

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

In the Matter of)	
)	
Petition for Declaratory Ruling that AT&T's)	WC 02-361
Phone-to-Phone IP Telephony Services Are Exempt)	
from Access Charges)	
)	
)	

Comments of Warinner, Gesinger & Associates, LLC

I. Introduction

Warinner, Gesinger & Associates, LLC (“WGA”) hereby submits its comments in response to the Federal Communications Commission (FCC or Commission) public notice seeking comments on AT&T's petition for declaratory ruling that phone-to-phone IP telephony services are exempt from access charges posted November 18, 2002.

WGA is a certified public accounting firm specializing in the provision of accounting and consulting services to local exchange telecommunications carriers throughout the United States in which the majority of our clientele are mainly rural Local Exchange Carriers (LECs).

II. Phone-to-phone IP telephony services represent telecommunications services under existing service definition standards

AT&T is seeking a declaratory ruling that would require Incumbent Local Exchange Carriers (ILECs) to exempt Interexchange Carriers (IXCs) from having to pay end office access charges on or for Internet Protocol (IP) telephone service. WGA

questions the reasoning of AT&T in support of its petition and challenges AT&T to address the arguments contained in this response. First of all, why allow an IXC to elude paying access charges for the use of LEC facilities to complete phone-to-phone interexchange calls simply because the IXC chooses to use an internet protocol (IP) for the transmission of telephony service? Phone-to-phone IP traffic is transparent to the consumer and uses the local network to originate and terminate interexchange calls that meet the definition of toll service. The transport method used by an IXC to carry the call does not change the definition of the service and should not dictate an ILECs means to recover costs.

Although the Commission has previously defined "information services" as well as "telecommunications services", especially in the rural areas, it is the rural carriers' telecommunications network which is used for connectivity to the Internet. In the FCC's report to Congress, the FCC stated that IP telephony can be provided through either software or hardware via "gateways" that enable the application to originate or terminate traffic via the LEC's Public Switched Telephone Network (PSTN).¹ Whenever a provider of telecommunications service uses the LEC's network, the LEC is entitled compensation for this use. The FCC has already determined that phone-to-phone IP telephony, the sole purpose of which is to transmit information without a change in form or content, is not defined as an information service, but rather a telecommunication service.² Until the Commission adopts new regulatory policy for IP telephony services, current policies and regulation must be applied.

¹ FCC 98-67 Report to Congress, released 04-10-98, para. 84.

² FCC 98-67 Report to Congress, released 04-10-98, para. 89

III. Access charges must continue to be assessed for all services/facilities purchased for resale by other telecommunications service providers

Purchasers of LEC services/facilities are classified as “end users” or “carriers” in accordance with the purpose or use of the services/facilities they purchase. Companies who purchase LEC services/facilities for their own consumption or for access to the public are considered “end users.” Companies who purchase LEC services/facilities for the provision of telecommunications services to customers with the intent to resell those services to customers are considered “carriers.” The definition of the service dictates the classification of the service provider. The classification of the service provider dictates the method of charging for the services/facilities provided. End users purchase telecommunications services/facilities from LECs under local exchange tariffs. Carriers purchase telecommunications services/facilities from LECs under access service tariffs.

AT&T argues that its phone-to-phone IP services could be provided through its ISP affiliates, AT&T WorldNet and AT&T Broadband.³ Currently, these entities are exempt from paying access charges to LECs because they are considered end user customers of the LECs and not carriers. However, in order to provide phone-to-phone IP telephony service, these entities would have to request certification as telecommunications service providers and that would reclassify them as carriers for the provision of phone-to-phone IP telephony service. As carriers, the telecommunication services provided by these entities should then be subject to access charges. This position is supported by statements appearing within the following Q&A on the fact sheet presented on the FCC’s website for Internet Service Providers and Access Charges⁴:

³ See AT&T Petition, WC 02-361, Filed 10/18/2002, Page 8.

⁴ FCC Website under fcc.gov/Bureaus/Common_Carrier/Factsheets/ispfact.html

Q: How does the FCC regulate the rates that local telephone companies charge to ISPs?

A: ISPs purchase local phone lines so that customers can call them. Under FCC rules, enhanced service providers ISPs are considered "end users" when they purchase services from local telephone companies. Thus, ISPs pay the same rates as any other business customer, and these rates are set separately in each state. By contrast, long-distance companies are considered "carriers," and they pay interstate access charges regulated by the FCC.

