



Rusty Taragan
Executive Vice President, Operations • General Manager, CyberTarget

October 28, 2008

The Honorable Kevin Martin
Chairman

The Honorable Michael J. Copps
Commissioner

The Honorable Jonathan S. Adelstein
Commissioner

The Honorable Deborah Taylor Tate
Commissioner

The Honorable Robert M. McDowell
Commissioner

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Presentation in CC Docket No. 99-68, Intercarrier Compensation for ISP-Bound Traffic; CC Docket No. 01-92, Developing a Unified Intercarrier Compensation Regime.

Dear Chairman Martin & Commissioners:

Last week, I, along with other representatives from United Online visited the Commission to express our concern regarding the potential impact that the draft decision could have on dialup Internet access services. I write this letter today to emphasize the points we made in ex parte meetings with all of the Commissioners' offices as well as with the Wireline Competition Bureau.

United Online provides dialup Internet access services to approximately 1.4 million subscribers under the brand names of Juno and NetZero. Our service is available in 2,510 counties and we offer a subscription service at a price of \$9.95 a month. We also provide a free Internet access service to approximately 1 million subscribers. Many

of our users are located in rural counties where broadband services are either not available or are too expensive for many consumers.

United Online is particularly concerned with the decline of access lines in rural counties. Over the past few years carriers have been retreating from rural markets shrinking our dialup Internet access footprint. We have determined that the root cause of this development is twofold: (1) state rules governing virtual NXX arrangements; and (2) the discriminatory treatment of ISP-bound traffic for purposes of intercarrier compensation.

In order to provide dialup Internet access services, United Online relies on carriers to provide a managed modem dialup Internet access network so that customers can access our services through locally dialed telephone numbers. Dialup Internet access services are not attractive if the user must also incur long distance charges in order to make use of the service. In rural counties in particular, CLECs are able to offer local dialup telephone numbers through virtual NXX arrangements. The cost associated with installing a modem bank in a rural exchange where there are a limited number of customers does not make it attractive to establish a physical, local presence in each rural rate center. Thus, the availability of virtual NXX arrangements is critical to rural consumers.

There is much confusion as to what the appropriate intercarrier payments are for this traffic. State commissions have reached conflicting conclusions as to how to classify the traffic that determines how intercarrier payments are made between carriers. In some areas of the country, CLECs offering virtual NXX arrangements to dialup ISPs cannot collect any form of compensation from the legacy provider of telephone service. Some of these monopoly providers argue that calls routed via such methods are not eligible for reciprocal compensation or for other terminating compensation under the *ISP Order on Remand*. The theory with respect to the former contention is that the call is in fact long-distance because the ISP is not physically located in the local calling area. These monopoly providers argue that the FCC included in the *ISP Order on Remand* a few references indicating that it was resolving compensation for traffic destined for ISPs "in the local calling area." Some legacy providers of telephone service take an even more aggressive posture and argue that the CLEC offering the virtual NXX service must pay originating access charges for its role in initiating the call in the first instance.

Discriminatory treatment of dialup ISP-bound traffic in the manner described above does not make sense when the details of the call flow are examined. When a legacy provider of telephone service sends a locally-dialed call placed by one of its customers to a CLEC customer, whether ISP or otherwise, the call always routes through the same point of interconnection ("POI"). There are no additional costs to the legacy provider based upon the location of the ISP customer behind the POI. The CLEC bears all costs if it has to take a call to a more distant location to hand the call off to the ISP. Thus, from a network interconnection perspective, the legacy provider is bearing no additional costs that require originating access charges. The CLEC is the only party

United Online will not repeat the legal arguments made by others as to why CLECs should be entitled to reciprocal compensation when traffic is delivered to legacy providers via virtual NXX arrangements.¹ United Online highlights that unfavorable intercarrier compensation arrangements for such traffic is causing carriers to withdraw from rural markets. If this trend continues, Internet access in rural counties will decline in the short term regardless of whether the Commission's policies with regard to broadband deployment succeed or fail.

United Online is also concerned that the Commission's adoption of a unified rate of \$0.0007 for all types of traffic will lead to further CLEC retreat from rural counties. Dialup ISP-bound traffic should be placed in the statutory reciprocal compensation structure as it would promote numerous sound policy and economic objectives. For example, if it is indeed true that a monopoly provider of service believes it is paying too much in reciprocal compensation payments to a CLEC that offers dialup Internet access services, the legacy provider could deploy broadband services in effort to lower such payments and win additional business from their customer base. Accordingly, establishing a cost-based reciprocal compensation rate for ISP-bound traffic would not only satisfy Sections 251 and 252 of the Act, but would also serve the Commission's objective of promoting broadband deployment. Further, ending discriminatory treatment of such traffic will allow United Online and other providers of dialup Internet access services to continue to provide service to consumers in rural counties and even expand their footprint to bring the benefits of the Internet to all Americans. Finally, there remains a strong demand for dialup Internet access. Our subscriber base demonstrates that not all consumers want or need costly broadband service. Allowing rural Americans the option of purchasing dialup service creates a competitive marketplace that benefits all consumers.

When we met with the Commission last week we discussed an ever increasing digital divide between Americans who have affordable Internet access options and those who do not. We believe that our recommendations herein will close this divide and give rural America the same access to the Internet as enjoyed by the rest of the country.

I appreciate your consideration of this filing.

Sincerely,



Robert Taragan
Executive Vice President of Operations

¹ See, e.g., Letter from William P. Hunt, III, Vice President, Public Policy, Level (3) Communications, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Docket Nos. 01-92, 05-337, 96-45, 99-68, 07-135, 04-36 (Oct. 27, 2008).

cc: Amy Bender
Scott Deutchman
Scott Bergmann
Greg Orlando
Nicholas Alexander