

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Feature Group IP	)	
	)	WC Docket No. 07-256
Petition for Forbearance Pursuant to	)	
47 U.S.C. §160(c) from Enforcement	)	
of 47 U.S.C. §251(g), Rule 51.701(a)(1),	)	
and Rule 69.5(b)	)	

**COMMENTS**

**of the**

**NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.; NATIONAL  
TELECOMMUNICATIONS COOPERATIVE ASSOCIATION; ORGANIZATION FOR  
THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS  
COMPANIES; INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS  
ALLIANCE; EASTERN RURAL TELECOMMUNICATIONS ASSOCIATION; and  
WESTERN TELECOMMUNICATIONS ALLIANCE**

February 19, 2008

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**TELECOMMUNICATIONS COMPANIES; INDEPENDENT TELEPHONE AND**  
**TELECOMMUNICATIONS ALLIANCE; EASTERN RURAL**  
**TELECOMMUNICATIONS ASSOCIATION; and WESTERN**  
**TELECOMMUNICATIONS ALLIANCE**

**I. INTRODUCTION AND SUMMARY**

By Public Notice dated December 18, 2007, the Commission has requested comment on a Petition for Forbearance filed October 23, 2007 by Feature Group IP West, LLC and related companies (“Feature Group IP”).<sup>1</sup> Feature Group IP asks the Commission to forbear from applying access charges to what it terms “voice-embedded Internet communications.”<sup>2</sup>

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<sup>1</sup> *Pleading Cycle Established For Feature Group IP Petition For Forbearance From Section 251(G) Of The Communications Act And Sections 51.701(B)(1) And 69.5(B) Of The Commission’s Rules*, Public Notice, DA 07-5029 (rel. Dec. 18, 2007) (*Public Notice*).

<sup>2</sup> Feature Group IP Petition for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 07-256 (filed Oct. 23, 2007), at 29 (*Feature Group IP Petition*). More specifically, according to the Commission’s Public Notice, Feature Group IP requests the Commission forbear from section 251(g) of the Communications Act of 1934, as amended (Act) “insofar as it applies to the receipt of compensation for switched ‘exchange access, information access, and exchange services for such access to interexchange carriers and information service providers’ pursuant to state and federal access charge rules.” In addition, the Public Notice states Feature Group IP seeks forbearance from “the clause of rule 51.701(b)(1) that excludes from the definition of telecommunications traffic subject to subpart H of Part 51 of the Commission’s rules ‘telecommunications traffic that is interstate or intrastate exchange access, information access,

In these comments, the National Exchange Carrier Association, Inc. (“NECA”), the National Telecommunications Cooperative Association (“NTCA”), the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), the Independent Telephone and Telecommunications Alliance (“ITTA”), the Eastern Rural Telecommunications Association (“ERTA”), and the Western Telecommunications Alliance (“WTA”) (the “Associations”<sup>3</sup>) urge the Commission to dismiss or deny Feature Group IP’s petition insofar as it seeks relief from the obligation to pay access charges on interconnected VoIP traffic.<sup>4</sup>

First, as discussed below, Feature Group IP lacks standing under section 10(c) of the Act<sup>5</sup> to seek forbearance from statutory provisions or Commission rules applying access charges to interconnected VoIP traffic. Feature Group IP does not appear to seek forbearance from any

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or exchange services for such access . . . .” *Public Notice* at 1. Finally, Feature Group IP is also said to seek forbearance from Commission rule 69.5(b) “to the extent applicable” and from any numbering representation rule or signaling standard “as applicable.” *Feature Group IP Petition* at 30.

<sup>3</sup> The National Exchange Carrier Association, Inc. (NECA) is a non-stock, non-profit association formed in 1983 pursuant to the Commission’s Part 69 access charge rules. *See generally* 47 C.F.R. § 69.600 *et seq.* NECA is responsible for filing interstate access tariffs and administering associated revenue pools on behalf of over 1200 incumbent local exchange carriers (ILECs) that choose to participate in these arrangements. The National Telecommunications Cooperative Association (NTCA) represents more than 570 rural rate-of-return regulated telecommunications providers. The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) is a national trade association representing over 550 small ILECs serving rural areas of the United States. The Independent Telephone and Telecommunications Alliance (ITTA) is an organization of midsize incumbent local exchange carriers (“ILECs”) that collectively serve over ten million access lines in over 40 states and offer a diversified range of services to their customers. Most ITTA member companies qualify as rural telephone companies within the meaning of section 3(37) of the Communications Act of 1934, as amended (the “Act”). 47 U.S.C. § 153(37). The Eastern Rural Telecom Association (ERTA) is a trade association representing approximately 68 rural telephone companies operating in states east of the Mississippi River. The Western Telecommunications Alliance (WTA) is a trade association that represents over 250 rural telecommunications companies operating in the 24 states west of the Mississippi River. Most members serve fewer than 3000 access lines overall and fewer than 500 access lines per exchange.

