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Internet Service and Access Charges

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Summary

On May 10, 2000, the House Commerce Committee approved a bill (H.R. 1291) by voice vote, which prohibits the Federal Communications Commission (FCC) from levying access charges on providers of Internet data services. Although the FCC has had a long-standing policy exempting Internet service providers (ISPs) from paying such charges, concerns have been voiced that the FCC may at some point in time reverse this policy. H.R. 1291 seeks to codify the policy by barring the FCC from requiring ISPs to make universal service contributions based on per-minute use of Internet access services. The measure also clarifies that it does not preclude the FCC from imposing access charges on providers of Internet telephone services.

What Are Access Charges?

In 1982 the FCC established a new framework to compensate local telephone companies for the costs they incur for the origination and termination of interstate telephone calls.[1] Under this framework, part of the local telephone company's fixed costs (e.g., telephone wires, poles, switches) are recovered through fees placed on those who access the network. These charges are called access charges. Presently interstate (long distance) telephone carriers are among those who rely on the local telephone network to access their customers and therefore are assessed access charges. In most cases, when a subscriber makes a long distance telephone call in addition to using the long distance network, two local telephone networks are involved – the local telephone company network of the consumer who originates the call, and the local telephone company of the receiving party to complete the call. The long distance company is required to pay for this access. Part of this interstate carrier access charge is recovered based on a per-minute of use structure.[2]

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[1] The FCC implemented this order in 1984 but has continued to address various aspects of the access charge issue in subsequent rulemakings. See: FCC Access Charge Reform Homepage at [http://www.fcc.gov/isp.html].

[2] For further information on the FCC's interstate access charge system see: Consumer Information. *The FCC's Interstate Access Charge System*. Available at the FCC web site:

The ISP Exemption

Although there are many categories of users who are subject to access charges of varying types, the FCC has upheld a long standing policy exempting Internet service providers (ISP's) from paying such charges. Under this special exemption, the FCC treats ISPs as local telephone customers, or "end users", thereby exempting them from interstate access charges paid by the interstate carriers. Although the FCC has continually confirmed that there are no plans to remove this exemption, and that the FCC will not impose long distance charges for dialing up the Internet, rumors to the contrary continue to exist. Concerns have also been expressed that even though this Commission and past Commissions have chosen to grant an exemption, at some point in time, the FCC may choose to rescind this policy and levy such charges. The fear is that if ISPs are subject to interstate access charges, theses charges would be passed along to consumers, leading to the charging of a per-minute of use pricing structure for use of the Internet.[3]

H.R. 1291

The House Commerce Committee passed H.R. 1291, as amended in the nature of a substitute, by voice vote on May 10, 2000. H.R. 1291, the "Internet Access Charge Prohibition Act of 2000", amends Section 254 of the Communications Act of 1934 (47 U.S.C.254) to prohibit the FCC from imposing on any provider of Internet access service any universal service support contribution "... that is based on a measure of the time that telecommunications services are used in the provision of such Internet access service" (i.e., minutes of use). [4] The measure also clarifies that it does not preclude the FCC from imposing access charges on providers of Internet telephone services.[5]

Supporters of the measure claim that the bill codifies existing FCC long term policies exempting ISP's from per-minute access charges, ending constant rumors regarding the imposition of per minute usage charges for traditional Internet usage. This measure, they claim, will help to ensure that the Internet remains free from regulations that could result in Internet per-minute usage fees.

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[2] (...continued)
[http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/access2.html]

[3] Federal Communications Commission Fact Sheet. *No Consumer Per-Minute Charges to Access ISPs.* FCC web site: [http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/nominute.html]. *Answers From FCC Commissioner William Kennard Concerning Reciprocal Compensation and Dial-Up Internet Traffic.*
[http://www.fcc.gov/Bureaus/Common_Carrier/Factsheets/faq_recp.html].

[4] H.R. 4202, the "Internet Services Promotion Act of 2000", contains a similar provision. Section 2(a)(1), prohibits the FCC from imposing on any provider of Internet access service "... any contribution for the support of universal service, or any access charge... that is based on a measure of the time that telecommunications services are used in the provision of such Internet access service.". This measure is pending in the House Subcommittee on Telecommunications and the Subcommittee on Commercial and Administrative Law.

[5] Internet telephony refers to the use of the Internet to send and receive voice messages.

Others have questioned the need for a bill at this time. They point to the FCC's long standing policy exempting ISPs from interstate access charges. Furthermore, they state, there is no attempt on behalf of the FCC, other regulators, or Congress to impose such a charge. Although they admit that rumors and misinformation continue to circulate regarding this issue, they question the need to address it at this juncture.

Concern was also expressed over the provision which permits, but does not require, the FCC to impose access charges on Internet telephony. Opponents to that provision fear that the potential for the FCC to levy per-minute charges on this service could discourage investment in and development of this nascent service. Supporters of this provision, however, stated that it would be unfair to exempt providers of Internet telephone service from paying charges that traditional long distance providers are required to pay. Furthermore they state the debate over what type of charges, flat rate or usage sensitive, if any, should be levied on Internet telephony needs further examination before any decisions can be made.[6]

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[6] *House Committee Moves Bill to Block FCC From Imposing Access Fees on Internet Data.* Daily Report for Executives. No. 92. Thursday May 11, 2000. P. A-37.