John Staurulakis, Inc.
NEWS & COMMENTARY
ANALYSIS OF A CHANGING INDUSTRY

JSI NEWSLETTER 1999 NUMBER 2: MARCH 22

FCC Issues Decision on Jurisdictional Nature of Dial-Up Internet Traffic; Controversy Expected To Continue

In a decision long awaited and much anticipated by JSI clients and others in the industry, the Federal Communications Commission (FCC) on Feb. 26 issued a Declaratory Ruling (Ruling) in CC Docket No. 96-98 and a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 99-68, regarding the jurisdictional classification and treatment of dial-up, Internet service provider- (ISP-) bound traffic. To no one's surprise, the FCC concluded that ISP-bound traffic appears to be largely interstate and that, absent a federal rule regarding the appropriate treatment of this traffic, parties should be bound by their existing interconnection agreements, as interpreted by state regulatory commissions. The FCC's decision to classify dial-up ISP traffic as interstate is consistent with its recent decision to similarly classify ISP usage provided via high-speed, private-line connections. Though it would appear that the FCC has finally settled the question of jurisdictional classification of ISP traffic, many important related issues were not addressed by the Ruling.

In reaching its decision, the FCC utilized a traditional standard that determines the jurisdictional nature of communications by its end points. In the case of ISP traffic, the FCC concluded that the communications at issue do not terminate at the ISP's server, but continue on to a web-site destination often located in another state. In applying the end-point standard, the FCC rejected arguments made by competitive local exchange carriers (CLECs) and ISPs that for jurisdictional purposes, ISP traffic must be separated into two components: an intrastate telecommunications service provided by one or more LECs; and an interstate information service provided by the ISP. Thus, for jurisdictional purposes, the FCC views ISP traffic as a continuous transmission from the end user to a distant Internet site, regardless of intermediate facilities, such as local servers.

In the Ruling, the FCC was careful to note the strong federal interest in ensuring that regulation does nothing to impede the growth of the Internet. And, in fact, the FCC's Ruling does not alter the current exemption that ISPs enjoy with respect to the payment of interstate access charges associated with ISP traffic. Consequently, the primary impact of the FCC's Ruling would appear to be on the status of current and future reciprocal compensation arrangements between LECs and ISPs.

Since the majority of dial-up ISP traffic is no longer considered local in nature, the FCC now refers to this type of traffic as "inter-carrier traffic," subject to compensation. Pending a federal rule establishing an interstate compensation mechanism for ISP-bound traffic, the FCC has found little reason to interfere with state commission findings on whether reciprocal compensation provisions of interconnection agreements apply. Therefore, parties may voluntarily include ISP traffic within the scope of interconnection agreements under Sections 251-252 of the Telecommunications Act of 1996 and will be bound by those agreements. What this means for existing interconnection agreements negotiated between parties that treat Internet traffic as local and subject to reciprocal compensation is that these agreements remain in force until an appropriate federal rule is enacted. Obviously, this decision does not sit well with the regional Bell operating companies (RBOCs), and it remains to be seen what action, if any, the RBOCs will take to force ISPs to renegotiate current reciprocal compensation arrangements.

Impact On the Jurisdictional Separations Process

In the wake of the FCC's Ruling, there appears to be a great deal of confusion regarding the impact of ISP traffic on the jurisdictional separations process. On the surface, one could conclude that with ISP traffic now designated as interstate, it would be included in the FCC's Part 36 allocation of investment and expenses to the interstate jurisdiction for cost recovery purposes. However, several passages in the NPRM indicate that, for now, the FCC is seeking comments on the effect of proposals regarding inter-carrier compensation for ISP traffic on the separations regime, such as appropriate treatment of incumbent LEC revenues and payments associated with the delivery of such traffic.

JSI has held preliminary discussions with the National Exchange Carrier Association (NECA) on its position on the jurisdictional issue. NECA's existing procedures call for LECs to treat ISP traffic as local in nature in calculating their jurisdictional allocation factors for cost-study purposes and in establishing interstate access charges. Thus far, NECA has not made a final determination on how to interpret the FCC's Feb. 26 ruling. While the FCC's Ruling may not conflict with the current separations practice of treating ISP traffic as local, it does appear to have created some confusion regarding the allocation of ISP traffic. Consequently, JSI believes some clarification is necessary. In previous comments filed with the FCC, it has been JSI's position that until the Commission renders a definitive decision regarding the treatment of ISP traffic for jurisdictional allocation purposes, such traffic should be excluded from calculations leading to the development of interstate allocation factors.

