

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: 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

I support this important effort to clarify the obligations of long-distance carriers to pay access charges in connection with their use of the public switched telephone network. The advent of IP technology opens up exciting new opportunities for providers of communications services and consumers, but it also challenges existing regulatory structures. In particular, it has become abundantly clear that the Commission needs to overhaul its intercarrier compensation regime to address artificial distinctions among various types of traffic. At the same time, however, I have always stressed that carriers are bound by our current rules unless and until the Commission changes them in accordance with the Administrative Procedure Act. Carriers cannot unilaterally effect rule changes by engaging in self-help.

As the foregoing Order makes clear, there is no doubt that AT&T's "phone-to-phone IP telephony service" is a telecommunications service. In fact, this service — which begins and ends on the PSTN, provides no enhanced functionalities, and entails no net protocol conversion — does not differ in any material respect from traditional long distance services. Nor can there be any serious claim that the Commission formally exempted these services from the access charge regime. While the Commission has unfortunately muddied the waters by issuing some opaque statements regarding the appropriate regulatory treatment of phone-to-phone services that employ IP in the backbone, the Commission never waived the requirement that interexchange carriers pay access charges in connection with such traffic. Thus, carriers that provide such phone-to-phone services must comply with our access charge rules, even if those rules create anomalies and inefficiencies that warrant reform.¹

A number of parties have suggested deferring resolution of this issue and deciding it in the pending rulemaking on IP-enabled services. While I understand the desire for a comprehensive approach, I believe such arguments misapprehend the difference between a declaratory ruling proceeding and a rulemaking. The former clarifies the *existing* state of the law, while the latter establishes *new* rules (which may modify or eliminate existing rules). It is not possible for the Commission to elucidate carriers' *existing* compensation obligations in a rulemaking. Nor would it have been appropriate to delay issuing this ruling any longer; rather, we should have issued it long ago. AT&T's unilateral decision to stop paying access charges in connection with "phone-to-phone" traffic has created significant competitive distortions. When some carriers are paying access charges in connection with such traffic while others are not, customers end up choosing service providers based on regulatory arbitrage rather than service quality or other more legitimate factors. Therefore, while I strongly endorse calls to reform our

¹ While I am receptive to arguments that we should not extend legacy regulations to nascent services such as VoIP, those arguments overlook the facts present here. We are not choosing to extend regulatory requirements in this Order; rather, such requirements *already* apply under section 69.5(b) of the Commission's rules, and can be eliminated only through a rulemaking proceeding or by waiver. Moreover, the service at issue appears no different from traditional long distance services, and thus is unlike true VoIP services, which are provided via broadband connections and offer enhanced functionalities to consumers.

intercarrier compensation rules — and I stand ready to work with my colleagues and interested parties on a broad range of options — we must enter into that process with carriers competing on a level playing field and with a common understanding of existing obligations.