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Illinois Commerce Commission)
on Its Own Motion)
Establishing Rules for Reciprocal)
Compensation for Internet Service)
Provider-Bound Traffic.)

Docket No. 00-0555

**AMERITECH ILLINOIS' RESPONSE TO MOTION TO DISMISS OR,
IN THE ALTERNATIVE, TO EXPAND SCOPE OF PROCEEDING**

Illinois Bell Telephone Company ("Ameritech Illinois") hereby responds to the motion of Focal Communications of Illinois, McLeod USA Telecommunications Services, Inc., Allegiance Telecom of Illinois, Inc., AT&T Communications of Illinois, Inc., TCG Chicago, TCG Illinois, TCG St. Louis and WorldCom, Inc. ("Movants") to expand the scope of this proceeding (the "Motion"). Movants cast the Motion as one to dismiss or, in the alternative to expand the scope of the proceeding. The Motion does not advocate dismissal as a real alternative, however, and Ameritech Illinois is confident that the Commission, having opened this docket to address a real problem that is only getting worse, will not entertain dismissal. Accordingly, this response addresses the Motion as a request to expand the scope of the proceeding.

There is no reason to expand the scope of this proceeding. The Motion's premise (at ¶ 3) that the current scope may "unnecessarily preclude consideration of numerous relevant facts and arguments" is wrong as a matter of law. By definition, the Commission can consider in this proceeding each and every relevant fact and argument. To be sure, the purpose of the proceeding is "to determine the just and reasonable reciprocal compensation mechanism for ISP-bound

traffic.” (Initiating Order, Docket No. 00-0555, p. 2, August 17, 2000.) But there is nothing in the Initiating Order that prevents the Commission from doing whatever it needs to do to achieve that purpose. Thus, if the Commission concludes that “the just and reasonable reciprocal compensation mechanism for ISP-bound traffic” is one that affects other traffic as well, then the Commission may adopt that mechanism, and the Commission does not need to amend the Initiating Order – which, at the end of the day, is what the Motion proposes – in order to do so.

More important, though, the Commission should not allow the Motion to further delay the closing of the loophole through which the Movants and similarly situated carriers continue to extract unearned ISP reciprocal compensation profits to the tune of tens of millions of dollars a year. The Commission recognized last May that that loophole needs to be closed. Ten months later (and many months after Movants could have brought their Motion), nothing has changed. Certainly, no one would contend there has been ten months’ progress toward a solution. Whether or not the Commission alters the scope of this proceeding, the Commission should take appropriate measures to ensure that it achieves the stated objective of the proceeding as soon as reasonably practicable.

Ameritech Illinois further states as follows:

1. It is old news that the current regime of reciprocal compensation on ISP traffic is a “boondoggle,”¹ that has allowed CLECs to reap as much as 4000% arbitrage profit.² As the Massachusetts Department of Telecommunications and Energy concluded nearly two years ago:

The unqualified payment of reciprocal compensation for ISP-bound traffic . . . enriches competitive local exchange carriers, Internet service providers, and Internet users at the expense of telephone customers or shareholders. This is done

¹ *Communications Daily*, Sept. 17, 1998, quoting Chuck McKinn, Chairman of Covad Communications.

² *Reciprocal Compensation for Internet Traffic – Gravy Train Running out of Track*, Scott C. Cleland, Legg Mason Research Technology Team, June 24, 1998.

under the guise of what purports to be competition, but is really just an unintended arbitrage opportunity derived from regulations that were designed to promote real competition. A loophole, in a word. . . .

* * *

. . . ISP-bound traffic . . . generates significant reciprocal compensation payments from [ILECs] to CLECs, an imbalance which enables CLECs to increase their profits or to offer attractive rates and services to Internet service providers – or to do both. . . . [T]he benefits gained, through this regulatory distortion, by CLECs, ISPs, and their customers do not make society as a whole better off, because they come artificially at the expense of others.³

2. Why do the Movants – all landline local exchange carriers – seek to expand this docket to encompass the asserted interests of wireless carriers, when the wireless carriers themselves have taken no such initiative? And why did the Movants, even though they have known for the better part of a year that the solution to the problem of ISP reciprocal compensation might implicate local traffic generally – wait until now to bring their Motion? The answer is plain, especially in light of the fact that the interests advanced in the Motion are not the Movants' interests, but rather are the purported interests of wireless carriers: Every minute of every day, the Movants are racking up unearned profits for delivering dial-up Internet-bound traffic to their ISP customers, at the expense of Ameritech Illinois' customers and shareholders. And every day that the Movants can prolong this docket is another day on the gravy train for them, and another day of bleeding for Ameritech Illinois' and other incumbent carriers' constituents.

