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

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| In the Matter of | ) | |
| | ) | |
| Petition for Declaratory Ruling | ) | |
| Regarding Self-Certification | ) | WC Docket No. 05-283 |
| Of IP-Originated VoIP Traffic | ) | |

# BELLSOUTH'S OPPOSITION


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## BELLSOUTH'S OPPOSITION

BellSouth Corporation ("BellSouth"), on behalf of its affiliated companies, files these comments in response to the *Public Notice* issued in this docket.[1] BellSouth opposes the Petition for Declaratory Ruling filed by Grande Communications, Inc.[2] Besides being unfounded in law, Grande's petition seeks to have the Commission prejudge issues pending in the Commission's *IP-Enabled Services* proceeding.[3] Until the Commission establishes a unified regime of intercarrier compensation in its pending *Intercarrier Compensation* proceeding,[4] the Commission must make clear that interstate access charges apply equally to all services, including IP-enabled services that employ Voice over Internet Protocol ("VoIP"), that use the public switched telephone network ("PSTN") in the same way. In the meantime, the Commission should enforce its existing rules. It can do so in the context of this proceeding by

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1 *Pleading Cycle Established for Grande Communications' Petition for Declaratory Ruling Regarding Intercarrier Compensation for IP-Originated Calls*, WC Docket No. 05-283, *Public Notice*, DA 05-2680 (rel. Oct. 12, 2005).

2 Petition for Declaratory Ruling of Grande Communications, Inc. WC Docket No. 05- (filed Oct. 3, 2005) ("Grande petition").

3 *IP-Enabled Services*, WC Docket No. 04-36.

4 *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92.

denying the Grande petition and affirming that the services described therein are not entitled to exemption from the application of terminating access charges.

## INTRODUCTION AND SUMMARY

Grande wants the Commission to rule that Grande, a LEC, may rely upon a service provider-customer's self-certification that the traffic sent to Grande for ultimate termination over the PSTN is "enhanced services traffic" for the purposes of (1) selling its customer local services in order to terminate the traffic, and (2) insulating both Grande and its service-provider customer (and presumably any upstream carriers) from the payment of access charge liability to other LECs and other downstream carriers.

The Commission should deny the Grande petition. Mere reliance upon Grande's customer self-certifications that traffic is enhanced service traffic is insufficient to prevent unlawful access charge avoidance to downstream terminating LECs under existing rules. VoIP traffic that originates in IP format at the calling party's premises and crosses exchanges is subject to terminating access charges under the Commission's existing rules, even though it undergoes the protocol conversion necessary to terminate on the PSTN in time-division multiplexing ("TDM") format. To the extent that Grande transits such traffic to downstream LECs for ultimate termination to the called party, Grande must follow existing rules and procedures in allocating the appropriate costs of the access traffic with downstream LECs.

Grande provides no support for its contention that the traffic at issue is exempt from the payment of access charges. In the first place, although Grande does not acknowledge it, the ESP exemption applies only when ESPs use LEC facilities in a fundamentally different manner than IXCs, which is not the case here. Further, even though the traffic may undergo a format protocol

conversion, it is not the type of protocol conversion that automatically turns a telecommunications transport service into an information service. Under existing rules, downstream carriers may challenge the jurisdictional nature of Grande's "Certified Traffic" based on originating line information such as Calling Party Number ("CPN"), and if it appears to be access traffic, to collect access charges from Grande. Grande's petition fails to demonstrate that downstream terminating LECs can be assured that their interests are adequately protected by the self-serving "self-certifications" of putative enhanced services providers, particularly when Grande has not demonstrated that the traffic at issue qualifies, under existing law, for an exemption from the application of access charges.

In the *IP-Enabled Services* proceeding, the Commission should affirm that interstate access charges apply equally to all services, including IP-enabled services that employ VoIP, that use the PSTN in the same way. In the meantime carriers should be permitted to adopt effective mechanisms for preventing fraud in the collection of interstate access charges currently applicable to IP-enabled services that originate or terminate in circuit-switched format on the PSTN. A mere self-certification as proposed by Grande, without clarification of authorized fraud prevention measures, allocation of the burden of proof, and a commitment to enforce its rules, will not prevent providers from engaging in unlawful access charge avoidance schemes. It is imperative that, for traffic delivered from or to the PSTN by IP-enabled services providers, appropriate and effective fraud prevention mechanisms be in place. Grande's self-certification proposal is not appropriate, would not be effective, and must be denied.

