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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

5 **In the Matter of Feature Group IP**)
6 **Petition for Forbearance Pursuant to**) **WC Docket No. 07-256**
7 **47 U.S.C. §160(c) from Enforcement**)
8 **of 47 U.S.C. § 251(g), Rule 51.701(b)(1),**)
9 **and Rule 69.5(b)**)
10 **STATE OF TEXAS** §
11 §
12 **COUNTY OF TRAVIS** §

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DECLARATION OF LOWELL FELDMAN

14 My name is Lowell Feldman. I am the President and Chief Executive Officer of UTEX
15 Communications Corp. d/b/a FeatureGroup IP (“FeatureGroup IP”), the Petitioner in this case. I
16 offer the following Declaration to present FeatureGroup IP’s perspective on some of the
17 arguments raised by the opponents, and to present additional facts that are relevant to those
18 arguments.

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Part I

20 **“If the opponents are correct that the cited rules do not apply to FeatureGroup IP, why do**
21 **I keep getting million dollar invoices from the incumbents?”**

22 Some of the opponents for relief make the remarkable assertion that FeatureGroup IP’s
23 petition should be denied because it seeks relief from rules that apply to others and do not apply
24 to FeatureGroup IP. FeatureGroup IP wholeheartedly agrees that there is no rule that presently
25 allows for access charges to be applied to voice-enabled IP-based applications and services that
26 involve more than mere IP transmission, and offer enhanced functions or change the content of
27 customer-supplied information. We also strongly agree that even if the access rules could be
28 somehow applied to voice-enabled IP-based services there is no rule that would allow an ILEC
29 to send the access bill to another LEC, instead of the voice-enabled IP-based service provider. If
30 this is access, then it is jointly-provided access and in that situation each LEC in the call path
31 looks to the access customer for payment. No LEC sends the access bill to any of the other
32 LECs.

33 FeatureGroup IP is an LEC; it does not provide telephone toll. It does not provide any
34 enhanced service. All FeatureGroup IP does is provide telephone exchange and/or exchange
35 access service to a specific sub-set of ESPs. These ESPs or the ESP’s customers are the ones that

1 support or provide voice-enabled / IP-based services to retail consumers. Nonetheless, even
2 though the ILECs vigorously assert there is no rule that allows them to send access bills to
3 FeatureGroup IP, we receive access charge bills every month from one or more ILECs that then
4 threaten collection actions. Some have attempted to disconnect existing interconnection. Others
5 have refused to exchange traffic under §§ 251 and 252. Apparently, the ILECs' disagree with
6 their FCC counsels' advocacy.

7 AT&T Texas is but one example. Attached to this Declaration as Exhibit 1 is an affidavit
8 submitted to the Texas PUC last month by an AT&T representative. The affidavit claims that we
9 owe AT&T Texas \$7.5 million for "access service." This affidavit is part of AT&T Texas'
10 ongoing attempt to convince the Texas PUC to require us to escrow this amount, and all newly
11 billed amounts every month (estimated by AT&T Texas to be \$150,000 per month),¹ until the
12 Texas Commission decides whether access charges apply to IGI-POP traffic. If we do not
13 escrow, then AT&T Texas wants to be allowed to disconnect the interconnection arrangements
14 that are in place and cancel the current interconnection agreement. The Texas PUC, however, has
15 indicated it does not want to decide the issue, and it is waiting for this Commission to render a
16 ruling on the question. The FCC's dithering on this question may well put FeatureGroup IP out
17 of business, because a rule that "does not apply to FeatureGroup IP" is being applied to
18 FeatureGroup IP.

19 Again, we do not think access applies and we surely do not think the ILEC can send the
20 bill to FeatureGroup IP even if access does apply. But if we are wrong, we are asking the
21 Commission to forbear from any rule that allows this result.

22 FeatureGroup IP deserves a decision on the question. A "non" decision denying relief on
23 "procedural" grounds that attempts to dodge the question may allow the Commission to avoid a
24 hard question, but in the real world a non-decision will be spun (right or wrong) by the ILECs as
25 a decision that they won and access does apply. They are already filling the regulatory void
26 caused by inaction and surely no one could reasonably think they will change their tactics.

¹ We responded to AT&T Texas most recent gambit. That response is also appended to this Declaration as Exhibit 2.

1 **Part II**

2 **“Innovation is the Everlasting Gobstopper”**

3 Fresh off of our round of *ex-parte* visits with the various FCC offices during the second
4 week of January 2009, I downloaded some of the recent *ex-parte* filings of some of the
5 participants in this case. Most of them completely ignore the factual and policy foundation
6 FeatureGroup IP has placed in the record as the basis for forbearance relief. The opponents are
7 largely incumbent telephone companies and some competitive carriers that are merely incumbent
8 wanna-bes that employ the same business model and engage in umbrella pricing for legacy
9 services.

