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Frank S. Simone
Government Affairs Director

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Suite 1000
1120 20th Street, N.W.
Washington, DC 20036
202 457-2321
FAX 202 457-2545
EMAIL fsmone@att.com

February 7, 2000

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

Re: Ex parte, CC Docket No. 99-68, Inter-Carrier Compensation for ISP-Bound Traffic; CC Docket No. 96-98, Local Competition Provisions of the Telecommunications Act of 1996

Dear Ms. Salas:

On Friday, February 4, 2000, I met with the following representatives of the Commission's Common Carrier Bureau: Yog Varma, Donald Stockdale, William Bailey and Rodney McDonald. The purpose of the meeting was to discuss AT&T's previously filed comments in the above-captioned proceeding. In addition, AT&T provided the staff with a summary of state decisions, post 2/25/99 FCC Declaratory Judgement, regarding reciprocal compensation.

AT&T proposes that the Commission adopt a rule that treats the termination of ISP-bound traffic the same as the termination of local traffic.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

ATTACHMENTS

cc: W. Bailey
R. McDonald
D. Stockdale
Y. Varma

CFI



CC Docket No. 99-68

Inter-Carrier Compensation for ISP-Bound Traffic



CC Docket No. 99-68
Inter-Carrier Compensation for ISP-Bound Traffic

National Rules

- Strong national pricing rules for reciprocal compensation will:
 - reduce the transaction and litigation costs of entry,
 - enhance the ability of carriers to adopt region-wide or national entry strategies,
 - facilitate entry by providing carriers and financial markets with greater predictability,
 - simplify the dispute-resolution process by providing clear standards for arbitrators,
 - limit the number of issues that arbitrators must consider, and
 - enable this Commission to address issues swiftly if state commissions fail to act.



CC Docket No. 99-68
Inter-Carrier Compensation for ISP-Bound Traffic

AT&T proposes that the Commission adopt the following rule:

The rates, terms , and conditions for the transport and termination of ISP-bound traffic between any two carriers in a state shall be the rates, terms, and conditions established or approved by the state commission in such state for the transport and termination of local traffic between the two carriers.



CC Docket No. 99-68
Inter-Carrier Compensation for ISP-Bound Traffic

***Existing reciprocal compensation pricing rules should cover
ISP-bound traffic***

Existing rules should be applied uniformly to voice and ISP-bound traffic.

- Unable to distinguish analog circuit-switched local voice/data from analog circuit-switched ISP data.
- No economic justification for subjecting local voice/data and ISP data traffic to different compensation rules.
 - costs associated with the termination ISP-bound traffic should be substantially identical to the termination of local voice/data traffic
 - originating costs are irrelevant
- ISP “sharing” of reciprocal compensation revenue can be discouraged by the existing rules’ requirements for forward-looking cost based rates.



CC Docket No. 99-68
Inter-Carrier Compensation for ISP-Bound Traffic

*National rules should apply uniformly to all forms
of ISP-bound traffic -- intrastate and interstate*

- No practical way to segregate intrastate from interstate ISP-bound traffic.
- Prohibitively costly and impractical for an ISP to store records of the thousands or millions of URL addresses that its customers request on a monthly basis.
- IP addresses do not disclose geographic locations
 - Intrastate/interstate nature of the traffic could change from day to day basis depending on the ISPs caching protocols.



CC Docket No. 99-68
Inter-Carrier Compensation for ISP-Bound Traffic

***Costs related to ISP-bound traffic should be
assigned to the intrastate jurisdiction***

- Jurisdictional assignment of ISP-bound traffic to the interstate jurisdiction would be inconsistent with the exemption for enhanced service providers from interstate access charges.
- Under bill-and-keep or a state determined cost-based compensation rate, both costs and rates would be determined by the same intrastate agency.
- Assignment of these costs to the interstate jurisdiction would artificially lower the incumbent's rate of return and lead to an unwarranted increase in access charges.