## I. GRANDE IS SIMPLY DIVERTING ACCESS TRAFFIC OVER LOCAL TRUNKS

### A. Grande Accepts IP-Traffic for Termination Over the PSTN

Grande asserts that it is both a wholesale and retail provider of telecommunications services that, among other things: (1) provides termination services by accepting traffic from incumbent LECs ("ILECs"), competitive LECs ("CLECs"), interexchange carriers ("IXCs"), enhanced service providers ("ESPs"), and other carriers and providers that Grande in turn terminates to its own end user customers; and (2) forwards traffic to ILECs and CLECs for termination to their end user customers.[5] Grande gets certain service providers for whom it provides services to provide a self-declaration that the traffic it sends to Grande is enhanced services "Certified Traffic."[6]

Grande collects this Certified Traffic over dedicated facilities to individual customers, and, if Grande does not terminate the traffic to one of its own end users, the traffic is forwarded together "with all signaling received by Grande, *e.g.* calling party number ('CPN')," to a LEC that in turn either terminates the call or performs a transiting function for other LECs.[7] When Grande forwards Certified Traffic to LECs for termination, it does so over local interconnection trunk groups, and the Certified Traffic is mixed in with other local traffic.[8] Grande pays reciprocal compensation to the terminating LEC, exchanges the mixed traffic with other LECs on

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5 Grande petition at 5.

6 *Id.* at 7.

7 *Id.* at 8.

8 *Id.*

a bill and keep basis, or pays a transiting charge, depending on the interconnection agreements it has in place with downstream carriers.[9]

### B. Under Existing Rules Downstream Carriers Are Free to Assess Access Charges on This Traffic Depending Upon the End Points of the Call

Grande claims that some ILECs treat VoIP-originated traffic terminating on the PSTN as subject to terminating access charges "simply because it touches the PSTN, completely ignoring whether the traffic undergoes a net protocol conversion or otherwise includes enhanced functionalities" and therefore "prejudge" the questions pending before the Commission in separate proceedings related to IP-enabled services and intercarrier compensation.[10] Grande asserts that several ILECs have begun assessing access charges against Grande for Certified Traffic, and that it in turn has disputed all such bills.[11] Grande alleges that ILECs are ascertaining the jurisdictional end points of the call based on both originating line information, such as CPN, and the termination end point on the PSTN, thus determining that the calls are interexchange calls subject to access charges.[12]

The ILEC behavior, characterized by Grande as immoderate self-help, is well within the rights of those ILECs. Until the Commission rules otherwise, under current FCC rules the physical end points of the call determine the appropriate jurisdiction of the call for compensation purposes. Thus, if Grande accepts traffic from a VoIP or other IP-enabled services provider and sends that traffic to ILECs such as BellSouth for termination to called party end users, Grande

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9 *Id.*

10 *Id.* at 7. Of course, Grande seeks to "prejudge" these issues by eliciting a declaration from the Commission that when traffic originates as VoIP format, and terminates in TDM format, the traffic is enhanced services as defined in the Communications Act because the traffic "undergoes a net protocol conversion."

11 *Id.* at 8.

12 *Id.* at 9.

would pay BellSouth either interstate access, intrastate access, or reciprocal compensation, depending upon the end points of the call.

### C. The ESP Exemption Does Not Apply to the Traffic at Issue

Grande maintains that, although the Commission has not yet resolved whether traffic that originates in VoIP format and is completed to called parties on the PSTN is properly categorized as either an "information service" or a "telecommunications service," the Commission has taken an "interim" position that "IP telephony [is] generally exempt from access charges."[13] Grande's description of the access charge exemption is overbroad. It fails to acknowledge that under Commission precedent all users of interstate services – whether carriers or end users or whether enhanced service providers or telecommunications service providers – are subject to access charges (otherwise there would be no reason to exempt any subset of service customer).[14] It fails to acknowledge the limited scope of the exemption as characterized by the Commission in its orders,[15] its briefs[16] and which in turn was expressly relied upon by the Eighth Circuit,[17] all of which make clear that the exemption is limited to circumstances when an ESP purchases LEC facilities to allow the ESP's customers to access the ESP's enhanced services, not to participate in the transport of voice traffic over the PSTN for ultimate termination to individuals who are not

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[13] *Id.* at 15.