<sup>4</sup> The term “Interconnected VoIP traffic” as used herein refers to telecommunications traffic that originates, transmits or terminates on the public switched telephone network (“PSTN”). *See, e.g., IP-Enabled Services and E911 Requirements For IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005).

<sup>5</sup> 47 U.S.C. § 160(c).

obligation it might have as a carrier to *comply* with the Commission's access charge rules, but rather seeks forbearance from its obligation as a customer to *pay* access charges for its interconnected traffic. Section 10 of the Act does not give an access customer the right to seek "forbearance" from its obligation to pay tariffed charges.

Even if Feature Group IP could claim standing under section 10(c), it has not shown its request meets the standards for forbearance enumerated in section 10(a) of the Act. In fact, Feature Group IP's petition merely presents (albeit in more confusing terms) essentially the same arguments advanced by Core Communications, Inc. in a petition for forbearance from access charges filed April 27, 2006.<sup>6</sup> The Commission firmly rejected Core's arguments for forbearance from access charge rules and should reach the same result here.<sup>7</sup>

To the extent Feature Group IP's petition can be read to request clarification regarding application of access charges to interconnected VoIP traffic, the Associations agree such clarification is needed. Contrary to Feature Group IP's claims, however, the Commission should promptly issue an order in its IP-Enabled Services proceeding<sup>8</sup> or a related proceeding<sup>9</sup> confirming that access charges in fact *apply* to interconnected IP-originated VoIP traffic.

As the Commission is aware, the Associations' member companies are required to terminate a rapidly increasing number of interexchange calls from entities such as Feature Group

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<sup>6</sup> Petition of Core Communications, Inc. for Forbearance under 47 U.S.C. § 160(c) from Rate Regulation Pursuant to § 251(g) and for Forbearance from Rate Averaging and Integration Regulation Pursuant to § 254(g), WC Docket No. 06-100 (filed Apr. 27, 2006) (*Core Petition for Forbearance*).

<sup>7</sup> *Petition of Core Communications, Inc. for Forbearance from Sections 251(g) and 254(g) of the Communications Act and Implementing Rules*, WC Docket No. 06-100, Memorandum Opinion & Order, 22 FCC Rcd 14118 (2007), petition for review pending, *Core Communications, Inc. v. FCC*, No. 07-1381 (D.C. Cir. 2007) (*Core Order*).

<sup>8</sup> *IP-Enabled Service*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

<sup>9</sup> *E.g., Developing a Unified Inter-carrier Compensation Regime*, WC Docket 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005).

IP, who improperly claim their traffic is “enhanced” and therefore exempt from access charges, solely because it may originate in IP format.<sup>10</sup> Consistent with other Commission actions applying carrier-type regulations and obligations to interconnected VoIP service providers,<sup>11</sup> the Commission can resolve these issues by confirming that interconnected interexchange VoIP traffic is, in fact, subject to access charges.

## II. BACKGROUND

On October 23, 2007, Feature Group IP filed its petition with the FCC for forbearance relief that would remove the obligation to pay switched access charges on certain categories of calls entailing what Feature Group IP terms “voice-embedded Internet-based communications,” or “voice-embedded IP” calls.<sup>12</sup> Feature Group IP essentially seeks permission to avoid paying interstate and intrastate switched access charges assessed by Local Exchange Carriers (“LECs”) to which Feature Group IP delivers traffic for termination to end user customers.