CC Docket No. 99-68
Inter-Carrier Compensation for ISP-Bound Traffic

Pick-and-choose issue is easily addressed

- Application of local compensation treatment to ISP-bound traffic should obviate any need for wholesale modification of existing agreements.
 - If necessary, clarify in the Commission's order that its extension of its local traffic reciprocal compensation rules to ISP-bound traffic provides a basis for ILECs to break the chain of pick-and-choose elections regarding such traffic after existing agreements expire.

- Reaffirm that rule 809(b) sets forth the circumstances under which an ILEC can refuse to honor a pick-and-choose election
 - technical infeasibility or legitimate cost differences
 - ILEC bears the burden to prove these circumstances exist
 - absent such a showing, CLECs should be able to opt into any provision of an interconnection agreement for the same full term as the original CLEC.

State Summary of Decisions Post 2/25/99 FCC Declaratory Judgement Regarding Reciprocal Compensation for ISP- Bound Traffic

State	Recip. Comp. Treatment for ISP-bound Traffic	Date	Venue	Ruling based on pre-existing or new agreement	Restrictions or limitations
Alabama	Granted	11/15/99	USDC MDAL affirming PSC 3/4/99 decision	Pre-existing	none
Alabama	Granted	11/10/99	ALPSC	New Agreement	In ICG/BST arbitration proceeding ALPSC ruled ISP traffic to be treated as local traffic subject to reciprocal compensation. PSC also ruled compensation is subject to true up pending FCC decision.
Alaska	---	---	---	---	---
Arizona	Granted	11/2/99	PUC	Pre-existing	none
Arkansas	---	---	---	---	---
California	Granted, with limitations	9/16/99	PUC	New agreement	Compensation for tandem or common transport is available only when function is actually provided.
Colorado	Granted	8/17/99	PUC	Pre-existing	none
Connecticut	---	---	---	---	---
Delaware	Granted.	12/14/99, the USDC, DE, found that PSC could not expand GNAPs' ability to opt into an ICA; Court did not address PSC's	PSC order upholding 3/9/99 arbitrator's award (GNAPs allowed to opt into MFS-BA agreement, with recip. comp. treat-	PSC interpreted pre-existing MFS-BA agreement	none

State	Recip. Comp. Treatment for ISP-bound Traffic	Date	Venue	Ruling based on pre-existing or new agreement	Restrictions or limitations
		reciprocal comp. findings.	ment for ISP-bound traffic)		
District of Columbia	---	---	---	---	---
Florida	Granted	10/14/99	FPSC	New Agreement	In MediaOne/BST arbitration proceeding, the FPSC ruled that ISP traffic will be treated the same as in the current ICA unless and until the FCC rules otherwise.
Florida	Granted	4/6/99	FPSC	Pre-existing	none
Georgia	Granted	2/1/00	PSC	New Agreement	In IGC/BST arbitration, Commission ruled that ISP traffic will be local for purposes of reciprocal compensation and payments will be made and trued-up upon a ruling from the FCC. [Oral decision at 2/1/00 meeting; no written order yet.]
Hawaii	Granted	5/6/99	PUC	Pre-existing	none
Idaho	---	---	---	---	---
Illinois	Granted	6/18/99	7th Cir., aff'ing ICC 3/11/98 decision	Pre-existing	none
Indiana	Granted	6/9/99	URC	Pre-existing	none
Iowa	---	---	---	---	---
Kansas	---	---	---	---	---
Kentucky	---	---	---	---	---
Louisiana	Not Granted	10/13/99	LAPCS	Pre-existing	In complaint filed by KMC against Bell-South, LA Commission ruled that ISP