3. Accordingly, Ameritech Illinois submits that the real issue presented by the Motion is not whether the scope of this rulemaking should be expanded, but rather is whether the remainder of the docket, whatever its scope, will be conducted at the snail's pace that the

³ DTE 97-116-C, *Complaint of MCI WorldCom, Inc. against New England Telephone Company d/b/a Bell Atlantic – Massachusetts for breach of interconnection terms entered into under Sections 251 and 252 of the Telecommunications Act of 1996*, Order (May 19, 1999) at *15-*17.

Movants would prefer or with dispatch appropriate to the seriousness of the problem – a problem that the Initiating Order itself recognized (at p. 1) was already “exacerbate[d].”

4. Indeed, the Commission recognized, in the Order that gave rise to this proceeding, the urgency of resolving the ISP reciprocal compensation problem. In its May 8, 2000, Order in the Focal/Ameritech Illinois arbitration, Docket No. 00-0027, the Commission, having directed Staff to initiate a proceeding to address that problem, went on to say (at p. 12), “the Commission may subject this reciprocal compensation rate [*i.e.*, the rate in the Focal Ameritech Illinois interconnection agreement] to an adjustment, including a possible true up or retroactive payment, based on its ultimate conclusion reached in the reciprocal compensation proceeding.” Plainly, this provision for a possible true up or retroactive payment was an acknowledgement of the magnitude and the time-sensitivity of the problem. In keeping with that acknowledgement, Ameritech Illinois entreats the Commission, however it rules on the Motion, to move this proceeding along.

5. There is, in any event, no reason to change the scope of the proceeding, for the simple reason that the scope set forth in the Initiating Order is broad enough to encompass any reasonable method of achieving the stated purpose of the proceeding. That purpose is “to determine the just and reasonable reciprocal compensation mechanism for ISP-bound traffic” (Initiating Order at 2, 3), and in determining that mechanism, the Commission has said it will consider such “innovative reciprocal compensation techniques (*e.g.*, alternatives to the traditional per-minute-of-use structure)” as the parties may proffer (*id.* at 2.) Nothing in the Initiating Order places out of bounds any reasonable solution to the problem of reciprocal compensation on ISP-bound traffic, and nothing in the Initiating Order suggests that the solution can affect only ISP-bound traffic.

6. Movants badly undermine their own Motion when they contend that “the broader issue of inter-carrier compensation for all local calls must be considered.” (Motion ¶ 9.) In support of that contention, Movants cite to “SBC states” that “have adopted symmetrical bifurcated reciprocal compensation rates for *all* local traffic” or that are “leaning strongly in that direction,” and assert that the scope of this proceeding would not allow this Commission to adopt such an approach. (*Id.* ¶¶ 9-10.) But the stated scope of two of the proceedings that Movants cite was ISP traffic, just like the scope of this docket. See *Investigation of the Compensation Arrangements for the Exchange of Traffic Directed to Internet Service Providers*, Docket No. 05-TI-283, Order Establishing a Method for Pricing Reciprocal Compensation in Interconnection Agreements (Wisc. PSC Nov. 8, 2000) (Motion at 5 and n.4), at p. 1 (“This docket was opened on December 14, 1999, on the Commission’s own motion, *to consider alternative methods for pricing dial-up access for Internet traffic*”) (emphasis added); *In the Matter of a General Investigation to Determine Whether Reciprocal Compensation Should be Paid for Traffic to an Internet Service Provider*, Docket No. 00-GIMT-1054-GIT, Order Finding Reciprocal Compensation Should be Paid for Traffic to an Internet Service Provider (Kan. Corp. Comm’n Dec. 19, 2000) (Motion at 6 and n.6) (“[T]he Commission on May 19, 2000, issued an order opening this docket to conduct a general investigation *to determine whether reciprocal compensation should be paid for traffic destined for an Internet Service Provider*”) (emphasis added). Thus, Movants’ argument – that the problem of reciprocal compensation on ISP traffic cannot be solved by addressing local traffic generally unless the Initiating Order says so – is refuted by the very authorities that the Movants rely on.⁴ It simply is not true, as Movants assert (at ¶ 10), that “the bifurcated rate proposal that Ameritech has advocated in other states could not

⁴ Furthermore, the proceedings in California, Michigan and Texas to which Movants cite did not address reciprocal compensation on wireless or paging traffic.

even be considered in this proceeding because of the unnecessarily narrow scope described in the Commission's initiating Order."

7. Nor does anything else in the Motion support the Movants' position. For example, the Movants assert (at ¶ 2) that "it is evident that any effort to re-examine the current reciprocal compensation rate structure necessarily implicates a wide variety of legal, economic and policy issues." To the extent that is so, so be it: Those legal, economic and policy issues that are relevant to the subject matter of the proceeding can be considered, and the Initiating Order does not have to be amended to permit that.