Feature Group IP maintains that the services and applications described in its petition are exempt from the payment of access charges because they are protected by the “enhanced service provider exemption” from access charges.<sup>13</sup> Alternatively, Feature Group IP requests forbearance from section 251(g) of the Act and from the FCC’s associated regulations, asserting

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<sup>10</sup> See e.g., Letter from Joe A. Douglas, NECA, to Kevin J. Martin, Chairman, FCC, CC Docket No. 01-92 (Nov. 13, 2007); See also, Letters from Joe. A. Douglas, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed on Oct. 16, 2007, July 25, 2007, and May 2, 2007).

<sup>11</sup> E.g., *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712 (2007), at ¶ 18; *Implementation of the Communications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *IP-Enabled Services*, WC Docket 06-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) at ¶ 56 (*CPNI Order*).

<sup>12</sup> *Feature Group IP Petition* at 1-2.

<sup>13</sup> *Id.* at 3, 11, and 15

such forbearance would subject these calls only to reciprocal compensation charges, pursuant to section 251(b)(5) of the Act, rather than to either interstate or intrastate access charges.<sup>14</sup>

Specifically, Feature Group IP seeks relief from switched access charges for three categories of voice-embedded IP calls: 1) calls originating in IP format and terminating on the PSTN; 2) calls originating on the PSTN and addressed to an IP-based end point; or 3) calls that originate and terminate on the PSTN, but which traverse an IP-based platform at some point during the call, and for which there is a change in content or "non adjunct-to-basic enhanced functionalities" are offered to the end user customer.<sup>15</sup> Feature Group IP supports its position by claiming that forbearance would:

ensure that consumers and users of Voice-Embedded Internet-based communications services and applications are allowed to employ new Internet-based technologies and applications to the fullest extent possible and that providers and enablers of [those] applications are given the assurance that they may deploy and offer such services without the threat that they will be mired in the archaic access charge quagmire that currently plagues legacy telecommunications.<sup>16</sup>

Feature Group IP further alleges that relief is required quickly because ILECs are attempting "to extend the access charge regime to Voice Embedded Internet-based communications services and applications" and are "exercising their continuing ... stranglehold over access to their existing base of consumers."<sup>17</sup> Feature Group IP concludes that forbearance relief is justified because the section 251(b)(5) reciprocal compensation regime that will govern the traffic covered by the request will ensure that rates and practices are just and reasonable and

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<sup>14</sup> *Id.* at 54.

<sup>15</sup> *Id.* at 25.

<sup>16</sup> *Id.* at iii.

<sup>17</sup> *Id.*

that consumers are protected and because elimination of access charges for the covered services will promote competition and innovation.<sup>18</sup>

### III. DISCUSSION

#### A. Feature Group IP Lacks Standing to Seek Forbearance

Forbearance under section 10 of the Act is intended to give carriers the right to seek relief from regulatory obligations where certain statutory prerequisites are satisfied. Section 10(c) provides: “Any telecommunications carrier, or class of telecommunications carriers, may submit a petition to the Commission requesting that the Commission exercise the [forbearance] authority granted under this section *with respect to that carrier or those carriers, or any service offered by that carrier or carriers.*”<sup>19</sup>

In order to claim protection or relief under a federal statute, a party must demonstrate that “the injury he complains of falls within the ‘zone of interests’ sought to be protected by the statutory provision whose violation forms the legal basis for his complaint.”<sup>20</sup> Feature Group IP has not alleged that any of its services are subject to regulatory obligations under Title II of the Act. For example, Feature Group IP has not alleged that it is required to file tariffs under Title II of the Act, or assess access charges under Part 69 of the Commission’s rules. Therefore, Feature Group IP has no reason or standing to seek forbearance from the Commission’s access charge rules under section 10. Its request for relief lies well outside the zone of interest protected by section 10 by any fair reading of that statute.

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<sup>18</sup> *Id.* at 24, 29, 50, and 54.

<sup>19</sup> 47 U.S.C. § 160(c) (emphasis added).

<sup>20</sup> *Lujan v. National Wildlife Fed’n*, 497 U.S. 871, 883 (1990).



Indeed, what Feature Group IP wants is for the FCC to declare that it (or its customers) should not have to *pay* access charges when “voice embedded Internet-based communications” are terminated on the PSTN. As noted above, Feature Group IP claims such calls are “enhanced services” under section 64.702(a) of the Commission’s rules.

