

**ORDER NO. 75280**

IN THE MATTER OF THE COMPLAINT OF MFS INTELNET OF MARYLAND, INC. AGAINST BELL ATLANTIC - MARYLAND, INC. FOR BREACH OF INTERCONNECTION TERMS AND REQUEST FOR IMMEDIATE RELIEF	* * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND  <hr style="width: 100%;"/> CASE NO. 8731 <hr style="width: 100%;"/>
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**I. INTRODUCTION**

This matter comes before the Commission pursuant to a Petition of Bell Atlantic – Maryland, Inc. (“BA-MD”) for Declaratory Order that Internet Traffic is not “Local” Traffic Subject to Reciprocal Compensation (“Petition”). Specifically, BA-MD seeks an order declaring that, pursuant to the February 25, 1999 Federal Communications Commission (“FCC”) Order,<sup>1</sup> and under the terms of BA-MD’s interconnection agreements, calls from BA-MD’s network to Internet Service Providers (“ISPs”) served by interconnecting carriers do not constitute local traffic subject to reciprocal compensation. By Letter Order dated March 17, 1999, the Commission requested that parties file comments on BA-MD’s petition by March 29, 1999. The Commission received comments from fifteen parties.<sup>2</sup> BA-MD filed a letter

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<sup>1</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Declaratory Ruling, CC Docket 96-96 (rel. February 26, 1999) (“ISP Order”).

<sup>2</sup> Parties filing comments included AT&T, Commission Staff, MCI Worldcom, Global NAPS South, Inc., Office of People’s Counsel, Starpower Communications, Inc., Focal Communications Corporation, KMC III Telecom, Inc., Choice One Communications, Inc., Sprint Communications Company L.P., Prism Operations LLC, Intermedia Communications, Inc., e.spire Communications, Inc., Association for Local Telecommunications Services, and Conectiv Communications, Inc.

response to these comments on March 31, 1999 and filed a more extensive response on April 6, 1999. On April 14, 1999, the Commission heard oral argument during its weekly administrative meeting.

## **II. BACKGROUND**

On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996 (“1996 Act”), which establishes a framework for opening the local telephone markets to competition.<sup>3</sup> In order to promote competition in the local exchange telecommunications market, the 1996 Act imposes a general duty on all telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. 47 U.S.C. §251(a). With regard to incumbent local exchange carriers (“ILECs”) such as BA-MD, the duty to interconnect is even more specifically defined by Section 251(c)(2).

In conjunction with the above-mentioned interconnection obligations, the 1996 Act requires all local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. §251(b)(5). For purposes of compliance with this subsection, the 1996 Act provides that a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier. Further, such terms and conditions must determine costs on

the basis of a reasonable approximation of the additional costs of terminating such calls.

47 U.S.C. §252(d)(2)(A). However, it should be noted that ILECs may negotiate and enter into a binding agreement with a requesting telecommunications carrier without regard to the standards set forth in Sections (b) and (c) of §251. 47 U.S.C. §252(a)(1).

The procedures for negotiations between Competitive Local Exchange Carriers (“CLECs”) and ILECs are governed by §252 of the Act. If negotiating companies cannot reach agreement, §252 provides that the parties may request that the appropriate State commission arbitrate unresolved issues. Each interconnection agreement must be submitted to the State commission for approval, regardless of whether the agreement was negotiated by the parties or arbitrated, in whole or part, by the State commission. 47 U.S.C. §252(e)(1). However, the State commission may only reject a negotiated agreement if it finds that the agreement or a portion thereof discriminates against a telecommunications carrier not a party to the agreement, or the implementation of such an agreement is not consistent with the public interest, convenience and necessity. 47 U.S.C. §252(e)(2)(A).

The issue of the correct treatment of ISP-bound traffic first arose in Maryland when MFS Intelenet of Maryland, Inc. (“MFS”) filed a complaint requesting that we enforce the reciprocal compensation provisions of the interconnection agreement between MFS and BA-MD. (“MFS agreement”). MFS is a local exchange carrier providing telephone services in various regions of Maryland in competition with BA-MD. On July 16, 1996, MFS and BA-MD entered into an interconnection agreement under §§251 and 252 of the 1996 Act. Among

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<sup>3</sup> See, 47 U.S.C. §§251-261. The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), is codified throughout title 47 of the United States Code. References to the 1996 Act are to the relevant

other things, the MFS agreement contains terms addressing provision of interconnection and reciprocal compensation between the parties. Pursuant to §252 of the 1996 Act, the MFS agreement was filed with the Commission and we approved the agreement on October 9, 1996.<sup>4</sup> Pursuant to the MFS agreement, MFS and BA-MD exchange traffic between their respective networks, so that a customer subscribing to MFS' local exchange service can place calls to customers subscribing to BA-MD's local exchange service, and vice versa. Both MFS and BA-MD provide local exchange services over their respective networks to end use customers, including some business customers operating as ISPs.

