

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

Washington, D.C. 20554

_____)	
In The Matter of)	
)	CC Docket No. 96-98
Implementation of the Local Competition)	
Provisions in the Telecommunications Act)	
of 1996)	
)	CC Docket No. 99-68
Intercarrier Compensation)	
for Internet-Bound Traffic)	
_____)	

COMMENTS OF RNK INC.

RNK INC.

By its attorney,
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April 12, 1999

SUMMARY

RNK Inc. d/b/a/ RNK Telecom (ARNK≡), a small Competitive Local Exchange Carrier (ACLEC≡) from Stoughton, Massachusetts, offering both facilities-based and resold services, provides comments, and urges the Commission to provide expedient insight on the issues of: the applicability of its Declaratory Ruling on reciprocal compensation payments occurring after the terms of existing agreements or per explicit preemption; the methodology to be used to determine which data traffic is local or interLATA/interstate for purposes of reciprocal compensation; and, whether, if interLATA traffic is determined to be non-compensable under the reciprocal compensation clauses of Interconnection Agreements, switched access charges for toll should apply.

RNK agrees with the Commission that growth of the Internet and local telecommunications market should not be unnecessarily impeded, and applauds the Commission for its Ahands-off≡ policy to date, which has allowed companies like RNK to form and thrive. RNK also agrees that efficient entry into the local market by CLECs is crucial to the creation of that market, and argues that current reciprocal compensation rates are facilitating the type of efficient market entry envisioned by both Congress and the FCC.

RNK further agrees with the Commission=s tentative conclusion that Interstate traffic should be governed prospectively by existing Interconnection Agreements, and that A parties should be bound by the terms of their existing [I]nterconnection [A]greements, as interpreted by state commissions.≡ Declaration at &1, &19. To that end, RNK has provided two means of determining which portions of ISP or Internet-bound traffic are interstate and local for purposes

of reciprocal compensation. RNK recommends that the Commission use a methodology to determine the nature of Internet-bound traffic that does not attempt to trace each call, but instead looks at general traffic or capacity levels. Under this methodology, it may be necessary that ISPs themselves will have to work with their serving local exchange carriers to determine traffic patterns and levels for purposes of determining accurate reciprocal compensation amounts. If the Commission decides that the InterLATA portion of data traffic is non-compensable at rates in current reciprocal compensation clauses, RNK argues against treating all traffic to ISPs as InterLATA, because it is possible to separate local and Internet-bound traffic, as per the methods explained in more detail below.

On the issue of payments for reciprocal compensation after terms of existing agreements expire, RNK argues that not only should the marginal costs associated with the technical transporting and terminating of Internet-bound calls be included, but also the cost avoided by dominant incumbent local exchange providers, such as their avoiding having to purchase newer switches that deal more effectively with internet or other data traffic, as opposed to traditional voice traffic.

Finally, RNK argues that if the Commission creates a dispute resolution process, or a collaborative process specifically for resolving disputes involving reciprocal compensation, that it be on a severely expedited schedule. As a small carrier, RNK does not have a lot of overhead that will allow it to keep significant portions of its revenue tied up in negotiation or dispute resolution. To make future plans, RNK needs to know what income it will or will not have on at least a monthly process. RNK, therefore, suggests that the Commission use a period of one week from

the **rendering** of bills for reciprocal compensation for both parties to resolve the dispute, and a second week for a local state commission to address and render opinion on such bills should a dispute arise.

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RNK, Inc. d/b/a RNK Telecom (ARNK≅), pursuant to Section 1.415 of the Federal Communication Commission=s (ACommission≅) Rules, 47 C.F.R. § 1.415, hereby submits its Comments in response to the Commission=s Notice of Proposed Rulemaking, FCC 99-68, released by the Commission in the captioned docket on February 26, 1999.