[14] *MTS and WATS Market Structure*, CC Docket No. 78-72 Phase I, *Memorandum Opinion and Order*, 97 FCC 2d 682, 763, ¶ 204 (1983) ("*MTS/WATS Market Structure Order*").

[15] *See, e.g., Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213 & 95-72, *First Report and Order*, 12 FCC Rcd 15982, 16132-33, ¶ 343 (1997) ("*Access Charge Reform Order*"), *petitions for review denied*, *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

[16] Brief for the FCC at 75-76, *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1997) (No. 97-2618) ("FCC Br.").

[17] *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d at 542 (8th Cir. 1998).

the ESP's customers. It fails to acknowledge the Commission's ruling that ESPs may act as ESPs for some purposes and as IXCs, fully subject to access charges, for other purposes.[18]

Finally, Grande acknowledges that in both events in which the Commission was called upon to determine whether access charges apply to specific alleged enhanced services, the Commission was unable to grant the relief requested by the erstwhile ESPs and instead declared that access charges clearly applied.[19] Yet Grande appears to take these two rulings as the "exception that proves the rule," rather than as indicia of the extremely narrow scope of the current ESP exemption. More egregiously, Grande fails to acknowledge Commission precedent in which the Commission makes clear that the fact that a net protocol conversion may take place in the context of PSTN call does not necessarily convert access traffic to enhanced services traffic entitled to an exemption from access charges.[20]

Under the Commission's current regulatory framework, the cost of the PSTN is borne equitably by all service providers that send traffic to the PSTN, irrespective of where the traffic originated. Granting the instant petition would disrupt both the existing regime and the process of measured, holistic reform that the Commission is charged with making after passage of the 1996 Act.

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[18] *Northwestern Bell Telephone Company Petition for Declaratory Ruling, Memorandum Opinion and Order*, 2 FCC Rcd 5986, 5987-88, ¶ 19 (1987) (exempting an interexchange carrier from access charges for that carrier's enhanced service offering where the offering qualified for an exemption).

[19] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, *Order*, 19 FCC Rcd 7457, 7459, ¶ 4 & n.13 (2004) ("*AT&T Declaratory Ruling*"); *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services; Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133 & 05-68, *Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 4826 (2005).

[20] *See, e.g., AT&T Declaratory Ruling* 19 FCC Rcd at 7459, ¶ 4, n.13 and authorities cited therein.

The service providers that are handing off "Certified Traffic" to Grande use the PSTN in the same way as any other interexchange carriers that seek to terminate interexchange calls. Other interexchange carriers pay access charges in recognition of the fact that their usage imposes costs on the underlying LEC network on which the call is terminated. The "Certified Traffic" providers' offerings constitute an interexchange service to which the current rules require that access charges be assessed. Indeed, access rules and regulations form the only lawful mechanism by which these toll providers must compensate access providers for the use of their facilities.

Grande simply may not rely on the limited ESP exemption as a basis for an argument that access charges have never applied to interexchange IP communications that terminate on the PSTN. From the very beginning, enhanced service providers, as end users, were part of the "expanding universe of liable entities" subject to reasonable and non-discriminatory access charges published in LEC tariffs. When it created the access charge regime, the Commission's "intent was to apply these carrier's carrier charges to interexchange carriers, and to all resellers and enhanced service providers."[21] And while the Commission's Part 69 rules were written in terms of carrier charges and end user charges, the access tariffs which implemented those rules did not restrict purchasers of access services based on the classification of the customer as an end user or interexchange carrier. From the outset, the Commission never intended to limit the application of access charges to just carriers:

> Some petitioners contend that enhanced services should not be subjected to access charges because the providers and users of those services did not receive sufficient notice that this proceeding might affect the amounts that they pay for access. We do not find that contention persuasive. The *Initial Notice* in this docket advised all persons that we

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21 *MTS/WATS Market Structure Order*, 97 FCC 2d at 711, ¶ 76.

