suppress[ed] demand for inter[exchange] . . . services."[70] Second, for the same reason, the rate structure attracted inefficient "bypass" of the incumbent LEC's exchange access network.[71] And, third, by limiting the non-traffic sensitive costs that LECs could recover on a flat-rate, per-line basis, the rate structure artificially suppressed local exchange rates and thereby deterred competitive entry.[72]

The Commission long ago recognized the inefficiencies associated with this historical rate structure, and, in the wake of the 1996 Act, it moved to address it at the federal level. In particular, after initiating access-charge reform in the 1997 *Access Charge Reform Order*, the Commission adopted the *CALLS Order* in 2000, which put in place a range of access-charge reforms intended in large part to "remov[e] implicit subsidies from the interstate access charge system."[73] The Commission accomplished this primarily by reducing switched access charges over time, while permitting increases in the SLC charged to residential and single-line business end users to $6.50 and, at the same time, establishing an explicit universal service support fund for interstate access services.[74] As the Commission explained, the aim of these reforms was "to provide more equal footing for competitors in both the local and long-distance markets, while still keeping rates in higher cost areas affordable and reasonably comparable with those in lower cost areas."[75] The Commission found, moreover, that the re-balanced SLCs and switched access

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[70] *Id.*

[71] *See id.*

[72] *See id.*

[73] *CALLS Order* ¶ 3.

[74] The Commission also permitted increases in the non-primary residential SLC to $7.00 and in the multi-line business SLC to $9.20.

[75] *CALLS Order* ¶ 3.

charges were "just and reasonable" and in the "public interest,"[76] and the Fifth Circuit affirmed the Commission's decision.[77]

In many states, by contrast, access-charge reform has lagged. Although numerous states have embraced reform and have adopted switched access rates at parity with federal levels, others have not, or at least not in all areas. In those states and areas in which access-charge reform has not occurred, intrastate terminating switched access rates continue to recover significant non-traffic sensitive costs, and they therefore exceed interstate rates. That rate structure, in turn, creates precisely the inefficiencies that led the Commission to embrace access-charge reform at the federal level: diminished demand for long distance service and distorted competition.

Furthermore, in addition to the competition-distorting effects of an antiquated access-charge rate structure, the differential between intrastate and interstate access charges has created a significant opportunity for regulatory arbitrage. Where intrastate traffic is compensated at a higher rate than interstate traffic, carriers delivering traffic to the local exchange in those states have a strong incentive to misclassify their traffic as interstate (or "local"), and to adopt routing practices, not on the basis of efficiency, but because they help disguise the jurisdiction of the traffic. For their part, terminating LECs must expend resources policing such behavior and attempting to collect unpaid intrastate access charges. The result, as in the case of the controversy over the compensation that applies to IP-to-PSTN traffic, is a morass of billing and collection disputes that consume significant resources, create additional uncertainty and impede efficient competition.

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[76] *CALLS Order* ¶¶ 58, 81, 176.

[77] *See Texas Office of Public Utility Counsel*, *supra*, 265 F.3d 313.

IV. DISCUSSION

This petition is intended to address the two intercarrier compensation controversies discussed above by ensuring that all interexchange IP/PSTN traffic is terminated at a unified, just and reasonable per-minute terminating access rate level in each state, regardless of whether the traffic originated in IP format or on the PSTN, and regardless of whether the traffic is interstate or intrastate. To be sure, this petition is not a substitute for comprehensive intercarrier compensation reform, which remains vitally necessary for the long-term health of the communications industry.[78] Rather, it is a means to equitably address two of the most substantial controversies plaguing the industry, which have stood far too long as roadblocks to achieving comprehensive reform. As noted at the outset, this petition has two separate but interrelated parts, which we discuss in turn.

A. The Commission Should Clarify the Applicability of Access Charges to Interexchange IP/PSTN Traffic.

1. Applicability of Access Charges.

As discussed above, AT&T has historically advocated that the ESP Exemption does not prevent the application of access charges to VoIP traffic. We are not asking, however, for the Commission to reach that broad conclusion here. Instead, this petition seeks a more limited declaratory ruling that interstate terminating access charges apply to interstate interexchange IP-to-PSTN traffic when a telecommunications carrier delivers such traffic to a LEC for termination on the PSTN and when a telecommunications carrier delivers PSTN-to-IP traffic to a LEC for termination to a VoIP provider (and its end users) served by the LEC. In addition, AT&T asks the Commission to declare that the assessment of intrastate terminating access charges on intrastate interexchange IP-to-PSTN traffic that is delivered by a telecommunications carrier to a

[78] *See AT&T July 17 Intercarrier Compensation Letter.*

LEC for termination on the PSTN and on PSTN-to-IP traffic that is delivered by a telecommunications carrier to a LEC for termination to a VoIP provider (and its end users) served by the LEC does not conflict with federal policy (including the ESP Exemption), when the LEC's intrastate terminating per-minute access rates are at parity with or below its interstate terminating per-minute access rates.[79]

As previously discussed, the level of intrastate terminating access charges has become a source of controversy because some states have failed to remove implicit subsidies from those rates. By contrast, there can be no dispute that, following the Commission's efforts to remove implicit subsidies from *inter*state terminating access charges, those rates are, as the Commission has found, "economically efficient" and "just and reasonable."[80] Thus, the ruling sought by AT&T with regard to a LEC's ability (arising specifically from this petition) to collect interstate terminating access charges would apply uniformly to all interstate interexchange IP/PSTN traffic terminated using the LEC's network. Similarly, the ruling that the application of intrastate terminating access charges to intrastate interexchange IP/PSTN traffic does not conflict with federal policy (including the ESP Exemption) would only apply where the LEC's intrastate terminating access charges are set at or below the level of interstate terminating access charges. In both instances, interexchange IP/PSTN traffic (both interstate and intrastate) would be subject to rates no higher than the prevailing interstate terminating access rate levels authorized by this Commission.

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[79] Although the result of these rulings would, among other things, be the application of terminating switched access charges to interexchange IP-to-PSTN traffic delivered by CLECs to ILECs for termination on the PSTN, it does not necessarily follow that CLECs who deliver such traffic via interconnection trunks would be prevented from continuing to use those physical facilities. To the contrary, in establishing interconnection agreements, AT&T has previously negotiated, and remains open to negotiating, the appropriate terms and conditions pursuant to which such physical facilities could continue to be used to deliver interexchange traffic.

[80] *See e.g.*, *CALLS Order* ¶¶ 29, 176.

