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January 13, 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Room CY-B402
Washington, D.C. 20554

RE: *Notice of Ex Parte Presentation*
In 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

Dear Ms. Dortch:

In accordance with § 1.1206 of the Commissions rules, 47 C.F.R. 1.1206, Transcom Enhanced Services, LLC, through its attorneys, files this notice of *ex parte* presentations.

On January 8, 2004, Michael Donohoe, General Counsel of Transcom Holdings, Inc., Chad Frazier, President and Chief Technical Officer of Transcom Enhanced Services, LLC ("Transcom") and I, counsel to Transcom, met with the following persons in separate meetings:

Meeting: Jessica Rosenworcel, Legal Advisor to Commissioner Copps.
Meeting: William Maher, Bureau Chief, Joshua E. Swift, Legal Counsel to the Bureau Chief, Jeffrey Carlisle, Senior Deputy Bureau Chief, and Tamara L. Price, Division Chief, Pricing Policy Division.

On January 9, 2004, Michael Donohoe, General Counsel of Transcom Holdings, Inc., Chad Frazier, President and Chief Technical Officer of Transcom Enhanced Services, LLC ("Transcom") and I, counsel to Transcom, met with Commissioner Kevin J. Martin and Daniel L. Gonzalez, Senior Legal Advisor to Commissioner Martin.

During the meetings, Transcom explained that it is a non-carrier Enhanced Services Provider that provides IP Telephony and other enhanced and information services. Transcom reiterated the position it took in prior filings that its IP Telephony services *are* enhanced services since they "employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information." Transcom again showed that its IP Telephony services *are* also information services since they "offer[] ... a capability for generating,

acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” Transcom once again demonstrated that its services *are not* telecommunications since there is in fact a change in both form and content “of the information as sent and received.”

Mr. Frazier described the opportunities and multiple services that Transcom’s IP Services Network presently allow and will soon facilitate. Mr. Donohoe emphasized that these type services are available today and many other new and innovative services will be made available only if the Commission continues the *status quo* under which Transcom and many others have based their business plans.

Transcom provided the attached written materials at the meetings.

Please contact me at 512.485.7920 if you have any questions.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a horizontal line extending to the right.

W. Scott McCollough

Transcom

IP Telephony Provided by Non-Carrier ESPs

CC Docket 02-361

The IP Services Network

- Transcom operates an “IP services network” that enables anyone with connectivity to be a player from an applications perspective. The “IP services network” allows Transcom and its customers to develop and deploy many diverse and innovative products and services in a short time frame. This means that applications and services are no longer tied to or controlled by the network operator and significantly expands the probability that the next “killer app(s)” will be conceived and made generally available.

The IP Services Network

- **Traditional TDM Networks:**
 - Location based and distance sensitive.
 - Most services are offered through a direct, partner or resale channel by providers who own the network.
 - Service offerings are limited and standardized across several very large vendors.
 - “Next Generation” TDM is merely a cost saver.
- **IP networks:**
 - Presence based, not location and distance sensitive.
 - Services can be offered by anyone with connectivity.
 - IP protocols such as SIP and XML as drivers.
 - Service offerings are diverse across a virtually infinite number of providers (i.e. WWW).
 - DoCoMo's i-mode as a model (40 mm subscribers, 40,000+ content providers).
 - “Next Generation” IP is a service creator and a cost saver.

The IP Services Network

- A few of the potential applications:
 - Innovative teleworking
 - Multimedia conferencing
 - High-power call centers
 - Unified messaging
 - Expanded call management and screening
 - Availability awareness
 - Location scheduling
 - Many others yet to be imagined

Non-Carrier IP Telephony is an “Enhanced Service”

- **Transcom is not a carrier, and its IP Telephony services, process voice and data communications and act on the content, code and protocol of the transmitted information. See, Transcom September 23, 2003 *ex parte*, Declaration of Chad Frazier.**
- **47 CFR § 64.702 (a) provides that “For the purpose of this subpart, the term enhanced service shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information. Enhanced services are not regulated under title II of the Act.”**
- **Transcom’s services are therefore enhanced services.**

Non-Carrier IP Telephony is an “Information Service”

- **Transcom is not a carrier, and its IP Telephony services, generate, acquire, store, transform, process, retrieve, utilize, and make available information via telecommunications. See, Transcom September 23, 2003 *ex parte*, Declaration of Chad Frazier.**
- **47 USC § 153(20) Information service.--The term “information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.**
- **Transcom’s services are therefore information services.**

Transcom's IP Telephony service is not "Telecommunications"

- **Transcom's IP Telephony Service provides a net change in content of the information as sent and received and is therefore not "telecommunications." See, Transcom September 23, 2003 *ex parte*, Declaration of Chad Frazier.**
- **47 USC § 153(43) Telecommunications.--The term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. (emphasis added)**

Non-Carrier ESPs providing IP telephony services are exempt from switched access charges

- **Because Transcom is not a carrier and is an enhanced/information service provider selling IP Telephony services that are not telecommunications, it is deemed to be an “end user” and its services are not subject to switched access charges.**
- **47 CFR § 69.2(m) End User means any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone company shall be deemed to be an “end user” when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an “end user” if all resale transmissions offered by such reseller originate on the premises of such reseller.**
- **47 CFR § 69.5(a) End user charges shall be computed and assessed upon public end users, and upon providers of public telephones, as defined in this subpart, and as provided in subpart B of this part. (b) Carrier’s carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.**
- **An ESP that is not also a carrier uses telecommunications but does not provide telecommunications or telecommunications service.**
- **Non-Carrier ESPs are end users and exempt from switched access charges under 47 CFR §§ 69.2(m) and 69.5(a).**
- **Carriers are subject to switched access charges under 47 CFR. § 69.5(b).**
- **ILECs recover cost-based reciprocal compensation or above-cost local business rates (including the EUCL) when they originate or terminate ESP traffic.**

Comparison of AT&T's Services (as described in the Petition) and Transcom's Services

- **Unlike AT&T, Transcom operates a private IP services network for communication between gateways; customers can access the private network through the public Internet and peering points.**
- **Transcom's services are not "telecommunications" and are enhanced/information services.**
- **Transcom is not a carrier and does not operate a circuit switched network.**
- **Transcom does not subscribe to Feature Group D access at the originating end although some of its customers choose to do so.**
- **Transcom provides service to customers with IP connectivity (SIP, H.323, MGCP).**

The Commission Should Narrowly Decide the AT&T Petition

- **Transcom agrees with the conclusions and legal and policy points raised by AT&T in its Petition and supports the requested relief. The Commission can grant AT&T's Petition without foreclosing the possibility of imposing access charges on AT&T's services at the end of the coming NPRM.**
- **Commentors have addressed issues far beyond the application described by AT&T; *the Vonage, FWD and Level 3* cases involve issues outside of those expressly addressed in the AT&T Petition.**
- **Transcom's services are legally and factually distinguishable from those described by AT&T; some of Transcom's services are similar to but different from than those addressed in *Vonage* and *Level 3*.**
- **If the Commission is inclined to deny AT&T's Petition it should do so only with regard to the very specific application described by AT&T, which is merely one of many existing and possible IP Telephony applications. The Commission should expressly limit its decision to the specific service described by AT&T and reserve judgment on the issues raised by *Vonage* and *Level 3*, and applications/services like those provided by Transcom.**