

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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| In the Matter of                           | ) |                      |
|  | ) |                      |
| Petition for Declaratory Ruling the AT&T's | ) | WC Docket No. 02-361 |
| Phone-to-Phone IP Telephony Services Are   | ) |                      |
| Exempt from Access Charges                 | ) |                      |

Opposition of the Fair Access Charge Rural Telephone Group

North Pittsburgh Telephone Company, Northeast Florida Telephone Company, Inc , Ponderosa Telephone Company and the Western Iowa Telephone Association, collectively the Fair Access Charge Rural Telephone Group ("Rural Telephone Group"), by its attorneys, hereby oppose the Petition for Declaratory Ruling tiled by AT&T, in which AT&T asks the Commission to find that its phone-to-phone Internet Protocol (IP) telephony services are exempt from access charges

In its Petition, AT&T argues that because its phone-to-phone IP and other services are provided over the Internet, they should be exempt from the requirements that they purchase access services that are above-cost AT&T also argues that the Commission's current policy exempts phone-to-phone IP telephony services from access charges pending future Commission action AT&T argues that it is necessary for the Commission to issue a declaratory ruling at this time because a few local exchange carriers (LECs) allegedly took inappropriate actions in response to AT&T's IP telephony service

The Rural Telephone Group opposes AT&T's Petition because AT&T's service is not an information Service and, therefore, it is not and should not be exempt from access charges In

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addition, grant of AT&T's Petition would undermine the access charge regime, which would negatively impact rural carrier revenue streams and force ILEC customers to subsidize AT&T's voice over IP (VoIP) services.

### **I. The Interests of the Rural Telephone Group**

As rural incumbent LECs (ILECs) dependent on revenues from interstate access charges, the members of the Rural Telephone Group would be significantly impacted by grant of AT&T's Petition. Northeast Florida Telephone Company is a small rural ILEC located in the state of Florida. Western Iowa Telephone Association is a member-owned cooperative providing telecommunications services to eleven rural communities in northwest Iowa. Local exchange service is provided from eight digitally-switched exchanges. The Ponderosa Telephone Company and North Pittsburgh Telephone Company are rural ILECs respectively located in the states of California and Pennsylvania. All of these ILECs are small telephone companies and have less than 100,000 access lines.

### **II. AT&T's VOIP Service Is Not and Should Not Be Exempt From Access Charges**

Although AT&T calls its service phone-to-phone IP telephony, it is important to understand that AT&T's service involves voice calls that are originated and terminated over local exchange network facilities and AT&T simply routes the long haul portion of the call using the IP protocol. The fact that AT&T's service uses IP protocol or the Internet to create a voice connection between two customers located in different ILEC service areas does not change the function of AT&T's service. It remains interexchange service. **As** recognized by the Commission, the proper focus for identifying a communication is its function, "not on the

increasingly mystifying technical and mechanical activity in the middle that makes the communication possible.”<sup>1</sup>

It also is important not to confuse AT&T’s service with true information services. The Commission has clearly stated that

certain forms of “phone-to-phone” IP telephony services lack the characteristics that would render them information services within the meaning of the statute, and instead bear the characteristics of telecommunications services.”<sup>2</sup>

AT&T’s phone-to-phone service functions as an interexchange service that happens to use the Internet as a conduit to connect two voice callers. In its service, AT&T uses the Internet as a voice transporter as opposed to a data transporter. As such, AT&T is not functioning as an ISP with respect to such calls. In its *Report to Congress*, the Commission stated “from a functional standpoint, users of [phone-to-phone IP telephony] services obtain only voice transmission, rather than information services. .and bear the characteristics of telecommunications services”<sup>3</sup>

On the other hand, the Commission has found that ISPs should not be subjected to an interstate regulatory system designed for circuit-switched interexchange voice telephony because ISPs are functionally different from IXCs, stating that “it is not clear that ISPs use the public switched network in a manner analogous to IXCs.”<sup>4</sup> The function of an ISP is to facilitate communications between the customer and the global computer network of web content, e-mail

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<sup>1</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for /SP-Hound Traffic*, Order on Remand and Report and Order (FCC 01-131) (rel April 27, 2001) at para. 59; *remanded in part, WorldCom v. FCC, et al.*, No. 01-1218 (D.C. Cir.) (May 3, 2002).

<sup>2</sup> *Federal-State Joint Hard on Universal Service*, CC Docket No. 96-45, *Report to Congress*, 13 FCC Rcd 11501 (1998), para. 14 (*Report to Congress*).

<sup>3</sup> *Report to Congress* at para 89.

<sup>4</sup> *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16133 (¶ 345) (1997); AT&T Petition at 8.

authors, and databases, while the function of an IXC is to transport a call to the out-of-state location directed by a customer

Unlike an ISP, AT&T's service continues to offer a pure transmission path for its customers desiring to make a long-distance voice call. The nature of the service being offered to consumers *is* interexchange service. And from the customer's perspective, AT&T's service is no different than switch-based IXC service. AT&T's selection of a particular connection or transport system is irrelevant. The function of its service and, therefore, the regulatory status of the call should remain the same, namely, interstate interexchange service to which access charges apply. Accordingly it must be classified as long distance interexchange telecommunications service, subject to access charges.<sup>5</sup>

### **III. AT&T Seeks to Undermine the Lawful Access Charge Mechanism**

Providing interexchange voice service by using the Internet as a transmission conduit should not exempt such a service provider from paying access charges to the ILEC for the use of ILEC facilities for the origination and termination of such traffic. AT&T's service uses the facilities of LECs for call origination and termination. Therefore, the LECs are entitled to be compensated for such use in accordance with the current access charge mechanism. AT&T's Petition should be denied as nothing more than an attempt to undermine the lawful access charge mechanism and avoid access charges by routing interstate calls over the Internet.

