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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 ) CC Docket No. 99-68  
Inter-Carrier Compensation )  
for ISP-Bound Traffic )

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COMMENTS OF CTSI, INC. APR 12 1999  
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Dated: April 12, 1999

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## SUMMARY

The public interest has been well served by the framework of intercarrier compensation for ISP-bound traffic implemented by carriers and states under the negotiation and arbitration processes of Sections 251 and 252. This framework has been fully compatible with the unprecedented growth of the Internet and helped foster the creation of new services for both businesses and individual consumers.

The Commission should now establish a framework governing intercarrier compensation for ISP-bound traffic on a going-forward basis that preserves and extends the current approach to the treatment of this traffic. This framework should include as an essential component the right of parties to negotiate and arbitrate intercarrier compensation for this traffic pursuant to Sections 251 and 252 of the Act and the right to rely on federal pricing guidelines that the Commission should adopt in this proceeding. These federal guidelines should require that intercarrier compensation for ISP-bound traffic be based on ILEC costs using the TELRIC methodology, and be symmetrical unless a competitive LEC can demonstrate that it has higher costs. The Commission should determine that recovery of costs exclusively on a usage sensitive basis is consistent with federal requirements. The Commission should further require that rates, and requirements governing intercarrier compensation for ISP-bound traffic, be the same as those governing reciprocal compensation.

States have authority under Section 252 of the Act to arbitrate intercarrier compensation for ISP-bound traffic even if this traffic is jurisdictionally interstate. The Commission has recognized that the 1996 Act created a new regulatory regime in which states may exercise authority over some matters which were traditionally considered interstate. Specifically,

Sections 251 and 252 contemplate that parties may negotiate comprehensive interconnection arrangements. Intercarrier compensation for ISP-bound traffic is within the scope of matters parties may negotiate under Section 251 and that states may arbitrate under Section 252.

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**COMMENTS OF CTSI INC.**

CTSI, Inc. ("CTSI"), by its undersigned counsel, submits these comments in response to the *NPRM* issued in the above captioned proceeding.<sup>1</sup> CTSI, formerly known as Commonwealth Telecom Services, Inc., is a competitive local exchange carrier ("CLEC"), currently providing local exchange services in New York and Pennsylvania over its own facilities, by resale, and over unbundled loops obtained from Bell Atlantic pursuant to section 251<sup>2</sup> of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act").

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<sup>1</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling and Notice of Proposed Rulemaking, CC Docket Nos. 96-98, 99-68, FCC 99-38, released February 26, 1999 ("*Dial-Up Order*" or "*NPRM*").

<sup>2</sup> 47 U.S.C. § 251 (1996).

## I. THE PUBLIC INTEREST IS WELL SERVED BY THE CURRENT INTERCARRIER COMPENSATION ARRANGEMENTS FOR ISP-BOUND TRAFFIC

In the *Local Competition Order*,<sup>3</sup> the Commission established regulations implementing the local competition provisions of the Telecommunications Act of 1996 ("1996 Act")<sup>4</sup> including Section 251(b)(5)<sup>5</sup> concerning reciprocal compensation. Under the regulations implementing Section 251(b)(5), local service providers may negotiate reciprocal compensation rates and arrangements subject to an opportunity to arbitrate before state commissions under Section 252.<sup>6</sup> At the time parties entered into their interconnection agreements, they assumed that the reciprocal compensation provisions of the Act and their interconnection agreements were fully applicable to ISP-bound traffic. State commissions also assumed this was the case.<sup>7</sup> Thus, for

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<sup>3</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No.96-98, First Report and Order, 11 FCC Rcd 15499, 15805-15806, ¶¶ 694-606 (1996) (*Local Competition Order*), *vacated in part, aff'd in part*, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8<sup>th</sup> Cir. 1997), *aff'd in part, rev'd in part* AT&T Corp. v. Iowa Utils. Bd., 119 S.Ct. 721 (1999).

<sup>4</sup> Pub.L. 104-104, Title VII, Sec. 706, Feb. 8, 1996, 110 Stat. 153, reproduced in the notes under 47 U.S.C. Sec.

<sup>5</sup> 47 U.S.C. Section 251(b)(5).