Such rulings would "terminat[e] a controversy" and "remov[e] uncertainty" in a manner fully consistent with the Commission's conclusion that the "cost of the PSTN should be borne equitably among those that use it in similar ways."[81] In the context of access charges, this means 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."[82] As the Commission has stated, "[o]ne of [its] primary objectives with respect to the formulation of [its] access charge rules has been to assess access charges on all users of exchange access, irrespective of their designation as carriers, non-carrier service providers, or private customers."[83] The Commission can achieve that objective with regard to interexchange traffic, while also taking a significant step toward comprehensive reform and a unified rate structure for *all* traffic, if it declares that access charges apply to interexchange IP/PSTN traffic subject to the caveats herein.[84]

Indeed, the current interstate switched access charge rate structure – including the level of per-minute terminating access charge rates for AT&T and other price-cap LECs – "reflect[s] the manner in which carriers incur costs."[85] The "implicit subsidies" that were once reflected in

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[81] 47 C.F.R. § 1.2; *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4683, ¶ 61 (2004) (*IP-Enabled Services NPRM*).

[82] *Id.*

[83] *Amendments of Part 69 of the Commission's Rules Relating To the Creation of Access Charge Subelements for Open Network Architecture Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Order on Further Reconsideration and Supplemental NPRM, 6 FCC Rcd 4524, ¶ 54 (1991).

[84] The relief requested in this petition, if granted and implemented, would thus obviate the need to resolve a long-running controversy among industry participants over whether IP/PSTN traffic can be accurately and reliably distinguished from non-IP-originated traffic for intercarrier compensation purposes. *See* Letter from John T. Nakahata, Level 3, to Marlene Dortch, FCC, WC Docket Nos. 03-266 & 04-36 (filed Sept. 24, 2004) (proposing the use of the Originating Line Information (OLI) parameter to identify IP-to-PSTN traffic); Letter from James C. Smith, SBC, to Chairman Powell, FCC, WC Docket No. 03-266, at 3, and attached SBC Memorandum at 20 (filed Feb. 3, 2005) (describing flaws in OLI proposal).

[85] *CALLS Order* ¶ 129.

above-cost per-minute access rates have in most instances been removed and made "explicit,"[86] and the Commission has expressly found that the resulting rates are "just and reasonable."[87] If, as the Commission found, LECs' per-minute terminating access rates are *already* "just and reasonable," it follows that the application of those rates to VoIP providers (and their partners) when terminating interstate or intrastate interexchange IP/PSTN traffic to a LEC is likewise just and reasonable.

While the Commission may have had concerns about "rate shock" at the time the ESP Exemption was adopted, those concerns are certainly no longer valid in light of the dramatic declines in access charges over the last quarter-century. As the Commission's own data show, the average interstate access charge per "conversation minute" (*i.e.*, originating plus terminating access charges) has fallen from 17.26 cents in 1984 to 1.63 cents in 2007 – a decline of *more than 90 percent*.[88] Given that the fundamental justification for the ESP Exemption no longer exists (whatever its scope), there is no tenable basis to preclude the application of access charges to IP/PSTN traffic, including interconnected VoIP and other VoIP services.

There are also multiple advantages to declaring that the application of *intrastate* access charges to IP/PSTN traffic is not inconsistent with federal policy in the specific circumstances presented in this petition – *i.e.*, where a LEC's intrastate terminating access charges are at parity with (or below) its interstate terminating access charges. Such a declaration would provide a

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[86] *See id.* ¶ 29; *see also id.* ¶ 36 ("The CALLS Proposal is a reasonable approach for moving toward the Commission's goals of using competition to bring about cost-based rates, and removing implicit subsidies without jeopardizing universal service.").

[87] *See id.* ¶ 176.

[88] *Federal-State Joint Board on Universal Service*, Universal Service Monitoring Report, CC Docket No. 98-202 at Table 7.12 (2007). Although the access charges incurred by a given provider are dependent on the particular access services it chooses to purchase from a given LEC, the Commission's data irrefutably demonstrate that all per-minute access charges have dropped sharply since the ESP Exemption was first adopted. *See id.* Tables 7.12, 7.14.

powerful incentive to achieve parity for *all* intrastate, interexchange traffic, which itself would serve the public interest. As previously explained, above-parity terminating intrastate rates typically reflect an outdated rate structure, in which a LEC is recovering non-traffic sensitive costs and/or universal-service support in per-minute charges. Pending more comprehensive reform, replacement of this inefficient, disparate rate structure with a unified, predictable terminating access rate set at the interstate level – one that, as noted above, the Commission has already recognized as "just and reasonable" – would further the Commission's aim of bringing the access rate structure "into line with cost-causation principles,"[89] which in turn would enhance efficiency and further competition.

Beyond that, as also explained above, the disparate treatment of interexchange calls based on jurisdictional considerations has yielded significant arbitrage opportunities, the pursuit and policing of which consume substantial time and resources. By providing LECs with a considerable incentive to eliminate the disparity between intrastate and interstate terminating access rates, the Commission would substantially reduce the arbitrage opportunities presented in today's marketplace, thereby reducing the resulting intercarrier compensation disputes as well. Thus, the requested declaratory ruling would serve the public interest by terminating a substantial controversy among industry participants.[90]

This ruling, moreover, would not confer any greater jurisdiction or regulatory authority on state commissions than they already have today. In particular, concluding that the application of intrastate access charges to IP/PSTN traffic is consistent with federal policy does *not* mean that VoIP providers are subject to state regulatory jurisdiction. Rather, the Commission's ruling would simply confirm existing state authority to regulate the rates, terms and conditions of the

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[89] *Access Charge Reform Order* ¶ 35.

[90] *See* 47 C.F.R. § 1.2.

intrastate services offered by a *LEC* that terminates such traffic. That is so for at least two reasons.

First, the assessment of intrastate access charges on a subset of IP/PSTN traffic does not itself constitute state regulation of VoIP providers or the end user service they provide. When a LEC provides a local business line to an ESP (such as a dial-up Internet access provider who uses the line as an input into a dial-up Internet access service), the state commission exercises jurisdiction over the *LEC* by regulating the rates, terms and conditions of the business line. But the state commission does not regulate the *ESP*, which is simply purchasing the business line from the LEC's intrastate tariff as an input into the ESP's own retail services. For the same reason, when a state commission regulates the intrastate access service offered by that same LEC, it does not thereby regulate a VoIP provider (or its partner), which merely purchases access service from the LEC's intrastate tariff and uses it as an input into its service.[91] Indeed, the same logic holds true when state commissions regulate the rates, terms and conditions of the local exchange service offered by LECs to residential consumers (as well as the rates, terms and conditions of services offered by electric, gas and water utilities to residential consumers) -- it would be truly bizarre to suggest that state commissions are regulating those residential consumers when they purchase the LEC's intrastate services.[92] So too here. In short, the declaration sought by AT&T regarding intrastate access charges does not involve state

[91] *See* Verizon Comments, WC Docket No. 07-256, at 5-6 (Feb. 19, 2008) (observing that access charge regulations apply only to LECs, not third parties); Embarq Comments, WC Docket No. 07-256, at 21 (Feb. 19, 2008) (same); USTelecom Comments, WC Docket No. 07-256, at 7 (Feb. 19, 2008) (same).