On April 28, 1997, nine months after entering into the MFS agreement and six months after we approved that agreement, BA-MD sent a letter to MFS stating that it intended to discontinue payments of reciprocal compensation for local exchange traffic terminating to ISPs. In its letter, BA-MD claimed that local exchange traffic delivered to ISPs was ineligible for reciprocal compensation and stated that BA-MD intended to withhold reciprocal compensation payments for traffic BA-MD believed may be delivered to ISPs. BA-MD further indicated that it would seek refund of money previously paid as compensation for such calls.

On May 21, 1997, MFS filed a complaint with the Commission alleging that the actions of BA-MD violated the 1996 Act and the MFS agreement. Specifically, MFS alleged that BA-MD's actions were contrary to the plain language of the MFS agreement. According to MFS,

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sections of the Code.

Sections 1.44 and 1.61 of the MFS agreement established the parameters for reciprocal compensation between MFS and BA-MD. These sections state:

1.44 “Local Traffic” means traffic that is originated by a Customer of one Party on that Party’s network and terminates to a Customer of the other Party on that other Party’s network, within a given local calling area, or expanded area service (“EAS”) area, as defined in BA’s effective Customer tariffs. Local Traffic does not include traffic originated or terminated by a commercial mobile radio service carrier.

1.61 “Reciprocal Compensation” is As Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Local Traffic originating on one Party’s network and terminating on the other Party’s network.

MFS contended that pursuant to these provisions, to the extent an ISP purchases local exchange service from MFS and receives calls which originate from users of BA-MD provided local exchange service, BA-MD is obligated to pay reciprocal compensation to MFS for termination of such calls. MFS requested that the Commission declare the MFS agreement’s reciprocal compensation provisions fully applicable to calls that terminate at ISPs. On July 2, 1997, BA-MD responded to the MFS complaint. In its response, BA-MD

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<sup>4</sup> *In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996*, Case No. 8731, Phase(a), Order No. 72939, 87 Md. PSC 210 (Oct. 9, 1996).

contended that ISP traffic is interstate and the Commission should leave the determination of what compensation is due to the FCC.

On September 11, 1997, we released our Letter Order in response to the MFS complaint. In this Order, we noted that “the primary issue presented is resolvable pursuant to the terms of the BA-MD/MFS Interconnection Agreement.”<sup>5</sup> We accordingly found that MFS was entitled to compensation for the transport and termination of ISP-bound telephone calls. BA-MD’s Petition for Reconsideration of the MFS Order was subsequently denied by the Commission.<sup>6</sup>

We considered this issue a second time within the context of a Sprint Communications Company, LP (“Sprint”) complaint. On December 2, 1998, Sprint filed a Motion for Resolution of Disputed Issue. This motion was filed in response to BA-MD’s refusal to sign an interconnection agreement unless it stated that Internet traffic is not local and not subject to reciprocal compensation. Sprint sought a Commission ruling on how ISP-bound calls should be treated. Basically, Sprint wanted the Commission to find that ISP-bound traffic was local and therefore, subject to reciprocal compensation. After consideration of the comments filed by Sprint, BA-MD and Staff, the Commission concluded that ISP-bound calls “are classified as local in nature and are therefore, subject to reciprocal compensation” from BA-MD.<sup>7</sup>

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<sup>5</sup> Letter from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Bell Atlantic-Maryland, Inc. and Andrew D. Lipman, Swidler & Berlin, Chg. (Sept. 11, 1997). (“MFS Order”).

<sup>6</sup> Letter from Daniel P. Gahagan, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Bell Atlantic-Maryland, Inc. (Oct. 1, 1997).

<sup>7</sup> Letter from Felecia L. Greer, Executive Secretary, Maryland Public Service Commission, to David K. Hall, Bell Atlantic-Maryland, Inc. and Cathy Thurston, Sprint Communications Company L.P. (Feb. 9, 1999) (“Sprint Order”).

