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February 28, 2003

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

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Re: Phone-to-Phone Internet Protocol IP Telephony
(Voice Over Internet Protocol) - Undocketed

Dear Ms. Bayo:

Enclosed for filing in the above undocketed matter are the original and fifteen (15) copies of Post-Workshop Written Comments of Northeast Florida Telephone Company.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Yours truly,

John P. Fons

Enclosures

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Undocketed
Phone-to-Phone Internet Protocol IP Telephony
(Voice Over Internet Protocol)

Post-Workshop Written Comments of
Northeast Florida Telephone Company

February 28, 2003

These written comments are being submitted by Northeast Florida Telephone Co. ("NEFCOM") to both memorialize and supplement its oral presentation made at the January 27 2003, Staff Workshop conducted in this undocketed matter. NEFCOM has been advised by the Division of Commission Clerk and Administrative Services that the tape of the workshop was damaged and was untranscribable. Although a portion of the tape was transcribable, the tape containing NEFCOM's oral presentation was not. In addition to recreating and supplementing the oral presentation at the workshop, NEFCOM is providing a copy of its filings with the Federal Communications Commission in response to AT&T's *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*, WC Docket No. 02-361. Attachment A is the *Opposition of the Fair Access Charge Rural Telephone Group*, filed December 18, 2002, and Attachment B is the *Reply Comments of Northeast Florida Telephone Company*, filed January 24, 2003.

Overview

The Staff Workshop was convened at the direction of the Commission "to conduct a [sic] undocketed workshop to explore the issue of phone-to-phone IP telephony." *In re: Petition of CNM Networks, Inc. for Declaratory Statement regarding Florida Public Service Commission Jurisdiction,* Docket No. 021061-TP, Order No. PSC-02-1858-FOF-TP, issued December 31, 2002, page 3. A number of issues were raised, but unresolved, in the *CNM Networks* proceeding directly related to the impact on local exchange telecommunications companies – such as

NEFCOM – on the provision of voice over IP (VOIP) telephony by a variety of entities using that technique. Although most would agree that VOIP is a "new" transmission technique and, perhaps, even a "new" technology, the fact of the matter is that the voice telecommunications services being provided by this "new" technique are the same old voice telecommunications services that were provided using the "old" technique and technology. There is little reason to treat VOIP any differently than were satellite and cellular technologies, which were also used to transport voice communications. Those new technologies were not exempted from the payment of access charges for the use of the local exchange companies' local network to originate and terminate long distance calls.

The most serious issue facing NEFCOM and other small, rural incumbent local exchange companies (ILECs) is the catastrophic erosion of intercarrier compensation which would result if phone-to-phone VOIP providers were to be exempted from compensating the ILECs for use of the ILECs' local networks. Today, ILECs, especially small, rural ILECs, are heavily dependent on network access charges to support universal service and carrier of last resort obligations. *See* Section 364.025, Florida Statutes. Without this support provided by access charges, NEFCOM's local residential rates would be over $17 per month higher than the $9 per month rate they are today.

<u>Background</u>

NEFCOM is a small local exchange company serving approximately 10,000 access lines located in rural, northeast Florida: Macclenny, its principal "urban" area has a population of 4,000, and Baker County, its principal serving area has a population of less than 20,000. In 2002, NEFCOM's local service revenues, including optional extended area service and end user revenues were $4,520,317. Its intrastate network access services billings to interexchange carriers ("IXCs") were $1,338,542,[1] and its interstate network access service billings were $390,780 in 2002. NEFCOM's total gross intrastate revenues were $5,816,134 in 2002, and total company gross revenues were $8,758,721.[2] Of NEFCOM's total gross revenues, $1,729,322,[3] or 20%, came from access charge payments made by interexchange carriers during 2002. Needless to say, any action taken by the FCC or this Commission exempting entities that originate or terminate long distance calls in NEFCOM's service area from the payment of access compensation would place NEFCOM and its local subscribers in serious jeopardy.

In 1995, the Florida Legislature rewrote Chapter 364, Florida Statutes, to allow local competition for the very first time since the late 1800's. As part of that legislation, the Legislature recognized the potential impact of local competition on universal service and carrier of last resort obligations. Although continuing the incumbent local exchange companies' ("ILECs") carrier of last resort obligation, the Legislature also directed this Commission to create an *interim* universal service support mechanism to assure that all carriers using the ILECs' local network would contribute to the support of universal service. At the conclusion of hearings that addressed the cost of universal service, the Commission concluded that as long as the ILECs continue to receive implicit subsidies from access services, no *interim* universal service support mechanism was required. As determined by the Commission, as long as NEFCOM continues to receive intrastate switched network access charges, NEFCOM should be able to cover its universal service support obligation. Once, however, the access charge revenues are diminished or eliminated, one of NEFCOM's principal sources of universal service support will evaporate and, unless a substitute support mechanism is implemented by the Legislature, NEFCOM would have to seek an increase in its local rates.

