

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

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

Comments of the ICORE Companies

The consulting firm of ICORE, Inc. (ICORE), on behalf of many small, rural incumbent local exchange carriers (ILECs)¹, offers these comments in the above-captioned proceeding. ICORE provides a variety of consulting, regulatory and network related services to a number of small ILECs serving rural and suburban America.

¹ ILECs participating in this filing include: Barry County Telephone Company, Delton, MI; Citizens Telephone Company of Kecksburg, Mammoth, PA; Cooperative Telephone Company, Victor, IA; Doylestown Telephone Company, Doylestown, OH; Dunbarton Telephone Company, Dunbarton, NH; Hayneville Telephone Company, Hayneville, AL; Hershey Cooperative Telephone Company, Hershey, NE; Hot Springs Telephone Company, Kalispell, MT; Le-Ru Telephone Company, Stella, MO; New Lisbon Telephone Company, New Lisbon, IN; Nova Telephone Company, Nova, OH; Phillips County Telephone Company, Holyoke, CO; Prairie Grove Telephone Company, Prairie Grove, AR; Ronan Telephone Company, Ronan, MT; Sherwood Mutual Telephone Company, Sherwood, OH; State Long Distance Telephone Company, Elkhorn, WI; Summit Telephone Company, Fairbanks, AK; Swayzee Telephone Company, Swayzee, IN; Sycamore Telephone Company, Sycamore, OH; The Middle Point Home Telephone Company, Middle Point, OH; Van Horne Telephone Company, Van Horne, IA; Wabash Mutual Telephone Company, Celina, OH; Wood County Telephone Company, Wisconsin Rapids, WI; WSTA – Small Company Committee, Madison, WI.

I. INTRODUCTION

The petition² at hand is the latest in a series of attempts by VoIP providers to evade paying lawful access charges.

The companies represented herein have, as part of the ILEC industry, collectively invested billions of dollars in wireline infrastructure. They have met their social responsibilities, including universal service and carrier of last resort obligations, as well as such regulatory requirements as 911, CALEA and LNP.

VoIP providers, for some reason, believe that they should be allowed to use ILEC infrastructure for free, simply because they carry traffic to and from ILEC facilities using the Internet network (at least in part) rather than the circuit switched network.

These brief comments will summarize why VoIP providers must pay both lawful access charges and USF payments for use of ILEC infrastructure, regardless of the technology used to carry their traffic.

II. VoIP TOLL IS THE FUNCTIONAL EQUIVALENT OF CIRCUIT SWITCHED TOLL AND IS THEREFORE A TELECOMMUNICATIONS SERVICE

Despite its portrayal as a new and unique technology, VoIP toll service as offered by Inflexion and others is just that – toll service. While the Internet has spawned, in other areas, wonderful new services that would not be possible without it, VoIP toll is not one of them.

VoIP toll is simply traditional long distance telecommunications service using the Internet, at least in part, instead of the circuit switched network. In the case of Inflexion,

² Petition for Declaratory Ruling that Inflexion Communications' ExtendIP VoIP Service is Exempt from Access Charges. (Inflexion Petition).

in fact, it uses, for “Internet Protocol connectivity,” such traditional facilities as “free space optics, point-to-point and point-to-multipoint unlicensed wireless, coaxial cable, fiber, and dry copper.”³

The Telecommunications Act confirms Inflexion’s service as telecommunications. Congress has defined “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” (47 U.S.C. §153 (51). (Emphasis added). In turn, the term “telecommunications” is defined as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”

Here, there is no change in the form or content of the information as sent and received. The person speaking on one end of the call uses his or her voice to transmit the information. The called party on the other end of the call hears that same voice with the same information. An IP-PSTN call is simply a voice call carried through a transmission medium that involves the Internet. It does not involve anything more complicated than that.

VoIP toll is simply the latest advancement in the Long Distance business, which over the years has seen the introduction of many new technologies (including microwave transmission, satellite transmission, and fiber optics) but has always been treated as toll.

It is thus the exact functional equivalent of traditional circuit switched toll. The Commission, in its 1998 Report to Congress, stated that “the classification of service

³ Inflexion Petition, at 4.

under the 1996 Act depends on the functional nature of the end-user offering.”⁴ Here, the end user offering is exactly identical to circuit switched toll, even though the underlying technology is different, at least in part.

When services offered by LECs and IXC’s, which are classified as telecommunications services, can be replaced with services using VoIP technology, then the substitute services must also be classified as telecommunications under the Commission’s functionality test.

III. ACCESS CHARGES MUST APPLY TO VoIP TOLL

As an identical end user offering, and a directly substitutable service, VoIP toll is both the functional equivalent of circuit switched toll and a telecommunications service. The Commission’s long standing access charge rules clearly apply to this traffic, and there is no reason for the Commission to exempt VoIP traffic from such application.

In fact, to apply access charges to circuit switched toll, but to exempt from access its exact functional equivalent – VoIP toll – is illegal and discriminatory. To classify toll service providers differently, based solely on the technology used to transmit those toll messages, would be not only discriminatory, but arbitrary and capricious as well.