On February 26, 1999, the FCC released its Order clarifying the jurisdictional status of calls to ISPs.<sup>8</sup> The FCC concluded that “ISP-bound traffic is jurisdictionally mixed and appears to be largely interstate.” However, the FCC further concluded that given the absence of a “federal rule regarding the appropriate inter-carrier compensation mechanism for this traffic, that parties should be bound by their existing interconnection agreements, as interpreted by state commissions.”<sup>9</sup> Thus, the FCC permitted states which have treated ISP-bound traffic as local under interconnection agreements to continue to require ILECs to compensate CLECs under contractual principles or other legal or equitable considerations.<sup>10</sup>

### III. DISCUSSION

BA-MD’s argument essentially is that because the FCC has determined that ISP-bound calls are largely interstate in nature, BA-MD can no longer be required to provide reciprocal compensation under its interconnection agreements because reciprocal compensation only applies to local traffic. If the finding that ISP-bound traffic is largely interstate was all that the FCC had decided, BA-MD’s contention probably would be correct.

However, the FCC also went on to state that this conclusion is not dispositive of interconnection disputes currently before state commissions.<sup>11</sup> The FCC noted that, since

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<sup>8</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Declaratory Ruling, CC Docket 96-96 (rel. February 26, 1999) (“ISP Order”).

<sup>9</sup> *Id.*, at para. 1. See, also, para. 22.

<sup>10</sup> *Id.*, at para. 27.

<sup>11</sup> *ISP Order*, at para. 20.

1983, the FCC itself has treated ISP-bound traffic as though it were local.<sup>12</sup> “In addition, ILECs characterized expenses and revenues associated with ISP-bound traffic as intrastate for separations purposes.”<sup>13</sup> The FCC found that “[A]gainst this backdrop, and in the absence of any contrary [FCC] rule, parties entering into interconnection agreements may reasonably have agreed, for purposes of determining whether reciprocal compensation should apply to ISP-bound traffic, that such traffic should be treated in the same manner as local traffic.”<sup>14</sup> Thus, the clarification of the jurisdictional issue was not the FCC’s only holding.

The FCC took the opportunity to issue some subsidiary conclusions. First, the FCC made clear that its jurisdictional determination did not in itself establish whether reciprocal compensation is due in any particular instance. The FCC recognized that parties might have agreed to reciprocal compensation for ISP-bound traffic, or a State commission exercising its authority under §§251 and 252 of the 1996 Act might have imposed reciprocal compensation obligations for this traffic.

The FCC developed a list of factors State commissions should consider when construing interconnection agreements to determine whether the parties agreed that ISP-bound calls should be treated as local at the time the contract was entered into. These factors include:

1. negotiation in the context of the FCC’s longstanding policy of treating ISP traffic as local;

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<sup>12</sup> *Id.*, at para. 23.

2. the conduct of the parties pursuant to those agreements;
3. whether ILECS serving ISPs have done so out of intrastate or interstate tariffs;
4. whether revenues associated with those services were counted as intrastate or interstate revenues;
5. whether there is evidence that ILECs or CLECs made any effort to meter this traffic or otherwise segregate it from local traffic, particularly for the purpose of billing one another for reciprocal compensation; and
6. whether, if ISP traffic is not treated as local and subject to reciprocal compensation, ILECs and CLECs would be compensated for this traffic.

While many of these factors constitute nothing more than an ILEC following established FCC procedures, the factors demonstrate that at the time the interconnection agreements were entered into, ISP-bound traffic was consistently treated as if it were local. Thus, if any of the ILECs wanted to change the prevailing view for purposes of reciprocal compensation negotiations, the companies were obligated to raise this issue during negotiations. Silence on the issue would logically be construed as accepting the prevailing treatment for ISP-bound traffic.

Furthermore, the FCC also found that even where parties to interconnection agreements do not voluntarily agree on an inter-carrier compensation mechanism for ISP-bound traffic, “State commissions may determine in their arbitration proceedings at this point that reciprocal

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*, at para. 24.

compensation should be paid for this traffic.”<sup>15</sup> According to the FCC, because no current rule exists on this specific issue, State commissions have had “no choice but to establish an inter-carrier compensation mechanism and to decide whether and under what circumstances to require the payment of reciprocal

compensation.”<sup>16</sup>

Clearly, the FCC’s interpretation of the 1996 Act is that, in view of the absence of FCC rule to the contrary, State commissions have authority to decide whether ILECs and CLECs intended to treat ISP-bound traffic as local when they negotiated their agreements. If the parties did, then the State commissions have authority to require that such intention be honored. Moreover, the FCC’s ruling is that State commissions have authority in arbitration proceedings to require that reciprocal compensation be paid even if the parties do not agree.

