

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

In the Matter of)
)
Petition for Declaratory Ruling that)
Inflexion Communications ExtendIP VoIP) WC Docket No. 04-52
Service is exempt from Access Charges)
)
)
)

**JOINT COMMENTS
of the
INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE
and the
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.
and the
ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES
and the
UNITED STATES TELECOM ASSOCIATION**

The Independent Telephone & Telecommunications Alliance (ITTA), the National Exchange Carrier Association (NECA), the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and the United States Telecom Association (USTA)(“the Associations”)¹ hereby submit these

¹ The Associations are membership organizations that collectively represent all incumbent local exchange carriers providing service in the United States. The Associations’ members are heavily regulated by the Commission and are required to file interstate access tariffs pursuant to Part 69 of the Commission’s Rules. As “dominant” carriers, the Associations’ members are subject to the full panoply of common carrier regulation under Title II of the Communications Act of 1934 (the “1934 Act” or “Act”), as amended by the Telecommunications Act of 1996 (the “1996 Act”), and would be substantially affected by grant of the instant petition.

Comments, consistent with previous filings,² in response to the Federal Communications Commission's ("FCC" or "Commission") *Public Notice* in the above captioned proceeding.³ For the reasons set forth below, the Commission should dismiss Inflexion's Petition.⁴

The issues raised by Inflexion in its *Petition* are already being considered in the Commission's recently released IP-Enabled Services notice of proposed rulemaking.⁵ Inflexion seeks a declaratory ruling from the Commission that its ExtendIP voice over Internet protocol ("VoIP") service provided to underserved markets is exempt from access charges and may lawfully be provided over end user local services.⁶ Inflexion believes such an exemption is needed to aid its investment in developing services for the underserved market.⁷

Inflexion has presented no evidence whatsoever that its ExtendIP service uses the local exchange network any differently than other telecommunications services that use

² See Association Joint Comments, Level 3 Petition for Forbearance Under 47 U.S.C. §160(c) from Enforcement of 47 U.S.C. §251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 03-266 (Mar. 1, 2004).

³ Pleading Cycle Established for Inflexion Communications' Petition for Declaratory Ruling that Inflexion's ExtendIP VoIP Service is Exempt from Access Charges, WC Docket No. 04-52, *Public Notice*, DA 04-627 (rel. Mar. 8, 2004)(*Public Notice*).

⁴ Petition for Declaratory Ruling that Inflexion Communications' ExtendIP VoIP Service is Exempt from Access Charges (Feb. 27, 2004)(*Petition*).

⁵ See IP Enabled Services, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, FCC 04-28 (rel. Mar. 10, 2004) (*VoIP NPRM*). Among other issues, the FCC addresses whether access charges should apply to IP-enabled traffic sent to the PSTN and whether assessment of rates lower than access charges would require increases in universal service support or end-user charges.

⁶ *Petition* at 1.

⁷ Inflexion defines the underserved, or periphery, markets as "regions with an aggregate telephone density below the national average, low-income consumers, other authorized recipients of state or federal [universal service program] grants and discounts, and entities that in turn provide service to the target population. *Petition* at 13.

the public switched telephone network (“PSTN”). Indeed, Inflexion describes its ExtendIP VoIP services as providing “substantially the same functionality as Plain Old Telephone Service, plus more.”⁸ To the extent calls from Inflexion end user customers touch the PSTN, most likely by having their calls terminated on a local exchange carrier network, Inflexion must pay adequate access compensation.

The Commission recently stated that all service providers using the PSTN should equitably bear its cost.⁹ Inflexion’s use of IP technology does not reduce ILECs’ cost of terminating a phone call. Consequently, access charges apply to Inflexion’s phone-to-phone IP telephone offerings in the same manner as other interstate telecommunications services that use the local network to originate or terminate calls. To hold otherwise would result in an unfair, unjust and unlawful preference in favor of certain interstate services based solely on the type of transmission technology being used.

With regard to reaching periphery markets, two programs exist to specifically help low-income consumers receive telecommunications services. The lifeline program allows low-income consumers to receive telecommunications services at reduced rates and the linkup program provides a discount on service installation. This component of the universal service fund has been implemented by the FCC to address the concerns stated by Inflexion.¹⁰

⁸ *Petition* at 3.

⁹ “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.” *VoIP NPRM* at ¶ 33.

¹⁰ 47 C.F.R. §54.400 et seq.

Inflexion's claim that access charges counter the goals of universal service is misguided. By exempting ExtendIP from access charges, the Commission would be forcing ILECs and their customers to bear the cost of Inflexion's service. This would create regulation induced incentives to substitute one technology for another. In the past, the Commission has not subsidized the use of one particular technology over another.¹¹ The Commission should not do so now. Discriminatory policies that favor one technology over another would hurt the very same underserved customers Inflexion claims it wishes to serve.

CONCLUSION

The FCC should dismiss Inflexion's *Petition* and confirm that any call touching the PSTN must pay access charges.

April 7, 2004

Respectfully Submitted,

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¹¹ See., e.g., Filing and Review of Open Network Architecture Plans, CC Docket No. 88-2, *Memorandum Opinion and Order*, 4 FCC Rcd 1, at n. 12 (1988).

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Comments was served this 7th day of April 2004, by electronic filing, electronic mail, or first class mail, to the persons listed below.

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