

**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	)	
	)	
	)	

**Reply Comments of Warinner, Gesinger & Associates, LLC**

Warinner, Gesinger & Associates, LLC ("WGA") hereby respectfully presents its reply comments in response to the Commissions Public Notice posted November 18, 2002 (DA 02-3184) seeking comments and replies on AT&T's petition for a declaratory ruling that phone-to-phone IP telephony services should be exempt from access charges. 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 especially rural Local Exchange Companies. We offer the following reply comments on AT&T's IP declaratory ruling.

**I. LEC NETWORK UTILIZATION**

WGA views AT&T's petition as nothing more than a means to avoid paying access charges for services provided by the LEC's for the use of the LEC's network as well as a way to avoid contributions to the Universal Service Fund (USF). Due to advancements in technology for telecommunications, the means to transport a call from point A to point B have significantly changed. However, as the New Hampshire PUC

pointed out in their comments:

*"While the new technologies can blur the line of distinction between jurisdictions and create new issues in the separation of responsibility between state and federal commissions, long distance calling is not a new technology, and the insertion of a new technology in its routing does not change the nature of that calling."*

WGA believes phone-to-phone IP traffic is transparent to the consumer and uses the local network to originate and terminate interexchange calls. In our opinion, AT&T has done nothing more than changed their technique within their own network to route the calls. AT&T is still using the LEC network for the origination and termination of calls for which, the LECs are entitled to access compensation per FCC rules.<sup>1</sup>

## **II. USF and LEC ACCESS REVENUES IMPACT**

The FCC's existing rules require telecommunications carriers providing interexchange phone-to-phone telecommunications services via the Public Switched Telephone Network to pay access charges. Although AT&T has tried to convince the Commission that access charges are above the LEC's cost, in essence the FCC and State commissions have already established access charges to equal cost or even below cost. Through approved tariffs, the LECs are entitled to compensation whenever their networks are used by interexchange carriers.

Should the Commission grant AT&T's petition, most likely all other interexchange carriers would be motivated to switch all their voice traffic to the Internet

---

<sup>1</sup> FCC Rule 47.69.5 (b) Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.

Protocol in order to avoid paying access charges to any LEC. This action would have detrimental affects to LECs nationwide especially in the rural market areas on access charges as well as Universal Service. The rural LECs rely a great deal on access charges as they are a significant percentage of their total revenues for upgrading and maintaining their networks. Many of the LECs have already experienced a drop in access revenues due to wireless providers bundling both local and long distance services. Should AT&T and other IXC's be allowed to treat voice traffic over IP facilities as information services, this would consequently cause a shift to USF contributions, eroding the existing policy base as well as increase the burden to contributing companies. USTA noted in their comments:

*"If the FCC were to grant AT&T's request that access charges should not be assessed to IP Telephony, the FCC may well be jeopardizing the future of the Universal Service Fund (USF)."*

### **III. Summary**

WGA urges the FCC to deny AT&T's request for a declaratory ruling to exempt phone-to-phone IP traffic from access charges. WGA believes AT&T 's petition is attempting to reclassify its long distance service under the pretense of "information services" to avoid having to pay access charges as well contributing to USF under existing Commission rules. In addition WGA respectfully requests the Commission to classify phone-to-phone IP telephony service as telecommunications service and require all providers of such service to pay all applicable access charges and make all appropriate contributions to the universal service funding mechanisms.

Respectfully submitted,

By: William J. Warinner  
Managing Principal  
Warinner, Gesinger & Associates, LLC  
10561 Barkley Street, Suite 550  
Overland Park, Kansas 66212  
[Filed Electronically]

January 24, 2003