

# VoIP Access Charge Appeal To Proceed After Nearly Two Year Delay

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A long time ago, we posted about a decision of the US District Court in DC declaring that [VoIP traffic was not subject to access charges](#) and the [strange coalition](#) that asked the Court of Appeals to review the case. Now, after a nearly two year delay caused by one of the litigants' bankruptcy, the appeal is moving forward. Since the FCC refuses to rule whether access charges applied to VoIP (even as it has recently applied interstate access rates to VoIP prospectively), this case could have an important impact on many current access charge disputes.

The case is [PaeTec Communications, Inc. v. CommPartners, LLC](#). As described in our [February 2010 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 LECs.

PaeTec sought and was granted permission to file an immediate appeal of the district 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. However, before the D.C. Circuit Court of Appeals could rule on whether to hear the appeal, CommPartners filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. As a result, PaeTec's attempt to collect access charges from CommPartners was automatically stayed pursuant to the U.S. Bankruptcy Code.

So sat the litigation for 15 months. In September 2011, the bankruptcy court lifted the automatic stay to allow the PaeTec to pursue its claim for access charges. On September 15, 2011, PaeTec and CommPartners filed a [joint motion](#) in the Court of Appeals to return the case to the active docket. On December 7, the Court [granted the motion](#) and granted permission to appeal on an interlocutory basis (but without prejudice to the merits panel's ability to reconsider the issue). In a move that is [becoming more common](#), the Court, on its own motion, also invited the FCC to participate as *amicus curiae* in the appeal.

The parties have now docketed the D.C. Circuit case and the district court has transmitted the record to the Court of Appeals. Soon, we will receive a briefing schedule in the case and the court may consider whether access charges apply to VoIP traffic. Stay tuned.