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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

To: The Commission

PETITION FOR PARTIAL STAY

The Independent Alliance on Inter-Carrier Compensation (hereafter referred to as the "Alliance") respectfully requests that the Commission stay the effectiveness of those portions of the *Order on Remand and Report and Order* released on April 27, 2001 in the proceedings captioned above ("*Order*")[1] that apply to non-ISP-bound traffic. A Petition for Reconsideration and/or Clarification ("Reconsideration Petition") of the *Order* is being filed contemporaneously.[2]

Stay of those portions of the *Order* that apply to non-ISP-bound traffic is required to avoid the irreparable harm to Alliance members, all of whom are rural incumbent local exchange carriers, that will result from enforcement of the *Order* with respect to non-ISP-bound traffic, and to protect the public interest.

I. STANDARD FOR GRANT OF A STAY

Stay of an agency order is appropriate when: (1) the petitioner is likely to prevail on the merits of the appeal; (2) the petitioner will suffer irreparable harm absent the grant of a stay; (3) stay of the order will not substantially harm other parties; and (4) grant of the stay is in the public

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[1] 66 Fed. Reg. 26800, May 15, 2001.

[2] Members of the Alliance are identified individually in an attachment to the Petition for Reconsideration and/or Clarification.

interest. *Washington Metro. Area Transit Comm'n. V. Holiday Tours*, 559 F. 2d 841, 843 (D.C. Cir. 1977); *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). All of these elements exist here.

II. ALL OF THE ELEMENTS REQUIRED FOR GRANT OF A STAY ARE SATISFIED

A. Petitioner is Likely to Prevail on Reconsideration

As is demonstrated in detail in the Reconsideration Petition, which is incorporated herein by reference, it is likely that the Alliance will prevail on reconsideration. There is no basis, in fact or law, on the record in the proceedings at issue for the Commission to reach any conclusion or to make any rulings with respect to non-ISP-bound traffic. Indeed, the Commission has initiated a separate rulemaking to address generally the issue of inter-carrier compensation for non-ISP-bound traffic. At the same time, the Commission has in this proceeding aimed solely at ISP-bound traffic made rulings about non-ISP-bound traffic. This violates the Administrative Procedures Act and prejudges the outcome of the separate rulemaking. Thus, it is likely that the Alliance will prevail on reconsideration.

B. Petitioner Will Suffer Irreparable Harm Absent Grant of a Stay

Additionally, members of the Alliance will suffer irreparable harm absent grant of the stay they seek. By the express requirements of the *Order*, Alliance members must adopt bill and keep or Commission-prescribed capped rates with respect to reciprocal compensation for non-ISP-bound traffic immediately upon adopting bill and keep or the capped rates with respect to ISP-bound traffic. Furthermore, bill and keep is mandated for all new and renewed interconnection agreements with respect to ISP-bound traffic and, by extension, with respect to non-ISP-bound traffic.

Moreover, in the absence of a stay, each of the Alliance members will be subject to unnecessary administrative burdens. The Alliance is composed of small, rural telephone companies which, unlike larger telecommunications carriers, do not maintain large staffs dedicated to interconnection arrangements. The already burdensome nature of establishing interconnection arrangements with multiple carriers will needlessly be exacerbated if the Alliance members are required to dedicate resources to the simultaneous development and execution of new or revised interconnection agreements under new rules that will not be sustained. The required dedication of time and effort to this otherwise unnecessary endeavor cannot be recovered.

These new requirements will thus have an immediate, significant, and irreversible impact on Alliance members' existing and future interconnection agreements. Once these Commission-mandated terms are incorporated into an agreement, they cannot be changed without consent of the other party to the agreement even if the Commission subsequently alters or rescinds these requirements for non-ISP-bound traffic. Further, no consideration has been given to the impact application of the *Order* to non-ISP-bound traffic will have on the Alliance members' cost recovery and on universal service.

C. Grant of a Stay Will Not Harm Any Other Party

While failure to grant the stay will irreparably harm the Alliance members, grant will not harm any other party. Grant of the stay will merely maintain the *status quo* that existed prior to the *Order* and which was not at issue in the proceedings leading up to the *Order*, with respect to non-ISP-bound traffic. There can be no harm to other parties when a regulation that was not at issue in a proceeding merely continues in force unaltered after that proceeding.

D. Grant of a Stay is in the Public Interest

Finally, grant of the stay is in the public interest. Grant of the stay will avoid application of requirements that have not been the subject of a notice and comment rulemaking proceeding as required by the Administrative Procedures Act. Prior to the *Order*, there was no suggestion anywhere in the record that the rules and regulations under consideration would apply to anything but ISP-bound traffic. The public interest demands that the requirements applicable to non-ISP-bound traffic be stayed and taken up in the separate notice-and-comment rulemaking proceeding that the Commission has initiated to address non-ISP-bound traffic. The public interest further demands that the requirements in the *Order* not be enforced with respect to non-ISP-bound traffic until the full impact of those requirements on the Alliance members' cost recovery and on universal service can be examined.

III. CONCLUSION

For the reasons stated herein, the Commission should stay those portions of the *Order* that apply to non-ISP-bound traffic pending reconsideration of those provisions. Grant of the stay will avoid irreparable injury to Alliance members and protect the public interest.

Respectfully submitted,

INDEPENDENT ALLIANCE
ON INTER-CARRIER
COMPENSATION

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June 14, 2001

CERTIFICATE OF SERVICE

I, Nancy Wilbourn, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify the foregoing "Petition for Partial Stay" was served on this 14th day of June 2001 by first class, U.S. Mail, postage prepaid or via hand delivery to the following parties:

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