POINTONE™

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July 29, 2004

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Docket No. WC 04-36, IP-Enabled Services; and Docket No. CC 01-92, Developing a Unified Intercarrier Compensation Regime

Dear Ms. Dortch:

On July 27, 2004, Staci Pies of PointOne, Glenn Richards, counsel for CallSmart, and Andrew Lipman, counsel and Kathleen Wallman, consultant for Callipso met with the following individuals from the Wireline Competition Bureau (WCB): Carol Mattey, Deputy Bureau Chief; Margaret Dailey, Legal Counsel; and Tamara Preiss, Chief and Jennifer McKee, Assistant Chief, Pricing Policy Division, WCB. The purpose of the meeting was to discuss the injurious and discriminatory actions of incumbent local exchange carriers (LECs) resulting from misinterpretations of the Commission's *AT&T VoIP Order*. The meeting participants urged the Commission to act promptly to prevent the incumbent LECs from continuing to engage in these actions that are unlawful in several material respects.

As detailed in previous submissions, VoIP providers offering a broad-range of IP-enabled services are encountering in the marketplace considerable overreaching as to the Commission's intended application of the *AT&T VoIP Order*. Although PointOne, Callipso, and CallSmart each offer a variety of IP-enabled services, none has ever been a regulated telecommunications "carrier," and, under existing Commission precedent, the services offered by each of the providers constitute the provision of "information services" that fall outside of the Commission's AT&T VoIP decision. PointOne, Callipso and CallSmart purchase "telecommunications" services as end users, pursuant to the Commission's long-standing Enhanced Service Provider Exemption, to enable their customers to access their IP services; however, the *AT&T VoIP Order* has had significant unintended negative consequences for the business plans of VoIP providers.

Unfortunately for the American consumer and the national economy, the discriminatory and unlawful, unilateral imposition of access charges on VoIP providers is threatening the ability of these providers to offer innovative information services at a price that reflects the economic efficiency inherent in all IP-enabled services.

During the meeting, the VoIP providers emphasized the urgent need for the Commission to clarify that, given the ongoing IP-Enabled Services rulemaking and the Intercarrier Compensation proceeding, incumbent LECs are not permitted to determine unilaterally the parameters of the *AT&T VoIP Order* or whether specific types of VoIP services fall precisely within those parameters. Individuals from the Commission have made public statements regarding the precise and factually driven nature these parameters. At a recent hearing before the Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce in the United States House of Representatives, Jeffrey Carlisle, the Senior Deputy Chief of the Wireline Competition Bureau at the FCC described the circumscribed nature of the AT&T VoIP decision. In his written testimony, Mr. Carlisle stated that:

> [t]he Commission, by issuing this decision, did not prejudge the application of access charges to other types of VoIP service, which are still subject to consideration in both the IP-Enabled Services Proceeding and the Intercarrier Compensation docket. Thus, this decision was <u>explicitly limited to the factual circumstances described by AT&T</u>. (emphasis added).

Again on July 23, 2004, at a hearing before the Commercial and Administrative Law Subcommittee of the House Judiciary Committee, Chairman Chris Cannon asked Dr. Robert Pepper, Chief of Policy Development in the Commission's Office of Strategic Planning and Policy Analysis whether the *AT&T VoIP Order* permitted incumbent LECs to apply the findings in that order to other VoIP providers that are distinguishable from AT&T. Dr. Pepper responded that "the AT&T decision applies only to the specific facts of the AT&T case." Noting that that "the Commission has not yet made a determination ..." as to whether incumbent LECs are permitted to impose access charges on other forms of VoIP, Dr. Pepper acknowledged that this issue is directly before the Commission in "other petitions pending, as well as the notice of proposed rulemaking that is addressing situations that go beyond the AT&T set of facts."

The meeting participants emphasized the need for an official statement from the Commission to this effect. Furthermore, the meeting participants called upon the Commission to notify offending incumbent LECs that they are prohibited from taking any actions that pre-judge the Commission's impending orders on IP-enabled services and intercarrier compensation and, that given the unlawful nature of such actions, to do so raises serious potential consequences.

The VoIP providers stated, moreover, that incumbent LECs' refusals to make PRIs and PRI equivalents available to VoIP providers or even to their CLEC customers for sale to VoIP providers violates the incumbent LECs' nondiscrimination obligations.

For the reasons stated in the meeting, PointOne, CallSmart and Callipso urged the Commission to act promptly to notify incumbent LECs that they cannot unilaterally act in a matter that obliterates the Enhanced Service Provider exemption. Instead, the

incumbent LECs must await the outcome of the Commission's *IP-Enabled Service NPRM* and the Intercarrier Compensation Proceeding in which it will decide the appropriate regulatory and compensation regime for IP to PSTN interconnection.

Finally, Staci Pies left behind the attached presentation detailing the fallout of the *AT&T VoIP Order* with regard to the specific enhanced IP-enabled services offered by PointOne.

Sincerely,

/ s/ Staci L. Pies

Staci L. Pies

Attachment

cc: Staci Pies, PointOne
Glenn Richards, Shaw, Pittman LLP
outside counsel for CallSmart
Andrew Lipman, Swidler Berlin Shereff Friedman, LLP
outside counsel Callipso
Kathleen Wallman, Wallman Consulting, LLC
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Carol Mattey, Deputy Chief, Wireline Competition Bureau (WCB)
Margaret Dailey, Legal Counsel, WCB
Tamara Preiss, Chief, Pricing Policy Division, WCB
Jennifer McKee, Assistant Chief, Pricing Policy Division, WCB