[92] Of course, to the extent a dispute arises between the ESP and the LEC over a local business line, for example, the state commission may serve as the forum for resolving that dispute. But serving as a forum for resolution of disputes over the LEC's tariffed intrastate services does not amount to state regulation of the ESP any more than serving as a forum for resolution of disputes between LECs and residential consumers amounts to regulation of those consumers.

jurisdiction over VoIP because the declaration does not call for, or result in, state regulation of VoIP providers or their retail services.

Second, the application of intrastate access charges to IP/PSTN traffic delivered by a telecommunications carrier to a LEC, which is an input into an end-user VoIP service offered by a VoIP provider, does not imply that the end-user service is itself separable into discrete inter- and intrastate components and is thereby susceptible to state regulation. On the contrary, in the *Vonage Order*, the Commission found that VoIP services are jurisdictionally mixed but inseparable, and therefore subject to the Commission's exclusive jurisdiction.[93] In particular, "[b]ecause of the impossibility of separating out"[94] a VoIP service's intrastate components from its interstate components for regulatory purposes, the Commission concluded that state regulation of the intrastate components should be preempted. Such state regulation, the Commission explained, would unavoidably reach the interstate components of the service and would thus "thwart federal law and policy"[95] that mandates "pro-competitive, deregulatory"[96] treatment for "interstate [VoIP] communications."[97]

Critically, the Commission's ruling in this respect was based in large part on the fact that VoIP service "includes a suite of integrated capabilities and features, able to be invoked

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[93] *Vonage Order* ¶¶ 23-32.

[94] *Vonage Order* ¶ 31.

[95] *Vonage Order* ¶ 14.

[96] *Vonage Order* ¶ 20.

[97] *Vonage Order* ¶ 31. In its preemption analysis, the Commission observed that, although it had not yet classified VoIP services as either information services or telecommunications services, state regulation would conflict with federal rules and policies under either regulatory classification. *Vonage Order* ¶¶ 20-22. AT&T has argued in the past, and continues to believe, that retail VoIP services are information services. *See* Comments of SBC Communications Inc., WC Docket No. 04-36, at 25-48. As AT&T has previously explained, classifying a retail VoIP service as an information service does not alter the conclusion that access charges apply to such services when they are used to make interexchange IP/PSTN calls. *Id.* at 65-77; AT&T Comments, WC Docket No. 07-256, at 9-10.

sequentially or simultaneously, that allows customers to manage personal communications dynamically."[98] VoIP, the Commission explained, "enable[s] subscribers to utilize *multiple service features* that access different websites or IP addresses during the same communication session and to perform different types of communications simultaneously."[99] A voice communication enabled by a VoIP service – whether local, intrastate, or interstate – is merely one such "service feature." Even if the assessment of intrastate access charges on that particular voice communication component of the overall service reflected a definitive determination that the end points of the communication were in the same state – which it does not, as discussed further below – it would not follow that the overall service is severable and therefore subject to state regulation. On the contrary, separate and apart from the ability to "jurisdictionalize" a given voice communication for intercarrier compensation rating purposes, the geographic indeterminacy of the many other integrated "service features that access different websites or IP addresses during the same communication session" render the service as a whole inseverable and therefore subject to the Commission's exclusive jurisdiction.[100]

Moreover, even focusing solely on a given voice communication component in a VoIP service session – as opposed to the aggregate multifaceted service offering that the Commission rightly focused on in the *Vonage Order* – the assessment of intrastate access charges on that given communication does *not* necessarily reflect a definitive determination that the call in fact originated and terminated in the same state. Existing LEC tariffs and interconnection agreements contain certain mechanisms, which have been approved by state commissions and/or this

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[98] *Vonage Order* ¶ 32.

[99] *Vonage Order* ¶ 25 (emphasis added).

[100] *See Pacific Bell Telephone Co. v. Global NAPs California, Inc.*, Case 07-11-018, Presiding Officer's Decision Finding Global NAPs California in Breach of Interconnection Agreement at 10-11 (June 4, 2008) (distinguishing contractual obligations to pay a LEC's access charges from regulatory charges imposed by a state commission).

Commission, to rate traffic for intercarrier compensation purposes (*e.g.*, call detail records, including the telephone numbers of the calling and called parties, as well as factors, such as percent interstate use (PIU) and percent local use (PLU)). But, because a calling party's number does not necessarily correlate with the party's physical location,[101] those mechanisms are not necessarily accurate indicators of the actual end points of the call in all cases. These mechanisms may be appropriate (though admittedly not perfect) for purposes of enabling a LEC to bill another carrier for intercarrier compensation,[102] but *for purposes of enabling a state to assert regulatory jurisdiction over VoIP services*, these and other similar mechanisms do not by their mere operation establish state jurisdiction over communications that are simply rated by a LEC as "intrastate."[103]

Indeed, the Commission has made this point expressly. In the *Vonage Order*, the Commission stressed that such proxy-based mechanisms are "very poor fits" and do *not* provide an adequate basis to separate-out the intrastate component of a VoIP service and subject it to state regulation without violating federal deregulatory policies.[104] Thus, by merely providing the

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[101] *See, e.g.*, *Vonage Order* ¶¶ 5, 26.

[102] As the Commission has recognized, the application of proxy mechanisms is likewise appropriate for calculating VoIP universal service contribution obligations, without undermining the Commission's conclusion that state regulation of VoIP is preempted. *See VoIP USF Order* ¶ ¶¶ 53, 56. *See also AT&T July 17 VoIP Letter* (advocating an FCC ruling that authorizes states to assess universal service contribution requirements on VoIP on a proxy basis, while at the same making clear that state regulation of facilities-based VoIP is preempted).

[103] The *Vonage Order* (at ¶ 44) expressly deferred resolution of "critical issues," such as "intercarrier compensation," to the pending *IP-Enabled Services* proceeding and nothing in the *Vonage Order* specifically precludes a terminating LEC from assessing intrastate access charges on intrastate interexchange IP/PSTN traffic. *See* Letter from James C. Smith, SBC, to Chairman Powell, FCC, WC Docket No. 03-266, at 9-10 n.14 of attached SBC Memorandum (filed Feb. 3, 2005). The Commission, moreover, has expressly declined to preempt state commissions from permitting LECs to collect intrastate access charges from ESPs. *See supra* n. 39.