1. INTRODUCTION

RNK is a competitive local exchange carrier (ACLEC≅) in Massachusetts that competes with Bell Atlantic-Massachusetts (ABell Atlantic≅) as both a reseller of Bell Atlantic=s services, and a facilities-based competitor offering services such as voice, voice-mail (although Bell Atlantic=s Astutter≅ tone voice-mail is not available via resale, as per the Massachusetts Department of Telecommunications and Energy (ADTE≅)), and data transport. RNK and Bell

Atlantic are parties to a 1998 interconnection agreement (AICA \cong) made pursuant to Section 252 of the Telecommunications Act of 1996 (the AAct \cong).

As a CLEC, RNK believes that it is operating as just the sort of new competitor envisioned by Congress when it passed the Act, and the Commission in its numerous Orders and other opinions interpreting the Act, including the Commission's recent Declaratory Ruling *In re: Implementation of the Local Competition Provisions in the Telecommunication Act of 1996; Inter-Carrier Compensation*, CC Docket Nos. 96-98 and 99-68 (the ADeclaratory Ruling \cong). Because RNK serves business and residential Massachusetts consumers with both resold and facilities-based services, it provides a real choice in local telephone service. RNK has plans to expand to other New England states, and New York, in the near future. RNK, however, like many other CLECs in Massachusetts and the nation, is in its infancy and as such, is dependent upon Bell Atlantic to provide network interconnection facilities to allow it to service its customers. RNK is also currently dependent upon Bell Atlantic for a significant portion of its revenues, both Aflow-through \cong from customers, and from Bell Atlantic itself, including reciprocal compensation payments.

II THE EFFECT OF THE COMMISSION'S DECLARATORY RULING

Recently, the importance of reciprocal compensation payments to RNK and the developing local marketplace was demonstrated, as Bell Atlantic's interpretation of the Commission's Declaratory Ruling in the instant docket and resulting immediate escrowing of all unpaid past and future reciprocal compensation payments for Internet-bound traffic for CLECs that terminate more than twice as much traffic as they originate (as allowed by the DTE's March 23, 1999 *Interlocutory Order* on Bell Atlantic's Request for Authority to Escrow, in DTE 97-116-B) forced RNK to lay off 16 of its 20 staff members, and cast serious doubt about the local marketplace into the minds of RNK's investors and creditors. *See generally*, Ralph Ranalli, *Bell Atlantic Withholds Cash*, Boston Herald, March 27, 1999. RNK, and other CLECs, are currently involved in a dispute with Bell Atlantic before the DTE as to the effect of the Commission's Declaratory Ruling on the DTE's October 23, 1998 Order defining traffic terminating to the Internet as local for purposes of reciprocal compensation payments.¹

¹ Generally, the CLECs are arguing that the Commission's Declaratory Ruling does not affect the DTE's Order, at least as far as for the duration of existing Interconnection Agreements, or until the Commission rules and

As the Commission can likely see from the position of Bell Atlantic above and assumingly other incumbent local exchange providers (AILECs[≡]), for the sake of the stability and existence of the infant local marketplace, the Commission needs to make a quick decision on the issue of reciprocal compensation for Internet Service Provider (AISP[≡]) or Internet-bound traffic. In its ruling in the instant docket (ARuling[≡]) the Commission will hopefully provide insight on what types and/or amounts of data traffic are local, or Internet-bound for purposes of determining future compensation to be made after the terms of existing Interconnection Agreements expire. *See* Declaratory Ruling, FCC 99-38 at 2, 14 (1999).