<sup>6</sup> *Local Competition Order*, ¶¶ 13, 35; 47 U.S.C. Section 252.

<sup>7</sup> Prior to the *Dial-Up Order*, every state commission - 28 state commissions - that examined the issue found that dial-up calls to ISPs were subject to reciprocal compensation. *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc., Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996*, Opinion and Order, Decision No. 59872, Docket No. U-2752-96-362 *et al.* (Az. C.C. Oct. 29, 1996); *Petition of MFS Communications Company, Inc., for Arbitration Pursuant to 47 U.S.C. § 252(b) of Interconnection Rates, Terms, and Conditions with US WEST Communications, Inc.*, Decision Regarding Petition for Arbitration, Docket No. 96A-287T (Co. PUC Nov. 5, 1996); *The Investigation and Suspension of Tariff Sheets Filed by U S West Communications, Inc. With Advice Letter No. 2617, Regarding Tariffs for Interconnection, Local Termination, Unbundling and Resale of Services*, Docket No. 96A-331T, Commission Order, at 8 (Co. PUC July 16, 1997). *Petition for Arbitration of an Interconnection Agreement Between MFS Communications Company, Inc. and US WEST Communications, Inc., Pursuant to 47 USC § 252*, Arbitrator's Report and Decision, Docket No. UT-960323 (Wash. Utils. and Transp. Comm. Nov. 8, 1996); *U S West Communications, Inc. v. MFS Intelenet, Inc. et al.*, Order, No. C97-222WD (W.D. Wash. January 7, 1998); *Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access*

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*Transmission Services, Inc., and MFS Communications Company for Arbitration with US WEST Communications, Inc., Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Order Resolving Arbitration Issues, Docket Nos. P-442, 421/M-96-855, P-5321, 421/M-96-909, P-3167, 421/M-96-729 (Minn. PUC Dec. 2, 1996); *Petition of MFS Communications Company, Inc., for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996*, Commission Decision, Order No. 96-324 (Ore. PUC Dec. 9, 1996), at 13, *aff'd in applicable part, US WEST Communications, Inc. v. WorldCom Technologies, Inc.*, Civil Action No. CV97-857-JE, (slip op. Dec. 10, 1998 D. Or); *Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic*, Case 97-C-1275, Order Denying Petition and Instituting Proceeding (N.Y. PSC. July 17, 1997). Letter dated September 11, 1997 from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Esq., Bell Atlantic-Maryland, *Petition of the Southern New England Telephone Company For a Declaratory Ruling Concerning Internet Service Provider Traffic*, Docket No. 97-05-22 (Conn. DPUC Oct. 10, 1997); *Petition of Cox Virginia Telecom, Inc. for Enforcement of interconnection agreement with Bell Atlantic-Virginia, Inc. and arbitration award for reciprocal compensation for the termination of local calls to Internet service providers*, Final Order, Case No. PUC970069 (Va. S.C.C. Oct. 24, 1997); *Complaint and Request for Expedited Ruling of Time Warner Communications*, Order, PUC Docket 18082 (TX PUC, February 27, 1998). *Southwestern Bell Telephone Co. v. Public Utility Commission of Texas*, Case No. MO-98-CA-43, June 22, 1998; *Petition For Arbitration of Unresolved Issues For the Interconnection Negotiations Between MCI and Bell Atlantic - West Virginia, Inc.