

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

In the Matter of	)	
	)	
Petition of the Frontier Local Operating	)	
Companies for Limited Forbearance	)	WC Docket No. 08-205
Under 47 U.S.C. § 160(c) from	)	
Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b),	)	
and Commission Orders on the ESP Exemption	)	

**REPLY COMMENTS OF AT&T INC.**

**I. INTRODUCTION & SUMMARY**

AT&T Inc. and its affiliates (collectively, AT&T) respectfully submit the following reply comments on the petition filed by the Frontier Local Operating Companies (Frontier) seeking forbearance from certain provisions of the Act, and Commission rules and orders, as a means to ensure the application of access charges to IP-to-PSTN traffic.<sup>1</sup> As AT&T and many other parties have explained in detail, the best solution to the controversy over IP-to-PSTN traffic is for the Commission to promptly and comprehensively reform the overall intercarrier compensation regime, rather than addressing discrete issues on a piecemeal basis in response to petitions from individual providers like Frontier (or, for that matter, AT&T).<sup>2</sup>

But to the extent the Commission is not able to promptly achieve comprehensive reform in a manner that puts an end to the competition-distorting regulatory arbitrage associated with IP-

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<sup>1</sup> Petition of the Frontier Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption, WC Docket No. 08-205 (Sept. 25, 2008) (Frontier Petition).

<sup>2</sup> See Letter from Hank Hultquist, AT&T, to Marlene Dortch, FCC, WC Docket No. 01-92, et al (July 17, 2008) (AT&T Hultquist Letter); Letter from Robert W. Quinn, Jr., AT&T to Kevin Martin, FCC, WC Docket No. 01-92, et al (July 17, 2008) (AT&T Quinn Letter); Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the “ESP Exemption,” WC Docket No. 08-152 (July 17, 2008) (AT&T Petition).

to-PSTN traffic, it will have no choice but to address that arbitrage, as well as many other related intercarrier compensation disputes, on an individual basis. Consistent with Commission policy, AT&T's proposal for applying access charges to IP-to-PSTN traffic would stop regulatory arbitrage by ensuring that all providers are subject to the same intercarrier compensation obligations when they send traffic to the PSTN.<sup>3</sup> And it would do so in a way that reduces and unifies terminating access charges, thereby furthering the Commission's overall goals for comprehensive intercarrier compensation reform. In all events, and contrary to Google's misguided assertions,<sup>4</sup> applying access charges to IP-to-PSTN traffic would not result in "regulation" of VoIP providers or their services.

## **II. DISCUSSION**

### **A. The Commission's First Priority Should be to Comprehensively Reform Its Dysfunctional Intercarrier Compensation Regime.**

As Commissioner Copps candidly observed, the Commission's system of intercarrier compensation is "Byzantine and broken."<sup>5</sup> That system requires carriers to charge different rates for functionally identical uses of the public switched telephone network – even when doing so has no technical or economic basis – which creates opportunities for regulatory arbitrage and incentives for inefficient investment.<sup>6</sup> Thus, it is hardly surprising that a multitude of telecommunications stakeholders have been calling upon this Commission for the better part of a decade to comprehensively reform its intercarrier compensation regime. As AT&T explained in a recent filing, Commission action "is desperately needed to resolve, once and for all, a series of

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<sup>3</sup> See AT&T Petition.

<sup>4</sup> Google Comments at 9.

<sup>5</sup> *Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd. 4685, 4796 (2005) (*Intercarrier Compensation FNPRM*), Separate Statement of Commissioner Michael J. Copps.

<sup>6</sup> See *Intercarrier Compensation FNPRM* ¶¶ 3, 15; AT&T Quinn Letter at 2-4.

never-ending, multi-billion dollar disputes in the industry over the proper intercarrier compensation rate for traffic termination,” including ISP-bound traffic, traffic pumping, phantom traffic, IP-in-the-middle, and IP-to-PSTN compensation.<sup>7</sup>

AT&T strongly believes that the *best* way to address the controversy over intercarrier compensation for IP-to-PSTN traffic (as well as other intercarrier compensation controversies) is to do so through comprehensive reform of the entire intercarrier compensation regime, rather than through piecemeal efforts at regulatory “whack-a-mole” in reaction to individual intercarrier compensation crises as they occur.<sup>8</sup> Thus, instead of devoting scarce Commission resources to address the relief sought by Frontier, the Commission should focus its efforts on adopting and implementing comprehensive reform as expeditiously as possible.

Of course, to the extent the Commission is unable to act on comprehensive reform in the near future in a manner that ends regulatory arbitrage with respect to IP-to-PSTN traffic, it will have no choice but to address that arbitrage, along with all of the other controversies mentioned above and in AT&T’s previous filings. In that event, AT&T has offered a compromise proposal for addressing intercarrier compensation for IP-to-PSTN traffic that asks the Commission to declare – on an interim, transitional basis pending comprehensive reform – that the application of access charges to interexchange IP-to-PSTN traffic does not conflict with federal policy, provided that such charges are set no higher than the terminating carrier’s interstate switched access rate levels.<sup>9</sup> The petition also asks the Commission to enable AT&T and similarly situated carriers to offset reductions they make in intrastate terminating rates to achieve parity with interstate rate levels by waiving certain price cap rules to allow increases in

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<sup>7</sup> AT&T Hultquist Letter at 1.

