

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

In the Matter of)	
)	
FEATUREGROUP IP)	
)	
Petition for Forbearance Pursuant to 47)	WC Docket No. 07-257
U.S.C. § 160(c) from Enforcement of)	
47 U.S.C. § 251(g), Rule 51.701(a)(1),)	
and Rule 69.5(b)))	
)	
Broadband Industry Practices.)	
)	
In the Matter of)	
)	
Petition of the Embarq Local Operating)	WC Docket No. 08-8
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.)	

**REPLY COMMENTS OF
THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON PETITIONS FOR FORBEARANCE**

On October 23, 2007, 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”) filed a petition with the Federal Communications Commission (“FCC” or “Commission”). The Feature Group IP petition asks 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. Then on January 11,

2008, the Embarq Local Operating Companies (“Embarq”) filed a petition that seeks to ensure that carriers whose Internet protocol (“IP”) calls terminate on the public switched telephone network (“PSTN”) **do** pay access charges.

The FCC put both petitions out for public comment, with matching comment dates.¹ Given the overlap of the subjects of these two petitions, and their essential opposite intentions, the National Association of State Utility Consumer Advocates (“NASUCA”) submitted combined comments. Many other parties did as well.²

Most of the comments oppose the Feature Group IP petition.³ Many of those and others support the Embarq petition.⁴ Global Crossing and Verizon oppose both petitions.⁵

NASUCA has supported the requirement that carriers using the networks of other carriers to terminate calls must compensate the carriers who own those networks.⁶ Those

¹ Feature Group IP: DA 07-5029; Embarq: DA 08-94.

² Combined comments were filed by the Ad Hoc Manufacturer Coalition (“AHMC”); AT&T Inc. (“AT&T”); CenturyTel, Inc. (CenturyTel”); Global Crossing North America, Inc. (“Global Crossing”); Google Inc. (“Google”); Open Internet Coalition (“OIC”); Qwest Communications International Inc. (“Qwest”); Unipoint Enhanced Service d/b/a PointOne (“PointOne”); United States Telecom Association (“USTelecom”); and Verizon; Comments were filed only on the Feature Group IP Petition by Embarq; the National Exchange Carrier Association, et al. (“NECA, et al.”); PAETEC Communications, Inc. (“PAETEC”); Texas Statewide Telephone Cooperative, Inc. (“TSTCI”); Time Warner Telecom, et al. (Time Warner, et al.”); and Windstream Corporation (“Windstream”).

³ AHMC; AT&T; CenturyTel; Embarq; NECA, et al.; Qwest; Time Warner, et al.; TSTCI; USTelecom; Verizon; Windstream. PAETEC takes no position on the merits at this time, seeking to revive the “moribund” intercarrier compensation docket, CC 01-92. PAETEC Comments at 3.

⁴ AHMC; AT&T; CenturyTel; D&E Communications; Qwest; TDS Telecommunications Corp. (“TDS”); USTelecom; Windstream.

⁵ Global Crossing would also have interconnected voice over Internet protocol (“VoIP”) exempted from compensation requirements. Global Crossing Comments at 5-8. On the other hand, Verizon opposes Embarq’s petition out of concerns that broad intercarrier compensation issues should not be addressed through narrow forbearance requests. Verizon Comments at 11.

⁶ See, e.g., *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket 01-92, Reply Comments of the National Association of State Utility Consumer Advocates (July 30, 2005).

who support the Feature Group IP petition⁷ do violence to that fundamental principle. As stated in NASUCA’s initial comments, “[I]n this arena of dueling petitions, NASUCA supports the position taken in the Embarq petition, while largely opposing that in the Feature Group IP petition.” The remainder of these reply comments will, therefore, briefly respond to the supporters of Feature Group IP.

The Internet is a wonderful thing. But Feature Group IP, Google, OIC and PointOne all focus on the wonder and razzle-dazzle,⁸ and ignore the simple reality that VoIP (or “voice-embedded”⁹) calls that use the public switched telephone network (“PSTN”) for their connections actually **use** the PSTN. Thus those voice calls should be responsible for compensating the owners and constructors of the PSTN for that use – rather than burdening the end-use customers of the PSTN where the calls terminate with paying all the costs of the network.

Feature Group IP asserts that:

The question is whether Embarq’s own users who are communicating with the Internet will continue to enjoy that experience as part of their telephone exchange service, or will end up subsidizing themselves or other Embarq users by directly or indirectly paying access charges whenever an Embarq customer has the temerity to “talk” to their neighbors, family, friends or associates and the Internet is involved. These higher costs do not just disappear; they will be passed on. Embarq may want to charge one or more “providers” but it is its own users that will end up either footing the bill or losing out in the Internet experience.¹⁰

⁷ Google; OIC; PointOne. CommPartners Holding Corporation and Sprint Nextel Corporation oppose Embarq without explicitly supporting Feature Group IP. On the other hand, Feature Group IP filed an opposition to Embarq that was combined with opposition to a NECA petition for interim order in CC Docket 01-92 that has apparently not yet been put out for public comment.

⁸ See, e.g., Google Comments at 1-2; Feature Group IP Comments at 2.

⁹ PointOne Comments at 3.

¹⁰ Feature Group IP Comments at 64 (emphasis in original).

Rhetoric aside,¹¹ when an Embarq customer (or any other end user) talks (not in quotes, with or without temerity) to another customer over a network, the customer should pay for the use of that network. This is scarcely the “previously mythical ‘modem tax.’”¹²

Google says that Feature Group IP petition seeks “to ensure that consumers have the right and the opportunity to purchase Voice-Embedded Internet communications applications at prices that reflect the cost of offering the services and with all available robust features without undue interference from the network owners.”¹³ But by avoiding payment of access charges, the prices of those services do not reflect the true cost of offering the services, and the “undue interference” of the network owners is their insistence on being paid for the use of their networks.¹⁴

Likewise, PointOne speaks of “the tremendous network effects and resulting consumer benefits of providing connectivity to all types of networks and end users.”¹⁵ If compensating the owners of the networks would cause PointOne to “rethink the services it provides and the locations in which it provides its services,”¹⁶ then the Commission should incent such rethinking – to the extent that the services and locations are dependent on a free ride on the network.

Voice calls that use the PSTN were the focus of Embarq’s petition. Requiring those calls to pay their fair share of the network cost will of course increase the cost of

¹¹ See *id.* at 63 (“feral pigs”; “unclean interlopers”).

¹² *Id.* at 64.

¹³ OIC Comments at i-ii.

¹⁴ It may be that some access charges do not reflect the actual cost of the networks (*id.* at ii) but neither does a charge of zero reflect actual costs.

¹⁵ PointOne Comments at 3.

¹⁶ *Id.* at 4.

those calls. But it would be equally absurd to say that VoIP providers need not pay their employees because that payment also increases the cost and stifles innovation.

The Commission should deny the Feature Group IP petition. The Commission should address the issues in the Embarq petition by issuing a declaratory ruling that IP-to-PSTN voice traffic is subject to access charges.¹⁷

Respectfully submitted,

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¹⁷ See TDS Comments at 1.