

Resolution on Jurisdictional Issues for Internet-Bound Traffic

WHEREAS, The FCC released its Order on Remand and Report and Order in the Matter of Intercarrier Compensation for ISP-Bound Traffic (Remand Order) on April 27, 2001 and it was published in the Federal Register on May 15, 2001; *and*

WHEREAS, In the Remand Order the FCC:

- Reaffirms its conclusion that ISP-bound traffic is predominantly interstate access traffic and thus, under FCC jurisdiction in accordance with section 201 (b);
- Uses new rationales to reaffirm its Declaratory Ruling conclusion that the provisions of § 251 (b) (5), regarding reciprocal compensation, do not apply to ISP-bound traffic;
- Considers ISP-bound traffic to be, at a minimum, "information access" because it is access traffic routed by a LEC "to or from" an information service provider;
- Under section 251 (i), FCC proposes "Bill and keep" as a cost recovery mechanism for the exchange of ISP traffic and requests comments;
- FCC implements an interim recovery scheme to gradually decrease reliance on carrier-to-carrier compensation and increase recovery of costs from end-users by establishing a cap on the rate of intercarrier compensation for the delivery of ISP-bound traffic and capping the total number of minutes for which a LEC may receive compensation; *and*

WHEREAS, The Remand Order, as did its predecessor order that was remanded by the Court, continues to send mixed signals to state regulators and to the markets regarding regulatory jurisdiction, statutory definitions, tariff authority and rate recovery for this traffic; *and*

WHEREAS, In the not-so-distant-future the telecommunication network could become a seamlessly interconnected set of networks for information, entertainment and inter-communication traveling over various telecommunication mediums in various electronic formats and the Internet is likely to be an integral component for home access to this network; *and*

WHEREAS, The Remand Order substantially diminishes State jurisdiction for Internet access and telecommunications traffic to and from the Internet; *and*

WHEREAS, One of the conditions for application of the Remand Order's interim pricing scheme is that an affected incumbent local exchange company must also elect to offer all of its local traffic at the same interim rate levels, thereby displacing reciprocal compensation rates for local traffic already established by State commissions pursuant to Section 252 of the 1996 Act; *and*

WHEREAS, Responsibility for assuring access to the network of the future is a State responsibility under various state mandates and jointly shared with the FCC under Sections 706 and 254 of the Telecommunications Act; *and*

WHEREAS, The Remand Order may assume cost recovery for facilities for this traffic at the state level while maintaining FCC authority over the access facilities and services possibly resulting in unaffordable local rates and stifling the roll-out of advanced telecommunications access facilities; *now, therefore, be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), convened in its 2001 Summer Meetings in Seattle, Washington, directs that NARUC should seek judicial review of the Remand Order to ensure that cost recovery responsibility and cost assignment are jurisdictionally consistent and to preserve State authority with regard to Internet-related traffic and intercarrier compensation; *and be it further*

RESOLVED, That the NARUC General Counsel be directed to file and take any appropriate actions to further the intent of this resolution.

Sponsored by the Committee on Telecommunications
Adopted by the Board of Directors July 18, 2001