

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

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In the Matter of )

Petition for Declaratory Ruling and Rulemaking )  
Regarding IP-Enabled Dial-Around Calls from )  
Payphones )

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WC Docket No. 05-176

**REPLY COMMENTS OF AT&T CORP.**

David L. Lawson  
Paul J. Zidlicky  
SIDLEY AUSTIN BROWN & WOOD LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
Tel. (202) 736-8000

Lawrence J. Lafaro  
Judy Sello  
Martha Lewis Marcus  
AT&T CORP.  
Room 3A229  
One AT&T Way  
Bedminster, New Jersey 07921  
Tel. (908) 532-1846

*Attorneys for AT&T Corp.*

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Pursuant to 47 C.F.R. § 1.415, AT&T Corp. (“AT&T”) submits these reply comments in connection with the Petition of the American Public Communications Council (“APCC”).<sup>1</sup>

**INTRODUCTION AND SUMMARY**

The comments filed in this proceeding confirm three points. *First*, there is no legitimate basis for the Commission to address the proposals of the American Public Communications Council (“APCC”) in the course of a declaratory ruling separate and apart from the on-going rulemaking proceeding addressing IP-Enabled Services. APCC’s proposals relate to the regulation of IP-Enabled services and, if addressed at all, should not be considered in artificial isolation from that FCC proceeding.

*Second*, there is no reason for the Commission to retreat from its recent determination that interexchange carriers (“IXCs”) are not obligated to compensate payphone service providers (“PSPs”) for calls for which they are not the Completing Carrier. On this point, APCC recasts

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<sup>1</sup> See *Petition for Declaratory Ruling and Rulemaking Regarding IP-Enabled Dial-Around Calls from Payphones*, WC Docket No. 05-176 (filed Mar. 23, 2005) (“*Petition*”); see also Public Notice DA 05-1106 (rel. Apr. 21, 2005).

arguments that already have been considered and rejected by the Commission in its recent orders addressing the payphone compensation obligations of switch-based resellers.<sup>2</sup>

Finally, AT&T agrees with the commenters that there is no basis for the Commission to wade into a regulatory thicket regarding payphone calls that originate on the Internet when no such payphones exist currently, and where there is no basis for concluding that they will exist in the near future.

### ARGUMENT

#### **I. APCC'S PETITION SHOULD NOT BE ADDRESSED IN ARTIFICIAL ISOLATION FROM THE COMMISSION'S IP-ENABLED SERVICES PROCEEDING.**

AT&T agrees with Sprint that "it makes sense to address the declaratory ruling request together with other issues under consideration in the IP-Enabled Proceeding." Sprint at 3.<sup>3</sup>

APCC does not appear to disagree with this conclusion as a matter of first principles. Specifically, APCC recognizes that for a hypothetical category of IP-originated payphone calls—for which the Commission has "not yet ruled on the status of IP-originated communications"—"a rulemaking is the more appropriate vehicle." APCC at 2. APCC attempts to avoid that conclusion with regard to PSTN-originated payphone calls by arguing that the Commission "has addressed the regulatory classification of PSTN-originated calls involving an IP-enabled

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<sup>2</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Reconsideration*, 19 FCC Rcd. 21457 (2004) ("Switch-Based Reseller Reconsideration Order") (rejecting arguments of APCC that IXCs, rather than Completing Carriers, should be obligated to compensate PSPs); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 18 FCC Rcd. 19,975, ¶¶ 51-52 (2003) ("Switch-Based Reseller Order") (same).

<sup>3</sup> *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd. 4863 (2004) ("IP Enabled-Services Proceeding").

component in previous orders,” and therefore there is no need for a further rulemaking because the Commission can instead address APCC’s proposals through a declaratory ruling. *Id.* In doing so, APCC points to the Commission’s ruling on AT&T’s *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd. 7457 (2004) (“*Access Order*”), and argues that the Commission determined that “IP-enabled service providers must comply with the compensation rules to the same extent as any other entity in the transmission path.” *Petition* at 16; *id.* at 17 (“The Commission has already *conclusively* addressed the status of the PSTN-to-PSTN scenarios . . . in its *AT&T* ruling”) (emphasis added).

In other words, APCC contends that there is no need for the Commission to consider its proposal in connection with a rulemaking (*i.e.*, the *IP-Enabled Services Proceeding*) because the Commission already has “conclusively” “resolved the issue” in the *Access Order*. But that argument simply ignores the *Access Order*, in which the Commission made plain that its ruling was designed to provide clarity to the industry “pending the outcome of the comprehensive *IP-Enabled Services* rulemaking proceeding.” *Access Order*, ¶ 2. Indeed, the Commission explained that the *Access Order* would “in no way . . . preclude the Commission from adopting a different approach when it resolves the *IP-Enabled Services* rulemaking proceeding . . . .” *Id.*

Because the Commission already is considering questions regarding the appropriate regulatory framework for IP-Enabled services, it should address APCC’s proposals in connection with the *IP-Enabled Services Proceeding* and not through a separate declaratory ruling.

## **II. APCC SHOULD NOT BE PERMITTED TO IMPOSE UNWARRANTED OBLIGATIONS ON IXCS ACTING AS CONNECTING CARRIERS.**

AT&T agrees with commenters that “an intermediate carrier cannot be held responsible for the payphone compensation obligations of a downstream VoIP provider.” *Sprint* at 11. As

Sprint explains, APCC's contrary argument is merely another attempt by APCC improperly to impose payphone compensation obligations on IXCs.

