

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 99-10

CASE 99-C-0529 - Proceeding on Motion of the Commission to
Reexamine Reciprocal Compensation.

OPINION AND ORDER
CONCERNING RECIPROCAL COMPENSATION

Issued and Effective: August 26, 1999

CASE 99-C-0529

by a rebuttable presumption, in a manner similar to that suggested by CPB. If a carrier's incoming to outgoing traffic ratio exceeds 3:1 for the most recent three-month period, it is fair to presume that a substantial portion of its traffic is convergent, costing less to terminate, and that delivery of that traffic therefore should be compensated at end-office (in the Bell Atlantic-New York context, Meet Point A) rather than tandem (Meet Point B) rates. The end-office rate should apply to the portion of the traffic that exceeds the stated ratio, and the tandem rate should continue to apply to the portion of the traffic below that ratio. (In effect, the compensation would be at the blended rate characteristic of many interconnection agreements.)

The CLEC whose compensation is so adjusted will be permitted, however, to rebut the presumption with a suitable showing that its network and service are such as to warrant tandem-rate compensation for all traffic. Most of the factors to be considered in any such showing would go to the carrier's overall network design and take account of whether the network has tandem-like functionality that enables it to send, as well as receive, traffic. The network design factors to be considered include, but are not limited to:

the number and capacity of central office switches;

the number of points of interconnection offered to other local exchange carriers;

the number of collocation cages;

the presence of SONET rings and other types of transport facilities;

the presence of local distribution facilities such as coaxial cable and/or unbundled loops.

The presence of some or all of these network components in substantial quantities would demonstrate that the carrier in question was investing in a network with tandem-like functionality, designed to both send and receive

customer traffic. Multiple interconnection points, collocation cages, SONET rings and other types of transport facilities in various combinations are all evidence of a network being built out to reach a dispersed customer base. Collocation cages along with the use of unbundled loops are a clear indication the carrier intends to serve residential and small business customers. The presence of the network design features would be more important than actual numbers of residential and business customers served given the newness of the competitive local exchange market.

If a carrier subject to the presumption succeeds in rebutting it, the compensation paid to the carrier will revert to its previous, higher, level. In addition, the carrier will be made whole for the difference between the higher and lower compensation rates for the interval going back to its filing of its rebuttal presentation. These arrangements should be set forth in all tariffs that contain reciprocal compensation provisions.

ISP Traffic

Even if the FCC ISP Ruling affords us the discretion to adopt either of Bell Atlantic-New York's proposals, we see no sound reason to treat ISP traffic differently from other convergent traffic. For one thing, the FCC ISP Ruling is not the FCC's last word on the subject, and a regulatory regime based on it might have to be changed yet again before too long. More substantively, Bell Atlantic-New York has shown no reason to treat ISP traffic differently from other convergent traffic, and its specific proposals are similarly unsupportable. To deny all compensation for ISP termination would be to unfairly ignore the indisputable fact that CLECs completing these calls incur costs in doing so; and even if ISPs in concept resemble interexchange carriers that should recover their costs through carrier access charges, current federal law prevents them from doing so. Meanwhile, Bell Atlantic-New York's direct variable cost proposal, though less