III THE NATURE OF DATA TRAFFIC

In its March 23 ruling, the DTE was consistent in using the term **Ainternet-bound**[≡] traffic, following its original order finding such traffic as local for purposes of reciprocal

explicitly preempts the field. Bell Atlantic is arguing that the Commission's Order nullifies the DTE's Atwo-call[≡] reasoning for finding Internet data traffic to be local, and therefore, that it should be relieved of its current, past, and future responsibility to pay reciprocal compensation for Internet-bound traffic. *See generally*, *Complaint of WorldCom*, DTE 97-116 (1998).

compensation, as opposed to the Commission's use of the clause AISP-bound. *See Complaint of WorldCom*, DTE 97-116 (1998); *Complaint of WorldCom*, DTE 97-116-B.² RNK finds the DTE's use of this terminology as particularly appropriate in consideration of the technical realities of Internet use in today's economy, as explained below, and hopes the Commission will also use that terminology to further clarify its Declaratory Ruling, and the issue in general.

In the United States in 1999, the internet is used by businesses and consumers as a tool for work and play, and is an integral part everyday life for a rapidly growing majority of the American public. Access to the internet, via a local dial-up number leading to an ISP server, is generally provided through local dedicated trunks going directly to the Internet, from servers located within the state in which the calls originate, or located outside the state from which the calls originate. To be efficient, a significant number, or perhaps even a majority of the ISPs have located servers within the state or states housing a significant number of their customers, and when those customers access their email accounts, or browse their ISP's webpage, which may have local information in which they are most interested, such as www.Boston.com for local Boston residents, RNK believes they are making a local call, just as they might make a local call to the local Chamber of Commerce to get information. In addition, many ISPs download copies of popular webpages onto these local servers to provide local access to these pages to their customers. Again, RNK believes that these types of calls are local, and eligible for reciprocal compensation at the rates negotiated or arbitrated in Interconnection Agreements created under Section 252 of the Act.

² Available via the Internet at: <<<http://www.state.ma.us/dpu/telecom/97-116/revised.pdf>>>; <<<http://www.state.ma.us/dpu/telecom/97-116-b/97-116-b.htm>>>

2. POSSIBLE METHODS FOR DETERMINING THE NATURE OF TRAFFIC

Below are a few methods that might be used, alone, or in concert, for determining whether traffic is local or Internet-bound for purposes of reciprocal compensation.

A. Determining the Amount of Time Spent on Local Servers

In terms of measuring the amount of traffic that terminates locally, if so requested, ISPs should be able to provide their local exchange carriers (ALECs), whether ILEC or CLEC, with the percentage of their customers' total minutes spent on their local servers. As traffic that does not leave the LATA and/or state, this amount is local, and, as stated above, is compensable for purposes of reciprocal compensation under Section 252 of the Act.

5. Determining the Ratio Between Incoming Trunks to the ISP and Direct Trunks to the Internet from the ISP

In addition, a simpler method may be available to determine how much data traffic actually terminates to the Internet as opposed to determining the amounts terminating to local servers. Each ISP has a number of access lines, often T-1 lines, or trunks that terminate into its local server via modem banks and a LEC's switch. Each ISP has a finite number of trunks that feed directly into the Internet. Each of the trunks feeding directly into the Internet has capacity limits, and can be strictly monitored for traffic levels. For example, if an ISP has eight trunks of capacity X terminating to the Internet, and ten trunks of capacity X coming in from customers to its servers, if the trunks are operating at similar capacity levels, or are assumed to be at 100 percent capacity for means of simplicity, then 80 percent of the traffic to ISP would be deemed to be terminated to the Internet, or Internet-bound. This traffic would then be subject to reciprocal compensation payments as required by Interconnection Agreements until the ends of their current terms, and thereafter subject to whatever rate the Commission deemed appropriate, through cost study, or via tariffed rates for switched access.

5. COSTS OF PROVIDING TRANSPORT AND TERMINATION OF INTERNET-BOUND TRAFFIC

In determining the rates, or cost structure for the transporting and terminating of Internet-bound calls, not only should the actual cost of both transport and termination be considered, but, at least while the market is in its infancy, the lack of necessary investment by dominant incumbent local exchange carriers, who are the default carriers of traffic under the Act.

