

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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CC Docket No. 96-98

CC Docket No. 99-68

In the Matter of

Implementation of the Local Competition
Provisions of the Telecommunications Act
of 1996

Inter-Carrier Compensation
for ISP-Bound Traffic

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

GEORGE N. BARCLAY
Associate General Counsel
Personal Property Division

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
1800 F Street, N.W., Room 4002
Washington, D.C. 20405
(202) 501-1156

Economic Consultants:

Snively King Majoros O'Connor & Lee, Inc.
1220 L Street, N.W., Suite 410
Washington, D.C. 20005

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Summary

GSA explains that the Commission should reject claims that traffic bound to Internet Service Providers (“ISPs”) is jurisdictionally intrastate. Some commenters maintain that ISP-bound traffic should be viewed as consisting of two components — (1) an intrastate telecommunications service, provided by one or more LECs, and (2) an interstate information service provided by the ISP. However, many carriers convincingly rebut this assertion, explaining that the stream of communications in an Internet session is uninterrupted and indivisible.

Secondly, GSA explains that reciprocal compensation procedures should not apply to Internet traffic in spite of requests by competitive LECs. In addition to the fact that ISP-bound calls are not properly considered “local” messages, Internet traffic is different from conventional local voice and data traffic in several significant respects.

One of the unique characteristics of Internet calls is the extreme imbalance in the direction of traffic. For one incumbent LEC, the imbalance is causing a net revenue outflow of nearly one billion dollars a year. Moreover, the imbalance impedes the rational development of competition. Indeed, competitive LECs serving ISPs would logically prefer that end users are served by incumbent LECs providing reciprocal compensation payments that far exceed the potential income from provision of local exchange services to their own subscribers.

Finally, GSA explains that comments by carriers demonstrate the importance of national guidelines concerning inter-carrier compensation for Internet messages. Without standard rules, different state commissions are reaching disparate conclusions as to whether reciprocal compensation is due for ISP-bound traffic. The Commission can take an important pro-competitive step by establishing a national compensation framework that reflects cost relationships and balances the interests of all carriers and end users.

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GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") on the Public Notice ("Notice") released on June 23, 2000. The Notice seeks comments and replies on issues concerning inter-carrier compensation for message traffic bound to Internet Service Providers ("ISPs").

I. INTRODUCTION

On February 26, 1999, the Commission released a Declaratory Ruling stating that ISP-bound traffic is jurisdictionally mixed, and not subject to the reciprocal compensation provisions for local telecommunications services in the 1996 Act.¹ On March 24, 2000, the Court of Appeals for the District of Columbia Circuit vacated

¹ *Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC Docket No. 96-88 and Notice of Proposed Rulemaking in CC Docket No. 99-68, FCC 99-38, 14 FCC Rcd 3689 (1999), at 3690, 3695-3703, citing Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. § 151 *et seq.* ("1996 Act"), at §251(b)(5).

several provisions of that ruling.² In remanding the matter, the court stated that the Commission should revisit its conclusion that ISPs should not be subject to reciprocal compensation rules.³

In the instant Notice, the Commission seeks to develop the record in response to the court's direction by obtaining views of parties on the jurisdictional nature of ISP-bound traffic.⁴ In addition, the Commission seeks comments on the application of the reciprocal compensation requirements of section 251(b)(5) of the 1996 Act to Internet traffic.⁵

GSA submitted Comments in response to the Notice on July 21, 2000. In those Comments, GSA urged the Commission to confirm its conclusion that traffic to ISPs is jurisdictionally mixed.⁶ Also, GSA requested the Commission to rule that reciprocal compensation plans for local voice traffic developed in proceedings before state regulatory agencies should not be used for Internet messages.⁷

In addition to GSA, more than 25 parties submitted comments in response to the Notice. These parties include:

- 4 incumbent local exchange carriers ("LECs") and groups of these carriers;
- 16 competitive LECs, interexchange carriers ("IXCs"), other carriers and carrier associations;
- 3 state regulatory agencies and groups of state regulators; and
- 3 associations of end users.

² *Bell Atl. Tel. Companies v. FCC.*, 206 F.3d 1 (D.C. Cir.)

³ *Id.*, at 3-6.

⁴ Notice, p. 2.

⁵ *Id.*

⁶ Comments of GSA, pp. 3-5.

⁷ *Id.*, pp. 8-11.

In these Reply Comments, GSA responds to the positions advanced by those parties.

