

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

www.kelleydrye.com

DIRECT LINE: (202) 955-9788

EMAIL: tdaubert@kelleydrye.com

NEW YORK, NY
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February 2, 2004

VIA ELECTRONIC FILING

Michael K. Powell, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: **Written Ex Parte Presentation**

Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges, **WC Docket No. 02-361**;

Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, **WC Docket No. 03-211**;

Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. §16(c) for Enforcement of 47 U.S.C. §251(g), Rule 51.701(b)(1), and Rule 69.5(b), **WC Docket No. 03-266**

Dear Chairman Powell:

USA Datanet Corporation ("USA Datanet" or "Company"), by its attorneys, has previously written¹ to urge the Commission to grant AT&T's Petition for Declaratory Ruling

¹ See *Joint Comments of The American Internet Service Providers Association, The California Internet Service Providers Association, The Connecticut ISP Association, Core Communications, Inc., Grande Communications, Inc., The New Mexico Internet Professionals Associations, Pulver.Com, and USA Datanet Corporation ("Joint Commenters")*, filed Dec. 18, 2002; *Joint Reply Comments of the Joint Commenters*, filed Jan. 24, 2003. See Ex Parte Letter from Brad E. Mutschelknaus, Joan M. Griffin and Todd D. Daubert to Chairman Michael K. Powell, FCC, WC Docket No. 02-361 (Jan. 20, 2004); Notice of Ex Parte Presentation from Brad E. Mutschelknaus and Todd D. Daubert to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-361 (June 20, 2003); Notice of Ex Parte Presentation from Brad E. Mutschelknaus and Todd D. Daubert to Marlene H. Dortch, Secretary, FCC, WC Docket No. 02-361 (June 13, 2003); Notice of Ex Parte Presentation from Todd D. Daubert to Marlene H. Dortch, Secretary, FCC,

(“AT&T Petition”) in the above-referenced proceeding.² USA Datanet was an early “first adopter” of Internet protocol (“IP”) technology and a pioneer in the deployment of many different IP-based services, including voice applications. USA Datanet installed the nation’s first production SONUS network so that it could provide high quality and reliable IP-based services, including voice applications, to its customers. The Company chose to build its IP-based data network from the ground up rather than modify an existing network optimized for circuit-switched services because USA Datanet seeks to offer its customers the full range of benefits that IP-based services can make available. USA Datanet now uses its network to provide communications services to several hundred thousand residential and small business customers.

USA Datanet strongly supports the AT&T Petition and agrees that the full range of IP-based services, including the “phone-to-phone” voice over IP (“VoIP”) application at the heart of the AT&T Petition, qualify as “information services” within the meaning of the Act and under existing Commission rules and policies should not be regulated as “telecommunications services.” Thus, entities providing phone-to-phone VoIP services are and should continue to be entitled to connect to the PSTN without the crushing burden of paying existing subsidy-laden ILEC switched access charges. As AT&T, USA Datanet and numerous others have explained in the record herein, the Commission has never required providers of phone-to-phone VoIP to pay switched access charges, and to do so now would represent a destructive reversal of long-standing Commission precedent and policy encouraging the growth of all IP-based services.

Assuming for the moment that the Commission nonetheless were to decide to deny AT&T’s Petition for Declaratory Ruling, it is crucial that the decision be precisely worded and narrowly confined to the specific application at issue in the AT&T Petition. A broader ruling is not warranted, or even permissible, given the scope of relief AT&T sought in its Petition. Moreover, the Commission should avoid adopting any decision that could be misinterpreted as applying to other IP-based voice applications. Were the Commission to issue a decision rejecting AT&T’s Petition that lacked such precision, uncertainty would result which would hamper and threaten the further development of innovative IP services by numerous IP-based service providers like USA Datanet that offer a wide range, and are developing an even wider range, of IP-based services. The Commission should be careful to avoid such a broad-based impact at this time in light of the agency’s decision to initiate a generic proceeding to address the regulatory treatment of IP-based services.

A more complete description of USA Datanet’s service offerings will illustrate not only how its services are “information service” and different from some other IP-based

WC Docket No. 02-361 (June 4, 2003). *See also* Petition for Declaratory Ruling that AT&T’s Phone-to-Phone Telephony Services Are Exempt from Access Charges, WC Docket 02-361 (Oct. 18, 2002) (“AT&T Petition”).