State	Recip. Comp. Treatment for ISP-bound Traffic	Date	Venue	Ruling based on pre-existing or new agreement	Restrictions or limitations
					traffic is not subject to reciprocal compensation.
Maine	---	---	---	---	---
Maryland	Granted	6/11/99	PSC (BA filed complaint in USDC MD 7/14/99, which was dismissed on other grounds, and filed appeal in state court 7/99.)	Pre-existing (MFS-BA ICA)	none
Massachusetts	Not Granted	8/25/99	DTE order re: MediaOne Arbitration, clarifying prior DTE 5/19/99 order addressing recip. comp. AT&T and TCG have moved for reconsideration of the 5/19/99 order. The DTE expects carriers to negotiate alternative arrangements with BA-MA. However, given the DTE ruling, BA-MA has no incentive to negotiate.	New Agreement	BA not required to make reciprocal compensation payments in excess of a 2:1 terminating-to-originating traffic ratio, unless CLECs could rebut the presumption that such traffic was not ISP-bound traffic. There is a corresponding rebuttable presumption that CLEC traffic is local traffic if the CLEC's traffic imbalance is less than 2:1.
Michigan	Granted	7/20/99	USDC (WDMI), affirming PSC 1/28/98 decision	Pre-existing	none
Minnesota	Granted	8/17/99	PUC denied ILEC petition for a determination that ISP	Pre-existing	none

State	Recip. Comp. Treatment for ISP-bound Traffic	Date	Venue	Ruling based on pre-existing or new agreement	Restrictions or limitations
			traffic is not subject to reciprocal compensation payments under the MFS/ U S WEST agreement.		
Mississippi	---	---	---	---	---
Missouri	Not Granted	4/8/99	PSC	New agreement	ISP traffic will be not local for purposes of reciprocal compensation pending a ruling from the FCC.
Montana	---	---	---	---	---
Nebraska	Granted	12/7/99	PSC	Pre-existing	none
Nevada	Granted	4/8/99	PUC	New Agreement	none
New Hampshire	---	---	---	---	---
New Jersey	Not Granted	7/7/99 (Reconsideration before BPU pending; GNAPs filed complaint in USDC in 8/99.)	BPU	BPU interpreted pre-existing MFS-BA agreement	The BPU determined that CLEC could opt into another party's agreement. However, notwithstanding that the agreement provided for reciprocal compensation for ISP traffic, the BPU found that ISP-bound traffic was not subject to reciprocal compensation. The decision applies only to the parties to the arbitration.
New Mexico	---	---	---	---	---
New York	Granted, with limitations	8/26/99	PSC	New agreements	If 3 times as much local

State	Recip. Comp. Treatment for ISP-bound Traffic	Date	Venue	Ruling based on pre-existing or new agreement	Restrictions or limitations
				(generic proceeding)	traffic is terminated on CLEC's network as on BA's network, compensation paid to that CLEC must be reduced to end-office rate from tandem rate.
North Carolina	Granted	11/4/99	NCUC	New Agreement	Commission ruled that compensation is subject to true-up pending FCC decision.
North Dakota	---	---	---	---	---
Ohio	Granted	5/5/99	PUC	Pre-existing	none
Oklahoma	---	---	---	---	---
Oregon	Granted	4/26/99	PUC	Pre-existing	none
Pennsylvania	Granted	9/30/99	PUC (in consolidated Global proceeding, which is on appeal in state court)	PUC affirmed earlier decision interpreting pre-existing TCG ICA and found that recip. comp. should be payable as a matter of public policy.	none
Rhode Island	Granted	10/5/99	PUC order re: Global NAPs agreement, reiterating prior PUC 7/21/99 order addressing recip. comp.	Pre-existing	none
South Carolina	Not Granted	10/4/99	SCPSC	New Agreement	In DeltaCom/ BST arbitration proceeding, SC Commission ruled on 10/4/99 that based in part on recent FCC Order, ISP

