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

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

Comments of the ICORE Companies

The consulting firm of ICORE, Inc. (ICORE), on behalf of many rural incumbent local exchange carriers (ILECs),[1] offers these comments in the above-captioned proceeding. ICORE provides a variety of consulting, regulatory and network-related services to a number of the nation's smallest, most rural ILECs

[1] ILECs participating in this filing include: Benton Cooperative Telephone Company, Rice, MN: Christensen Communications Company d/b/a/ Madelia Telephone Company, Madelia, MN; Climax Telephone Company, Climax, MI; Community Service Telephone Company, Winthrop, ME; Doylestown Telephone Company, Doylestown, OH; Dunbarton Telephone Company, Dunbarton, NH; Granby Telephone & Telegraph Company, Granby, MA; Home Telephone Company – IL, St. Jacob, IL; Hot Springs Telephone Company, Kalispell, MT; Ironton Telephone Company, Coplay, PA; LEXCOM, Lexington, NC; Liberty Communications, West Liberty, IA; McClure Telephone Company, McClure, OH; Medicine Park Telephone Company, Medicine Park, OK; Middle Point Home Telephone Company, Middle Point, OH; Nehalem Telephone & Telegraph Company, Nehalem, OR: New Lisbon Telephone Company, New Lisbon, IN; Nortex Communications, Muenster, TX; NTELOS Telephone Inc., Waynesboro, VA; Palmerton Telephone Company, Palmerton, PA; Pennsylvania Telephone Company, Jersey Shore, PA; Prairie Grove Telephone Company, Prairie Grove, AR; R&B Telephone Inc., Daleville, VA; Range Telephone Cooperative Inc., Forsyth, MT; Redwood County Telephone Company, Wabasso, MN; Rochester Telephone Company, Rochester, IN; Ronan Telephone Company, Ronan, MT: Sherwood Mutual Telephone Company, Sherwood, OH; Southern Montana Telephone Company, Wisdom, MT; State Telephone Company, Coxsackie, NY; Stayton Cooperative Telephone Company, Stayton, OR; Summit Telephone Company, Fairbanks, AK; Swayzee Telephone Company, Swayzee, IN; Sycamore Telephone Company, Sycamore, OH; Van Horne Co-op Telephone Company, Van Horne, IA: Venus Telephone Company, Venus, PA; Wisconsin State Telecommunications Association Small Company Committee, Madison, WI; Wood County Telephone Company, Wisconsin Rapids, WI; Yukon-Waltz Telephone Company, Yukon, PA.

I. INTRODUCTION

AT&T, on October 18, 2002, filed a Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges.[2] The ICORE Companies vigorously oppose this petition, and respectfully request that the Commission reject it completely.

Our brief comments will demonstrate why the Commission must reject AT&T's transparent attempt to avoid paying legitimate access charges on Phone-to-Phone IP Long Distance services:

- The Internet in general is no longer a "nascent" enterprise, AT&T is not a start-up company, and phone-to-phone voice over Internet Protocol (VOIP) telephony is not a new concept. In short, IP telephony is not a nascent Internet service.
- Large, established companies such as AT&T should not be shielded from paying their fair costs, particularly when all they offer are traditional services using an Internet platform.
- Regardless of the company offering them, traditional services with large, existing markets should not be protected by the FCC simply because they are "Internet" based.
- Internet Protocol Long Distance telephony is the exact functional equivalent of Circuit Switched Long Distance telephony. ILEC originating and terminating facilities are used in exactly the same way.

[2] *In the Matter of AT&T Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket 02-361, Petition of AT&T (filed Oct. 18, 2002) (AT&T Petition).

- Exempting AT&T from paying access charges on IP Long Distance telephony, when access charges apply to Circuit Switched Long Distance telephony, is arbitrary and capricious and violative of Commission Rules.

II. PHONE-TO-PHONE IP TELEPHONY IS NOT A NASCENT INTERENT SERVICE

Certainly, the Internet is not a nascent enterprise. Nascent, according to Webster, means "coming into being; being born; beginning to form, start, grow or develop." [3]

Personal fortunes have been made and lost; cottage industries have grown, surpassed the economics of most third world nations, and quickly withered; small companies - - built mostly on paper and promises - - have ascended to the heights of corporate America and descended to the depths of bankruptcy and ruin, all based on Internet commerce. The Internet has been around for years, spawning ideas, businesses, and industries - - some successful, some not. It is many things, but it is clearly not just coming into being, or being born.

