

**IN RE: Petition for a Declaratory Order
regarding classification of IP Telephony
Service.**

DOCKET 29016

ORDER ESTABLISHING DECLATORY PROCEEDING

BY THE COMMISSION:

On July 31, 2003, the Alabama Local Exchange Carriers listed in Appendix A attached hereto (the "ILECs") filed a Petition for a Declaratory Order regarding the classification of IP Telephony Service (the "ILEC Petition"). Said ILEC Petition was submitted pursuant to Rule 22 of the Commission's Rules of Practice.¹ The ILEC Petition seeks a Declaratory Ruling from the Commission holding that: (1) providers of intrastate phone-to-phone IP Telephony Service or other Voice over Internet Protocol ("VoIP") configurations (collectively, "IP Telephony Service") are "transportation companies" as defined by Alabama Code §37-2-1 (1975); (2) providers of intrastate IP Telephony Service are subject to APSC rules applicable to the provision of telephone service, including the filing of tariffs; and (3) providers of IP Telephony Service are responsible for the payment of intrastate access charges for the origination or termination of non-local traffic from, or to, the ILEC's public switched telephone network that originate and terminate in Alabama.

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In support of their Petition, the ILECs assert that there are numerous forms of IP Telephony Service which bear investigation. The ILECs note that as defined by the FCC, “phone-to-phone” IP Telephony consists of services in which the provider: (1) holds itself out as providing voice telephone service; (2) does not require the use of a computer to transmit the message; (3) allows a customer to call telephone numbers assigned in accordance with the North American Numbering Plan; and (4) transmits customer information without change in form or content.²

The ILECS maintain that in some instances, a phone-to-phone IP Telephony provider seeks to offer both local and interexchange service to its customers through a DSL or other high speed connection, which in some cases may also be used by a computer. In other instances, the ILECs assert that interexchange carriers offer access to IP Telephony Service for the use of a standard telephone where the customer dials a seven digit local number, reaches the provider for a second dial tone and places the local or long distance call. In yet another configuration, the ILECs represent that IP Telephony Service may be accessed by a personal computer that accesses a provider for the purpose of local or long distance call completion.

The ILECs maintain that while the details of the different IP Telephony Service configurations are complex and varied, they are all performed in order to complete a voice call and generally utilize a local exchange carrier’s network to originate or terminate the call. The ILECs maintain that the IP Telephony Service provider typically

¹ The ILEC Petition is attached hereto as Appendix B.

² See ILEC Petition at p. 2, *Citing FCC Report to Congress (Universal Service)*, FCC 98-67, 13 FCC Rcd. 11, 830 at para. 88-89 (April 10, 1998).

connects to the network of the originating and terminating local exchange carrier at points of interconnection much like traditional IXCs. The ILECs seek a ruling affirming that the provision of such services on an intrastate basis is subject to the jurisdiction of the Commission and to the same rules and regulations that apply to the voice services provided by the ILECs.³

The Joint Petitioners assert that the APSC has jurisdiction over “utilities”, which under *Alabama Code* §37-1-30 (1975) includes any company considered a “transportation company.” According to the ILECs, Title 37 of the *Alabama Code* provides that “the term ‘transportation company’ shall include every person not engaged solely in interstate commerce or business that now or may hereafter own, operate, lease, manage, or control those common carriers or for hire...any telephone line.”⁴ The ILECs assert that the APSC’s regulatory authority is predicated on the interpretation of what constitutes a “telephone line”. The ILECs represent that the term telephone line has never been restricted to apply solely to old copper lines, but has instead been broadly interpreted as incorporating the provision of voice telephone service over any type of medium including microwave frequencies and light waves carried over fiber optic strands.⁵

The ILECs assert that the Declaratory Ruling they seek is needed in order to ensure that a level playing field is maintained for all providers of voice telephone service and that new entrants, as well as the ILECs, are put on notice regarding the rules and

³ *Id.* at pp. 2-3.

⁴ See *Alabama Code* §37-2-1 (1975), emphasis added.

⁵ *Id.* at p. 3.

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regulations that will apply to IP Telephony Service in Alabama. The ILECs maintain that a failure by the Commission to assert jurisdiction over IP Telephony Service providers could result in a breakdown of the Commission's established regulatory scheme and result in revenue losses that could ultimately endanger the ability of the ILECs to maintain their carrier of last resort obligations.

Even prior to the filing of the ILEC Petition discussed herein, the Commission had begun to receive inquiries regarding the jurisdictional status of IP Telephony Service on an increasingly frequent basis. It accordingly appears that the issues presented in the ILEC Petition concerning the jurisdictional status of IP Telephony Service are timely and should be investigated further by the Commission. We, therefore, establish this declaratory proceeding to consider issues related to IP Telephony Service and the jurisdictional status of same.

In order to aid the investigative process, the Commission herein seeks comments from interested parties concerning the various forms of IP Telephony Service and the jurisdictional issues related thereto. The Commission further seeks comments specifically addressing the matters raised in the ILEC Petition attached hereto as Appendix A. Initial comments will be considered by the Commission if received on, or before, October 31, 2003. Reply comments will be considered by the Commission if filed on, or before, December 2, 2003.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That a Declaratory Proceeding is hereby established to address issues related to IP Telephony Service including the jurisdictional status of such service.

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IT IS FURTHER ORDERED BY THE COMMISSION, That interested parties may file initial comments in this cause provided that such comments are filed on, or before, October 31, 2003.

IT IS FURTHER ORDERED BY THE COMMISSION, That Reply Comments may be filed by interested parties on, or before, December 2, 2003.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this day of August, 2003.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary