

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of AT&T Inc. for Interim Declaratory	)	
Ruling and Limited Waivers Regarding	)	WC Docket No. 08-152
Access Charges and ESP Exemption	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36

**COMMENTS OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) hereby submits its comments regarding the petition filed by AT&T in the above-captioned proceeding.<sup>1</sup> For the reasons explained below, the Commission should focus its attention on comprehensive intercarrier compensation reform and not the interim, piecemeal solution proposed by AT&T in this petition.

**INTRODUCTION AND SUMMARY**

NCTA is the principal trade association representing the cable television industry in the United States. Its members include cable operators serving more than 90% of the nation's cable television subscribers, as well as more than 200 cable programming networks and services. NCTA's members also include suppliers of equipment and services to the cable industry. The cable industry is also the nation's largest provider of high-speed Internet access after investing over \$130 billion since 1996 to build out a two-way interactive network with fiber optic

---

<sup>1</sup> Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers, WC Docket No. 08-152 (filed July 17, 2008) (AT&T VoIP Petition).

technology. NCTA's members also are the leading providers of Voice over Internet Protocol (VoIP) service and therefore NCTA has a significant interest in the regulatory regime applicable to VoIP services.

In the petition at issue here, AT&T requests that, in the absence of comprehensive intercarrier compensation reform, the Commission clarify that terminating access charges apply to traffic originating in IP format and terminating on the "public switched telephone network" (IP/PSTN traffic) and to traffic originating on the PSTN and terminating in IP format (PSTN/IP traffic).<sup>2</sup> Access charges on traffic that appears to be jurisdictionally intrastate would be permitted, however, only if the rate is equal to or less than the interstate access rate. To the extent carriers need to reduce intrastate terminating access rates under this proposal, any resulting revenue reductions would be offset by increased charges to end users and, if necessary, increased interstate originating access charges.<sup>3</sup>

**THE COMMISSION SHOULD FOCUS ITS EFFORTS ON  
COMPREHENSIVE REFORM, NOT PIECEMEAL CHANGES**

NCTA consistently has supported rational reform of the intercarrier compensation regime.<sup>4</sup> We agree with AT&T that it is long past time for the Commission to move to a regime

---

<sup>2</sup> The AT&T VoIP Petition does not clearly define the term public switched telephone network. Given that many providers (ILECs and CLECs, wireline and wireless) use a mix of IP and circuit-switched technologies, it might be more accurate to use the term public circuit-switched network in place of public switched telephone network.

<sup>3</sup> In two related filings, AT&T also submitted a framework for comprehensive intercarrier compensation reform and a request that the Commission clarify that VoIP services, including facilities-based VoIP services, are subject to exclusive federal jurisdiction as described in the *Vonage Order*. See Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T, to Kevin J. Martin, Chairman, Federal Communications Commission, CC Docket No. 01-92, et al. (filed July 17, 2008) (AT&T Comprehensive Proposal); Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T, to Kevin J. Martin, Chairman, Federal Communications Commission, WC Docket No. 04-36, et al. (filed July 17, 2008) (AT&T Preemption Request); see also *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (*Vonage Order*), affirmed *Minnesota Public Utilities Commission v. FCC* 483 F.3d 570 (8<sup>th</sup> Cir. 2007).

<sup>4</sup> See, e.g., Comments of the National Cable & Telecommunications Association, CC Docket No. 01-92 (filed May 23, 2005); Comments of the National Cable & Telecommunications Association, CC Docket No. 01-92 (filed Oct. 25, 2006) (NCTA 2006 Comments).

with unified termination rates for all traffic, including VoIP traffic.<sup>5</sup> But the interim approach proposed in the AT&T VoIP Petition is not such a regime. As AT&T acknowledges, it “addresses only the symptoms of the underlying regulatory problem, but not the problem itself.”<sup>6</sup> In particular, the AT&T interim proposal retains disparate termination rates for “local” and “interexchange” VoIP traffic, notwithstanding recognition by AT&T, and by the Commission itself, that there is no difference in the cost of terminating local and interexchange traffic<sup>7</sup> and that retaining disparate termination rates provides significant arbitrage incentives.<sup>8</sup> In short, the reasons AT&T offers for quickly adopting a unified compensation regime, which NCTA agrees with, are the very same reasons why its interim VoIP proposal is inadequate.