² *See also* Petition for Declaratory Ruling that AT&T’s Phone-to-Phone Telephony Services Are Exempt from Access Charges, WC Docket 02-361 (Oct. 18, 2002) (“AT&T Petition”).

applications, but will demonstrate why, if AT&T's Petition is not granted, as USA Datanet submits it should be, it should be expressly confined to the particular IP-based application that was the subject of the AT&T Petition. As explained above, USA Datanet built its network specifically so that the Company could offer its customers the "*capability* for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications" See 47 U.S.C. 153(20) (emphasis added). Voice is only one aspect of the capabilities that USA Datanet can offer customers via its IP-based network. Indeed, one of the most innovative aspects of USA Datanet's network – as well as the services that USA Datanet offers via the network – is the flexibility it permits customers to have in choosing how, when and where to communicate, access, manipulate, store, and forward information.

The way in which the National Federation of the Blind ("NFB"), one of USA Datanet's customers, uses the capabilities of the Company's IP-based network illustrates why the mere fact that a customer could use its service provider's IP-network to place a phone-to-phone voice call should not automatically lead to the conclusion that the service offered is a "telecommunications service" subject to access charges. Specifically, the NFB relies on the capability for Interactive Information Services that USA Datanet offers via its IP-based network to provide its NFB-NEWSLINE®, which enables those who cannot read conventional print to have access 24 hours a day, seven days a week to dozens of newspapers, including USA Today, the New York Times, the Washington Post, the Los Angeles Times, the Wall Street Journal and dozens of local papers, simply by dialing a toll-free number using any telephone. Users can choose that day's, the previous day's, and the previous Sunday's issue of each newspaper on the service. The menu, which uses synthetic speech, allows users to change the speed and voice quality, spell out, or search for words, capabilities made possible because of USA Datanet's IP-based network. For more information about the NFB-NEWSLINE®, see <http://www.nfb.org/newsline1.htm>.

This revolutionary application receives digital transmissions from newspapers on the morning of publication, reformats the data for conversion to synthetic speech, and uploads the data to USA Datanet's IP/Web application platform. A user can access the NFB-NEWSLINE® by dialing a toll-free or local number. Calls to the NFB-NEWSLINE® are terminated to USA Datanet's Data Center, and when he selects the NFB application, the call is then connected by USA Datanet's network to the IP/Web application platform that supports the NFB-NEWSLINE® service. The NFB's "America's Jobline®" works in the same way to provide people who cannot see or read standard video display terminals, or who do not have or cannot use standard computers, with interactive audible access to job information. For more information about NFB's "America's Jobline®", see <http://www.nfb.org/jobline/enter.htm>. Attachment 1 provides a diagram of how these interactive information services are provided. The diagram shows that the services of USA Datanet manipulate the application's layers and

provide end users with the capability of engaging in a net protocol conversion, both of which qualify the service as an information service.

The same IP-based technologies that enable the NFB-NEWSLINE® and “America's Jobline®” can be used to provide any end user with the capability of accessing any digital text in an audible format. For example, USA Datanet customers on business trips can use any telephone to secure access to any digital data in an audible format. The tremendous potential of this type of IP-based application increases exponentially when combined with other capabilities that the Company's network make possible that simply are not present with a circuit switched network or the functional equivalent. Perhaps the single most powerful capability of the USA Datanet design is its “Mid-Call Event Triggers,” which are technically feasible because the underlying network uses Session Initiation Protocol (“SIP”). This underlying IP technology allows USA Datanet's customers to escape the limitation associated with traditional “One Call – One Circuit” communication network and USA Datanet to build virtually unlimited advanced calling information services. These services can range in scope from simple Call Re-Origination (a feature which allows multiple calls to be made in serial fashion), to sophisticated voice, data and multimedia applications discussed in following sections of this pleading.³ As such, a USA Datanet customer could (1) initiate a call through the USA Datanet platform from any standard telephone, (2) listen to a newspaper article that has been converted to synthetic speech on the Company's IP/Web application platform, (3) decide that a colleague should hear the same article and conference in that colleague by calling her mobile phone, (4) listen to the newspaper article with the colleague, (5) decide that they should both review a recent press release by the customer's company and access the digital text of the release in an audible format, and (6) decide that all of the employees of the customer's company be aware of an inaccuracy in the press release and send an e-mail message to those employees created using voice commands. Of course, the order of these steps can be reversed, and individual steps (as well as others) can be added or deleted or replicated during the course of the same call. Indeed, the person initiating a call or transaction has such flexibility due to USA Datanet's underlying IP-based network that she need not decide which steps or actions she intends to take, or even the identity of the recipient, if any, of the resulting communications, before initiating the call or transaction.

