

(“ILEC”) which terminate this traffic to its ILEC end user customers.³ Grande routes this traffic to the ILECs, including Alltel’s ILEC affiliate in Texas, over local interconnection trunk groups.⁴ These local interconnection facilities were established in accordance with an agreement that establishes the interconnection requirements and compensation obligations for the traffic exchanged between the parties.⁵

In its Petition, Grande asks the Commission to allow its customers to self-certify that the traffic they deliver to Grande originates in voice over Internet Protocol (“VoIP”) format (“Certified Traffic”). The Petition further requests that the Commission permit Grande to terminate this Certified Traffic over local interconnection facilities and to exempt it from access compensation obligations “regardless of whether the end points of the traffic are in the same or different states.”⁶

Grande’s Petition should be denied in its entirety. Alltel will demonstrate that self-certification is irrelevant because it incorrectly presumes that ILECs are not entitled to be compensated for the use of their networks. Contrary to Grande’s conclusions, the Commission has never ruled that interexchange traffic originated in IP format and terminated to the PSTN is not subject to the existing access

³ Grande Petition at 5.

⁴ Grande Petition at 8.

⁵ Interconnection Agreement negotiated pursuant to Sections 251 and 252 of the Act between Sugar Land Telephone Company (d/b/a Alltel) and Fort Bend Communications (assigned by Fort Bend Communications to Grande Communications on March 15, 2003). Approved by the Public Utility Commission of Texas on February 25, 2000 (the “Interconnection Agreement”).

compensation regime. Alltel will further demonstrate that access compensation is due on all interexchange interstate and intrastate traffic delivered by Grande because compensation obligations for this traffic are governed by Grande's interconnection agreements and the ILECs' lawful access tariffs.

II. Grande's Petition is Not Based on Current Law

Grande incorrectly assumes, under the guise of the ESP Exemption, that VoIP originated traffic is not subject to the Commission's access compensation rules⁷ when in fact the Commission has not determined that the traffic Grande seeks to designate as "Certified Traffic" is exempt from these compensation obligations. Contrary to Grande's assertions, the Commission believes that as a policy matter "any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP-network, or on a cable network."⁸ Clearly the timing of Grande's Petition is out of sequence and it is plainly a backdoor attempt to obtain the same relief from payment of access charges for IP originated traffic sought, and subsequently withdrawn, by Level 3 in its IP-Originated Forbearance Petition.⁹

⁶ Grande Petition at i.

⁷ Grande Petition at 13.

⁸ *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, 19 FCC Rcd 4863 (released March 10, 2004) at ¶61.

⁹ *In the Matter of LEVEL 3 COMMUNICATIONS LLC Petition for Forbearance Under 47 U.S.C. § 160(e) from Enforcement of 47 U.S.C. §251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266 (filed December 23, 2003).

Alltel agrees with SBC's comments in the Level 3 Petition proceeding stating that "[t]he ESP Exemption does not, and was never intended to, exempt the VoIP provider from paying terminating access charges when the call originates in IP, is subsequently converted to circuit-switched format and is delivered to the PSTN to terminate to a LEC's end-user customer as a normal, POTS voice telephone call."¹⁰ Therefore, until and unless the Commission changes its existing rules governing intercarrier compensation, access charges continue to apply to all interexchange traffic terminating on the PSTN and Grande's request for self-certification is moot.

III. Grande's Petition could be interpreted to include "IP in the Middle" traffic which the Commission has already determined is subject to the access charge rules

It is unclear from Grande's Petition whether traffic originated on the public switched telephone network ("PSTN") in time-division multiplexed ("TDM") format, subsequently converted to IP-format and transported by one of Grande's customers prior to delivery by Grande to an ILEC for termination is considered by Grande to have been "originated" on Grande's network in IP format and exempt from access compensation.

¹⁰ *In the Matter of LEVEL 3 COMMUNICATIONS LLC Petition for Forbearance Under 47 U.S.C. § 160(e) from Enforcement of 47 U.S.C. §251(g), Rule 51.701(b)(1), and Rule 69.5(b)*, WC Docket No. 03-266, Opposition of SBC Communications, Inc., WC Docket No. 03-266 (filed March 1, 2004) at 10.

Grande claims throughout its Petition that some or all of its traffic originates in IP format.¹¹ However, it is unclear how Grande defines the term “originates” with respect to VoIP originated traffic and it is unclear from Grande’s Petition whether Grande considers some or all of the traffic it receives from its self-proclaimed ESP customers to have been “originated” on Grande’s network. CLECs other than Grande have claimed, during the course of previous disputes related to similar intercarrier compensation matters with Alltel, that they consider all of the traffic received from their ESP customers to have been “originated” by the ESP because the ESP is the CLEC’s end user customer. These CLECs have made this claim in spite of the fact that the traffic is often originated by another carrier in another state and routed to the ESP prior to delivery to a CLEC for call completion to an ILEC.

