

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Feature Group IP Petition for Forbearance	)	WC Docket No. 07-256
Pursuant to 47 U.S.C. § 160(c) from	)	
Enforcement of 47 U.S.C. § 251(g), Rule	)	
51.701(b)(1), and Rule 69.5.5(b)	)	
	)	
Petition of the Embarq Local Operating	)	WC Docket No. 08-8
Companies for Limited Forbearance	)	
Under 47 U.S.C. § 160(c) from	)	
Enforcement of Rule 69.5(a), 47 U.S.C.	)	
§ 251(b), and Commission Orders on the	)	
ESP Exemption	)	

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**REPLY COMMENTS OF AT&T INC.**

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## I. INTRODUCTION AND SUMMARY

AT&T, Inc. and its affiliated companies (collectively, AT&T) respectfully submit the following reply comments in response to the forbearance Petition filed by Feature Group IP in the above-referenced docket. Of the seventeen parties that filed comments on Feature Group IP's Petition, fifteen commenters representing a diverse cross-section of the communications industry – including ILECs, CLECs, IXCs, consumer advocates, equipment vendors and Internet search providers – either expressly declined to support, or flatly opposed, Feature Group IP's forbearance request due to a litany of procedural and substantive defects in the Petition.<sup>1</sup> And the two parties who supported Feature Group IP's request, the Open Internet Coalition and PointOne, merely parrot the same meritless arguments (sometimes verbatim) that were raised in the Petition and which AT&T and others have already addressed.<sup>2</sup>

Rather than respond to those arguments again here, particularly given the overwhelming record demonstrating that Feature Group IP's Petition fails to satisfy the statutory test for forbearance, AT&T instead takes this opportunity to address a specific issue that has come into focus as a result of Feature Group IP's subsequent comments on a related forbearance petition filed by Embarq.<sup>3</sup> As discussed below, Feature Group IP's filings with the Commission contain inconsistent and contradictory representations regarding its regulatory status and the nature of the services it provides, which expose fatal flaws in its forbearance request and warrant a swift denial of its Petition.

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<sup>1</sup> See AT&T Comments; CenturyTel Comments; Embarq Comments; NECA, et al Comments; Qwest Comments; Texas Statewide Telephone Cooperative Comments; USTelecom Comments; Verizon Comments; Windstream Comments; Paetec Comments; Time Warner Telecom Comments; Global Crossing Comments; NASUCA Comments; Ad Hoc Manufacturer Comments; Google Comments.

<sup>2</sup> Compare Feature Group IP Petition at 24-25, 39-42, Open Internet Coalition Comments at 13, 14-17. Feature Group IP has filed two versions of its Petition with varying pagination. The version cited herein is attached to an ex parte that Feature Group IP filed on October 25, 2007, in WC Docket No. 01-92.

<sup>3</sup> Feature Group IP Comments, WC Docket No. 08-8 (Feb. 19, 2008).

## II. DISCUSSION

In its Petition, Feature Group IP claims that “all of its services and all of its traffic are related to a purely and solely interstate tariffed offering designed to facilitate the intercommunication of the Internet and the PSTN.”<sup>4</sup> According to Feature Group IP, this tariffed offering, known as “Internet Gateway Intermediation Point of Presence (‘IGI-POP’),” requires a VoIP provider to deliver traffic to Feature Group IP in IP format through an “Internet Protocol (‘IP’) interface.”<sup>5</sup> Feature Group IP will then “convert IP-based traffic to SS7-based traffic”<sup>6</sup> using Feature Group IP’s “superior technology,”<sup>7</sup> thereby enabling Feature Group IP’s VoIP provider customers to “originate traffic to or receive traffic from the PSTN.”<sup>8</sup>

Feature Group IP further asserts that “IP-PSTN communications undergo a ‘net protocol’ conversion, and thus can be classified as ‘Information Services’ under existing FCC precedent.”<sup>9</sup> Given that Feature Group IP apparently performs such a net protocol conversion with its IGI-POP service, and that “the entirety of [Feature Group IP’s] traffic is the result of IGI-POP,”<sup>10</sup> the Petition appears to suggest that Feature Group IP is an enhanced service provider (ESP) engaged in the provision of an enhanced service.

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<sup>4</sup> Feature Group IP Petition at 23 n. 27.

<sup>5</sup> See Feature Group IP Petition, Appendix A, IGI-POP Tariff at section 7.1.2(A).5, and Appendix C, Soren Telfer Testimony at 6.

<sup>6</sup> Feature Group IP Petition, Appendix B, Lowell Feldman Testimony at 48.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 28.

<sup>9</sup> Feature Group IP Petition at 26.

<sup>10</sup> See Feature Group IP Petition, Appendix B, Lowell Feldman Testimony at 139. See also Feature Group IP Petition at 13 (“This particular Forbearance request is also limited to those communications that traverse Feature Group IP’s Internet Gateway Intermediation Point of Presence (‘IGI-POP’) services. Accordingly, the requested forbearance would initially extend only to Feature Group IP.”).