[104] *Vonage Order* ¶¶ 26-27, 29 and n.98 (rejecting "NPA/NXXs" and "proxy or allocation mechanisms" for determining state jurisdiction to regulate VoIP providers). Given the nomadic characteristics of wireless services and certain VoIP services, as well as the non-geographic assignment of telephone numbers by certain VoIP providers, call detail records may not be a perfect mechanism for intercarrier

information requested in a LEC access tariff or an interconnection agreement (e.g., by transmitting call detail records or supplying PIU or PLU factors to the LEC) strictly for purposes of enabling the LEC to render a bill for terminating compensation on the IP/PSTN traffic that is an input into a VoIP provider's end-user service, the VoIP provider would not lose the preemptive effect of the *Vonage Order* for that end-user service.

This analysis is further confirmed by the *VoIP USF Order*. There, the Commission explained that, although a VoIP provider may lose the preemptive effect of the *Vonage Order* if and when it "develops the capability to track the jurisdictional confines" of customer communications, that is not the case where a provider relies on "traffic studies or the safe harbor" in order to determine the provider's federal universal service contributions.[105] The application of the rating mechanisms necessary to assess intrastate access charges (or reciprocal compensation) are akin to the "traffic studies" the Commission addressed in the *VoIP USF Order*: they provide a practical means for allocating traffic across jurisdictions for intercarrier compensation purposes, despite the fact that, as the Commission expressly recognized in the *Vonage Order*, their application for that specific purpose is insufficient to warrant the exercise of state regulatory authority over the end user service.

Finally, because the declaratory relief AT&T seeks in this respect is confined to states where the LEC's intrastate terminating access charges are at parity with interstate rates, there is no plausible argument that the application of intrastate access charges to IP-to-PSTN traffic conflicts with federal policy. As explained above, the Commission has already found AT&T's

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compensation purposes. *See Intercarrier Compensation FNPRM* ¶ 22. Unless and until new rating mechanisms are developed and receive regulatory approval, however, existing mechanisms specified in tariffs and interconnection agreements continue to govern the compensation obligations for traffic originating and/or terminating on the PSTN.

[105] *VoIP USF Order* ¶ 56.

interstate terminating access rates to be "just and reasonable." It necessarily follows that the application of those rates to interexchange traffic, including interexchange traffic that is rated intrastate, is consistent with federal policy. Furthermore, although the Commission properly recognized in the *Vonage Order* that it would conflict with federal policy to force service providers to incur the costs necessary "to incorporate geographic considerations" into their service – by, for example, making the "modifications to systems that track and identify subscribers' communications" that would be necessary to conform to state "regulatory purposes" – there are no such concerns here.[106] As noted above, LECs' tariffs and agreements already include appropriate mechanisms for rating and billing traffic, including traffic that originates in IP. VoIP providers (and their partners) can simply allow those mechanisms to work as they do for all other interexchange traffic.

Indeed, far from conflicting with federal policy, the result AT&T seeks here would further federal policy, both in the robust deployment of VoIP and in establishing a coherent intercarrier compensation structure. Again, a primary objective of the relief AT&T seeks is certainty over the terminating rate that applies to interexchange traffic, for both VoIP and conventional wireline traffic. That certainty would eliminate the arbitrage opportunities created by the current regime, and it would enable VoIP providers (and their partners) to divert resources from the compensation disputes that are currently consuming the industry to uses that are more likely to yield efficiencies and to drive consumer welfare. Furthermore, by enabling the Commission to take a significant step towards a unified rate structure, the relief AT&T seeks would move the Commission closer to the goal of comprehensive intercarrier compensation

[106] *Vonage Order* ¶ 29.

reform, itself an overriding federal policy objective that further supports the relief sought in this petition.[107]

2. Waiver.

To the extent the Commission disagrees with AT&T, however, and concludes that the ESP Exemption does, in fact, apply today to prevent the application of access charges to IP/PSTN traffic, we respectfully request that the Commission grant a limited waiver of the ESP Exemption. Specifically, we ask the Commission to waive the ESP Exemption with respect to: (a) the application of interstate terminating access charges to interstate, interexchange IP/PSTN traffic; and (b) the application of intrastate terminating access charges to intrastate, interexchange IP/PSTN traffic (in the event the Commission concludes the exemption applies to intrastate access charges), where the terminating LEC's intrastate terminating access charges are set at or below its interstate terminating access charges.

Pursuant to section 1.3 of the Commission's rules, the Commission may waive a rule upon a showing of "good cause."[108] Under the good cause standard, the Commission may exercise its discretion to waive a rule where the particular facts before it make strict compliance inconsistent with the public interest.[109] In doing so, the Commission may take into account considerations of hardship, equity, or the more effective implementation of overall policy on an

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[107] If, as an alternative to applying "jurisdictionalized" compensation to IP-to-PSTN traffic as described herein, the Commission instead concluded that IP/PSTN traffic should uniformly be subject to interstate access charges, AT&T would not object to such a conclusion. *See, e.g.*, SBC Comments, WC Docket No. 04-36, at 77-81 (proposing the uniform application of interstate access charges to IP-to-PSTN traffic as an alternative to "jurisdictionalized" compensation). *But see supra* n. 84 (describing concerns about accurately and reliably distinguishing IP/PSTN traffic from other, non-IP-originated/terminated traffic for intercarrier compensation purposes).

[108] 47 C.F.R. § 1.3.

[109] *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *Midwest Wireless Iowa, LLC Petition for Waiver of Sections 54.313(d) and 54.314(d) of the Commission's Rules and Regulations*, CC Docket No. 96-45, Order, DA-1688 ¶ 3 (released June 14, 2004).

individual basis.[110] Thus, waiver of the Commission's rules is appropriate when special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.[111]

A limited waiver of the ESP Exemption (assuming *arguendo* that it applies) would unquestionably serve the public interest in light of the special circumstances presented in this petition, where the growing volumes of IP/PSTN traffic discussed herein neither existed, nor were even contemplated, when the Commission adopted the ESP Exemption in 1983. Indeed, VoIP services were not offered in any meaningful commercial sense in 1983 and the FCC could not have foreseen the competition-distorting effects that applying the exemption to such services would have a quarter-century later in 2008.[112] By waiving the ESP Exemption in these circumstances and granting the other relief requested herein, the Commission would create an opportunity for all interexchange IP/PSTN traffic terminated via a LEC's network in a given state to be subject to a unified terminating access rate level, which the Commission has expressly

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[110] *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

[111] *See Northeast Cellular*, 897 F.2d at 1166. *See also Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, Declaratory Ruling and Notice of Proposed Rulemaking, FCC 02-77, ¶¶ 45-47 (released March 15, 2002) (finding good cause to deviate from the Commission's *Computer Inquiry* requirements and granting a blanket waiver of those requirements for all providers of broadband cable modem service).