<sup>8</sup> AT&T Quinn Letter at 1-2.

<sup>9</sup> AT&T Petition at 4-6.

federal subscriber line charges (not to exceed existing SLC caps) and, if necessary, interstate originating switched access charges, subject to a cap of \$0.0095 on Average Traffic Sensitive (ATS) rates.<sup>10</sup> Thus, unlike petitions filed by other parties that seek an all-or-nothing resolution to the issue of whether access charge apply to IP-to-PSTN traffic (*e.g.*, Feature Group IP, Embarq and Frontier), AT&T’s petition offers a balanced compromise that also is fully consistent with a critically important goal of comprehensive intercarrier compensation reform: reducing and unifying the charges carriers collect for terminating traffic on their networks. Accordingly, if – and only if – the Commission is unable to achieve comprehensive reform in the near term that ends regulatory arbitrage for IP-to-PSTN traffic, it should address the IP-to-PSTN traffic controversy by granting AT&T’s petition.

**B. Contrary to Google’s Misguided Claims, the Application of Access Charges to IP-to-PSTN Traffic Would Not Impose Regulations on VoIP Providers.**

In its comments on Frontier’s Petition, Google claims that subjecting IP-to-PSTN traffic to access charges would “expand regulation to unregulated IP innovators,” including “IP applications providers, ESPs, and innumerable other businesses that are decidedly not ‘carriers’ or telecommunications service providers . . . .”<sup>11</sup> Google’s argument is based on a fundamental misunderstanding of rate regulation. Applying access charges to IP-to-PSTN traffic may affect the rates that VoIP providers (or their partners) pay for connectivity to the PSTN, *but it does not result in any regulation of VoIP providers or any other non-carriers or the services they provide.*<sup>12</sup> The Commission’s access charge rules apply to *LECs* and prescribe the rates *LECs* must charge for providing access services to the entities that purchase those services. In

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<sup>10</sup> AT&T Petition at 8-11.

<sup>11</sup> Google Comments at 9.

<sup>12</sup> *See* AT&T Petition at 31-32.

particular, Part 69 of the Code of Federal Regulations “establishes rules for access charges for interstate or foreign access services *provided by telephone companies* on or after January 1, 1984.”<sup>13</sup> Thus, when a VoIP provider (or the entity it partners with to obtain PSTN connectivity) purchases an access service from a LEC, the VoIP provider (or its partner) is obtaining a LEC service that is subject to rate regulation. But while the LEC’s access service may be rate-regulated, the purchase of that service from the LEC does not result in regulation of the VoIP provider or its VoIP services.<sup>14</sup>

The same is true when an ESP purchases a local business line (*e.g.*, a PRI) from a LEC’s intrastate tariff to be used as an input into the ESP’s retail service. The rate that the LEC charges for that local business line is regulated by a state commission, but the ESP’s purchase of that business line does not result in state regulation of the ESP or its retail services.<sup>15</sup> Indeed, ESPs have been purchasing local business lines out of state tariffs for 25 years and neither Google nor any other commenter has complained that the act of purchasing those rate-regulated local business lines subjects ESPs to state regulation.

Thus, at bottom, Google’s concern with access charges cannot be about imposing additional “regulation” on VoIP providers because no such regulation would be imposed by those charges. Rather, Google’s real complaint is that, if the Commission definitively rules that access charges apply to IP-to-PSTN traffic, Google and certain other VoIP providers will lose their ability to engage in regulatory arbitrage by routing their PSTN-bound traffic in such a way as to avoid access charges. But propping up an arbitrage-based VoIP business model for Google or any other provider should not be the Commission’s objective in this or any other proceeding.

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<sup>13</sup> See 47 C.F.R. § 69.1 (emphasis added).

<sup>14</sup> See AT&T Petition at 31.

<sup>15</sup> See AT&T Petition at 31.

Instead, the Commission’s goal should be to ensure that the cost of the PSTN is “borne equitably among those that use it in similar ways” by making certain that any service provider who sends traffic to the PSTN is “subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network.”<sup>16</sup> And the best way to do so – *if* the Commission does not promptly adopt comprehensive intercarrier compensation reform and thereby end regulatory arbitrage – is to grant AT&T’s petition on IP-to-PSTN traffic.

### III. CONCLUSION

For all of the foregoing reasons, the Commission should turn its full attention to adopting and implementing comprehensive reform of the intercarrier compensation regime.

Respectfully Submitted,

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<sup>16</sup> *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4683, ¶ 33 (2004).