

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Petition of AT&T for Declaratory ) WC Docket No. 08-152  
Ruling and Limited Waivers )

**REPLY COMMENTS OF  
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.,  
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL  
TELECOMMUNICATIONS COMPANIES, and the  
WESTERN TELECOMMUNICATIONS ASSOCIATION**

The National Exchange Carrier Association, Inc. (NECA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO); and the Western Telecommunications Alliance (WTA) (the “Associations”) hereby jointly file reply comments in the above-captioned matter.

**I. CONFIRMATION THAT ACCESS CHARGES APPLY TO IP-PSTN TRAFFIC IS LONG OVERDUE.**

In comments, the Associations strongly supported AT&T’s proposal insofar as it asked the Commission to confirm access charges apply to interexchange traffic terminating on the Public Switched Telephone Network (PSTN), regardless whether such traffic originates in Internet Protocol (IP) format.

Most commenters agree all providers should pay for their use of the network regardless of technology used, and confirmation of this point by the Commission is long overdue.<sup>1</sup> As Frontier stated, lack of clarity on this point “is leading to growth in intercarrier disputes on Voice over IP (VoIP) originated traffic and multiple

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<sup>1</sup> E.g., NTCA at 2, GVNW at 6, CenturyTel at , Oregon Telecom Association at 1, RICA at 3, D&E, SureWest, & Moultrie at 7-7, Frontier at 7, MoSTCG at 7, ITTA at 5-6, TOPUC at 2, NASUCA at 3-4, Embarq at 3.

interpretations by the parties disputing these charges. Some carriers are paying intrastate and interstate access charges to incumbent local exchange carriers (ILECs) on such traffic, some are paying only interstate access charges, some are paying only reciprocal compensation charges, and some are paying nothing at all.”<sup>2</sup>

Most commenters also agree the ESP exemption has never applied to VoIP calls terminating on the PSTN.<sup>3</sup> Several commenters further point out interconnected VoIP calls are indistinguishable from any other calls routed to the PSTN. They are delivered by interconnecting carriers in Time Division Multiplex (TDM) format, and there is no feasible way to distinguish IP-originated calls from other TDM calls. As ITTA notes, “it all looks the same when converted to TDM and delivered via SS7.”<sup>4</sup>

Some parties suggest the Commission cannot apply access charges to IP-PSTN traffic until it makes a decision as to the regulatory status of IP-Enabled service providers. But as AT&T correctly observed, “[t]he applicability of interstate carrier charges does not depend on whether the entity taking service is a common carrier.”<sup>5</sup> The Associations also agree with D&E, SureWest & Moultrie, who pointed out:

although it would be preferable for the Commission to formally declare VOIP providers to be telecommunications carriers, it need not make that leap at this point. It need only require that all such providers that terminate traffic on the PSTN – whoever they are – pay access charges which are required under the current regulatory regime and commensurate with the benefits that they receive.<sup>6</sup>

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<sup>2</sup> Frontier at 7.

<sup>3</sup> *E.g.*, Embarq at 10, CenturyTel at 6, D&E at 3-4, GVNW at 8.

<sup>4</sup> ITTA at 6.

<sup>5</sup> Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the “ESP Exemption”, WC Docket No. 08-152 (July 17, 2008), at 16, n. 45 (*AT&T Petition*), citing *HAP Services, Inc. v. Southwestern Bell Telephone Company*, 2 FCC Rcd 2948 (1987), at ¶ 15.

<sup>6</sup> D&E et al at 7.

Contrary to claims by some providers, the fact the Commission has not previously issued a formal declaration subjecting IP-PSTN traffic to access charges does not mean it cannot now confirm access charges apply to this traffic.<sup>7</sup> As the Associations and numerous other commenters have shown, IP-PSTN calls are not “enhanced” or “information services.” They are simply interexchange voice telephone calls, to which access charges have applied since 1984. The Commission itself has found several times that interconnected VoIP services are functional replacements for traditional local exchange and toll services, and indeed are “virtually indistinguishable” from ordinary telephone calls from the customer’s perspective.<sup>8</sup> Such services (*i.e.*, local and interexchange voice calling) obviously pre-date the 1996 Act. The only “new” thing since 1996 is the increasingly pervasive use of IP technology to evade payment of tariffed access charges, and the Commission’s increasingly inexplicable reluctance to address the issue.

