FeatureGroup IP*

Lowell Feldman
CEO

1250 South Capital of Texas Highway
Building Two, Suite 235
Austin, Texas 78746

512.888.2311 (V)
512.692.2252 (FAX)
lowell@worldcall.net

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Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Robert McDowell
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate

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

Dear Chairman Martin and Commissioners:

Feature Group IP ("FGIP") submits this *ex parte* communication in response to the August 6, 2008 letter submitted in the above-captioned proceedings by at&t, CompTIA, CTIA, Global Crossing, ITI-C, the NAM, New Global Telecom, PointOne, Sprint-Nextel, TIA, T-Mobile, Verizon and the VON Coalition ("Industry Letter").

We applaud this latest effort at industry consensus and agree there is an urgent need for reform along the lines discussed in the Industry Letter as it pertains to transport and termination. FGIP supports moving to a unitary termination price of $0.0007 for IP based voice-enabled and all other LEC-LEC or LEC-CMRS traffic. That amount is a reasonable approximation of the "additional cost" of transporting and terminating a call. We would also support bill and keep and we will continue our efforts to negotiate mutual waivers of the right to compensation with all carriers just as we did several years ago with the then SBC-Texas.

We must note, however, that the Industry Letter does not address an essential principle for creation of the ubiquitous network of networks that should be the communications system of tomorrow. The Industry Letter fails to include a reaffirmation of the requirement that all carriers must interconnect with one another <u>and</u> route traffic originating on one network but addressed to another, regardless of technology and on equal terms and conditions. Simply establishing a unitary terminating rate does not resolve the ILECs' present refusal to route traffic to other carriers for termination unless the terminating network pays access charges. Sprint filed a request in this case several years ago on this very topic. ASAP Paging's request for preemption on this issue in Docket 04-6 has lain just as fallow. FGIP has the same problem: we cannot use the North American Numbering

Plan numbering resources assigned to us because no ILEC will route calls addressed to those numbers unless and until FeatureGroup IP agrees to pay the ILEC access charges and significant nonrecurring fees for number translations. The ILECs flatly refuse to obey 47 C.F.R. §§ 51.703(b) and 51.709(b). While terminating prices are surely important, the rules for originating traffic between two carriers are equally important.

It was not so long ago that the Commission was concerned with convergent traffic originated by ILECs and terminated by CLECs. The ILECs complained because they were net originators (and were therefore net payors) in contrast to their expectations in 1996 that they would be net terminators. The ILECs naturally advocated high termination prices that they then later regretted when they had to pay the steep price. Ironically, now that VoIP traffic is growing, we see convergent traffic terminated by ILECs. It turns out they were right after all – that they would be net terminators of traffic. But, with regard to VoIP, the ILECs have been demanding access charges – rather than the *ISP Remand Order* rate or the § 251(b)(5) rate – for termination. The Industry Letter is a welcome change in this regard. But the Industry Letter still does not satisfactorily address the reason that traffic between the PSTN and IP-enabled networks always seems to be convergent in one or the other direction, rather than equal as one might expect it to be and as it would be if rational rules were in place.

The rate for transport and termination is only part of the battle. Carriers must also be expressly required to interconnect and exchange traffic in both directions with all other carriers with equal "rights and responsibilities." LECs must recognize and properly route calls addressed to numbering resources assigned to other LECs. LECs and CMRS providers must recognize and honor LECs' and CMRS carriers' numbering resources without imposing translation fees, and they must properly route calls addressed to other LEC/CMRS networks without trying to recover originating access charges from the network to which a call is addressed.

The August 6 Industry Letter states: "(n)ow more than ever, it no longer makes sense to perpetuate a system that requires or permits terminating carriers to apply different rates to different traffic based on arbitrary distinctions." We completely agree. But FGIP also contends that, now more than ever, it no longer makes sense to perpetuate a system that forces new technology to replicate old technology, adopt legacy business models or allow incumbents to control how new technology entrants will interconnect and exchange traffic. This is especially so when the ILECs are imposing "fraud charges" 20 to 40 times the proposed $0.0007 compensation on traffic that is IP originated. This attempt to control is what causes convergent traffic patterns because new entrants will always and naturally seek to handle the most profitable traffic. That is how the market and competitive systems operate. This is not just a "transport and termination" issue. Solving termination with a unitary rate will only lead to more fights over origination and network management. The Commission should just solve all issues right now.

