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January 12, 2009

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: WC Docket No. 07-256; *Feature Group IP Petition for Forbearance From Section 251(g) of the Communications Act and Sections 51.70(b)(1) and 69.5(b) of the Commission's Rules*

Dear Ms. Dortch:

On January 8, 2009, NECA made a Commission filing that contained a letter addressed to the undersigned and sent via US Mail. On January 9, 2009, FeatureGroup IP sent a response to NECA. That response again implored NECA to engage in a dialogue regarding the signaling, routing and rating of FeatureGroup IP's tariffed IGI-POP service and offered to meet with NECA to discuss the matter. In a phone call to the undersigned NECA again declined the request to meet.

NECA's continued refusal to discuss these topics is relevant to and should be considered as part of the deliberations in this proceeding. NECA's actions evidence the effect that the lack of regulatory clarity has on emerging businesses and technologies and the ILECs' proclivity to fill that regulatory void with anti-competitive and monopolistic behavior.

A copy of Feature Group IP's response to NECA's letter is enclosed for your information.

Yours very truly,

Patricia B. Tomasco

PBT/pk
cc: Mr. Lowell Feldman (via e-mail)

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January 8, 2009

VIA E-MAIL (jlharris@reedsmith.com)
Judith L. Harris
Reed Smith
1401 K Street, NW, Suite 1100
Washington, D.C. 20005

Re: Notice and Demand regarding impermissible and improper NECA activities

Dear Ms. Harris:

This firm, having sent a demand letter to NECA on December 17, 2008, was surprised to see your response in an ex parte filing before the FCC before it had received your letter by US Mail. I will not repeat the same practice and send this to you via e-mail before it is lodged with the FCC. This, among other conceits, further demonstrates the arrogance of NECA and its members in dealing with competitive, technologically advanced CLECs, a few of which I will address below.

First, litigation demand and advocacy can never form the basis of a defamation claim, as you must know. Civil liability cannot attach under any legal theory for statements made during the course of litigation. *Loigman v. Twp. Comm'n*, 185 N.J. 566, 889 A.2d 426, 436 (N.J. 2006) (litigation privilege provides immunity "not only from defamation actions, but also from a host of other tort-related claims"). Contrastingly, Noerr-Pennington immunity does not protect NECA from liability from private action, only from attempts to influence a governmental body. Your letter ignores this distinction that FGIP was careful to make, complete with relevant authority which you have failed to distinguish. Moreover, FGIP detailed its factual and legal basis for its assertion that NECA members engage in a group boycott of competitive new technology through the guises of "access assurance" campaigns as well as a concerted effort to boycott FGIP's competitive IGI-POP tariffed services. Group boycotts can be proven by collective action of defendants in excluding a competitor even without a formal agreement, and FGIP has proof of that and more. *E.g. United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940).

Your apparent response to these allegations is that NECA opposes FGIP and NECA boycotts FGIP because FGIPs tariffed IGI-POP Internet-based services are not competition but are all subject to access charges – an issue that the FCC has refused to address even today because of its complexity. While FGIP is impressed that NECA professes to have solved the

ESP exemption by single-handedly eliminating it from existence, FGIP believes that the FCC is the body that Congress intended to resolve these issues, not NECA's amalgam of anti-competitive ILECs.

NECA further evidences its group boycott by refusing to meet with FGIP. If NECA is not engaged in a group boycott as you claim, then we anticipate that NECA would be willing to meet to discuss FGIP's proposal sent a year ago but attached hereto for your convenience. We repeat that FGIP is willing to meet with NECA and its members for the mutual exchange of traffic both to and from the Internet under FGIP's tariff that specifically excludes IXCs. We do not need to "classify" the traffic from a regulatory point of view, we simply need an bi-lateral agreement to signal, route and rate the traffic. My client, who is in DC at the moment, is more than happy to meet with NECA **today** to set up further negotiations to flesh out additional details and welcomes the direct involvement of the FCC Staff.

Finally, as you know, the failure to preserve evidence upon notification of potential litigation will subject NECA to the negative evidentiary inference. Should NECA fail to preserve relevant physical and electronic evidence, it will be at its peril. Since you claim that NECA has done nothing wrong, one wonders why NECA would engage in evidence destruction at all, let alone publicly announce its intention to do so in your letter. Should you have any questions or comments, please let me know. My cell phone is listed in my e-mail signature if you want to set up a meeting today.

Yours very truly,

Patricia B. Tomasco

PBT/pk
Cc: Mr. Lowell Feldman (via e-mail)

FGIP Proposal to NECA

1. We meet at agreed upon points to exchange the bearer portion of traffic that will be exchanged between the RLECs' networks and our network. We suggest that this can be done at each of 5 regional exchange points, established in existing "carrier hotels." We propose that this occur in Chicago, Dallas, Los Angeles, Miami and New York but are willing to consider other locations. The exchange of bearer traffic can occur in either "TDM" or IP format. If an RLEC prefers to have an exchange point within its own territory, then FeatureGroup IP would be willing to do so, if the RLEC provides a location for us to install a gateway and gives us Internet access at that location.

2. The parties signal to each other using SS-7 B-Links, with each party paying its own way. If an RLEC does not have its own STPs we will provide an A-Link to support signaling and will charge the RLEC a price for the signaling service at or below the price it currently pays. The SS7 signaling should provide the full functionality that SS7 provides including but not limited to both ISUP and TCAP.

3. The parties agree to route and exchange bearer traffic at § 252(d)(2)-compliant price for all traffic. We propose use of the FCC's $0.0007, but we could also use state-specific TELRIC based rates or a reasonably proxy. We might be willing to apply a non-cost based rate if it is reciprocal, *e.g.*, the RLEC pays us the same price for traffic that originates on the RLEC's network and FeatureGroup IP pays the same price for traffic handed off to the RLEC for termination.

4. Feature Group IP will place or cause to be placed on every outbound call a unique non-geographic number (the initial numbers will come from the 500-888 NPA-NXX) that corresponds to an IP-enabled application (*e.g.,* Xbox, Skype, a voice recognition IM service, a voice e-mail service). You must also agree to load into routing and route back to this number.

5. Initially, no Legacy Feature Group D Carriers will be allowed to use the Feature Group IP Service. In the event that you believe an ordinary IXC is routing PSTN-originated traditional telephone toll calls via our network, simply open up a test or trouble ticket and we will track the call and report call detail to you so that you can bill access charges to the ordinary IXC.

6. We both agree to let the FCC monitor the parties' good faith efforts to resolve any technical or policy issue that arises