



# Protecting Universal Service From Misapplication of the ESP Exemption

Granting Embarq's Petition

WC Docket No. 08-8

Denying FGIP's Petition

WC Docket No. 07-256

# Embarq's Petition

- Embarq seeks forbearance to ensure the ESP exemption is not misapplied.
- The ESP exemption has never properly applied to IP-to-PSTN voice calls.
  - The regulation was created to exempt links between ESPs and *their own subscribers*.
    - It has never applied to voice calls to nonsubscriber third parties on the PSTN.
    - True ESPs don't use the PSTN in the same way as carriers; they're more like business end users.
  - The exemption has never applied to carriers.
    - It does not apply to carriers delivering voice calls for termination on the PSTN.
    - ESPs have no rights to interconnect under 47 USC § 251.

# Access Charges Are Integral To Universal Service.

- Access charges are essential to support Universal Service.
  - FCC has expressly approved access charges as just and reasonable.
  - Access revenue accounts for the large majority of support for operating, maintaining, and upgrading the PSTN in high-cost and rural areas.
    - ILECs have CoLR obligations that compel service in uneconomic areas.
    - Much of ILECs' capital expenditures are in network that's uneconomic without implicit support of access revenue.
  - Access revenue remains essential to support service to and investment in high-cost and rural areas

# Access Charges Are Integral To Universal Service.

- *USF Contribution Order* found interconnected VoIP shares the obligation to support Universal Service.
  - FCC recognized interconnected VoIP providers benefit from the PSTN.
  - FCC held competitive neutrality compels that Interconnected VoIP support the PSTN through access charges.
  - FCC found any other conclusion would distort the market and reward regulatory arbitrage.
  - DC Circuit affirmed.
- It would be arbitrary and capricious to exempt IP-to-PSTN voice traffic from the access charge regime.

# IP-to-PSTN Calls Are Subject To Access Charges Under Existing Law.

- Access charge rules govern all voice traffic connected to the PSTN.
- The ESP exemption doesn't extend to carriers sending IP-originated voice traffic to the PSTN.
- Interconnected VoIP is functionally no different than more traditional voice services supported by the PSTN.

# Some Parties Mischaracterize The ESP Exemption.

- Industry practice confirms that the ESP exemption does not apply to interconnected VoIP calls.
  - The great majority of IP-to-PSTN voice traffic is properly contributing to the PSTN through access charges.
- Too many providers, however, are over-extending claims to the ESP exemption.
  - Embarq and other LECs are seeing a growing number of disputes.
  - Misapplication of the ESP exemption threatens needed investment in local networks, especially in rural America.
- Interconnected VoIP involves no net protocol conversion.
  - These calls originate and terminate as voice.
  - These calls are delivered by interconnecting carriers in TDM.
  - Use of IP in originating a call isn't a net protocol conversion any more than use of ATM or frame relay.

# IP Technology Doesn't Change The Nature Of A Call.

- IP-originated calls are no different from other voice calls terminated on the PSTN.
  - Interconnected VoIP is marketed as a substitute for more traditional phone service.
  - When delivered to the PSTN, IP-originated are in TDM format and indistinguishable from any other voice calls.
  - IP is just a technology used in originating the call, like analogue or digital.
  - IP-originated voice calls are not “enhanced services.”
- IP is already becoming standard technology.
  - VoIP accounts for some 15M cable telephony lines alone.
  - ILECs (including Embarq) increasingly utilize IP technology in their own networks.
  - Any business using a T1 can originate voice calls in IP, but that traffic isn't exempt from access charges.

# Competitive Neutrality

- Misapplication of the ESP exemption hurts consumers and undermines competition.
  - ESP exemption was never meant to give particular a class of competitors an artificial advantage, simply because of the technology they choose to use.
  - Fairness and competitive neutrality call for the FCC to use forbearance to prevent misapplication of the ESP exemption.

# “IP Innovation”: A Red Herring.

- Innovation doesn't justify misapplying the rules.
  - Access rules don't change simply because of the technology used when originating a call off the PSTN.
  - Innovation has thrived even with all competitors facing the same rules.
  - FGIP and others simply want an artificial advantage in the marketplace.
- Embarq supports intercarrier comp and USF reform.
  - But reform must be done comprehensively.
  - In the meantime, it's wrong for some players to pretend the rules are other than what they are.

# Embarq's Petition Ensures Just, Reasonable, Nondiscriminatory Charges.

- It'd be unjust, unreasonable, and discriminatory if IP-to-PSTN calls didn't contribute the same support as traditional voice services.
  - “The cost of the PSTN should be borne equitably among those that use it in similar ways.” *IP Enabled Services Order* at ¶ 61.
- The CALLS Order determined appropriate access charges and found them “just and reasonable.”
  - Embarq's forbearance will ensure compliance with long-standing rules, until the FCC completes comprehensive intercarrier compensation and universal service reform.
- Over-extending the ESP exemption under-compensates ILECs for use of the PSTN.
- Embarq's forbearance will promote just, reasonable, and nondiscriminatory charges, by minimizing regulatory arbitrage.
  - Forbearance will reduce discrimination by reiterating that all providers are subject to the same rules when terminating voice calls to the PSTN.

# Embarq's Petition Benefits Consumers.

- The ESP exemption, misapplied to IP-to-PSTN voice calls, isn't necessary to protect consumers.
- Consumers will be harmed if forbearance isn't granted, especially in rural America.
  - Embarq's forbearance will promote competition.
  - Embarq's forbearance will protect investment in the PSTN and promote broadband deployment in rural areas.

# Embarq's Petition Is In The Public Interest.

- Forbearance from the ESP exemption on any IP-to-PSTN voice traffic is in the public interest.
  - Forbearance would promote and enhance competition.
    - FCC and Joint Board have consistently recognized the importance of competitive and technological neutrality.
  - Forbearance would reduce regulatory arbitrage.
    - Forbearance would minimize disputes and would be consistent with other FCC steps to discourage arbitrage.
  - Forbearance would protect investment in the PSTN, particularly in rural America.
    - Failing to stop regulatory arbitrage will only discourage network investment in rural America.

# Forbearance Should Apply To:

- (1) Any FCC orders to the extent anyone may argue they create an exemption for access charges for IP-to-PSTN voice calls.
  - 1983 *Access Charge Order*
  - 1988 *ESP Order*
  - 1997 *Access Charge Reform Order*
  - Any subsequent orders, to extent language might be interpreted to justify applying the ESP exemption to such traffic.
- (2) 47 CFR § 69.5(a) to extent any service provider might claim IP-to-PSTN traffic qualifies it as an end user, rather than paying access under § 69.5(b).
- (3) 47 USC § 251(b)(5) to extent any service provider might claim non-local IP-to-PSTN traffic is subject to reciprocal compensation.

## Feature Group IP Fails § 10.

- FGIP's petition is improper.
  - The FGIP petitioners lack standing under § 10.
  - FGIP can't seek forbearance from rules that apply to another, different class of carrier.
  - Forbearance can't invalidate another carrier's tariffed charges.

## FGIP Fails § 10.

- FGIP fails to show forbearance from enforcing access rules would be in the public interest.
- FGIP fails to show enforcing access rules on interconnected VoIP calls is unnecessary to ensure just and reasonable and nondiscriminatory charges.
- FGIP fails to show that enforcing access rules is unnecessary to protect consumers.