

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of Frontier’s Petition )  
for Declaratory Ruling Regarding the )  
Application of Access Charges to ) WC Docket No. 05-276  
IP-Transported Calls )

**COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. (“QCII”), on behalf of its affiliates Qwest Communications Corporation (“QCC”), Qwest LD Corporation (“QLDC”) and Qwest Corporation (“QC”) [hereafter referred to jointly as “Qwest”]<sup>1</sup>, hereby files these comments in connection with the Petition of Frontier Telephone of Rochester, Inc. for Declaratory Ruling (the “Frontier Petition”) and the related primary jurisdiction referral<sup>2</sup> from the United States District Court for the Western District of Missouri regarding the application of access charges to IP-transported calls (the “Referral”).<sup>3</sup>

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<sup>1</sup> QCC, a subsidiary of QCII, an interexchange carrier (or “IXC”) provides intraLATA and interLATA long distance service; QLDC is a reseller of both intraLATA and interLATA long distance service; and QC is the local exchange carrier (“LEC”) subsidiary of QCII and also provides intraLATA service.

<sup>2</sup> *Frontier Telephone of Rochester, Inc. v. USA Datanet Corp.*, No. 05-CV-6056 (CJS), Decision and Order (D.N.Y. Aug. 2, 2005).

<sup>3</sup> This matter was consolidated in this docket with the Petition of the SBC ILECs for a Declaratory Ruling, WC Docket No. 05-276, filed Sept. 19, 2005 (correction filed Sept. 21, 2005) (the “SBC Petition”) and the VarTec Telecom, Inc. Petition for Declaratory Ruling, WC Docket No. 05-276, filed Aug. 20, 2004 (the “VarTec Petition”) due to the similarity of issues raised therein. See *Public Notice*, Pleading Cycle Established for Frontier’s Petition for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls, DA 05-3165, rel. Dec. 9, 2005.

## I. INTRODUCTION AND SUMMARY

The Frontier Petition and the Referral present a request to the Federal Communications Commission (the “Commission”) for a declaratory ruling as to one of the basic issues already presented squarely to the Commission via the SBC and VarTec Petitions and which issue has been fully briefed to the Commission. That is the issue of whether ordinary long distance calls transported, in part, using IP technology are “enhanced” services exempt from access charges because IP technology is used in the transmission of that traffic. As Qwest demonstrated in its comments in connection with those other petitions, this issue has already been resolved by the Commission’s April 21, 2004 AT&T “IP-in-the-Middle” Declaratory Ruling (hereafter, the “IP-in-the-Middle Ruling”) ruling.<sup>4</sup> In that decision, the Commission made it unambiguously clear that access charges apply to such traffic and that this is so regardless of whether only one interexchange carrier is involved in transporting the traffic or multiple service providers are involved.<sup>5</sup> There was overwhelming agreement on this issue in the extensive comments filed in connection with the SBC and VarTec Petitions.<sup>6</sup> Accordingly, the Commission should grant

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<sup>4</sup> *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457, 7457-58 ¶ 1 (“IP-in-the-Middle Ruling”).

<sup>5</sup> *Id.* at 7469-70 ¶ 19.

<sup>6</sup> These Comments were filed on or around Nov. 10, 2005 in WC Docket No. 05-276 and Reply Comments were filed on Dec. 12, 2005. *See, e.g.*, ACS of Alaska, Inc., ACS of Fairbanks, Inc., ACS of the Northland, Inc. and ACS of Anchorage, Inc. at 1-3; AllTel Corporation at 2-3, 6-9; BellSouth Corporation at 4-6, 13-17, *and see* BellSouth Reply at 6; CenturyTel, Inc. at 1-4; Cincinnati Bell Telephone Company LLC at 3-4, 6; Cinergy Communications Company at 3-4; EarthLink, Inc. at 4; Frontier Communications at 2-3; Global Crossing Telecommunications, Inc. at 13, *and see* Global Crossing Reply at 9; Independent Telephone & Telecommunications Alliance, National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, United States Telecom Association and Western Telecommunications Alliance at 2-6 *and see* their Reply at 1-2; John Staurulakis, Inc. at 2-5; Level 3 Communications, Inc. at 6-7; NASUCA, Office of the Ohio Consumers’ Counsel at 3-5, n. 13, *and see* NASUCA Reply at 2; NuVox Communications, XO Communications and

Frontier's request for a declaratory ruling clarifying that the traffic at issue here is subject to tariffed access charges.<sup>7</sup> While this issue can also be resolved by Commission action in either or both of the *IP-Enabled Services* proceeding or the *Intercarrier Compensation* rulemaking proceeding,<sup>8</sup> the Commission should not delay. Instead, it can and should act quickly to resolve this issue in order to eliminate the current potential for some carrier to avoid tariffed charges based on a proclaimed lack of clarity.

## II. ARGUMENT

### A. The Commission's "IP-In-The-Middle" Ruling

Qwest will not restate the extensive background discussion regarding the IP-in-the-Middle Ruling contained in its comments filed in connection with the SBC and VarTec Petitions. As discussed at length there and in numerous other comments filed in this docket, the IP-in-the-Middle Ruling held that IP-in-the-middle long distance calls, which begin and end on the Public Switched Telephone Network ("PSTN") and involve no net protocol conversion, are "telecommunications services" subject to access charges. The Commission emphasized that its ruling applied to any "interexchange service that: (1) uses ordinary customer premises equipment (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

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Xspedius Communications, Inc. at 2-3; Pac-West Telecomm, Inc. at 2-4; SBC Communications Inc. at 1-3, 7, 9-17, *and see* AT&T Inc. (formerly SBC) Reply at 5; United States Telecom Association at 3-6; Verizon telephone companies at 1-3, 3-6, *and see* Verizon Reply at 1-2; WilTel Communications, LLC at 2-5.

