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TALK AMERICA'S COMMENTS ON THE FCC ISP REMAND ORDER

It should be noted that these comments result from a cursory, lay person's reading of the associated documents, and not the applied wisdom of company counsel.

CenturyTel has asserted, "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... 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."

Yet a reading of the ISP Remand Order does not seem to support CenturyTel's comments. In opening paragraph 1, the FCC in the ISP Remand Order said, "... we reaffirm our previous conclusion that traffic delivered to an ISP is predominately interstate access traffic subject to section 201 of the Act, and we establish an appropriate cost recovery mechanism for the exchange of such traffic." The FCC did not say that this rule applied only to traffic where the ISP is located within the same local calling area as the calling party. In paragraph 14, the FCC observed that "...Internet communications originate with the ISP's end-user customer and continue beyond the local ISP server to websites or other servers and routers that are often located outside of the state." And in Appendix B, the Final Rules which in fact are the words which are legally binding, the FCC did not say that the compensation plan the FCC was adopting was to apply only to traffic where the ISP is located within the same local calling area as the called party.

In *Global NAPs, Inc. v. Verizon New England*, in an order dated August 26, 2004, the U.S. District Court for the District of Massachusetts summarized on page 22 as follows: "On April 27, 2001, the FCC issued its Order on Remand. The Order on Remand treats ISP-bound traffic as interstate traffic subject to FCC regulation and not subject to reciprocal compensation." Again, the interpretation which CenturyTel seeks, is not to be found.

Then we have the matter which CenturyTel itself brought before the Alabama Public Service Commission, for a Declaratory Ruling Concerning the Usage of Local Interconnection Services for the Provision of Virtual NXX Service, Docket 28906, decided by the Alabama Commission on April 29, 2004. If the Commission's summary of the Initial and Reply comments of the parties is correct and complete, CenturyTel did not raise its argument there, that the ISP Remand Order rules applied only to traffic where the ISP is located within the same local calling area as the calling party. Nor did BellSouth, which was taking positions generally on the CenturyTel side. However, parties on the other side of the issue did cite the ISP Remand Order. Said the Alabama Commission, "AT&T noted that as a result of the conclusions reached by the FCC in its ISP Remand Order, traffic delivered to an ISP is predominately interstate access traffic

which is subject to the jurisdiction of the FCC pursuant to §201 of the Telecommunications Act of 1996. AT&T further stated that the FCC's ISP Remand Order established an intercarrier compensation mechanism for the exchange of ISP-bound traffic including ISP-bound FX-like traffic which has been upheld by the United States Court of Appeals for the D.C. Circuit. AT&T thus surmised that ISP-bound traffic, including ISP-bound FX-like traffic, is subject to the FCC's intercarrier compensation mechanism and is not subject to the jurisdiction of state commissions." Similar comments came from Level 3, and US LEC of Alabama.

In its conclusions in the case, the Alabama Commission said, "Having reviewed the foregoing arguments of the commenting parties, the Commission concludes that by virtue of the determinations reached by the FCC in its ISP Remand Order, IP-Bound FX and VNXX calls are predominately considered jurisdictionally interstate and subject to the authority of the FCC. This Commission accordingly has no authority to render determinations regarding the ISP-Bound FX/VNXX traffic referenced in this proceeding."

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