Grande seems to define “originated” in a similar manner.¹² To prevent Grande (and other CLECs) from pursuing yet another escape route from paying compensation to ILEC’s for the use of their networks, the Commission should confirm, in accordance with its end-to-end analysis, that a call has only one point of origination to be used for determining the appropriate intercarrier compensation obligations¹³ and that CLECs may not create additional points of call origination

¹¹ Grande Petition at i, 4, 6, 7, and 17.

¹² Grande Petition at 13.

¹³ *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, WC Docket No. 02-361, 19 FCC Rcd. 7457 (released April 21, 2004) at ¶12.

based on their relationship with another carrier, regardless of the CLECs characterization of this carrier-customer relationship. If CLECs were given the latitude to create additional points of origination, they could simply partner with a self-proclaimed ESP to receive interexchange traffic and re-designate all interexchange traffic as local traffic (subject to reciprocal compensation rather than access compensation). Furthermore, the Commission should affirm that the existing law governing intercarrier compensation with respect to “IP in the middle” traffic applies to traffic which both originates and terminates on the PSTN.¹⁴

IV. Grande is liable for charges owed to Alltel under the terms of the parties’ Interconnection Agreement and Alltel’s tariffs

Alltel is compelled to respond to Grande’s allegations against Alltel in its Petition, although Alltel would prefer to resolve any pending disputes in accordance with the dispute resolution terms provided for in the parties’ Interconnection Agreement.

Grande alleges that Alltel disputes Grande’s delivery of Certified Traffic over local interconnection trunks, that Alltel has billed and Grande has disputed access charges for Certified Traffic and that Alltel has summarily denied Grande’s disputes. Additionally, Grande alleges that Alltel reserves the right to block the Certified Traffic if Grande does not pay the disputed charges. Alltel agrees with

¹⁴ Id.

each of these allegations with the exception of Grande's assertion that Alltel disputes Grande's delivery of Certified Traffic over local interconnection trunks.

Alltel, through an examination of the originating and terminating telephone numbers contained within its terminating billing records for the traffic delivered to Alltel over Grande's local interconnection facilities, has determined that Grande's traffic is comprised of both local and interexchange traffic. Furthermore, Grande's interexchange traffic is comprised of both interstate and intrastate traffic.

However, despite Grande's assertion to the contrary, Alltel has not taken any action to dispute Grande's delivery of non-local traffic (Certified Traffic) over these local interconnection facilities. Rather, Alltel has determined the appropriate jurisdiction of Grande's traffic by using the originating and terminating telephone numbers. Once Alltel determined the appropriate jurisdiction of the call, Alltel applied a rate from the appropriate intrastate or interstate access tariff and billed Grande for termination of Grande's non-local traffic.

The existing Interconnection Agreement approved by the Public Utility Commission of Texas between Grande and Alltel defines how the jurisdiction of traffic is determined¹⁵ and establishes the compensation obligations with regards to local and interexchange traffic exchanged between them.¹⁶ Furthermore, the Interconnection Agreement states that Grande and Alltel agree that the classification of traffic described in the Interconnection Agreement shall control

¹⁵ The Interconnection Agreement at Attachment 6: Compensation.

¹⁶ Id.

with respect to compensation obligations between the parties, regardless of the classification of traffic made by Grande with respect to its end users.¹⁷ Therefore, because the Interconnection Agreement specifically provides that the classification of Grande's traffic for intercarrier compensation purposes would not be affected by the Grande-ESP business relationship, Grande is liable for the payment of access charges.

Even though Alltel has complied with the provisions contained in their Interconnection Agreement and tariffs, Grande has refused to compensate Alltel for the termination of interexchange traffic. From January 2005 to April 2005, Grande simply asserted that it was delivering "local traffic" to Alltel, however Grande refused to provide Alltel any data supporting its assertion. In April 2005, Alltel provided Grande call detail records to support its charges and proved to Grande that its traffic was in fact interexchange traffic and therefore subject to Alltel's access tariffs. Only at that time did Grande claim that the traffic terminated to Alltel was VoIP originated traffic and not subject to access compensation obligations. Clearly Grande is searching for any perceived loophole in the existing Commission rules to avoid compensating Alltel for the use of its network.

V. Conclusion

The Commission should deny Grande's Petition in its entirety because the Commission, contrary to Grande's assertions, has not exempted VoIP originated

¹⁷ Id. at Attachment 6: Compensation, Section 1.1.

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Dated: December 12, 2005