*, Order, Case No. 97-1210-T-PC (W.Va. PSC Jan. 13, 1998); *Consolidated Petitions of Brooks Fiber Communications of Michigan, Inc., TCG Detroit, MFS Intelenet of Michigan, Inc. and Brooks Fiber Communications of Michigan, Inc. against Michigan Bell Telephone Company, d/b/a Ameritech Michigan and Request for Immediate Relief*, Order, Case Nos. U-11178, U-11502, U-11522, U-11553 (Mich. PSC Jan. 28, 1998; *In the Matter of Interconnection Agreement Between BellSouth Telecommunications, Inc. and US LEC of North Carolina, LLC*, Order Concerning Reciprocal Compensation for ISP Traffic, Docket No. P-55, Sub 1027 (N.C. Util. Comm. Feb. 26, 1998); *Teleport Communications Group, Inc. v. Illinois Bell Telephone Company, Ameritech Illinois, et al.*, Docket Nos. 97-0404, 97-0519, 97-0525 (Consol.), Order, (Ill. C.C. Mar. 11, 1998); *In the Matter of the Petition of Birch Telecom of Missouri, Inc. For Arbitration of the Rates, Terms, Conditions, and Related Arrangements for Interconnection with Southwestern Bell Telephone Company*, Arbitration Order, Case No. TO-98-278 (Mo. P.S.C. Apr. 23, 1998); *Re: Contractual Dispute About the Terms of an Interconnection Agreement Between Ameritech Wisconsin and TCG-Milwaukee, Inc.* Letter from Lynda L. Dorr, Secretary to the Commission, Public Service Commission of Wisconsin, to Rhonda Johnson and Mike Paulson, dated May 13, 1998; *In the Matter of Brooks Fiber Communications of Oklahoma, Inc. et al. For An Order Concerning Traffic Terminating To Internet Service Providers and Enforcing Provisions of the Interconnection Agreement With Southwestern Bell Telephone Company*, Case No. PUD 970000548, Order No. 423626 (June 3, 1998); *.Petition for Declaratory Order of TCG Delaware Valley, Inc.*, Docket No. P-00971256, (June 16, 1998); *Petition of Brooks Fiber to Enforce Interconnection Agreement and for Emergency Relief*, Docket No. 98-00118, voted to Affirm Hearing Officer, June 2, 1998; *Complaint of ICG Telecom Group, Inc., v. Ameritech Ohio Regarding the Payment of Reciprocal Compensation*, Case No. 97-1557-TP-CSS, Opinion and Order (PUCO, Aug. 27, 1998); *Complaint of World[Com] Technologies, Inc. Against BellSouth Telecommunications, Inc., for Breach of Terms of Florida Partial Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 and Request for Relief*, Docket No. 971478-TP, Final Order Resolving Complaints, Order No. PSC-98-1216-FOF-TP (Fla. PSC Sep. 15, 1998); *Complaint of WorldCom Technologies, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for alleged breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, D.T.E. 97-116, Decision (Mass. D.T.E., October 21, 1998); *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service* (Rulemaking 95-04-043); *Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service* (Investigation 95-04-044), Opinion, Decision 98-10-057 (Cal. P.U.C., October 22, 1998); *Complaint of MFS Intelenet of Georgia, Inc. Against BellSouth Telecommunications, Inc., and Request for Immediate Relief*, Order Affirming and Modifying the Hearing Officer's Decision, Docket No. 8196-U (Ga. P.S.C. Dec. 28, 1998);