10 Both the ILECs and these CLECs want to limit competitive entry and participation only
11 to “carriers” and they intend to squeeze out new entrants that provide sometimes partially
12 substitutable services or applications using IP so they can continue to carve up the market for
13 themselves. All of them know they can only survive if they can force all end users to buy a
14 “service” on a “minutes” or “voice circuits” basis using legacy distinctions between “call types”
15 based on geography and tied to “telephone numbers.” This is only possible if they can
16 functionally prohibit the application of Internet business models to “voice communications.”
17 They have to limit the available communications means to the same piece of candy with the
18 same flavor that most people over the age of 35 are used to and accept as part of their diet.

19 But this is a flavor that people under the age of 35 – who have grown up using the
20 Internet, only rarely have a traditional wireline phone, do not use White or Yellow Pages because
21 FaceBook and MySpace and Google are better and more efficient, and heavily engage in Group
22 Forming Networks – know all too well has a side effect. The side effect, which is intentional,
23 specifically attacks people with the “Innovation Gene” and it either prohibits innovation or
24 severely taxes it to appropriate and capture all the value for the benefit of the carrier rather than
25 the innovator, users, or society in general. The opponents must outlaw all other flavors and kinds
26 of candy in order for them to maintain the current market, which may have some measure of
27 “inter-modal” competition and a little bit of “intra-modal” competition but completely lacks what
28 I have coined as “inter-model” competition in my law school lectures. The younger generations
29 have tasted different and better flavors and they do not like and rarely use the sour, rubbery,
30 expensive and rigidly-controlled PSTN as their primary means of communication.

1 FeatureGroup IP is an inter-model competitor, and IGI-POP service allows ESPs to in
2 turn offer services and applications – including some that have “voice” – and they in turn are
3 employing yet other business models. These new entrants are the ones that presently offer “free”
4 calling, or flat-rate calling using an IP-based application, service or device. More importantly,
5 these entrants enjoy a level of control and freedom when they buy IGI-POP service that not only
6 allows but also promotes the use of innovation and the natural Group Forming Networks that
7 result. The opponents attack FeatureGroup IP, but what they really fear are the new entrants that
8 use IGI-POP and the freedom and flexibility that these entrants’ goods and services offer to the
9 user. User freedom and flexibility is not usually an attribute of any legacy telecommunications
10 service; to the contrary, the whole traditional business model is based on tight central control of
11 all aspects of the communication. And the traditional model is designed to be sour-tasting,
12 expensive and inflexible.

13 Legacy telephone candy was invented by Teddy Vail nearly one-hundred years ago and
14 became the official hard candy that our government began sucking on in 1934. Its flavor is a
15 funky mix of misplaced trust that Incumbent Local Exchange Companies will “do the right thing
16 in building and managing their networks” and that from an engineering perspective that there can
17 be only one centralized way of managing a real-time human voice communication network. The
18 Candy is a business model² that “claims” to be in the public interest by invoking the battle cry of
19 “Universal Service.” But in reality, the ILECs and their many friends do not have a universal
20 service that is better for consumers. Nor, despite their recent pleas for “symmetric regulation” do
21 they really want or advocate symmetry. Instead, they have unilaterally imposed, and want the
22 Commission to let them continue to unilaterally impose by “not deciding” a wholly asymmetric
23 regime that benefits only the incumbents and puts all the detriments on competition, innovation,
24 users and their own ratepayers. What they have is a very powerful hundred year old business
25 model that now requires the asymmetric application of the rule of law to continue its monopoly.
26 What they have is the reality that one centrally controlled network is not as valuable to society as
27 a network that extends user control to the edge and welcomes innovation and new applications.

² Attached to this Declaration as Exhibit 3 is the “Lorax” Ex-Parte FeatureGroup IP filed in 01-92 prior to our request for forbearance. It sets out the origin and ILEC use of Vail’s original sour hard candy. Interestingly, FGIP filed this long before we ever contemplated pursuing forbearance from the misapplication of access charges on innovation.

1 What is the new magic piece of candy, what is this **EVERLASTING GOBSTOPPER**³
2 that seems to have never ending flavor and is feared so much by the incumbents and their small
3 imitators? They cannot directly bite this thing, for it will break their teeth. So they look to the
4 Commission to outlaw it, or make it expensive to obtain by taxing its sale and giving the tax
5 revenue to the incumbents and other legacy service purveyors.