State	Recip. Comp. Treatment for ISP-bound Traffic	Date	Venue	Ruling based on pre-existing or new agreement	Restrictions or limitations
					traffic is not subject to reciprocal compensation.
South Dakota	---	---	---	---	---
Tennessee	---	---	---	---	---
Texas	---	---	---	---	---
Utah	Granted	10/28/99	PSC (NEXLINK Docket No. 99-049-44)	Pre-existing Ruling based on previous Utah Order (Docket Nos. 96-087-03 and 96-095-01) entitling AT&T to recip. comp for calls terminated to ISPs.	none
Vermont	---	---	---	---	---
Virginia	Not Granted, on jurisdictional grounds	1/24/00	VSCC	Pre-existing	VSCC declined jurisdiction necessary and therefore refused to order recip. comp. for ISP traffic as a matter of state law; parties encouraged to present cases directly to FCC.
Washington	Granted Note: In Docket Proceeding UT-960369, WA Commission has promulgated a rule of general application treating ISP bound traffic as local traffic for purposes of reciprocal.	10/8/99	9th Cir. aff'ing UTC 5/12/99 decision, U.S. West Comm. v. MFS, _F.3d_, 1999 WL 799082 (9th Cir. Oct 8, 1999)	Pre-existing	none

State	Recip. Comp. Treatment for ISP-bound Traffic	Date	Venue	Ruling based on pre-existing or new agreement	Restrictions or limitations
West Virginia	Not Granted (significant restrictions)	10/19/99	PUC	Pre-existing	If the amount of traffic originated on the ILEC's network and terminated on a competitor's network exceeds 3:1 ratio, the competitive carrier is not entitled to reciprocal compensation for excess traffic. The PSC agreed that some alternative form of compensation – to be negotiated by the parties – is due for traffic in excess of the 3:1 ratio.
Wisconsin	Granted	7/12/99	USDC (WDWI), dismissing appeal of PSC order requiring payment of recip. comp. for ISP traffic	Pre-existing	none
Wyoming	---	---	---	---	---

Summary of State Decisions

For jurisdictions that have ruled on the issue in the context of agreements that were approved prior to the date of the FCC Declaratory Judgment Order:

- 19 granted reciprocal compensation treatment for ISP-bound traffic:

AL, AZ, CO, DE, FL, HI, IL, IN, MD, MI, MN, NE, OH, OR, PA, RI, UT, WA and WI

- 4 denied reciprocal compensation treatment for ISP-bound traffic:

LA, NJ and VA*, and WV* has significant restrictions

(* WV – CLEC not entitled to recip. comp. for any traffic exceeding ratio of 3:1, but entitled to negotiated “alternative” compensation.)

(* VA – State commission declined to order recip. comp. for ISP traffic on jurisdictional grounds; parties encouraged present cases directly to FCC)

For jurisdictions that have ruled on the issue in the context of agreements that were arbitrated after the date of the FCC Declaratory Judgment Order:

- 7 granted reciprocal compensation treatment for ISP-bound traffic:

AL, FL, GA, NC and NV, and NY* and CA* subject to limitations

(* CA - Compensation for tandem or common transport is available only when function actually provided; and NY - If 3 times as much local traffic is terminated on CLEC's network, compensation paid to that CLEC must be reduced to end-office rate from tandem office rate)

- 3 denied reciprocal compensation treatment for ISP-bound traffic:

MA, MO*, and SC

(* MO – State commission ruled no recip. comp. for ISP traffic pending FCC order)

If the 4 states that denied reciprocal compensation treatment for ISP-bound traffic under pre-existing agreements are considered to have denied such treatment in new agreements being arbitrated, the effective rate on new ICAs post-FCC Order would be 7 in favor of recip. comp. treatment (with limitations in NY and CA), and 3 against.

Pending Cases

DC	Outstanding matter pending before the Commission, but a decision is not expected soon.
ID	Outstanding matter pending before the Commission.
LA	LA PSC has voted to establish a generic proceeding regarding recip. comp. for ISP-bound traffic, but no procedural schedule has been set.
NM	Ongoing generic proceeding
OH	Ongoing generic proceeding
TX	Two pending proceedings – an expedited rulemaking to establish policy on ISP recip. comp., however that proceeding was abated late January 2000, pending the outcome of Docket 21982. Docket 21982 is the commission's mega-arbitration on outstanding recip. comp. issues between SBC and the CLECs, with final award scheduled to be released May 15, 2000.
WI	Ongoing generic proceeding