all practical purposes, the framework that the Commission established for reciprocal compensation generally was applied by the industry and state regulators to ISP-bound traffic. It was not until the Commission's *Dial-Up Order* that the FCC found that, in its view, this traffic was not subject to reciprocal compensation under Section 251(b)(5) of the Act, and that, as a consequence, the Commission had no rules governing reciprocal compensation for ISP-bound traffic.

CTSI submits that the regulatory framework that parties and state authorities applied to ISP-bound traffic under the assumption that this traffic was subject to Section 251(b)(5) was nonetheless appropriate and in the public interest. Current intercarrier compensation arrangements for ISP-bound traffic have fostered the growth of Internet services. In addition, they have enabled incumbent and competitive LECs to meet the ISP access needs of consumers and businesses in efficient and cost-effective ways by enabling them to recover the costs of carrying this traffic. Consumers have benefitted from greater service choices. Incumbent LECs have benefitted from growth in subscriber lines. Current inter-carrier compensation arrangements for this traffic have helped contribute to, and are fully compatible with, the

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*Connect Communications Corp. v. Southwestern Bell Telephone Co.*, Order, Docket No. 98-167-C, Order No. 6 (Ark. P.S.C. Dec. 31, 1998); *Public Utilities Commission Instituting a Proceeding on Communications, Including an Investigation of the Communications Infrastructure of the State of Hawaii*, Decision and Order, Docket No. 7702 (Hawaii P.U.C. Jan. 7, 1999); *Complaint Against US WEST Communications, Inc., by Electric Lightwave, Inc., Requesting the Utah Public Service Commission to Enforce an Interconnection Agreement Between Electric Lightwave, Inc., and US WEST Communications, Inc.*, Order, Docket No. 98-049-36, (Utah P.S.C. Jan. 22, 1999); *Complaint of Time Warner Communications of Indiana, L.P., Against Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana, for Violation of the Terms of the Interconnection Agreement*, Cause No. 41097 (Ind. U.R.C. Feb. 3, 1999). See also *Emergency Petitions of ICG Telecom Group, Inc. and ITC^DeltaCom Communications, Inc. for a Declaratory Ruling*, Docket 26619 (Ala. P.S.C. Mar. 4, 1999); *Request for arbitration concerning complaint of American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. against BellSouth Telecommunications, Inc. regarding reciprocal compensation for traffic terminated to internet service providers*, Docket No. 981008-TP, Order No. PSC-99-0658-FOF-TP (Fla. P.S.C. April 6, 1999).

transformation of the Internet into one of the key features of the thriving telecommunications sector of the United States economy. CTSI submits, therefore, that current intercarrier compensation arrangements have served the public interest and that the Commission, in moving forward with this rulemaking, should be guided by the goal of continuing the current regulatory framework that industry assumed was applicable to governing intercarrier compensation for ISP-bound traffic.

## **II. COMPENSATION FOR ISP-BOUND TRAFFIC SHOULD BE THE SAME AS FOR TRAFFIC SUBJECT TO SECTION 251(b)(5).**

As discussed more fully below, a competitive LEC's costs of transporting and "terminating" a call to an ISP is no different from the costs of "terminating" other calls to other customers. A competitive LECs' costs do not vary significantly based on whether data or voice traffic is being transmitted. Further, the jurisdictional nature of ISP-traffic should be irrelevant to intercarrier compensation for this traffic. CTSI submits that, as discussed below, the Total Element Long Run Incremental Cost ("TELRIC") costs of originating or terminating long distance calls experienced by competitive and incumbent LECs are the same for all practical purposes as they are for local calls. Different pricing for ISP-bound traffic and local traffic would skew investment decisions by both incumbent and competitive LECs, encourage arbitrage, and hinder the development of an efficient telecommunication network.

Moreover, ISP-bound traffic has been treated as local traffic by regulators and the industry. In the *Dial-Up Order*, the Commission noted that for purposes of application of access charges, it has treated ISP-bound traffic as local.<sup>8</sup> Similarly, the Commission pointed out that

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<sup>8</sup> *Dial-Up Order*, ¶ 23.

incumbent LECs treat these calls as local for separations purposes.<sup>9</sup> Moreover, dial-up calls to ISPs have the same technical call-completion characteristics as any other local call, incumbent LECs charge their customers local rates for these calls, ISPs have local telephone numbers, and ISPs premises where the calls are handed off are in the local calling area. Thus, dial-up calls to ISPs are local calls for both regulatory purposes, other than jurisdiction, and as a practical matter. Accordingly, CTSI urges the Commission to establish as one of its federal pricing guidelines that intercarrier compensation rates, rate structures, and other requirements applicable to ISP-bound traffic must be the same as reciprocal compensation for local traffic generally.

CTSI also emphasizes that the Commission must reject any incumbent LEC requests in this proceeding that intercarrier compensation for ISP-bound traffic should be treated in the same manner as interstate access traffic. As noted by the Commission itself in the *Dial-Up Order*, this option is not available because the "ESP exemption" precludes assessment of interstate access charges.<sup>10</sup> Therefore, interstate access charge revenue is not available to carriers to form the basis of intercarrier compensation for this traffic. The Commission should not use this proceeding as a backdoor approach to rescinding the "ESP exemption."

CTSI also points out that the Commission has no substantial basis for concluding that any particular amount of ISP-bound traffic is jurisdictionally interstate. The Commission may receive comments in this proceeding repeating the unsupported generalizations to the effect that

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<sup>9</sup> *Dial-Up Order*, n. 76. An incumbent LEC at one point announced an intention to unilaterally reclassify this traffic as interstate in order to support its position concerning reciprocal compensation. Letter from SBC Communications, Inc. to Ken Moran, Chief, Accounting and Audits D. Communications Commission, January 20, 1998.

