Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Petition of the Embarq Local Operating Companies for Limited Forbearance from Any Exemption from Requirement to Pay Access Charges	)))	WC Dkt. No. 08-8
	)	
Petition of Feature Group IP for Limited Forbearance from Any Requirement to Pay Access Charges	))	WC Dkt. No. 07-256

COMMENTS OF AD HOC MANUFACTURER COALITION

Our companies, which make a large variety of products used in providing telecom services, submit these Comments in order to emphasize one important point in support of the Embarq petition and in opposition to the Feature Group IP ("Feature Group") petition. The Embarq petition asks the FCC to make clear that companies providing VoIP and all other Internet-originated voice service must continue to pay, to the local exchange carriers ("LECs") delivering those calls, the LECs' per minute access charge. By contrast, the Feature Group petition asks the Commission to discontinue those companies' obligation to pay access charges.

We file these Comments in order to make clear that one reason the Commission should grant the Embarq petition and deny the Feature Group petition is to avoid a large reduction in telecom infrastructure investment. The Communications Act authorizes the FCC to consider the impact of regulatory proposals on infrastructure investment.[1]

[1] *See, e.g.*, Sec. 706(a) of Telecom Act of 1996, reproduced under the notes to 47 U.S.C. § 157 (stating that the Commission shall "encourage deployment of advanced telecommunications capacity to all Americans" using methods that "remove barriers to infrastructure development"); *U.S. Telecom Ass'n v. FCC*, 359 F. 3d 554, 580 (D.C. Cir. 2004) (holding that it is lawful notwithstanding the resulting injury to ILEC competitors,

Exempting companies that provide Internet-originated voice service from the requirement to pay access charges would have a negative impact on future telecom infrastructure investment since LECs then might be unable to recover their operating costs given that they would be denied substantial revenues to which they are entitled under existing access charge regulations. If LECs reduced infrastructure investment due to reduced revenues, investment in broadband access technologies (such as DSL and fiber) almost certainly would be negatively affected since most infrastructure spending planned by LECs for the foreseeable future is for the deployment of new broadband technologies and since experience proves that infrastructure investment is among the first casualties when LEC profits decline.

There is little doubt that granting the Feature Group petition could have a negative effect on infrastructure investment since LEC access charge revenues account for nearly $9 billion per year[2] and since Internet-originated voice services are expected to account for more than 20 percent of all voice calls in 2008, 33 percent in 2010, and 40 percent in 2011.[3] As a result, eliminating the obligation of companies providing Internet-originated voice service to pay access charges in short order could produce a revenue loss to LECs of more

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for the Commission not to require UNE unbundling if mandatory unbundling "would impose excessive impediments to infrastructure investment"); *Puerto Rico Telephone Authority/GTE Merger*, 14 FCC Rcd. 3122 at ¶ 58 (1999) (finding that the proposed merger at issue in that case was in the public interest in part because it was likely to result in additional infrastructure investment).

2 *See* Fed. And State State for the Fed.-State Joint Board on Universal Service, "Universal Service Monitoring Report, Dec. 2007 at Table 1.5, avail at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279226A1.pdf (originating and terminating LEC access revenues combined totaled $8.9 billion in 2006); Industry Analysis and Techn. Div., "Trends in Teleph. Service" at Table 1.4, Feb. 2007, avail. at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270407A1.pdf (interstate access charge was 1.63 cents per minute in 2005 for originating and terminating access combined).

3 Subscribership projections by eMarketer, www.emarketer.com/Article.aspx?id=1004829; www.imnewswatch.com/archives/2007/04/number_of_us_vo.html?visitFrom=1

than $2 billion per year – a loss that easily could cause their infrastructure investment to slow.

Further, although Feature Group suggests that LECs might be able to replace lost revenue by obtaining FCC or state PUC approval to raise other rates or by suing the FCC for unconstitutional confiscation of LEC property,[4] these approaches, even if ultimately successful, almost certainly would result in several years of reduced revenue (and thus a possible reduction in infrastructure investment). This is because LECs would not be reimbursed for reductions in access charge revenue until after winning that litigation and because experience shows that the litigation almost certainty would last at least three years, and probably more.

Feature Group's claim that reduced broadband investment would be offset by increased investment by companies providing Internet-originated voice service is misleading.[5] While Internet-originated voice service providers obviously would have more money to spend if rules requiring them to pay terminating access charges were not applied, a large portion of any increased spending necessarily would be used to develop computer systems that distinguish IP-originated voice calls from other long distance calls in order to ensure that access charges were not assessed when LECs terminate Internet-originated voice calls. Developing these systems not only would be a daunting and expensive task,[6] these expenditures would do *nothing* to improve Internet-originated voice service itself but

4 Feature Group Pet. at 58-59.

5 Id. at 54-55.

6 See, e.g., Memo. by AMA Technical Support Group, filed in Dkt. No. 03-266 on Feb. 10, 2005 by BellSouth.

instead would be necessary merely to accommodate the new regulatory regime Feature Group wants the Commission to implement.

Rather than waive the requirement that Internet-originated voice service providers pay access charges without providing LECs with a mechanism to recover their costs in other ways as Feature Group proposes, the FCC instead should reform intercarrier compensation regulations for *all* services at the same time in order to treat all competitors fairly.[7] It can do this by completing action in its nearly seven-year-old Intercarrier Compensation proceeding, a rulemaking that was established precisely for that purpose[8] and has been ready for decision since last April – ten months ago.

CONCLUSION

In view of the foregoing, the Commission should grant the Embarq petition and simultaneously deny the Feature Group petition.

Respectfully submitted,

ADC Telecommunications (Eden Prairie, MN)
Active Optical Mems Inc. (Fremont, CA)
BTECH Inc. (Rockaway, NJ)
CBM of America, Inc. (Deerfield Beach, FL)
Condux International, Inc. (Mankato, MN)
FiberSource, Inc. (Greenville, SC)
Independent Technologies Inc. (Omaha, NE)
Norland Products Inc. (Cranbury, NJ)
NSG America, Inc. (Somerset, NJ)
Optical Zonu Corp. (Van Nuys, CA)
PECO II, Inc. (Galion, OH)
Prysmian Communications Cables and Systems USA, LLC (Lexington, SC)
Sigma Designs (Milpitas, CA)
SNC Manufacturing Co. Inc. (Oshkosh, WI)
Sumitomo Electric Lightwave Corp. (Research Triangle Park, NC)
Sunrise Telecom, Inc. (San Jose, CA)
Suttle Apparatus Corp. (Hector, MN)
Telesync, Inc. (Norcross, GA)

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7 As PaeTec notes in Comments filed January 16, 2008, grant of the Feature Group petition, would encourage " entities generating telecom traffic . . . [to] attempt to shoehorn their traffic into . . . [the new] 'voice-embedded Internet communications' bucket [in order to avoid paying access charges]. . . . It takes no great foresight to predict with certainty that the Commission and state PUCs . . . [then would] see a plethora of [new] proceedings . . . as carriers argue about how many IP angels can dance on the head of a pin." PaeTec Comments at 7 (filed in WC Dkt. No. 07-256).

8 Notice of Proposed Rulemaking in CC Dkt. No. 01-92, rel. April 27, 2001.