ISP-Bound Traffic Is Not Subject to Section 251(b)(5) Reciprocal Compensation

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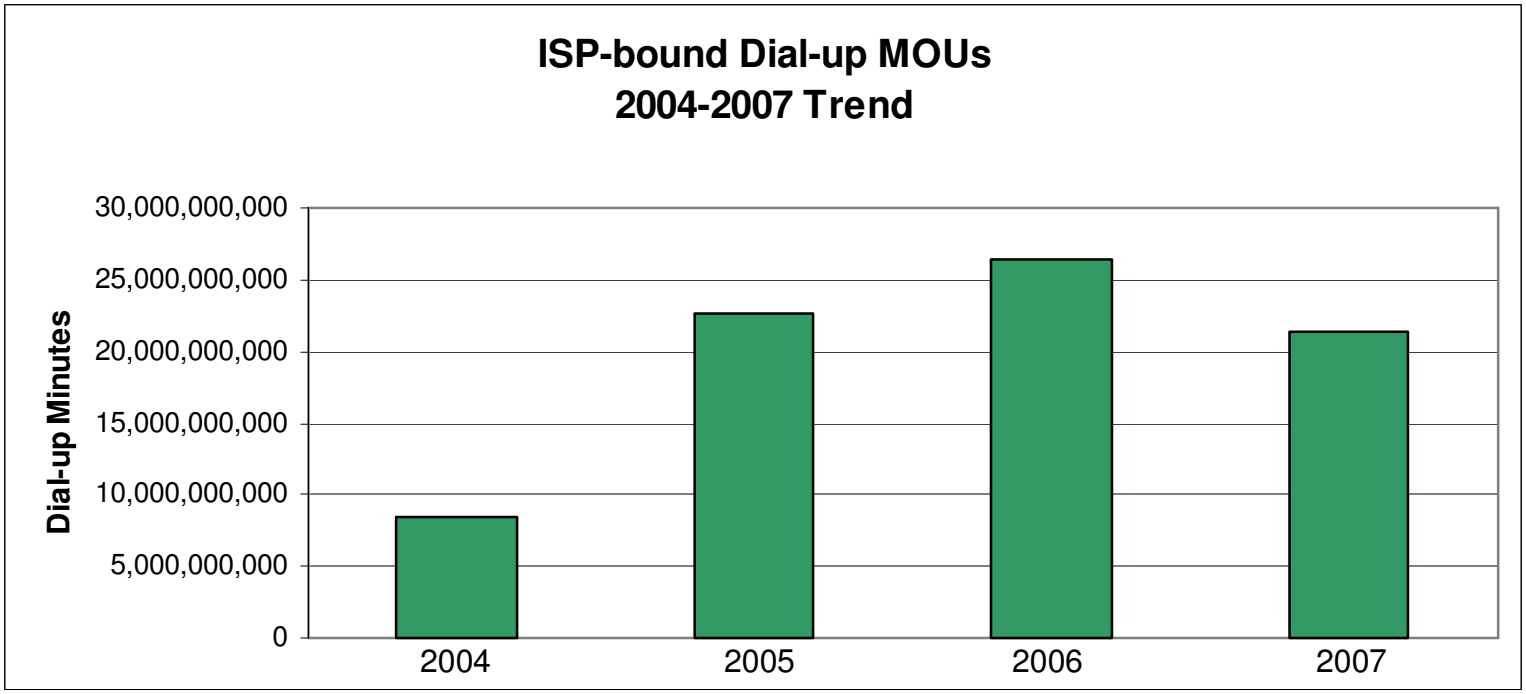
The ISP-Remand Decision Has the Potential to Diminish Investment in Rural Broadband

- ISP Recip. Comp. is, in essence, arbitrage.
- Increases in payments to ISP CLECs do not support broadband network investment.
- Rather, increases in payments to ISP CLECs can subsidize dial-up Internet access, which will reduce demand for broadband.
- The harms that would flow from undoing the ISP Remand compromise would be particularly hard hitting in rural America.
- Section 706 compels the Commission to interpret section 251(b)(5) in a manner that avoids this harmful result.

