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April 16, 2004

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

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

**Re: Voice on the Net Coalition
Written Ex Parte Presentation
WC Docket No. 02-361**

Dear Ms. Dortch:

The VON Coalition understands that the Commission may have reached a decision to deny the AT&T petition. The text of such decision, unless narrowly drafted, will have far-reaching implications for VoIP providers, at least until the conclusion of the IP-Enabled Services rulemaking. Accordingly, the VON Coalition makes the following three recommendations, each of which may be adopted on its own:

- 1) The decision should clearly state that it does not apply to all so-called "phone-to-phone" or "PSTN-to-PSTN" services, some of which may be information services and not subject to access charges. The decision should also reaffirm the FCC's longstanding policy that ESPs are end users and not carriers, allowing ESPs to obtain interstate access services by paying the local business exchange service rates contained in intrastate tariffs, rather than the access rates contained in interstate tariffs.¹ While the Commission may, in the future, set forth a test to define ESPs in the VoIP context, it should defer doing so at this time, leaving that issue to be addressed in the NPRM on IP-Enabled services.
- 2) The decision should apply only if and when the calls in question a) are originated by a retail customer of a vertically integrated carrier; b) neither originate or terminate on

¹ See *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982 at ¶ 345 (1997) ("*Access Charge Reform Order*") and *MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 F.C.C.2d 682, 711-722 (1983).

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customer IP devices; c) enter and leave the physical facilities of the vertically integrated carrier as TDM calls; and d) do not transit IP routers on which carriers other than the vertically integrated carrier commingle voice and other forms of data traffic without regard to packet content.

3) The decision should not be retroactive and there should be a reasonable transition period for compliance of at least 12 months or, preferably, to coincide with the completion of the IP-Enabled Services NPRM.

The VON Coalition continues to oppose the application of access charges to any form of VoIP and believes that rather than denying the AT&T petition, the more prudent course is to fold the petition into the IP-Enabled Services rulemaking and make it a priority to reform the current access charge and inter-carrier compensation regime. However, should the Commission deny the petition, the recommendations above will help minimize harm to others and reduce disputes concerning application of the decision.²

Please direct any questions regarding this matter to the undersigned.

Very truly yours,



Glenn S. Richards
Counsel for the VON Coalition

cc: Christopher Libertelli
Trey Hanbury

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² As petitioner in the current proceeding, AT&T is not a participant in this ex parte presentation.