6 FeatureGroup IP is a carrier. It is an LEC. It has identified new business model creators
7 that develop and deploy new applications as the target customers. FeatureGroup IP has launched
8 service to many of them either directly or through others that are our customers. These customers
9 are NOT consumers, but they service consumers. These customers do not hold themselves out to
10 be carriers and they provide no telecommunications service at all. FeatureGroup IP has invented
11 and deployed technology that protects the PSTN and its current service capabilities when new
12 business models interact with the PSTN. **FeatureGroup IP insists that consumers directly**
13 **benefit from these new business models.** None of these facts are challenged by any party in this
14 proceeding.⁴

15 Larry Lessig has recently claimed that the DNA of the FCC is wired in a way to be anti-
16 innovation.⁵ I however, do not think that this is true. I think the FCC has been addicted to legacy
17 candy and to some extent simply cannot conceive of any other kind of candy or flavor rather than
18 being genetically pre-disposed to oppose and obstruct alternatives. Lessig's theory does not
19 explain how the FCC could have developed and initiated *Carterphone* or the *Computer Inquiry*;
20 indeed, I think Lessig is merely reacting to the serial dismantling of those decisions over
21 relatively recent years. Hence, the problem is not the Commission's DNA, but instead recent
22 vices it somehow picked up. The addiction, however, has led to government abdication of

³ See, "Charlie and the Chocolate Factory," by Roald Dahl, illustrated by Joseph Schindelman, published by Knopf, ISBN 0394810112, 9780394810119 (hardcover, 1973, revised Oompa Loompa edition). In Dahl's story, Everlasting Gobstoppers were designed for children with "very little pocket-money" by Willy Wonka. They were purported to last forever, as the name suggests. If someone bit an Everlasting Gobstopper, the person would break their teeth. In the 1971 film, Wonka's exact words on the subject were "You can suck 'em and suck 'em and suck 'em, and they'll never get any smaller".

⁴ Some Rural ILECs and Embarq have opined that granting our application will directly cost them revenue. We do not believe this is true. But even if it is the case, Section 10 does not protect the ILECs' revenue stream, it was written to protect consumers. Innovation and new business models clearly benefit consumers and it almost always leads to lower revenues and market share by the legacy incumbent in that market.

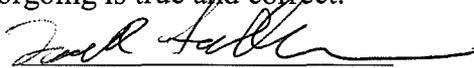
⁵ "Reboot the FCC" by Lawrence M. Lessig, Newsweek, available at <http://www.newsweek.com/id/176809> (December 24, 2008).

1 forward looking technology policy related to the users controlling their own technology.⁶ I
2 sincerely hope FeatureGroup IP's application can be recognized for what it is: an opportunity to
3 reinvigorate innovation and begin to once again encourage technological advancement, new and
4 different business models and to make user freedom – as opposed to protection of legacy
5 incumbents – the primary goal. The Everlasting Gobstopper is inexpensive, but it is also
6 continually renewing. It will never get any smaller – but it very well could get much bigger. And
7 society and individual consumers will be the winners.

⁶ Open Source projects included.

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I declare under penalty of perjury that the forgoing is true and correct.

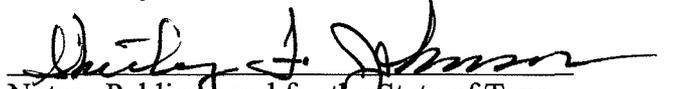


Lowell Feldman

Executed on January 15, 2009

SUBSCRIBED AND SWORN BEFORE ME, the undersigned notary public, on this the 15th day of January, 2009, to certify with witness my hand and official seal.





Notary Public and for the State of Texas
Commission Expiration: 8-23-2012

WC DOCKET 07-256

EXHIBIT 1 TO DECLARATION OF LOWELL FELDMAN



Control Number: 33323



Item Number: 336

Addendum StartPage: 0



Joseph E. Cosgrove, Jr.
General Attorney & Associate
General Counsel
Legal

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Austin, Texas 78701

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F 512.870.6063
joseph.cosgrove.jr@att.com

2008 DEC 22 PM 12:05
FILING CLERK

December 22, 2008

Chairman Barry T. Smitherman
Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Judge Liz Kayser
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, TX 78711-3326

RE: Docket No. 33323; *Petition of UTEX Communications Corporation for Post-Interconnection Dispute Resolution with AT&T Texas and Petition of AT&T Texas for Post-Interconnection Dispute Resolution with UTEX Communications Corporation*

Dear Chairman Smitherman, Commissioners Nelson and Anderson, and Judge Kayser:

Due to the increasing revenues at risk in this case, AT&T Texas requests that the Arbitrator rescind the interim relief order (Order No. 32) entered August 20, 2007.¹ In the alternative, AT&T Texas urges the Commissioners to act on AT&T Texas' Motion for Reconsideration filed on September 7, 2007.

