

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON D.C. 20554**

In the Matter of:)	
)	
Petition for Declaratory Ruling that AT&T's)	
Phone-to-Phone IP Telephony Services Are)	WC Docket No. 02-361
Exempt from Access Charges)	

**REPLY COMMENTS
OF THE MICHIGAN PUBLIC SERVICE COMMISSION**

I. Introduction

In this proceeding, AT&T Corporation (AT&T) submitted a petition to the Federal Communications Commission (FCC) requesting a Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges.¹ The Michigan Public Service Commission (MPSC) offers its reply comments on AT&T's petition.

II. The Petition

AT&T has two requests: (1) to be exempt from "unlawful" access charges on the "phone-to-phone" Internet Protocol (IP), commonly known as VoIP, by incumbent local exchange carriers (ILECs); and (2) to be entitled to subscribe to local service without restrictions.

AT&T presented a 33 page document stating that "incumbent local exchange carriers (ILECS) are unlawfully imposing access charges on the nascent "phone-to-phone" Internet Protocol (IP) telephony service that AT&T and others are providing over the Internet".² In

¹ WC 02-361, Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges, October 18, 2002.

² WC 02-361, AT&T Petition, October 18, 2002, pg.1

addition, AT&T claims that the lack of a ruling has caused the ILECS to engage in “self-help” by refusing to terminate calls, taking down lines, and using Calling Party Number identifiers to assess interstate (and intrastate) access charges on phone-to-phone IP telephony calls.

AT&T ultimately bases their argument on the Commission’s 1998 *Universal Service Report* to Congress and a 1999 US West Petition For An Expedited Declaratory Ruling that access charges apply only to “phone-to-phone IP telephony services”.

III. What is Internet Protocol (IP)?

IP is one of several packet-handling protocols for transporting data and voice. In recent years, packet switching technology has become increasingly more efficient at transporting data, voice, and video to the point of surpassing the ubiquitous circuit switching in the public switched network. Although, the Internet is based on this technology, IP is no longer just for the Internet. IP has become the protocol of choice for a variety of networks, as a more efficient protocol for handling and transporting all types of information, including voice. Therefore, IP is not the Internet, but rather is the replacement transporter of choice for telecommunications, because of its efficiency.

IV. Voice over IP (VOIP) versus Voice over Internet (VOI)

AT&T argues that since computer-to-computer Voice Over the Internet (VOI) has been granted preferential regulatory treatment, primarily due to the difficulty in accurately determining the jurisdiction of the information being transported, any instance where voice is transported or potentially transported using IP (VoIP) e.g., phone-to-phone, phone-to-computer, computer-to-phone, VoIP must also receive the same preferential regulatory treatment.

Currently, there are technologies to accurately determine the jurisdiction of the voice traffic being transported and, although AT&T believes that VoIP will be unfairly discriminated against, SBC Communications Incorporated (SBC) points out “the effect of AT&T’s requested ruling would be to create a massive new subsidy flowing from local telephone customers to IP telephony providers.”³

V. Net Protocol Conversion vs. No Net Protocol Conversion

Frontier Telephone of Rochester, Incorporated supports access charges for “interstate long distance phone-to-phone telephone calls with *no net protocol conversion*...to the extent that the calls use LECs’ switched networks at the origination or termination of the calls.”⁴ If this distinction is followed, there would be three scenarios:

1. Phone-to-phone VoIP originating in IP and terminating in IP without any conversion.
2. Phone-to-phone VoIP originating in IP converted to the Public Switched Telephone Network (PSTN) in a gateway at a PBX, LEC end office, LEC tandem, or TDM switch and terminating in IP or PSTN.
3. Phone-to-phone VoIP originating in PSTN converted to IP in a gateway at a PBX, LEC end office, LEC tandem or TDM switch and terminating in IP or PSTN.

Would the scenario involved affect the regulatory nature of the call? Should access charges be imposed in *all IP* calls or should it be treated differently? These issues should be studied in more depth before arriving at any decision.

