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

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

COMMENTS OF JOHN STAURULAKIS, INC.

John Staurulakis, Inc. ("JSI") hereby files these comments in response to the request by the Wireline Competition Bureau for comments on a petition filed by AT&T seeking a declaratory ruling that "phone-to-phone" IP telephony services offered by AT&T are exempt from access charges applicable to circuit switched interexchange calls.[1]

JSI is a consulting firm specializing in regulatory and financial services to more than two hundred Incumbent Local Exchange Carriers ("ILECs") throughout the United States. Among its consulting services, JSI assists these ILECs in the preparation and submission of jurisdictional cost studies to the National Exchange Carrier Association ("NECA") and Universal Service Fund ("USF") data to the Universal Service Administrative Company ("USAC") and NECA, and routinely prepares and files tariffs

[1] *Wireline Competition Bureau Seeks Comment on AT&T's Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, DA 02-3184, Public Notice released November 18, 2002.

with the Federal Communications Commission ("Commission") on behalf of a number of these ILECs. JSI also consults with CLECs that use a variety of technologies to provide competitive local exchange services across the nation. The Wireline Competition Bureau seeks comments on the petition for a declaratory ruling that would alter the regulatory treatment of interstate traffic under the Commission's interstate interexchange access regime.[2] The proposed action would significantly affect JSI's clients' recovery of costs associated with provision of interexchange access services; consequently, JSI is an interested party in this proceeding.

On October 18, 2002, AT&T filed a petition for declaratory ruling with the Commission.[3] The *AT&T petition* describes a form of telecommunications services, namely phone-to-phone IP telephony services, and seeks to have the Commission alter the regulatory treatment of this service. The service involved in this proceeding is limited to phone-to-phone service as described in AT&T's petition. To wit: AT&T proposes to use a "one-stage dialing" service. This service involves a process whereby an end-user initiates an interexchange call by dialing 1+NPA-NXX-XXXX using a traditional telephone handset whose service is presubscribed to AT&T's interexchange service. The call is routed over Feature Group D access trunks in order to reach AT&T's

[2] In addition to altering the treatment of interstate interexchange traffic under the interstate interexchange access regime, the proposed action would indirectly alter intrastate access regimes in numerous states inasmuch as most state interexchange access regimes are reflective of the Commission's interstate interexchange access regime. Thus, multiple interexchange access regimes could be altered by granting AT&T's petition. This relationship between the interstate and intrastate access regimes suggests that before any final action is taken by the Commission, referral to a Federal-State Joint Board is appropriate.

[3] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, AT&T, October 18, 2002. Assigned to WC Docket No. WC 02-361 by the Federal Communications Commission. ("*AT&T Petition*")

local IP gateway.[4] Thereupon, AT&T routes the call using Internet Protocol and terminates the call to the called-party using dedicated business lines supplied by an ILEC, or more customarily, to a CLEC who delivers the call to the ILEC on local interconnection trunks destined for termination by the ILEC.

AT&T expounds on the virtues of other types of IP telephony services, but at bottom the issue in this proceeding is limited solely to one-stage phone-to-phone dialing described above. AT&T is requesting that the Commission remove phone-to-phone IP telephony services from the established interexchange access regimes. This request should be rejected.

In 1998, the Commission established a fundamental difference between "computer-IP-telephony" ("computer-to-computer" and "computer-to-phone" transmissions) and phone-to-phone IP telephony. The Commission stated that phone-to-phone IP telephony is a telecommunications service regardless of whether the Internet is used or whether IP is used on a dedicated network.[5] The classification of phone-to-phone

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[4] In its petition, AT&T described the calls as being routed over Feature Group D access "lines." JSI believes it is more appropriate to refer to routing over Feature Group D access trunks. Under Feature Group D, calls dialed 1+NPA-NXX-XXXX by an end user are routed by the central office switch to the trunk associated with the end user's respective interLATA or intraLATA preferred interexchange carrier ("PIC"). This routing is facilitated by the equal access features in the switch that store the respective carrier identification codes ("CICs") for automatic routing of 1+ calls to the preferred carrier. Thus, Feature Group D functionality relates to the switch and trunks, not end user access lines (although the end user access lines benefit from the Feature Group D capability). Feature Group D functionality only exists because of the access charge regime initially launched by the 1982 Modification of Final Judgment ("MFJ") *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 229 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) and altered by Commission orders that have built upon and reshaped the original access charge regime. AT&T describes a second method of phone-to-phone IP telephony service where the end-user customer dials a local number or an 800 number. This two-stage gateway process has been rejected by AT&T as a viable business alternative. *AT&T Petition*, pages 18-19.

