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January 23, 2004

*ELECTRONICALLY FILED*

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: *Ex Parte* Presentation in WC Docket No. 02-361**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, this letter provides notice that on January 20, 2004, Adam Kupetsky, Director of Regulatory Affairs of WilTel Communications, met with Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin, to discuss the above captioned proceeding. A summary of the points made by WilTel in the meeting is attached.

Respectfully submitted,

Peter A. Rohrbach
Counsel for WilTel Communications, LLC

cc: Daniel Gonzalez

# EX PARTE STATEMENT OF WILTEL COMMUNICATIONS
# WC DOCKET NO. 02-361

**The FCC must resolve the issues raised by the AT&T Petition now.**

- Companies have a right to know the current law. The present uncertainty forces firms to compete based on the amount of legal and regulatory risk they are willing to assume, rather than on the true cost and quality of their services.

- The FCC's ruling on the AT&T Petition must draw a bright line between traffic/applications where access charges and USF contributions will apply -- and those where they will not -- during the period that the VoIP NPRM is pending.

- Failure to act now would be a decision by default. The market already is moving based not on the benefits of new or improved services, but rather on the perceived access savings. This will continue given the huge competitive significance of access cost. As some companies market long distance services at prices based on non-payment of access when IP transport is used, others will have to follow to remain competitive. If there is a retroactivity issue today, it will be much larger three months from now, let alone by the end of the VoIP rulemaking.

**WilTel can live with any rule (even an interim rule) provided two conditions are met:**

1. ***Certainty*** as to whether and when access applies when an interexchange call uses both the PSTN and IP transport.

    - If the FCC concludes that use of IP transport is sufficient to eliminate access obligations, we and others can conform our networks to the FCC's chosen technical paradigm without fear of litigation or retroactivity disputes later.

    - Conversely, if the FCC says that routing through IP gateways with IP transport by itself does not eliminate access, we can live with that result too because it will apply to all carriers pending further Commission decisions.

    - Logically, the FCC could answer the question differently at the originating and terminating ends of a call. For example, if a call originates over broadband, that is similar to other forms of bypass like dedicated lines, and originating switched access should not apply. However, the Commission might conclude that if that same call terminates over the PSTN, terminating access should apply. The reverse could be true if a call originates over the PSTN and terminates over broadband. If necessary, carriers could determine jurisdiction based on methods currently employed for wireless originated or terminated calls.

    - Again, WilTel is just asking for a clear answer to guide its business decisions and investment now, for the period while the VoIP Rulemaking is pending.

2. ***No distinctions based on where IP protocol conversions take place***, and especially no distinctions favoring a "two vendor" model over a "single vendor" model.

- If the FCC decides that use of IP transport and related IP-TDM protocol conversions can in some cases eliminate access charges, any company should be eligible for this rule.

- AT&T speaks to its use of IP transport in its own network. But companies routinely interconnect their networks to provide telecommunications functionality, including both circuit-switched and IP networks. Any FCC decision must address whether it is relevant where conversions to and from IP are made.

- Discrimination is a serious potential issue. For example, the FCC would distort network investment and market decisions if it said that a carrier like AT&T had to pay access if IP protocol conversion occurs in its own network, but not if the conversion is done by a third party calling itself an "ESP." Distortion also would occur if access did not apply when conversions are done by two firms -- for example when one firm converts traffic from TDM to IP, and the other firm converts it back from IP to TDM for hand-off to the PSTN.

- In that case, IXCs would stop investing in their own networks, and contract with third party providers who can deliver terminating functionality to the PSTN without paying access. This arbitrage would be artificial, but necessary given the significance of access.

- **Again, however, any clear rule is better than the current uncertainty.**