Dial-Up Traffic Remains At High Levels, Particularly in Rural America



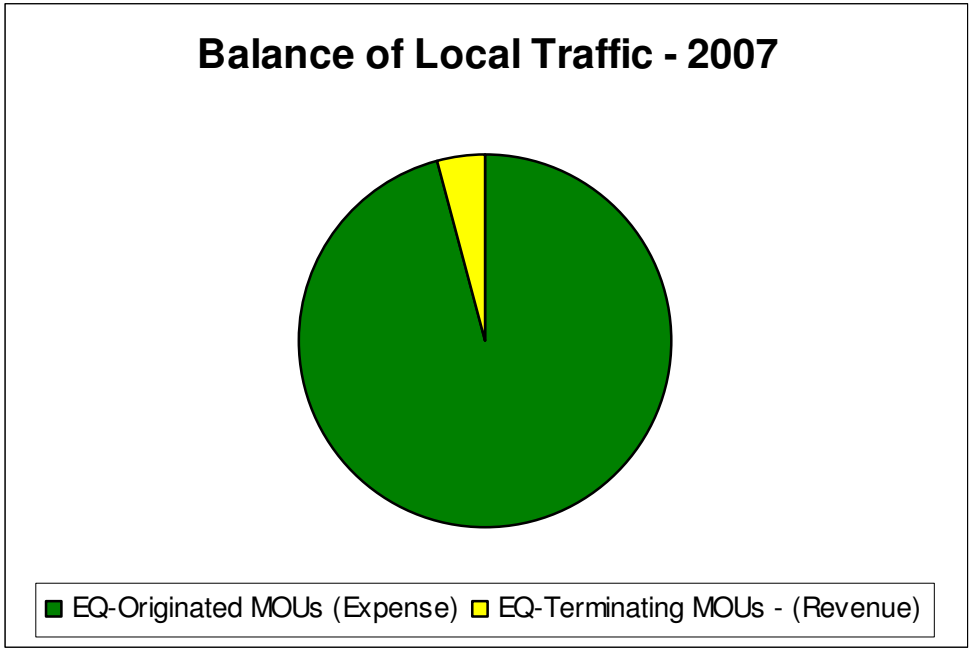
Note: Lifting the new entrant rule in late 2004 resulted in a significant increase in dial-up traffic in 2005. Tremendous embedded base of dial-up usage that remains.

Dial-Up Traffic Remains High, Particularly in Rural America – Significant Out of balance Traffic Remains

