Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
SBC's and Vartec's Petitions for Declaratory	)	WC Docket No. 05-276
Ruling Regarding the Application of Access	)	
Charges to IP-Transported Calls	)	

Comments of Frontier Communications on SBC and Vartec Petitions

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Access to the Internet over Wireline Facilities	)	
	)	

Comments of Frontier Communications on SBC and Vartec Petitions

Introduction

Frontier Communications ("Frontier")[1] hereby submits its comments in the above captioned matter pursuant to the Commission's September 26, 2005 Public Notice.[2] For the reasons stated herein, Frontier supports the petition of SBC and opposes the petition of Vartec. In particular, SBC's position is fully consistent with the Commission's "IP-in-the-middle" decision in WC Docket No. 02-361, *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 (2004) ("AT&T Order"). The facts set forth in SBC's Petition are legally indistinguishable from the facts that underlie the AT&T Order. Vartec's Petition, on the other hand, shoots for the moon by

[1] Frontier is a mid-size holding company with incumbent local exchange carrier (ILEC) operations in 24 states. As an ILEC, Frontier operates in one of the most competitive (both residential and business) urban markets in the country (Rochester, NY), but the balance of its ILEC operations are located in several small, high cost rural markets throughout the United States. In most of its ILEC markets, Frontier operates under federal price cap regulation, but operates under NECA Average Schedules in some of its smallest rural markets; on an intrastate basis, Frontier mostly operates under a mix of traditional rate-base, rate-of-return regulation and alternative forms of regulation. Additionally, Frontier's affiliate, Electric Lightwave, LLC (ELI), is a leading competitive local exchange carrier (CLEC) and enhanced service provider, with local operations concentrated in six western states (in five of which, Frontier also operates as an ILEC), and long distance operations throughout the country. This somewhat unique mix of size, industry segment, geographic scope and business conditions allows Frontier special insights into the major issues confronting the Federal Communications Commission (the "Commission") and the industry in regard to intercarrier compensation and universal service.

[2] Public Notice, DA 05-2514 (released September 26, 2005).

attempting not only to avoid lawful, tariffed access charges on its interexchange carrier traffic, but also to turn the intercarrier compensation regime on its head with a novel proposal for terminating Incumbent Local Exchange Carriers ("ILECs") to pay Vartec for the termination of its traffic. Vartec's positions lack either a legal or a logical basis and should be rejected.

I. THE FACTS IN SBC'S PETITION ARE INDISTINGUISHABLE FROM THE FACTS IN THE AT&T ORDER, AND SBC'S PETITION SHOULD THEREFORE BE GRANTED.

In the AT&T Order, the facts were that the interexchange carrier (AT&T) converted ordinary phone-to-phone calls from voice or standard Time Division Multiplexing (TDM) protocol into Internet Protocol (IP) within its network for transport, and back into voice or TDM protocol for termination, with the second conversion again taking place within its network. The Commission decided that AT&T's service was a "telecommunications service" and therefore subject to access charges and not an "information service" because AT&T made no net protocol conversions and offered nothing more than voice transmission from one ordinary telephone set to another ordinary telephone set. More specifically, the Commission held that if a service: (1) uses ordinary CPE with no enhanced functionality; (2) originates and terminates on the PSTN; and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users, then the service is a "telecommunications service" subject to access charge.[3] The Commission also noted that its decision applies not only to a single interexchange carrier such as AT&T but also to a situation in which "multiple service providers are involved in providing IP transport."[4]

The facts in SBC's Petition are legally indistinguishable from the facts underlying the AT&T Order. As set forth in the court decision that is the basis of SBC's Petition, in which the

[3] AT&T Order, ¶1.

[4] AT&T Order, ¶19.

court deferred to the Commission's primary jurisdiction,[5] Vartec is a "dial-around" or "10-10" long distance carrier and Unipoint[6] (d/b/a Point One) is a least cost router hired by Vartec to transport and terminate Vartec's traffic. The progression of the calls is as follows: (1) the call originates on the PSTN from a user with ordinary CPE; (2) the user directs the call to Vartec using "dial around" or "10-10" dialing; (3) Vartec converts the call from voice or TDM protocol to IP; (4) Vartec hands off the call to Unipoint in IP format; (5) Unipoint transports the call in IP format and converts it back to voice or TDM protocol; (6) Unipoint hands off the call in voice or TDM protocol to the terminating local exchange carrier, possibly using a Competitive Local Exchange Carrier ("CLEC") as an additional intermediary; and (7) the terminating local exchange carrier delivers the call via the PSTN to the called party, who like the caller is using ordinary CPE.