Furthermore, the FCC provided the following statement in its report to Congress supporting the imposition of access charges for phone-to-phone IP telephony services. In its report, the Commission stated that the:

"Act and the Commission's rules impose various requirements on providers of telecommunications, including contributing to universal service mechanisms, paying interstate access charges, and filing interstate tariffs. We note that, to the extent we conclude that certain forms of phone-to-phone IP telephony service are "telecommunications services," and to the extent the providers of those services obtain the same circuit-switched access as obtained by other interexchange carriers, and therefore impose the same burdens on the local exchange as do other interexchange carriers, we may find it reasonable that they pay similar access charges."⁵

The IP service being provided by AT&T is nothing more than an end user customer dialing a seven digit local telephone number to gain access to an ISP which is being accomplished over the public switched network. This is similar in nature to Feature Group A service, which provides for "a line side connection to end office switches associated with a seven digit phone number for the customer's use in originating and terminating communications to an Interexchange Carrier's service."⁶ The IXC is responsible for paying a LEC under the appropriate access tariff for Feature Group A service. One questions whether IP telephony service is nothing more than a FGA service

⁵ FCC 98-67 Report to Congress, released 04-10-98, para. 91

⁶ NECA Tariff F.C.C. No 5 - section 6.5.1

in disguise.

IV. LECs have the right to identify traffic delivered to its network in order to bill access charges to telecommunications service providers under the appropriate tariff

It is evident that a LEC can determine the jurisdiction of the various calls traversing the LEC's network via the Calling Party Number (CPN) designation on the call detail record. Within AT&T's petition, they state they "are disputing charges by Verizon and will be entitled to a full refund (plus interest) when the FCC grants the ruling AT&T is requesting". It would appear AT&T has already (wrongfully) made the assumption that they are correct and the LEC is in error in validating the records for calls placed on the LEC network. WGA supports Verizon on this issue and firmly believes a LEC has the right to validate the call detail records of all calls traversing their networks in order to bill access in accordance with the jurisdiction of the call. If carriers such as AT&T plan to use IP technology to provide telecommunications services, they should be required to report the appropriate usage to the LEC, make their call records available for inspection and pay access to the LEC where the calls originate and/or terminate.

V. There will be a significant revenue impact to LECs if the FCC grants AT&T's petition for exemption of access charges for IP based telephony services

WGA believes this will be a critical decision by the FCC. It is likely that if AT&T's petition is granted, all interexchange carriers will have an incentive to move or convert all voice traffic to the Internet Protocol in order to avoid paying access charges to any LEC in the future. If LEC access revenues were to "disappear" simply because of a change in the way a call is transported over carrier networks, the LEC's would lose a

major source of revenue while still providing the same services to the carriers. Access charges compensate LECs for the use of the local network when connecting calls between end users and IXC networks. Approximately two-thirds of rural ILEC revenues are directly or indirectly attributed to access services provided to IXCs. Should these access revenues disappear, these revenues must be recovered directly from ILEC customers at the discretion of state regulatory agencies.

WGA believes the FCC's intent is to apply access charges to voice calls regardless of whether voice calls are transported over circuit based networks or IP packet based networks. WGA respectfully cautions the FCC in making a ruling that would enable AT&T the IXC to contract with AT&T the ISP to deliver all voice calls on their behalf so that the IXC could avoid paying access to the LECs.

VI. Opinion Summary

All toll telecommunication services provided by IXCs should be subject to toll access charges. The transport method used to carry toll calls by an IXC does not change the classification of a toll call and should not dictate the LECs means to recover costs. WGA believes that LECs are entitled to compensation whenever a provider of telecommunications service uses the LEC's network. If carriers plan to use IP technology to provide toll telecommunications services, they should make their call records available for inspection, be required to report the appropriate usage to the LEC, and pay access to the LEC for all calls originating and/or terminating on the LEC's network.

For the reasons stated above, WGA requests the FCC deny AT&T's request for a declaratory ruling and continue the present course which is to enforce the policy that

access charges should apply for IP based telephony services provided by carriers until such time as the Commission determines alternative rules and charges for this service.

Respectfully submitted,

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December 18, 2002