

**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)
_____)

**REPLY COMMENTS OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),¹ through the undersigned and pursuant to Federal Communications Commission (FCC) Rules 1.415 and 1.419,² hereby provides reply comments to AT&T Corporation's (AT&T) Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges (Petition).³ Pursuant to section 1.401 of the FCC's rules,⁴ the FCC now seeks reply comments to AT&T's Petition.

USTA contends that any carrier utilizing the PSTN to originate or terminate interexchange telecommunications services, regardless of the transport technology (*e.g.*, circuit switched or Internet Protocol) that may be used to provide such services should be subject to the current intercarrier compensation regime. The current federal and state intercarrier compensation regime for such telecommunications services is access charges. Thus, USTA opposes the FCC's need to issue a declaratory ruling in regards to IP telephony.

¹ USTA is the Nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data and video services over wireline and wireless networks.

² 47 C.F.R. §§ 1.415 and 1.419.

³ *In the Matter of AT&T Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket 02-361, Petition of AT&T (filed Oct. 18, 2002) (AT&T Petition).

⁴ 47 C.F.R. § 1.401.

DISSCUSSION

I. Definition of Telecommunications Services and Part 69

USTA agrees with Net2phone, Inc. that in order for Part 69 of the FCC's rules to apply to IP telephony a provider must be deemed to be a telecommunications service provider.⁵ Under the Communications Act of 1934, as amended (the Act), telecommunications service is defined as "the offering of telecommunications for fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."⁶ AT&T originates and/or terminates telephone calls using the public switch telephone network (PSTN). In addition, AT&T is offering telecommunications service via IP telephony to the public for a fee using its Internet backbone to connect to LECs by using "access services to originate calls."⁷ USTA contends that unless the call is routed through Internet Peering points to the Public Internet Network, the call has not traveled over the Internet. Rather, the call has remained on AT&T's "Internet Technology" Backbone Network and should be classified as telecommunications service.

Moreover, the FCC tentatively concluded in the *Federal-State Joint Board on Universal Service* proceeding (Report to Congress) that certain "phone-to-phone" services lack the characteristics of "information services"⁸ and instead resemble "telecommunications services."⁹ The FCC went on to define phone-to-phone IP telephony services "as services that enable real-time voice transmission using the Internet protocols . . . "through software at the customer

⁵ Comments of Net2phone, Inc. at 4 (Net2phone).

⁶ 47 U.S.C. § 153(46).

⁷ AT&T Petition at 4.

⁸ See 47 U.S.C. § 153(20) (defining "information services" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service").

⁹ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 1150, ¶ 83 (1998) (Report to Congress).

premises, or through “gateways” that enable applications originating and/or terminating on the PSTN.”¹⁰ Hence, USTA contends that AT&T is providing telecommunications services as defined by the Act and the Report to Congress.

Under Part 69 of the FCC’s rules,¹¹ LECs receive access charges from IXC’s that provide interstate long distance service that use ILEC facilities to originate and terminate calls for their customers. The purpose behind Part 69 of the FCC’s rules was to promote competition in the interstate IXC market by ensuring that LECs originate and terminate IXC traffic at just, reasonable, and non-discriminatory rates.¹² The FCC’s rules require that telecommunications carriers providing interexchange phone-to-phone telecommunications services via the PSTN, when originating or terminating interexchange telecommunications services, pay access charges regardless of whether the carrier utilizes circuit switching or Internet Protocol. For the reasons set forth above, AT&T’s IP telephony service is a telecommunications service as defined by the Act and the Report to Congress. Thus, AT&T’s IP telephony service offering should be subject to access charges under Part 69 of the FCC’s rules.

II. AT&T Should Pay Access Charges When Terminating Interstate Interexchange Calls Via CLECs

AT&T’s Petition admits to entering into “arrangements with CLECs to take AT&T’s long distance traffic and deliver it to ILECs as if it were local traffic.”¹³ USTA agrees with Verizon Telephone Companies (Verizon) and SBC Communications Inc. (SBC) that AT&T is engaged in the practice of terminating interstate interexchange calls via CLECs in order to avoid

¹⁰ *Id.* at ¶ 84.

¹¹ 47 C.F.R. § 69.5(b) (stating that “interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services).

¹² *See Internet Over Cable: Defining the Future in Terms of the Past*, Office of Plans and Policy, Federal Communications Commission, Barbara Esbin, at 54 (1998) (citing 47 C.F.R. § 69.1 *et seq.*) (Internet Over Cable).

¹³ Verizon Telephone Companies at 5 (Verizon); *See* AT&T Petition at 20.

LEC access charges and pay reciprocal compensation rates.¹⁴ We believe that the FCC should mandate that CLECs identify the “interstate nature of IP telephony calls routed through their networks to LEC networks.”¹⁵ This will ensure that ILECs are properly compensated for the services they provide.

III. Granting AT&T’s Petition will have Implications upon Competition and USF

USTA agrees with Qwest Communications International Inc. (Qwest) that from a public policy perspective, the FCC should reject AT&T’s Petition because it would violate the fundamental principle of technological neutrality by securing and exchange access discount based solely on the type of interexchange technology employed.¹⁶ “Granting to the providers of phone-to-phone IP telephony services a discount in access charges not available to other providers of phone-to-phone telephony services would artificially discriminate between technologies in violation of the fundamental principles of the 1996 Act that the market, not the regulator, should ultimately determine the optimal telecommunications technology to be deployed.”¹⁷ In addition, we agree with Western Alliance that if AT&T was able to avoid paying ILECs for the use of the local network there would be less incentive for ILECs to invest in the construction and upgrade of expensive local exchange facilities in the future.¹⁸ Moreover, we believe that if FCC were to grant AT&T’s Petition carriers would have “an incentive to modify networks to shift traffic to Internet protocol and thereby avoid paying into the universal service fund”¹⁹

¹⁴ See Verizon at 5; Comments of SBC Communications Inc. at 4 (SBC).

¹⁵ SBC at 4.

¹⁶ Comments of Qwest Communications International Inc. at 3 (Qwest).

¹⁷ *Id.*

¹⁸ Comments of Western Alliance at ii.

¹⁹ *Report to Congress* at ¶ 98.

USTA believes that if the FCC were to rule in favor of AT&T, certain IXC's would shift traffic to Internet protocol and would not be required to contribute to Universal Service Fund (USF). This would give long distance carriers a regulatory incentive to move from the PSTN to "Internet Technology" backbone networks, thereby receiving a competitive advantage and draining the USF. If the FCC were to grant AT&T's request that access charges should not be assessed to IP Telephony, the FCC may well be jeopardizing the future of the USF.

CONCLUSION

For the reasons set forth above, USTA contends that the public interest requires that the FCC rule consistent with its prior determinations involving access charges and under Part 69 of its rules that LECs have the lawful ability to assess access charges upon IP telephony services. Accordingly, AT&T's Petition should be denied.

Respectfully submitted,

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