USA Datanet's network also supports Enhanced Internet Call Waiting (“EICW”), which unites voice and data applications. EICW allows dial-up Internet customers to manage their communications in real time while connected to the Internet. Specifically, upon establishing a dial-up Internet connection, a customer automatically notifies the Company's network that they are going online. If the customer subsequently receives a phone call while online, a call management screen will appear and allow the customer to decide whether to (1)

³ Other Advanced Call Capabilities include network based speed dialing, voice mail, and other information retrieval applications. These features will be enhanced over time to include call management, presence capabilities, and real time unified communications.

ignore the call, (2) take the call, (3) send the call to voicemail, (3) chat with the caller via text messaging, (4) establish a voice chat session, or (5) play a pre-recorded message.⁴

Although this letter describes only a few of the many capabilities that USA Datanet's network facilitates, the examples discussed above demonstrate that the type of IP-based technology deployed by the Company offers customers the capability for engaging in multiple protocol conversions during a single "call" or "transaction," including text-to-voice, voice-to-text, text-to-text (*e.g.*, newspaper text to instant message or e-mail text) and voice-to-voice (*e.g.*, conversation to audio file that can be attached to an e-mail, sent as an instant message, or stored as a voicemail message). In other words, thanks to USA Datanet's IP-based network, customers can generate, acquire, store, transform, process, retrieve, utilize, or make available any type of information via telecommunications. The services that USA Datanet offers fall squarely within the Act's definition of "information services," even if a customer chooses not to use all of these capabilities during a particular call (*e.g.*, the customer chooses only to engage in a real-time voice conversation during a phone-to-phone call), because inherent in the network supporting the services is the "*capability* [offered to end users] for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications" *See* 47 U.S.C. 153(20) (*emphasis added*).

⁴ The Company's network also supports call management services like USA Datanet's "Family Communications Tree," which allows members of a family or group to receive their calls and messages individually from the same local number. Specifically, calls to a particular family or group of users can be placed using a single number that terminates on USA Datanet's network, at which point the caller is asked to identify the specific party he wishes to contact. Based upon individual preset preferences of the party identified by the caller, the call would be forwarded to (1) an alternate number (or simultaneously to multiple numbers) for the called party, (2) a voicemail box for the called party, (3) a prerecorded message from the called party, or (4) a personal message to be played while the calling party is placed on hold until the called party is located.

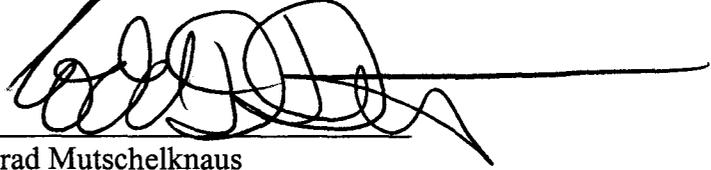
Michael K. Powell, Chairman
February 2, 2004
Page Six

In sum, USA Datanet strongly supports grant of the AT&T Petition and urges the Commission to ensure that the full range of IP-based services remain exempt from the above-cost access charges that currently apply to circuit-switched telecommunications services. If the Commission nonetheless decides to deny AT&T's Petition for Declaratory Ruling, it is crucial that the decision be precisely worded and narrowly confined to the specific application at issue in the AT&T Petition. In any event, the Commission should avoid adopting any decision that could be misinterpreted as applying to the IP-based voice applications of other service providers. The upcoming NPRM on the regulation of VoIP and other IP-based applications is the appropriate vehicle for addressing the proper regulatory framework for the broad range IP-based services that USA Datanet and others provide.

Respectfully submitted,

USA DATANET CORPORATION

By: _____


Brad Mutschelknaus
Edward A. Yorkgitis, Jr.
Todd D. Daubert
Its Attorneys

cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein
Bryan Tramont
Christopher Libertelli
Matthew Brill
Jessica Rosenworcel
Lisa Zaina
Daniel Gonzalez

William Maher
John Rogovin
Jeffrey Dygert
John Stanley
Debra Weiner
Paula Silberthau
Jeffrey Carlisle
Michelle Carey
Tamara Preiss
Jennifer McKee

ATTACHMENT 1