The Commission, in upholding the Congressional mandate to "preserve the free and competitive market that presently exists for the Internet and other interactive computer services, unfettered by Federal or state regulation,"[4] must begin to consider the specific nature of each Internet or interactive computer service in question. It must not offer blanket protection to everything with Internet in its name, or to every service that uses some part of an Internet platform.

[3] Webster's New Twentieth Century Dictionary, Second Edition.
[4] 47U.S.C.§230(b)(2).

If the Commission looks carefully at AT&T's Phone-to-Phone IP Telephony Service, it will see that it is not a nascent Internet service at all. AT&T has been the predominant long distance telecommunications company in this country for over 100 years. Long Distance telephony has been its core business since the early 1900s. AT&T has continually replaced and upgraded its LD facilities, availing itself of the newest and most advanced technologies, throughout its history.

Voice over Internet Protocol (VOIP) telephony is simply the latest advancement in LD service. It has joined microwave, satellite, fiber optic and other technologies in the AT&T arsenal. It is revolutionary, just as microwave and fiber optics were revolutionary in their times. It is now a supplement to, and may ultimately be a replacement for, the existing circuit switched network. But IP telephony is still simply the latest method of delivering long distance telephone calls.

The Commission, interestingly, has already determined this. In its 1998 Universal Service Report to Congress, the Commission concluded that phone-to-phone IP telephony was a <u>telecommunications</u> service. It is difficult to understand how it could have been viewed as nascent even back then, given that the almost limitless resources of AT&T were behind it. Now, this "nascent" telecommunications service has had four additional years of AT&T funding and development.

Phone-to-Phone IP Telephony is clearly <u>not</u> a nascent Internet service. It is Long Distance service being offered by the largest Long Distance company in the world. It is an alternative to the circuit switched network, but still its functional equivalent. IP telephony has had years to grow and prosper, funded by the giant AT&T and exempt from paying applicable access charges. This Commission has already concluded that IP

telephony is a telecommunications service, not an Internet, or information or computer service. The Commission should also conclude that as the functional equivalent of circuit switched LD service, IP LD service should begin paying its fair share of access charges.

III. IP TELEPHONY IS A TRADITIONAL SERVICE USING A NON-TRADITIONAL PLATFORM

IP telephony is not some new, unique, never-before-attempted venture made possible only by the advent of the Internet. It is, rather, traditional long distance telecommunications service using the Internet instead of the circuit switched network.

Not only is IP telephony not a ground breaking or pioneering service, it is being offered by AT&T, not by a struggling, start-up company. It is being funded and developed by one of the largest telecommunications companies in the world, a company that built its fortune on providing long distance service.

Surely, when Congress talked in terms of preserving "the free and competitive market that presently exists for Internet and other interactive computer services," it did not mean traditional services, such as telecommunications, that would simply use some portion of the Internet. And it certainly did not intent to shield the largest, most well established corporations, offering their core products on an Internet basis, from paying their fair share of the costs of others' products and services.

That is the case here. AT&T's IP long distance service, just like its circuit switched long distance service, needs ILEC originating and terminating facilities for call completion. ILECs should not be expected to forego access charges from AT&T, simply because AT&T is offering its traditional long distance service over a different form of internal network.

IV. IP LONG DISTANCE TELEPHONY HAS A LARGE, EXISTING MARKET

Just as IP Long Distance telecommunications is not a new or unique Internet-dependent service, i.e., it is already being offered over the circuit switched network, neither is AT&T searching for, or attempting to create, a new market. There has always been, and continues to be, a large and mature market for long distance service.

Thus, AT&T faces only the normal risks associated with the long distance business. It is not engaged in a brand new service seeking a brand new market, but a traditional service for which a ready made market already exists.

Again, the ICORE companies cannot believe that the Congressional protection afforded Internet and other computer services was meant to apply in this type of situation. The Commission has properly deemed AT&T's IP Long Distance as telecommunications. It is the core service of the preeminent long distance company. It has a huge existing market. It uses ILEC facilities in exactly the same way as circuit switched Long Distance service.

While AT&T has been investing in IP telephony, ILECs have been investing in transport, switching and local distributions facilities to originate and terminate long distance calls, whether coming from the circuit switched network or the Internet network. The same access charges should apply to both.