[1] Includes $286,873 retroactive billing for SSI applicable to 2001.
[2] Includes NECA settlements and federal USF funds.
[3] This amount is a combination of both intrastate and interstate access revenues billed to IXCs, excluding NECA settlements and federal USF funds.

Economic Impact of Voice Over Internet Protocol Telephony

Any regulatory decision which permits an entity/carrier to provide its customers with interexchange voice telecommunications that either bypass the local exchange network or use the local exchange network free of intercarrier compensation will adversely impact the ILEC and its local subscribers. Some would argue, however, that to burden a nascent technology with intercarrier compensation will unfairly burden and stifle a new technology. This is a particularly uncompelling argument, especially when the alleged "new technology" uses the ILEC's switched local network to originate and terminate long distance calls just like the "old" technology did; when the universal service support collection mechanism is based on use-of-the-ILEC's-local network; and when the "new" technology provides the same services as the "old" technology. Moreover, one of the alleged economic benefits of the "new technology" is that it can be used to avoid the access charge payments being paid by providers utilizing the "old" technology.

The technology de jour is Voice Over Internet Protocol ("VOIP"). Of particular interest to interexchange carriers ("IXCs") is phone-to-phone IP telephony in which the IXC's customer uses his or her traditional phone set to dial and complete long distance calls. Only after the call is delivered by the ILEC to the IXC is the call packetized somewhere in the IXC's network. For all intents and purposes, the call looks to the end user and the ILEC as a voice grade, circuit switched call from the customer's premises to the IXC's point of presence, regardless of what conversion takes place on the IXC's network. Having used the ILEC's local network, including the local loop, transport and switching, the IXC should be required to compensate the ILEC for its use. Moreover, if the compensation mechanism includes a regulatory imposed or sanctioned universal support component, then until the need for that support component is eliminated or replaced, regulators should require its continued collection.

SSI Is Providing Traditional IXC Service

Beginning in December, 2000, Southeastern Services, Inc. ("SSI") began offering long distance users residing or operating a business in NEFCOM's service area the ability to place long distance calls to anywhere in the United States, including Alaska and Hawaii, for a flat rate monthly charge.[4] As set forth in more detail in NEFCOM's Reply Comments filed with the FCC on January 24, 2003, (Attachment B, hereto), SSI provides its subscribers – who are not "presubscribed" to SSI – with a local telephone number in NEFCOM's service area to call to reach SSI's network. After the caller reaches SSI, the SSI equipment recognizes the caller's ANI, compares it against SSI's customer list and prompts the caller to dial the area code and telephone number of the person or business the caller wants to communicate with. SSI claims, but NEFCOM has seen no proof, that once the call is on SSI's network, or the network of the carrier whose services SSI resells, the call is converted using the internet protocol.

What SSI does with the call once the call reaches its network is really not important to determining what intercarrier compensation should be assessed by the ILEC against an entity claiming to be using VOIP telephony technology. What is important is how that entity uses the ILEC's local switched network. In SSI's case, SSI uses NEFCOM's local switched network in the same fashion and to the same extent as any IXC uses that network to originate [and/or terminate] long distance calls. For example, SSI's customer uses the same type telephone instrument and uses the same local loop as would the customer of an IXC paying FGA access charges. SSI's customer uses the same North American Numbering Plan dialing; and the NEFCOM local switch performs the same function as it would for an IXC that orders FGA access. If any packetizing takes place, it occurs after the call reaches SSI's network, not at SSI's customers' premises.

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[4] SSI did not receive an interexchange carrier certificate from the Florida Public Service Commission until December, 2001.

Instead of ordering Feature Group A ("FGA") from NEFCOM's tariffs, which is the appropriate intercarrier service arrangement, SSI is ordering PRI channels linking NEFCOM's switch with SSI's equipment. By doing so, SSI is able to obtain a single local number – 653-2111 – and 23 channels per PRI, with each channel served from that one local number. Internet service providers ("ISPs") often use such an arrangement for their "dial up" internet access services. In SSI's case, SSI – which is also an ISP – advertises the 653-2111 number for its long distance service only. In fact, at the time SSI first ordered the PRIs and obtained the telephone number, SSI was not certificated as an IXC. For over a year, SSI offered and provided IXC services without the requisite IXC certificate. It was only later that NEFCOM discovered SSI's deception – something SSI has been heard to "crow" about.

