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By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation in Dockets 96-98, 99-68, 01-92, and 04-36

Dear Ms. Dortch:

Cal Simshaw and John Jones of CenturyTel, Inc. and I met yesterday with Jane Jackson, Rob Tanner and Jeremy Marcus of the Wireline Competition Bureau. CenturyTel urged that the Commission clarify that its compensation rules for ISP-bound traffic were intended to apply only to traffic originating and terminating in the same local calling area (*i.e.*, that of the originating local exchange carrier). CenturyTel described the problems caused by the growing use of "virtual NXX" codes to avoid legitimate assessment of access charges on non-local traffic. CenturyTel requested that any action the Commission may take on inter-carrier compensation be consistent with existing rules authorizing assessment of access charges on non-local traffic. The enclosed materials were provided in the meetings.

In accordance with Commission rules, this letter and the enclosures are being filed in the above-referenced dockets. Please contact me if you have any questions.

Very truly yours,

Karen Brinkmann

Enclosures

cc: Jane Jackson, Associate Bureau Chief, Wireline Competition Bureau
Robert Tanner, Assistant Bureau Chief, Wireline Competition Bureau
Jeremy Marcus, Legal Counsel, Wireline Competition Bureau

"Virtual NXX" Traffic and Inter-Carrier Compensation

I. <u>First Principles: ISP-Bound Traffic "Terminates" With the ISP, Not "On the Internet"</u>

A. *Establishing Jurisdiction Requires Analysis of the End-to-End Nature of Traffic*

1. The DC Circuit twice approved end-to-end analysis as appropriate for determining the jurisdictional nature of ISP-bound traffic

B. *The DC Circuit Affirmed That ISP-Bound Traffic "Terminates" at the ISP Receiving the Call, Based on the Commission's Definition of "Termination"*

1. The DC Circuit reviewed the Commission's end-to-end analysis in 2000, and cited the FCC's own definition of "termination" (consisting of the switching of the traffic at the terminating LEC's end-office switch and the delivery of the traffic to the called party (*i.e.,* ISP) premises)

2. The customer's communications may or may not "continue" beyond the ISP server, but that does not change the "termination" of the call to the ISP at the ISP's server, according to the DC Circuit and the FCC's rules

C. *The ISP's Server Is the Point of Termination of This Traffic, and Relevant to the Determination Whether It Is Local Exchange or Inter-Exchange*

II. <u>If the ISP's Server Is Not In the Originating LEC's Local Calling Area, the Traffic Is Inter-Exchange and Subject to Access Charges, Regardless of the Called Party's Number</u>

A. *The ISP-Bound Compensation Rules Were Intended To Apply To Local ISPs*

1. In both 1999 and 2001, the Commission repeatedly characterized the ISP's server as "local" to the originating LEC – the Commission never indicated any intention that inter-exchange traffic would come within the scope of the compensation rules for ISP-bound traffic

B. *Where the ISP's Server Is Not Local, Traffic Is Inter-Exchange Telecommunications Traffic And Subject to Access Charges*

C. *Carriers That Originate Inter-Exchange Traffic to "Virtual NXX" Numbers Are Entitled to Impose Access Charges for the Origination of Such Traffic*

1. An ISP's use of "virtual NXX" numbers to avoid the cost of installing a local server does not change the inter-exchange nature of the traffic

2. Toll trunks are becoming congested with this traffic, yet the originating carrier receives no revenues with which to expand its toll facilities

3. Legitimate toll customers, on whose traffic access charges are assessed, are harmed by this ever-growing congestion and access avoidance

Compensation for ISP-Bound Traffic
(CC Dockets 96-98, 99-68 and 01-92)

VNXX Arrangements Were Not Contemplated In the FCC ISP-Bound Traffic Order

- The FCC's 2001 *ISP Remand Order* noted that "an ISP's end-user customers typically access the Internet through an ISP server *located in the same local calling area.*"
- This observation is inconsistent with the use of virtual NXX arrangements, in which a telephone number associated with an exchange area is assigned to an ISP that is not physically located in that exchange area, and has no server in the local community.
- CenturyTel customers dial a "local" number according to the NPA-NXX code, but the traffic must be delivered to a distant ISP that does not have facilities in the local calling area in which the call originates, and in some instances not even in the same state.