II. THE COMMISSION SHOULD NOT HEED CLAIMS THAT ISP-BOUND TRAFFIC IS JURISDICTIONALLY INTRASTATE.

In the circuit-switched network employed for conventional voice and data communications, a call originating and terminating within the same state is jurisdictionally "intrastate," while a call originating in one state and terminating in another state or country is jurisdictionally "interstate."⁸ These distinctions do not hold for Internet traffic because communications with ISPs do not have unique "termination" points.⁹

Although it is not practical to distinguish interstate and intrastate ISP-bound calls based on termination points or other measurable attributes, several parties contend that all of this traffic should be classified as intrastate for regulatory purposes. For example, the Florida Public Service Commission asserts that "the FCC is clinging to a weathered end-to-end jurisdictional approach that is particularly ill-suited for the years ahead."¹⁰ Indeed, the Florida regulators claim that considering the traffic to be interstate could have the effect of extending Federal jurisdiction beyond telephony.¹¹ Moreover, these regulators claim that state commissions are in a better position to address the compensation issues because of their proximity to end users, their familiarity with local conditions, and their long-standing authority over local telecommunications providers.¹²

⁸ Declaratory Ruling, para. 18.

⁹ *Id.*

¹⁰ Comments of the Florida Public Service Commission, p. 5.

¹¹ *Id.*

¹² *Id.*, pp. 5-6.

In the same vein, Cablevision Lightpath (“Lightpath”) urges the Commission to consider Internet traffic as “local” at least for the purpose of establishing a framework for inter-carrier compensation.¹³ Lightpath asserts that “a call to an ISP originates and terminates in the same way as any other local call because “the Internet user dials the ISP’s local number, and the call travels over the local network until it reaches the telephone company end office serving the ISP that the customer dialed.”¹⁴

From GSA’s perspective, the description in Lightpath’s comments does not fully portray Internet transmissions. Lightpath focuses on one part of the overall transmission, the only segment that is between known locations, usually within the same state and often within the same local calling area. Then, Lightpath ascribes the characteristics of this segment to the entire communications between the end user and the various websites participating in the “conversation.” These websites are likely to be distributed throughout the nation.

In comments responding to the Notice, SBC Communications (“SBC”) rebuts this segmented view of Internet traffic. SBC explains that the Commission has correctly viewed Internet traffic on an end-to-end basis.¹⁵ Moreover, SBC points out that the Commission has rejected arguments that for jurisdictional purposes, ISP-bound traffic should be viewed as consisting of two components: (1) an intrastate telecommunications service, provided by one or more LECs, and (2) an interstate information service provided by the ISP.¹⁶

¹³ Comments of Lightpath, pp. 1-2.

¹⁴ *Id.*, p. 5.

¹⁵ Comments of SBC, p. 7.

¹⁶ *Id.*, citing Declaratory Ruling, paras. 10-15.

Another large carrier, Verizon, also explains that Internet “calls” do not terminate at the ISP but transit that location to their ultimate destinations.¹⁷ Verizon states that the stream of communications is “uninterrupted and indivisible.”¹⁸ Indeed, if the end user wished to communicate with the nearby ISP, he or she would call the ISP on its exchange service telephone line, a message that could appropriately be classified as an intrastate call.¹⁹

Comments by additional LECs also rebut assertions that Internet traffic should be considered jurisdictionally intrastate. For example, the United States Telecom Association (“USTA”) notes that ISPs, like IXCs and other enhanced service providers, use the local exchange network to connect the customer to a distant location.²⁰ USTA explains:

The ISP customer or calling party initiates interstate communications when it dials-up the ISP through the local access number. The initial leg of the interstate communications is delivered to the ISP for ‘transmittal to out-of-town websites.’ The ISP then relays the traffic to the distant website. The transmittal of such traffic from the ISP to the out-of-town website is an interstate access service.²¹

Moreover, USTA notes that participation by two different local carriers does not modify the jurisdictional characteristics of the call. USTA explains that if different LECs serve the party originating the Internet call and the ISP, both local carriers are jointly providing access.²²

17 Comments of Verizon, p. 8.

18 *Id.*, p. 9, citing *General Tel. Co. of Cal. v. FCC*, 413 F.2d 390, 400-01 (D.C. Cir. 1969), *cert. denied*, 396 U.S. 888 (1969).

19 Comments of Verizon, pp. 8-9.

20 Comments of USTA, p. 5.

21 *Id.*, pp. 5-6.