8. Movants then assert (at ¶ 3):

As an example, the proceeding is captioned as a rulemaking to establish reciprocal compensation for Internet service provider bound traffic. In the Order, the Commission parenthetically defines Internet service provider bound traffic as "dial-up Internet traffic routed to an ISP." While the terms Internet-bound and ISP-bound are sometimes used interchangeably, Internet-bound calls refer to only those calls bound for the Internet. While all Internet traffic may eventually be routed to an entity that can be described as an ISP, not all traffic routed to an ISP is Internet traffic. The scope of this docket has important ramifications on the extent of the Commission's jurisdiction and the feasibility of particular proposals.

Movants offer this "As an example," but what it is supposed to be an example of could hardly be more obscure. If it is intended as an example of how the scope of the proceeding would "preclude consideration of numerous relevant facts and arguments" (Motion ¶ 2), it fails badly: There is no confusion about the class of traffic that gave rise to this docket, and for Movants to pretend otherwise is disingenuous. (And even if there were some question about what constitutes the universe of ISP-bound traffic that precipitated this proceeding, there is no reason that that question could not be resolved within the proceeding itself.)

9. Finally, Movants' suggestion that the proceeding needs to be expanded to take wireless traffic into account is mistaken at several levels (as one might expect given the fact that wireless carriers have raised no such concern):

a. To the extent Movants are saying that the proper solution to the problem to be addressed in this proceeding is one that must “include local traffic, whether landline or wireless” (Motion ¶ 8), the proceeding need not be expanded to accommodate that solution. As discussed above, if the Commission concludes that “the just and reasonable reciprocal compensation mechanism for ISP-bound traffic” is a mechanism that implicates all local traffic (*e.g.*, a bifurcated rate structure along the lines described at Motion ¶ 9), the Commission may adopt that mechanism, and the Commission does not need to amend the Initiating Order in order to do so.

b. If, on the other hand, the Movants are suggesting that there is some *separate* reciprocal compensation problem that uniquely affects wireless carriers, then this is not the place to address that problem, but that is no reason to expand the docket to address whatever that separate problem is.

c. Finally, Movants’ argument that incumbent carriers terminate more calls from wireless carriers than vice versa and therefore allegedly benefit from “this heavy imbalance of traffic” by collecting reciprocal compensation “at the current, out-of-balance rate” (Motion ¶ 8) is off the mark. The problem to be addressed in this proceeding is not, as Movants’ argument assumes, that reciprocal compensation rates in general are too high (so that any carrier that terminates the majority of any class of traffic is over-compensated). The problem, as the Initiating Order recognizes, lies both in the structure of reciprocal compensation rates as applied to the huge volume of ISP-bound traffic that has unique traffic and cost characteristics, and in the mismatch between the flat-rated (per call or per month) local rates paid by consumers and the per-minute nature

of the existing reciprocal compensation rates. Neither of these conditions exists in the traffic exchanged between landline and wireless carriers.

d. Thus, the specific concern that Movants have devised on behalf of wireless carriers is unfounded, and to the extent (if any) that the best solution to the problem that is the subject of this rulemaking needs to take wireless traffic into account, that can readily be done without amending the Initiating Order.

10. In short, the Commission's commendable purpose can be achieved within the scope of the proceeding as set forth in the Initiating Order. The challenge is to join other state commissions across the country in putting in place as soon as practicable "the just and reasonable reciprocal compensation mechanism for ISP-bound traffic" that the Commission has undertaken to establish.

WHEREFORE, Ameritech Illinois respectfully urges the Commission to deny the Motion, and to take appropriate measures to ensure that it achieves the stated purpose of this proceeding as soon as reasonably practicable.

Dated: February 27, 2001

Respectfully submitted,

AMERITECH ILLINOIS

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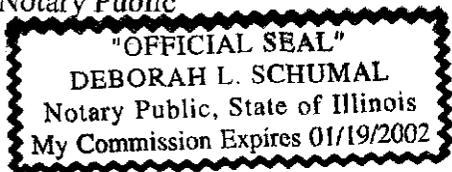
VERIFICATION

I, Dennis G. Friedman, being first duly sworn upon oath depose and say that I am an attorney for Ameritech Illinois; that I am authorized to make this Verification on its behalf; that I have read the foregoing Ameritech Illinois' Response to Motion to Dismiss or, in the Alternative, to Expand Scope of Proceeding and know the contents thereof; and that said contents are true and correct to the best of my knowledge, information and belief.


Dennis G. Friedman

Subscribed and Sworn to before
me this 27th day of February, 2001.


Notary Public



CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused copies of the attached, Ameritech Illinois' Response to Motion to Dismiss or, in the Alternative, to Expand Scope of Proceeding, to be served on each of the persons on the attached Service List by depositing the same in the U.S. Mail on February 27, 2001, and, in the case of persons whose names are asterisked, via e-mail on that same date.



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