

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

In the Matter of)	
)	
SBC Petition for Declaratory Ruling)	
That UniPoint Enhanced Services, Inc.)	WC Docket No. 05-276
d/b/a PointOne and Other Wholesale)	
Transmission Providers Are Liable for)	
Access Charges)	
Petition for Declaratory Ruling that)	
VarTec Telecom, Inc. Is Not Required to)	
Pay Access Charges to Southwestern Bell)	
Telephone Company or Other Terminating)	
Local Exchange Carriers When Enhanced)	
Service Providers or Other Carriers)	
Deliver the Calls to Southwestern Bell)	
Telephone Company or Other Local)	
Exchange Carriers for Termination)	

**COMMENTS OF THE
VERIZON TELEPHONE COMPANIES¹**

The Commission should grant SBC's petition.² The Commission has held unequivocally that "when a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN, the interexchange carrier is obligated to pay terminating access charges . . . regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport."³ There can be no question, therefore,

¹ The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A to these Comments.

² Petition of the SBC ILECs for a Declaratory Ruling That UniPoint Enhanced Services, Inc. d/b/a PointOne and Other Wholesale Transmission Providers Are Liable for Access Charges, WC 05-276 (filed Sept. 21, 2005) ("*SBC Petition*").

³ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Servs. Are Exempt from Access Charges*, 19 FCC Rcd 7457, ¶ 19 (2004) ("*AT&T IP-in-the-Middle Order*").

that SBC is owed access charges for the PSTN-to-PSTN long distance calls carried by PointOne and other wholesale transmission providers, without regard to the fact that such providers may transport the call, in part, using IP. And this is true even where calls are routed to a CLEC that delivers the call to the ILEC over local interconnection trunks. *Id.* at ¶¶ 11, n.49, 19.

PointOne claims that it is an ISP, not an “interexchange carrier,” and therefore is not subject to access charges. *See* SBC Petition, Exhibit B at 4. But the fact that an entity may be an information services provider with respect to some of its service offerings does not exempt it from access charges when it is providing telecommunications services. *See, e.g., Southwestern Bell Telephone Co. v. FCC*, 19 F.3d, 1475, 1481 (D.C. Cir. 1994) (“one can be a common carrier with regard to some activities but not others”) (*quoting NARUC v. FCC*, 533 F.2d 601, 608 (D.C. Cir. 1976)). The Commission already has rejected arguments that the use of IP in the transport of these long distance calls somehow converts them into “enhanced” services or “information” services, and has stated clearly that these calls are “telecommunications services” to which access charges apply. *AT&T IP-in-the-Middle Order* ¶¶ 12-13, 19. And as SBC explains in detail, PointOne is acting as an interexchange carrier in the transport of these long distance calls. SBC Petition at 17-24. Accordingly, the Commission should grant SBC’s petition and make clear that PointOne and other wholesale transmission providers owe access charges when they transport IP-in-the-middle long distance calls.

1. Interstate long distance calls that originate on the PSTN, undergo no net protocol conversion, and terminate on the PSTN are telecommunications services to which interstate access charges apply. The Commission has already held that the type of long distance service at issue here is “a telecommunications service upon which interstate access charges may be assessed.” *AT&T IP-in-the-Middle Order* ¶¶ 1, 19. In that case, AT&T sought a declaratory

ruling that it was exempt from access charges on ordinary long distance calls that originated and terminated on the PSTN. According to AT&T, it was exempt because, when the call reached AT&T's network, it converted the call from its existing format into an IP format, transported the call over AT&T's Internet backbone, then converted the call back from IP format for delivery to the called party. *Id.* The Commission rejected AT&T's claim. It determined that the calls underwent no net protocol conversion and that the IP transport provided no enhanced functionality to end users. As a result, these ordinary long distance calls constituted a telecommunications service and were subject to access charges. *Id.*

The calls at issue here match the Commission's description of the service provided by AT&T – they originate on the PSTN with an end user dialing 1+ the called number from ordinary CPE, they are converted into IP format for transport, then converted back and terminated on the PSTN. The fact that, for the calls at issue here, there are multiple service providers involved does not lead to a different conclusion. The Commission was clear in the *AT&T IP-in-the-Middle Order* that its “analysis in [that] order applies to services that meet [the specified] criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.” *Id.* The Commission recognized that any other result could place AT&T (and other similar carriers) at a competitive disadvantage. *Id.* ¶ 19. As a result, SBC is clearly entitled to collect interstate access charges when it terminates this type of long distance call.

