



PUBLIC NOTICE

Federal Communications Commission
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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

COMMENTS DUE: November 10, 2005

REPLY COMMENTS DUE: December 12, 2005

On September 21, 2005, the SBC incumbent local exchange carriers (SBC) filed a petition for declaratory ruling that wholesale transmission providers using Internet protocol (IP) technology to transport long distance calls are liable for access charges.¹ SBC filed its petition after the United States District Court for the Eastern District of Missouri dismissed without prejudice SBC's claims seeking payment of access charges for long distance calls that were transported using IP technology.² The court found it appropriate to defer the issues raised by SBC to the primary jurisdiction of the FCC.³ In its petition, SBC seeks a declaratory ruling that wholesale transmission providers using IP technology to carry long distance calls that originate and terminate on the public switched telephone network (PSTN) are liable for access charges under section 69.5 of the Commission's rules⁴ and applicable tariffs.⁵ SBC seeks a ruling that providers meeting these criteria are interexchange carriers.⁶

¹ 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). This filing corrected and replaced an earlier petition that SBC had filed on September 19, 2005.

² *Southwestern Bell Tel., L.P. v. VarTec Telecom, Inc.*, No. 4:04-CV-1303 (CEJ), 2005 WL 2033416 (E.D. Mo. Aug. 23, 2005). The defendants from which SBC sought payment were VarTec Telecom, Inc. (VarTec); UniPoint Enhanced Services, Inc. (d/b/a PointOne), UniPoint Services, Inc., and UniPoint Holdings, Inc. (UniPoint); and Transcom Communications, Inc. and Transcom Holdings, LLC (Transcom).

³ *Id.* at *4.

⁴ 47 C.F.R. § 69.5.

⁵ SBC Petition at 17-24.

⁶ *Id.* at 17-35.

VarTec filed a petition for declaratory ruling on related issues.⁷ Specifically, VarTec seeks a declaratory ruling that it is not required to pay access charges to terminating local exchange carriers (LECs) when enhanced service providers or other carriers deliver calls directly to the terminating LECs for termination.⁸ VarTec also seeks a declaratory ruling that such calls are exempt from access charges when they are originated by a commercial mobile radio service (CMRS) provider and do not cross major trading area (MTA) boundaries.⁹ VarTec also seeks a declaratory ruling that terminating LECs are required to pay VarTec for the transiting service VarTec provides when terminating LECs terminate intraMTA calls originated by a CMRS provider.¹⁰

Interested parties may file comments on or before **November 10, 2005**, and reply comments on or before **December 12, 2005**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹¹ Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed.¹² In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number, in this case **WC Docket No. 05-276**. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.¹³

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). **Parties are strongly encouraged to file comments electronically using the Commission's Electronic Comment Filing System (ECFS).**

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.

-The filing hours at this location are 8:00 a.m. to 7:00 p.m.

⁷ 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).

⁸ *Id.* at 1, 3-8.

⁹ *Id.* at 8-11.

¹⁰ *Id.* at 1-2, 11-12.

¹¹ *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11,322 (1998).

¹² If multiple docket or rulemaking numbers appear in the caption of a proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption.

¹³ If more than one docket or rulemaking number appear in the caption of a proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW-A325, 445 12th Street, SW, Washington, D.C. 20554. Parties should also send a copy of their filings to Jennifer McKee, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A263, 445 12th Street, SW, Washington, D.C. 20554, or by e-mail to jennifer.mckee@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

Documents in WC Docket No. 05-276, including the SBC Petition and the VarTec Petition, are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁴ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.¹⁵ Other requirements pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.¹⁶

For further information, contact Jennifer McKee of the Pricing Policy Division, Wireline Competition Bureau at (202) 418-1530, or jennifer.mckee@fcc.gov.

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¹⁴ 47 C.F.R. § 1.1200 *et seq.*

¹⁵ *See* 47 C.F.R. § 1.1206(b)(2).

¹⁶ 47 C.F.R. § 1.1206(b).