AT&T Texas commenced Docket No. 33323 on October 6, 2006, affirmatively seeking recovery of access charges and for no-CPN charges with respect to calls passed over local interconnection trunks. The primary dispute was over UTEX seeking to avoid payment of access and related charges (about \$5 million unpaid as of the date of hearing) on the claim that its traffic is "enhanced" or "Voice over Internet Protocol" ("VoIP") and immune from compensation obligations. UTEX's separate complaint filing in Docket No. 32041 was consolidated with Docket No. 33323, and this case proceeded to hearing on the merits in November 2007. Post-hearing briefing was completed January 21, 2008.

In balancing the merits of this request, AT&T Texas urges the Commission to avail itself of the record developed at the November hearing and to consider the escalated amounts for which AT&T Texas now seeks a Commission-required escrow and/or surety bond protection.² Former justifications for not requiring an escrow such as

¹ "Should, for any reason, the Hearing on the Merits not be completed in this calendar year [i.e. 2007], the arbitrators would entertain a motion by AT&T Texas to consider rescission of this interim relief order." [Order No. 32 at p.3.] This letter is such motion to the extent required.

² See attached Affidavit of Robert Dignan dated December 19, 2008.

Chairman Barry T. Smitherman
Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Judge Liz Kayser
December 22, 2008
Page 2

maintaining the "status quo" and the absence of a need to impose "interim measures" are no longer tenable. This is especially true in the context of AT&T Texas' current financial risk in this matter and AT&T Texas' proof of the merits of its position in the hearing conducted in this case over one year ago.³

While AT&T Texas appreciates the numerous issues on the decision point list in this case, the lack of an Award requires AT&T Texas to respectfully request an order to establish an escrow account. Unpaid amounts continue to escalate in the millions of dollars as evidenced by the attached affidavit of Robert Dignan. The affidavit sets forth the outstanding amounts due and the monthly escalation of debt through December 2008. AT&T Texas urges the Commission to require UTEX to pay into an escrow account \$7.5M subject to the final outcome of the Award and any subsequent appeals. In the alternative, AT&T Texas requests an order requiring the posting of a similarly conditioned surety bond by UTEX in the amount of \$7.5M. On December 3, 2007, AT&T Texas made clear that it had not abandoned its appeal to further pursue escrow requirements on UTEX and indicated that as business needs warranted and depending on the time frames involved AT&T Texas would need to pursue such interim measures.

It should also be noted that the harm is not to AT&T Texas alone, which is being deprived of intercarrier compensation revenue to which it is entitled, but also unfairly advantages UTEX, which is competing with carriers that do not pay for these same services. Finally, the Commission has most recently recognized its concerns over possible schemes of arbitrage and should protect against any unintended message to the industry that such conduct will be permissively tolerated without consequence.⁴

³ On December 11, 2007, the Commissioners entered their Order Extending Time to Rule on Appeal. This Order indefinitely extended the time for ruling on AT&T Texas' Appeal of Order No. 32 and left in place the prohibition on AT&T Texas from enforcing the escrow provisions for disputed amounts under the parties' interconnection agreement. On May 1, 2008, AT&T Texas wrote to the Commissioners reurging its Motion for Reconsideration of Order No. 32. In response, however, the Arbitrators released Order No. 60 indicating a target release date of July 17, 2008. On July 24, 2008, the Arbitrators released Order No. 61 indicating that they were working on the Award and anticipated issuance in the "near future." Subsequently, in response to AT&T Texas' letter inquiry dated September 22, 2008, Order No. 62 was released on stating that the "arbitrators anticipate issuance of the arbitration award in this docket on or slightly before October 31, 2008." Most recently, on November 24, 2008, Order No. 63 was released announcing that the issuance of the Award was "anticipated" by December 15, 2008. The Award has not been issued as of this date.

⁴ "The disparate rates that apply to different types of traffic in the existing intercarrier compensation mechanisms also create the opportunity and incentive for carriers to disguise the nature, or conceal the source, of the traffic being sent in order to avoid or reduce payments to other carriers." 2009 Scope of Competition Report to the 81st Legislature at pp. 46-47.

Chairman Barry T. Smitherman
Commissioner Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Judge Liz Kayser
December 22, 2008
Page 3

In sum, AT&T Texas seeks protection from any further financial risk in this proceeding and requests imposition of an escrow account and/or a surety bond.

Your attention to this matter is appreciated.

