

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the matter of)
)
Declaratory Ruling Regarding)
the Use of Section 252(i) to Opt Into)
Non-Cost-Based Rates)
)

CC Docket No. 99-143

To: The Commission

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its reply comments in opposition to the petition for declaratory ruling of GTE Service Corporation ("GTE") regarding the use of the "opt-in" provision of the Communications Act (the "Act") to determine compensation for dial-up Internet-bound traffic.¹

Cox submits this Opposition to address the comments filed by Bell Atlantic, which are nothing more than an attempt to tailor the Commission's policies to fit Bell Atlantic's business needs.² Bell Atlantic has claimed repeatedly that the reciprocal compensation provisions of the Act do not apply to traffic directed at Internet Service Providers ("ISPs"). It now invokes those same provisions to deny the legal rights of CLECs to obtain compensation for terminating that

¹ Request for Declaratory Ruling Regarding the Use of Section 252(i) to Opt Into Non-Cost-Based Rates, *Petition*, CC Docket No. 99-143, DA 99-862 (filed April 13, 1999) ("GTE Petition").

² All other commenters opposed the GTE Petition.

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traffic.³ Moreover, Bell Atlantic misreads the purpose and requirements of the reciprocal compensation rules, suggesting that the rules guarantee equal cost recovery. Like the GTE Petition, the Bell Atlantic comments are so inconsistent with the plain language of the Act that they should be dismissed summarily.

I. Bell Atlantic Cannot Have It Both Ways.

Bell Atlantic's reading of the reciprocal compensation provisions of the Act depends on which interpretation best suits Bell Atlantic's needs at a particular time. In its comments in the proceeding on Inter-Carrier Compensation for ISP-Bound Traffic, for example, Bell Atlantic claimed the reciprocal compensation provisions in section 251(b)(5) did not apply to traffic directed at ISPs. Specifically, Bell Atlantic stated "inter-carrier compensation for Internet traffic is not covered by section 251 and, consequently, is not subject to state authority under section 252."⁴

Now, however, Bell Atlantic has determined that it is more convenient to claim that the reciprocal compensation provisions do apply to ISP-bound traffic. Indeed, most of Bell Atlantic's assertions center around the requirements of section 252(d)(2).⁵ Bell Atlantic argues

³ Section 251(b)(5) requires local exchange carrier to pay reciprocal compensation and section 252(d)(2) establishes rules for the charges of transport and termination services under 251(b)(5).

⁴ Inter-Carrier Compensation for ISP-Bound Traffic, *Comments of Bell Atlantic on Notice of Proposed Rulemaking* at 5, CC Docket No. 99-68 (filed April 9, 1999). See also Inter-Carrier Compensation for ISP-Bound Traffic, *Reply Comments of Bell Atlantic on Notice of Proposed Rulemaking* at 8, CC Docket No. 99-68, (filed April 27, 1999) ("the reciprocal compensation provision (section 251(b)(5)), is inapplicable").

⁵ Section 252(d)(2) establishes rules for the charges of transport and termination services under section 251(b)(5).

that because the requirements of section 252(d)(2), as defined by Bell Atlantic, allegedly are not met by Internet traffic, ILECs should not have to pay reciprocal compensation for ISP-bound traffic. Bell Atlantic's reliance on a provision that it has repeatedly argued is "inapplicable" is, to say the least, curious. Rather than focusing on the plain language of the Act, Bell Atlantic is simply changing its position to suit its immediate business needs.⁶

II. Bell Atlantic Misreads the Commission's Reciprocal Compensation Rule.

Bell Atlantic's substantive argument is that reciprocal compensation requirements are not met when "all of the traffic – and any compensation – flows from the incumbent local exchange carrier to the interconnecting carrier." By arguing that reciprocal compensation applies only when there is two-way traffic, Bell Atlantic seriously misconstrues the plain language of the reciprocal compensation provisions.

First, Bell Atlantic's argument ignores the actual wording of the statute, which calls for carriers to "establish reciprocal compensation arrangements."⁷ This language was a specific response to incumbent LEC refusals to pay any compensation to co-carriers (such as cellular

⁶ These comments certainly do not mark the first time Bell Atlantic has changed its opinion for the sake of convenience on the reciprocal compensation issue. In its July 31, 1998, *ex parte* on reciprocal compensation, Bell Atlantic claimed that it never stated that ISP traffic was local traffic subject to reciprocal compensation. Letter to William E. Kennard, from Edward D. Young and Thomas J. Tauke of Bell Atlantic, at 3, File No. CCB/CPD 97-30, dated July 31, 1998. In its earlier Virginia arbitration with Cox, however, Bell Atlantic presented a witness, and elicited testimony from the witnesses of other parties, to demonstrate that traffic to ISPs would create an imbalance in the number of incoming and outgoing local calls between ILECs and CLECs. At the time, Bell Atlantic argued that the inevitable disparity supported its proposal for reciprocal compensation. *See* Letter to Chairman William K. Kennard, from Alexander V. Netchvolodoff of Cox Communications, Inc., CC Docket No. 96-98, dated September 24, 1998. When Bell Atlantic realized that this imbalance did not help its bottom line in a reciprocal compensation regime, however, it attempted to backtrack and deny its earlier assertions.

⁷ 47 U.S.C. § 251(b)(5).

providers) terminating calls from incumbent LEC customers, even while the incumbents demanded payment for calls they received.⁸ The Congressional response to this state of affairs was to adopt an obligation on incumbent LECs to enter into “reciprocal” “arrangements” to compensate carriers for the costs of terminating traffic. Moreover, Congress explicitly recognized that traffic could be unbalanced and provided for intercarrier payments to cover that possibility.⁹ Thus, it is the *arrangements* that are reciprocal, not the compensation, and Bell Atlantic’s argument is contradicted by the statute.

Second, Bell Atlantic’s argument is absurd because whenever a customer places or receives a telephone call, the call will constitute one-way traffic. This, of course, is true both of intrastate and interstate traffic. While some customers have a larger percentage of incoming calls, virtually every customer both accepts incoming calls and makes outgoing calls. Even ISPs, which have more incoming than outgoing calls, place a significant number of outgoing calls. When these outgoing calls are originated by a CLEC and are terminated by an ILEC, the ILEC is entitled to compensation. Similarly, when calls are originated by an ILEC and terminate with the CLEC, the CLEC is entitled to reciprocal compensation, regardless if the call is a voice call or a call to an ISP. The Commission must not allow Bell Atlantic simply to decide on its own what customers are entitled to reciprocal compensation.

Moreover, Bell Atlantic serves many customers and lines that almost exclusively receive telephone calls and Bell Atlantic receives compensation for the termination of traffic on these lines originating from CLEC customers. Many Bell Atlantic business customers, such as pizza

⁸ The Commission should not overlook the parallel between the pre-1996 state of affairs and the arguments now being made by Bell Atlantic, GTE and other incumbent LECs.

⁹ See 47 U.S.C. §251(d)(2).

delivery companies or ticket agencies, receive significantly more traffic than they originate. In addition, many business customers have dedicated incoming fax lines, while information service lines served by Bell Atlantic only receive phone calls.¹⁰ Even Bell Atlantic's customer service numbers accept thousands of incoming calls, but do not originate a single call. Many individuals calling the customer service lines undoubtedly originate their calls from CLECs, including customers who want to transfer service to Bell Atlantic or Bell Atlantic customers calling from a business phone served by a CLEC. Bell Atlantic expects to and *does* receive reciprocal compensation for calls to these lines.

From the perspective of whether "compensation" is "reciprocal," the many Bell Atlantic lines that only accept incoming calls are no different from the ISP lines served by CLECs, yet Bell Atlantic is attempting to persuade the Commission to make an artificial distinction between them. Section 251(b)(5) plainly states, however, that local exchange carriers have the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."¹¹ The Act creates no distinction between calls to information service lines and calls to ISPs, and Bell Atlantic's attempt to introduce such a distinction should be flatly rejected.

¹⁰ In fact, Bell Atlantic dedicates the first section of its phone books to listing just these numbers. For example, the Bell Atlantic telephone book for the District of Columbia has twenty-two pages listing information numbers for a variety of services and attractions in the D.C. area. This section heavily promotes Bell Atlantic's Info-Source and Info-Tips, which are inbound-only services.

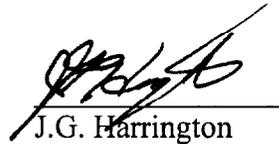
¹¹ 47 U.S.C. § 251(b)(5).

III. Conclusion

Bell Atlantic supports its own “pick-and-choose” approach to reciprocal compensation, without regard to the plain language of the statute. The Commission should reject its effort to classify some telephone lines as ineligible for compensation based on the amount of traffic they generate as contrary to section 251(b)(5) and to common sense. Bell Atlantic has presented no new facts or legal arguments to support GTE's Petition. Cox therefore respectfully requests that the Commission deny GTE's Petition.

Respectfully submitted,

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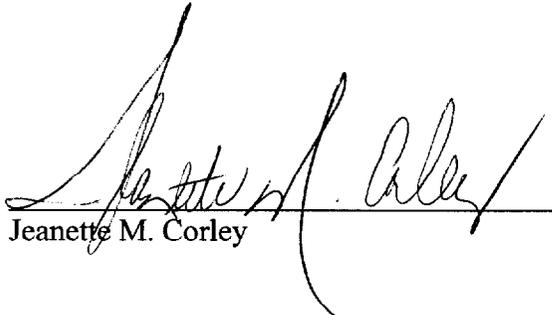
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