22 *Id.*

In its Comments, GSA addressed the appropriate regulatory jurisdiction for Internet traffic. GSA explained that during a single Internet session a user will often access websites that reside on servers in various jurisdictions, or communicate on-line with users who are geographically dispersed among many locations.²³ Moreover, GSA explained that even the contents of a “single website” may be stored on multiple servers, some located in the caller’s home state, and others in widely separated parts of the nation.²⁴

Other end users also urge the Commission to find that Internet traffic is jurisdictionally mixed. In their joint comments, Keep America Connected and other users explain that recognition of the global nature of Internet calls is crucial in achieving the objectives of local telephone competition and the deployment of advanced services — the primary goals of the 1996 Act.²⁵

GSA concurs with the views of these users concerning the jurisdictional nature of Internet traffic. Therefore, GSA urges the Commission to reaffirm its previous finding that this traffic is jurisdictionally mixed, and exercise its role in establishing the inter-carrier compensation framework for these communications.

III. IN SPITE OF REQUESTS BY COMPETITIVE LECs, RECIPROCAL COMPENSATION PROCEDURES SHOULD NOT APPLY TO INTERNET TRAFFIC.

Carriers asserting that Internet traffic has a distinguishable “intrastate” segment argue that this conclusion requires application of reciprocal compensation rules. For example, Lightpath contends that the local segment of the Internet message between

²³ Comments of GSA, p. 3, citing *Universal Service Report to Congress*, 13 FCC Rcd at 11531, 11532.

²⁴ *Id.*, p. 6.

²⁵ Comments of Keep America Connected, National Association of the Deaf, National Association of Development Organizations, National Black Chamber of Commerce, New York Institute of Technology, Ocean of Know, Telecommunications for the Deaf, Inc., and the United States Hispanic Chamber of Commerce, p. 4.

the end user and the ISP imposes the same costs on carriers as other “local” calls.²⁶ Therefore, according to Lightpath, Internet calls should be treated as local calls subject to the reciprocal compensation provisions in section 251(b)(5) of the 1996 Act.²⁷

Some parties acknowledging that Internet traffic may be jurisdictionally interstate nevertheless ask the Commission to find that such messages are “local service.” For example, the Association for Local Telecommunications Services (“ALTS”) asserts that “the jurisdictional characterization has nothing to do with the service characterization.”²⁸ Therefore, according to ALTS, the Commission should conclude that ISP-bound traffic is “local as a service category” and subject to reciprocal compensation like all other local traffic.²⁹

GSA urges the Commission to reject these contentions. As GSA explained, reciprocal compensation plans should not be employed for ISP-bound messages.³⁰ In addition to the fact that ISP-bound calls are not properly considered “local” messages, Internet traffic is different from conventional local voice and data traffic in several significant respects.³¹

In its Comments, GSA explained that distinctions between Internet and voice messages concern the average length of the calls, the directional characteristics of the traffic, and the cost characteristics of the switches that are used.³² In the first place, average holding times for Internet traffic are much greater.³³ Secondly, ISPs do not

26 Comments of Lightpath, p. 1.

27 *Id.*

28 Comments of ALTS, p. 6.

29 *Id.*

30 Comments of GSA, pp. 8-9.

31 *Id.*

32 *Id.*

33 *Id.*, p. 8.

originate calls, so that Internet traffic is unidirectional.³⁴ Thirdly, there are additional distinctions between Internet and voice traffic because of differences in the cost characteristics of the switches that are employed.³⁵

Comments by Verizon demonstrate the fallacies of reciprocal compensation for Internet traffic. Verizon reports that instead of the 1:1 traffic ratios achieved with other traffic, it is sending other carriers more than 21 times as much Internet traffic as it is receiving from them, and this ratio is several times higher in some instances.³⁶ Moreover, Verizon states that the imbalance is so extensive that it expects to be billed almost one billion dollars for compensation for Internet-bound calls this year.³⁷ The imbalance has numerous harmful consequences, including higher charges for local exchange services, reductions in investment for new services and technologies, and increases in fees for Internet services.³⁸

USTA explains how the imbalance of traffic impedes the rational development of competition. For example, USTA observes that after a competitive LEC has gained an ISP customer, each residential or business customer that continues to be served by the incumbent LEC is a potentially valuable source of reciprocal compensation revenue.³⁹ This revenue is likely to be many times greater than the revenue that the competitive LEC could expect to realize by providing local exchange services to the end user, particularly a residence customer.⁴⁰ Thus, residence subscribers are far

34 *Id.*

35 *Id.*, p. 9.

36 Comments of Verizon, p. 11.

37 *Id.*

38 *Id.*, pp. 14-16.

39 Comments of USTA, Attachment entitled "Analysis of Issues on remand in ISP Reciprocal Compensation Proceeding," p. 13.