Respectfully submitted,



Joseph E. Cosgrove, Jr.
General Attorney and
Associate General Council

Attachment

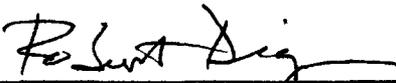
cc: Kell Mercer
Patricia Tomasco
Scott McCollough
Mary Keeney
Dennis Friedman

STATE OF ILLINOIS
COUNTY OF COOK

AFFIDAVIT OF ROBERT DIGNAN

BEFORE ME, the Undersigned Authority, on this 19th day of December 2008, personally appeared Robert Dignan of Southwestern Bell Telephone Company d/b/a AT&T Texas who, upon being duly sworn, stated as follows:

1. My name is Robert Dignan and I am a Director in AT&T's Wholesale Operations organization representing Southwestern Bell Telephone Company d/b/a AT&T Texas.
2. As of December 2008, UTEX's past due accounts with AT&T Texas relating to the issues under review in Docket No. 33323 total \$7,590,147.83; further, UTEX's accounts continue to escalate at a current rate of approximately \$150,000 per month. Moreover, UTEX's past due accounts have increased over \$2,900,000 since September 2007, and following the close of the Texas Public Utility Commission hearing held in this matter in November 2007.
3. UTEX has not made any payment towards their accounts in this matter, and has caused, but not borne, significant financial risk associated with the non-payment of millions of dollars related to the use of AT&T's Public Switched Telephone Network (PSTN) in Texas.
4. I have personal knowledge of the facts herein and certify that they are true and correct to the best of my knowledge.



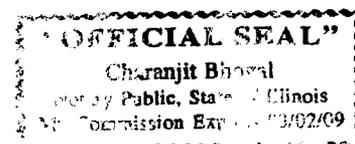
Robert Dignan

Sworn to and Subscribed before me this 19th day of December, 2008.



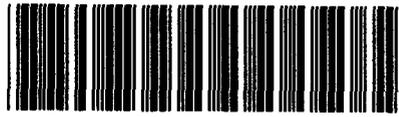
Notary Public in and for the
State of Illinois

My Commission expires on: 03/02/2009



WC DOCKET 07-256

EXHIBIT 2 TO DECLARATION OF LOWELL FELDMAN



Control Number: 33323



Item Number: 337

Addendum StartPage: 0

Email kmercet@mailbmc.com, Direct (512) 479-9749

January 2, 2009

Hon Barry Smitherman, Chairman
Hon. Donna L. Nelson, Commissioner
Hon. Kenneth W. Anderson, Jr., Commissioner
Arbitrator Liz Kayser
Public Utility Commission of Texas
1701 N Congress Ave.
Austin, Texas 78711-3326

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PUBLIC UTILITY
HEARING CLERK

RE: Docket 33323; *Petition of UTEX Communications Corporation for Post-Interconnection Dispute Resolution with AT&T Texas and Petition of AT&T Texas for Post-Interconnection Dispute Resolution with UTEX Communications Corporation*

Dear Commissioners and Arbitrator:

On December 22, 2008, AT&T Texas filed a letter in this docket requesting that Order No. 32 be rescinded or, alternatively, reconsidered. AT&T Texas' request should be in all respects denied.

First, as is typical in this proceeding, AT&T Texas fails to provide an accurate recitation of the facts. This consolidated case was commenced by UTEX (not AT&T Texas) in November of 2005 to, among other things, stop fraudulent invoicing and to obtain other relief.¹ Despite multiple requests by UTEX that its case against AT&T Texas be processed by the Texas PUC, UTEX's case languished until September of 2006, following UTEX's commencement of a suit in federal court brought, in part, to activate this case.

Second, Order No 32, the subject of AT&T Texas' letter, was entered following an evidentiary hearing in which UTEX provided pre-filed direct testimony, had its witnesses cross-examined by AT&T Texas, and had admitted seventy-six (76) exhibits in support of its case (but in which AT&T Texas proffered no testimony, thereby precluding any cross-examination on its contentions). In Order No. 32, the Arbitrators ruled entirely in UTEX's favor granting its request for interim relief. Specifically, the Arbitrators ruled in Order No. 32 that UTEX had met its

¹ UTEX asserted in November of 2005 and continues to claim now that it owes nothing to AT&T Texas because all of the traffic in issue is "destined for or received from an Enhanced Service Provider" and therefore "[n]o compensation is due or payable to either Party." AT&T Texas' purpose in prosecuting its portion of this case and in reurging its motion to reconsider Order No. 32 has nothing to do with "financial risk" as claimed in its letter. This whole matter is about AT&T's strategic attack on new technology and new entrants that threaten AT&T's dominance.

337

Hon. Barry Smitherman, Chairman
Hon. Donna L. Nelson, Commissioner
Hon. Kenneth W. Anderson, Jr., Commissioner
Arbitrator Liz Kayser
January 2, 2009
Page 2

evidentiary burden under TEX PUC PROC R 21.129(g) and AT&T Texas was ordered (1) not to implement the Section 10.3 escrow provision of the ICA, (2) not to take any action to suspend service under the ICA, and (3) not to commence termination of the ICA until a final decision is rendered in this docket. UTEX submits that, on the merits, given the evidentiary record developed at the prehearing conference held on August 15, 2007, Order No. 32 should remain in place and AT&T Texas' request be denied in all respects.