Our ISP decisions have taken two different tracks. In the MFS decision, the Commission concluded that, under contract principles, pursuant to the interconnection agreement between the parties, MFS was entitled to compensation for termination of calls to ISPs. In this decision, we did not make a determination as to the jurisdictional nature of calls to ISPs. We concluded that the parties intended for ISP calls to be local. In contrast, in the Sprint decision, the Commission did address the jurisdictional nature of calls to ISPs and concluded that these calls were local. Since we find that a different analysis should be applied in

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<sup>15</sup> *Id.*, at para. 25.

the context of an approved negotiated interconnection agreement as opposed to an arbitration order, we will separately discuss whether CLECs should receive reciprocal compensation for ISP-bound traffic under each of these scenarios.

#### **A. Approved Negotiated Interconnection Agreements**

The primary issue in this context is relatively straightforward. We must determine whether the parties to the approved interconnection agreements intended, at the time those agreements were entered into, to treat ISP-bound telephone calls as local traffic subject to the payment of reciprocal compensation.<sup>17</sup> First, we must focus on the actual language of the interconnection agreement under review. We begin our assessment with a review of the provisions which define local traffic and address the reciprocal compensation obligations of BA-MD and MFS. The terms and conditions of the MFS agreement which define local traffic are found in Section 1.44 of the original agreement executed between MFS and BA-MD on July 16, 1996. This section states:

1.44 “Local Traffic” means traffic that is originated by a Customer of one Party on that Party’s network and terminates to a Customer of the other Party on that other Party’s network, within a given local calling area, or expanded area service (“EAS”) area, as defined in BA’s effective Customer tariffs. Local Traffic does not include traffic originated or terminated by a commercial mobile radio service carrier.

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<sup>16</sup> *Id.*, at para. 26.

<sup>17</sup> Under well-established principles of contract construction, the parties’ intent is determined at the time of contracting, not at some subsequent date. See, e.g., *Hardy v. Brookhart*, 259 Md. 317, 326-27 (1970).

Also under review are the provisions addressing the reciprocal compensation obligations of both BA-MD and MFS. Section 1.61 reflects the mutual agreement of the parties, and that subsection reads in pertinent part:

1.61 “Reciprocal Compensation” is As Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Local Traffic originating on one Party’s network and terminating on the other Party’s network.

At the time the interconnection agreement was entered into, ISP traffic was treated as local in virtually every respect by all industry participants, including the FCC. BA-MD was fully aware of the industry’s prevailing local treatment of ISP traffic at the time that it entered into the interconnection agreement in question. In fact, BA-MD afforded ISP traffic local treatment in the same respect that the CLECs did at the time.

Thus, at the time the interconnection agreement was entered into, the prevailing local treatment of ISP traffic already was in place. Even today, both BA-MD and the CLECs charge their ISP customers local business line rates for local telephone exchange service that enables the ISP’s customers to access their service via a local call. The service provided to ISP customers by both BA-MD and CLECs falls under their local exchange tariffs and calls to ISPs are rated and billed just as any other local calls. Neither BA-MD nor the CLEC assesses toll charges for those calls. Further indication of the prevailing local treatment afforded ISP traffic is the fact that BA-MD records the minutes of use associated with such calls as local for ARMIS

reporting requirements with the FCC. Finally, BA-MD characterizes expenses and revenues associated with ISP-bound traffic as intrastate for jurisdictional separation purposes.

Even the FCC noted in its *ISP Order* that since 1983, it has treated ISPs as end users under the access charge regime and permitted them to purchase their links to the public switched telephone network through intrastate business tariffs rather than through interstate access tariffs. The FCC specifically recognized that it has, by the actions in that regard, discharged its interstate regulatory obligations through the application of local business tariffs and has thus treated ISP-bound traffic as though it were local.

