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

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In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Inter-Carrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68

REPLY COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association ("USTA") hereby files its reply comments. Arguments that ISP-bound Internet traffic is subject to reciprocal compensation because the traffic is allegedly local traffic or has been treated as local traffic for compensation purposes is simply unsupported by Commission and judicial precedents.[1] As explained in USTA's Comments, ISP-bound Internet traffic is jurisdictionally interstate traffic and reciprocal compensation does not apply. ISP-bound Internet traffic "may use incumbent LEC facilitates to originate and terminate interstate calls," but such calls "do not terminate at the ISP but continue

[1] AT&T Comments at 14 ("ISP-bound traffic has ... always been treated as local"); WorldCom Comments at 7 ("ISP-bond traffic squarely falls within the statutory definitions of telephone exchange service"); ALTS Comments at 6 ("dial-up ISP-bound traffic is subject to reciporcal compensation like all other local traffic").

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to the ultimate destination or destinations very often at a distant Internet website accessed by the end user."[2]

Some commenters erroneously argue that the court's opinion forecloses the Commission from continuing to use an end-to-end jurisdictional analysis. According to WorldCom, the court's holding that the Commission failed to provide a reasoned explanation why its jurisdictional analysis was applicable to its determination that reciprocal compensation does not apply to ISP-bound Internet traffic precludes the Commission from affirming its end-to-end analysis in this proceeding.[3] WorldCom is simply incorrect. The court's holding states "Because the Commission has not supplied a real explanation for its decision to treat end-to-end analysis as controlling, ... we must vacate the ruling and remand the case."[4] As WorldCom is well aware, the Commission is perfectly able on remand to apply its end-to-end analysis and conclude that ISP-bound Internet traffic is jurisdictionally interstate traffic in which reciprocal compensation does not apply. In its filing, USTA explained that the court questioned the Commission's application of the end-to-end analysis used to determine the jurisdictional nature of ISP-bound Internet traffic.[5] As USTA noted:

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2 USTA Whitepaper at 5.

3 WorldCom Comments at 2.

4 *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1, 8 (D.C. Cir. 2000).

5 USTA Whitepaper at 8; *see also* AT&T Comments at 5 ("Under the well settled end-to-end analysis that governs the determination of the scope of the Commission's jurisdiction, the D.C. Circuit accepted that this single undisputed fact establishes that ISP services, and the LECs' carriage of ISP-bound calls, are interstates communications by wire or radio and are within the jurisdiction of the Commission.") AT&T acknowledged that the court concluded that "there is no dispute that the Commission has been historically justified in relying on the end-to-end method when determining whether a particular communication is jurisdictionally interstate and that the end-to-end analysis is sound for jurisdictional purposes." *Id.* at 5-6.

> The court identified two problems with the FCC's analysis. First, the court found that the FCC's prior analysis "involved a single continuous communication, originated by an end-user, switched by a long-distance communications carrier, and eventually delivered to its destination." *Bell Atlantic*, 206 F.3d at 6. Second, the court stated that "[e]ven if the difference between ISPs and traditional long-distance carriers is irrelevant for jurisdictional purposes, it appears relevant for purposes of reciprocal compensation." *Id.* at 6-7.[6]

In addressing these questions, USTA noted that the "Commission's end-to-end jurisdictional analysis has been consistently applied to circumstances involving multiple service providers, including information-service providers."[7] USTA also explained that application by the Commission of "the end-to-end analysis has not been confined to purely jurisdictional analysis, but has been applied as well to substantive questions concerning application of the Commission's rules."[8] Moreover, "the FCC has reaffirmed both the jurisdictional and the substantive aspects of this analysis in two recent orders in the specific context of Internet-bound communications."[9]

An argument is also made that ISP-bound Internet traffic is exchange traffic in which reciprocal compensation applies. WorldCom argues that ISP-bound traffic originates and terminates in the same local exchange and reciprocal compensation must be paid on such traffic.[10] As previously explained, ISP-bound traffic originates in the local exchange but terminates in a distant website not located in the same exchange where the call originated. The ISP is not the called party, but merely an intermediary between the calling party and the ultimate

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6 USTA Whitepaper at 8.

7 *Id.* (citations omitted).

8 *Id.* at 9 (citations omitted).

9 *Id.* at 10 (citations omitted).

10 WorldCom Comments at 7-25.

called party which is the Internet website. Section 251(b)(5) makes no mention of exchange access or telephone exchange services. The terms telephone exchange and exchange access are irrelevant to the Commission's deliberations over whether reciprocal compensation applies to ISP-bound Internet traffic.[11] As USTA commented, "the reciprocal compensation issue turns ... solely on whether the traffic in question is local telecommunications traffic – that is, whether it originates and terminates within a local service area."[12] Beyond the relevancy of those terms to the Commission's review, ISP-bound traffic is not telephone exchange service. As the Commission has concluded "typically ISP-bound traffic does not originate and terminate within an exchange, such traffic does not constitute telephone exchange service within the meaning of the Act."[13]

The Commission's jurisdiction over ISP-bound traffic is irrefutable. When telecommunications traffic does not terminate within the local exchange in which it originates, such traffic does not terminate locally as the term "termination" is defined in section 51.701(d) of the Commission's regulations. The ISP dialed by the calling party is the point of origination, but not the final destination of the calling party. The ISP merely acts as an information service provider or conduit for the end-user to reach its intended destination on the Internet.

The application of reciprocal compensation to ISP-bound traffic is inconsistent with 1996 Act, Commission's regulations, and prior precedents. Based upon the Commission's end-to-end analysis, ISP-bound traffic is jurisdictionally interstate traffic. For purposes of inter-carrier compensation, ISP-bound traffic is not subject to reciprocal compensation because it is

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11 USTA Whitepaper at 14-16

12 *Id.* at 15.

13 *Id.* at 16.

not local telecommunications traffic. Although ISP-bound traffic originates in a local exchange and local facilities are used to facilitate the completion of the call to its ultimate destination, the call itself does not terminate in the same local exchange in which it originates. Simply put, prior precedents support but one conclusion that ISP-bound Internet traffic is non-local telecommunications traffic in which reciprocal compensation does not apply.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Gail Talmadge, do hereby certify that copies of the foregoing *Reply Comments of the United States Telecom Association*, in CC Docket Nos. 96-98, 99-68, were served this 4th day of August, 2000, by hand delivery or postage-paid, first class mail to the parties on the attached list:

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