

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Petition for Declaratory Ruling that Inflexion) WC Docket No. 03-52
Communications' ExtendIP VOIP Service Is Exempt)
from Access Charges)

**COMMENTS OF
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

Independent Telephone & Telecommunications Alliance ("ITTA"), through its attorneys, urges the Commission to deny the above-captioned petition ("Petition") of Inflexion Communications Corporation ("Inflexion").

ITTA is an organization of midsize incumbent local exchange carriers ("LECs") that collectively serve over ten million access lines in over 40 states and offer a diversified range of services to their customers, including advanced telecommunications capability. Most members qualify as rural telephone companies within the meaning of Section 3(37) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 153(37). ITTA's members have devoted considerable resources to provide consistently high quality phone services at reasonable prices throughout their service areas. They generally serve as the only "carrier of last resort" in their service areas, which include some of the nation's most rural, insular and high-cost areas.

ITTA rejects Inflexion's premise that affordable local phone service is unavailable to low-income consumers in America. The Commission established the Lifeline

program in 1985 to help low-income consumers afford the monthly cost of telephone services.¹ Since that time, great strides have been made to improve penetration rates among the nation's lowest income households.² The Commission and state governments, in partnership with the telecommunications industry, have made significant progress over the last several years to increase penetration rates by promoting increased awareness of the Lifeline and Link-Up programs among those who most could be helped by those programs. Today, penetration rates are at an historic high, overall and for the nation's lowest income households.³

Statistics show that consumer outreach, *not* elimination of access charges, is the key to improving penetration rates to low-income consumers. In states that have taken an active role in the Lifeline and Link-Up programs, both through their own funding as well as outreach, telephone penetration rates among low-income households have risen by nearly five percent over the last six years.⁴ The Federal-State Joint Board on Universal Service has noted "the Lifeline/Link-Up take rate almost triples from 13.1 to 39.6% when states implement outreach initiatives designed to increase telephone penetration and participation."⁵ ITTA supports the Joint Board's recommendation that the Commission continue to promote customer education and outreach efforts. ITTA also applauds the Commission's recent, ongoing efforts to increase

¹ Alexander Belinfante, Industry Analysis and Technology Division, Wireline Competition Bureau, Federal Communications Commission, Telephone Penetration by Income by State, at 3 (rel. Feb. 2004) ("FCC Penetration Report").

² Penetration rates among the nation's lowest income consumers have risen from 80.0 percent in 1985 to 89.2 percent today, among households that earn \$10,000 or less (in 1984 dollars), a nearly 50% reduction in the percentage of low-income consumers without telephone service. *Id.* at 1.

³ *Id.* at 22.

⁴ *Id.* at 5.

⁵ *Federal-State Joint Board on Universal Service, Recommended Decision, FCC 03J-2, CC Docket No. 96-45* (rel. Apr. 2, 2003), at ¶ 48 ("*Joint Board Recommended Decision*").

awareness of the federal Lifeline and Link-Up programs in tribal lands, Appalachia and the Mississippi Delta.⁶ These programs facilitate greater penetration of Lifeline and Link-Up resources within communities most in need of assistance.

In contrast, Inflexion's Petition threatens to harm the underserved communities it purports to want to benefit. Inflexion provides no evidence that its telephone service uses the PSTN any differently than traditional voice services. The fact is, Inflexion and other voice over Internet protocol ("VOIP") providers cannot deliver their services without utilizing and relying upon the critical telecommunications infrastructure built and maintained by incumbent LECs. In its recent Notice of Proposed Rulemaking seeking comments on regulation of IP-Enabled services, the Commission indicated its skepticism about the notion that certain service providers should avoid paying for their use of LEC facilities based on the technology platform employed:

As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.⁷

Inflexion's Petition asks the Commission to shift the cost of using the network from Inflexion's customers to the customers of other carriers, including customers in rural areas, undermining our universal service system. Rural consumers are among the most vulnerable to rate increases. Rural consumers have significantly less purchasing power than those in non-rural

⁶ News Release, *FCC Commences Lands of Opportunity Initiative for Rural America Access to Affordable and Quality Telecommunications Services in Rural America* (rel. Aug. 6, 2003).

⁷ *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28 (rel. Mar. 10, 2004), at ¶ 61 ("*IP Services NPRM*").

areas,⁸ and would be harmed by the potential rate increases that could result if Inflexion had its way. Inflexion's premise – that penetration rates would increase if Inflexion did not have to pay its fair share – is incorrect and should be rejected.

Moreover, Inflexion gives the Commission no assurances regarding the quality of service that it will provide, its proposed cost of service and customer premises equipment, or even whether it will use cost savings from an exemption from access charges solely to benefit low-income consumers. It is not even clear what form of broadband service Inflexion expects to use to provide its ExtendIP voice service.⁹ The Commission must be wary of encouraging inefficient or low-quality service providers to enter underserved communities. The Petition mentions several times that “three-nines or 99.9%” is a targeted penetration rate, but never mentions the five nines – 99.999% – standard that traditional LECs are expected to meet for service availability. Low-cost service must not mean low-quality service. It is also unclear whether Inflexion intends or is even able to provide capabilities crucial to all communities, such as access for Americans with disabilities, E-911 and Communications Assistance for Law

⁸ The median household income in rural areas is \$40,600 compared to \$46,600 in non-rural areas and the median net worth in rural households is \$40,500 compared to \$61,000 in non-rural households. NECA, *Trends in Telecommunications Cost Recovery: The Impact on Rural America*, October 2002, at 11-13.

⁹ Without more information from Inflexion, it is hard to escape the conclusion that there is a basic flaw in the logic and economics of Inflexion's Petition. The Petition identifies access charges as the chief impediment preventing Inflexion from providing its ExtendIP VOIP service to low-income customers. Yet even if Inflexion were permitted to avoid paying access charges to reach its customers, and then offer a purportedly lower-priced voice service to low-income consumers, the Inflexion customer would presumably also have to have already subscribed to some form of broadband service – DSL, cable modem, etc. The prices of these services are significantly higher than any access charges Inflexion would normally pay and would more than offset any discount Inflexion might offer on its voice service. While ITTA concedes that the Petition is excessively vague on this point, the Commission should hold Inflexion accountable for such a glaring omission from its Petition.

Enforcement Act compliance. Low-income customers should not be deprived of these capabilities. The Petition does not speak to any of these basic concerns.

In addition, other than Inflexion's stated business plan to market to low-income communities, Inflexion does not adequately tie the extraordinary relief sought to the provision of service to low-income consumers. In essence, Inflexion asks the Commission to trust that Inflexion will apply access charge savings to "the periphery market."¹⁰ Although the Petition is cloaked in public interest platitudes, ITTA submits the only guarantee is that granting the Petition would improve Inflexion's bottom line.

As a final matter, ITTA supports the Commission's efforts expeditiously to develop a comprehensive solution to the issues of intercarrier compensation, universal service and the regulatory classification of different IP technologies.¹¹ Through comprehensive rulemaking, not piecemeal exemptions, the Commission is most likely to achieve improved universal service for consumers. Grant of Inflexion's Petition, however, would lead to an irrational environment and increased regulatory uncertainty, to the detriment of consumers.

¹⁰ Petition at 7-8.

¹¹ See, e.g., *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (rel. Apr. 27, 2001); *IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28 (rel. Mar. 10, 2004).

For the foregoing reasons, the Commission should deny Inflexion's Petition for Declaratory Ruling.

Respectfully submitted,

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April 7, 2004