UTEX's substantive responses to AT&T Texas' Motion for Reconsideration of Order No. 32 are found within this docket at PUC website item numbers 282 and 283.

Third, prior to entry of Order No. 32, the Arbitrators set a trial on the merits in this case to commence on November 7, 2007. That trial date was maintained, and a trial on the merits of this case was held on November 7 to 9, 2007. A decision on the merits is past due but should be forthcoming. UTEX, like AT&T Texas, is extremely desirous of finality of this proceeding which UTEX commenced in November of 2005. The continued uncertainty regarding these matters caused by AT&T Texas' fraudulent and baseless invoices prevents UTEX from expanding its presence in the market and growing its business. However, the *status quo* should be maintained as the final award is prepared.

Finally, AT&T Texas' made-up numbers² contained in its letter and the supporting affidavit of Robert Dignan, cannot be considered by the Commission or the Arbitrator since they are not in evidence and have not been subjected to cross-examination. As demonstrated at the trial on the merits of this proceeding, AT&T Texas' invoices are fraudulent, are not supported by the evidence, and have no basis under the parties' ICA. AT&T Texas is simply trying to drive innovative competition from the market. Order No. 32—entered after a full blown evidentiary hearing—serves to protect UTEX during the pendency of this proceeding. With the end now in sight, there is no basis for the Commission to change the *status quo*.

² AT&T Texas' letter introduces yet a new number (and the record in this case makes clear that AT&T Texas has never properly calculated any claim) that is asserted to come from so-called "recent billing information." This new amount has absolutely no basis in the record. AT&T Texas' "billing information"—which of course UTEX challenges and completely disproved at the hearing on the merits—is wildly overinflated even if one incorrectly accepts their legal premises. In particular the claim in Mr. Dignan's improper affidavit that the UTEX "accounts escalate at a current rate of approximately \$150,000 per month" is flatly wrong. AT&T Texas' own fraudulent invoices for August, September, and October, 2008, for example, reflect less than \$35,000 per month in made up usage-based charges. The only "escalating" amounts in AT&T Texas' billings to UTEX are tariff-based late payment penalty charges that are presently accruing at over \$115,000 per month. The actual nature of the claimed amounts were conveniently not mentioned in Mr. Dignan's affidavit. If the commission goes beyond the record in considering AT&T Texas' improper request, which it must not, the evidence would show that \$7.5MM in made up charges compared to AT&T Texas' \$42 Billion in trailing 12 month EBITDA represents only 0.018%, which by any accounting measure is non-material and therefore not much of a financial risk. The only conclusion to be made by AT&T Texas' persistence on this matter is its strategic goal to drive from business all competitors prior to seeing conclusion of full legal remedies.

Hon Barry Smitherman, Chairman
Hon. Donna L. Nelson, Commissioner
Hon. Kenneth W. Anderson, Jr , Commissioner
Arbitrator Liz Kayser
January 2, 2009
Page 3

Respectfully,

A handwritten signature in black ink, appearing to read "Kell C. Mercer", with a long horizontal flourish extending to the right.

Kell. C. Mercer

KCM/nwg
cc. Counsel of Record

WC DOCKET 07-256

EXHIBIT 3 TO DECLARATION OF LOWELL FELDMAN

UTEX Communications Corp. d/b/a FeatureGroup IP

W. Scott McCollough
General Counsel

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

713.231.2315 (V)
512.692.2252 (FAX)
scott@worldcall.net

June 27, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Room CY -B402
Washington, D.C. 20554

RE: Docket 01-92; *In the Matter of Developing a Unified Intercarrier Compensation Regime; In the Matter of The Missoula Intercarrier Compensation Reform Plan; In the Matter of the Missoula Intercarrier Compensation Reform Plan; Missoula Plan Phantom Interim Process and Call Detail Records Proposal*
Notice of Ex Parte Meeting

Dear Ms. Dortch:

On behalf of UTEX Communications Corp. d/b/a FeatureGroup IP ("FeatureGroup IP"), I hereby submit this notice of *ex parte* meetings held in the above-captioned proceeding, on the dates and involving the persons below indicated. At each meeting the FeatureGroup IP representatives distributed the attached document, which served as the basis for discussion. All discussions that occurred were consistent with FeatureGroup IP's prior-filed comments in this proceeding, with particular emphasis on but not limited to the technical aspects to and policy ramifications of FeatureGroup IP's March 26, 2007 Written *Ex Parte* submission submitting specifications for the Universal Tele-Traffic eXchange ("UTEX"). The FeatureGroup IP representatives in each meeting were Lowell Feldman, CEO and Soren Telfer, CTO.

