

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
 )  
Petition of the Frontier Local Operating ) WC Docket No. 08-205  
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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**COMMENTS OF  
THE  
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER  
ADVOCATES  
ON PETITION FOR FORBEARANCE**

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On September 25, 2008, the Frontier Local Operating Companies (“Frontier”) filed a petition with the Federal Communications Commission (“Commission” or “FCC”), asking the Commission to forbear from any application of the so-called “ESP exemption” that allows enhanced service providers (“ESPs”) not to pay access charges, specifically for traffic that originates as Internet protocol (“IP”) and terminates on the public switched telephone network (“PSTN”).<sup>1</sup> In a Public Notice released October 3, 2008, but not published in the FCC’s Daily Digest until October 6, 2008, the FCC directed that public comment on the Frontier petition be filed by October 10, 2008.<sup>2</sup>

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<sup>1</sup> Petition for Forbearance (filed September 25, 2008) at iii.

<sup>2</sup> DA 08-2228 (rel. October 3, 2008). There was no explanation given for the short comment period, especially in light of the publication, which allowed interested persons all of four business days to prepare comments. The nature of the Frontier petition, as explained here, however, makes this truncated comment period somewhat less of a detriment.

As the Frontier petition states, it “mirrors a nearly identical petition filed by Embarq on January 11, 2008 in WC Docket No. 08-08....” That petition, filed by the Embarq Local Operating Companies (“Embarq”), was put out for public comment in January 2008.<sup>3</sup> The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>4</sup> filed comments on the Embarq petition, which were combined with comments on a petition filed by Feature Group IP West LLC, Feature Group IP Southwest LLC, UTEX Communications Corp., Feature Group IP North LLC, and Feature Group IP Southeast LLC (collectively “Feature Group IP”), which sought a result opposite to the Embarq and Frontier petitions, asking the FCC to **exempt** Feature Group IP from having to pay access charges to the carriers on whose networks Feature Group IP’s calls terminate.<sup>5</sup>

In those comments, NASUCA supported the Embarq petition and opposed the Feature Group IP petition, stating,

NASUCA has supported the requirement that carriers using the networks of other carriers to terminate calls must compensate the carriers who own those networks. Therefore, in this arena of dueling petitions, NASUCA supports the position taken in the Embarq petition, while largely opposing that in the Feature Group IP petition. NASUCA believes, however, that the Embarq position and the underlying public policy it embodies can be

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<sup>3</sup> DA 08-94 (rel. January 14, 2008).

<sup>4</sup> NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio. Rev. Code Chapter 4911; 71 Pa.Cons.Stat. Ann. § 309-4(a); Md. Pub.Util.Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

<sup>5</sup> The Feature Group IP petition was filed on October 23, 2007 in WC Docket 07-256. The petition was put out for public comment in DA 07-5029; in DA 08-93, the comment dates for the Feature Group IP petition were extended to match those of the Embarq petition.

best and most efficiently resolved not through forbearance, but through a declaratory ruling.<sup>6</sup>

Given the “mirroring” of the Embarq petition in the petition filed by Frontier, NASUCA incorporates herein the initial (February 21, 2008) and reply (March 14, 2008) comments submitted in WC Docket No. 08-08, and attaches them to this filing. (The comments on the Feature Group IP petition are relevant here in that they oppose extending the ESP exemption to IP-to-PSTN calls.)

As recommended in NASUCA’s earlier comments, the Commission should issue a declaratory ruling -- in the course of the order denying Feature Group IP’s petition -- that IP-to-PSTN calls are not exempt from access charges. In this way, the need to review and respond to future similar petitions could be obviated, conserving regulatory resources.<sup>7</sup>

That would also address the key issues raised by a subsequent AT&T petition that also seeks to have access charges apply to IP calls.<sup>8</sup> And it would do so without the objectionable revenue recovery gyrations contained in the AT&T Petition.<sup>9</sup>

Respectfully submitted,

/s/ David C. Bergmann

David C. Bergmann

Assistant Consumers’ Counsel

Chair,

NASUCA Telecommunications Committee

Office of the Ohio Consumers’ Counsel

10 West Broad Street, Suite 1800

Columbus, OH 43215-3485

Phone (614) 466-8574

Fax (614) 466-9475

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<sup>6</sup> 07-256, 08-08, NASUCA Comments (February 19, 2008) at 2-3.

<sup>7</sup> Id. at 10.

<sup>8</sup> *In the Matter of Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the “ESP Exemption,”* WC Docket No. 08-152 (“08-152”).

<sup>9</sup> See 08-152, NASUCA Comments (August 14, 2008) at 3-11.

NASUCA  
8380 Colesville Road, Suite 101  
Silver Spring, MD 20910  
Phone (301) 589-6313  
Fax (301) 589-6380

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