

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

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| In the Matter of                        | ) |                      |
|   | ) |                      |
| Petition of Pac-West Telecomm, Inc.     | ) | WC Docket No. 11-115 |
| for Declaratory Ruling Regarding Access | ) |                      |
| Charges Assessed on VoIP Traffic        | ) |                      |

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**COMMENTS OF AT&T INC.**

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## **I. Introduction**

AT&T Inc., on behalf of its affiliated companies (collectively, AT&T), respectfully submits the following comments in response to the petition for declaratory ruling filed by Pac-West Telecomm, Inc. (Pac-West), which addresses issues raised in a primary jurisdiction referral from a federal trial court adjudicating a dispute between Pac-West and Verizon.<sup>1</sup> In particular, Pac-West asks the Commission to declare that interexchange carriers (IXCs) are required to pay Pac-West's federally tariffed originating access charges on "IP-to-PSTN 8YY traffic" that Pac-West sends to the IXCs for termination to the IXCs' 8YY customers. Pac-West asks the Commission to make this declaration applicable to Verizon and "similarly situated IXCs," which presumably includes AT&T.<sup>2</sup> For the reasons discussed below, Pac-West's petition is defective and should be denied.

## **II. Discussion**

According to Pac-West, the calls at issue in its petition "are toll-free interexchange calls initiated in IP format, carried to an appropriate Pac-West switch, at which point Pac-West performs the necessary SMS/8YY database query to identify the responsible IXC that sold that particular 8YY service."<sup>3</sup> When the query results identify the responsible IXC, Pac-West delivers the call to that IXC (either directly, or indirectly through another carrier) and then bills the IXC for the access services it purportedly rendered.<sup>4</sup> Pac-West alleges that Verizon has refused to pay for these services, which apparently gave rise to the federal litigation between the two carriers. Thus, Pac-West seeks a Commission declaration that its "tariffed access-service

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<sup>1</sup> Petition of Pac-West Telecomm, Inc. for Declaratory Ruling Regarding Access Charges Assessed on VoIP Traffic, WC Docket No. 11-115, at 1 (June 28, 2011) (Pac-West Petition).

<sup>2</sup> Pac-West Petition at 3.

<sup>3</sup> Pac-West Petition at 3.

<sup>4</sup> Pac-West Petition at 3.

charges” apply to interexchange IP-to-PSTN 8YY calls that it delivers to Verizon and “similarly situated IXCs.”<sup>5</sup>

Aside from the meager description of the calls it delivers to Verizon quoted above, however, Pac-West offers no explanation of the access services it purportedly provides to Verizon or any other IXC. In particular, Pac-West fails to provide any information about: the entity or entities making the VoIP-originated calls; the entity or entities that deliver the calls to Pac-West; the facilities over which the calls are routed from their point of origination to Pac-West; the means by which Pac-West determines the jurisdiction of the calls; the functions (other than 8YY database dips) that Pac-West provides (e.g., end office switching, tandem switching, transport); or the equipment Pac-West uses to perform those functions. These omissions are fatal to Pac-West’s petition for at least two independent reasons.

*First*, in order to collect the “tariffed access-service charges” it demands, Pac-West must establish that it is actually providing the access services described in its tariff.<sup>6</sup> In its federal access services tariff, Pac-West purports to offer “Carrier Access Services.”<sup>7</sup> According to the tariff, these services “are applicable to [i] the origination or termination of interstate and international calls [ii] from or to the Company’s End User subscribers [iii] over local exchange

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<sup>5</sup> Pac-West Petition at 3.

<sup>6</sup> See *AT&T Corp. v. YMAX Communications Corp.*, File No. EB-10-MD-005, Memorandum Opinion and Order, FCC 11-59, ¶ 12 (released April 8, 2011) (“Section 203(c) of the Act bars a carrier from enforcing any classifications, regulations, or practices affecting its tariffed charges, except as specified in the tariff. Consistent with these statutory provisions, a carrier may lawfully assess tariffed charges only for those services specifically described in its applicable tariff.”) (internal quotations, footnotes and alterations omitted). See also *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, ¶ 21 (2004) (CLECs, like ILECs, are permitted to “charge only for those services that they provide”).

<sup>7</sup> Pac-West Telecomm, Inc., Carrier Access Services Tariff, Tariff F.C.C. No. 3, § 3.1 (effective July 17, 2010) (Pac-West Tariff).

circuits [iv] furnished by the Company and [v] to interstate calls completed by the Company.”<sup>8</sup>

But as noted above, Pac-West never provides any information in its petition about how it accomplishes the “origination” of these IP-to-PSTN calls; the identity of its purported “End Users subscribers” and whether they meet the definition of “End User” in its tariff;<sup>9</sup> the “local exchange circuits” over which these calls are originated; how Pac-West “furnished” these circuits; how Pac-West determined that the calls are “interstate” or “international;” or the manner in which Pac-West “completed” these calls. By failing to provide basic information about its access services, Pac-West has made it impossible for the Commission to determine whether Pac-West is actually providing the services for which it seeks to collect tariffed access charges. Thus, there is no possible basis upon which the Commission could grant Pac-West’s demand for “a declaration confirming that its tariffed access-service charges” apply to the calls at issue here.<sup>10</sup>

*Second*, even if Pac-West were actually providing the access services described in its tariff, Pac-West has not demonstrated that such services are the “functional equivalent” of the competing ILEC’s access services. Specifically, section 61.26 of the Commission’s rules permits a CLEC to tariff and charge the competing ILEC’s exchange access rates only if the CLEC’s services are “the functional equivalent of the ILEC interstate exchange access

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<sup>8</sup> Pac-West Tariff at § 3.1.

<sup>9</sup> To the extent Pac-West is seeking to collect originating access charges on 8YY calls delivered to it by one of its VoIP provider customers, it would need to demonstrate (among other things) that such VoIP providers qualify as “End User” subscribers as that term is defined in its tariff. See Pac-West website, describing services provided to VoIP providers, at <http://www.pacwest.com/voip-providers.php?nav=solutions&parent=VOIP>. Pac-West’s federal Carrier Access Services Tariff defines “End User” in relevant part as “any customer of an interstate or foreign telecommunications service that *is not a carrier* . . . .” Pac-West Tariff, § 1.0 (emphasis added). Thus, despite Pac-West’s assertion to the contrary, Pac-West would need the Commission to rule that a VoIP provider “is not a carrier” in order to obtain the declaratory ruling it seeks. See Pac-West Petition at 2-3 (“this petition does not require the Commission to classify VoIP services generally”). Pac-West’s failure to meaningfully address this VoIP classification issue in its petition is another independent reason for the Commission to deny that petition.

<sup>10</sup> Pac-West Petition at 3.

services.”<sup>11</sup> But as discussed above, Pac-West has failed to provide even the most basic information about the access services it provides, let alone explain how those services are the “functional equivalent” of the services provided by the competing ILEC. Thus, again, there is no possible basis upon which the Commission could grant the relief requested by Pac-West.

### **III. Conclusion**

For all of the forgoing reasons, the Commission should deny Pac-West’s petition for declaratory ruling.

Respectfully Submitted,

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<sup>11</sup> 47 C.F.R. § 61.26(a)(3). In addition, section 61.26 (f) states that, when a CLEC provides some portion of the interstate switched exchange access services used to send traffic to or from an end user not served by that CLEC, the CLEC’s rate for the access services it provides may not exceed the rate charged by the competing ILEC for the same access services. 47 C.F.R. § 61.26(f). Pac-West has failed to address whether it has complied with the requirements of section 61.26(f), providing yet another independent reason to deny its petition.