Moreover, payment for use of an ILEC's facilities to complete a long-distance voice call that happens to use the Internet as a medium for transportation is not a tax on the Internet, as

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<sup>5</sup> See *Report to Congress* at paras 56-60. The Commission also noted that "[t]he classification of a service under the 1996 Act depends on the functional nature of the end-user offering." *Id.* para 86

alleged by AT&T. Rather, interstate access charges are legitimate tariffed charges imposed by ILECs to recover the costs of providing access to their networks for interstate service. In addition, the Commission has found that rural ILEC access charges based on historic costs are appropriate.<sup>6</sup>

Grant of AT&T's proposal also would open the floodgates for other schemes to avoid access charges, some of which are already in operation. In one example in the operating area of Northeast Florida Telephone Company (Northeast Florida), an entity is ordering Primary Rate Interface ("PRI") lines, instead of access services, to provide long-distance phone service. The entity provides a local number. When its customer dials the number, the call travels through the ILEC switch to the entity's equipment.<sup>7</sup> The customer is prompted to use a PIN or other dialing code to make a long-distance phone call. This is identical to Feature Group A access. The entity then converts the call into IP telephony for transmission across the Internet through its own Internet backbone, or through a resale agreement with an Internet backbone provider, such as AT&T. The call is terminated to a customer in another state or service area outside the ILEC's territory. Northeast Florida estimates that it already is losing revenue on 17.7% of its total access minutes of use due to this service.

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<sup>6</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*; 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 Order in CC Docket Nos. 98-77 and 98-166 (FCC 01-304)(rel. November 8, 2001)(**MAG Order**). In addition, AT&T's claim that its service must be exempt from access charges because such charges are above-cost and inefficient fails to recognize that access charges have been greatly reduced since the passage of the 1996 Act.

<sup>7</sup> The equipment may also be set up to pass a dial-up caller directly to the Internet as well.

#### IV. AT&T's Proposal Would Negatively Impact Rural Carriers

When the public switched network is used to originate and terminate calls, as with the AT&T service and the service described above, the ILEC is entitled to be compensated under the current access charge mechanism. Moreover, it is important to the financial health of rural carriers that they receive the compensation to which they are entitled. The Commission has long recognized the many significant differences between large price cap ILECs and rural rate-of-return (ROR) carriers, as well as the wide diversity among rural carriers. There are more than 1,300 ROR carriers serving less than eight percent of all lines. These carriers are typically small, rural telephone companies that have relatively few access lines; they generally have higher operating and equipment costs than price cap carriers due to lower subscriber density, smaller exchanges, and limited economies of scale.<sup>8</sup> The estimated cost of providing local telephone service in rural areas is approximately 195 percent higher than in central cities.<sup>9</sup> Accordingly, rural carriers rely more heavily on revenues from interstate access charges and universal service support to maintain and upgrade their networks and, as acknowledged by the Commission “rate-of-return carriers are particularly sensitive to disruptions in their interstate revenue streams.”<sup>10</sup>

Northeast Florida, for example, obtains 25% of its total interstate revenues from interstate access charges and that percentage increases to 37% when universal service support is included. The result is that ROR carriers are much less able to absorb any misjudgment on the part of the

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<sup>8</sup> Rate of return carriers serve areas with population densities of only about 13 persons per square mile, compared to 105 persons per square mile in areas served by non-rural carriers. *Rural Task Force White Paper 2* at 20.

<sup>9</sup> *Telecommunications - Federal and State Universal Service Programs and Challenges to Funding*, GAO-02-187 (February 2002). Moreover, the cost differences between rural and urban carriers approaches, in some cases a 100 to 1 ratio for local loops. *MAG Order*, para. 45, and note 140.

<sup>10</sup> *MAG Order* at para. 134.

Commission concerning the impact that granting AT&T's request for eliminating access charges will have on their companies.

The AT&T proposal would give AT&T a free ride on the ILECs' networks and reduce the essential funding stream used by rural carriers to maintain and update their high cost facilities for the delivery of high-quality telecommunications to rural customers. Any diminution of access charge recovery will have a profound and negative impact on small carriers due to their dependence on such revenues to maintain their high-cost service areas. And, without an adequate revenue stream, investment in rural service areas will be discouraged, the rates charged to rural customers will increase; and the draw on universal service funds will increase.

## **V. Conclusion**

AT&T is using the network of the ILEC for the origination and termination of a long distance voice call. Regardless of whether AT&T transforms the call to IP telephony and use its Internet backbone to transmit the voice call to the ILEC's switch, the fact remains that the call is delivered to the ILEC for termination and that the call originated outside the ILEC's service area.

Therefore, the call is a telecommunications service, as opposed to an information service, subject to interstate access charges. Accordingly, the **Rural** Telephone Group asks the Commission to declare that AT&T's service is subject to interstate access charges.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

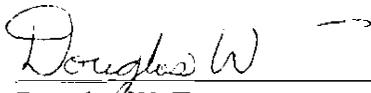
I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing Comments were served by hand delivery on this 18<sup>th</sup> day of December, 2002 to the persons listed below:

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