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ORIGINAL

TDS TELECOM

February 28, 2003

Ms. Blanca Bayo
Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL. 32399

Re: Undocket: Post-Workshop Comments: Phone-To-Phone Internet Protocol Telephony (Voice Over Internet Protocol)

Dear Ms. Bayo:

Enclosed for filing are comments filed jointly by ALLTEL Florida, Inc., Frontier Communications of the South, TDS Telecom/Quincy Telephone Company, and Smart City Telecommunications, (herein after referred to as "Small LECs"), to the above reference subject.

Questions regarding this filing may be directed to me at (850) 875-5207.

Sincerely,

Thomas M. McCabe

Thomas M. McCabe
Manager-External Relations
TDS TELECOM/Quincy Telephone Company

AUS
CAF
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CTR
ECR
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MMS
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Before the Florida Public Service Commission

In re:	)	
	)	Post Workshop Comments
Phone-To-Phone	)	
Internet Protocol Telephony	)	
(Voice Over Internet Protocol)	)	

ALLTEL Florida, Inc., Frontier Communications of the South, Inc., TDS Telecom/Quincy Telephone Company, and Smart City Telecommunications (Smart City), (herein after referred to as "Small LECs") hereby submit their post workshop comments in response to the Florida Public Service Commission (Commission) workshop regarding Internet Protocol Telephony. The Commission should affirm that phone-to-phone Internet Protocol (IP) Telephony is subject to originating and terminating access charges.

Introduction

This workshop was initiated as a result of a petition by CNM Networks for declaratory ruling that phone-to-phone IP telephony is not "telecommunications" and that CNM is not a "telecommunications company" subject to the Florida Public Service Commission jurisdiction. Essentially, what CNM Networks and other communication providers that utilize IP technology are seeking as evident in AT&T's petition before the Federal Communications Commission, is to bypass state and federally tariffed access charges. What IP telephony providers are asking for is a finding, which would favor a particular means of transmission for an interexchange call. Internet Protocol is merely one of a large number of formats for assembling data into packets. Other forms include X.25, X.75, frame relay and many other means. The fact that one packet form uses the Internet does not mean it is any more efficient, secure or desirable in any way compared to all the others.

The bottom line is that IP telephony is merely another form of transmission. Today, interexchange calls are transmitted through any number of transmission paths. Interexchange calls may be transmitted over copper , fiber , satellite, or microwave technologies. IP telephony service providers are requesting that an interexchange call that uses Internet protocol, primarily packet switching, be given a position different from the same type of communications transmitted over other means. The Small LECs believe that there is no public policy reason why phone-to-phone IP telephony should be given favored status over the transmission of an interexchange call. Any determination that voice-to-voice telephony is not subject to access charges will significantly impact the financial viability of the Small LECs and ultimately also adversely effect universal service unless a permanent state universal service fund is established to replace these lost revenues.

Comments

1. Technical Aspects of Phone-To-Phone IP Telephony

One of the arguments used to suggest that IP telephony should be treated differently for the transmission of interexchange calls is that it is a "nascent" technology. However, this argument is mistaken. Much of the Internet backbone described is simply existing fiber optic cable. IP telephony is simply a means of transmitting the originating interexchange call to its point of destination.

An interexchange call that routes from one exchange to a second exchange begins when the calling party takes the telephone off-hook. The calling party dials the appropriate digits which conform to the number of the called party issued under the North American Numbering Plan. That information is then transmitted over the customer's drop to the distribution facilities of the local telephone company, where it is carried by the local telephone company to that company's switch. Then, based upon identification of the customer's pre-subscribed carrier, the call is routed to the appropriate carrier's facilities. Traditionally, that transmission path would either be through a dedicated facility purchased through special access or over a common trunk to which switched

access charges apply. The interexchange carrier is responsible for transmission of the call from the point of interconnection with the local company which serves the calling party to the call's destination exchange. The interexchange carrier may carry the call through transmission by microwave or over copper or fiber cable or by satellite. The call is transmitted to the local exchange in which the called party resides and is delivered to the local telephone company serving the called party at the point of interconnection between the local company and the interexchange company. When the traffic is delivered to the meet-point with the terminating local exchange company, the traffic is then routed through that company's switch, out over its distribution plant, through the called party's drop and to the called party's telephone. The interexchange carrier thus uses transmission facilities of both the originating local exchange company and the terminating local exchange company to originate and terminate the call.

This is no different than the transmission path using IP telephony. In phone-to-phone IP telephony, again, the call is initiated by the calling party taking the telephone off-hook and generating the signals associated with the called party's number under the North American Numbering Plan. That call transits the customer's drop to the local telephone company's distribution facilities, where it is carried to the local telephone company's switch. The local telephone company recognizes that call as being routed to a particular carrier over some sort of transmission facility, either copper or fiber, to the point at which the interexchange carrier, here using IP telephony, receives the call and assumes the responsibility for transmitting that call to the local exchange carrier on the terminating end of the call.

