

CENTURYTEL'S STATEMENT ON THE FCC ISP REMAND ORDER

ISP-bound traffic utilizing VNXX is not covered by the FCC's ISP Remand Order. In its ISP Remand Order, the FCC established a compensation plan applicable to local ISP-bound traffic not otherwise subject to access charges. An examination of the ISP Remand Order indicates that the FCC was addressing only that traffic bound for the internet where the ISP is located in the same calling area as the calling party. In that order the FCC stated:

As we noted in the *Declaratory Ruling*, an ISP's end-user customers typically access the Internet through an ISP server located in the same local calling area.¹

In referring back to its earlier determination in the *Local Competition Order* that reciprocal compensation is due only on "local" traffic, the FCC stated the question before it as follows:

As a result of this determination, the question arose whether reciprocal compensation obligations apply to the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC.² (emphasis added).

In the ISP Remand Order, clearly the compensation plan that the FCC sought to create was to apply only to traffic where the ISP is located within the same local calling area as the calling party. No party in that proceeding advocated that interexchange traffic (where the ISP is located outside of the local calling area) should be subject to a new compensation plan or anything other than access charges. Nowhere in the 54-page ISP

¹ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"). at ¶ 10.

² *Id.*, at ¶ 13

Remand Order did the FCC state that it was applying a new compensation plan to calls where the ISP is located outside of the local calling area.

It is untenable for any party to suggest that the compensation plan established by the FCC in the ISP Remand Order somehow applies to any and all calls to an ISP regardless of where they are located. For one thing the FCC never stated that to be the case. For another, there is no question that 1+ and 1-800 calls to ISP's today continue to be subject to access charges and not the interim intercarrier compensation plan established by the FCC in the ISP Remand Order. This is because they are calls where the ISP is not located in the same local calling area.

The limited scope of the FCC's ISP Remand Order was readily apparent to the reviewing Court. In the D.C. Circuit Court's review and remand of the Internet Order the opinion states:

In the order before us the Federal Communications Commission held that under section 251(g) of the Act it was authorized to 'carve out' from section 251(b)(5) calls made to internet service providers ('ISPs') located within the caller's local calling area.³ (emphasis added).

As noted by the reviewing court, the compensation plan established by the FCC in the ISP Remand Order applied only to traffic where the ISP is located within the caller's local calling area.

Therefore ISP-bound traffic utilizing VNXX (where the ISP is, by definition not located in the same local calling area) is not covered or affected by the FCC's ISP Remand Order.

³ *WorldCom v. FCC*, 288 F.3d 429, 430 (D.C. Cir. May 3, 2002).