<sup>7</sup> Qwest's comments address only this issue -- whether or not access charges apply to this type of traffic -- and do not address the additional issues raised in Frontier's Petition relating to how Frontier's access tariff applies to this traffic.

<sup>8</sup> *And see In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004); *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

users due to the provider's use of IP technology.”<sup>9</sup> The Commission expressly ruled that the use of IP to transmit ordinary long distance calls does not transform those calls into “enhanced” services exempt from access charges.<sup>10</sup> Moreover, with respect to multi-carrier scenarios, the Commission, in the IP-in-the-Middle Ruling, stressed that it wanted to make unambiguously clear that there should be no disparity in the treatment of this type of service for access charges purposes based on the number of carriers involved:

Our analysis in this order applies to services that meet these three criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved.<sup>11</sup>

**B. The Traffic At Issue**

As is described in detail at pages five and six of the Frontier Petition, the traffic at issue in the Frontier Petition and the Referral is identical to that at issue in the IP-in-the Middle Ruling.<sup>12</sup> The traffic at issue here is ordinary long distance traffic that is transported using IP technology in part of the traffic flow. As in the IP-in-the-Middle Ruling, the traffic originates and terminates on the PSTN without a net protocol conversion, uses ordinary CPE with no enhanced functionality and provides no enhanced functionality to end users due to the use of IP technology.

**C. The Traffic At Issue Here Is Not Subject To The Enhanced Service Provider (“ESP”) Exemption And Is Not Exempt From Access Charge Liability**

USA Datanet's (“Datanet”) contention that it is an ESP qualifying for the ESP exemption from liability for access charges should, like similar contentions made by Point One in connection with the SBC and VarTec Petitions, be rejected as patently frivolous. The

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<sup>9</sup> IP-in-the-Middle Ruling, 19 FCC Rcd at 7457-58 ¶ 1.

<sup>10</sup> *Id.* at 7465-66 ¶ 13, 7468-69 ¶ 18.

<sup>11</sup> *Id.* at 7457-58 ¶ 1, 7469-70 ¶ 19.

<sup>12</sup> Frontier Petition at 5-6.

Commission, in the IP-in-the-Middle Ruling, has already ruled that this type of traffic -- ordinary long distance calls transported, in part, using IP technology -- is not an “enhanced” service despite the fact that IP technology is used in the transmission of that traffic. Moreover, the Commission made it unambiguously clear that the IP-in-the-Middle Ruling “applies to services that meet these three criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved.”<sup>13</sup>

Nor does Datanet present any cognizable argument as to why this traffic should be exempt from access charges. As Frontier points out, the “only distinction between Datanet’s service and AT&T’s service ... is that Datanet requires its customers to use ... seven-digit Feature Group A dialing.”<sup>14</sup> This is the only distinction the District Court could identify in its Referral.<sup>15</sup>

However, this is not a relevant distinction. The traffic falls squarely within the IP-in-the-Middle Ruling. It uses ordinary CPE with no enhanced functionality, originates and terminates on the PSTN and undergoes no net protocol conversion. The traffic can not be classified as an enhanced or information service. Nor does it make any difference, as described above, that multiple service providers are involved

In light of the above, the Commission should reconfirm that a wholesale transmission provider like Datanet is not exempt from liability for access charges based on the ESP exemption and is, in fact, exposed to access charge liability on an equal plane with any other transmission provider.

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<sup>13</sup> IP-in-the-Middle Ruling, 19 FCC Rcd at 7457-58 ¶ 1, 7469-70 ¶ 19.

<sup>14</sup> Frontier Petition at 5.

<sup>15</sup> Referral at 8-9.

**D. Many Theories To The Contrary Exhibit a Misunderstanding Of The ESP Exemption**

The so-called “ESP exemption” permits an enhanced (or information) service provider to connect an ESP point of presence (“POP”) to local exchange switching facilities on the same basis as an end user connects its premises (via customer premises equipment). When a carrier provides transport to an ESP from a remote location to a local exchange switch, the identical access charge treatment applies as would apply when a carrier brings other remote traffic to the exchange. There is no magic to the ESP exemption. Those parties who claim that, if they are providing an enhanced service, this service automatically is exempt from payment of carrier’s carrier charges notwithstanding the location of their POPs simply misunderstand and misstate the true nature of the ESP exemption. As part of the grant of Frontier’s Petition, the Commission should (again) clarify this simple but vital point.

**III. CONCLUSION**

For the foregoing reasons, Qwest respectfully requests that the Commission take the action described herein.

Respectfully submitted,

QWEST COMMUNICATIONS  
INTERNATIONAL INC.

By: Timothy M. Boucher  
Craig J. Brown  
Timothy M. Boucher  
Suite 950  
607 14<sup>th</sup> Street, N.W.  
Washington, DC 20005  
(303) 383-6608

Its Attorneys

January 9, 2006

## CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.** to be 1) filed with the FCC via its Electronic Comment Filing System in WC Docket No. 05-276, 2) served via e-mail on Ms. Jennifer McKee, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission at [jennifer.mckee@fcc.gov](mailto:jennifer.mckee@fcc.gov), 3) served via email on the FCC's duplicating contractor Best Copy and Printing, Inc. at [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com), and 4) served via First Class United States mail, postage prepaid, on the parties listed on the attached service list.

/s/ Richard Grozier  
Richard Grozier

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Kenneth F. Mason  
Frontier Communications  
180 South Clinton Avenue  
Rochester, NY 14646-0700

Gregg C. Sayre  
Frontier Communications  
180 South Clinton Avenue  
Rochester, NY 14646-0700