

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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

REPLY COMMENTS OF THE  
WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION,  
WASHINGTON EXCHANGE CARRIER ASSOCIATION,  
OREGON TELECOMMUNICATIONS ASSOCIATION,  
OREGON EXCHANGE CARRIER ASSOCIATION,  
COLORADO TELECOMMUNICATIONS ASSOCIATION  
AND MONTANA TELECOMMUNICATIONS ASSOCIATION

I. Summary.

The Washington Independent Telephone Association ("WITA"), Washington Exchange Carrier Association, ("WECA"), Oregon Telecommunications Association ("OTA"), Oregon Exchange Carrier Association ("OECA"), Colorado Telecommunications Association ("CTA") and Montana Telecommunications Association ("MTA") ("Joint Commenters") submit these Reply Comments to address three items: First, the Commission should not accept arguments that applying access charges to voice over Internet protocol (VoIP) services will undermine the FCC's access charge and universal service orders.<sup>1</sup> Second, the FCC should not accept arguments that application of access charges to VoIP services will distort investment decisions.<sup>2</sup> Third, there are good public policy reasons for applying access charges to VoIP services.

Based on the comments submitted in this docket, the FCC should confirm that IP telephony providers are not exempt from paying access charges for calls that are

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<sup>1</sup> See Joint Comments of the American Internet Service Providers Association, the Connecticut ISP Association, Core Communications, Inc., Grand Communications, Inc., the New Mexico Internet Professionals Association, Pulver.com, US DataNet Corporation at p. 32.

<sup>2</sup> See, e.g., Joint Comments of Association for Communications Enterprises, Big Planet, Inc., ePHONE Telecom, Inc., ICG Communications, Inc., and Vonage Holding Corp. at p. 24.

originated or terminated over the public switched telephone network ("PSTN").

II. Imposition of Access Charges on IP Telephony is Consistent with the Commission's Access Charge and Universal Service Orders.

Many of the comments submitted in support of AT&T's Petition are from groups or individual companies that admit that they are already providing significant IP telephony.<sup>3</sup> Many construct highly inventive arguments to support their position that access charges should not apply to IP telephony. One invention is that access charges should not be imposed on VoIP services because to do so would be inconsistent with the Commission's universal service and access charge decisions.<sup>4</sup> The conclusion is that imposition of access charges on VoIP would undermine the balance sought by the Commission's orders by illegally creating new sources of increased access charge revenue and universal service revenue. However, nothing could be further from the truth.

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<sup>3</sup> As used in these Reply Comments the terms "IP telephony" and "VoIP services" are interchangeable. An example of comments from IP telephony providers are the Comments of the VON Coalition.

<sup>4</sup> Joint Comments of the American Internet Service Providers Association, the Connecticut ISP Association, Core Communications, Inc., Grande Communications, Inc., the New Mexico Internet Professionals Association, Pulver.com, US DataNet Corporation, at p. 23, et seq.

As pointed out by SBC Communications, Inc., AT&T and others providing VoIP services purchase local business services in order to avoid paying access charges for the delivery of long distance calls to end users served by the PSTN.<sup>5</sup> This is confirmed by the Joint Commenters' own experience. The rural company members of the Joint Commenters have found that IP telephony providers such as LocalDial Corporation and Vonage are completely bypassing the access charges of the rural companies.

This access charge bypass has two effects. First, since the customer revenue from IP services is not counted as telecommunications revenue that would otherwise be generated by an interexchange carrier contributing to the universal service fund, there is less revenue than was originally contemplated to support universal service programs. Therefore, in order to support existing universal service programs, a higher percentage of a diminishing revenue stream is needed. It is only when the "bypassed" revenue from IP telephony providers is included in the contribution base for universal service that the balance in the universal service and access charge orders is maintained.

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<sup>5</sup> Opposition of SBC Communications, Inc. at p. 11, et seq.

Second, because the rural telephone companies are cost-based providers of access service, to the extent there are fewer minutes over which to recover those costs, there is upward pressure on access charges. Obviously, the more minutes that are in the denominator of the access charge calculation, the lower the rate can go. As pointed out in their initial Comments, the Joint Commenters have experienced a very substantial drop in access minutes in the recent past. The timing corresponds with the onset of significant VoIP service activity.<sup>6</sup> That upward pressure on access rates is antithetical to the FCC's goal in its access charge and universal service orders.

To the customer receiving the service, IP telephony is no different than any other form of interstate communications. Yet, IP telephony providers are trying to avoid their Section 254 obligations by having IP telephony classified as an information service and, therefore, not a telecommunication service, the revenue from which would otherwise be part of the contribution base for the universal service fund.