40 *Id.*

more valuable to the competitive LEC if they remain customers of the incumbent LEC than if they become the competitor's own subscribers.⁴¹

End users in addition to GSA also voice concerns with reciprocal compensation for ISP-bound traffic. For example, the National Consumers League (“NCL”) explains:

We do not believe that the original intent of the reciprocal compensation arrangement was to enable carriers to reap large payments for terminating calls in which there are no real customers. This abuse contravenes the goal of a fair and competitive telecommunications marketplace and does nothing to remove the digital divide that prevents many citizens from enjoying the full benefits of the information society.⁴²

Moreover, in comments representing a spectrum of consumer interests, the Alliance for Public Technology (“Alliance”) urges the Commission not to employ reciprocal compensation for Internet messages.⁴³ The Alliance states that a regime of reciprocal compensation payments is hardly “reciprocal” and drains revenue that could be invested in the deployment of advanced telecommunications networks.⁴⁴ Thus, while the Commission would be taking “a step in the right direction” by ruling that ISP-bound traffic is jurisdictionally mixed, consumers would realize even greater benefits if the Commission would totally prohibit reciprocal compensation for Internet calls.⁴⁵

GSA concurs with the views of these users. Reciprocal compensation plans developed under section 251(b)(5) of the 1996 Act are not economically sound for Internet traffic. Moreover, as GSA explained, the Commission should retain authority over inter-carrier compensation plans for Internet traffic to ensure that they recognize

41 *Id.*

42 Comments of NCL, p. 1.

43 Comments of Alliance, pp. 1–2.

44 *Id.*, p. 1.

45 *Id.*

the unique characteristics of this traffic, help foster development of the Internet, and protect the interests of end users.⁴⁶

IV. COMMENTS DEMONSTRATE THE NEED FOR NATIONAL GUIDELINES GOVERNING INTER-CARRIER COMPENSATION FOR INTERNET MESSAGES.

Although reciprocal compensation is not appropriate for Internet traffic, local carriers serving the ISPs are entitled to some compensation for handling these messages. In its Comments, GSA urged the Commission to prescribe guidelines for rules to compensate these carriers.⁴⁷ GSA explained that the guidelines should recognize the unique topographical and cost characteristics of ISP-bound traffic, and ensure that no additional financial obligations are placed on ISPs for network access facilities.

Incumbent LECs also urge the Commission to establish guidelines to provide some uniformity in compensation rules throughout the nation. Qwest states that the absence of guidelines is creating confusion in its 14-state operating area because state regulators are continuing to reach different conclusions regarding the same set of facts, dividing about evenly as to whether or not reciprocal compensation is due for ISP-bound traffic.⁴⁸ Moreover, Qwest explains that “this dissensus is not surprising, given the absence of any guidance from the Commission with respect to these matters legally assigned to its jurisdiction.”⁴⁹

Similarly, SBC stresses the need for action by the Commission to halt abuses of reciprocal compensation arrangements.⁵⁰ SBC identifies a variety of alternative types

⁴⁶ Comments of GSA, p. 10.

⁴⁷ *Id.*, pp. 10-11.

⁴⁸ Comments of Qwest, pp. 2-3.

⁴⁹ *Id.*, p. 13.

⁵⁰ Comments of SBC, p. 48.

of compensation plans that the Commission should evaluate for application to Internet traffic.⁵¹ SBC's analyses encompass the contingency that the Commission concludes, contrary to the weight of the evidence, that reciprocal compensation is appropriate for Internet traffic.⁵² In that event, SBC urges the Commission to require, at the minimum, a significant adjustment to reflect the cost differences between ISP traffic and local traffic as conventionally defined.⁵³

GSA concurs with SBC's recommendations. Economically efficient inter-carrier compensation plans that reflect cost relationships and balance the interests of all carriers are necessary to help foster development of the Internet and protect the interests of end users.

51 *Id.*, pp. 49-55.

52 *Id.*, p. 55.

53 *Id.*

V. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

Respectfully submitted,

GEORGE N. BARCLAY
Associate General Counsel
Personal Property Division



MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
1800 F Street, N.W., Rm. 4002
Washington, D.C. 20405
(202) 501-1156

August 4, 2000

CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 4th day of August, 2000, by hand delivery or postage paid to the following parties.

The Honorable William E. Kennard,
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Harold Furchtgott-Roth,
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Susan Ness,
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C 20554

The Honorable Michael K. Powell
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C 20554

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

Chief
Competitive Pricing Division
Federal Communications Commission
445 12th Street, S.W., TW-A225
Washington, D.C. 20554

Editorial Offices
Telecommunications Reports
1333 H Street, N.W., Room 100-E
Washington, D.C. 20005

Ms. Edith Herman
Senior Editor
Communications Daily
2115 Ward Court, N.W.
Washington, D.C. 20037

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20554