SSI Is Not Paying Access Charges

An IXC not trying to hide from the ILEC what it is doing would have ordered FGA from NEFCOM in order to serve its customers in the manner SSI has chosen to offer its long distance service. FGA is priced on a per minute of use basis, while what SSI has ordered to provide its long distance service is flat rated. Yet the facilities used to provide FGA access are virtually the same as the facilities being used by SSI, including the use of the local loop, the switch and the PRI facilities between NEFCOM's switch and SSI's point of presence. Using PRIs eliminates the FGA per minute of use charges and gives SSI a cost advantage over IXCs that continue to pay usage sensitive access charges. Not ordering or using FGA, and, instead, ordering flat-rated private line service from NEFCOM, facilitates SSI offering a flat-rated long distance service.

The tariffed rates for NEFCOM's FGA access are found in BellSouth's intrastate access charge tariff to which NEFCOM is a concurring carrier. These FGA access charges apply to both originating and terminating toll traffic. SSI is originating toll traffic in NEFCOM's certificated service area, but because NEFCOM has no way of knowing how much toll traffic, if any, SSI is terminating in NEFCOM's service area, NEFCOM is billing SSI for only originating FGA access minutes. Using actual and projected minutes of use on NEFCOM's network originated by SSI's customers, NEFCOM is billing SSI approximately $35,000 per month for network access service.[5] The monthly charges to SSI for the PRI facilities which SSI is using to provide the very same access function are costing SSI only $3,600 per month.[6] It is easy to see why SSI has chosen to avoid paying FGA access charges, and it is easy to see why allowing SSI or other entities to do so is so potentially devastating to NEFCOM and its ability to meet its continuing universal service support obligations.

Current State of Law Regarding VOIP

SSI and others contend that phone-to-phone VOIP telephony enjoys a FCC exemption from paying access charges or other intercarrier compensation. There is no such exemption, and the FCC has made no such finding. Although FCC deferred until another time a definitive ruling, an analysis of the FCC's recent findings and conclusions in the FCC's *Universal Service Report* proceeding, lead to a totally different conclusion. The FCC has determined that phone-to-phone IP telephony provided in the manner that SSI provides the service is "telecommunications service" and access charges should apply.

In its Report to Congress, the Federal Communications Commission ("FCC") addressed why IP telephony as provided by SSI should be considered a "telecommunications service." The FCC defined the term "telecommunications service" as follows:

> A telecommunications service is a telecommunications service regardless of whether it is provided using wireline, wireless, cable, satellite, or some other infrastructure. Its classification depends

[5] NEFCOM's Feature Group A intrastate access is billed at $0.0304 per originating minute and $0.0382 per terminating minute, and $0.01770 per switched access minute. All minutes have been billed at the intrastate FGA originating access charge rates because NEFCOM cannot identify terminating minutes from SSI and because SSI has not provided NEFCOM its per interstate usage (PIU) factor.

[6] If SSI had been ordering FGA from NEFCOM, SSI would also have had to obtain transport from NEFCOM. The transport cost for SSI would have been approximately $3,600 per month. NEFCOM has not billed SSI for transport but, instead, has given SSI credit for the PRI charges.

> rather on the nature of the service being offered to customers. Stated another way, if the user can receive nothing more than pure transmission, the service is a telecommunications service. If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service. A functional analysis would be required even were we to adopt an overlapping definition of 'telecommunications service' and 'information service.'[7]

The FCC then enumerated several criteria for testing whether phone-to-phone IP telephony is a "telecommunications service:"

> In using the term 'phone-to-phone' IP telephony, we tentatively intend to refer to services in which the provider meets the following conditions: (1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (of facsimile transmission) over the public switched telephone network; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (4) it transmits customer information without net change in form or content.[8]

The FCC observed:

> Specifically, when an IP telephony service provider deploys a gateway within the network to enable phone-to-phone service, it creates a virtual transmission path between points on the public switched telephone network over a packet switched IP network. These providers typically purchase dial-up or dedicated circuits from carriers and use those circuits to originate or terminate Internet-based calls. From a functional standpoint, users of these services obtain only voice transmission, rather than information services as access to stored files. The provider does not offer a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information. Thus, the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them "information services" within the meaning of the statute, and instead bear the characteristics of "telecommunications services."[9]

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[7] *Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd. 11501, at ¶ 83 (1998) (Report to Congress).
[8] *Id.* at ¶ 85.
[9] *Id.* at ¶ 89.