If you have questions about this article, or about the FCC's ruling on the jurisdictional nature of ISP-bound traffic, we invite you to contact Manny Staurulakis or Douglas Meredith, at JSI's Seabrook, MD headquarters, at 301-459-7590.

Rural LEC Certification Deadline Extended

On March 16, the FCC revised the annual deadline for local exchange carriers (LECs) seeking "rural telephone company" status to file their self-certification letters with the FCC. The new date is July 1 of each year. The FCC Common Carrier Bureau will submit a list of LECs certified as rural telephone companies to the Universal Service Administration Company (USAC) annually on November 1.

JSI reminds clients of the importance of filing for rural telephone company status by the July 1 date. Failure to do so will result in an interruption of a LEC's universal service payments, since USAC will not disburse USF money to a LEC that has not been certified as rural by the FCC.

Long Distance Uproar Won't Go Away;

FCC Orders IXCs To Post Rates on the Internet

Reflecting continuing consumer unrest about confusing and hidden charges in their long-distance bills, the FCC on March 18 issued an order requiring long-distance carriers to publicly disclose their rates. Once the FCC's proceeding to detariff long-distance services is clear of its current judicial stay, interexchange carriers (IXCs) will be required to disclose their rate structures in an "easy-to-understand, clear format" on the Internet "to ensure this information is dispersed as widely as possible."

In its news release announcing the action in CC Docket No. 96-91, the FCC noted that this order was one of a series of actions it has taken to help consumers. Specifically, with this latest measure, the Commission will require long-distance carriers to make the rates, terms, and conditions of their interstate, domestic, long-distance services available to the public "in at least one location during regular business hours." In addition, carriers that have an Internet web site "must also post this information on-line in a timely and easily accessible manner."

The FCC's initial detariffing order (October 1996) remains pending in the U.S. Court of Appeals, District of Columbia Circuit. As a result, the new public disclosure requirements will not become effective until the Court has ruled on the merits of the FCC's detariffing rules. JSI clients with long-distance operations, or others that have questions about the FCC's disclosure requirements, should contact Douglas Meredith or Chris Lehner, at JSI's Seabrook, MD headquarters, at 301-459-7590.

JSI Schedules 1999 Accounting and CABS Seminars

Our coverage of the FCC's decision regarding the treatment of Internet traffic in this *News and Commentary* serves to reminds us all of the challenges inherent for key staff and decision makers in staying current with the dynamic nature of telco financial operations. To help client companies and others in the industry keep up-to-date on revenue/expense reporting, billing, access-related compensation, and other pivotal financial issues, JSI has scheduled the 1999 sessions of its popular Part 32 & Part 64 Accounting Seminar, as well as its Carrier Access Billing Services (CABS) Seminar.

The Accounting Seminar will focus on review and discussion of the FCC's Part 32 and Part 64 accounting principles and applications. Among the issues to be covered will be plant accounting, revenue/expense account review, other income accounts, and a variety of specific topics. New this year, the seminar agenda will include an industry update to provide participants with background and perspective on the changing requirements. The CABS session, which will be conducted in partnership with Creative Support Solutions (CSS), will feature review of detailed guidelines and examples of billing applications and access-related compensation. This year, for the first time, the CABS Seminar will address specific question and issues of attendees, who will receive with their confirmation letter a request form for them to fax JSI their issues of individual concern. Attendees of both the Accounting and CABS seminars will receive comprehensive seminar manuals.

The schedule for the JSI Accounting Seminars, which will be conducted by Vice President-Operations Steve Meltzer and JSI Solutions Manager Ron Kent in our traditional 1¸-day format, is:

- Atlanta Airport Marriott, May 3-4
- Hyatt Regency, San Antonio, Oct. 25-26

The JSI CABS Seminars, which will be presented by CSS President Marnell Robertson in a full-day session, will be held as follows:

- Atlanta Airport Marriott, May 18
- Hyatt Regency, San Antonio, May 25

JSI has mailed registration information for the sessions to clients. You can register on-line for both seminars on the Seminars and Events page of JSI's web site (www.jsitel.com), or mail or fax your registration to JSI. For more information on the programs or hotel reservations, contact Seminar Administrator Kim Johnson, at JSI's Seabrook, MD headquarters, at 301-459-7590.