These facts are no different from the facts in the AT&T Order except that multiple carriers are involved, which, as the Commission stated in the AT&T Order, makes no difference. The three essential elements are met in this situation: (1) both the calling and called parties use ordinary CPE with no enhanced functionality; (2) the call originates and terminates on the PSTN; and (3) the service involves no net protocol conversion and provides no functionality to the end user beyond the transmission of an ordinary voice call.

The only question remaining is which of the carriers in question are responsible to pay access charges to the terminating LEC. In the case at hand, one such carrier is clearly Unipoint. Unipoint is providing wholesale transport and termination services to Vartec. It receives compensation from Vartec for these services and it is responsible for completing the call at its expense as Vartec's agent, from the point Vartec hands the call to Unipoint all the way to the ultimate end user. This is a common situation in the telecommunications industry. Very

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[5] *See* the Memorandum and Order of the United States District Court for the Eastern District of Missouri, attached as Exhibit A to SBC's Petition.

[6] Another carrier in the same position as Unipoint in the federal court litigation was Transcom, but the case against Transcom was stayed due to Transcom's bankruptcy filing.

few interexchange carriers have their own trunks to each tandem in the United States, and many interexchange carriers own no trunks at all. In order to be able to terminate calls to any location in the United States, every carrier without ubiquitous trunking must hire one or more other carriers to transport and terminate its traffic. In general in these situations, it is the responsibility of the intermediary carrier, the wholesale transport and termination provider, to pay the applicable access charges at the terminating end of the call. The intermediary carriers are responsible to make all termination arrangements and to pay all termination costs, and they are paid to do so by the originating interexchange carriers. In the case at hand, Unipoint is no different from AT&T where AT&T terminates voice traffic to a local exchange carrier that originates from another carrier (such as a reseller) that does not have its own trunks into the relevant tandem. Both Unipoint and AT&T in this situation are paid by the originating interexchange carrier for transport and termination, and both Unipoint and AT&T are free to make whatever lawful arrangements they may choose to make in order to transport and terminate the traffic.

It is entirely irrelevant in this situation that Unipoint makes a net protocol conversion. If that fact made a difference, then all carriers could avoid all access charges by working in pairs, with one converting traffic to IP and the other converting traffic from IP. The AT&T Order makes it clear that this kind of arrangement does not evade access charges where overall, the call undergoes no net protocol conversion.

It is also entirely irrelevant in this situation whether Unipoint offers its services only to carriers as opposed to end users. Unipoint is paid to transport and terminate the traffic. In doing so it is acting as an interexchange carrier and is responsible for any charges applicable to the traffic that it delivers to the terminating local exchange carrier. As a provider of transport and termination services, Unipoint could, if it wished, deliver traffic directly to an end user and avoid the payment of terminating access charges. Where it chooses to use the PSTN facilities

of a LEC to meet its contractual obligation to deliver the traffic, there is no reason to allow it to escape its responsibilities for the payment of access charges.

SBC's Petition should therefore be granted. Under the facts of the case, Point One as a wholesale interexchange carrier must pay terminating access charges to SBC.

II. VARTEC'S PETITION IS UNSUPPORTED BY LAW OR LOGIC.

A. Under The Facts Of The Case, Vartec Is Responsible For Terminating Access Charges For Traffic It Terminates To Local Exchange Carriers Through Intermediary Agents.

The facts underlying the first portion of Vartec's Petition are the same as the facts described above. As fully discussed above, the traffic as a whole meets the criteria of the AT&T Order and access charges are due to the terminating local exchange carrier. IP conversions and IP transport are red herrings in this proceeding. The real issue is what carrier or carriers are responsible to pay the terminating local exchange carrier's access charges.

Vartec admits that it that it hires other carriers to transport and terminate its traffic, and claims that it is exempt from access charges on such traffic.[7] Vartec claims that because Unipoint or other carriers take over the responsibility for transport and termination, Vartec is insulated from liability.[8] As discussed above, the intermediary carrier providing transport and termination is indeed responsible for terminating access charges, and certainly the terminating local exchange carrier is not entitled to a double recovery. However, where the intermediary carrier fails to pay the terminating access charges for any reason including bankruptcy, the responsibility must flow back to the interexchange carrier that hired the intermediary carrier in the first place. The intermediary carrier is acting as Vartec's agent. It is perfectly permissible for Vartec as the principal and Unipoint as the agent to agree that Unipoint will pay the

[7] Vartec Petition, pp. 1-2.

