

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

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

WORLDCOM'S REPLY COMMENTS

WorldCom, Inc. ("WorldCom"), through counsel, hereby replies to comments filed in response to AT&T Corp.'s ("AT&T") petition for a declaratory ruling that its phone-to-phone IP telephony services are exempt from access charges.

INTRODUCTION AND SUMMARY

The responses to AT&T's petition fall into a predictable pattern. Local exchange carriers who profit handsomely from the existing access charge regime oppose the status quo in which companies that make use of the Internet to provide services are permitted to purchase local business trunks in place of access. Everyone else – ISPs, long-distance carriers, consumers – supports AT&T's petition. The comments also contain lengthy discussions concerning AT&T's particular use of IP telephony and whether it should be properly subject to the so-called "ESP exemption." But underlying these conflicting comments there is in fact an agreement that the underlying problem is the existing patchwork access charge regime, which imposes different non-cost-based charges for access services based on irrelevant characteristics. These comments make clear, then, that the Commission promptly should replace this access charge regime with a

competitively neutral interconnection regime in which end users pay directly for network access and carriers incur only the costs occasioned by interconnection. The pending Inter-carrier Compensation NPRM poses the right question. The Commission should answer them promptly. In the meantime, the Commission should maintain the status quo and decline to extend its flawed access charge regime on news services.

ARGUMENT

The local exchange carriers essentially make one point: that from the customers' vantage point AT&T's service is indistinguishable from non-IP-based long-distance service, and AT&T's service makes use of access facilities in the same way its standard long-distance service does. For that reason, they insist, it should not be treated differently than non-IP long-distance service. In sum, as they do on every occasion in which competitors using existing regulatory structures to their advantage, the LECs claim that AT&T is guilty of "regulatory arbitrage."

But while Qwest and others argue that the "right" comparison is between AT&T's IP-based service and its traditional long-distance service,¹ they have no persuasive argument why it is "wrong" to compare AT&T's phone-to-phone IP service to other Internet applications that permit the transmission of voice communication over the public Internet or private IP networks that are information services indisputably subject to the ESP exemption. After all, these services all use the LECs' loop facilities in the same way, and it is far from clear why customer perceptions about the nature of the technology used in completing their call should govern the way in which the LEC is compensated for the use of its loop facilities.

¹Comments at 19.

Indeed, while the LECs focus intently on the extent to which AT&T's particular IP-based service is similar to traditional long-distance service, and ask the Commission to make broad pronouncements about the regulatory treatment of voice applications over the Internet, other commenters join WorldCom in making clear that there are a wide variety of Internet voice applications that look nothing like traditional long-distance (or local) phone service. The real question presented by AT&T's petition is not how to characterize the particular service it is offering, but whether the existing regulatory framework allows the Commission to make sensible judgments concerning "Internet telephony."

As to that, the Comments actually presents something of a consensus: the existing framework is unacceptable and needs to be changed. Market participants are faced with a patchwork of regulations that treat technologies that use the network in similar ways differently based on "regulatory" considerations: interstate access, intrastate access, reciprocal compensation, ESP exemption, and so on. The market's response to such a regulatory framework inevitably will be to attempt to offer services in a manner that receives the most favorable regulatory treatment. Whether that response is considered "good business sense" or "arbitrage" is largely a matter of who is benefiting and who is being harmed. Because that business response over time puts pressure on irrational regulatory constructs, consumers in the end generally benefit from these business practices. But at some point, the distortions created by regulation can no longer be ignored.

The responses to AT&T's petition make clear that this point has been reached, and the Commission needs promptly to devise a rational intercarrier compensation scheme that compensates the LECs for all similar uses of their facilities, and does no more than that. Some of

the commenters suggest that the CALLS reform has substantially solved the problem, but SBC's assertion that "access charges continue to be an important source of implicit subsidies that are used to maintain universal service,"² makes abundantly clear that the modest reforms implemented in CALLS left much to be accomplished. That the nation's second largest telephone carrier can claim, seven years after the passage of the 1996 Act, that carriers still operate based on a system of implicit subsidy, puts into question whether the FCC and the states have yet seriously committed to the regulatory changes necessary to create sustainable telephone competition.

The good news is that the Commission's Intercarrier Compensation acknowledges these problems and has sought comment on uniform compensation schemes that would bring much needed rationality to the access regime. A wide cross-section of commenters in this proceeding, including Qwest, SBC, Global Crossing, Level 3 Communications, and Time Warner Telecom, have joined WorldCom and point to the Intercarrier Compensation proceeding as the appropriate way to address on a permanent basis the questions raised by AT&T's petitions and the varied responses it has generated. In particular we join Qwest in believing that a "bill and keep" system, in which it is understood that the end-user customer is the entity that is using the network, and therefore should be responsible for paying for its use, is the most sensible form of "intercarrier compensation," and one that should be adopted for all purposes, including access to the Internet to carry voice traffic implicated in AT&T's instant petition.³

²Comments at 18.