Some commenters call for rejection of AT&T’s petition because it represents only an interim step on the way to full ICC reform.<sup>9</sup> For example, Verizon<sup>10</sup> argues grant of AT&T’s petition (as well as Embarq’s) would leave in place a complicated patchwork of different rates for different types of traffic and different providers. In Verizon’s view, the

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<sup>7</sup> *E.g.*, Core at 4 (arguing the Commission cannot subject IP-PSTN “telecommunications” traffic to access charges pursuant to section 251(g) of the Act because “there had been no pre-Act obligation relating to intercarrier compensation” for this traffic.)

<sup>8</sup> *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *IP-Enabled Services*, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007), at ¶56 (*2007 CPNI Order*); *See also Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712 (2007), at ¶18 (*2007 Regulatory Fees Order*).

<sup>9</sup> *E.g.*, FGIP at 51, WUTC at 3, Verizon at 2, NY PSC at 4, Comptel at 12.

<sup>10</sup> Verizon at 4-5.

“Commission should instead remain focused on its stated goal of achieving comprehensive intercarrier compensation reform – for *all* traffic and all providers – before the close of 2008.”<sup>11</sup>

But the Commission has often recognized the need to take one step at a time when implementing major reforms. For example, in adopting the Multi-Association Group (MAG) plan for access reform in 2001, the Commission responded to similar objections by stating:

Although we agree with the MAG that a comprehensive solution to the regulatory issues facing rate-of-return carriers would be ideal, we cannot wait for such a solution. Rather, we conclude that we must proceed with interstate access charge reform for rate-of-return carriers, while continuing to explore alternative regulatory methods that would create benefits for both rate-of return carriers and their customers.”<sup>12</sup>

The Associations agree there is an urgent need for the Commission to press ahead with comprehensive reform of existing intercarrier compensation mechanisms. Our member companies are faced with the challenge of building networks capable of supporting next-generation services in the most remote and sparsely-populated areas of the country. They need sufficient and reliable cost recovery in order to accomplish this goal and meet the needs of rural consumers and the communities in which they reside. Yet they increasingly are being required to transport and deliver traffic for retail service

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<sup>11</sup> *Id.* at 2.

<sup>12</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98- 166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001), at ¶ 10 (*MAG Order*). See also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 and *Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, 16 FCC Rcd 9151 (2001), at ¶ 2 (“... in this Order we also take interim steps to limit the regulatory arbitrage opportunity presented by ISP-bound traffic while we consider the broader issues of intercarrier compensation in the *NPRM* proceeding.”)

providers who place significant importance on optimum delivery of calls via the PSTN, and yet bear no responsibility for the costs of maintaining and upgrading the very networks that they rely upon for the provision of their services. If the Commission wishes to accomplish its broadband deployment goals in rural areas, it must first ensure reliable intercarrier compensation, and then address how intercarrier compensation mechanisms should work in the broadband age.

Contrary to claims by parties offering simplistic “uniform” rate proposals, developing fair and effective intercarrier compensation mechanisms for rural carriers deploying broadband-capable networks will take time. Meanwhile, chaos caused by uncertainty over the scope of the Enhanced Service Provider (ESP) exemption undermines today’s networks and services, as well as deployment of next generation networks in the rural areas of our nation.

Continued “free” use of rural networks by interconnected VoIP providers, falsely claiming the benefits of the ESP exemption, results in abuse of the Commission’s current intercarrier compensation rules, discriminatory treatment between service providers, encouragement for other providers to abuse Commission rules, further pressure on rural companies’ ability to invest in next generation networks, and increased pressure on high-cost funding mechanisms. There is no basis for further delay on this critical point. The Commission should grant AT&T’s request for declaratory ruling in part and confirm promptly that IP/PSTN interexchange voice calls are subject to interstate and intrastate access charges.

## **II. Reductions in Intrastate Rates Should Be Accompanied By An Alternative Cost Recovery Mechanism**

In Comments, the Associations stated it would not be unreasonable, on an interim basis, to permit AT&T and similarly-situated price cap carriers to reduce their intrastate access rates to interstate levels and recover intrastate access revenue shortfalls via increases in their subscriber line charges (SLCs) and originating access charges.<sup>13</sup> Because few rate-of-return (ROR) ILECs have the ability to recover intrastate revenue shortfalls in this manner, the Associations suggested the Commission should permit ROR carriers who reduce intrastate access rates to interstate access levels to recover shortfalls in intrastate access revenues via targeted increases in interstate access support mechanisms.

