

# Strange Coalition Petitions Court of Appeals to Bypass FCC on VoIP Access Charges

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A diverse group of telecom companies and trade groups have jointly submitted a supporting brief to the U.S. Court of Appeals in the [Paetec v. CommPartners](#) appeal. The [Joint Brief](#) includes ILECS like AT&T and Verizon, CLECs like Neutral Tandem, and normally contrary trade associations like USTA and the VON Coalition. Although these parties have wildly divergent views on how the VoIP access charge dispute should be resolved, they all agree that the Court of Appeals should decide the issue now. The Joint Brief states that the parties submitting "have differing views about the merits" of the district court ruling, "but all agree that a decision from" the Court of Appeals is desirable to clarify the situation for all concerned.

No one knows for sure, but the many pending cases and disputes on VoIP access charges collectively probably have hundreds of millions of dollars at stake. The FCC has exerted much effort to avoid making a decision on the court referrals and various petitions that it has received on the subject since 2005.

Always hopeful that it will moot the question with a comprehensive reform of "intercarrier compensation" within the next 12 months, the FCC has allowed the issue to stay undecided for five years and counting. Paetec and the 14 organizations on the Joint Brief, believe things have dragged on long enough and want the Court of Appeals to rule where the FCC is apparently afraid to tread.

As described in our [February 19 posting on the Paetec case](#), Paetec sued CommPartners in federal district court seeking to collect terminating access charges on interconnected VoIP traffic sent to Paetec by CommPartners. The district court ruled against Paetec, concluding that "the access charge regime is inapplicable to VoIP-originated traffic" because such transmissions qualify for the FCC's "information services" exemption from access on the basis that IP-to-TDM calls involve "net protocol conversion." The district court went on to deny Paetec's claims on unjust enrichment and quantum meruit as well, concluding that the Telecom Act's access charge regime creates a statutory bar to those equitable legal arguments. This ruling, if allowed to stand, would be a huge policy victory for VoIP providers and ISPs and a very expensive defeat for ILECs.

Paetec sought and was granted permission to file an immediate appeal of the Court's rulings. Because the case is not complete, the appeal is "interlocutory" and may be heard only if the district court allows it (it did) and the Court of Appeals agrees to hear it. Paetec has filed its request with the Court of Appeals in D.C. The Joint Brief in support was filed May 20.