

hunter communications law group

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VIA HAND DELIVERY

September 1, 1999

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 - 12th Street, S.W.  
TW-A325  
Washington, D.C. 20554

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SEP 01 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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**Re: Ex Parte Presentation in CC Docket No. 98-147**

Dear Ms. Salas:

Today the undersigned, accompanied by David Gusky, Executive Vice President of the Telecommunications Resellers Association ("TRA"), and Catherine M. Hannan, met with Dorothy Attwood, Legal Advisor to Chairman Kennard, to discuss TRA's views concerning the resale of advanced telecommunications services.

Materials distributed at the meeting are attached hereto. Also distributed at the meeting were copies of TRA's White Paper submitted in the subject docket on April 27, 1999.

Respectfully submitted,



Charles C. Hunter  
General Counsel  
Telecommunications Resellers Association

No. of Copies rec'd 0620 L Street, N.W. 01 + 2  
List ABCDE Suite 701  
Washington, D.C. 20006  
Telephone (202) 293-2500  
Facsimile (202) 293-2571



**Telecommunications  
Resellers  
Association**

1401 K Street, N.W.  
Suite 600  
Washington, D.C. 20005

Tel: (202) 835-9898  
Fax: (202) 835-9893

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## **Resale of Advanced Telecommunications Services at Wholesale Rates**

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### **The Law:**

- Incumbent local exchange carriers have a duty under Section 251(c)(4) to offer for resale at wholesale rates any telecommunications services they provide at retail to subscribers who are not telecommunications carriers.
- The Commission has held that advanced telecommunications services are "telecommunications services."
- The Commission has tentatively (and correctly) concluded that advanced telecommunications services are subject to the Section 251(c)(4) resale obligations without regard to their classification as exchange or exchange access because they are offered predominantly to subscribers who are not telecommunications carriers.
- Advanced telecommunications services are provided at "retail" to residential users as single line offerings and to business users as multi-line offerings.
- Advanced telecommunications services are provided at "retail" to Internet service providers as bulk offerings.
  - Under the Telecommunications Act, services are offered at either "wholesale" or "retail." Wholesale requires resale without substantial alteration in either form or content. Retail contemplates consumption either by an end user or as an input to another product or service.
  - Internet service providers do not resell advanced telecommunications services; if they did they would be carriers subject to certification and other federal and state regulatory requirements. Internet service providers use advanced telecommunications services as inputs to their Internet-based services offerings.

- The Commission has determined in the context of volume and term customer specific arrangements that bulk offerings must be made available to requesting carriers for resale at wholesale rates, expressly rejecting the contention that Section 251(c)(4) does not apply to "discounted rates."
- It is for the Commission or individual state commissions, not incumbent local exchange carriers, to determine wholesale discounts.
- Avoided costs must be determined on the basis of an avoided cost study.

**Public Policy:**

- Requiring incumbent local exchange carriers to make advanced telecommunications services available for resale at wholesale rates will:
  - Help drive a mass market for advanced telecommunications services.
  - Provide a vehicle for small Internet service providers to compete against the America Online and other large Internet service providers.
  - Ensure that segments of the market are not walled off exclusively for incumbent local exchange carriers
  - Provide non-facilities-based local providers a fair opportunity to compete.