Finally, the FCC concluded:

> We note that, to the extent we conclude that certain forms of phone-to-phone IP telephony services are "telecommunications services," and to the extent the providers of those services obtain the same circuit-switched access as obtained by other interexchange carriers, and therefore impose the same burdens on the local exchange as do other interexchange carriers, we must find it reasonable that they pay similar access charges.[10]

In the *DataNet* case, the New York Public Service Commission ("NYPSC") likewise determined that the provision of IP telephony by DataNet – which is similar to the manner in which SSI provisions its service, is, in fact, the provision of "telecommunications service," and access charges do apply. The NYPSC based its decision upon the following criteria which mirror those criteria established by the FCC:

> (1) the long distance carrier holds itself out as providing voice telephony service;
> (2) the carrier does not provide enhanced functionality such as storing, processing or retrieving information;
> (3) customers are not required to use Customer Proprietary Equipment (CPE) different from the CPE used to place ordinary calls over the public switched telephone network;
> (4) customers dial calls to telephone numbers using the North American Numbering Plan;
> (5) the carrier's use of Internet Protocol is only within its own private network and does not result in any net protocol conversion to the end user;
> (6) a substantial portion of the carrier's traffic uses no IP conversion at all; and
> (7) the carrier uses the same circuit-switched access from local exchange carriers as obtained by other IXCs and imposes the same burdens on the local exchange as other IXCs.[11]

The NYPSC concluded:

> that the service provided by DataNet is simple, transparent long distance telephone service, virtually identical to traditional circuit-

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[10] *Id.* at ¶ 91.

[11] *Complaint of Frontier Telephone Company of Rochester Against DataNet Corporation Concerning Alleged Refusal to Pay Intrastate Carrier Access Charges*, Case No. 01-C-1119, p. 9 (May 31, 2002). *Id.* at p. 8.

> switched carriers. Its service fits the definition of "telecommunications" contained in the 1996 Telecommunications Act and is not "information service" or "enhanced service." Thus, its traffic is access traffic just like any other IXC's traffic. We also conclude that DataNet imposes the same burdens on the local exchange as do other interexchange carriers and should pay all applicable and appropriate charges paid by other long distance carriers, including access charges.[12]

SSI's Plea for Special Treatment

SSI, both before this Commission and the FCC, has claimed that requiring SSI to pay NEFCOM access charges will put SSI out of business. SSI, unfortunately, has chosen a business plan built upon the mistaken belief that using IP anywhere in its network exempts SSI from paying access charges. This belief is based upon a faulty analysis of the FCC's statements on whether phone-to-phone VOIP telephony is a "telecommunications service." The FCC, as noted above, has reached the conclusion that the form of phone-to-phone IP telephony service provided by SSI is a "telecommunications service," and that access charges should apply. SSI cannot now cry for relief from that failed analysis and seek to pass the loss to NEFCOM and its customer. It is ironic that, if SSI were to prevail, the very customers that benefit from SSI's ability to undercut its competitors' long distance prices could see their basic local rates increased to make up the shortfall in universal service support caused by SSI's refusal to pay tariffed access charges.

NEFCOM and the Commission's concern should not be limited to just SSI. If a small IXC like SSI can get the equipment necessary to provide phone-to-phone IP telephony, then <u>any</u> IXC, large or small, can do the same. It is not a question of waiting until the technology or the provision of such IP telephony "matures." As in NEFCOM's case, SSI's phone-to-phone IP telephony is not a small fraction of the interexchange calling. If NEFCOM has to recover from basic local service customers the amount of access charges SSI refuses to pay, NEFCOM's

[12] *Id.* pp. 8-9.

residential local rates would have to be increased by \$4.23 per month. Thus, the issue of intercarrier compensation must be addressed before ILECs like NEFCOM and their customers are damaged beyond repair.

Conclusion

The evidence is clear – the provision of phone-to-phone IP telephony is the provision of "telecommunications" service, not "information" service. The public policy is equally clear – access charges are applicable to "telecommunications" services that use the ILEC's circuit switched network and impose the same burdens on the local exchange network as do other IXCs. The state of technology is clear – any entity, large or small, can obtain the necessary technology and enter the IXC market anywhere and at any time. The economic impact implications are also abundantly clear – exempting any carrier from the payment of access charges on the basis that the carrier is using VOIP will bring financial ruin to the small ILECs and render access charges sterile as a means of universal service support. It is also clear that such a result would not be in the public interest.

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