

April 14, 2004

EX PARTE

FILED ELECTRONICALLY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. S.W.
Washington, DC 20554

Re: Petition for Declaratory Ruling That AT&T's Phone-To-Phone IP Telephony Services Are Exempt From Access Charges, WC Docket No. 02-361

Dear Ms. Dortch:

UniPoint Enhanced Services, Inc. d/b/a PointOne, by its counsel, and pursuant to Section 1.1206(b) of the Commission's rules, hereby submits this ex-parte presentation.

In the event that the Commission denies AT&T's Petition, and finds that the specific service at issue in the AT&T petition is a telecommunications service, PointOne urges the Commission to include the following language in its decision:

Reaffirming the ISP/ESP Exemption and that a Phone-to-Phone service can be an Information Service

While the Commission has found that the specific service offering at issue in the AT&T petition is a telecommunications service, this does not imply that all so-called "phone-to-phone" or "PSTN-to-PSTN" services are telecommunications services; some may be information services. Moreover, this ruling does nothing to change the ISP/ESP exemption that has been in place since 1983.¹ "The Commission determined long ago that ESPs should obtain interstate access services by paying the local business exchange service rates contained in intrastate tariffs, rather than the access rates contained in interstate tariffs. The

¹ See *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982 at ¶ 345 (1997) and *MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 F.C.C.2d 682, 711-722 (1983).

CHADBOURNE
& PARKE LLP

Ms. Marlene H. Dortch
Secretary

-2-

April 14, 2004

Commission made this determination to avoid severe rate impacts that would affect the continuing viability of the ESP industry.”² While the Commission may, in the future, set forth a test³ to define ESPs in the VoIP context, we will defer doing so at this time, leaving that issue to be addressed in the NPRM on IP-enabled services.

PointOne submits that adoption of the language proposed above would promote innovation, and protect the interests of VoIP service providers that have invested in and built true next generation IP communications networks. Consistent with the position advanced by PointOne in its April 8, 2004 *ex parte* filing, these information service providers are those that the ESP exemption from access charges was meant to benefit.

Respectfully submitted,

/s/ Kemal Hawa

Kemal Hawa

cc: Christopher Libertelli, Esq. (via e-mail)
Matthew Brill, Esq. (via e-mail)
Daniel Gonzalez, Esq. (via e-mail)
Jessica Rosenworcel, Esq. (via e-mail)
Scott Bergman, Esq. (via e-mail)
Mr. Mike Holloway, PointOne
Mr. Sam Shiffman, PointOne
Dana Frix, Esq.

² *General Communications, Inc., Complainant, v. Alaska Communications Systems Holding, Inc. and Alaska Communications Systems, Inc. d/b/a ATU Telecommunications d/b/a Anchorage Telephone Utility, Defendants*, Memorandum Opinion and Order, EB-00-MD-016, 16 FCC Rcd 2834, 2841 at ¶ 17 (2001).

³ UniPoint Enhanced Services, Inc. d/b/a PointOne set forth the *PointOne Test* in its February 24, 2004 *ex parte* filing made in these same dockets, and further discussed the test in a March 3, 2004 *ex parte* filing. See Letter from Dana Frix and Kemal Hawa, Chadbourne & Parke LLP to Marlene H. Dortch, FCC, WC Docket No. 02-361, dated February 24, 2004; and Letter from Michael Holloway, PointOne to Marlene H. Dortch, FCC, WC Docket No. 02-361, dated March 3, 2004.