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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: **Ex Parte**
CC Docket 99-68
Inter-Carrier Compensation for ISP-Bound Traffic

Dear Ms. Attwood:

We understand that the Commission is close to issuing an order addressing compensation for ISP-bound traffic. We understand further that the Commission is considering a proposal under which compensation rates for ISP-bound traffic would be capped at certain levels, provided that incumbent LECs offer to exchange wireless and local traffic at the same rates as ISP-bound traffic.

SBC is concerned whether this proposal will sufficiently address the regulatory distortions created by reciprocal compensation for one-way Internet traffic. The elimination of such distortions is necessary for telecommunications markets to function properly and for consumers to reap the full benefits of open markets. That being said, and without rehashing our broader concerns with the current proposal, we write to call your attention to certain "housekeeping" issues that can and should be addressed within the context of this proposal.

First, we ask the Commission to make clear that, under this proposal, incumbent LECs will not be forced to exchange local and wireless traffic in a state at the capped levels specified in the order before the incumbent LEC is able to exchange ISP-bound traffic at those levels. In order to avail itself of the rate caps established in the order for ISP-bound traffic, an incumbent LEC, in some instances, may have to invoke change of law provisions in its contracts. SBC will, of course, move as quickly as possible to implement those provisions. Unfortunately, SBC believes that certain CLECs that currently receive large amounts of reciprocal compensation for ISP-bound traffic will do everything in their power to delay the implementation of these provisions. They will dispute the meaning and effect of these provisions and attempt to trigger dispute resolution procedures in their interconnection agreements – which could result in lengthy state proceedings, replete with formal hearings, prior to the completion of the necessary contract amendments. They also can be expected to argue that any rate caps established by the

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Commission do not take effect until a contract amendment is signed and approved by the state commission. This has been their tact in the face of unfavorable changes of law in the past and SBC has every reason to believe, given the exorbitant sums of money at issue, that this pattern will repeat itself.

In contrast, wireless carriers will have every incentive to implement as quickly as possible the interconnection agreement changes that will reduce their reciprocal compensation obligation. Thus incumbent LECs could find themselves in a situation in which they are forced to exchange wireless and local traffic in accordance with the FCC caps, while they are still unable to exchange ISP-bound traffic at those same rates. Stated differently, absent the clarification offered below, incumbent LECs could be forced to exchange local and wireless traffic at *lower* rates than ISP-bound traffic. That would be a perverse result, to say the least, since the costs of delivering ISP-bound traffic are *less* than the costs of terminating local and wireless traffic.¹

To prevent this occurrence, SBC asks the Commission to include the following language in its order:

Because we believe it would be inequitable to require incumbent LECs to exchange local and wireless traffic at a lower rate than ISP-bound traffic, an incumbent LEC may condition the applicability of its offer to exchange local and wireless traffic at the rates specified herein on the completion of the steps required for it to exchange at least most of its ISP-bound traffic at the same rate. To that end, we hold that an incumbent LEC's offer to exchange local and wireless traffic in a state at the rates specified herein need not apply until that LEC has received the necessary approvals or taken the necessary steps such that it actually is able to exchange ISP-bound traffic at those same rates with CLECs accounting for 90% or more of the incumbent LEC's ISP-bound minutes in that state during the year 2000. For purposes of this 90% threshold, we exclude minutes exchanged pursuant to interconnection agreements that specifically address ISP-bound traffic and do not include a change of law provision.

Second, SBC asks the Commission to rule that if, on a going forward basis, a state establishes a reciprocal compensation rate for local and wireless traffic that is lower than the FCC-prescribed cap, or if the state establishes a bill and keep arrangement for local and wireless traffic, the same rate or arrangement will apply to ISP-bound traffic in that state. Here, again, the rationale is simply that there is no justification for an inter-carrier compensation regime in which local and wireless traffic are exchanged at rates that are *lower* than the rates for ISP-bound traffic.

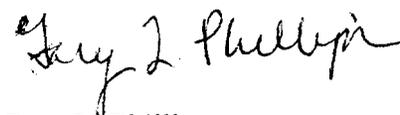
¹ To be sure, the CLECs claim otherwise but they have steadfastly refused to document their costs. In any event, not even the CLECs have suggested that local and wireless traffic should be exchanged at lower rates than ISP-bound traffic.

Third, to avoid disputes as to what traffic qualifies for compensation under the Commission's new regime, the Commission should clarify that its inter-carrier compensation regime applies only to ISP-bound traffic that is delivered to an ISP in the same local service area as the party originating the connection. In addition, the Commission should clarify that, for purposes of this rule, the relevant local service area is the local calling area of the *originating LEC*. Otherwise, a LEC that is serving an ISP could seek to collect inter-carrier compensation for traditional long-distance connections to an ISP under the pretense that *its* local calling area is the one that matters.

This is not a hypothetical risk. A number of CLECs continue to claim that a connection from an end user to an ISP that is clear across the local access transport area (LATA) or state – or sometimes even outside the state – is subject to reciprocal compensation. Their theory is that *their* local service area – not that of the originating LEC - is determinative of whether reciprocal compensation applies and, to maximize the abuse they derive from the situation, they define their local service area in sweeping terms. Although state commissions have rejected this ploy, the Commission could avoid confusion and the need for additional state-by-state litigation by clarifying what should be self-evident: that it is the local service area of the *originating* LEC that defines traffic that qualifies for reciprocal or inter-carrier compensation.

We appreciate your consideration of these matters. Please do not hesitate to call me if you any questions or would like to discuss these matters further.

Sincerely,



Gary L. Phillips

cc: Kyle Dixon
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