Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Inter-Carrier Compensation for	)	CC Docket No. 99-68
ISP-Bound Traffic	)	CC Docket No. 96-68
	)	

REPLY COMMENTS OF THE US INTERNET INDUSTRY ASSOCIATION
On Remand Of The Commission's Reciprocal Compensation Declaratory Ruling By The U.S. Court Of Appeals For The D.C. Circuit

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I. Summary

On March 24, 2000, the U.S. Court of Appeals for the District of Columbia vacated a FCC ruling (14 FCC Rcd 3689) on reciprocal compensation and remanded for decisionmaking . The FCC subsequently sought general comments and reply comments on the court's Reciprocal Compensation Declaratory Ruling (No. 99-1094). This Reply filed by the USIIA, is in reply to those comments presented during the comment period closing July 21, 2000.

The proceeding raises the question of whether a connection to the Internet should be considered local traffic that terminates at the ISP server, and if so to what extent such traffic should be subject to reciprocal compensation agreements.

It is the belief of the US Internet Industry Association (USIIA) that the payment of reciprocal compensation for the termination of calls to Internet Service Providers are inconsistent with the realities of the marketplace, and that such payments are detrimental to the growth and integrity of the Internet industry.

It is the position of USIIA that a new regimen of inter-carrier compensation will need to be developed to reflect the realities of the 21st Century telecommunications industry, and that in no case should per-minute fees for access or for inter-carrier compensation be applied to calls directed to an Internet service provider.

II. STANDING

USIIA is a national trade association of competitive companies engaged in Internet commerce, content and connectivity. Its members constitute a cross-section of the Internet industry, providing consensus on policy issues that breach the competitive interests of any single member or segment of the industry.

As the appointed representative of its members charged with advancing their economic interests and assisting in achieving and maintaining their legal and competitive parity, USIIA has standing to file these comments.

In addition, it should be noted that the USIIA has no financial interest in the outcome of the proceedings. The comments presented are based on a consensus of the best interests of the Internet industry and its members, and are not subject to change or withdrawal due to any contracts, agreements, competitive pressures, market valuations or corporate strategic goals.

II. Comments

1. This is not a jurisdictional issue. The decision as to whether a call terminating at an Internet service provider is local or long distance has jurisdictional implications. But attempting to make the issue jurisdictional rather than administrative adds unnecessary layers of complexity to what must otherwise be a simple matter of establishing contracts for reciprocal traffic management. This complexity has led to confusion and conflicting standards at the state level. The states, in comments filed for this docket, make the point that jurisdiction is of less importance than fixing a system that is no longer appropriate to the telecommunications market. In comments filed July 21, the Massachusetts Department of Telecom & Energy (DTE) said it might prefer that the Commission simply preempt state regulators because the current approach is so confusing. ". . .clearer FCC direction — even if it means preemption — and less deference to states would be most helpful to us in resolving the controversial issues of reciprocal compensation." [1]

2. The Internet cannot be described using obsolete telephony definitions. The terms "local" and "interstate," as applied to telecommunications services, are artificial devices that have little meaning in a market in which "local" telephone companies offer long-distance services, "interstate" companies offer local services, and data is carried by both. In point of fact, whether or not a call terminating with an Internet service provider is local or long-distance will differ with each call, and even within a single call. A call to check electronic mail or

news, for example, might terminate at a local server at the ISP's facilities and thus qualify as a local call, unless the ISP out-sources mail and news services to another provider not in the local area. Calls in order to browse the World Wide Web might be interstate or international in nature, simply passing through the ISP's equipment — unless the ISP caches the web pages on a local server. And a call to an information service such as America Online might be a local call from Northern Virginia, become an interstate call when the caller makes use of the web browser, and then return to being a local call — all within a single connection.

