

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

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Access Charge Reform)

Reform of Access Charges Imposed by
Competitive Local Exchange Carriers)

CC Docket No. 96-262

Petition of Z-Tel Communications, Inc.
For Temporary Waiver of Commission
Rule 61.26(d) to Facilitate Deployment of
Competitive Service in Certain
Metropolitan Statistical Areas)

CCB/CPB File No. 01-19

**AT&T COMMENTS ON PETITION
OF COX COMMUNICATIONS, INC.**

Pursuant to the Commission's August 3, 2004 public notice,¹ AT&T Corp. ("AT&T") submits these comments on the petition of Cox Communications, Inc. ("Cox") for clarification or, in the alternative, reconsideration of the Commission's *May 18 Order* in this proceeding.² The Cox petition, based on purely hypothetical network arrangements, fails to provide the Commission with an adequate record for decision, and should therefore be denied.

In the *May 18 Order*, the Commission addressed and resolved numerous issues regarding limitations on the right of competitive local exchange carriers ("CLECs") to assess access charges on interexchange carriers ("IXCs"). In particular, the

¹ Report No. 2667, published at 69 FR 48234 (August 9, 2004).

² *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc. For Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262 and CCB/CPB File No. 01-19, Eight Report and Order and Fifth Order on Reconsideration, FCC 04-110 (rel. May 18, 2004) ("*May 18 Order*").

Commission denied a request by one CLEC, NewSouth Communications, Inc. ("NewSouth") for clarification of the right of such carriers to impose tandem switching charges on IXCs, even where their end offices merely subtend an incumbent LEC ("ILEC" tandem). The *May 18 Order* (§ 21) held that non-rural CLECs may assess the end office switching rate -- at the same level as the competing ILEC -- when the CLEC originates or terminates calls to end-users, and those carriers may assess the tandem switching rate "when a [CLEC] passes traffic between two other carriers." The Commission reached this conclusion in light of its "long-standing policy" that LECs "should charge only for those services they provide." *Id.* As the *May 18 Order* stated (*id.*), under that policy a LEC whose switch is capable of performing both end office and tandem functions may charge "only for the function(s) actually provided to the IXC."

Cox now asks the Commission to clarify the appropriate application of access charges by a CLEC when that carrier has at least two switches in its serving area, and one of those switches performs tandem switching functions for IXC traffic. Cox contends (at 3) that in a network configuration in which one CLEC switch routes traffic to a separate CLEC switch, the CLEC should be entitled to charge an IXC for both the tandem and end-office switching rates for traffic completed to end users at the latter switch, which it asserts is "the only result that squares with the Commission's policy" announced in the *May 18 Order*. *Id.* at 4.

Cox's facile characterizations notwithstanding, the conclusion that its proposal accords with the *May 18 Order's* policy is far from ineluctable. As the Commission posited in that decision, under current network architectures in local exchange markets, a tandem switch generally routes calls between multiple carriers (thereby providing an IXC the benefit of access to more than one LEC) rather than

simply routing calls from the tandem switch carrier to itself. Moreover, to the extent that a CLEC's switch may provide both tandem and end-office functions, an IXC may elect to have direct trunking installed from its point of presence ("POP") to the end-office, thereby bypassing the purported need for any tandem function of the CLEC's switch.

The "clarification" that Cox requests could also create powerful perverse incentives for CLECs to engage in routing a call through several switches (claiming that these perform a "tandem" function) before delivering the call to the end-office serving a called party, and then charging an IXC both tandem and end-office switching access charges for that call. The same unnecessary routing from an end-office to a superfluous "tandem" could also apply in the case of traffic originated by the CLEC's subscribers.

In light of these serious concerns, the Commission should decline to issue the generic amplification of the *May 18 Order* that Cox requests in its petition. Any determination of the propriety of a CLEC's assessment of tandem switching charges on an IXC should be based on a concrete record that takes into account the specific facts of the network architecture at issue and whether that routing arrangement in fact provides economic, technical or other benefits to the IXC upon which such charges are assessed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich, do hereby certify that on this 24th day of August 2004 a copy of the foregoing "AT&T Comments on Petition of Cox Communications, Inc." was served by US first class mail, postage prepaid, on the parties listed below.

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