[8] Vartec Petition, p. 3.

terminating access charges. However, where the agent fails in its responsibility, the principal remains liable. Vartec is not entitled to hire a third party, hand off its traffic and thereby escape all further responsibility for the traffic. Accordingly, the Commission should rule that the intermediary transport carrier is primarily liable for terminating access charges, but that the originating interexchange carrier is also liable for these charges to the extent not paid by the intermediary carrier. Vartec's argument that it is not the local exchange carrier's "customer" fails for a very simple reason – in fact Vartec is the local exchange carrier's customer through the actions of its agent, the intermediary carrier.

B. Vartec As An Intermediary Carrier Is Responsible For CMRS Originated Traffic.

In an inconsistent reversal of the position it takes in the first portion of its Petition, Vartec argues in the later portion of its Petition that when it acts as an intermediary carrier itself, it is not responsible for traffic that it accepts from other carriers, and in particular, from CMRS carriers. In the first part of its Petition, where Vartec is the originating carrier, Vartec takes the position that the intermediary carrier is responsible. In the later part of its Petition, where Vartec is the intermediary carrier, Vartec argues that the originating carrier is responsible. This is an excellent example of the logical games that carriers are playing across the United States to avoid the responsibility for any carrier to pay appropriate charges to the terminating ILEC.

Vartec does not clearly describe the facts of this situation, but apparently CMRS carriers hire Vartec as an intermediary transport and termination carrier to complete their calls to local exchange carrier customers on the PSTN, and Vartec hires further intermediary carriers that ultimately terminate the traffic to the local exchange carrier that serves the called parties. In the course of these multiple handoffs, the identity and nature of the originating carrier is lost, and Frontier believes that this confusion is intentional. If the Calling Party Number (CPN) is passed at all (and it frequently is not) to the terminating LEC, there is in most cases no way for the

terminating LEC to identify the originating carrier or to determine whether the traffic is wireline or wireless. The advent of number portability makes it impossible to use the CPN, even where it is available, either to identify the originating carrier or to identify the nature of the call as wireline or wireless. Under these circumstances, for the very reasons cited by Vartec in the first part of its Petition, Vartec is responsible as an intermediary transport and termination carrier for the terminating LEC's access charges.

Vartec is a knowing participant in the multi-carrier handoff scheme that strips this traffic of its identifying information, and it should not be permitted to hide behind the fact that some of the traffic in its convoluted pipeline[9] may be local in nature. If Vartec and its CMRS customers wish to avail themselves of the principle that intra-MTA calls are local for purposes of reciprocal compensation, then Vartec and its CMRS customers should enter into interconnection agreements with the terminating LECs and deliver the traffic in a manner that it can be identified and properly rated.

The Commission should not permit Vartec and other carriers in its situation to play the game of hiding the ball. What is happening is that traffic in this situation is being delivered to ILECs such as SBC and Frontier with no means of billing for it, with each carrier in the pipeline pointing at one or more of the other carriers as the responsible party. For example, a carrier in Vartec's position in West Virginia is delivering to Frontier, via a Verizon tandem, traffic from multiple cellular carriers that cannot be identified from the tandem records that Verizon provides to Frontier. The tandem records identify all of the traffic as long distance traffic delivered to Verizon by the carrier in question, not as cellular or any other kind of traffic.

If Vartec is indeed delivering intra-MTA cellular traffic to ILECs along with its wireline interexchange traffic, and if Vartec wishes to escape access charges on the intra-MTA cellular

[9] Frontier has been informed of a situation in which there were so many handoffs that one of the subsequent carriers in a multi-carrier pipeline inadvertently handed off the traffic to one of the earlier carriers in the pipeline, causing the traffic to spin in an infinite loop.

traffic, it should be required either: (1) to segregate the intra-MTA cellular traffic onto a separate trunk group and to provide sufficiently detailed records to the ILEC that permit the ILEC to recover applicable reciprocal compensation from the CMRS carriers in question; or (2) to provide industry-standard tandem records that allow the ILEC to use industry-standard billing software to bill on an automated basis the appropriate access charges and reciprocal compensation charges to the appropriate carriers for all traffic that is commingled on a single trunk group. In both cases, either Vartec or the originating CMRS carrier should further be required to enter into an interconnection agreement with the terminating ILEC. If Vartec is not required to follow these procedures, the game of hiding the ball will only continue and the ILECs will in many cases receive no compensation at all for terminating this traffic.