2. PointOne's claim that it is an ISP does not exempt it from paying access charges on ordinary long distance calls. PointOne claims that it is an “intermediary ISP,” not an interexchange carrier, and therefore is not obligated to pay access charges. SBC Petition, Exhibit B at 4. According to PointOne, it is a “wholesale provider of IP-enabled services to service

providers, including interexchange and local exchange carriers . . .,” offering “‘any-to-any’ services over its state-of-the-art, Advanced IP Communications Network.” *Id.* PointOne claims that this makes it “an ‘information’ or ‘enhanced’ service provider.” *Id.* PointOne is wrong.

PointOne offers a wholesale transmission service that “transmits and routes traffic between any origination and termination device.” *Id.* For the calls at issue here, PointOne is transporting ordinary long distance calls that originate on the PSTN in one exchange and terminate on the PSTN in another exchange. The calls are transmitting information “between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” They are, therefore, telecommunications, *see* 47 U.S.C. § 153(43), and the service PointOne offers is a telecommunications service. *Id.* at § 153(46). As discussed above, the fact that the transport PointOne offers is in IP format does not transform PointOne’s service into “information” service – the calls “undergo[] no net protocol conversion,” and PointOne’s service “provides no enhanced functionality to end users due to [its] use of IP technology.” *AT&T IP-in-the-Middle Order*, ¶¶ 1, 17.⁴

But even if the calls did involve a net protocol conversion, access charges would still apply. The Commission has squarely held that services that involve a so-called “net protocol conversion” do not fall within the scope of the ISP exemption when that conversion is “necessitated by the introduction” of new technology on a “piecemeal” basis in order to maintain

⁴ Even if PointOne offers some services that would qualify as “information services,” for example, allowing its customers to access stored data and to otherwise process, utilize, and retrieve it, that would not transform all of PointOne’s services into information services and does not exempt PointOne from the obligation to pay access charges where, as here, it is providing interstate telecommunications services that use “local exchange switching facilities.” *See* 47 C.F.R. § 69.5(b).

compatibility with the existing network and equipment.⁵ Indeed, the paradigm example of such basic protocol conversion service – “a carrier-provided end office analog to digital conversion that permits an analog terminal to be accommodated by a network that is evolving to digital status,”⁶ is directly analogous to IP-in-the-middle traffic. Just as the network previously evolved from analog to digital, the network today is evolving from circuit-switched to IP technology, and carrier-provided protocol conversions are needed to permit IP terminals and equipment and TDM terminals and equipment to communicate with one another.

The Commission also has made clear that the use of new packet switching transmission protocols, of which Internet protocol is one type, likewise does not bring services within the scope of the exemption, despite the fact that a net protocol conversion is necessarily involved whenever a customer of a packet-switched service exchanges traffic with a customer of a circuit-switched service.⁷ And it also has made clear that if a service that uses the local telephone network is not subject to the ESP exemption, access charges apply.⁸

⁵ *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 12 FCC Rcd 2297 ¶ 2 n.6 (1997) (citations omitted).

⁶ *Amendment to Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3072, ¶ 70 (1987).

⁷ See *Independent Data Communications Manufacturers Association, Inc., Petition for Declaratory Ruling that AT&T’s InterSpan Frame Relay Service Is a Basic Service*, 10 FCC Rcd 13717, ¶¶ 33-41 (1995).

⁸ *AT&T IP-in-the-Middle Order*, ¶ 4 n.13. There, the Commission explained that there are “three categories of protocol processing services that would be treated as basic services.” Namely, “protocol processing: (1) involving communications between an end user and the network itself . . . (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3) involving internetworking The first and third identified categories of processing services result in no net protocol conversion to the end user.” *Id.* (citations omitted). Plainly, then, the second category – the one relevant here – *does* involve a net protocol conversion but nonetheless is considered a basic telecommunications service, not an information service.

PointOne's service does not fit within the stated rationale for the ESP exemption. The Commission has justified the exemption on the theory that ESPs use the local network in a way that is analogous to local businesses – to communicate with and provide enhanced services to their own customers – rather than as a conduit for a voice telephone call between two end user customers. Accordingly, “it is not clear that ISPs still use the [public switched access] network in a way that is analogous to the way IXCs use it.”⁹ Here, in contrast, PointOne *does* use the PSTN “in a manner analogous to IXCs” – to provide a transmission path between two people who wish to speak to one another. Accordingly, the ESP exemption is not applicable and access charges apply under the Commission's rules.

