

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions in the Telecommunications Act)	
Of 1996)	
)	
Inter-Carrier Compensation)	CC Docket No. 99-68
For ISP-Bound Traffic)	

**COMMENTS OF THE
COMMERCIAL INTERNET EXCHANGE ASSOCIATION**

The Commercial Internet eXchange Association ("CIX"), by its attorneys, files these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned dockets. CIX is a trade association that represents almost 150 Internet Service Provider member networks who handle over 75% of the United States' Internet traffic.¹ CIX works to facilitate global connectivity among commercial Internet service providers ("ISPs") in the United States and throughout the world.

As an initial matter, CIX believes that existing ILEC-CLEC interconnection agreements providing for reciprocal compensation of ISP-bound traffic should be maintained, and should not be superceded by the Commission's actions in this proceeding. CIX believes that the rulemaking decisions to be promulgated in this proceeding should apply prospectively only to

¹ The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

interconnection agreements entered into after the effective date of those final rules. The Commission should not apply assertedly “prospective” rules to negate the terms of existing negotiated agreements. Negotiation of existing contractual agreements would raise issues of unreasonable retroactive rulemaking², especially where Congress has established a process to encourage binding and negotiated agreements.³

CIX also supports the Commission’s tentative conclusion that the interconnection processes of Sections 251 and 252 of the Act should govern ILEC/CLEC compensation arrangements for ISP-bound traffic. NPRM, ¶ 30. The Commission’s suggested approach for state resolution of ISP-bound reciprocal compensation disputes, along with all other interconnection disputes, would promote a stable and competitive local telecommunications market to serve multiple ISPs in a given local market.

As the Commission notes, it is far more efficient to resolve disputes arising under interconnection agreements at a single primary forum. By contrast, fora at both the state and FCC levels would invite forum shopping, and slow down the resolution of disputes by injecting complex jurisdictional issues. States also have established expertise and a continuing statutory mandate under Section 252 to resolve interconnection disputes. The creation of a federal arbitration role would largely duplicate the state processes already in place, and awkwardly sever off a single portion of the interconnection process -- ISP-bound traffic disputes. The costs,

² National Assn. of Independent Television Producers and Distributors, 502 F.2d 249, 255 (2nd Cir. 1974); Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 220 (concurring opinion, J. Scalia).

³ 47 U.S.C. § 252(a)(1).

complexity, and delays associated with a bifurcated state and federal process would, in CIX's view, undermine CLEC deployment in a manner that is contrary to federal and state public policy goals to speed the introduction of local competition.

Further, state resolution of the issue would better allow ILECs and CLECs to compete for the business of ISPs and end-users, because state authorities could examine comprehensively the ILEC's state tariffing and its inter-carrier compensation practices. As noted in the Declaratory Ruling (at ¶ 20), ISPs and Internet end-users may continue to purchase access via state business and residential line tariffs. Alternatively, CLECs can offer viable service alternatives for ISPs and end-users. It is appropriate, therefore, that state commissions oversee the compensation scheme between two competing local carriers serving ISPs and Internet end-users because state authorities could also consider the relationship between the ILEC's inter-carrier compensation practices and its intrastate tariff offerings for possible anti-competitive conduct. The FCC, however, may be understandably reluctant to examine comprehensively an ILEC's state tariff practices, even when such practices negatively impact local competition. In CIX's view, ISPs and Internet end-user customers are better served with pro-competitive interconnection dispute resolution, which can look comprehensively at possible ILEC anti-competitive practices.

State resolution of inter-carrier disputes on ISP-bound traffic is also fully consistent with the Commission's precedent. For example, in the CMRS context, the Commission explained that state authorities maintain Section 252 authority over interconnection disputes, including reciprocal compensation, even though CMRS traffic within a given MTA may be interstate or

jurisdictionally mixed.⁴ In this same way, disputes concerning ISP-bound traffic, whether they are viewed as intrastate or jurisdictionally mixed, should be resolved by the same state authorities that have jurisdiction over the ILEC-CLEC interconnection process generally.

Finally, while states should govern interconnection disputes, CIX believes that the Commission must take a proactive role to establish clear federal parameters guiding the scope of reciprocal compensation, as it did in the First Report and Order,⁵ to ensure that inter-carrier compensation does not, in fact, undermine CLEC efforts to provide ISPs with truly efficient telecommunications alternatives. At this time, CIX proposes that the Commission establish, as a minimum, that ILECs should not be permitted to charge CLECs for ISP-bound traffic originating on the ILEC network.

In sum, CIX believes that the Commission should adopt a prospective approach in this proceeding to support effective CLEC offerings to ISPs and Internet end-users. Local

⁴ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499, 16013-14 (1996) ("First R&O").

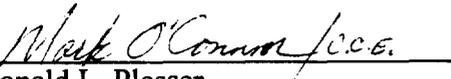
⁵ First R&O, 11 FCC Rcd. at 15557-61 (FCC has authority to establish broad national rules governing the implementation of Section 251, including rates and terms of interconnection). The U.S. Supreme Court has specifically upheld the Commission's authority. AT&T Corp. v. Iowa Util. Bd., 119 S. Ct. 721, 732-33 (1999).

competition can produce significant benefits for ISPs and Internet end-users, measured in terms of better prices and a greater variety of telecommunications services for the data user.

Respectfully submitted,

COMMERCIAL INTERNET EXCHANGE
ASSOCIATION

Barbara A. Dooley
Executive Director
Commercial Internet eXchange Association


Ronald L. Plesser
Mark J. O'Connor

Piper & Marbury L.L.P.
1200 Nineteenth Street, N.W.
Suite 700
Washington, D.C. 20036
(202) 861-3900

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