Section 10 of the Act does not provide an avenue for customers of telecommunications services to seek forbearance from the obligation to pay tariffed charges. If Feature Group IP believes that access charges imposed by carriers are unjust and unreasonable for some reason, section 204 of the Act allows it to file a petition to suspend and investigate newly-filed tariffs. Alternatively, it can file a complaint against existing rates pursuant to section 208 of the Act. Those remedies stand independently of section 10.

**B. Feature Group IP Has Failed to Satisfy Section 10’s Forbearance Criteria.**

Even if Feature Group IP’s petition for “forbearance” could properly be considered under section 10 of the Act, Feature Group IP has failed to satisfy the statutory requirements for forbearance relief. First, Feature Group IP essentially seeks the same “forbearance” relief requested by Core Communications in its 2006 *Petition for Forbearance*. The Commission explicitly found such relief to be unwarranted under section 10 of the Act.<sup>21</sup> If it chooses to address the merits of Feature Group IP’s “forbearance” petition at all, the Commission must reach the same conclusions it reached with Core’s petition.

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<sup>21</sup> *Core Order* at ¶¶ 12- 16.

The *Core Order* makes clear a petitioner seeking forbearance must demonstrate satisfaction of all three criteria contained in section 10(a).<sup>22</sup> The three criteria are:

1. enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations ... [at issue] are just and reasonable and are not unjustly or unreasonably discriminatory (“just and reasonable”);
2. enforcement of such regulation or provision is not necessary for the protection of consumers (“consumer protection”); and
3. forbearance from applying such provision or regulation is consistent with the public interest (“public interest”).

Feature Group IP has failed to show that all three criteria are satisfied. In attempting to demonstrate that charges and practices would remain “just and reasonable” if the FCC were to forebear from the “savings” provision of section 251(g), Feature Group IP asserts all intercarrier compensation would then be subject to interconnection agreements negotiated under section 251(b)(5) of the Act.<sup>23</sup>

The *Core Order* expressly rejects this logic, finding instead that, because the language in the Act explicitly contemplates affirmative action by the Commission in the form of new regulation, forbearance from rate regulation preserved under section 251(g) of the Act would result in no rate regulation whatsoever.<sup>24</sup> In the absence of rate regulation, the Commission found in the *Core Order* it could not conclude that enforcement of its access charge rules was no longer necessary to ensure that charges and practices are just and reasonable, and not unjustly or unreasonably discriminatory.<sup>25</sup> More importantly, in the *Core Order* the Commission

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<sup>22</sup> *Id.* at ¶13.

<sup>23</sup> *Feature Group IP Petition* at 67.

<sup>24</sup> *Core Order* at ¶ 14.

<sup>25</sup> *Id.* Reciprocal compensation charges apply to local calls, while access charges apply to interexchange calls. The elimination of access charges for interexchange calls no more converts those calls into local calls than would the non-application of reciprocal compensation charges to local calls convert those calls into interexchange calls.

recognized the important role access charges play in existing intercarrier compensation mechanisms, and why these rules must be maintained unless and until they are changed as a part of the FCC's ongoing intercarrier compensation and IP-Enabled Services rulemaking proceedings.<sup>26</sup> Feature Group IP offers no new evidence or arguments that would support a different result here.

Feature Group IP does, however, attempt to ameliorate the overall adverse effects of forbearance by proposing to exempt rural LECs, at least in those instances where the FCC finds that current access charges are necessary and the benefits of access charges “outweigh the positive network effects and other benefits that would result from allowing rural Americans to participate in Group Forming Networks and other Internet-based communications communities.”<sup>27</sup>

In this regard, Feature Group IP's proposal appears to recognize that rural telephone companies face different circumstances, and that separate regulatory treatment is often necessary to enable these companies to continue serving rural customers. But Feature Group IP's proposed “rural forbearance exemption” would be unworkable.<sup>28</sup> It is not clear, for example, whether any supportable method could be found to quantify the supposed benefits of participating in the various Internet-based communities described in Feature Group IP's petition. Even if there were, it appears Feature Group IP's proposal would have the FCC examine such circumstances on an individual basis for hundreds of small rural companies. Moreover, there is no way to distinguish calls originated from “Internet-based communications communities” from all other

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<sup>26</sup> *Id.*

<sup>27</sup> *Feature Group IP Petition* at 11-12.