[5] *Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd. 11,501, ¶¶ 13-

IP telephony is not at issue in this proceeding. Here AT&T concerns itself with the discrimination between computer-IP-telephony and phone-to-phone IP telephony. It states that "the ultimate question presented here relates not to the proper regulatory classification of various services, [something already done by the Commission], but whether incumbent LECs may *discriminate* among them by requiring all or some IP telephony providers to pay access charges and by exempting other providers of VOIP services from those charges."[6]

With respect to the allegation of discrimination, JSI disagrees with AT&T's viewpoint. The AT&T service at issue is one in which the end-user dials one-plus to reach a distant called party. The use of IP in this context is transparent to the end-user. AT&T acknowledges that ILECs provide an originating access service that enables end-users to reach the AT&T "IP gateway" – a next generation name for an interexchange carrier ("IXC") point-of-presence. In fact, AT&T admits that ILECs currently receive originating access charges for the access service they provide.[7] In this proceeding, AT&T seeks to eliminate the recovery of costs incurred by the ILEC in performance of originating access service. In arguing that phone-to-phone IP telephony services are similar to computer-IP-telephony services, AT&T misses the obvious fact that while phone-to-phone service may be similar to computer-IP-telephony service, ILEC access service for phone-to-phone telephony service is identical to ILEC access service to any other transmission protocol used for interexchange transmission.[8] JSI recommends that

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15 (1998) ("*Universal Service Report"*).

6 Id., pages 29-30. (Emphasis in original)

7 *AT&T Petition*, page 19.

8 Moreover, as discussed in Note 4 above, AT&T's phone-to-phone IP telephony service relies

the Commission reject AT&T's comparison and hold that interexchange access service provided by ILECs is non-discriminatory to any IXC seeking to order the service.[9]

With respect to the terminating function of phone-to-phone calls, JSI believes AT&T's position is more questionable than its discrimination argument respecting call origination. Currently, AT&T knowingly routes interexchange traffic to a local CLEC with the understanding that the CLEC will transit this traffic to the ILEC for termination under the guise of traffic subject to Section 251(b)(5) of the Telecommunications Act of 1996 – reciprocal compensation.[10] Such willful action to circumvent the purposes of Section 251 should not go without censure. By law, and by Commission implementation policy, interexchange traffic is not subject to reciprocal compensation because such traffic is subject to the Section 251(g) carve-out provision.[11] AT&T seeks to avoid paying terminating access charges but appears to imply that the terminating ILEC should receive compensation in the form of reciprocal compensation.

JSI recommends that the Commission recognize that AT&T's petition is an attempt to unjustly undermine the current interstate interexchange access regime. The termination of interexchange traffic on reciprocal compensation trunks is an attempt to avoid lawfully determined terminating access service charges established to recover costs associated with the termination of interexchange calls. JSI recommends that the

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completely on the equal access presubscription process established concomitant to with establishment of the interstate interexchange access regime.

[9] The *reductio ad absurdum* of AT&T's discrimination argument is that, were the Commission to grant AT&T's request, conventional interexchange carriers remaining subject to interstate interexchange access charges would have a reasonable claim that payment of access charges by them is unreasonably discriminatory vis-à-vis the disparate treatment of phone-to-phone IP telephony carriers.

[10] 47 U.S.C. §251(b)(5).

Commission reject AT&T's request that phone-to-phone IP telephony interexchange traffic be exempt from access service charges.

In support of its apparent violation of the Act, AT&T claims that the interstate access charge regime is inefficient. This statement fails to recognize the recent reforms of the Commission in the interstate access service regime. Since 1998, the Commission has significantly changed the interstate access service cost-recovery mechanisms.[12] AT&T's efforts to portray the current interstate cost recovery mechanism as inefficient appears to be another of AT&T's recurring attempts to reduce access service rates regardless of the cost of providing the service. JSI recommends that the Commission reject AT&T's "justification" for its petition.

Any one-stage dialing phone-to-phone IP telephony interexchange service offered by a carrier uses the originating and terminating ends of the public switched telephone network ("PSTN") in a manner identical to any other interexchange transmission. The cost-recovery for use of these PSTN facilities should be consistent across any

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[11] 47 U.S.C. § 251(g).

[12] See, *e.g.*, *Multi-Association Group ("MAG") Plan for Regulation of Interstate Service of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Service of Local Exchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) ("*MAG Order"*); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-262, 94-1, 99-249, and 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) ("*CALLS Order"*), aff'd in part, rev'd in part, and remanded in part, *Texas Office of Public Util. Counsel et al. v. FCC*, 265 F.3d 313 (5th Cir. 2001), cert. denied, *Nat'l Ass'n of State Util. Consumer Advocates v. FCC*, 70 U.S.L.W. 3444 (U.S. Apr. 15, 2002).

transmission protocol. Questions related to the use of the PSTN for computer-IP-telephony are not at issue in this proceeding and should be addressed another day.

Respectfully submitted,

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