> expected to examine all forms of access compensation for interstate and foreign telecommunications in a comprehensive manner. None of the subsequent *Notices* expressed any intention to narrow the scope of this proceeding. Moreover, the local business rate, or B-1, charges which have been paid for enhanced service access in the past merely represent another application of the method the telephone industry has traditionally used to obtain access compensation from FX customers. The *Second Supplemental Notice* clearly indicated that we viewed the relationship among FX, ENFIA, MTS, and WATS access compensation as a central problem that must be resolved in order to establish access compensation for MTS/WATS equivalent services. The use of B-1 rates for enhanced service access is part of the same generic problem, since enhanced service providers use local exchange facilities in the same or similar manner as do these services. Therefore, vendors of enhanced services should have known that any final decision in the access charge phase of this proceeding would be likely to affect the charges they pay for access.[22]

When an end user directly seeks to obtain access to local exchange facilities in order to terminate interstate communications, the end user must purchase an interstate service from an interstate tariff. Where an end user seeks to use the PSTN, the end user would purchase switched access, which is the only interstate tariff that offers use of the local exchange network for the termination of interstate communications.

The Commission created limited exceptions to the nondiscriminatory access charge scheme adopted in CC Docket No. 78-72. One exception was the leaky PBX, where an interstate communication over an interstate private line was routed through a PBX and then "leaked" into the local exchange network.[23] Another exception was the enhanced services exemption from access charges. The Commission was concerned that full application of access charges on certain private users at the outset could be disruptive. Accordingly, the Commission fashioned a transition plan that would ease the impact of access charges on private users who were paying

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[22] *Id.* at 763, ¶ 204.

[23] In that instance, the local carrier would not be able to identify and measure interstate minutes and assess access charges. To cover the cost of the interstate use of the local network, the Commission created the leaky PBX surcharge that was assessed on interstate private lines terminating in a PBX.

local business line rates for interstate access but otherwise would have to pay access charges once the access tariffs were implemented:

> Other users who employ exchange service for jurisdictionally interstate communications, including private firms, enhanced service providers, and sharers, who have been paying the generally much lower business service rates, would experience severe rate impacts were we immediately to assess carrier access charges upon them. One of our paramount concerns in fashioning a transition plan is the customer impact or market displacement that any proposed remedy might cause. Were we at the outset to impose full carrier usage charges on enhanced service providers and possibly sharers and a select few others who are currently paying local business exchange service rates for their interstate access, these entities would experience huge increases in their costs of operation which could affect their viability. The case for a transition to avoid this rate shock is made more compelling by our recognition that it will take time to develop a comprehensive plan for detecting all such usage and imposing charges in an evenhanded manner. We would envision that once a procedure is implemented by which the exchange carriers charge all access service users for their usage on an equal basis, the level of carrier access charges in general should fall as the universe of liable entities is expanded. For this reason also, it would be unreasonable immediately to increase as much as tenfold the charges paid by customers who do not presently come under the coverage of the current ENFIA tariff.[24]

Enhanced service providers, prior to the adoption of access charges, had been paying local business rates for the purpose of connecting to their enhanced services customers to deliver to those customers the enhanced service to which the customer subscribed. To the extent the enhanced service provider took its customer to an interstate database or otherwise involved interstate communications, the enhanced service provider obtained interstate services from interexchange carriers (and to the extent such carriers used local exchange facilities to deliver these services, access charges applied). For example, in a typical voice messaging service, the voice mail provider could provide an option that allows the customer to launch a call from the voice mail platform. If the call were an interstate interLATA call, access charges would apply notwithstanding that the call originated from an enhanced services platform. In the case of

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[24] *MTS/WATS Market Structure Order*, 97 FCC 2d at 715, ¶ 83.

transport providers using IP-enabled information services, where such transport services enable the information service provider's customers to communicate with any person via the PSTN, use of the PSTN does not fall within the limited access charge exemption created by the Commission since the use of the local network is not for the purpose of delivering an enhanced/information service to the information service provider's customer.