[112] *See Ameritech Operating Companies, et al*, Order, 9 FCC Rcd. 7873 ¶ 25 (1994) (granting blanket waiver of access charge rules where the service at issue "was not anticipated when the Part 69 Rules were adopted" and "reject[ing] [the] contention that a rulemaking proceeding is required" to effectuate relief); *Ameritech Operating Companies Revisions to Tariff F.C.C. No. 2, et al*, 8 FCC Rcd. 5172 (1993) (granting blanket waiver of access charge rules to enable creation of new rate elements where existing rules did "not contemplate" new type of customer for LEC access services). Although VoIP services were not offered commercially in 1983, LECs did provide access services to ESPs at that time and the Commission did have rules governing the payment of access charges for PSTN-originated and PSTN-terminated interexchange traffic. *See* 47 C.F.R. Part 69. Thus, while today's ever-growing volume of IP/PSTN traffic may not have been foreseen, the obligation to pay access charges on that traffic has existed since the access charge regime was first created. *See WorldCom, Inc. v. FCC*, 288 F.3d 429, 433-34 (D.C. Cir. 2002) (contrasting the pre-Act obligation of LECs to provide access service to ESPs with the absence of a pre-Act obligation for LECs to interconnect to each other for ISP-bound calls).

found to be "just and reasonable" and which is *substantially* lower than the average interstate access charges in existence at the time the Commission adopted the ESP Exemption.[113]

Further, waiving the ESP Exemption under the conditions set forth in this petition, together with granting the other relief requested herein, would enable *all* users of the implementing LEC's local exchange switching facilities to pay the same, competitively neutral rates for terminating interexchange traffic, regardless of whether such traffic originated on an IP network or on a circuit-switched network. This equitable result would more effectively implement the Commission's policy conclusion that "any provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, or an IP network, or on a cable network."[114] In addition, a waiver of the ESP Exemption would promote the Commission's long-standing policy goal of establishing a unified rate structure, which would significantly reduce arbitrage while simultaneously encouraging economically rational competition.[115] Thus, granting such a waiver here would be fully consistent with previous Commission decisions to grant waivers that promote "fundamental reform in the future."[116] Accordingly, for all of these reasons, there is "good cause" to grant the waiver requested by AT&T.[117]

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[113] *See supra* p. 29.

[114] *IP-Enabled Services NPRM* ¶ 61. *See also id.* ("We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways."). By contrast, applying the ESP Exemption in these circumstances would be inconsistent with the public interest because it would perpetuate and expand a discriminatory, arbitrage-inducing rate structure that has long outlived its intended purpose.

[115] *See Intercarrier Compensation FNPRM* ¶¶ 3, 15-17.

[116] *See Rochester Telephone Company*, Order, 10 FCC Rcd. 6776 (1995) (granting waivers to Rochester Telephone to restructure its access charges, and concluding that "the possibility of fundamental reform in the future not only is consistent with, but may be facilitated by, granting a waiver in this instance."). *See also Ameritech Operating Companies*, Order, 11 FCC Rcd. 14028 (1996) (granting waivers to enable Ameritech to restructure its access charges and thereby promote more efficient competition, notwithstanding pendency of rulemaking proceedings where similar issues were under consideration); *The NYNEX Telephone Companies Petition for Waiver*, 10 FCC Rcd. 7445, 7446 (1995) (granting

3. Asymmetrical Arbitrage.

Notwithstanding their insistence that access charges do not apply to IP-to-PSTN traffic when they deliver that traffic to the PSTN, some CLECs nonetheless collect access charges today on PSTN-to-IP traffic bound for their VoIP-provider customers. Specifically, when a POTS end user dials a "1-plus" interexchange call to a VoIP end user, the POTS end user's LEC will route the call to the POTS end user's presubscribed IXC. The IXC, in turn, will route the call to the CLEC serving the VoIP provider (either directly over the CLEC's access trunks or indirectly via an ILEC tandem switch subtended by the CLEC). In many cases, the CLEC will then impose terminating access charges on the IXC for delivering the call to the VoIP provider, who will ultimately terminate the call to its end user (either over its own facilities, e.g., cable VoIP, or over the facilities of an unaffiliated broadband provider, e.g., independent "bring your own broadband" VoIP provider). Because the IXC typically does not know the identity of the CLEC's individual customers, the IXC will not know whether a particular call bound for the CLEC is ultimately terminated to a VoIP end user or to a POTS end user. Thus, in the normal course of business, the IXC will usually have little, if any, ability to identify – let alone challenge – a CLEC that is imposing access charges on PSTN-to-IP calls but paying only reciprocal compensation on IP-to-PSTN calls.

Although this "I pay you reciprocal compensation but you pay me access charges" regime for IP/PSTN traffic is undoubtedly a lucrative business model for certain CLECs, it is

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NYNEX's request for waivers to "use different methods for assessing certain categories of access charges," "while the Commission explores more comprehensive reform").

[117] To the extent the Commission believes that it needs to modify (rather than waive) any of its rules to produce the results requested by AT&T, the Commission is, of course, free to do so in either or both of the rulemaking proceedings where these issues are currently pending. *See IP-Enabled Services NPRM*; *Intercarrier Compensation NPRM*; *Intercarrier Compensation FNPRM*. Any such modifications would only be needed on an interim basis, pending further reform to achieve a unified intercarrier compensation rate structure.

also a patently unjust and unreasonable practice that violates sections 201 and 202 of the Act and must not be countenanced by this Commission.[118] If a CLEC serving a VoIP provider asserts that the ESP Exemption applies to IP-to-PSTN traffic and refuses to pay access charges when terminating that traffic on the PSTN, there is simply no credible argument that would enable that same CLEC to collect access charges when that very same traffic flows in the opposite direction – PSTN-to-IP – particularly when the CLEC makes no effort to self-identify calls bound for VoIP end users (e.g., via a "VoIP factor" to reduce the terminating compensation charged by the CLEC to IXCs) or to offer an alternative termination service for VoIP-bound traffic at reciprocal compensation rates. Indeed, by assessing access charges on PSTN-to-IP traffic, these CLECs are effectively conceding that the ESP Exemption does not prevent the imposition of access charges on traffic exchanged between IP-based networks and the PSTN. Thus, neither these CLECs nor their VoIP-provider customers should be heard to complain when they are asked to pay access charges on the IP-to-PSTN traffic they send to the PSTN. Accordingly, regardless of how the Commission ultimately resolves the other requests in this petition, it should immediately declare that the practice of avoiding access charges on IP-to-PSTN calls while simultaneously collecting access charges on PSTN-to-IP calls violates sections 201 and 202 of the Act.