<sup>28</sup> *Id.* at 14.

calls terminated on the switched PSTN (just as there is no way for the LEC to distinguish VoIP-originated calls from all other calls terminating on their local switched networks). Many rural LECs receive this traffic indirectly through a tandem provider, so both the tandem provider and the rural LEC would require a mechanism to be able to identify such traffic. In short, the addition of a complicated and unworkable waiver process for rural companies does nothing to help assure that rates will remain “just and reasonable” if Feature Group IP’s forbearance proposal is otherwise granted.

To meet the second criteria for forbearance, Feature Group IP must show that enforcement of existing access charge rules is not necessary to protect consumers. In this regard, Feature Group IP seems to assume that preserving access charges cannot be “necessary” to protect consumers because the Act authorizes increases in universal service support to offset resulting shortfalls in revenues for carriers.<sup>29</sup> This argument again ignores the important role access charges play in existing intercarrier compensation mechanisms, as determined by the Commission in the *Core Order*. Granting Feature Group IP’s request would only be likely to result in a stampede of other carriers claiming their services or those of their customers are “enhanced” in some manner. Existing access charge and USF mechanisms maintain a delicate balance between cost recovery from carriers and end users, ensuring rural carriers the ability to provide high quality service to their communities without unduly burdening carriers or end users. Giving Feature Group IP and similarly-situated carriers a free pass from access charges at the expense of other carriers would not only be unfair but would result in severe financial disruptions to the USF and to rural carriers. This would harm, not protect, consumers.

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<sup>29</sup> See *id.* at 48.

Finally, Feature Group IP has provided no evidence that forbearance would be consistent with the public interest. Permitting Feature Group IP and its customers to use the PSTN to terminate interexchange traffic, without paying access charges, would not provide for more economic growth, innovation or other societal benefits. Feature Group IP's approach ignores the very real costs for constructing, maintaining and operating communications networks, and unfairly favors Feature Group IP's business plan at the expense of other companies.

The public's interest in regulatory certainty instead should be satisfied by confirming that access charges in fact apply to all interexchange calls terminating on the PSTN, regardless of the technology employed to originate or transmit such calls. The Commission has already found that IP transmission alone does not entitle a company to avoid access charges.<sup>30</sup> Yet, there is widespread evidence that companies such as Feature Group IP continue to misuse the ESP exemption illegally to evade access charges for ordinary PSTN-to-PSTN calls. In its interconnection dispute with UTEX (Feature Group IP's CLEC) in the state of Texas, for example, AT&T has stated that it has "conducted studies of PSTN-originated traffic terminated by UTEX over AT&T Texas' local interconnection trunks. The studies revealed considerable volumes of UTEX traffic, although terminated on the local interconnection trunks, were in fact interLATA traffic that originated on the PSTN outside of the local calling area where such calls terminated."<sup>31</sup>

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<sup>30</sup> *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, Memorandum Opinion & Order, 19 FCC Rcd 7457 (2004). The Commission has long recognized that mere inclusion of a protocol conversion in what is otherwise an ordinary telephone call does not transform the call into an enhanced or information service. *Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, Memorandum Opinion & Order and Statement of Principles, 95 FCC 2d 584 (1983).

Moreover, the ESP exemption is limited in scope -- it only exempts an ESP from paying access charges when that ESP uses an ILEC's facilities to communicate with the ESP's *own customers*. When the Commission first adopted the ESP exemption in the *MTS/WATS Market Structure Order*, it focused exclusively on the ISP's use of the local exchange network to have calls delivered to the ISP's "location in the exchange area" from the ISP's own subscribers.<sup>32</sup> There was no discussion whatsoever of any connection between the ISP and end users who were not its customers. Similarly, in the *Access Charge Reform Order*, the Commission recognized the targeted nature of the ESP exemption, noting that the exemption carves ISPs out from the access charge obligation when they "use incumbent LEC networks *to receive calls from their customers*."<sup>33</sup> The ESP exemption does not, and was never intended to, exempt an ESP from paying terminating access charges when it picks up a call from its own customer and subsequently terminates that call, not to its own databases or other information sources, but to the telephone service customer of an ILEC on the PSTN.

