

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

In the Matter of

Petition for Declaratory Ruling That AT&T's  
Phone-to-Phone IP Telephony Services Are  
Exempt from Access Charges

WC Docket No. 02-361

**REPLY COMMENTS OF VERIZON**

In this declaratory ruling proceeding, the Commission is being asked simply to interpret its existing rules and orders. It is not being asked to change its rules or to develop a new policy for Internet telephony services generally. As AISPA correctly notes, this “docket is not a rulemaking proceeding and is not the appropriate forum to consider [] paradigmatic shifts”<sup>1</sup> The existing rule, by its express terms, requires that interexchange carriers pay access charges when providing telecommunications services, and the Commission has found that phone-to-phone Internet telephony is a telecommunications service.

To be sure, the growth of true IP telephony (as opposed to AT&T's IP-in-the-middle service) raises a host of complicated issues with respect to its impact on existing rules in areas ranging from universal service and access charge rules, to unbundling requirements and retail rate regulation. Verizon agrees with those commentators which suggest that the Commission should initiate a proceeding to undertake a broader inquiry on the impact of IP telephony generally, in order to ensure that its rules do not inhibit the growth of IP telephony, while at the same time ensuring that carriers are fairly

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<sup>1</sup> AISPA at 4.

compensated for the use of their networks. But those issues are well beyond the scope of anything that could be addressed in response to AT&T's declaratory ruling petition. For purposes of AT&T's petition, the existing rules require AT&T to pay access charges and that is the end of the matter.

### **Argument**

The hundreds of pages submitted by AT&T and its supporters ignore the two sentences that determine the outcome of this proceeding. The first, which is nowhere mentioned in the petition and in only one of the supporting comments,<sup>2</sup> is section 69.5(b) of the Commission's regulations, which requires that access charges "be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services." The second is the Commission's finding in 1998 that a phone-to-phone service like the service described by AT&T in its petition is a "telecommunications service."<sup>3</sup> AT&T, thus, as an interexchange carrier which uses local exchange switching facilities for the provision of an interstate telecommunications service must pay LEC access charges.

This result makes sense under the existing rules. As Time Warner observes, "Investment in VoIP offerings should be driven by the substantial efficiencies and innovations that TCP-IP-based services appear capable of delivering" and "should not be driven by the opportunity to exploit arbitrage opportunities created by regulation."<sup>4</sup> But

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<sup>2</sup> Net2Phone at 4 says that this rule applies access charges only to telecommunications services, but ignores the Commission's finding that phone-to-phone voice telephony is a telecommunications service.

<sup>3</sup> *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶ 89 (1998) ("1998 Report").

<sup>4</sup> Time Warner at 6.

this exploitation “opportunity” is exactly what AT&T is asking for — it wants to pay less for access to the local network when it uses IP technology than when it uses circuit switched. AT&T uses the local network to provide its IP-based service in the same way as it does when its service is circuit switched, and the costs to the LEC to provide that access to AT&T are the same as well. And, although AT&T’s petition does not mention it, its theory would also presumably relieve AT&T of the obligation to make universal service contributions on the revenues from these services. Such a result would drive VOIP investments whether they offered efficiencies and innovations or not.

Because the controlling rule and Commission order require the rejection of their position, AT&T’s supporters follow AT&T’s lead and fill the record with irrelevancies.

Perhaps the biggest irrelevancy is the often-discussed-at-length ESP exemption.<sup>5</sup> The Commission has already found that a phone-to-phone voice telephony service provided over the Internet is not an enhanced or information service, so the ESP exemption does not apply. “From a functional standpoint, users of these services obtain only voice transmission, rather than information services such as access to stored files. The provider does not offer a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information. Thus, the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them ‘information services’ within the meaning of the statute....”<sup>6</sup>

Global Crossing claims that all IP-based services are enhanced because they involve protocol conversion,<sup>7</sup> but not only is this inconsistent with the Commission’s

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<sup>5</sup> *E.g.*, AISPA 9-11, Global Crossing 9-13, Net2Phone 1-4.

<sup>6</sup> 1998 Report ¶ 89.