Indeed, PointOne, who supports Feature Group IP's Petition, asserts that Feature Group IP "offer[s] enhanced services" and is "not" providing "telecommunications services."<sup>11</sup>

Yet, in stark contrast to its own Petition and PointOne's comments thereon, Feature Group IP subsequently filed comments on Embarq's forbearance petition in which Feature Group IP claims that its services "are *all* telecommunications services and are exclusively LEC functions."<sup>12</sup> In particular, Feature Group IP asserts that all of its services qualify as "either telephone exchange service or exchange access service."<sup>13</sup>

Feature Group IP has thus presented the Commission with an irreconcilable contradiction that is fatal to its Petition. On the one hand, if Feature Group IP provides a protocol conversion service that renders the service "enhanced" and qualifies Feature Group IP as an ESP, then, contrary to its comments on the Embarq petition, this service cannot also be a "telecommunications service."<sup>14</sup> Moreover, as an ESP (rather than a telecommunications carrier), Feature Group IP would not be able to demand interconnection with an incumbent LEC under section 251 of the Act for the termination of IP-originated traffic on the PSTN.<sup>15</sup> Accordingly, the fundamental premise of its

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<sup>11</sup> PointOne Comments at 7-8.

<sup>12</sup> Feature Group IP Comments, WC Docket No. 08-8, at 7 (emphasis added).

<sup>13</sup> *Id* at 7. Contrary to this assertion, the testimony of Feature Group IP's CEO, which is attached to its Petition, indicates that "UTEX's business plan is 100% telephone exchange service" and "UTEX has never sent an exchange access bill." Feature Group IP Petition, Appendix B, Lowell Feldman Testimony at 38 n.19, 123-24.

<sup>14</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, FCC 98-67, ¶ 13 (1998) ("We conclude . . . that the categories of 'telecommunications service' and 'information service' in the 1996 Act are mutually exclusive."). Classification of IGI-POP service as an enhanced service would also raise serious questions about the validity of Feature Group IP's IGI-POP tariff. See *Integrated Services Digital Networks (ISDN)*, 94 FCC 2d. 1289, ¶ 28 (1983) ("Since enhanced services are not subject to Title II regulation, carriers may not include their enhanced service offerings in their tariffs.").

<sup>15</sup> See 47 U.S.C. § 251(c)(2) (describing an ILEC's duty to interconnect with a "requesting telecommunications carrier"); *id.* § 251(a) (describing the duty of a telecommunications carrier to

Petition – that Feature Group IP has a legal right to deliver IP-originated traffic over interconnection trunks to terminating LECs at reciprocal compensation rates – would be invalid as a matter of law.

On the other hand, if Feature Group IP does not provide a protocol conversion service and is not an ESP, but is instead a telecommunications carrier providing telecommunications services, Feature Group IP’s IGI-POP service and its advocacy extolling the virtues of “intermediating” the “intercommunication of the Internet and the PSTN” are a canard.<sup>16</sup> Indeed, if Feature Group IP merely provides TDM-based transport between a VoIP provider (who has performed the IP-to-TDM conversion itself) and the PSTN, then Feature Group IP cannot be an ESP and cannot claim that the ESP Exemption relieves it from the payment of access charges on interexchange IP-to-PSTN traffic, because, as Feature Group IP admits, the ESP Exemption is only “applicable to non-carriers.”<sup>17</sup>

Regardless of whether Feature Group IP is an ESP or a telecommunications carrier, and irrespective of whether IGI-POP involves a protocol conversion, the contradictory and irreconcilable assertions in Feature Group IP’s submissions are grounds for denial of its Petition. Despite filing nearly 500 pages of pleadings related to its

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interconnect with “other telecommunications carriers”). *See also* AT&T Comments at 9-10; *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513, ¶¶ 1, 12, 16 (2007).

<sup>16</sup> Feature Group IP Petition at 23 n.27, and Appendix B, Lowell Feldman Testimony at 31.

<sup>17</sup> Feature Group IP Comments, WC Docket No. 08-8, at 47. As AT&T has previously explained, even if Feature Group IP or its customers are ESPs, the interexchange IP-to-PSTN traffic they deliver to the PSTN would still be subject to access charges. *See* AT&T Comments at 5-14.

forbearance request,<sup>18</sup> Feature Group IP has so completely failed to coherently identify the nature of the services at issue in its Petition that even parties supporting the Petition disagree with Feature Group IP over the functionality and regulatory classification of those services.<sup>19</sup> Under these circumstances, the Commission cannot rationally conclude that Feature Group IP's request satisfies the three-pronged statutory test for forbearance under section 10 of the Act with respect to these ill-defined services and, therefore, the Commission should reject Feature Group IP's Petition.

### III. CONCLUSION

For all of the reasons stated above and in AT&T's opening comments, the Commission should deny Feature Group IP's Petition.

Respectfully Submitted,

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<sup>18</sup> See Feature Group IP Petition (396 pages), Feature Group IP Comments, WC Docket No. 08-8 (93 pages).

<sup>19</sup> See Point One Comments at 7-8.