The Commission recently rejected similar efforts by APCC to impose compensation obligations on IXCs when, as here, they act merely as Connecting Carriers. *See Switch-Based Reseller Reconsideration Order*, 19 FCC Rcd. 21457; *Switch-Based Reseller Order*, 18 FCC Rcd. 19,975. In those orders, the Commission explained that compensation should be paid by the “entity that: (1) is the primary economic beneficiary of PSP services; and (2) has control over the most accurate call completion data to compensate the PSPs.” *Switch-Based Reseller Reconsideration Order*, 19 FCC Rcd. 21457, ¶ 3 (quoting *Switch-Based Reseller Order*, 18 FCC Rcd. 19,975, ¶ 26). The Commission ruled that the Completing Carrier (and not the Connecting Carrier) therefore should be obligated to compensate PSPs for completed payphone calls. *Id.* In doing so, the Commission rejected APCC's proposal that IXCs be made liable to compensate PSPs in the event that PSPs cannot recover from the Completing Carrier. *Id.* ¶ 12. As the Commission put it, the failure by the Completing Carrier to provide compensation to the PSP “would not result in liability for payphone compensation shifting to another carrier.” *Id.*

That, however, is precisely what APCC proposes should occur in the event IP Service Providers are not obligated to pay payphone compensation. Such a result cannot be squared with the Commission's orders or the existing compensation regulations, which make plain that IXCs that do not “complete[.]” payphone calls are not obligated to provide compensation for them. *Switch-Based Reseller Order*, 18 FCC Rcd. at 20018 (quoting revised text of 47 C.F.R. § 1300(a)). Indeed, in the circumstances described by APCC, IXCs such as AT&T would be unable to determine whether calls that they hand-off to an IP service provider ultimately are completed and thus even eligible for payphone compensation. Nor would it be permissible to

shift payment obligations to IXCs in these circumstances because both the D.C. Circuit and the Commission have ruled that it is improper to impose compensation obligations on carriers in the name of administrative efficiency or because PSPs argue that they would not otherwise be compensated. *See Illinois Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555, 565 (D.C. Cir. 1997); *Fifth Order on Reconsideration* ¶¶ 82-83 (ruling that D.C. Circuit has held that requiring one carrier to bear burdens of another “is neither equitable nor . . . lawful”).<sup>4</sup>

### **III. THE COMMISSION SHOULD DECLINE TO SPECULATE ABOUT IP-ENABLED PAYPHONES THAT DO NOT EXIST.**

Finally, AT&T agrees with commenters that the Commission should decline APCC’s invitation to speculate how it would regulate payphones capable of providing IP-originated services even though, as APCC admits (at 28), there are no such payphones. *See* Qwest at 1; Sprint at 16-17; RBOC Coalition at 1, 5 (explaining that Commission should not address “hypothetical scenarios”). That is especially the case when, as here, there is “no such thing as an IP-enabled payphone,” and “no reason to believe that any such development is likely, let alone imminent.” RBOC Coalition at 5. In all events, APCC’s request should not be permitted to delay the Commission’s resolution of the *IP-Enabled Services Proceeding*. Sprint at 16; Qwest at 1; RBOC Coalition at 5.

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<sup>4</sup> *In re Implementation of the Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Fifth Order on Reconsideration & Order on Remand, 17 FCC Rcd. 21274, ¶ 82 (rel. Oct. 23, 2002) (“*Fifth Order on Reconsideration*”).

**CONCLUSION**

For these reasons, the Commission should (1) decline to address APCC's proposal through a separate declaratory ruling, (2) reject APCC's efforts to transfer compensation obligations onto IXCs, and (3) decline to address hypothetical scenarios relating to payphones that do not exist.

Respectfully submitted,

David L. Lawson  
Paul J. Zidlicky  
SIDLEY AUSTIN BROWN & WOOD LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
Tel. (202) 736-8000

/s/ \_\_\_\_\_  
Lawrence J. Lafaro  
Judy Sello  
Martha Lewis Marcus  
AT&T CORP.  
Room 3A229  
One AT&T Way  
Bedminster, New Jersey 07921  
Tel. (908) 532-1846

*Counsel for AT&T Corp.*

June 7, 2005

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Reply Comments of AT&T Corp. was served, by the noted methods, the 7th day of June 2005, on the following:

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A-325  
Washington, D.C. 20554  
**By Electronic Filing**

RBOC Payphone Coalition  
Michael Kellogg  
Aaron M. Panner  
Kellog, Huber, Hansen, Todd & Evans,  
P.L.L.C.  
1615 M Street, N.W., Suite 400  
Washington, D.C. 20036  
**By E-Mail**

Daphne Butler  
Qwest Services Corporation  
Suite 950 607  
14th Street, N.W.  
Washington, DC 20005  
**By E-Mail**

Jonathan Draluck  
iBasis, Inc.  
20 Second Avenue  
Burlington, MA 01803-4408  
[jdraluck@ibasis.net](mailto:jdraluck@ibasis.net)  
**By E-Mail**

Qualex  
Portals II  
Federal Communications Commission  
445 12th Street, S.W.  
Room CY-B402  
Washington, D.C. 20554  
**By E-Mail**

American Public Communications Council  
Albert H. Kramer  
Robert F. Aldrich  
Jacob S. Farber  
Dickstein Shapiro Morin & Oshinsky LLP  
2101 L Street, N.W.  
Washington, D.C. 20037  
**By E-Mail**

John Benedict  
Sprint Corporation  
401 9th Street, NW, #400  
Washington, DC 20004  
**By E-Mail**

/s/ Peter M. Andros  
Peter M. Andros