Commenters present a variety of objections to AT&T's proposal insofar as it relates to the application of intrastate access charges. Some parties suggest, for example, that AT&T's proposal inconsistently states VoIP calls are subject to exclusive federal jurisdiction yet proposes intrastate access charges should apply.<sup>14</sup> Others assert the Commission does not have the authority to limit assessment of intrastate access rates to interstate levels.<sup>15</sup>

Some commenters express concern AT&T's proposal will eventually result in the equalization of intrastate and interstate rates with no concomitant commitment for alternative cost recovery. RICA points out in this regard:

Such a declaration would force LECs with higher intrastate than interstate access rates to reduce all of their terminating rates. If they do not reduce their intrastate rates for IP/PSTN traffic they could expect providers of

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<sup>13</sup> Associations at 2, 14.

<sup>14</sup> TOPUC at 4, PA PUC at 11-12, NASUCA at 6-7, RICA at 4.

<sup>15</sup> NY PSC at 2-3, PA PUC at 13-14, TOPUC at 4, NASUCA at 6, 10-11.

IP/PSTN traffic to continue to refuse to pay some portion of their total terminating access bill, while if they reduced the rate only for IP/PSTN traffic, other carriers would undoubtedly claim unjust discrimination.<sup>16</sup>

The Associations share this concern. Rate of return companies generally cannot afford to forego intrastate access revenue without an appropriate alternative cost recovery mechanism. Unlike AT&T, these companies have no “headroom” to raise SLCs under existing caps, and cannot raise other interstate access rates to offset intrastate access revenue shortfalls. Pending comprehensive reform of existing intercarrier compensation mechanisms, an alternative cost recovery mechanism is needed.

The Associations’ comments outlined one such mechanism.<sup>17</sup> Specifically, they proposed adoption of a new component to the Commission’s existing Local Switching Support (LSS) universal service mechanism. The new component (LSS2) would permit recovery of foregone intrastate switched access revenues from interstate high cost support, and thus enable all carriers nationwide – not just AT&T and other large carriers – to equalize originating and terminating rates nationwide.<sup>18</sup>

Regardless of the specific methodology chosen, a mechanism for replacing foregone intrastate access revenues is vital for assuring the continued provision of advanced services in rural areas. Existing intrastate revenues are an important cost recovery component for ROR companies who serve as “carriers of last resort” in rural communities and must be maintained if they are to be successful in building the multi-use

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<sup>16</sup> RICA at 3-4.

<sup>17</sup> Associations at 8-9.

<sup>18</sup> The Associations pointed out this approach would be similar to the Commission’s addition of safety net and safety valve components to the high cost program in 2001. *Id.* at 9, n. 29. This approach would also be consistent with proposals to implement a Federal Benchmark Mechanism, as described in the Missoula Plan. *See id.* A similar approach was suggested by GVNW (at 7).

telecommunications infrastructure needed to deliver advanced services throughout the nation.

### III. CONCLUSION

The Commission should issue a declaratory ruling as requested by AT&T confirming access charges apply to all IP/PSTN traffic. Contrary to claims by interconnected VoIP providers and their competitive local exchange carrier partners, there is no basis for claims such traffic is entitled to the benefits of the ESP exemption, nor is there any reason for the Commission to delay resolution of this issue pending comprehensive intercarrier compensation reform.

The Associations also agree it would not be unreasonable for the Commission to permit AT&T and similarly-situated price cap carriers to recover intrastate access revenue shortfalls via increases in SLCs and originating access charges. Since ROR carriers do not have the ability to do so, however, the Commission should implement an alternative cost recovery mechanism for such carriers. This will allow consumers in all areas of the country to achieve the benefits of intrastate and interstate rate unification while the Commission considers ways to adapt intercarrier compensation mechanisms to the IP-based broadband environment.

Respectfully submitted,

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September 2, 2008

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Reply was served this 2<sup>nd</sup> day of September, 2008 by electronic filing and email to the persons listed below.

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