3. PointOne is obligated to pay access charges under the Commission's rules. Section 69.5(b) of the Commission's rules (47 C.F.R. § 69.5(b)) provides that access charges “shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.” PointOne claims that it is an “end user,” not an interexchange carrier, and therefore not subject to switched access charges under the Commission's rules. SBC Petition, Exhibit B at 4. But that is clearly not the case.

First, as a matter of common sense, PointOne (like other similar wholesale providers) is an interexchange carrier. By definition, “interexchange” means between exchanges. PointOne is carrying calls that originate on the PSTN in one exchange and terminate on the PSTN in another. Moreover the Commission's rules define “interexchange” as including “services or facilities provided as an integral part of interstate or foreign telecommunications that is not described as

⁹ Brief for Federal Communications Commission at 71, *Southwestern Bell Tel. Co. v. FCC*, No. 97-2618 (8th Cir. Dec. 16, 1997) (internal quotations omitted); *see also Access Charge Reform*, 12 FCC Rcd 15982, ¶¶ 344-48 (1997).

‘access service’ for purposes of this part.” 47 C.F.R. § 69.2(s). The calls at issue here are PSTN-to-PSTN calls from one state to another – “interstate . . . telecommunications” – and the wholesale transport of those calls is an “integral part” of the telecommunications. Further, the service is not an “access service.” Under the Commission’s rules, access service “includes services and facilities provided for the origination or termination of any interstate or foreign telecommunication.” 47 C.F.R. § 69.2(b). PointOne is not originating or terminating the calls in question here, but instead is providing transport – carrying the calls – in the middle. PointOne is an interexchange carrier.

Contrary to PointOne’s claim, it is not, for these purposes, an end user. Section 69.2(m) of the rules defines “end user” as

any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone company shall be deemed to be an “end user” when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an “end user” if all resale transmissions offered by such reseller originate on the premises of such reseller.

47 C.F.R. § 69.2(m). For the calls at issue here, PointOne is not a “customer” of an “interstate or foreign telecommunications service.” Instead, PointOne is providing an integral part of such a service. For these calls, PointOne also is not using telecommunications service for administrative purposes. Nor is it operating exclusively as a reseller. For the calls at issue here, therefore, PointOne is not an “end user” under the Commission’s access rules.

Finally, PointOne is an interexchange carrier “that use[s] local exchange switching facilities for the provision of interstate or foreign telecommunications services.” Section 69.5(b). As discussed above, the services PointOne provides here are “telecommunications services.” Point One terminates these services using the ILEC’s local switching facilities. Whether it does so directly or indirectly through a CLEC, the call is an interstate call for which interstate access

charges are due. PointOne cannot avoid the fact that it is an interexchange carrier simply by contracting with a CLEC to hand the calls to the ILEC for termination. On the contrary, that does not alter the nature of the traffic being terminated. When interstate interexchange traffic is handed to the ILEC for termination, the ILEC must assess interstate switched access charges for terminating interstate calls. The Commission's access charge rules prescribe the rate levels that local exchange carriers are permitted to charge,¹⁰ require local exchange carriers to file tariffs reflecting those rates,¹¹ prescribe the individual rate elements that local exchange carriers must charge,¹² and require that local exchange carriers assess those charges on "interexchange carriers that use local exchange switching facilities for the provision of interstate . . . telecommunications services."¹³ The LECs' existing tariffs also require the payment of access charges to originate and terminate all interexchange calls, regardless of the provider. *See, e.g., Verizon Telephone Companies, Tariff F.C.C. No. 1, Section 6-Switched Access Service, at 6.1* ("Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's facilities, and to terminate calls from a customer's facilities to an end user's premises in the LATA where it is provided"). Accordingly, access charges apply to the interexchange traffic at issue here, and the fact that PointOne contracts with a CLEC to hand the traffic off to an ILEC for delivery merely means that both the interexchange carrier and any CLEC it uses to transmit the calls to the ILEC are jointly and severally obligated to pay the interstate access charges.

¹⁰ *See* 47 C.F.R. § 69.1 (providing that rates are governed by price cap rules).

¹¹ *See id.* § 69.3.

¹² *See id.* § 69.5.

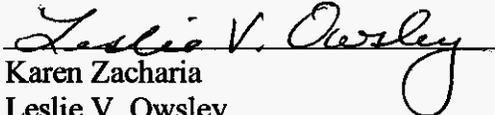
¹³ *See id.*

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For the foregoing reasons, the Commission should grant SBC's petition.

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.