



June 6, 2008

**EX PARTE NOTICE**

***Electronic Filing***

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Room TW-A325  
Washington, DC 20554

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92;  
IP-Enabled Services, WC Docket No. 04-36;  
Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47  
U.S.C. § 160(c), WC Docket No. 08-8;  
Feature Group IP Petition for Forbearance Pursuant to 47 U.S.C. § 160(c), WC Docket  
No. 07-256

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile”) opposes the Embarq Forbearance Petition (“Embarq Petition”) that seeks to impose access charges on non-local Internet Protocol (“IP”) calls terminated on the public switched telephone network (“PSTN”).<sup>1</sup> The issue raised by Embarq is another artifact of the current outmoded and discriminatory intercarrier compensation regime and should be addressed as part of overall reform efforts.

In fact, at least two pending, broad policy rulemakings would allow the Commission to consider the application of access charges to non-local Voice over Internet Protocol (“VoIP”) and other IP calls terminated on the PSTN. In the *IP-Enabled* proceeding, the Commission asked, among other things, whether access charges should apply to VoIP or other IP enabled services.<sup>2</sup> Similarly, in the *Intercarrier Compensation* proceeding, the Commission is considering wholesale reform of the access charge and reciprocal compensation regime that should be

---

<sup>1</sup> Petition for Forbearance, *Petition of the Embarq Local Operating 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*, WC Docket No. 08-8 (Jan. 11, 2008) (“Embarq Petition”).

<sup>2</sup> *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4904 (2004) (“*IP-Enabled*”).

applied to all traffic.<sup>3</sup> The Commission would undermine those rulemaking proceedings if it prematurely resolved the narrow issue presented by Embarq.<sup>4</sup> Moreover, addressing these issues piecemeal would adversely affect business efficiency and could cause customer confusion if companies must adapt to different regimes in a relatively short timeframe. T-Mobile agrees with Sprint Nextel and other carriers that the Commission should dismiss the Embarq Petition.<sup>5</sup>

If the Commission, nevertheless, considers the merits of the Embarq Petition, it should deny it for failure to meet the statutory forbearance criteria. Embarq's request is fatally flawed because it does not seek forbearance from a "regulation or any provision of this Act" and it does not seek relief with regard to a "telecommunications service."<sup>6</sup> Embarq asks the Commission to forbear "from any application or enforcement of the ESP exemption to the extent it may apply to IP-to-PSTN voice traffic."<sup>7</sup> Embarq concedes that the ESP exemption "is not codified" but argues that the Commission "should expressly forbear from" a series of orders creating and applying the ESP exemption.<sup>8</sup> Embarq fails to address, however, the statutory requirement that only a "regulation" or "[statutory] provision" may be the subject of a forbearance petition.

Forbearance is also unavailable here because the traffic at issue is not a telecommunications service.<sup>9</sup> Embarq's request covers only IP-to-PSTN calls, which, by definition, meet the

---

<sup>3</sup> *Developing a Unified Inter-carrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd 4685 (2005) ("*Inter-carrier Compensation*").

<sup>4</sup> In fact, the *Inter-carrier Compensation* rulemaking expressly raised the issue of whether comprehensive reform would address the cost differential under which standard long distance calls are subject to access charges, while IP telephony is not. *Developing a Unified Inter-carrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610, 9616 (2001) (subsequent history omitted).

<sup>5</sup> See, e.g., Comments of Sprint Nextel Corporation, *Petition of the Embarq Local Operating 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*, WC Docket No. 08-8 (Feb. 19, 2008).

<sup>6</sup> Section 10 of the Telecommunications Act of 1996 ("1996 Act") provides that "the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class [of carriers or services]" if certain criteria are met. 47 U.S.C. § 160(a).

<sup>7</sup> Embarq Petition at 5-6. In establishing its access charge system in 1983, the Commission decided to treat enhanced service providers ("ESPs") as end users, thus continuing their unregulated non-carrier status. See *MTS & WATS Market Structure*, 97 FCC 2d 682, 711-15 (1983). It reaffirmed this "ESP exemption" in 1991. *Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, 6 FCC Rcd 4524, 4534 (1991). In 1997 it again preserved the status quo. *Access Charge Reform*, 12 FCC Rcd 15982, 16132 (1997) (subsequent history omitted).

<sup>8</sup> Embarq Petition at 17.

<sup>9</sup> Section 10 of the 1996 Act authorizes forbearance as to "a telecommunications carrier or telecommunications service, or class [of carriers or services]." 47 U.S.C. § 160(a). Because not all of the parties originating IP-to-PSTN

statutory definition of an information service.<sup>10</sup> Accordingly, the traffic at issue is an information service, not a telecommunications service and Embarq's Petition should be denied.

If the Commission, nonetheless, decides to resolve the issue raised by Embarq in advance of comprehensive reform, the Feature Group IP ("FGIP") Petition for Forbearance ("FGIP Petition") would provide a sounder approach.<sup>11</sup> FGIP argues that the type of VoIP-to-PSTN traffic covered by the Embarq Petition is not subject to access charges under the ESP exemption but requests forbearance from the relevant access charge rules in the event that the FCC does not agree with FGIP's reading.<sup>12</sup> In contrast to the Embarq Petition, the forbearance relief requested by FGIP meets the statutory criteria because FGIP seeks forbearance from statutory and regulatory provisions on behalf of telecommunications carriers.<sup>13</sup> Moreover, FGIP is correct that the categories of calls covered by its Petition constitute information services and are thus exempt from access charges.<sup>14</sup>

---

traffic are "telecommunications carriers," the affected traffic must be a "telecommunications service" for Embarq to secure complete relief under Section 10 for all of the traffic addressed by its Petition.

<sup>10</sup> Any IP-to-PSTN call undergoes a net protocol conversion, which is an information service. *Implementation of the Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended*, 11 FCC Rcd 21905, 21955-56 (1996) (subsequent history omitted). IP telephony calls, on the other hand, that originate and terminate on the PSTN, undergo no net protocol conversion, and provide no enhanced functionality constitute a telecommunications service. *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004).

<sup>11</sup> Petition for Forbearance, *Feature Group IP Petition for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(a)(1), and Rule 69.5 (b)*, WC Docket No. 07-256 (Oct. 23, 2007) ("FGIP Petition").

<sup>12</sup> FGIP argues that VoIP-to-PSTN and PSTN-to-VoIP calls, as well as calls originating and terminating on the PSTN that undergo a change in content or in which enhanced functionalities are offered to the user, are not subject to access charges under the ESP exemption. FGIP Petition at 10-11.

<sup>13</sup> FGIP Petition at 11, 24-26.

<sup>14</sup> See n. 11, *supra*.

Ms. Marlene H. Dortch  
June 6, 2008  
Page Four

In accordance with Section 1.1206 of the Commission's rules, this letter is filed with your office for inclusion in the public record of the above referenced proceeding. If you have any questions regarding this *ex parte* notice, please contact the undersigned.

Sincerely,

/s/ Kathleen O'Brien Ham  
Kathleen O'Brien Ham

/s/ Sara F. Liebman  
Sara F. Liebman

/s/ Amy R. Wolverson  
Amy R. Wolverson

Federal Regulatory Affairs  
T-Mobile USA, Inc.

cc: Amy Bender  
Scott Bergmann  
Scott Deutchman  
John Hunter  
Chris Moore  
Dana Shaffer  
Deena Shetler  
Al Lewis  
Don Stockdale  
Victoria Goldberg  
Lynne Engledow  
Jay Atkinson  
Marcus Maher  
Randy Clarke