<sup>7</sup> Global Crossing at 9.

finding in 1998 that this service “transmits customer information without net change in form or content,”<sup>8</sup> it is obvious nonsense. The Commission has long held that the fact that a carrier performs a protocol conversion in providing a telecommunications service does not transform it into an enhanced service.<sup>9</sup> Where, as with AT&T’s service, there is no net protocol change — the voice that goes in at one end comes out in the same form at the other — the service is not enhanced.

Global Crossing’s conclusion — “Unless and until the Commission finds specific VOIP services to be telecommunications services — which it has not done — the ESP exemption continues to apply to all IP-based services”<sup>10</sup> — is, therefore, incorrect for two reasons. First, the Commission did in 1998 find services like that described by AT&T to be telecommunications services. Second, nothing in the Commission’s orders or rules ever suggested that the ESP exemption automatically applied to “all IP-based services.”

In the same vein, AISPA asserts that the Commission found that “Internet-based services did not use the public switched network in ways analogous to interexchange carriers.”<sup>11</sup> However, the Commission in 1998 described how these services are provided,<sup>12</sup> and that same description could also be used to describe how an interexchange carrier provides its service.

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<sup>8</sup> 1998 Report ¶ 88.

<sup>9</sup> *E.g.*, *Third Computer Inquiry*, 2 FCC Rcd 3072, ¶¶ 12-17 (1987).

<sup>10</sup> Global Crossing at 13.

<sup>11</sup> AISPA at 10.

<sup>12</sup> 1998 Report ¶¶ 88-89.

Level 3 makes the extraordinary claim that even if some VOIP services are telecommunications services, they are still not subject to access charges.<sup>13</sup> This is flatly inconsistent with section 69.5(b) of the rules which assesses access charges on all “interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.”

Level 3 goes on to note that IP telephony providers use a wide variety of architectures, technologies and applications<sup>14</sup> and that the Commission has found that “many VOIP services are information services, not telecommunications services.”<sup>15</sup> All this may well be true, but it doesn’t change the fact that this technology and application is a telecommunications service, not an information service.

AISPA says that providers of IP telephony services should not have to pay access charges because those charges include subsidies.<sup>16</sup> A few pages later, AISPA recognizes that the CALLS plan eliminated the subsidies from the access rates charged by Verizon and the other CALLS participants.<sup>17</sup> But even if that were not the case, AISPA does not explain why IP long distance services that use the LEC networks in the same way as circuit-switched long distance services should not support those networks in exactly the same way and to exactly the same extent.

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<sup>13</sup> Level 3 at 4.

<sup>14</sup> Level 3 at 6-8.

<sup>15</sup> Level 3 at 8-11.

<sup>16</sup> AISPA at 11.

<sup>17</sup> AISPA at 26.

A number of commentators support AT&T because, they say, “regulation of the Internet” or “regulation of IP telephony” would be bad.<sup>18</sup> These observations, even if completely true, have nothing whatever to do with the issue raised by AT&T here. Making an IP telephony provider pay for the telecommunications services it uses simply is not “regulating” that provider or “regulating” the Internet, any more than the Commission “regulates” any consumer or business telecommunications user when it makes the user pay for services.

Finally, a number of commentators criticize what they refer to as LEC “self-help” activities.<sup>19</sup> But these LECs are just doing what the law — the Commission’s rules and their tariffs — require, namely, charging interexchange carriers for access services. As AISPA notes, the carriers’ obligation to pay is based on rules, and collection activities are perfectly legitimate.<sup>20</sup>

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<sup>18</sup> *E.g.*, AISPA at 5-16, ASCENT at 17, Global Crossing at 16-17, VON Coalition at 10-11.

<sup>19</sup> *E.g.*, AISPA at 20, VON Coalition at 11.

<sup>20</sup> AISPA at 20.

**Conclusion**

The Commission should, therefore, deny AT&T's petition.

Respectfully submitted,

*John M. Goodman*

John M. Goodman

Attorney for the Verizon  
telephone companies

1300 I Street, N.W.  
Washington, D.C. 20005  
(202) 515-2563  
john.m.goodman@verizon.com

Michael E. Glover  
Edward Shakin  
Of Counsel

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