

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

In the Matter of)
)
Petitions for Declaratory Ruling)
Regarding the Application of Access)
Charges to IP-Transported Calls) WC Docket No. 05-276

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. (“JSI”) hereby responds to the invitation of the Federal Communications Commission (“FCC” or “Commission”) to comment on petitions filed by SBC incumbent local exchange carriers (“SBC”) and VarTec Telecom, Inc. (“VarTec”) seeking declaratory rulings regarding the application of access charges to calls that have been transported using Internet protocol (“IP”) technology.¹

JSI is a consulting firm offering regulatory, financial and business development services to more than two hundred rate-of-return local exchange carriers (“LECs”) throughout the United States. Part of JSI’s consulting services consists of assisting these LECs with a variety of issues relating to interconnection and delivery of traffic to and from other providers. It has been JSI’s experience that most of its LEC clients receive the majority of their traffic via a Regional Bell Operating Company (“RBOC”) Tandem and that issues that affect the Tandem provider also affect the subtending LECs. JSI is aware that many of its LEC clients are unable to bill and collect significant amounts of access revenue due to the erroneous claims of certain IP-based

¹ See *Pleading Cycle Established for SBC’s and Vartec’s Petitions for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls*, WC Docket No. 05-276, Public Notice, DA 05-2514 (rel. Sept. 26, 2005) (“Public Notice”).

providers and urges the Commission to promptly remind these carriers of their obligations to pay access charges on traffic that is originated and terminated on the PSTN.

I. Background

In its petition, SBC seeks a declaratory ruling that wholesale providers using IP telephony to carry long distance calls that originate and terminate on the PSTN are liable for access charges.² The petition arises in the context of a lawsuit that was filed by SBC in the fall of 2004 in the U.S. District Court for the Eastern District of Missouri against VarTec, a retail long distance provider, and certain IP-based carriers including UniPoint Enhanced Services, Inc. (d/b/a PointOne) (“PointOne”) and Transcom Communications, Inc. (“Transcom”).³ The suit seeks compensation from these “IP-in-the-middle” providers for failure to pay access charges for traffic that the providers terminated on SBC’s network. In making its case, SBC relies heavily on the FCC’s decision in which it ruled that AT&T’s IP telephony services were not exempt from access charges⁴ in support of its claim that access charges apply when long distance calls that originate on the PSTN are transported by one or more IP-based providers and terminate on SBC’s LEC network. In August of this year, however, the district court found that the liability for access charges for such IP-in-the-middle providers was “unsettled” and that the FCC had

² *Id.* at 1 citing Petition of the SBC ILECs for a Declaratory Ruling That UniPoint Enhanced Services, Inc. d/b/a PointOne and Other Wholesale Transmission Providers Are Liable for Access Charges (filed Sept. 21, 2005) (“SBC Petition”).

³ Prior to SBC’s filing its lawsuit, Vartec filed a petition before the FCC seeking a declaratory ruling that it is not required to pay access charges to [SBC] or any other terminating LEC when “enhanced service providers such as PointOne or [Transcom] or other carriers deliver calls to [SBC].” *See* Petition for Declaratory Ruling that Vartec Telecom, Inc. Is Not Required to Pay Access Charges to Southwestern Bell Telephone Company or Other Terminating Local Exchange Carriers When Enhanced Service Providers or Other Carriers Deliver the Calls to Southwestern Bell Telephone Company or Other Local Exchange Carriers for Termination (filed Aug. 20, 2004) (“VarTec Petition”). The Commission also seeks comment on the VarTec Petition in its Public Notice.

⁴ *See* Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, Order, FCC 04-97 (rel. Apr. 21, 2004) (“AT&T Order”).

primary jurisdiction over such matters.⁵ In response to the court’s finding, SBC filed its petition for declaratory ruling with the Commission.