FGIP and other providers that choose to use new technology and different business models and – unlike many ESPs – have jumped through the hoops necessary to be deemed "telecommunications carriers" must not be required to purchase goods and services as "customers" or "access customers" of the legacy ILECs in order to receive ILEC-originated traffic. Our peerage entitlements to interconnection and the mutual exchange of traffic must be recognized. This means the ILECs must signal directly with us in any technically feasible manner, even if the signaling is not legacy-based. This means they may not force us to manage our network in the same way they choose to manage their networks in terms of user identification. This means that we still have the right to allow our users to choose non-legacy identities and addresses so that not only can an e-mail or instant messaging client call the PSTN but the PSTN can also call e-mail and IM clients. This is not fraud, and our adoption and promotion of new technology can not be deemed fraudulent network management by the incumbents.

We again urge all providers and the FCC to look at the overall policy that should be driving the rules. For several years we have proposed principles that would fairly govern the ways in which carriers, be they PSTN or Internet-based, could interconnect. We are attaching these principles once again.

The Industry Letter is correct in observing:

> Today, more than ever, companies are investing in new, next-generation platforms based on IP technology. These revolutionary IP services, including Voice-over-IP ("VoIP") services, up-end traditional concepts of location-based and device-based services, enabling customers to have a single number that reaches them, no matter where they are and what device (phone or computer) they are using. These services enable subscribers to utilize multiple service features that access different websites or IP addresses during the same communication session and to perform different types of communications simultaneously. In addition, they can route calls seamlessly to and from a wide variety of devices, some of which may be mobile, some of which may be nomadic and some of which may be fixed, and changeable at the user's discretion. It is precisely these features, which resist traditional legacy telephone regulatory classification, that make possible vast new opportunities for consumers and businesses in urban and rural areas alike across the country.
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> Consumers and businesses are eagerly embracing the new and innovative, integrated packages of data, features and any-distance voice service that IP services make possible. At the same time, demand for traditional, circuit-switched voice services is declining. As a result, an ever-increasing proportion of traffic carried over the legacy public switched telephone network will originate or terminate in IP format. Wireline and wireless companies are also developing their own facilities-based IP services, which will compete with both the cable

> companies' fixed IP services as well as nomadic IP services that are available to any consumer with a broadband connection.
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> To foster the continued development and deployment of new and innovative IP services, as well as of the broadband platforms on which those services depend, the Commission must ensure regulatory stability for IP service providers, applications developers, and equipment manufacturers.
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> The Commission must focus on policies that will help spur the continued evolution to more advanced IP and broadband networks. If the Commission is to ensure the future growth and development of these services, it must not only eliminate multiple, and potentially capricious, compensation regimes. It must also create a uniform, rational compensation system. The evolution to IP-based services will create a more competitive environment and will bring new and innovative services to consumers in all areas of the country. However, for this trend to continue, the Commission must take these important steps and reject efforts to apply legacy regulation to the IP world — whether that involves state regulation or the legacy intercarrier compensation structure. By doing so, the Commission can ensure the continued development and deployment of new and innovative IP services, as well as of the broadband platforms on which those services depend.

The forgoing presents very noble sentiments, but they are still far too bound by legacy concepts. The Commission will only advance society's need to communicate if all carriers are also obliged to interconnect with new technology, honor other LEC and CMRS numbering resources and route originating traffic to the addressed network without imposing translation fees and originating access charges. It is insufficient that FGIP may only be charged $0.0007 by an interconnecting LEC that terminates traffic delivered to it by FGIP. ILECs must also be required to honor our numbering resources and route their originating traffic to our network, without demanding ruinous non-recurring and recurring access-based fees.

Respectfully submitted,

______/s/________________________

Lowell Feldman
CEO, Feature Group IP
1250 Capital of Texas Highway South
Building Two, Suite 235
Austin, TX 78746

cc: Daniel Gonzelez
Amy Bender
Nicholas Alexander
Scott Bergmann
Scott Deutchman
Greg Orlando
Matthew Berry
Dana Shaffer
Marcus Maher
Julie Veach
Randy Clarke
Al Lewis
Victoria Goldberg
Tim Stelzig