June 20, 2007:

Presentation to Randolph Clarke, Lynne Hewitt Engledow, Albert M. Lewis and Deena Shetler of the Wireline Competition Bureau

Presentation to Nicholas Alexander, Legal Advisor to Commissioner Tate

Presentation to Ian Dillner, Legal Advisor to Chairman Martin

June 21, 2007:

Presentation to Scott Bergmann Advisor to Commissioner Adelstein

Presentation to Scott Deutchman, Legal Advisor to Commissioner Copps

Sincerely,



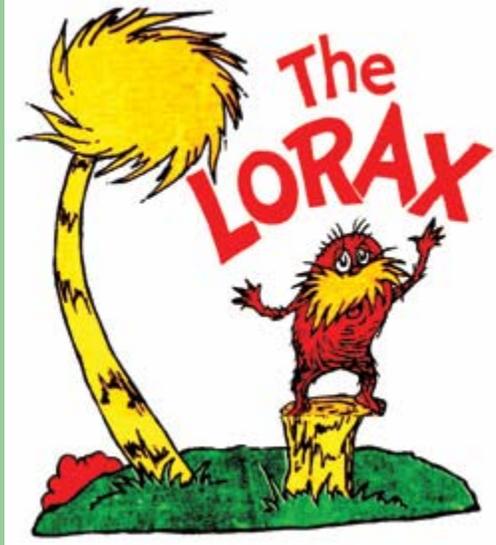
W. Scott McCollough
Counsel for UTEX Communications Corp.
d/b/a FeatureGroup IP

FeatureGroup

IP

The Universal Tele-traffic Exchange UTEx

Technical Solution for the Phantom Problem Facilitates Broad
Decisions on Compensation and Universal Service



The Lorax, Dr Seuss, 1971

Image: <http://www.corporateknights.ca/gfx/lorax.jpg>

June 20-21, 2007

The UTEx

- A Settlement-free VoIP and PSTN peering point that enforces good policy, creates business certainty and enables new business models to flourish.
- No assumptions about geography, only abstract addressing.
- Creates bright-line division between service providers that own customers and those that don't, and creates covenant for passing user information between providers.
- Legacy networks get the information they need in the mode they need it.
- Allows participating providers to
 - have sufficient information to identify the address of the person inviting a call session.
 - support reverse dialing regardless of addressing scheme.
- Solves Legacy inter-working by extending SS7 ISUP protocol.
- *Solves the “Phantom” traffic problem.*

With Technology Solved Focus Can Return to Policy Intercarrier Compensation

- New Technology traffic is more efficient than the SS-7 Based PSTN and should not be taxed or boxed into “Carrier” classifications or jurisdictions for the sake of historical policy; BUT if the FCC and Congress disagree, make the classification overt and the tax obvious and easy to implement
- With respect to “wholesale” Intercarrier compensation between LECS; Bill and Keep is most efficient because incremental measurement, rating billing and collection costs outweigh incremental cost of additional traffic units –The Commission should not impose non cost-based origination and termination prices on IP-Enabled Services using non-ILEC PSTN connectivity provider. The §251(g) “carve out” does not apply; instead §251(b)(5) and §252(d)(2) apply.

With Technology Solved Focus Can Return to Policy

Intercarrier Compensation (continued)

- If bill and keep is not possible, then apply the “additional cost” standard to all calls by eliminating §251(g) exemption for traditional switched access. If a rate is adopted it needs to be symmetrically applied – the logical rate that should apply is the current ISP Rate of \$0.0007.
- Network-related costs which need to be “politically subsidized” should not be recovered through intercarrier compensation. Subsidies should be moved to better USF regime.

With Technology Solved Focus Can Return to Policy

- Vail's vision in the early 1900's for AT&T was brilliant from a political/policy perspective.
- The policy goal: Everyone should have universally accessible and useful access to the telephone.
- The policy means: Grant AT&T an exclusive franchise and stewardship of the technical means to build the network that will support the service.
- Universal Service implicitly recognizes network effects: adding users on a network increases the social and economic utility of the network to society. The benefit to society is greater than the benefit to the additional user.
- Current "Universal Service" regime requires subsidization – residential and rural users pay less than would be the case in a competitive environment; the difference between marginal cost and rate charged is the subsidy. Businesses, urban customers and "vertical" or "optional services" (e.g., toll) supply the subsidy.

With Technology Solved Focus Can Return to Policy (Cont.)