<sup>10</sup> *Dial-Up Order*, ¶ 9.

the Internet is a "global medium of communications – or ‘cyberspace’ -- that links people, institutions, corporations and governments around the world."<sup>11</sup> These commenters conveniently forget that the voice network is also a "global medium of communications" "that links people, institutions, corporations and governments around the world" but that this does not justify an unsupported assumption that this traffic is mostly jurisdictionally interstate. CTSI submits that a far greater percentage of ISP-bound traffic is jurisdictionally intrastate, and even local, due to "caching" and "mirroring" of Internet sites, than the Commission has been assuming is the case. Thus, it may well be appropriate to treat ISP-bound traffic as local because much of it is local under the Commission's end-to-end jurisdictional analysis.

### **III. COMPENSATION FOR ISP-BOUND TRAFFIC SHOULD BE SUBJECT TO NEGOTIATION AND ARBITRATION**

CTSI strongly supports the Commission's tentative conclusion that intercarrier compensation arrangements for ISP-bound traffic should be established in the first instance by parties' voluntary negotiations.<sup>12</sup> As noted in the *NPRM*, negotiated intercarrier compensation rates are most likely to lead to economically efficient outcomes.<sup>13</sup> Private parties are in the best position to identify and establish prices that will provide a fair return in light of current industry and market conditions.

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<sup>11</sup> GTE Telephone Operating Companies GTOC Tariff FCC No. 1 GTOC Transmittal No. 1148, CC Docket No. 98-79, Opposition of Ameritech Corp. at 12 (1998) (*citing Internet Over Cable: Defining the Future in Terms of the Past*, FCC Office of Plans and Policy Working Paper No. 30, Aug. 1998, at 6).

<sup>12</sup> *NPRM*, ¶ 29.

<sup>13</sup> *Id.*

Relying on voluntary negotiations to set intercarrier compensation for ISP-bound traffic is also likely to be less burdensome to regulators. This approach is also most consistent with the goals of the 1996 Act to create a "pro-competitive, deregulatory national policy framework" for provision of telecommunications services in the United States.<sup>14</sup> Accordingly, CTSI recommends that the Commission provide that parties may negotiate intercarrier arrangements for ISP-bound traffic.

To ensure that the parties do, in fact, negotiate ISP-bound traffic rates in a good faith manner, parties must be afforded an opportunity to arbitrate before a regulatory authority any issues that they are unable to resolve through voluntary negotiations. Incumbent LECs continue to possess the overwhelming share of the local service market.<sup>15</sup> Competitive LECs remain dependent on reasonable terms of interconnection with incumbent LEC networks, including for intercarrier compensation, in order to function as viable local service providers. Absent an opportunity for arbitration, incumbent LECs will be able to thwart competitive entry by denying competitive LECs reasonable intercarrier compensation for ISP-bound traffic. Experience has also shown that incumbent LECs will unilaterally engage in self-help to prevail in their points-of-view concerning intercarrier compensation for ISP-bound traffic. Accordingly, the Commission should establish that parties may negotiate intercarrier compensation arrangements for ISP-bound traffic subject to an opportunity to arbitrate unresolved issues before regulators.

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<sup>14</sup> Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996)("Joint Explanatory Statement")

<sup>15</sup> Competitive LECs and Competitive Access providers accounted for less than 2% of local service revenues in 1997. *Local Competition Report*, Industry Analysis Division, Common Carrier Bureau, December 1998, p. 9.

#### **IV. ARBITRATION SHOULD BE CONDUCTED BY STATE AUTHORITIES PURSUANT FEDERAL GUIDELINES**

CTSI urges the Commission to determine that parties may arbitrate issues concerning intercarrier compensation for ISP-bound traffic before state authorities under Section 252 of the Act. State authorities have experience in this area because they have been conducting arbitrations concerning this traffic under Section 252 since 1996. They additionally have the resources to do so and have procedural rules in place.

The states have authority under Sections 251 and 252 to conduct arbitrations concerning intercarrier compensation for ISP-bound traffic even though, in the Commission's estimation, most of this traffic is jurisdictionally interstate. As the Commission found in the *Local Competition Order*, Sections 251 and 252 of the 1996 Act created a new jurisdictional regulatory regime in which some interstate matters normally subject to FCC jurisdiction are subject to state authority.<sup>16</sup> As a result, under Section 251 states may exercise authority over matters concerning interstate communications to the extent they are otherwise within the scope of Section 251.