Any assertion that transmission facilities on the terminating end between the interexchange carrier and the local exchange company may be in the form of a business line, such as a T-1 or PRI, does not change the facts. As the call exits the gateway facility in IP telephony it uses the terminating local exchange facilities for transmission to the local exchange company's switch and then finishes by routing over that local company's distribution facilities to the called party's drop and telephone. IP telephony is absolutely no different in the use of the originating and terminating local exchange company's facilities than any other interexchange call. The interexchange carrier using IP technology is still relying on the originating and terminating companies' switches,

distribution facilities and transmission facilities to be sure the call is connected between the calling and called parties. This is not new.

2. Economics

The Small LECs are particularly concerned if IP technology is allowed to ignore state and federal access rates. It is well-established that access revenues have been established by the Commission to enable rates for basic local exchange service to remain low in order to promote universal service policies. Any disregard for the current form of intercarrier compensation for the completion of toll calls will adversely impact universal service unless a permanent universal service plan is established.

The logical key to this analysis is to ask the question whether the services that allegedly should be exempt from access charges involve any net protocol conversion. In this case they do not. There is a normal telephone at each end of the calls in question, the calls are dialed normally, and each party to the call receives and transmits an ordinary voice electrical signal. Under these circumstances there is no enhanced or Internet or information service, because there is nothing more taking place than an ordinary phone call. Without net protocol conversion there is no enhanced service. A phone-to-phone voice call dialed using the North American Numbering Plan is not an Internet or information service, even if the provider chooses to use facilities that also carry internet traffic. Further, IP telephony is also being offered through the two-stage dialing process. In this process, the customer first calls a number to reach the service provider, and then at a prompt enters the number of the party they desire to call. Under this two-stage process, the IP Telephony service provider bypasses paying originating access . Whether IP telephony is a one-stage dialing process or a two-stage dialing process, it is still interexchange calling. It still uses the local network for transport, switching and call termination. Access charges are applicable.

3. Current State of Law Regarding VOIP

A. State Actions

Chapter 364 clearly provides the Commission with jurisdiction over communications providers utilizing phone-to-phone IP technology. Furthermore, the

New York Public Service Commission Order provides a strong framework for addressing this issue.

The New York Commission looked at the way in which a telephone call travels over the local networks and the interexchange carrier's network from the calling party to the called party. The New York Commission compared how an IP telephony call is handled with how a more traditional call is handled without packet switching. Based on the facts before it, the New York Commission found:

> (1) that the carrier was holding itself out as providing voice telephony service; (2) that the transmission of the voice telephony by the carrier "does not provide enhanced functionality to its [the carriers] customers, such as storing, processing or retrieving information";
>
> (3) that the carriers' customers are not required to use CPE different from the CPE used to place ordinary calls on the public switched telephone network;
>
> (4) that the carriers' customers placed calls to telephone numbers assigned in accordance with the North American Numbering Plan;
>
> (5) that use of Internet protocol is only incident to the carriers' own private network and does not result in any network protocol conversions to the end user; and
>
> (6) that the IP telephony "uses same circuit-switched access as obtained by IXCs and imposes the same burdens on the local exchange as do IXCs."[1]

This is a straightforward, functional approach to the analysis of IP telephony. It demonstrates that IP telephony is no different than any other interexchange calling method.

B. Federal

In 47 U.S.C. §153, Congress has defined "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

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[1] New York Order at 8. The Commission also made a finding that a substantial portion of the carriers' traffic used no IP conversion at all and was handled by normal transmission patterns.

47 U.S.C. §153(51) (emphasis added). In turn, the term "telecommunications" is defined as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[2] An information service is "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."[3]

In the past, the FCC has considered these definitions and has found that certain protocol processing services that result in no net protocol conversion to the end user are deemed telecommunications services.[4] The Commission stated: "The protocol processing that takes place incident to phone-to-phone IP telephony does not affect the service's classification, under the Commission's current approach, because it results in no protocol conversion to the end user."[5]

This Commission defined phone-to-phone IP telephony as a service which meets the following conditions: (1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (4) it transmits customer information without net change in form or content.[6] The Commission also concluded that an entity offering a simple, transparent transmission path, without the capability of providing enhanced functionality, offers telecommunications.[7]

The Commission described its approach as follows:

> This functional approach is consistent with Congress' direction that the classification of a provider should not depend upon the type of facilities used. A

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[2] 47 U.S.C. §153(48).
[3] 47 U.S.C. §153(41).
[4] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 98-67 (Released April 10, 1998) at ¶50.
[5] Ibid at ¶52.
[6] Ibid at ¶88.
[7] Ibid at ¶39.

> telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure. Its classification depends rather on the nature of the service being offered to customers. Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service.

This functional approach is exactly what the Joint Commenters advocate. If the service provides voice telecommunications between two parties on an interexchange basis, it is interexchange traffic subject to access charges no matter what transmission path is used.

Whether IP telephony is a one-stage dialing process or a two-stage dialing process, it is still interexchange calling. It still uses the local network for transport, switching and call termination. Access charges still apply.

CONCLUSION

Any decision that concludes that phone-to-phone IP telephony is to be treated as anything other than telecommunications services is not in the public interest and not lawful. Clearly, IP telephony is nothing more that an alternative method of transmission and is required to pay access charges. Further, failure to reach this conclusion conflicts with the fundamental principles of the Telecommunications Act of technology neutrality