In 1997 the Commission decided to maintain what it originally characterized as a "transitional" exemption in spite of evolved (but still largely pre-VoIP) information service technologies because it was still not clear to the Commission at that point in time that "ISPs use the public switched network in a manner analogous to IXCs."[25] The Commission explained in its subsequent brief on appeal of the issue to the Court of Appeals:

> Although the LEC services or facilities used by the ISPs may be similar to those used by some companies that pay per-minute access charges, the ISPs do not use them in the same way or the same purposes . . . [T]he ISP's use of the LEC facilities is analogous to the way another business subscriber uses a similarly-priced local business line to receive calls from customers who want to buy that subscriber's wares that are stored in another state and require shipment back to the customer's location.[26]

The Eighth Circuit decision underlying that affirmation was its understanding that "the Commission's actions do not discriminate in favor of ISPs, which do not utilize LEC services and facilities in the same way or for the same purposes as other customers who are assessed per-minute interstate access charges."[27] As the Court observed:

> ISPs subscribe to LEC facilities in order to receive local calls from customers who want to access the ISP's data, which may or may not be stored in computers outside the state in which the call was placed. An IXC, in contrast, uses the LEC

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25 *Access Charge Reform Order*, 12 FCC Rcd at 16133, ¶ 345.

26 FCC Br. at 75-76.

27 *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d at 542.

> facilities as an element in an end-to-end long-distance call that the IXC sells as its own product to its own customers.[28]

Relying on its earlier *CompTel* decision, the Court stated that where two different sets of carriers seek to use LEC network services and facilities that might be "technologically identical," the services and facilities provided by the LEC are "distinct" if the carriers are making different uses of them."[29] And in explaining why it was permissible for the FCC to extend the transitional ESP exemption but not the transitional access charge rules favoring smaller long distance carriers over larger long distance carriers, the Eighth Circuit observed that in the latter case, the FCC was imposing inconsistent, allegedly transitional rates on entities (large and small IXCs) that essentially provided identical services, while in the former:

> the FCC is exempting from interstate access charges ISPs that, according to the FCC, utilize the local networks differently than do IXCs. The FCC has justified its decision to exempt ISPs from access charges paid by IXCs by noting the distinction between the manner in which these separate entities utilize the local networks.[30]

It is manifestly clear that the ESP exemption was never intended by this Commission or interposed by the appellate courts to permit discriminatory access charge treatment among entities that use the PSTN in identical ways.

In any event, Grande's reliance on the calls conversion from VoIP to TDM protocol as a basis for classifying "Certified Traffic" as "information services" is misplaced:

> 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

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28 *Id.* n.9

29 *Id.*, quoting 117 F.3d at 1073.

30 *Id.* at 544.

> introduction" of new technology on a "piecemeal" basis in order to maintain compatibility with the existing network and equipment . . . . 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.[31]

And, of course, the *AT&T Declaratory Ruling* affirmed the Commission's longstanding rule that protocol processing involving communications between an end user and the network itself, as well as those involving internetworking, result in no net protocol conversion.[32] There is absolutely no way that a carrier downstream from Grande can reasonably believe that Grande's customers who have certified their traffic because they allegedly involve protocol conversions have, in good faith, analyzed these conversions in the light of the Commission's existing rules.

In sum, Grande's arguments for the classification of VoIP originated traffic terminated as TDM traffic to end-users who are not ESP customers on the PSTN as "enhanced services" completely ignore well-established Commission precedent that compels a contrary result. As hollow as its basic argument is, this argument cannot form the basis to compel any LEC to "honor" an upstream carrier's self-certification that the traffic it has handed to Grande and others in TDM format originated in VoIP format by way of excusing any and all carriers in the call flow stream from liability for access charges.

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[31] *SBC's and VarTec's Petitions for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls*, WC Docket No. 05-276, Comments of Verizon at 4-5 (filed Nov. 15, 2005) (citing *Non-Accounting Safeguards Order* at n.6).

[32] *AT&T Declaratory Ruling*, 19 FCC Rcd at 7459, n.13 (defining "internetworking" as "conversions taking place solely within the carrier's network to facilitate provision of a basic service that result in no net conversion to the end user").