Perhaps the most persuasive evidence that BA-MD did not intend to exclude calls to ISPs from the definition of local traffic is found in the conspicuous absence of a mechanism to track, separate and exclude ISP traffic from the local billing records of the CLECs. BA-MD certainly was in a position to know that such a mechanism would be necessary to segregate ISP traffic from local calls, yet no attempt was ever made to develop and incorporate such a mechanism.<sup>18</sup> Although BA-MD was well aware of the existence of ISP traffic at the time the MFS agreement was negotiated, it made no effort to exclude calls to ISPs from the definition of local traffic, but did expressly exclude commercial mobile radio service traffic. In contrast, there is no indication that the MFS agreement contemplated the segregation of ISP traffic, either as toll or as a “unique” form of local traffic.

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<sup>18</sup> In conjunction with the prevailing local treatment afforded ISPs, BA-MD’s actions immediately subsequent to executing the agreement evidence an intent to treat ISP-bound calls as local traffic. After our approval of the MFS agreement, MFS and BA-MD began operating under its terms and for many months, paid one another the agreed upon local compensation rates for the transport and termination of calls, including ISP-bound calls.

Based on the foregoing, and recognizing the prevailing local treatment of ISP traffic at the time the agreement was executed, we conclude that the regulatory and industry custom at that time dictated that ISP traffic be treated as local, and therefore, subject to reciprocal compensation. We find that the treatment of ISP traffic as local was so prevalent in the industry at that time that BA-MD, if it so intended, had an obligation to negate such local treatment in the interconnection agreements it entered into by specifically excluding ISP traffic from the definition of local traffic subject to the payment of reciprocal compensation.

Given the comprehensive nature of the MFS agreement and the specificity with which they address virtually all interconnection issues, we find it difficult to understand how BA-MD could fail to insist on a specific itemized exception excluding ISP traffic. BA-MD's knowledge of that regulatory and industry custom made it imperative that BA-MD specifically exclude calls to ISPs from the definition of local traffic subject to the payment of reciprocal compensation.<sup>19</sup> Given the circumstances then existing, we find the absence of such a specific exclusion or exception to be persuasive of the fact that BA-MD did not intend to exclude ISP traffic from the definition of local traffic when it entered into the MFS agreement. Under all of the circumstances existing at the time the contract was entered into, we conclude that the parties contemplated reciprocal compensation payments for ISP traffic. For MFS and those CLECs who "opted-in" to the MFS agreement, this conclusion means that those parties shall receive

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<sup>19</sup> It should be noted that, unless a contract provides otherwise, the law applicable at the time and place the contract is entered into is to be considered a part of that contract. See, e.g., *Denice v Spotswood I. Quinby, Inc.*, 248 Md. 428, 433-34 (1968).

reciprocal compensation for ISP-bound calls until July 1, 1999 under the rates set forth in the interconnection agreement.<sup>20</sup>

In conclusion, we find that with regard to the MFS agreement, telephone calls originating from a BA-MD provided telephone service end user to the respective ISP end users of MFS are subject to the reciprocal compensation provisions of that agreement. Based on the discussion above, we find that BA-MD was clearly in a position to know that the specific exclusion of such traffic from the definition of local traffic for purposes of the payment of reciprocal compensation was a necessity. BA-MD failed to incorporate such an exclusion and is, therefore, in breach of the MFS agreement under which it has withheld reciprocal compensation for ISP traffic.

Accordingly, we find that BA-MD must within 15 days of the effective date of this Order, pay all reciprocal compensation amounts withheld for ISP traffic under the MFS agreement. BA-MD also must continue to pay such amounts for the duration of the MFS agreement.

## **B. Arbitrated Agreements**

The issue of whether parties who arbitrated the issue of reciprocal compensation for ISP-bound calls are still entitled to that compensation in light of the FCC's *ISP Order* is more problematic. Obviously, there is no question of BA-MD having agreed that ISP-bound calls were local in this situation. BA-MD vigorously argued in its negotiations with Sprint, for

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<sup>20</sup> See, MFS agreement at §22.1. BA-MD's more recent interconnection agreements include explicit language excluding calls to the Internet from the payment of reciprocal compensation. See, e.g., Interconnection Agreement between BA-MD and Transwire Operations, LLC (Dec. 18, 1998) and Interconnection Agreement between BA-MD and Omnipoint Communications Enterprises, L.P. (Nov. 24, 1998). These parties, and any

example, that ISP-bound calls were not “local traffic.” Furthermore, as noted earlier, in the arbitration we concluded that ISP-bound calls were local. This conclusion appears to have been brought into question by the FCC’s *ISP Order*.

