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May 3, 2000

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

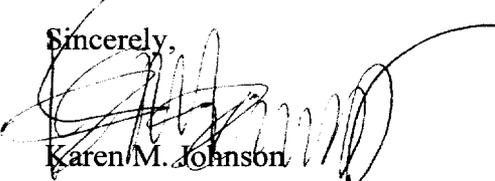
In the Matter of Inter-Carrier Compensation for ISP-Bound Traffic
CC Docket No. 99-68

Dear Ms. Salas:

On Tuesday, May 2, 2000, Rick Whitt, Cristin Flynn and I of MCI WorldCom, Inc. met with Tamara Preiss and Rodney McDonald of the Common Carrier Bureau to discuss MCI WorldCom's views on the D.C. Circuit Court's remand of the FCC's ISP reciprocal compensation order. We distributed the attached document at the meeting.

In accordance with section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, an original and one copy of this memorandum are being filed with your office.

Sincerely,


Karen M. Johnson

Associate Counsel, Regulatory Affairs

cc: Tamara Preiss
Rodney McDonald

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**MCI WORLDCOM'S VIEWS ON
THE D.C. CIRCUIT'S REMAND OF
THE FCC'S ISP RECIPROCAL COMPENSATION ORDER**
(May 2, 2000)

The D.C. Circuit Vacated And Remanded The FCC's Order

The Court Found Two Independent Grounds For Vacatur:

ISPs Are End Users, And Calls To ISPs Terminate At The ISPs' Premises Under The FCC's Own Regulations

- o The FCC did not explain why its traditional "end-to-end" communications analysis is relevant to whether a call to an ISP is local or interstate; in fact, such an analysis "yields intuitively backwards results."
- o Local traffic terminates at the ISP -- the ISP "clearly" is the called party, and "the mere fact that the ISP originates further telecommunications does not imply that the original telecommunications does not 'terminate' at the ISP."
- o The FCC did not explain why ISPs are not "simply a communications-intensive business end user selling a product to other consumer and business end-users."
- o In a subsequent decision reviewing a reciprocal compensation decision by the Texas Public Utilities Commission, the Fifth Circuit concluded that Internet-bound calls terminate at ISPs.

ISPs Do Not Provide Telephone Toll Services

- o The FCC determined that, under the Telecommunications Act, ISP traffic is either "telephone exchange service" or "exchange access."
- o The FCC did not explain how ISPs can be viewed as users of "exchange access" where they connect to the local network for the purpose of providing information services, not for the "origination or termination of telephone toll services."
- o In a subsequent decision reviewing the FCC's pole attachment rules, the Eleventh Circuit found that ISPs originate information services, not telecommunications services.

Thus, the D.C. Circuit found that "the Commission has not provided a satisfactory explanation why LECs that terminate calls to ISPs are not properly seen as 'terminat[ing] ... local telecommunications traffic," and why "such traffic is 'exchange access' rather than 'telephone exchange service....'"

The Court's Remand Decision Carries Significant Implications

The FCC Cannot Proceed With Its Federal Reciprocal Compensation Order

- o The Draft Order Is Based On An Unsupported And Now-Discredited Jurisdictional Conclusion That Calls To ISPs Inherently Are Interstate.
- o The FCC Cannot Adopt A Federal Reciprocal Compensation Rule Without First Addressing And Resolving The Jurisdictional Basis For Such A Rule In A Notice-And-Comment Rulemaking Proceeding.

The FCC Can Maintain The Status Quo, And Achieve Its Goal Of Overseeing The Pricing Of Reciprocal Compensation Arrangements, By Finding That Calls Terminating To ISPs Constitute Local Exchange Service

- o Under the Supreme Court's Iowa Utilities Board Decision, The FCC Has Jurisdiction To Determine The Pricing Methodology For Local Exchange Services.
- o Under The Telecommunications Act of 1996, Calls To ISPs Most Logically Come Within The Definition Of "Telephone Exchange" Service.
- o The Great Majority Of State Commissions, And All Courts, Considering The Issue Have Concluded That Calls To ISPs Are Local Under The Terms Of The Parties' Interconnection Agreements.
- o Post-Remand, State Commissions Remain Free To Review And Decide Reciprocal Compensation-Related Issues With Regard To Existing Interconnection Agreements, Arbitrations, And Generic Proceedings.

In Contrast, Finding Calls To ISPs To Be Interstate Would Be Entirely Unsupported

- o The Telecommunications Act of 1996
- o The D.C. Circuit, the Fifth Circuit, and the Eleventh Circuit
- o The FCC's Own Definition Of "Termination"
- o The FCC's Consistent Treatment Of ISPs As End Users, Not Carriers

Thus, the FCC should clarify that the jurisdiction of services provided between end users (for example, a non-ISP end user and an ISP) is determined by the location of those end

users, and its reciprocal compensation order needs to be revised to reflect this conclusion.