[118] 47 U.S.C. §§ 201, 202. *See Proposed 708 Relief Plan and 630 Numbering Plan Area Code By Ameritech-Illinois*, 10 FCC Rcd. 4596 ¶ 35 (1995) (competitively asymmetric numbering proposal that would advantage wireline carriers while disadvantaging wireless carriers found to be unjust and unreasonable in violation of section 201(b)); *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, 12 FCC Rcd. 18730 ¶ 358 (1997) (asymmetric limitation of liability provisions that advantaged LECs and disadvantaged other interconnecting carriers found "unreasonable" and "unreasonably discriminatory" "unless they are applied symmetrically to both LECs and interconnectors").

B. The Commission Should Grant Limited Waivers of Its Rules Governing SLCs and Switched Access Charges.

1. Limited Waiver of the SLC Rules.

To enable AT&T to bring its intrastate and interstate per-minute terminating access rates into parity in those states where rates are not in parity today, AT&T seeks a limited waiver from the provisions of the Commission's rules that prevent it from charging SLCs up to (but not above) the SLC caps the Commission adopted in the *CALLS Order*, subject to the aggregate recovery limit discussed below.[119]

In particular, AT&T asks the Commission for a limited waiver of the following rules:

- Section 69.152 of the Commission's rules (47 C.F.R. § 69.152) to the extent that it prevents AT&T from including a rate element in its SLCs that, when combined with AT&T's Average Price Cap CMT Revenue per Line, is less than or equal to (but not greater than) the SLC caps set forth in that rule ($6.50 for primary residential and single-line business lines, $7.00 for non-primary residential lines, and $9.20 multi-line business lines).[120]
- Sections 61.1(b), 61.41 and 69.1(b) of the Commission's rules (47 C.F.R. §§ 61.1(b), 61.41, 69.1(b)) to the extent that the provisions in these sections require AT&T to charge rates and file tariffs in conformance with Parts 61 and 69 of the Commission's rules and would otherwise prevent AT&T from effectuating the waiver granted from Section 69.152 of the Commission's rules.[121]

AT&T seeks a limited waiver of these rules only to the extent necessary to offset the forgone revenues from its voluntary reductions in intrastate terminating access charges that are required to achieve parity.[122] Thus, the total amount of all increases in SLCs would be no greater, on an

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[119] To the extent AT&T is required to obtain regulatory approval before lowering its intrastate terminating access rates in a given state, it would, of course, seek such approval prior to doing so in that state.

[120] *See, e.g.*, 47 C.F.R. § 69.152(d)(1) (limiting primary residential SLC rates to the lesser of the SLC cap or the Average Price Cap CMT Revenue per Line per month).

[121] To avoid introducing additional complexity into the calculations required under the Commission's price cap regime, the waiver requested herein would permit AT&T to exclude the SLC increases from price caps.

[122] Although this waiver request is designed to enable AT&T to increase its SLCs up to the caps, the Commission should also grant waivers to other carriers who are willing to achieve access charge parity consistent with the conditions set forth in this petition. Similarly, although this petition does not seek

aggregate dollar-for-dollar basis, than the amount by which AT&T reduces its total intrastate terminating access revenues to achieve parity.[123] Thus, even if a waiver is granted, AT&T may ultimately charge SLCs that are below the Commission's existing SLC caps.[124]

Under these special circumstances, where the SLC increases (combined with any interstate originating access charges increases, described below) are designed to enable AT&T to achieve access charge parity, there is "good cause" to deviate from the Commission's existing SLC rules and grant AT&T's requested waiver.[125] In particular, the carefully circumscribed limits on this relief demonstrate that it fosters the Commission's long-standing policy goal of achieving a unified, rationalized access charge regime without raising concerns about the affordability of local telephone service. In the *CALLS Order*, for example, the Commission expressly found that increasing the residential and single-line business SLC cap to $6.50 raised no affordability concerns or otherwise threatened the 1996 Act's goal "that consumers in all regions of the nation should have affordable access to telecommunications . . . services."[126] The Commission explained that, in light of the fact that the original $3.50 SLC cap had been in place

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additional universal service support to assist AT&T in achieving access charge parity, other higher-cost carriers may wish to seek such support to reach parity (*e.g.*, via relief from existing limits on interstate access support mechanisms).

[123] AT&T proposes to accomplish this rate rebalancing through a one-time calculation designed to convert its aggregate intrastate terminating access reductions in a given state or region into a per line SLC increase (and, if necessary, a per-minute interstate originating access increase, as discussed below). Specifically, AT&T would assign the total aggregate amount of intrastate terminating access charge reductions required to achieve parity in a given state or region to the relevant numbers of access lines subject to the various SLC caps (and, if necessary, the relevant number of interstate originating access minutes) to derive a per line (or per minute) amount. These per line (or per minute) amounts would be calculated once to achieve parity and would not increase in future years in the event AT&T experiences declines in access lines or interstate originating access minutes.

[124] To the extent AT&T achieves access charge parity but still has "headroom" remaining as a result of the SLC and originating access charge waivers, AT&T may decide to use that headroom to further decrease both its intrastate and interstate terminating access rates in tandem while maintaining parity.

[125] *See supra* pp. 37-38 (discussing Commission waiver standards).

[126] *CALLS Order* ¶ 85.

for more than a decade, an adjustment was long overdue.[127] The Commission held that the SLC increase was unlikely to "negatively impact [telephone] subscribership,"[128] which proved to be a prescient conclusion as telephone subscribership in the U.S. is higher today than when the *CALLS Order* was adopted.[129]

After the Fifth Circuit affirmed the Commission's holding on affordability,[130] moreover, the Commission revisited and reaffirmed the propriety of a $6.50 SLC in the *SLC Cap Review Order*. There, the Commission expressly "verif[ied] that it [wa]s appropriate to increase the [SLC] above $5.00" to the $6.50 cap that is in place today.[131] The Commission found that "even the most conservative estimate of forward-looking costs shows that a substantial number of lines exceed . . . the ultimate $6.50 SLC cap,"[132] and it further emphasized that it had "previously found that the ultimate SLC Cap of $6.50 is affordable . . . , and the Fifth Circuit . . . upheld this finding."[133] On the basis of those findings, as well as the overriding policy benefits of "removing implicit subsidies" from per-minute switched access rates that result from allowing increases to the SLC – which, as explained herein, are the same policy benefits presented by this petition – the Commission allowed the SLC cap to increase to the $6.50 cap that is in place today.[134] And, just as the Fifth Circuit had affirmed the Commission's initial determination of

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[127] *See id.*

[128] *Id.* ¶ 86.