C. Vartec As An Intermediary Carrier Is Not Entitled To Charge Terminating Carriers For Its Traffic.

In an attempt to shoot for the moon, Vartec argues that when it is hired by a CMRS carrier as an agent to transport and terminate intra-MTA calls, the terminating ILEC should pay Vartec for Vartec's "transiting" service. This proposal should be summarily rejected for the following reasons:

(1) Vartec is not providing transiting services. Instead, it is acting as an interexchange carrier on behalf of the CMRS originating carriers. Vartec is commingling intra-MTA cellular traffic with its landline interexchange traffic. As an interexchange carrier agent for the originating carrier, it should meet the requirements described above if it wishes to exempt itself from access charges for the intra-MTA cellular calls. Under no circumstances should Vartec be allowed to charge terminating ILECs as if it were providing only transiting services. Vartec is simply not a "transiting carrier."

(2) Vartec would be receiving a double recovery. It is paid by the cellular carriers to transport and terminate their traffic. It is probably getting a little extra from the cellular carriers if the arrangement sufficiently hides the ball so that the ILECs are unable to bill reciprocal compensation to the cellular carriers. Vartec should not also be permitted to charge ILECs for the same service for which the cellular carriers are already paying it.

(3) Vartec would be permitted to create captive customers. In the Commission's Texcom decision[10] that forms the basis of Vartec's argument, Answer Indiana chose to use GTE North as its interconnecting LEC, and Answer Indiana ultimately ended up responsible for some of GTE North's non-traffic sensitive transiting costs for third-party carrier originated traffic. In the case at hand, Vartec proposes to become a self-appointed transiting carrier entitled to charge any carrier to which it chooses to deliver its intra-MTA traffic. Such a result would be unreasonable and inequitable in the extreme.

(4) The Texcom decision applies to a paging carrier's receipt of traffic from its connecting ILEC. It does not apply where an ILEC is receiving traffic from a carrier such as Vartec. In the Texcom case, the paging carrier was receiving compensation from its end users (the paging customers) for the traffic in question, and there was a reasonable basis to require it to take some responsibility for the transiting costs. ILECs, however, receive no compensation from their end users for terminating traffic, and there is no policy or legal basis to require them not only to terminate the traffic but also to pay for the privilege of doing so.

(5) Vartec is not directly interconnected to SBC the way GTE North was connected to Answer Indiana in the Texcom case. In the Texcom decision, GTE North was permitted to charge Answer Indiana only for some of the costs of non-traffic sensitive connecting facilities. Vartec admits that there are no such facilities when it admits that the traffic passes through the

[10] *Texcom, Inc. v. Bell Atlantic Corp.*, 16 FCC Rcd 21493 (2001), *recon. denied*, 17 FCC Rcd 6275 (2002).

facilities of additional carriers before it reaches SBC's network.[11] Accordingly, even if the Texcom decision applied, which it does not, Vartec does not have any facilities that would qualify for transiting charges to the terminating ILEC.

CONCLUSION

For the reasons stated herein, the Commission should issue the declaratory ruling requested by SBC and deny the declaratory ruling requested by Vartec. In addition, the Commission should declare that intra-MTA CMRS traffic delivered by an intermediary carrier such as Vartec to an ILEC is not exempt from access charges unless: (1) either the CMRS carrier or the intermediary carrier enters into an interconnection agreement with the ILEC that covers such traffic; and (2) the intermediary carrier either delivers the intra-MTA traffic over a separate trunk group and provides records allowing the ILEC to bill reciprocal compensation to the appropriate CMRS carriers, or delivers the intra-MTA traffic over a mixed trunk group and provides industry-standard tandem records to the terminating ILEC allowing it to use industry-standard software to properly bill in an automated fashion for all types of traffic on that trunk group.

Respectfully Submitted,

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[11] Vartec Petition, p. 12.

CERTIFICATE OF SERVICE

I, Gregg C. Sayre, do certify that on November 10, 2005, the aforementioned ***Comments of Frontier Communications on SBC and Vartec Petitions*** were electronically filed with the Federal Communications Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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