The Commission's access charge and universal service orders are best served by requiring IP telephony providers

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<sup>6</sup> The Joint Commenters do not take the position that VoIP service is the only reason for declining minutes. However, VoIP services do appear to be a significant factor.

to pay access charges. The IP telephony providers are diverting traffic that would otherwise be carried by interexchange carriers paying access charges. The IP telephony providers do not want to contribute to universal service. This bypass should not be allowed to continue.

III. IP Telephony is Regulatory Arbitrage, Not a Distortion of Market Incentives.

Several comments supporting AT&T's position argue that applying access charges to IP telephony will distort markets, stunt growth and stifle innovation. They also tend to argue that this is a nascent market.<sup>7</sup> First, from the perspective of the rural telephone companies, this is not a nascent market. The market appears to be easy to enter, has low capital investment requirements and is growing by leaps and bounds. Providers such as Vonage, LocalDial Corporation and Net2Phone advertise their services to the general public as long distance calling that the customer can use from their existing telephone.<sup>8</sup> IP telephony is not offered solely by "new" providers, it is also offered by large, well-established firms such as

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<sup>7</sup> See Joint Comments of Association for Communications Enterprises, Big Planet, Inc., ePHONE Telecom, Inc., ICG Communications, Inc., and Vonage Holding Corp. beginning at p. 16.

<sup>8</sup> Level 3 is in error in how it implies that specialized equipment is needed by the customer. Level 3 Comments at p. 7.

AT&T. Indeed, Time Warner Telecom in its Comments indicates that it is poised to enter the market should the Commission rule that VoIP services are not subject to access charges.<sup>9</sup>

As the Joint Commenters pointed out in their initial Comments, VoIP services use the rural telephone companies' networks in exactly the same way as any other long distance call. The calling party dials the NPA/NXX and associated line number of the called party and the call is routed through the rural company's switch to the IP telephony provider's location (usually in a larger company service area at the other end of an Extended Area Service network). The call reaches the IP telephony service provider's location and is then routed to the terminating location where the local telephone company on that end of the call terminates the call using its switch and network to get to the called party. Sometimes the switch of an intervening carrier, such as Qwest in the case of the Joint Commenters, is involved. This would most often be a local/EAS tandem switch which accepts the call from the rural company and routes it to the IP telephony provider. This is the functional equivalent to an access tandem. There is nothing about this service that is nascent.

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<sup>9</sup> Comments of Time Warner Telecom at p. 3.

The Comments of the VON Coalition argue that voice "is essentially just another application being deployed on these [Internet] networks, often in combination with other applications." The VON Coalition goes on to state "As computer processing power increases even more, VON products and services are poised to make communications even more innovative, affordable, and universal."<sup>10</sup> While the VON Coalition attempts to argue that these are reasons why IP telephony should be treated as any other Internet service, these arguments also point out that this is hardly a nascent market or one that needs protection. IP telephony is just like any other form of telephony. As such, it should bear the same costs as any other form of telephony.

The cries that applying access charges to IP telephony will drive investment decisions elsewhere, stifle innovation and stunt growth are simply empty cries of "wolf." Even in a market in which access charges are applied to IP telephony, Level 3 states that it has designed its network from end-to-end to accommodate VoIP products and services.<sup>11</sup> The Comments from the VON Coalition demonstrate that innovation has and will continue unabated. If VoIP is truly a lower cost and more reliable

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<sup>10</sup> Comments of the VON Coalition at p. 2.

<sup>11</sup> Level 3 Comments at p. 5 and 6.

form of transmission, as the VON Coalition argues, then it does not need regulatory arbitrage to gain a cost advantage.

#### IV. Public Policy Supports Application of Access Charges to IP Telephony.

IP telephony provides interexchange calling. It is transparent to the customer whether the call is going over the Internet, microwave, fiber or copper. The origination and termination of the call is through the PSTN just as any other interexchange call. The Internet is simply the transmission medium.

Access charges recognize that there are costs incurred by the local telephone company on the originating and terminating ends of the call. The rural companies that are members of the Joint Commenters have seen their access traffic decline sharply in recent years. This results in under recovery of the costs associated with access services and places upward pressure on access rates. Declining access revenue also makes investment in telecommunications infrastructure more difficult. It only makes good sense from both policy and economic perspectives to spread the costs of providing access services over the largest possible base. It does not make sense to discriminate

against traditional transmission mediums, and the carriers that use them, by allowing those carriers that use the Internet to bypass access charges.

The Joint Commenters urge that the FCC deny AT&T's Petition and confirm that IP telephony is subject to access charges.

Respectfully submitted this 24th day of January, 2003.

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