## II. IT IS INAPPROPRIATE TO REFORM ACCESS CHARGES ON A PIECEMEAL BASIS

The Grande petition appears to be premised on the flawed and unsustainable assumption that access charges do not apply to the traffic described in the petition. In the Commission's *IP-Enabled Services* proceeding, there is widespread support for the Commission's statement of policy: "As a policy matter, we believe that 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. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways."[33] A large number of commenters in that proceeding agree that if IP-enabled services use the PSTN and require a LEC to use its switches and other facilities to terminate a call that starts on an IP network (or originates a call that is then handed over to an IP network), the LEC should be compensated through access charges (or any future mechanism) just as it is compensated for performing the same functions to originate or terminate other interstate communications.[34] There is no legal or policy justification for a government mandate that allows some carriers to avoid access charges because of the technology they use, notwithstanding Grande's claims otherwise.

It is often remarked that "the Commission should not pick winners and losers" by applying different regulatory rules to competing entities. That fundamental insight compels the

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[33] *IP-Enabled Services*, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863, 4885, ¶ 33 (2004).

[34] *See, e.g.*, *IP-Enabled Services*, WC Docket No. 04-36, Time Warner Inc. Comments at 15-16; CWA Comments at 18-19; DJE Teleconsulting, LLC ("DJE") Comments at 5; General Communication, Inc. ("GCI") Comments at 15; Independent Telephone & Telecommunications Alliance ("ITTA") Comments at 6-7; NASUCA Comments at 70-73; Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO") Comments 2-6; Ohio PUC Comments at 34-35 (filed May 28, 2004).

conclusion that *all* providers that use the PSTN to originate or terminate calls should be subject to the same intercarrier compensation obligations, regardless of whether they use IP technology or circuit-switched technology. VoIP providers are providers of interstate communications services, and, to the extent they use the PSTN to terminate communications, they should have the same obligations as other interstate interexchange carriers, in order to avoid arbitrage and artificial advantages.

As the Commission itself explained in a related context, there is no sound policy reason to create "artificial incentives for carriers to convert to IP networks. Rather than converting at a pace commensurate with the capability to provide enhanced functionality, carriers would convert to IP networks merely to take advantage of the cost advantage [of avoiding access charges] . . . . IP technology should be deployed based on its potential to create new services and network efficiencies, not solely as a means to avoid paying access charges."[35]

The proper way to address the appropriate compensation for IP traffic is not through the creation of arbitrage opportunities through piecemeal adjudication of declaratory ruling petitions such as the instant one, but rather by the Commission completing its *IP-Enabled Services* proceeding. At the same time, the Commission should continue its efforts to reform the current Intercarrier compensation system, particularly when the establishment of a unified Intercarrier compensation regime would make it unnecessary to distinguish IP traffic from other types of traffic. In the meantime, the Commission should do nothing that would prevent carriers from adopting effective mechanisms for preventing fraud in the implementation of the Commission's current rules, which require that the compensation for IP calls that originate or terminate in

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[35] *AT&T Declaratory Ruling*, 19 FCC Rcd at 7469, ¶ 18.

circuit-switched format on the PSTN depend upon the end points of that call.[36] A mere certification of the variety advocated by Grande, without clarification of authorized fraud prevention measures, allocation of the burden of proof, and a commitment to enforce its rules, will not prevent providers from engaging in unlawful access charge avoidance schemes.[37]

## CONCLUSION

For the foregoing reasons, the Commission should deny Grande's petition. Besides being premised upon a fundamental misunderstanding of the ESP exemption, Grande's petition would require the Commission to prejudge intercarrier compensation issues for use of the PSTN by IP-enabled service providers currently pending in the Commission's *IP-Enabled Services* proceeding.

Respectfully submitted,

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36 *IP-Enabled Services*, WC Docket No. 04-36, SBC Comments at 80 (filed May 28, 2004).

37 *Id.*

## CERTIFICATE OF SERVICE

I do hereby certify that I have this 12th day of December 2005 served the following with a copy of the foregoing **BELLSOUTH'S OPPOSITION** via electronic filing and/or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

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