VNXX Arrangements Impose Substantial Costs on CenturyTel

- If a dial-up Internet customer has an ISP whose server is not located in the originating LEC's local calling area, with a telephone number that accurately reflects the location of the server, the originating LEC would be properly compensated by charging access for the origination of that inter-exchange traffic. To avoid such charges, the ISP could simply establish a server in the originating LEC's local calling area.
- Under virtual NXX arrangements, CenturyTel must transport the traffic via the public switched network to a distant ISP server located outside of the LEC's local calling area. This ties up inter-office toll network facilities normally reserved for traffic that is subject to access charges, without the corresponding revenue.
- Due to the frequency of, and long holding times associated with dial-up Internet calls -- CenturyTel has customers logging 40,000 minutes per month on ISP-bound calls -- inter-office trunks can quickly become congested, raising the risk of toll traffic blockage; CenturyTel may have to add interoffice trunking facilities to alleviate this congestion.
- Normally when an interoffice trunk is added to accommodate increased toll traffic, the toll traffic generates sufficient access revenue to offset the cost of the trunk. In the case of virtual NXX traffic, however, unless access charges apply, there are no added revenues to offset the added costs.
- The cost associated with the need for additional interoffice trunks would be the direct result of the decision of the terminating LEC and its ISP customer to employ a virtual NXX arrangement, rather than locate a server in the local community.
- Such arrangements also give VNXX-based ISPs an unfair cost advantage over competing ISPs that *have* established servers in the local community.
- ILECs should not be denied the ability to recover their costs simply because another carrier assigns particular telephone numbers for the convenience of its ISP customers.

Compensation for ISP-Bound Traffic
(CC Dockets 96-98, 99-68, and 01-92)

ISP-Bound Traffic That Is Inter-exchange In Nature Should Be Subject to Access Charges

- The FCC should conclude that dial-up ISP-bound traffic that does not originate and terminate in the calling party's local calling area is inter-exchange in nature and, like other inter-exchange traffic, is subject to access charges.

If the ISP's Premises Are Located Outside of the Calling Party's Local Calling Area, the FCC Should Conclude that ISP-Bound Traffic Is Inter-exchange in Nature

- Based on the FCC's traditional end-to-end analysis, the Commission should conclude that ISP-bound traffic is inter-exchange and subject to access charges if the ISP's premises are located outside of the calling party's local calling area. When a CenturyTel end-user dials an ISP, the ISP as an information service provider is the customer of the terminating LEC -- the call terminates when it is handed off to the ISP.

- The FCC must acknowledge that ISP end-user customers are accessing the Internet through ISP facilities that often are located outside of the end-user's local calling area, and that inter-carrier compensation arrangements should reflect that reality.

If the FCC Concludes that ISP-Bound Traffic that Originates and Terminates in Different Local Calling Areas Is Not Subject to Access Charges, the FCC Must Require the Terminating Carrier to Establish a Point of Interconnection Within the ILEC's Local Calling Area

- With the widespread use of virtual NXX arrangements, the ISP's premises no longer is "typically" located in the same local calling area as the dial-up customer. This is especially true in rural areas where some ISPs try to avoid installing a local server.

- Virtual NXX arrangements undermine the current ILEC rate structure by requiring ILECs to haul traffic beyond their local calling areas without compensation.

- Virtual NXX arrangements also raise the question whether ILECs are required to provide trunks to distant points of interconnection at their own expense. (The FCC sought comment on this issue in its pending intercarrier compensation proceeding; however, the FCC has not yet ruled on this point.)

- The FCC's rules must allow ILECs to recoup the cost of their networks.

- If the FCC rules that ISP-bound traffic is not subject to access charges, then the Commission should also rule that the terminating carrier serving the ISP must establish a direct point of interconnection within the originating ILEC's local calling area.

- Alternatively, a new compensation mechanism must be established so originating LECs will be able to recover the costs associated with carrying this traffic on their networks.