V. IP LONG DISTANCE TELEPHONY IS THE FUNCTIONAL EQUIVALENT OF CIRCUIT SWITCHED LONG DISTANCE TELEPHONY

The Internet as a telecommunications network is certainly revolutionary, perhaps more so than all of the previous advances in transmission and switching equipment,

which have created the current circuit switched network. It is, after all, a new network, one with infinitely more potential capabilities than AT&T's existing network.

Yet when it is used to provide core long distance service, it is nothing more than a long distance network. The long distance service provided is a telecommunications service, according to the Commission. LD service using IP telephony, then, is the exact functional equivalent of LD service using circuit switched telephony.

The LD, or interexchange, network of the IXC's choice is virtually transparent to the ILEC. The ILEC's access facilities - - transport, switching and loop plant - - are used in exactly the same way to originate and terminate interexchange calls, whether they are carried by the Internet or the circuit switched network. The ILEC's access costs are identical.

The Commission's access charge regime thus clearly applies to interstate long distance telephony over the Internet, whenever originated or terminated on the access facilities of an ILEC. The technology underlying the long distance network should have absolutely no effect on the payment of access charges. Per Commission policy and rules, IXCs are required to pay access charges to ILECs for the use of ILEC facilities in originating and terminating interstate long distance calls.

Proper application of the Commission's access charge rules should in no way be dependent on the IXC's choice of which of its long distance networks to use. This would leave ILECs totally at the mercy of IXCs, and place their access revenues in serious jeopardy.

VI. EXEMPTING AT&T FROM PAYING ACCESS CHARGES ON IP LONG DISTANCE TELEPHONY IS ARBITRARY AND CAPRICIOUS AND VIOLATIVE OF COMMISSION RULES

From the ILEC perspective, there is virtually no difference between IP long distance telephony and circuit switched long distance telephony with regard to the origination and termination of interexchange calls. The same ILEC facilities are used to send and complete these calls, and the costs are the same.

Access charges represent the Commission's approved methodology for IXCs to compensate ILECs for the use of ILEC facilities to originate and terminate interstate, interexchange calls. Access charges are not dependent on costs or configurations associated with IXC networks. Access charges are designed to compensate ILECs for the use of their local distribution networks by IXC traffic.

The form of the IXC network is irrelevant. When an IXC network is used to originate or terminate interstate long distance calls on ILEC facilities, access charges apply. They have, by Commission rules, applied to calls to and from the circuit switched network since the inception of its access charge regime. It is impossible to understand why access charges should not apply to identical traffic originating and terminating from the functionally equivalent Internet network.

In fact, it is arbitrary and capricious for the Commission to apply access charges to interstate long distance traffic coming from one type of IXC network, but not to identical traffic coming from a different type of network. It makes the form of the IXC network the chief determinant of access charges, rather than the classification of traffic or the use of ILEC facilities by that traffic. Clearly, the Commission's access charge rules will not sustain such an interpretation.

Congressional protection in this area extends only to "Internet and other interactive computer services." The Commission has already found phone-to-phone IP telephony to be a telecommunications service. The Commission will not violate the Congressional mandate by applying access charges to service it has already deemed to be telecommunications. It will, however, violate its own access charge rules if it exempts interstate long distance service from access charges, based solely on the fact that such service is carried on an alternative IXC network.

VII. CONCLUSION

Phone-to-phone IP telephony is clearly not a nascent Internet service. By determination of this Commission, it is a telecommunications service. And while it still might be emerging, it is long distance service being developed, promoted and funded by the premier long distance company in the world.

AT&T surely has expended large amounts of money on its Internet network, a network which can be used for a multitude of applications. But when used for IP telephony, it is simply a long distance network.

The ILECs, too, have invested heavily in the wireline network, a network which makes possible the origination and termination of long distance calls from anywhere, to anywhere. When ILEC wireline facilities are used to send and complete IXC long distance traffic, access charges are supposed to be paid by the IXC to the ILEC.

The Commission is required by Congress to protect only Internet and interactive computer services. It is required by its own rules to prescribe the payment of access

charges by IXCs to ILECs for the origination and termination of long distance telecommunications services.

The ICORE companies respectfully request that the Commission follow these mandates.

Respectfully submitted,
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