II. The FCC Must Reaffirm its Ruling that Access Charges Apply to Long Distance Calls that Originate and Terminate on the PSTN

When it ruled that AT&T’s IP telephony services are not exempt from access charges, the Commission sought to “provide clarity to the industry” with respect to the application of interstate access charges to providers utilizing IP-based technologies.⁶ Unfortunately, however, an increasing number of IP-based providers have disregarded the Commission’s rulings and have avoided or outright refused to compensate LECs for use of their networks by erroneously claiming that all IP traffic is exempt from access charges. As a result, SBC reports that it has lost over \$100 million in access revenues over the last five years, and that amount is increasing by \$1 million each month.⁷ Similarly, many rural LECs have been unable to collect significant amounts of access charge revenue from IP-in-the-middle providers. Because rural LECs depend on information from the Tandem provider to identify the billed carrier, any problems that the Tandem provider encounters related to billing the IP-in-the-middle carrier have an impact on subtending rural LECs. Accordingly, it is vital that the Commission take this opportunity to reaffirm its previous ruling that when traffic originates and terminates on the PSTN and provides no enhanced functionality to the end user, access charges apply regardless of how many service providers are involved in providing IP transport.

⁵ SBC Petition at 2.

⁶ AT&T Order at para. 10.

⁷ SBC Petition at 1.

In its AT&T Order, the Commission found that services that meet certain criteria are not exempt from access charges “regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.”⁸ These criteria were that the service was an interexchange service that:

(1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the [PSTN]; and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology.⁹

IP-in-the-middle providers referenced in the petitions satisfy these criteria in the AT&T Order. First, because these providers are wholesale providers that deliver traffic originated by LECs or Commercial Mobile Radio Service (“CMRS”) providers, the equipment used by the consumer is ordinary CPE with no enhanced functionality.¹⁰ Second, the traffic originates on the PSTN (LEC or CMRS networks) and terminates on the PSTN (SBC or other LEC networks). Third the calls are terminated on SBC’s network where it is then delivered to the end user with the end user receiving no enhanced functionality.

Further, similar to AT&T’s IP telephony services, the service provided by the IP-in-the-middle providers “imposes the same burdens on the local exchange as do circuit-switched interexchange calls” and “merely uses the Internet as a transmission medium without harnessing the Internet’s broader capabilities.”¹¹ Indeed, these realities are recognized by the many rural LECs that provide IP-based wholesale services and who pay access charges. Accordingly, to ensure consistent application of Commission rules, the IP-in-the-middle providers must be

⁸ AT&T Order at para. 1.

⁹ *Id.*

¹⁰ See VarTec Petition at 2 (VarTec noting that the calls that are at issue are ones that it delivers to carriers such as PointOne and Transcom that are originated by LECs or CMRS carriers).

¹¹ AT&T Order at paras. 15 & 17.

prohibited from claiming any exemption from access charges. As the Commission stated in the AT&T Order,

we see no benefit in promoting one party's use of a specific technology to engage in arbitrage at the cost of what other parties are entitled to under the statute and our rules, particularly where, based on the record before us, end users received no benefit in terms of additional functionality or reduced prices.¹²

III. Conclusion

In its AT&T Order, it is clear that the Commission intended that until matters were settled that it has pending before it in its intercarrier compensation and IP-enabled services proceedings, providers of IP-based services that deliver long distance calls that originate and terminate on the PSTN are to pay access charges. Unfortunately, this has not occurred and even a district court has found this issue to be "unsettled" in the context of IP-in-the-middle providers. Accordingly, JSI urges the Commission to immediately declare that these providers must pay the same access charges that are required of other providers that terminate calls over the PSTN.

Respectfully submitted,

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John Staurulakis, Inc.

By: /s/ Manny Staurulakis

Manny Staurulakis
President
John Staurulakis, Inc.
7852 Walker Drive, Suite 200
Greenbelt, Maryland 20770
301-459-7590

¹² *Id.* at para. 17.