3. Per-minute pricing is inappropriate for data connectivity. In the most practical sense, telephone calls to an Internet service provider constitute an asynchronous connection to a network — whether that network exists locally, globally, or in any combination of the two. In a network environment, optimal communications and efficiencies are attained when a stable, uninterrupted connection can be maintained among all of the nodes of the network. Any form of per-minute pricing, whereby cost becomes a disincentive to maintain connections over time, is therefore at odds with the optimal conditions for use of the network. This is the reason that per-minute and per-hour pricing plans for the Internet were abandoned almost immediately in the early stages of the Internet. Unlike voice telephone calls, which are designed to be of limited duration, data connections to a network must be of unlimited duration in order to deliver network services. This necessity for continued connectivity can be more clearly understood in the context of broadband connections to the Internet, which enable the expansion of network services. When a synchronous, full-time connection is used, per-minute pricing is clearly inappropriate.

4. Per-minute-based reciprocal compensation creates an unintended loophole. In the wake of the 1996 Telecommunications Act, CLECs began to seek out ISPs as customers in order to exploit a loophole in the reciprocal compensation agreements. In some cases, ISPs formed CLEC subsidiaries and vice versa. Per-minute fees for termination of calls to ISPs make it possible for a CLEC to earn substantial revenue for each user who maintains a connection. Those keeping a full-time connection to an ISP (less time to disconnect and reconnect

once every 24 hours) earn $200 per month in revenues (based on $.005 per minute compensation). For some CLECs, ISP compensation accounts for up to 70 percent of all revenues. Reciprocal compensation represents a significant revenue stream that generates growth for the CLEC.[2] This strategy is less common today, both because the loophole is being closed at the state level, and also because regulators are growing weary of CLEC business plans based solely on this exploitation. According to state regulators, these CLECs are not interested in promoting local exchange competition and, as a result, some commissions are eliminating or limiting payment for ISP traffic.[3]

5. Reciprocal compensation creates a disincentive for the deployment of Broadband Internet. The Commission has set as a goal the rapid and effective deployment of Broadband Internet nationwide. Yet at the same time, through the encouragement of per-minute reciprocal compensation, the Commission has created a powerful financial incentive for a CLEC/ISP business to maintain dial-up connections on a full-time basis. Broadband connections offer no subsidization from the ILEC, and therefore may be seen by some CLECs as less attractive or even a threat to profitability. This is particularly the case with smaller companies that are denied access to cable networks and cannot qualify for the more attractive DSL rates.

6. Reciprocal compensation creates an uneven playing field. Where there is a defined relationship between a CLEC and an ISP in any geographic market segment, the ability of the CLEC to generate revenues from reciprocal compensation allows it to provide favorable terms and services to its own ISP, to the detriment of other competitors in that segment. At its worst, reciprocal compensation then becomes a mechanism for the state to select which ISPs may survive — a concept that is contrary to the intentions of both the federal and state governments.

7. Any fee structure based on per-minute usage is potentially detrimental to ISPs. The Commission has consistently rejected usage-based fees on Internet access, rightly arguing that such fees have proven detrimental to the emergence and growth of enhanced telecommunications services. But per-minute reciprocal

compensation fees — particularly when abused as a profit-generation mechanism — will ultimately force the ILECs to recover their costs through assessment of per-minute fees from the end users who connect to an ISP. This would, in turn, cause Internet usage to decline to the detriment of ISPs and their e-commerce partners.

Conclusion

The United States enjoys the highest connectivity rate in the world, and is the global leader in enhanced telecommunications services. This impressive leadership is the direct result of the policies of the Federal Communications Commission and its efforts to stimulate competition while nurturing the growth of emerging technologies and services.

Among the most beneficial of these policies has been the decision to prevent the application of per-minute usage fees to any facet of Internet connectivity. The current fee structure for reciprocal compensation is a strong threat to the nation's high levels of Internet usage, and the application of such fees to calls terminating with ISPs should be discontinued.

Respectfully submitted,

US INTERNET INDUSTRY ASSOCIATION

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Dated: August 1, 2000

[1] Washington Internet Daily -- July 28, 2000

[2] Getting Reciprocal Revenues From ISP Traffic Is Becoming Perilous, John Kern, CLEC Business, December, 1999

[3] Ibid.