Additionally, Section 252(a) does not limit the matters that parties may include in their voluntary interconnection agreements or that states may arbitrate. In fact, Section 252(a) states that parties may enter into a binding agreement without regard to the standards set forth in subsections (b) and (c). This includes subsection 251(b)(5) concerning reciprocal compensation. Thus, even if the Commission believes that ISP-bound traffic is not subject to Section 251(b)(5) because it does not, in the Commission's view, terminate locally, parties may negotiate intercarrier compensation for it under Section 252(a). Furthermore, the explicit language of

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<sup>16</sup> *Local Competition Order*, ¶ 83.

Sections 252(b)(1) and (2), allows states to mediate or arbitrate the negotiations which concern ISP-bound traffic. Therefore, CTSI reasons that Congress clearly gave states authority to arbitrate intercarrier compensation for ISP-bound traffic, even if the FCC believes that such traffic is not subject to reciprocal compensation under Section 251(b)(5).

Moreover, permitting state mediation of any matters appropriately included within an interconnection agreement would provide for the efficient administration of interconnection agreements. CTSI submits that it would make little sense for the states to arbitrate reciprocal compensation for local traffic while the Commission separately arbitrate intercarrier compensation for ISP-bound and access traffic. Interconnection agreements are negotiated as a unified package. It would not be practical for the Commission, state arbitrators, and the parties to try to coordinate simultaneous federal and state negotiations and arbitrations in an effort to reach a comprehensive agreement. This could lead to situations in which state and federal arbitrators reach inconsistent outcomes leading to unnecessary rounds of negotiations and litigation.

Furthermore, CTSI questions whether the Commission would even be able conduct the arbitrations for this traffic arising from carriers in the fifty states, the District of Columbia, and United States Territories and Possessions in a timely manner. The Commission's resources are already strained, and it is under constant pressure to reduce, rather than expand, its regulatory programs. While the Commission does have a small staff assigned to the complaint resolution process, it is likely that an influx of arbitrations stemming from these and other new issues would

quickly overwhelm this process.<sup>17</sup> Nor is it realistic to expect that the Commission would be able to devote the significant additional resources necessary to conduct arbitrations for this traffic.

Therefore, CTSI submits that the Commission can most efficiently assure that the pro-competitive goals of the Act are met by establishing guidelines for states to follow in arbitrations, rather than conducting arbitrations itself. Accordingly, the Commission should determine that all arbitration of intercarrier compensation for ISP-bound traffic should be conducted by state authorities pursuant to Section 252 of the Act. The Commission should also determine that if a state fails to conduct any given arbitration then the Commission may do so pursuant to Section 252(e)(5).<sup>18</sup>

#### **V. THE FCC SHOULD ESTABLISH FEDERAL PRICING GUIDELINES**

As discussed above, state authorities should be able to set rates for ISP-bound traffic in arbitrations. CTSI recommends that the Commission apply the general approach it established in the *Local Competition Order* for implementation of the local competition provisions of the Act. Under this approach, states are largely responsible for implementation and enforcement of the local competition provisions of the Act, including reciprocal compensation, in accordance with federal guidelines. Thus, the Commission should establish guidelines for pricing ISP-bound traffic, while states set the actual rate in arbitrations pursuant to those guidelines in the event that the parties cannot agree on appropriate pricing parameters.<sup>19</sup>

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<sup>17</sup> *Implementation of the Telecommunications Act of 1996: Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers*, CC Docket No. 96-238, Second Report and Order, 13 FCC Rcd 17018 (1998).

<sup>18</sup> 47 U.S.C. Section 252(e)(5).

<sup>19</sup> *Local Competition Order*, ¶¶ 1027-1118.

In addition, broad pricing rules along the lines of those adopted in the *Local Competition Order* will not impinge upon state authority more than necessary. CTSI believes that using proxy rates where no rates are currently in effect, pending a state's setting of permanent rates, would assure that federal pricing guidelines are not too burdensome for the states to implement.