The use of VoIP technology does not reduce the costs incurred by the ICORE companies and other small ILECs in providing access services for this traffic. The costs of small ILECs to originate and terminate toll calls over the ILEC network is exactly the same, whether other providers involved in carrying other portions of these calls use the circuit switched network or the Internet network.

⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501, 11543 (1998 Report).

Access charges must not be a function of, or dependent on, the nature of the technology used by the toll carrier to transmit its traffic on its way to or from the ILEC. Rather, access charges must fairly and equitably compensate ILECs for the use of their facilities to originate and terminate a call over the ILEC network, independent of the type of network used by the toll carrier in handling other portions of the call.

The disparate regulatory treatment of VoIP toll and circuit switched toll discriminates not only against carriers providing exactly the same access services to both, but against carriers providing circuit switched toll as well. ILECs would be deprived of applying their lawful access rates for the origination and termination of VoIP toll, the same toll service to which they apply full access rates when offered by a circuit switched provider.

Similarly, those circuit switched toll providers would pay to use the originating and terminating facilities of the ILECs. VoIP toll providers, which use these identical facilities in exactly the same way, would do so for free.

Such discriminatory and inequitable regulatory treatment would violate long standing Commission rules and procedures, and run directly counter to the public interest.

IV. APPLICATION OF LAWFUL ACCESS CHARGE RULES WILL END ALL UNCERTAINTY SURROUNDING VoIP TOLL

Inflexion tells us that the “long standing persistence of access fees . . . leads the investment community to resolve the uncertainty (of whether or not access charges apply to VoIP traffic) in favor of the ILECs . . .”⁵

⁵ Inflexion Petition, at 4.

But the lawful application of access charges to VoIP toll will actually remove one very large variable with regard to the ability of this new technology to grow and prosper. VoIP toll already has all of the advantages inherent in any new and exciting technology. To afford it preferential and discriminatory regulatory treatment vis-à-vis its technological rival – the circuit switched network – will make it impossible for investors to judge how much of its success is due to technology, and how much to favorable – but discriminatory - regulatory treatment.

Just as importantly, ILECs, CLECs and other access providers will be spared the uncertainty of not knowing whether VoIP toll providers will be made to properly compensate them for the use of their facilities. Circuit switched toll providers will also be spared the uncertainty associated with the possibility that their technological competition will be given a free pass on the use of the identical access facilities for which they must pay.

Inflexion would have us believe that only a Commission decision to exempt its service from lawful access charges will bring certainty in this arena. This is nonsense. Certainty will truly be achieved only when the Commission's access rules are applied fairly and equitably to all providers in the marketplace, regardless of the technology used to carry their traffic.

V. EXEMPTING VoIP PROVIDERS FROM ACCESS CHARGES AND USE PAYMENTS IS NEITHER A LEGAL NOR EQUITABLE MANNER OF FURTHERING UNIVERSAL SERVICE

Inflexion’s main premise is that it can help bring universal service to “underserved markets” if it is not made to pay access charges.⁶ And while its petition “does not address the issue of VoIP service providers contributing to USF,” Inflexion says “the same issues (relative to access fees) arise regarding low cost basis VoIP services contributing to support the high cost basis traditional USF. . . .”⁷

Clearly, Inflexion believes it can better serve “underserved” areas if it is relieved of its obligations to pay access charges and USF.

But the same can obviously be said for circuit switched toll providers, ILECs, CLECs and others. Any provider in the marketplace can offer its services far more cheaply if allowed to avoid its fair share of social and regulatory costs.

Inflexion freely admits it provides “substantially the same functionality as Plain Old Telephone Service . . . ,”⁸ but wants preferential treatment vis-à-vis all other providers of traditional telephone service. In this way, Inflexion can offer more affordable service in “underserved” areas.

This agreement is just one more in the litany of VoIP providers’ attempts to elicit discriminatory regulatory treatment from this Commission.

The cause of universal service will never be advanced by exempting VoIP providers from lawful access charges and USF payments, while circuit switched toll providers pay these same costs. Nor will it be advanced by depriving small, rural ILECs - companies that for years have been the standard bearers of universal service and the only true carriers of last resort – of their lawful access charges.

⁶ Inflexion Petition, beginning at 2.

⁷ Id, at 6.

⁸ Id, at 3.

The Commission has in place a reasonable and lawful system of access charges and USF payments. These help support the ILEC infrastructure which makes possible both VoIP and circuit switched connectivity to end users. The Commission cannot exempt one set of providers from access charges and USF payments simply because it allows them to operate more cheaply.

VI. CONCLUSION

Inflexion's VoIP service is the exact functional equivalent of, and directly substitutable for, circuit switched service. It is thus a telecommunications service to which the Commission's access charge and USF rules should apply.

The ILECs' costs of access are identical, whether the traffic originating from or terminating to their facilities is carried via the Internet or the circuit switched network.

VoIP providers must pay their lawful share of access and USF for use of these facilities, just as other providers do.

Respectfully submitted,
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