

## Outline for October 4, 2004 Ex Parte Conference Call

1. Problem Definition
  - a. Second ISP Remand Order
    - i. Commission said all traffic is “telecommunications” for the purposes of § 251(b)(5) unless specifically excluded
    - ii. Commission ruled that § 251(g) was an exclusion
    - iii. Court disagreed and remanded
2. ISP Classification
  - a. Test for “Telecommunications Carrier”
    - i. “Telecommunications” – 47 U.S.C. 43
    - ii. “Telecommunications Service” – 47 U.S.C. 46
    - iii. “Telecommunications Carrier” – 47 U.S.C. 44
  - b. Diagrams and Retail Service Provider (“RSP”)
3. Future problems if ISPs are NOT classified as telecommunications carriers
  - a. Telecommunications Act becomes moot
  - b. No interconnection or open network obligations
  - c. No USF assessment base – everything will be IP at a retail level in a converged environment
  - d. No means to regulate retail telecommunications services
4. Conclusion
  - a. Traffic between ISPs and LECs should be classified as Exchange Access, not local
  - b. An intermediate LEC does not change the classification of traffic between ISPs and ILECs. i.e. exchange access not reciprocal compensation
  - c. Commission urged to go back to end-to-end analysis and explain fully to reflect both compensation obligations as well as jurisdiction
  - d. Clarify the ESP exemption
    - i. ESP exemption applies ONLY to ISP-bound traffic for directly connected ISPs.
    - ii. Exchange access charges apply in all other cases. Those cases include, but may not be limited to:
      1. ISP traffic terminating to the LEC
      2. ISP traffic between a CLEC and an ILEC