

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

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

Reply Comments of Beacon Telecommunications Advisors, LLC

Beacon Telecommunications Advisors, LLC (Beacon) submits these reply comments in response to the Commission's Public Notice seeking comment on AT&T's Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony services are exempt from access charges.

Beacon is a regulatory, financial, and management consulting firm providing services to independent and tribal rural local exchange carriers (LECs) throughout the United States. Beacon's initial comments in this proceeding disputed AT&T's claims that IP Telephony services should be exempt from compensation of access charges to ILECs. These reply comments further exemplify the far-reaching consequences that will occur should AT&T's petition be granted.

Universal Service Support Sustainability

AT&T has for some time not only been trying to avoid its Section 254 obligations to properly contribute to the universal service support fund, but has also been trying to avoid payment of fair and legally enforceable intercarrier compensation via access charges. As USTA points out in their comments to this proceeding, "...AT&T's Petition will begin a chain reaction that will have potentially catastrophic consequences for the

future of universal service support mechanisms.”¹ USTA goes on to rightfully note, “Should the FCC grant AT&T’s request, it threatens to create a universal service funding crisis. . . . If carriers are permitted to escape classification as telecommunications service providers solely by migrating customer transmissions to IP-based networks, the FCC will have created a powerful incentive for interexchange carriers to migrate all of their current interexchange telecommunications traffic to IP-based networks. The consequences to universal service would be devastating.”² As Beacon presented in its initial comments to this proceeding, IP Telephony is simply the medium used for transporting telecommunications services. Classifying these services as information services or exempting them from the assessment of access charges not only threatens the sustainability of the universal service funding mechanisms from which so many small, rural, and tribal companies depend, but also threatens the viability of the public switched telephone network. Without universal service funding or the ability to assess fair and just access charges, rural ILECs nationwide will no longer have the means to continue providing affordable services, including access to advanced services, which are goals explicitly stated in the 1996 Telecommunications Act.

Access Charge Considerations and Concerns

Part 69 of the Commission’s rules govern interstate “access charges.”³ These charges are assessed upon end users and interexchange carriers that utilize ILEC facilities to originate and terminate long distance calls. As Part 69.5 – “Persons to be assessed” states, “Carrier’s carrier charges shall be computed and assessed upon all interexchange carriers. . . .”⁴ In their petition, AT&T makes no dispute about the fact that IP Telephony calls use the same technology to originate and terminate calls as phone-to-phone calls. Thus, if the same facilities and technology are used for both IP Telephony and circuit switched technologies, enforcement of Commission rules regarding assessment of access charges is the proper thing to do. Following are excerpts from AT&T’s petition:

¹ USTA Comments, WC Docket No. 02-361, pg. ii

² *Ibid*, pg. iii

³ CFR Title 47, Part 69 of the Code of Federal Regulations

“For example, a phone-to-phone IP call will travel over the *public switched network* to a local gateway where it is converted to Internet Protocol and then routed over the Internet backbone to a terminating gateway, where it is converted back to voice and *sent over local exchange facilities* to the called party. These calls are sent and received in voice (TDM) protocol, and effect no net change in format.”⁵

“Computer-to-phone calls can follow *precisely the same path as phone-to-phone calls*, and all computer-to-phone IP calls *use the same terminating facilities as phone-to-phone calls*.”⁶

“Here, the decisive fact is that all types of VOIP providers compete with one another through IP technologies, and *they all use identical local exchange facilities* for the same purposes. Most starkly, *all phone-to-phone and computer-to-phone services are terminated in precisely the same way*, for they all route traffic in voice (TDM) format from the providers’ terminating gateways to called parties *over circuit switched local exchange facilities*.”⁷

In this last example, AT&T completely contradict themselves in that several times in their petition, they make mention that their service is “provided over the common Internet”⁸ but at the same time here acknowledge that these services use “identical local exchange facilities for the same purposes” and that “phone-to-phone services are terminated in precisely the same way.” Given the Commission’s rules in Part 69 that these charges are assessed upon end-users and interexchange carriers that utilize ILEC facilities to originate and terminate long distance calls, and the fact that AT&T willingly admits to using these “identical” and “precise” facilities for IP Telephony, AT&T’s petition requesting exemption of paying access charges should be denied.

Lastly, other parties in this proceeding recognize AT&T’s underlying motive to avoid paying access charges. NTCA states, “The petition is a preemptive attempt to evade paying legitimate access charges and avoid making lawful universal service fund contributions under the Commission’s existing and prospective rules.”⁹ OPASTCO rightfully points out, “. . .there is no dispute that, if the same phone-to-phone call was transported without the use of IP technology, both originating and terminating access

⁴ CFR Title 47, Part 69.5(b)

⁵ AT&T Petition, pgs. 10,11

⁶ Ibid, pg. 11

⁷ Ibid, pg. 30

⁸ Ibid, pg. 1,3,5,8,18,24,33

charges would apply”.¹⁰ OPASTCO also states, “...the adoption of IP technology should not absolve IXC’s of their responsibility to adequately compensate LECs for their access to the local loop.”¹¹ Lastly, OPASTCO realizes that, “For AT&T to base its argument upon access rates that no longer apply only serves to illustrate the petition’s lack of merit.”¹²

Conclusion

Given the record on this issue, including the vast amount of support in the form of historical precedence, FCC rules, public interest, and evidence to the contrary in this proceeding, AT&T’s petition should be denied.

Respectfully submitted,

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[Filed Electronically]

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⁹ NTCA Comments, pg. 1

¹⁰ OPASTCO Comments, pg. 2

¹¹ Ibid, pg. 4

¹² Ibid, pg. 6