- The patchwork of subsidies is anticompetitive because no other entity can achieve sufficient scale or penetration to avoid subsidization of ILECs' embedded base.
- Congress sought to end implicit subsidies with the 1996 amendments and create a competitive market, while preserving universal service through explicit but neutral subsidies.
- Policy should move from subsidizing Legacy *services* to subsidizing *networks* that allow users to run any service or application – obtained from any source.
- Current Intercarrier Compensation Regime imbeds the old Policy

New Model vs. Old Model

- The Internet was designed to be agnostic to the physical layer and the higher layer services and applications being used. It is a common platform for any type of communication.
- This is diametrically opposed to the Theodore Vail concept of communications: “one policy, one system (AT&T's) and universal service, no collection of separate companies could give the public the service that [the] Bell... system could give.”
- The Internet has proved and is based upon the exact opposite: many policies, many systems, many companies and any service or application.
- Vail's Universal Service paradigm involves geographic relevance and service cross-subsidies.

New Model vs. Old Model (Cont.)

- The Internet has no concern with geographic relevance and does not require subsidization; nor should it be required to subsidize Legacy networks.
- The Vail approach involved top-down control over technology and service deployment.
- The Internet (at present) has no service control layer, it merely routes packets using user (edge device) supplied instructions. Services can be deployed within minutes and without requesting permission of the network owner.
- Will we poison or water the roots of the Truffula trees -- which are different business models?

Don't preclude INTER-MODEL Competition

- Inter-Modal competition assumes similar business models for Legacy Incumbents and insurgent competitors.
- From the ILEC perspective, any technology use that doesn't fit the Legacy Business Model is "Bad" – in this case a "Phantom" that must be stopped by the government. The result is a closed self-perpetuating system.
- In fact, technology is neither good or bad and applications using different technology make no assumptions about underlying business models.
- New technology enables new business models. These new models present a different kind of competition – Inter-Model competition, e.g., not necessarily priced in the same way, or involving multi-sided transactions.
- The incumbents tend to oppose alternative models, and try to label them as "Phantom" – implying they involve "arbitrage" or some nefarious scheme – merely because they don't comport with the Legacy business model of service-driven Legacy network architecture or traditional concepts of geographic relevance used to extract subsidies.

TODAY'S NEW VOIP MODELS

- Users of the Internet do not look at bandwidth as content, but as a necessary prerequisite to be able to communicate or use applications and services.
- Today's Model is user empowering. It allows users to buy "network access" and then choose the services and applications they desire from a multitude of sources.
- DNS Servers to Mail Servers to Search Engines to GOOGLE to Skype and FLiKr.

Disconnecting subsidies from services will allow competition to flourish, while ensuring the networks are built.

GOOD POLICY

- Explicitly accepts and promotes Inter-Model Competition by promoting cost based interoperability between VOIP and Non-VOIP users.
- Don't get in the way by imposing Legacy concepts of intelligent network design, signaling standards, content delivery, and charges.
- Promote communications use in general – communications industry is unique in that there are mostly positive externalities and very few negative externalities.
- Update and modernize Universal Service to support networks, not Legacy “services.” Or, support any substitutable service such as VOIP.

What Should the Policy Be?

- Policy makers should embrace and encourage “Inter-Model” competition by requiring interconnection and interoperation and eliminating economic barriers presented by current intercarrier compensation and universal service rules.
 - AT&T still is defending last century’s Public Policy which is top down control:
 - Everyone should have universally accessible and useful access to the telephone -- one policy, one system (AT&T's) and universal service, no collection of separate companies could give the public the service that the Bell system gives.

What Should the Policy Be? (Continued)

- Google is at other end of Spectrum – For Free it wants to inter-operate with everyone-
 - Google's mission is to make the world's information universally accessible and useful. Google Talk, which enables users to instantly communicate with friends, family, and colleagues via voice calls and instant messaging, reflects our belief that communications should be accessible and useful as well. We're committed to open communications standards, and want to offer Google Talk users and users of other service providers alike the flexibility to choose which clients, service providers, and platforms they use for their communication needs.

http://code.google.com/apis/talk/open_communications.html

Proposed Lorax Policy

- Make the world's information universally accessible and useful, enable users to instantly communicate with friends, family, and colleagues via voice calls and instant messaging without measured charges. Assist in the development, deployment and creation of open, interconnected and interoperable communications standards and networks among and between users and service providers.

**Federal Communications Commission**

The FCC Acknowledges Receipt of Comments From ...
UTEX Communications Corp. d/b/a FeatureGroup IP
...and Thank You for Your Comments

Your Confirmation Number is: **'2007627243729 '**

Date Received: **Jun 27 2007**

Docket: **01-92**

Number of Files Transmitted: **1**

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updated 12/11/03