Continuing uncertainty regarding the ESP exemption's scope has forced many state PUCs and local courts to attempt to grapple with this federal regulatory issue. Fortunately, some state agencies have reached the right conclusion. The California PUC, for example, recently rejected Global NAPS' claim to be exempt from access charges because its customers were ISPs.

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<sup>31</sup> *Petition of UTEX Communications Corporation for Post Interconnection Dispute Resolution with AT&T Texas and Petition of A T&T Texas for Post-Interconnection Dispute Resolution with U TEX Communications Corporation*, Initial Response of AT&T Texas to UTEX's Motion for Summary Decision, Docket No. 33323, (TX P.U.C. Apr. 6, 2007), at 7.

<sup>32</sup> *MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 FCC 2d 692 (1983), at ¶ 78 (*MTS/WATS Market Structure Order*).

<sup>33</sup> *Access Charge Reform*, CC Docket No. 96-262, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *Transport Rate Structure and Pricing*, CC Docket No. 91-213, *End User Common Line Charges*, CC Docket No. 95-72, First Report and Order, 12 FCC Rcd 15982 (1997), at ¶ 343 (*Access Charge Order*) (emphasis added).

According to the PUC, “[t]he only relevant exemption from the access charge regime under Federal law is for **ISP-bound** traffic rather than **ISP-originated** traffic . . . .”<sup>34</sup>

Other states, unfortunately, continue to wait for the FCC to resolve this key issue.<sup>35</sup>

As a result, the ESP exemption –which was originally intended to provide temporary assistance to providers of computer-based services and dial-up Internet access users – is now seriously jeopardizing RLEC access cost recovery. The FCC should firmly reject Feature Group IP’s claims that its services (and/or services provided by its customers) qualify it for an exemption from terminating access charges.

In applying various common carrier-type regulatory structures to interconnected VoIP providers, the Commission has found that the interconnected voice services offered by these providers are “indistinguishable, from a customer’s point of view, from traditional voice telecommunications services.”<sup>36</sup> It is long past time for the Commission to clarify that these services should be treated the same as any other telecommunications service for access charge purposes as well.<sup>37</sup>

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<sup>34</sup> *Cox California Telecom v. GlobalNAPSs California*, Decision, 07-01-004 (Ca P.U.C., Jan. 11, 2007).

<sup>35</sup> See e.g., Letter from Robert W. Quinn, Jr., AT&T, to Dana R. Shaffer, WCB, FCC, WC Docket No. 05-276 (Jan. 8, 2008). See also, *Southwestern Bell Tel., L.P. v. Vartec Telecom, Inc.*, Memorandum and Order, No. 4:04-CV-1303-CEJ (E.D. Mo. Aug. 23, 2005); *Southwestern Bell Tel. Co. v. Global Crossing Ltd.*, Memorandum and Order, No. 4:04-CV- 01573-CEJ (E.D. Mo. Feb. 7, 2006).

<sup>36</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2007*, MD Docket No. 07-81, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712 (2007) at ¶ 18; *Implementation of the Communications Act of 1996:Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, *IP-Enabled Services*, WC Docket 06-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) at ¶ 56.

<sup>37</sup> Feature Group IP asserts a difference between the “Voice-embedded *Internet* communications” described in its petition and services that “merely use the Internet Protocol to transmit voice signals undifferentiated from PSTN traffic . . . .”*Feature Group IP Petition* at 2, n.3. While it may be possible some of the “voice embedded Internet-based communications” confusingly described in Feature Group IP’s petition could qualify as “enhanced services” under the Commission’s rules, this type of determination should be made, if at all, on the basis of a clear and

#### IV. CONCLUSION

For the reasons set forth above, the Commission should dismiss or deny Feature Group IP's petition insofar as it seeks relief from the obligation to pay access charges on interconnected VoIP traffic. Further, to reduce controversy and stem what is rapidly becoming a tide of uneconomic arbitrage activity by providers such as Feature Group IP, the FCC should confirm that interconnected interexchange VoIP traffic is, in fact, subject to access charges.

February 19, 2008

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Respectfully submitted,

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complete record, such as that compiled by the Commission in the context of its IP-Enabled Services proceeding. The vague and confusing descriptions contained in the Feature Group IP's petition do not provide the Commission with any basis for such findings here.



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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Associations' Comments was served this 19<sup>th</sup> day of February, 2008 by electronic filing and email to the persons listed below.

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