

**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*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)*

Today's decision clarifies the scope of carrier access charge obligations when interexchange carriers provide phone-to-phone IP telephony services. I support this Order because the decision we reach is the one that flows most logically from our current rules.

Nonetheless, I am concerned that we have reached this conclusion without taking into consideration the full context that good policy-making requires. By approaching the subject of access charges and VoIP through occasional and discrete petitions, we are nickel-and-diming much larger intercarrier compensation issues. We should have begun at the beginning and undertaken the sorely needed reform of intercarrier compensation and then considered petitions such as this. We have in place today an intercarrier compensation regime under which the amounts and direction of payments vary depending on whether carriers route traffic to local providers, long-distance providers, Internet providers, CMRS carriers, or paging providers. This system is an open invitation for abuse. In an era of convergence of markets and technologies, its patchwork of rates should have been consigned by now to the realm of historical curiosity. But rather than grasp the whole, today's decision sets the stage for proceeding piecemeal. It only prolongs the development of a better system that would rely more heavily on market forces to drive technological advances and innovation.

As a separate matter, I am concerned that unsuspecting carriers may wind up caught in the crossfire and rendered collateral damage by today's Order. To date, the Commission's pronouncements concerning VoIP services and access charges have been unfortunately opaque. The Commission suggested that access charges "may apply" in its 1998 Report to Congress, but reserved further judgment until future proceedings with more focused records. The Commission prolonged this uncertainty by declining to move ahead on a 1999 petition from US West. It provided another vague sign in the Initial Regulatory Flexibility Analysis accompanying the 2001 Intercarrier Compensation Notice of Proposed Rulemaking. As a result, innovative and entrepreneurial VoIP upstarts may have been encouraged to believe they had a green light to go ahead and develop business plans based on the assumption that access charges were not required. This may not have been the best interpretation of our precedent. But the Commission surely played a role in this state of affairs by sending out mixed signals.

Today the Commission does not acknowledge the confusion it created. Instead, this decision is eerily silent on the equities of retroactive liability, the degree to which there has been detrimental reliance on our muddled pronouncements, and the auditing and litigation burden that would follow from retroactive application. This is unfortunate. Because the Communications Act does not contemplate that the Commission will act as a collection agent for carriers with unpaid tariffed charges, carriers seeking recovery will proceed directly to court. The ensuing litigation could tie up the resources of carriers providing services similar to AT&T's phone-to-phone IP telephony, carriers caught in the middle of access charge disputes between incumbent local exchange carriers and VoIP providers, and entrepreneurial VoIP providers that heretofore

believed their services were exempt from access payments.

We can and should do better. We have a three-year old proceeding on intercarrier compensation that is still pending. We are late to these issues, and the pit stop we take here to straighten out one issue leaves behind a system in need of more comprehensive improvement.