However, even this conclusion does not totally resolve the issue. The FCC found that, even in cases where a State commission does not find that the parties voluntarily agreed on an inter-carrier compensation scheme, or where a state has not addressed the issue, “state commissions may nevertheless determine in their arbitration proceedings at this point that reciprocal compensation should be paid for this traffic.”<sup>21</sup> State commissions may make such determinations “pursuant to contractual principles or other legal or equitable considerations, that reciprocal compensation is an appropriate interim inter-carrier compensation rule” pending completion of the FCC rulemaking on this issue.<sup>22</sup> Until such time as a federal inter-carrier compensation mechanism is developed, the FCC left the determination of the applicability of reciprocal compensation entirely to State commissions. Thus, under the FCC’s *ISP Order*, it is incumbent upon this Commission to determine an interim cost recovery methodology which may be used until the FCC completes its rulemaking on this issue and adopts a federal rule governing inter-carrier compensation arrangements.<sup>23</sup>

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parties similarly situated would not be entitled to reciprocal compensation for ISP-bound calls. These parties are bound to their contractual agreement in the same manner and to the same extent as BA-MD.

<sup>21</sup> *ISP Order*, at para. 25.

<sup>22</sup> *Id.*, at para. 27 (emphasis added).

<sup>23</sup> Specifically, the FCC stated that “[A]lthough reciprocal compensation is mandated under Section 251(b)(5) only for the transport and termination of local traffic, neither the statute nor our rules prohibit a state commission from concluding in an arbitration that reciprocal compensation is appropriate in certain

In fact, according to the FCC, “State commissions are free to require reciprocal compensation for ISP-bound calls, or not require reciprocal compensation and **adopt another compensation mechanism**, bearing in mind that ISP/ESPs are exempt from paying access charges.”<sup>24</sup> This directive does not leave us the option of providing for no compensation for ISP-bound calls. State commissions must either require reciprocal compensation or develop another compensation mechanism. To fail to provide for any compensation would violate the 1996 Act, which states:

A State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of the other carrier. 47 USC § 252(d)(2)(A).

We are very concerned that the adoption of BA-MD’S position will result in CLECs receiving no compensation for terminating ISP-bound traffic. Such an effect will be detrimental to our efforts to encourage competition in Maryland. No one disputes that local exchange carriers incur costs to terminate the traffic of other carriers over their network. In the absence of finding that reciprocal compensation applies, a class of calls (ISP traffic) will exist for which there is no compensation. The reciprocal compensation rates established by our arbitration order and contained in the approved Statement of Generally Available Terms (“SGAT”) reflect the costs of this termination. Until the FCC establishes an appropriate inter-carrier compensation mechanism for ISP-bound traffic, we find that it is in the public interest to

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circumstances not addressed by Section 251(b)(5), so long as there is no conflict with governing federal law.” *ISP Order*, at para. 26.

require BA-MD to pay our arbitrated reciprocal compensation rates contained in the SGAT as an **interim** compensation mechanism. Absent such a mechanism, CLECs will be forced to absorb these costs. However, we wish to stress that this compensation rate is a temporary, but necessary, measure. The parties are of course free to negotiate another compensation rate to be applied to ISP-bound traffic. In any event, our interim rate will only apply until the FCC issues an order creating its inter-carrier compensation mechanism for ISP-bound traffic.

**IT IS, THEREFORE,** this 11th day of June, in the year Nineteen Hundred and Ninety-Nine, by the Public Service Commission of Maryland,

**ORDERED:** (1) That the parties shall reconcile the amounts owed and Bell Atlantic – Maryland, Inc. shall remit payment of reciprocal compensation charges previously withheld within 15 days of this order.

(2) That Bell Atlantic – Maryland, Inc. shall continue to pay reciprocal compensation for ISP-bound traffic under its agreement with MFS and any CLECs who opted in to that agreement until the expiration of the MFS agreement.

(3) That, on an interim basis, the inter-carrier compensation mechanism for ISP-bound calls for providers not currently operating under an approved interconnection agreement, shall be the reciprocal compensation rates established in our arbitration Order as contained in the approved SGAT.

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Commissioners

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<sup>24</sup> *ISP Order*, at para. 26 (emphasis added).