[129] *Telephone Subscribership in the United States (Data through November 2007)*, FCC, Industry Analysis and Technology Division, at Table 1 (March 2008) (showing 94.4% penetration in July 2000; 94.9% penetration in November 2007).

[130] *See Texas Office of Public Util. Counsel v. FCC*, 265 F.3d 313, 323 (5th Cir. 2001) ("*TOPUC II*"). As discussed above, no party on appeal challenged the Commission's decision to increase the non-primary residential SLC cap or the multi-line business SLC cap.

[131] *SLC Cap Review Order* ¶ 5.

[132] *Id.*

[133] *Id.*

[134] *Id.*

the SLC cap in the *CALLS Order*, the D.C. Circuit affirmed the Commission's decision in the *SLC Cap Review Order* to permit that cap to take effect.[135]

In short, the ability to charge a primary residential SLC up to the cap has been approved by the Commission (in the *CALLS Order*), by the Fifth Circuit (in *TOPUC II*), by the Commission again (in the *SLC Cap Review Order*), and by the D.C. Circuit (in *NASUCA*). If, as the Commission has twice held and the courts of appeals have twice confirmed, a $6.50 SLC was just and reasonable when it took effect (in July 2003), it necessarily follows that a waiver to enable AT&T to charge that SLC will still result in rates that are just and reasonable.

The existence of competition, moreover, provides still more assurance that a limited waiver will not give rise to affordability concerns. Even if AT&T is authorized to charge SLCs up to the current caps, competition in the marketplace may as a practical matter prevent it from taking advantage of that relief. The Commission has stressed this exact point, explaining that "one of the major benefits of recovering common line costs through the SLC alone is to encourage efficient competitive entry, particularly in providing competing alternatives for loop service."[136] Competitive entrants, including CLECs, wireless carriers and VoIP providers, "are not required to charge the SLC," thus creating "competitive pressure" that may "force [AT&T] to reduce the SLC through efficiency gains."[137] Thus, insofar as the waiver sought by AT&T only *permits* it to charge a higher fixed line charge than it does today – and thereby "provide[s] greater economic incentives to stimulate alternative sources for the loop through facilities-based competition" – the SLCs authorized by this waiver may be "competed away."[138] Indeed,

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[135] *See NASUCA v. FCC*, 372 F.3d 454, 461 (D.C. Cir. 2004).

[136] *CALLS Order* ¶ 89.

[137] *TOPUC II*, 265 F.3d at 323.

[138] *See CALLS Order* ¶ 89.

according to the Commission's own data, incumbent LECs lost a total of more than 45 million access lines between the May 2000 adoption of the *CALLS Order* and June 2007.[139] For its part, AT&T alone lost nearly *5 million* switched access lines in just the last year.[140] Thus, AT&T has appropriate incentives to exercise restraint in increasing the rates paid by its customers.

In all events, any concern about the modest increases to AT&T's SLCs that would result from this waiver are far outweighed by the pro-competitive benefits that would stem from that relief.[141] In the *SLC Cap Review Order*, the Commission emphasized that raising the SLC cap was "necessary to achieve [the Commission's stated] access charge reform goals . . . of removing implicit subsidies by moving to a more cost-causative rate structure."[142] On appeal, the D.C. Circuit found that the balance the Commission struck "between the competing congressional directives – reducing implicit subsidies and maintaining universal service – was reasonable . . . ."[143] That same analysis applies here. By granting this petition, the Commission will enable AT&T to reduce its intrastate per-minute terminating access rates and thereby remove implicit subsidies embedded in those rates, and to recover the associated costs instead in a "cost-causative" manner, via the SLC. Moreover, the end result that AT&T seeks here is a unified, just and reasonable per-minute terminating access rate level that would apply to all interexchange traffic in a given state. That result would provide certainty and predictability,

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[139] *Local Telephone Competition: Status as of December June 30, 2007*, FCC Industry Analysis and Technology Division, Table 1 (March 2008).

[140] *See* AT&T Investor Relations website at http://www.att.com/Investor/Growth_Profile/download/master.xls, "In-region volumes" (data through December 2007).

[141] *See WAIT Radio*, 418 F.2d at 1159 (citing "effective implementation of overall policy" as grounds for a waiver).

[142] *SLC Cap Review Order* ¶ 5.

[143] *NASUCA v. FCC*, 372 F.3d at 461.

send appropriate price signals to the market, and encourage providers to direct their efforts at efficient and effective service, rather than arbitraging terminating access rates.

2. Limited Waiver of the Switched Access Charge Rules.

Because AT&T may not be able to achieve parity in certain states under some circumstances using SLC increases alone, this petition requests a waiver of the Commission's rules so that, after first exhausting the "headroom" created by the SLC waiver, AT&T would then be permitted to increase the *inter*state originating switched access component of its Average Traffic Sensitive (ATS) rate up to (but not above) a level that would result in AT&T's ATS rate being no higher than the $0.0095 target ATS rate approved in the *CALLS Order* for low-density price cap carriers.[144] In particular, AT&T asks the Commission for a limited waiver of the following rules:

- Section 69.4 of the Commission's rules (47 C.F.R. § 69.4) to the extent that it prevents AT&T from including an additional rate element in its interstate carrier's carrier charges for access service beyond the rate elements specifically listed in that section, but only to the extent that such additional rate element does not result in AT&T's ATS rate exceeding $0.0095.
- Sections 61.1(b), 61.41 and 69.1(b) of the Commission's rules (47 C.F.R. §§ 61.1(b), 61.41, 69.1(b)) to the extent that the provisions in these sections require AT&T to charge rates and file tariffs in conformance with Parts 61 and 69 of the Commission's rules and would otherwise prevent AT&T from effectuating the waiver granted from Section 69.4 of the Commission's rules.[145]

In addition to the $0.0095 ATS rate limit, AT&T's proposed waiver is further limited such that any increases in interstate originating access charges, when combined with any SLC increases (discussed above), would be no greater on an aggregate dollar-for-dollar basis than the amount of revenues AT&T forgoes by voluntarily reducing its intrastate terminating access

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[144] *CALLS Order* ¶¶ 176-78.