In addition, NCTA disagrees with the premise underlying AT&T's petition that incumbent LECs must somehow be "made whole" to offset estimated reductions in access charge revenue. Almost all ILECs now provide numerous services that are not subject to price regulation (including long distance voice, broadband Internet access, and multichannel video service), and many states have deregulated most, if not all, ILEC local exchange rates, allowing such rates to be increased. Therefore, as NCTA has explained previously, there is no reason to

---

<sup>5</sup> See AT&T Comprehensive Proposal at 2 (“Comprehensive reform is by far the healthier and more rational solution and it is the only solution that serves the long-term interests of America’s consumers.”).

<sup>6</sup> *Id.* at 2.

<sup>7</sup> See AT&T VoIP Petition at 1 (“A prime example of this irrational disparity . . . is the multiple different rates . . . that an incumbent local exchange carrier (ILEC) must charge for performing essentially the same basic function: call termination.”); see also *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4694, ¶ 15 (“Our current classifications require carriers to treat identical uses of the network differently, even though such disparate treatment usually has no economic or technical basis.”).

<sup>8</sup> See AT&T Comprehensive Proposal at 4 (“[T]he disparate charges that may apply to traffic depending on how a provider purports to self-classify that traffic sends artificial price signals to the market. This system has created entire sub-industries . . . which rise and fall solely as a result of regulatory uncertainty or loopholes that are exploited for as long as possible.”); see also *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685, 4694, ¶ 15 (“These artificial distinctions distort the telecommunications markets at the expense of healthy competition.”).

assume that a reduction in access charges will require the adoption of some mechanism or subsidy to allow ILECs to recover their network costs.<sup>9</sup>

Finally, NCTA supports AT&T's call for federal preemption of state regulation of VoIP services. As AT&T notes, some state commissions, notwithstanding the *Vonage Order*, are seeking to impose unnecessary and burdensome entry requirements on facilities-based VoIP providers.<sup>10</sup> The Commission should clarify that such requirements are inconsistent with federal law. Of course, federal preemption of state authority over *VoIP providers* has no impact on the rights and obligations of *telecommunications carriers* under Section 251, including competitive carriers that provide wholesale telecommunications services to VoIP providers. Accordingly, clarifying the jurisdictional status of retail VoIP services, as AT&T requests, would not interfere in any respect with the interconnection rights of any carrier, including a wholesale carrier, or with the obligation of a state commission to enforce such rights.<sup>11</sup>

---

<sup>9</sup> NCTA 2006 Comments at 32 (“Because most ILEC retail services are not subject to rate regulation, the Commission should not assume that, absent further regulatory relief, LECs would be unable to recover the costs of their networks if access charges were reduced.”). Other parties have endorsed this position. *See, e.g.*, Letter from Norina Moy, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, *et al.* (filed Aug. 7, 2008) at 2 (“A provider’s overall portfolio of revenue sources and operations – for both its regulated services and its total corporate operations – should be considered in evaluating the need for any alternative recovery mechanism.”).

<sup>10</sup> *See* AT&T Preemption Request at 2 (describing decisions of Wisconsin, Missouri, and Vermont commissions).

<sup>11</sup> *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007).

## **CONCLUSION**

For the reasons explained above, the Commission should quickly take steps to establish a unified compensation regime applicable to all traffic, rather than making piecemeal changes as proposed in the AT&T VoIP Petition. In addition, to the extent the Commission preempts state regulation of retail VoIP services, it should make abundantly clear that the requirements of Section 251, and the role of the states in applying those requirements, remain in effect.

Respectfully submitted,

**/s/ Daniel L. Brenner**

Daniel L. Brenner  
Neal M. Goldberg  
Steven F. Morris  
National Cable &  
Telecommunications Association  
25 Massachusetts Avenue, N.W. – Suite 100  
Washington, D.C. 20001-1431  
(202) 222-2445

August 21, 2008