RNK, and CLECs of all sizes, have made significant investment in new switches that are better designed to handle data traffic and the different calling patterns (*i.e.*, longer average call) and capacity requirements associated with packet-switched data traffic, as compared to switches designed and programmed for traditional voice traffic. Bell Atlantic.net, the ISP Aarm≡ of Bell Atlantic, the dominant carrier in Massachusetts, is recently reported to have only a third of the internet customers in Massachusetts. *See Affidavit of Fred Goldstein*, Comments of Global NAPS in DTE 97-116-B (Mar. 12, 1999). The reasons Bell Atlantic, the dominant local exchange carrier in Massachusetts, with more than 95 percent of the local market and a customer base in the millions, is no longer the majority, or even dominant carrier of Internet traffic is because their switches and other facilities were and are still not adequate to deal with the quantity or quality of traffic generated by Internet users.³

Recently, this reality was brought to light for RNK, when a RNK customer, TIAC Inc., an ISP, transferred a large portion of its Internet access traffic from Bell Atlantic to RNK because of poor service, and of RNK=s ability to provide a more efficient and inexpensive solution. The switch Bell Atlantic originally anticipated using for this traffic was overwhelmed by the data traffic, causing blockage, and forcing Bell Atlantic to have to route the traffic differently, which it did via call forwarding, at considerable cost to itself. When RNK took the ISP=s business away from Bell Atlantic, Bell Atlantic was probably glad to get rid of it, free up its switching facilities, and avoid having to absorb the costs of call-forwarding the traffic to another location. It is these types of situations of which RNK wishes to make the Commission aware when the Commission reviews differing cost methodologies.

In summary, the true cost of providing Internet access is not just the transport and termination costs, but costs for avoided investment by the ILECs, who are the default carriers by virtue of their dominant status.

6. INTERSTATE DATA TRAFFIC SHOULD BE SUBJECT TO INTERSTATE OR TOLL ACCESS FEES AND CHARGES

³ In addition, arguably because of their massive size, Bell Atlantic cannot react as quickly to market demands placed upon them by ISPs, allowing smaller CLECs to fill this important and arguably first truly competitive local niche, which they have done, and done well..

Another means of treating the Interstate portions of data traffic is to allow LECs to charge each other interstate or toll switched access fees, as determined in the Interconnection Agreements and intrastate (or Interstate if need be) tariffs of CLECs. If these calls are not local, they and then toll calls, intra or interstate calls, and should be treated as such.

7. ANY DISPUTE RESOLUTION INVOLVING FUTURE RECIPROCAL COMPENSATION MUST BE SEVERELY EXPEDITED

RNK believes that for a dispute resolution process, or a collaborative process specifically for resolving disputes involving reciprocal compensation to work, it must be on a severely expedited schedule. As a small carrier, RNK has already felt the sting of two months of escrowing of its currently owed reciprocal compensation payments, which almost caused its demise. RNK, like many small-to-medium sized CLECs, does not have the quantity of overhead that will allow it to keep significant portions of its revenue tied up while negotiation or dispute resolution proceeds for prolonged periods of time.

Any revenue RNK makes is automatically reinvested into infrastructure, like Class 5 end office switches, tandem switches, and voice-mail platforms, to allow RNK to compete as a facilities-based carrier. RNK makes its business plans monthly, quarterly, and bi-annually, and needs to be able to count on a certain percentage of its revenue being paid on time and litigation/dispute-resolution-free. RNK, therefore, suggests that the Commission use a period of one week from the **rendering** of bills for reciprocal compensation for both parties to resolve the dispute, perhaps via a monthly collaborative process, or perhaps during the scheduled monthly Claims meeting, and a second week for a local state commission to address and render opinion on such bills should a dispute arise.

8. CONCLUSION

For the reasons stated above, RNK hopes that the Commission will carefully consider all factors when determining how all data traffic flowing to ISPs is treated, and the costs and various cost recovery methods that should be applied, and expedite its Ruling to provide further stability to the local market in this important area.

Respectfully submitted

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