

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

MAUREEN O. HELMER
Chairman

THOMAS J. DUNLEAVY
JAMES D. BENNETT
LEONARD A. WEISS



LAWRENCE G. MALONE
General Counsel

DEBRA RENNER
Acting Secretary

DOCKET FILE COPY ORIGINAL

April 9, 1999

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Room TW - A 325
Washington, DC 20554

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RE: In the Matter of Implementation of the Local
Competition Provisions in the Telecommunications Act of
1996, Inter-Carrier Compensation for ISP-Bound Traffic,
Notice of Proposed Rulemaking in CC Docket No.
99-68

Dear Secretary Salas:

Enclosed is an original and four copies of a letter in
response to the February 25, 1999, Declaratory Ruling and Notice
of Proposed Rulemaking in above-captioned matter. In addition, a
copy was filed using the Commission's Electronic Comment Filing
System and copies were sent to all parties on the enclosed
service list.

Sincerely,

Handwritten signature of Nancy A. Russell in cursive script.
Nancy A. Russell
Assistant Counsel

Enclosures:
Letter
Certificate of Service
Service List

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RE: In the Matter of Implementation of the Local
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1996, Inter-Carrier Compensation for ISP-Bound Traffic,
Notice of Proposed Rulemaking in CC Docket No.
99-68

Dear Secretary Salas:

The New York State Department of Public Service (NYS DPS) submits this letter in response to the February 25, 1999, Declaratory Ruling and Notice of Proposed Rulemaking in the above-captioned matter. The Commission seeks comment on proposals regarding inter-carrier compensation for Internet Service Provider (ISP)-bound traffic. The first proposal allows carriers to negotiate inter-carrier compensation for ISP-bound traffic. If the negotiations fail, state commissions will arbitrate issues under Sections 251 and 252 of the Act. In the second proposal the arbitration would be handled at the federal level. The Commission also seeks comment on the wisdom of imposing binding federal rules on the negotiation and arbitration processes.

The NYSDPS agrees with the Commission's tentative conclusion that any rule should recognize that commercial negotiations are the ideal means of establishing compensation for the exchange of traffic between carriers. Commercial negotiations, driven by market forces, should produce more efficient and reasonable outcomes than those directed by the government. Moreover, requiring negotiations first is consistent with the deregulatory goals of the 1996 Telecommunications Act.

The NYSDPS supports the Commission's proposal that where agreement on inter-carrier compensation for ISP-bound traffic cannot be reached, arbitrations should be conducted by state commissions under Sections 251 and 252 of the Act. This proposal recognizes the importance of addressing the myriad of competitive issues in a single set of negotiations/arbitrations and that arbitrations addressing the entire range of competitive issues, not just some, would lead to more efficient results.

The second alternative would have the Commission (or its staff) engage in an arbitration-like process when voluntary negotiations fail. This approach should be rejected as it would put carriers in two different forums to resolve competitive issues: one forum at the Commission addressing only inter-carrier compensation for ISP-bound traffic and the other forum at the states addressing all other inter-carrier competitive issues. This could result in delay and duplication. Moreover, states are in the best position to handle all aspects of carrier interconnection including inter-carrier compensation for ISP-bound traffic.¹

The Commission also requests comment on whether it should establish rules, in the first instance, governing inter-carrier compensation for ISP-bound traffic. Such rules are not necessary. Imposing federal rules on the negotiation process would be inconsistent with the 1996 Telecommunications Act's deregulatory approach² and would only serve to restrict carriers' ability to negotiate. Additionally, rules established today based upon a one-size fits-all approach fail to account for local market conditions. These rules may become burdensome as competition develops. Thus, the advantages, innovation, and dynamics that a truly competitive market provides will not be realized.³ Instead, the Section 252 process is likely to be the most effective.

The Commission also seeks comment on whether federal rules for interstate traffic could coexist with state rules governing intrastate traffic. State and federal rules have coexisted for over 60 years, and the 1996 Act reinforces the dual nature of regulation. Thus, there is no reason that the rules cannot coexist. Internet traffic can be segregated to the extent that it can be tracked - where each end of the transmission can

¹New York State alone has been involved with 62 interconnection agreements, the majority of which involved inter-carrier compensation for ISP-bound traffic.

²Rather than the deregulatory goal of free market competition, federal rules would create regulated competition.

³The competitive market is likely to produce more efficient options that government regulation may not consider or foresee.

be determined.¹ For example, when the Internet is used for dial-up voice telephony, the calling number and the number called will determine the jurisdictional nature of the call. Currently, "tracking" occurs in various manners. ISPs, with the ability to monitor certain services, such as chat lines, can find and disconnect a party if the party, for example, uses inappropriate language. Software also provides the ability to track communications. For example, software is used to prevent communications with certain websites, e.g., pornographic websites, and is used to monitor employees' Internet communications to prevent abuse. Technology is available to track the communications and advancing technology will eliminate any other concerns about the ability to track communications.

For all these reasons, we support the Commission's first proposal as being more compatible with an open market and consistent with the Commission's laudable goal of facilitating a solid working relationship with the states.

Sincerely,



Lawrence G. Malone
General Counsel
Public Service Commission
of the State of New York
Three Empire State Plaza
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¹Just as with the public switched telephone network, to the extent the end of a communication is geographically fixed, it would be possible to determine the location of each end of Internet traffic.

In the Matter of

In the Matter of Implementation)
of the Local Competition)
Provisions in the)
Telecommunications Act of 1996)
Inter-Carrier Compensation for)
ISP-Bound Traffic, Notice of)
Proposed Rulemaking)

CC Docket No. 99-68

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CERTIFICATE OF SERVICE

I, Patricia B. Fritz, hereby certify that an original and four (4) copies of letter comments in the above-captioned proceeding were sent via Airborne Express to Magalie Roman Salas, Secretary of the Federal Communications Commission. In addition, a copy was filed using the Commission's Electronic Filing System and copies were sent by First Class Mail, postage prepaid, to all parties on the enclosed service list.



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Albany, New York

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