[145] To avoid introducing additional complexity into the calculations required under the Commission's price cap regime in the event AT&T increases interstate originating access charges, the waiver requested herein would permit AT&T to exclude the increases from its price cap calculations.

charges to achieve parity with its interstate terminating access charges.[146] Like the proposed SLC increases, under these special circumstances where the interstate originating access charge increases are designed to achieve access charge parity, there is "good cause" to grant this limited waiver for the reasons discussed below.[147]

In the *CALLS Order*, the Commission sought to reduce price cap interstate access charges – which were then 1.1 cents per minute on average – by adopting ATS target rates set at $0.0055 per minute for the BOC LECs and GTE, $0.0095 per minute for low-density price cap carriers, and $0.0065 per minute for all other price cap carriers. The Commission observed that the target ATS rates were "within the range of estimated economic costs of switched access" that had been presented to the Commission[148] and, therefore, they are a "reasonable transitional estimate of rates that might be set through competition."[149] Accordingly, the Commission concluded that "these target ATS rates are just and reasonable."[150]

With respect to low-density price cap carriers, the Commission recognized that such carriers typically faced higher costs due to the geographic dispersion of their customer bases and therefore a higher ATS rate was "appropriate."[151] While AT&T is not a low-density price cap carrier, we have chosen to limit our waiver to the $0.0095 target ATS rate in order to assure the

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[146] AT&T is unaware of any Commission rule that would restrict AT&T from setting its interstate originating access rates above its interstate terminating access rates so long as the total of those two rates do not exceed the overall ATS limit on its interstate access rates under the Commission's access charge regime. To the extent such a restriction exists, however, AT&T seeks a waiver of it for all of the reasons discussed herein.

[147] *See supra* pp. 37-38 (discussing waiver standards). In the event AT&T is subject to "mirroring" rules in any state that would permit AT&T to increase its intrastate originating access rates to the same level as its interstate originating access rates, AT&T would agree to forgo any such intrastate rate increases that would be caused by the increases in its interstate originating access rates stemming from this waiver.

[148] *CALLS Order* ¶ 176.

[149] *CALLS Order* ¶ 178.

[150] *CALLS Order* ¶ 176.

[151] *CALLS Order* ¶ 177.

Commission that our ATS rate will not exceed a level that the Commission previously found to be "just and reasonable" in the *CALLS Order*. Further, because AT&T would first need to use any available headroom created by the SLC waiver (discussed above) before relying on the originating access waiver, any increases in originating access rates in order to achieve parity would be relatively modest. And, in all events, such originating access increases would be no higher in the aggregate (when combined with any aggregate SLC increases) than the total amount of revenues necessary to offset any reductions in intrastate terminating access charges.

Moreover, the same types of competitive market forces that, as a practical matter, limit AT&T's ability to raise its SLCs also ensure that AT&T's interstate originating access rates will remain just and reasonable. As previously discussed, AT&T (like other incumbent LECs) has been losing access lines at an astounding pace over the past seven years. Thus, AT&T has a strong incentive to ensure that the aggregate rates its POTS customers pay for local and long distance services (*i.e.*, the total costs they incur for using the PSTN) remain competitive with the rates for the ever-increasing array of alternative voice services. In particular, unlike AT&T's wireline IXC affiliate, our wireless and VoIP-based competitors – which include major wireless providers like Verizon, Sprint and T-Mobile as well as many regional carriers, and leading cable VoIP providers such as Comcast, Time Warner, Cablevision and Cox as well as numerous independent VoIP providers like Vonage and Packet8 – typically do not incur originating access charges when they provide long distance services to their customers because those calls do not originate from a LEC's wireline network. Wireless carriers and some VoIP providers (and their partners), however, do pay terminating access charges when they deliver interexchange calls to the PSTN.[152] To the extent AT&T decreases its intrastate terminating access rates (a cost these

[152] As discussed, AT&T has advocated that all providers of IP/PSTN services should be subject to access charges.

competitors pay) in order to increase its interstate originating access rates (a cost these competitors do not pay), we would be reducing their overall cost structure and giving them a competitive advantage in the marketplace.[153] Thus, AT&T has significant competitive incentives to be judicious in the amount of any increases it makes in its interstate originating access rates as a result of this waiver.

For related reasons, any such increases in interstate originating access rates would not necessarily have an adverse impact on independent IXCs operating in AT&T's LEC footprint. Although these IXCs would face higher interstate originating access rates, they would also see decreases in the intrastate terminating access rates they pay. In particular, because AT&T's petition requires access charge parity to be pursued first by using available headroom under the SLC caps (and then through interstate originating access charges), a substantial amount of the decrease in intrastate terminating access charges would be recouped through SLCs instead of interstate originating access charges. As a result, depending on its traffic mix, an IXC could experience a net *decrease* in its overall access charge costs.

AT&T recognizes, of course, that raising interstate originating access rates above interstate terminating access rates may create opportunities for arbitrage.[154] We believe, however, that such arbitrage will be less significant than the current terminating arbitrage opportunities under the *status quo*. That is so because, on the originating side of an

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[153] Because AT&T's IXC affiliate imputes the cost of AT&T LEC access charges to itself, a decrease in intrastate terminating access rates coupled with a corresponding increase in interstate originating access rates would not produce the same reduction in AT&T's cost structure.

[154] *See, e.g.*, Petition of Frontier Telephone of Rochester, Inc. for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls, WC Docket No. 05-276 (filed Nov. 23, 2005) (describing a calling card scheme designed to evade the payment of originating access charges on Feature Group A access services). Although Frontier withdrew its petition due to a settlement, the Commission should nonetheless address the issues raised in Frontier's petition to end the unlawful arbitrage scheme that Frontier identified. *See* AT&T Comments, WC Docket No. 05-276 (Jan. 9, 2006).

interexchange PSTN call, the LEC, the IXC and the calling party are typically all known to each other, which is often not the case on the terminating side of the call. As a result, the parties are better able to accurately identify the source and intended destination of a particular call, which in turn, improves the parties' ability to ensure that traffic is routed and rated appropriately. Thus, to the extent AT&T uses the relief sought here to increase its interstate originating access charges, the requested waiver will enable AT&T to achieve an access rate structure that, although not perfect, is *more* economically rational and *less* discriminatory than the rate structure dictated by the Commission's current intercarrier compensation regime. Accordingly, the requested waiver will serve the public interest and promote the more effective implementation of the Commission's overall policy goals for intercarrier compensation reform.

V. CONCLUSION

For all of the above-state reasons, the Commission should grant this petition without delay.

Respectfully submitted,

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