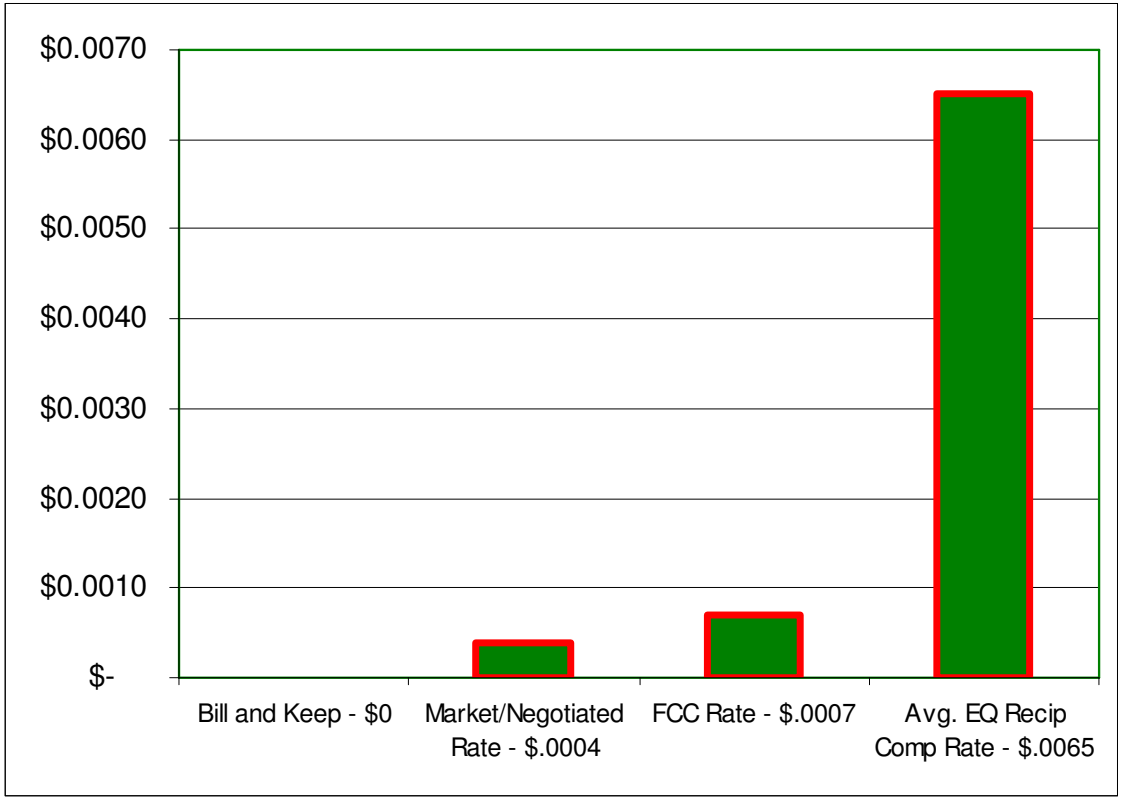
"Local" Minutes – MOUs on Local Trunks

EQ-Originated - Terminating to CLECs (96%)	22.7 B

EQ-Terminated -Originating from CLEC (4%)	1B



Rural Carriers Would Be Devastated by Moving to Reciprocal Compensation for ISP-Bound Traffic



Rural Carriers Would Be Devastated by Moving to Reciprocal Compensation for ISP-Bound Traffic

2007 Data

CLEC-terminating MOUs	22.7 Billion
CLEC-terminated MOUs at negotiated/market rate ($.0004)	18 Billion
Impact to EQ if all ISP-bound MOUs at current "market" rate were deemed 251(b)5/TELRIC	$100M+ expense increase

** Lifting the Rate cap would have negative implications to currently negotiated terminating rates

Lifting Rate Cap Retroactively Would Harm ILEC Customers and also Negatively Impact CMRS Industry

- EQ estimates that retroactive treatment regarding rate cap would cost EQ an additional $500 million in terminating compensation expense to CLECs.
- This would be offset, in small part, because the Mirroring Rule would logically also be reversed retroactively.
- Such a reversal would mean allow EQ to collect approximately $100 million for retroactive reciprocal compensation revenue from CMRS carriers.

ISP-Bound Traffic Does Not Terminate Locally; It Is Information Access Traffic

- The Internet end point can be difficult to ascertain, but more than 10% clearly is interstate.
- Caching is increasingly done regionally rather than locally, so the interstate percentage is likely closer to 100% than 10%.
- ISPs and those that serve them rely on the fact that the traffic is interstate when they claim the ESP Exemption; the traffic would be local and outside FCC jurisdiction otherwise.

Section 251(b)(5) Does Not Apply to Information Access

- Section 251(b) as a whole is intended to facilitate *local* competition; not re-write the entire framework for telecommunications generally.
- Section 251(b)(5) by its terms applies only to traffic that is being terminated locally by the receiving carrier (i.e., by a carrier acting as a LEC); it applies to transport ***and*** termination (as opposed to stand-alone transport).
- ISPs are not terminating traffic (much less doing so locally), for the most part, so section 251(b)(5) does not apply.
- This traffic falls under the MFJ term "information access," and it has long been treated as interstate access.

Treating ISPs as End Users for Part 69 Access Does Not Alter the Analysis of Intercarrier Comp.

- ISPs are treated as if they were end users for the purpose of Part 69, which addresses interstate access charges. Accordingly, they do not pay exchange access but, instead, purchase local business lines.
- The end user treatment does not extend to the relationship between two LECs jointly providing the exchange access, however.
- When two LECs jointly-provide exchange access, normally, they split the access charge between them.
- Accordingly, the most natural treatment of ISP-bound traffic with a CLEC interposed would be for both the ILEC and the CLEC to receive part of the business line revenue.
- Stated another way, the CLEC should be sending revenue to the ILEC, which is the direct opposite of what occurs today.