VI. Review of filed comments

The companies supporting AT&T’s petition, such as Vonage Holding Corp, ICG Communications, Inc., Big Planet, Inc., Ephone Telecom, Inc., Level 3 Communications, LLC,

³ WC 02-361, comments from SBC, December 18, 2002, pg. 12

Global Crossing North America, Inc., The American Internet Service Providers Association, The Connecticut ISP Association, Pulver.com, and US Datanet Corp. are concerned with the “tentative conclusion” by the FCC that VoIP is a “telecommunication service”⁵, the differing state rulings on the VoIP access charges issue⁶, the ISP exemption, and the “unlawful self-help”⁷ the LECs are allegedly engaged in. According to these commenters, the “imposition of above-cost access charges intended for traditional circuit switched services is likely to distort pricing incentives, as well as stunt growth and stifle innovation, in the nascent packet-switched IP services market.”⁸

Entities opposing an exemption from access charges, such as the National Telecommunications Cooperative Association (NTCA), United States Telecom Association (USTA), New York State Department of Public Service (NYDPS), New Hampshire Public Utilities Commission (NHPUC), Frontier Telephone of Rochester, Inc., SBC Communications, Qwest Communications International, Inc., and Sprint Corporation contend that “a telecommunication service is a telecommunication service regardless of whether it is provided using the PSTN, the Internet, wireless, cable, satellite, or some other infrastructure. Its classification should depend on the nature of the service being offered to customers.”⁹

NYDPS states that “efforts to make pricing distinctions among them would distort technological choices and market behaviors.” SBC would like all IP telephony services (information services and telecommunication services) subject to access charges for terminating traffic on the PSTN to non-ISP subscribers. SBC believes “AT&T is purchasing

⁴ WC 02-361, comments from Frontier Telephone of Rochester Inc., December 18, 2002, pg. 1

⁵ Federal-State Joint Board on Universal Service, Report to Congress, April 10, 1998, pg. 83.

⁶ WC 02-361, AT&T Petition, October 18, 2002, pg. 21.

⁷ WC 02-361, Petition of AT&T, October 18, 2002, pg. 4

⁸ WC 02-361, joint comments of Association for Communications Enterprises, Big Planet, Inc., Ephone Telecom, Inc., ICG Communications, Inc., and Vonage Holding Corp., December 18, 2002, pg. 17.

⁹ WC 02-361, comments from National Telecommunications Cooperative Association, December 18, 2002,

local business (e.g. ISDN PRIs¹⁰) under the guise of the ISP exemption to avoid paying terminating switched access charges for interstate calls delivered to non-ISP subscribers served by the PSTN.”¹¹ In addition, SBC states that “AT&T is improperly masking the jurisdictional nature of its interstate calls by routing them through CLEC networks so the calls appear to have originated locally.”¹²

VII. Access Charges

The NYDPS and the NHPUC filed comments affirming the rights of states to develop and initiate appropriate fees for telecommunication providers. In addition, the NYDPS has recently ordered the requirement of intrastate carrier access charges from a VoIP provider to a facilities-based carrier, determining that the VoIP provider “is not providing enhanced information services, but rather telecommunication services for which access charges should apply.”¹³

The MPSC believes that AT&T’s allegations, bringing the issue of access fees to the FCC to ensure “leadership and guidance to states,” is without merit and may result in incumbent carriers, such as AT&T, obtaining a competitive advantage over smaller competitors (CLECs) by having access fees imposed only on specific carriers. Therefore, the MPSC recommends that the FCC resist any attempt to limit state authority to address inequities that may result from technological changes, until a more complete record is developed on this issue. States have proven their ability to foster competition among telecommunication providers and choice for customers. States have been at the forefront of telecommunications

pg. 4.

¹⁰ Integrated Services Digital Network (ISDN) and Primary Rate Interface (PRI)

¹¹ WC 02-361, comments by SBC Communications Inc., December 18, 2002, pg. 4.

¹² WC 02-361, comments by SBC Communications Inc., December 18, 2002, pg. 5.

¹³ NYDPS, Case 01-C-1119, Complaint of Frontier Telephone of Rochester Against US DataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges, May 31, 2002, pg 6.

issues such as numbering, the universal service fund, and public safety. Industry concerns that states cannot understand basic technology changes and, therefore are unable to provide an appropriate mechanism to ensure the evolution of telecommunications while ensuring proper incentives should be dismissed.

VIII. Numbering Resources

Provided in the Universal Service Report is a definition of “phone-to-phone” IP telephony, which includes the use of the North American Numbering Plan (NANP).¹⁴ As new, or changing, technologies arise in telecommunications, there are concerns of the impact on the NANP ranging from inefficient use of numbering resources to the inability to account for numbering resources for bi-annual Numbering Resources Utilization and Forecasts (NRUF) reports. NRUF reports are a critical component of NANPA’s numbering exhaust forecasting system; however, its effectiveness will clearly be eroded by having non-carriers controlling numbering resources without any responsibility, by the non-carrier or the carrier holder, to account for these resources.