Finally, it is not necessary for the Commission to create new pricing guidelines. As explained below, the pricing rules governing reciprocal compensation for other traffic are fully appropriate for ISP-bound traffic. Accordingly, the Commission should apply its current reciprocal compensation pricing rules to ISP-bound traffic. As discussed above, this is what the parties and state regulators have assumed was the case, this approach has served the public interest well up to this point, and applying these rules on a going-forward basis will promote certainty and stability in the market and thereby promote the further rollout of new services.

## **VI. THE FCC SHOULD ADOPT RATE STRUCTURE GUIDELINES**

CTSI believes that the rate structure guidelines that the Commission adopted in the *Local Competition Order* for reciprocal compensation should also be applied to ISP-bound traffic. In that *Order*, the Commission determined that rates must reflect the way in which costs are incurred<sup>20</sup> and that states may set rates that vary according to whether traffic is routed through a tandem switch or directly to an end office.<sup>21</sup> The Commission also determined that in situations where the switch technology employed by the new entrant performs functions similar to a tandem, or where the new entrant's switch serves a geographic area comparable to a tandem, the

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<sup>20</sup> *Local Competition Order*, ¶ 1063.

<sup>21</sup> *Id.* ¶ 1090.

new entrant shall receive the tandem termination rate.<sup>22</sup> CTSI submits that adopting these requirements for ISP-bound traffic will assure that any rates set by states will promote efficient pricing. Thus, states would not be able to set rates that create market distortions and permit inefficient entry by permitting cost recovery in ways that are substantially different than the way that costs are incurred. This will ensure that competitive LECs will receive comparable rates where they perform the same switching functions as incumbent LECs.

The Commission should also find that for ISP-bound traffic, once a call has been delivered to an end office, most of the costs involved in reciprocal compensation consist primarily of the traffic sensitive component of local switching. This would be consistent with the Commission's findings in the *Local Competition Order*.<sup>23</sup> The Commission should state that recovery of all costs concerning ISP-bound traffic on a usage sensitive basis is acceptable under federal pricing guidelines. This would bring federal policy into conformity with the practice of parties in most interconnection agreements.

## **VII. THE FCC SHOULD PERMIT "BILL-AND-KEEP" FOR ISP-BOUND TRAFFIC**

CTSI urges the Commission to determine that "bill-and-keep" can be imposed in situation where the presumption of symmetrical rates has not been rebutted and where traffic is balanced. In this situation, there is no need for carriers to actually pay each other anything because they will be incurring essentially the same costs when transporting and terminating each others'

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* ¶ 1057.

traffic. The Commission should also apply to ISP-bound traffic the determination that states may set reasonable thresholds for determining when traffic is balanced.<sup>24</sup>

### **VIII. INTERCARRIER COMPENSATION FOR ISP-BOUND TRAFFIC SHOULD BE BASED ON TELRIC**

In the 1996 Act, Congress sought to create a competitive environment for the provision of local telecommunications services.<sup>25</sup> Subsequently, the Commission, in its *Local Competition Order*, determined that pricing of incumbent LEC services and elements based on a forward looking cost methodology was necessary to achieve the competitive goals of the 1996 Act because, in a competitive, efficiently operating market environment, service providers will set prices based on forward looking costs.<sup>26</sup> The Commission chose TELRIC as the appropriate forward looking cost methodology to implement the local competition provisions of the Act.<sup>27</sup>

CTSI believes that the Commission should similarly determine that intercarrier compensation rates for ISP-bound traffic should also be based on TELRIC. CTSI submits that the Commission should require that states use the TELRIC methodology when establishing rates for this traffic. Furthermore, this TELRIC methodology should be determined in accordance with the requirements specified in the *Local Competition Order*, including a reasonable allocation of overhead.

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<sup>24</sup> *Local Competition Order* ¶ 1113.

<sup>25</sup> *See* n. 9, *supra*.

<sup>26</sup> *Local Competition Order*, ¶¶ 620, 672, 1054.

<sup>27</sup> *Id.*

## IX. INTERCARRIER COMPENSATION RATES SHOULD BE SYMMETRICAL

The Commission should also require that intercarrier compensation rates for ISP-bound traffic be symmetrical, *i.e.* the rate will be the same for both directions, and that it be based on an examination of incumbent LEC costs. As discussed in the *Local Competition Order*, there is no reason to assume that the TELRIC costs of an incumbent LEC would be any different than those of the competitive LEC.<sup>28</sup> Moreover, competitive LECs do not have the extensive experience in rate regulation that incumbents have, nor are they necessarily likely to have the cost records appropriate for rate proceedings. Nor do they have the resources necessary to effectively participate in rate proceedings. Accordingly, as the Commission has already determined for reciprocal compensation generally,<sup>29</sup> it makes the most sense for TELRIC rates to be set using incumbent LEC costs.

