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November 19, 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 Nos. 03-133, 03-266, 04-36 and CC Docket No. 01-92

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 November 18, 2004, representatives of WilTel Communications, LLC met with representatives of the Wireline Competition Bureau to discuss the above-captioned proceedings. Present for WilTel were Blaine Gilles, Senior Vice President for Voice Services and Strategic Markets, and Adam Kupetsky, Director of Regulatory Affairs, along with the undersigned. Present for the Bureau were Jeffrey Carlisle, Bureau Chief; Lisa Gelb, Deputy Bureau Chief; Jane Jackson, Associate Bureau Chief; Pamela Arluk, Legal Counsel to the Bureau Chief; Tamara Preiss, Chief of the Pricing Policy Division; Steve Morris, Deputy Division Chief; and Darryl Cooper of the Competition Policy Division.

Non-discriminatory Interconnection to the PSTN for All IP-Enabled Voice Communications

During this meeting WilTel noted its strong support for general reform of intercarrier compensation and universal service contribution matters. However, WilTel emphasized that, pending such reform, the Commission has a vital responsibility to prevent unlawful discrimination in these areas from getting worse. In part this means strong enforcement of the current rules against those companies who seek to evade payments by mischaracterizing their telecommunications offerings as "information services," or their interexchange services as local (as in the case of so-called "virtual NXX"). Access and USF payments are crucial to all players, and temptations to evade them are enormous. In these circumstances failure of the Commission to enforce its rules is "de facto discrimination," penalizing law-abiding companies and distorting markets.

Equally important, WilTel noted that the Commission could not lawfully permit new forms of discrimination to develop as broadband voice-originated traffic grows and the Commission begins to act on VoIP matters. All providers of IP-enabled voice services must be treated the same when they terminate broadband-originated traffic to the PSTN (or the reverse). The current irrational distinctions between access charges and local compensation may not lawfully be migrated into the VoIP world (least of all when existing arbitrage opportunities have not been fixed through reform).

In particular, WilTel explained that as the Commission encourages VoIP service, it cannot create a world in which different rules apply depending upon the preexisting business roots of a competitor. For example, when a company offering broadband-originated voice terminates that service to the PSTN, it should not matter whether the company traditionally has had a business plan and intercarrier compensation mechanism focused on "conventional" interexchange service, local service, information service, or some combination of the above. The Commission should ensure that "Old World" discrimination problems in the current intercarrier compensation and USF regimes are not carried over to the "New World" of broadband voice.

Put more directly, the Commission cannot lawfully approve a regime in which some broadband VoIP providers can terminate to the PSTN at rates set at reciprocal compensation levels via interconnection agreements, while others are forced to do so at rates equivalent to current access charges. That result would be unlawfully discriminatory, encourage wasteful investment and other burdens, and delay rollout of competitive VoIP service. For example, CLECs should not be forced to set up Feature Group D arrangements when they terminate broadband-originated voice to the PSTN. But similarly, IXCs should not be forced to enter local markets or establish separate interconnection trunks when they sell broadband voice services themselves. The Commission must enforce the Telecommunications Act's mandate for non-discrimination with respect to this service that the Commission properly finds interstate. All companies should pay the same rate to terminate broadband voice to the PSTN.

WilTel noted reports of the new SBC "VoIP access" tariff, as well as a new interconnection agreement between Level 3 and Verizon that addresses termination of VoIP services. WilTel emphasized its concern that such arrangements not become a means for discrimination in connectivity to the PSTN among competing providers of broadband VoIP. To the extent that such arrangements might allow some broadband VoIP providers to obtain more favorable termination rates than others (e.g., by avoid access charges), the arrangements would violate Section 202 of the Act. Similarly, the Commission could not grant the Level 3 forbearance petition (WC Docket No. 03-266) in its current form if the result would be that some competing broadband VoIP companies have to pay access charges, while others would not (or some competing broadband voice companies would have to alter their networks to achieve the lower rates).

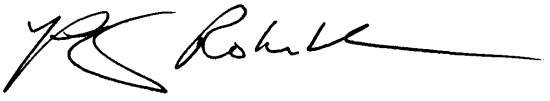
WilTel emphasized that, while rate levels are an issue, it is more important for the Commission to ensure non-discriminatory access to the PSTN, for discrimination is what most distorts market outcomes. WilTel asked the Bureau to be sure that, as it oversaw the development of broadband VoIP, it put in place measures to ensure that winners are chosen on the basis of the quality of their VoIP services, and their relative efficiency -- not on the happenstance of their traditional intercarrier compensation mechanisms or historical regulatory arbitrage activities. Simply put -- in the "New World" of broadband, all players should pay the same rate to terminate an IP-originated minute (or to originate an IP-terminated call).

AT&T Prepaid Card Petition

WilTel also discussed the need for immediate Commission action on AT&T's pending Petition for Declaratory Ruling concerning its so-called "Enhanced" Prepaid Calling Card. WilTel referenced its discussion of this matter in its previous filings in WC Docket 03-133, as well as its recent request for modification of the universal service contribution factor to reflect the outcome of that proceeding. WilTel also emphasized the need for the Commission to enforce its access and universal service rules in other situations where companies are taking the position that they are providing information services, when those companies actually are providing telecommunications.

If any questions arise in connection with this matter, please contact the undersigned.

Respectfully submitted,



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