³Qwest Petition at 22. WorldCom does not mean to suggest that it agrees with the very detail of Qwest's particular "bill and keep" proposal. The details of a equitable intercarrier compensation scheme remain to be fleshed out in the pending Intercarrier Compensation Proceeding.

We also agree with the many commenters who state that the issues raised by AT&T's petition need to be addressed generally and permanently, and not on an ad hoc basis as they might apply only to AT&T's particular service offering.⁴ While there is much ink spilled about whether AT&T's particular service offering is a "telecommunications service," an "information service," or something else, the real issue posed by its petition is how to treat voice applications over the Internet generally, and not how that yet-to-be determined framework might be applied specifically to AT&T's unique service offering.

Finally, we agree with the many commenters who state that pending the Commission's consideration of these questions, the status quo should be maintained.⁵ However one characterizes AT&T's service, it indisputably uses the public Internet to transmit voice traffic. It is equally indisputable that the Commission has made only tentative conclusions how to characterize that service. The comments filed in response to AT&T's petition, moreover, show that those tentative conclusions are deeply problematic, drawing distinctions that cannot be sensibly maintained.⁶

As many commenters describe, the LECs' claim that the status quo does not extend to AT&T's form of Internet telephony is wide of the mark. As just described, the Commission has made no final determination as to which types of Internet telephony services are subject to the exception, and which are not. And the Commission has indicated on many occasions, both in

⁴ See, e.g., Qwest Comments at 23-24; SBCC Comments at 19.

⁵ See, e.g., American Internet Service Providers Ass'n Comments at 20-23; VON Coalition Comments at 11-12; Small Business Survival Committee Comments; Net Action Comments; Level 3 Communications Comments at 19; Global Crossing Comments at 8-17; Association for Communications Enterprises et al. Comments at 13-16; Time Warner Telecom Comments at 4-6;

⁶ See, e.g., Level 3 Communications Comments at 14-19; Association for Communications Enterprises et al. Comments at 24-26.

formal rulings,⁷ and informal statements,⁸ that it understands the “exception” extends broadly to all forms of service that make use of the Internet. And while the LECs are certainly correct that the exceptional treatment of Internet-based transmissions creates regulatory incentives, that is of course true of the “ESP exemption” whenever it applies, and represents a judgment by the Commission that it is simply not willing to impose an old and flawed regulatory requirement on new forms of service.

For the same reason, it is of course true that any regime that allows the LECs to charge only reciprocal compensation charges, and not access charges, will be to the LECs’ detriment. But the Commission, as well as the LECs who participated in the CALLS arrangements, were well aware of the “ESP exemption” and its application to Internet telephony services when they entered into CALLS. Continuation of the status quo therefore does not take from the LECs anything they have not already agreed to give up. And to the extent the incongruities of the current regulatory environment spur market participants to help the Commission reach a more rational permanent solution to intercarrier compensation, and drive carriers away from the indefensible access charge regime, these so-called “arbitrage” opportunities serve both the public and the process well. To reiterate: the real answer to the LECs’ complaints here is the one SBC itself proposes: “The Commission accordingly must take decisive action to implement a unified

⁷ See, e.g., Association for Communications Enterprises et al. Comments at 15 & n.39 (citing Intercarrier Compensation NPRM ¶133); Joint Comments of American Internet Service Providers Ass’n et al. at 31 & n.66 (citing dissent to CALLS Order asserting that the Order permitted precisely the kind of “regulatory distortion” ILECs complain of here).

⁸ See, e.g., Joint Comments of American Internet Service Providers Ass’n et al. at 15 & nn.28 (citing statements of Chairman Powell and Commissioner Martin). -32

intercarrier compensation regime” that eliminates the obvious disparities created “by disparate intercarrier compensation regimes.”⁹

CONCLUSION

For these reasons, the Commission should maintain the status quo and proceed promptly with its Intercarrier Compensation NPRM and establish a uniform intercarrier compensation regime that eliminates the inefficiencies that plague the existing regime.

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⁹SBCCOM comments at 19.

CERTIFICATE OF SERVICE

I, Mark D. Schneider, hereby certify that copies of the foregoing WorldCom's Reply Comments were served, this 23rd day of January, 2003, by first class mail, postage prepaid, on the parties on the attached service list.

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