CTSI also urges the Commission to adopt the feature of its current reciprocal compensation requirements that permits competitive LECs to rebut the presumption of symmetrical rates and demonstrate that they have higher rates. This safeguard will assure that intercarrier compensation rates for ISP-bound traffic are appropriate for both parties.

The Commission should also explicitly preempt states that may be embarking on an examination of competitive LEC costs. Some incumbent LECs have urged some state commissions to do so.<sup>30</sup> For the reasons stated above, CTSI believes that this is neither

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<sup>28</sup> *Local Competition Order*, ¶ 1085.

<sup>29</sup> *Id.*

<sup>30</sup> See "Petition of Bell Atlantic-New York to Re-Open Case 97-C-1275" March 2, 1999, Proceeding on Motion to the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Case 97-C-1275, New York Public Service Commission.

necessary nor feasible. Accordingly, the Commission should preempt any state proceedings that may be taking this approach unless, as noted, they are part of a competitive LEC's efforts to rebut the presumption of symmetry of intercarrier compensation for ISP-bound traffic.

#### **X. THE FCC SHOULD PERMIT STATES TO USE PROXY RATES**

In the *Local Competition Order*, the Commission adopted proxy rates that states could use in situations where they had not yet set rates based on TELRIC. CTSI urges the Commission to adopt this approach in situations analogous to ISP-bound traffic, *i.e.* in situations where the parties do not have intercarrier compensation rates in effect arrived at either through voluntary negotiations or through arbitrations. In these situations, the proxy rate is a useful alternative and probably the only feasible one pending state TELRIC proceedings.

However, the Commission's proxy rates were adopted when no parties had established any rates under the 1996 Act. CTSI submits that an immediate implementation of proxy rates is not likely to be appropriate in situations where the parties already have rates in effect.

Accordingly, in situations where parties have not yet determined prices based on TELRIC and the parties request arbitration, it will probably be more appropriate and less disruptive to the parties to continue current rates in effect pending arbitrations or TELRIC proceedings.

Accordingly, the Commission should not mandate application of proxy rates but should permit states the option of maintaining current rates in effect pending any proceedings underway to set rates based on TELRIC. Of course, if current rates are based on TELRIC they may remain in effect permanently, or if voluntarily negotiated, may remain in effect until the agreement is renegotiated pursuant to its terms and conditions.

The Commission should also determine that competitive LECs may obtain the proxy rate on an interim basis pending completion of negotiations for an initial interconnection agreement. This will help assure that competitive LECs are not unduly delayed in seeking to provide initial service.

## **XI. THE FCC SHOULD CREATE OPT-IN RIGHTS**

In the NPRM, the Commission solicited comment on the extent to which parties may opt-in to interconnection agreements pursuant to Section 252(i)<sup>31</sup> and to reset the term for that interconnection agreement so that it runs for its full term from the date of the opt-in.<sup>32</sup> CTSI urges the Commission to strongly affirm new entrants' right to opt-in to existing interconnection agreements, or portions thereof, pursuant to Section 252(i). CTSI submits that the Commission should permit opting-in to existing agreements for the balance of the term of such agreements. This approach would best balance the interests of incumbent LECs and the rights of competitive LECs to opt-in to existing agreements under Section 252(i).

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<sup>31</sup> 47 U.S.C. Section 252(i).

<sup>32</sup> *NPRM*, ¶ 35.

## XII. CONCLUSION

For these reasons, the Commission should adopt the recommendations set forth in these Comments.

A handwritten signature in black ink, appearing to read "Patrick J. Donovan", is written over a horizontal line.

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Dated: April 12, 1999

**CERTIFICATE OF SERVICE**

I, Candise M. Pharr, hereby certify that on this 12<sup>th</sup> day of April 1999, copies of the foregoing Comments of CTSI, Inc. were delivered by hand and first class mail to the following:

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