AT&T, and other licensed carriers, are able to receive numbering resources directly from the NANP administrator and have the responsibility to report their usage. However, many VoIP providers are not licensed carriers, but have telephone numbers for distribution to their customers, and acquire numbering resources through many channels including direct-inward-dialing (DID) services or as intermediate numbers from licensed carriers. It is imperative that use of numbering resources be judicious and that the reporting of usage be adhered to. Carriers that provide numbering resources to non-carrier entities are responsible to report all numbering resource usage to the NANPA via the NRUF. Non-carrier VoIP providers

¹⁴ Federal-State Joint Board on Universal Service, Report to Congress, April 10, 1998, pg 88-89

could choose to initiate licensing proceedings in each state where it provides service and receive numbering resources directly from the NANPA.

As distributors of telephone numbers, all VoIP providers have responsibilities to each of their end-user customers. These responsibilities include the ability to access abbreviated dialing numbers including 9-1-1¹⁵ and local number portability between service providers. VoIP providers also have the responsibility to collect and remit fees for services such as 9-1-1 and the universal service fund (USF). To encourage end-users to change to VoIP, replacing their basic wireline service,¹⁶ VoIP providers must provide established services and realize their responsibilities as a phone-to-phone carrier.

IX. Universal Service Fund

The National Telecommunications Cooperative Association (NTCA) commented that AT&T may be working toward a change in the current USF contribution formula by eliminating those contributions based on specific types of long distance calls.¹⁷ Currently, the viability of the USF is being revisited by the FCC and the public will be able to comment on three possible equations.¹⁸

The MPSC has provided a possible solution which would base contributions to the USF on numbering resources held by carriers.¹⁹ VoIP providers, whether they receive numbering resources through DID services, as intermediate numbers, or by other means, would be an essential part of the collection and remittance of funds to the USF administrator.

¹⁵ In addition to 9-1-1 for emergency service, Michigan offers 7-1-1 for telecommunications relay services for the hearing impaired, 2-1-1 for human services, and 3-1-1 for non-emergency services.

¹⁶ www.vonage.com/learn_center.php: What do I do with my current provider?

¹⁷ WC Docket 02-361, Comments from NTCA, December 18, 2002, pg. 7.

¹⁸ CC Docket 96-45, *Report and Order and Second Further Notice of Proposed Rulemaking*, December 12, 2002.

¹⁹ CC Docket 96-45, *Ex parte* comments of the MPSC, November 1, 2002.

X. Local Number Portability

Among the concerns outlined in the joint comments of the Association for Communications Enterprises is the concern that the FCC would need to consider the “local number portability requirements to VoIP service offerings.”²⁰ Telecommunications carriers, who receive numbering resources, to provide VoIP service should have the responsibility to provide local number portability, between carriers, within the top 100 MSA/CMSAs.²¹

VoIP providers, who are non-carriers and who receive telephone numbers from a licensed carrier, must be expected to comply with the technical elements of competition, including enabling a customer to change their basic telephone service from one VoIP provider to another, from VoIP to a local exchange carrier, or from VoIP to a wireless carrier. The inability of end-users to change companies or services, whether it is a technical issue or a policy decision,²² is anti-competitive.

XI. Conclusion

The MPSC strongly supports choice and competition, and provides a favorable regulatory climate that would encourage providers of VoIP into Michigan. However, VoIP is not a new, untried technology requiring protection from regulatory mandates and industry transactions. VoIP is an evolutionary change in our existing telecommunications technology, whose providers must acknowledge their responsibilities to the telecommunications network and its customers. The MPSC reiterates that it may be in a non-carrier VoIP provider’s best interest to initiate licensing proceedings within each state where it provides service, to ensure that regulatory issues such as numbering, number portability, and the USF are complied with.

²⁰ WC Docket 02-361, Joint Comments of the Association for Communications Enterprises, Big Planet, Inc., ePhone Telecom, Inc., ICG Communications, Inc., and Vonage Holding Corp., December 18, 2002, pg. 22.

²¹ Metropolitan Statistical Areas/Combined Metropolitan Statistical Areas as determined by the 2000 U.S. Census.

AT&T proposes that the arena for determining access charges is with the FCC. However, the states possess the local view and expertise to determine the necessary and appropriate fees for providing “phone-to-phone” telecommunications services to end-users within the state boundaries. The states should be allowed to fashion their own fee structures before a “one size fits all” national solution is applied.

If the determination is made to explore AT&T’s proposal at the federal level, the MPSC requests an in-depth analysis, involving all interested parties and the states to study this evolution of existing telecommunications technology and corresponding regulatory issues.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE
COMMISSION**

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²² http://www.vonage.com/learn_center.php Can I keep my current phone number with your service?