

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

In the Matter of

**IP-Enabled Services**

)  
)  
)  
)

WC Docket No. 04-36

**COMMENTS OF THE VOICE ON THE NET (VON) COALITION**

Bruce D. Jacobs  
Glenn S. Richards  
David S. Konczal  
**SHAW PITTMAN LLP**  
2300 N Street, N.W.  
Washington, D.C. 20037-1128  
(202) 663-8000

Counsel for the VON Coalition

Dated: May 28, 2004

## Summary

The development of Internet-Protocol-enabled (“IP-enabled”) services, including voice over IP (“VoIP”), is having a profound and beneficial impact on the United States and the world. The benefits of IP-enabled services include cost savings for consumers, reduced operational costs for providers, advanced features unavailable with traditional circuit-switched telephony, increased competition, increased infrastructure investment, accelerated broadband deployment, improvements in emergency services, lower cost communications for rural and government users, increased access for persons with disabilities, and increased worker productivity.

To facilitate the further development of these services, the best public policy is to refrain from applying traditional telecommunications regulation to IP-enabled services and to create a national policy that ensures that traditional regulation does not apply to Internet voice communications throughout the country. To do so, the VON Coalition urges the Commission to classify IP-enabled services as information services subject exclusively to federal jurisdiction.

There are important social policy issues relating to IP-enabled services where the Commission and state regulators have a legitimate role. These legitimate concerns, however, can be addressed without having to declare IP-enabled services as “telecommunications services” or imposing heavy regulation on these services. For some social policy goals, such as 911/E911 services and affording access to persons with disabilities, voluntary agreements will ensure that IP-enabled services meet these goals. While the Commission seeks comment on whether universal service funding and intercarrier compensation obligations should be imposed on IP-enabled services, the Commission should instead devote its resources to reforming the existing regulatory frameworks governing these obligations. Finally, certain regulations, such as Title II consumer protection and economic regulations, are simply unnecessary as applied to IP-enabled services.

## Table of Contents

<b>Summary</b> .....	i
I. Background.....	1
A. VON Coalition.....	1
B. Emergence of IP-Enabled Services.....	2
C. New and Innovative IP-Enabled Services and Products.....	3
D. Advantages of IP Networks over the Circuit-Switched PSTN.....	5
E. Impact and Benefits of IP-Enabled Services.....	6
F. Gradual Development of IP-Based Services.....	15
G. “Hands-Off” Regulatory Approach to IP-Enabled Services.....	16
<b>Discussion</b> .....	19
II. The Commission Should Classify IP-Enabled Services as Information Services Subject Exclusively to Federal Jurisdiction.....	19
A. The Commission Should Avoid Any Attempt to Categorize IP-Enabled Services Into Existing Statutory Classifications.....	19
B. IP-Enabled Services Are Interstate in Nature and Should Thus Be Subject Exclusively to the Commission’s Jurisdiction.....	21
III. Specific Regulatory Goals as Applied to IP-Enabled Services Can Be Achieved Either Through Voluntary Efforts or Through Reform of Existing Regulations.....	24
A. Certain Regulatory Goals Can Best Be Accomplished Through Voluntary Efforts Encouraged by the Commission.....	24
B. The Commission Must Reform the Existing Regulatory Frameworks Governing USF and Intercarrier Compensation.....	26
C. Title II Consumer Protection and Economic Regulations Are Unnecessary for IP-Enabled Services.....	28
<b>Conclusion</b> .....	30

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

In the Matter of )  
 )  
**IP-Enabled Services** ) WC Docket No. 04-36  
 )

**COMMENTS OF THE VOICE ON THE NET (VON) COALITION**

The Voice on the Net Coalition (“VON Coalition”) hereby files these Comments on the above-captioned *Notice of Proposed Rulemaking* (“NPRM”) in which the Commission is seeking comment on various issues relating to Internet-Protocol-enabled (“IP-enabled”) services, including voice over IP (“VoIP”).<sup>1</sup> The VON Coalition urges the Commission to (i) classify IP-enabled services as unregulated information services subject exclusively to federal jurisdiction; (ii) rely on voluntary agreements to ensure that providers of IP-enabled services meet social policy goals, such as 911/E911 services and affording access to persons with disabilities; (iii) devote its resources to reforming the existing regulatory frameworks governing universal service and intercarrier compensation rather than considering whether to impose these obligations on providers of IP-enabled services; and (iv) refrain from imposing Title II consumer protection and economic regulations on IP-enabled services.

**I. BACKGROUND**

**A. VON Coalition**

The VON Coalition consists of companies that are developing and offering voice products and services for use on the Internet and IP networks. Largely through the efforts of VON Coalition members, including AT&T, BMX, Callipso, Convedia, Covad, IceNet, iBasis,

---

<sup>1</sup> See *IP-Enabled Services, Notice of Proposed Rulemaking*, WC Docket No. 04-36, FCC 04-28 (released March 10, 2004) (“NPRM”).

Intel, Intrado, ITXC, MCI, Microsoft, PointOne, pulver.com, Skype, Texas Instruments, VocalData, and Voiceglo.com, packet-switched voice services are emerging as an exciting new technology benefiting consumers throughout the world. Since its inception, the VON Coalition has consistently advocated that federal and state regulators maintain current policies of refraining from extending legacy regulations to Internet services.<sup>2</sup>

## **B. Emergence of IP-Enabled Services.**

The emergence of IP-enabled products and services is tied closely to the development of the Internet generally. Voice is simply another application being deployed on the Internet, often in combination with other applications. These applications are possible, in part, because the Internet offers openness, thereby encouraging innovation.<sup>3</sup> In contrast, the PSTN operates as a closed system on which it is impossible for innovative developers to build new applications.<sup>4</sup> The failure of Advanced Intelligent Networking illustrates the problem of closed systems impeding the development of innovative products and services. The Internet permits entrepreneurial firms to develop new hardware and software applications that can seamlessly fit into the network.<sup>5</sup> As computer processing power increases, IP-enabled products and services are poised to make communications more innovative, affordable, and universal.

---

<sup>2</sup> More information about the VON Coalition can be obtained at <http://www.von.org>.

<sup>3</sup> See, e.g., Isenberg, David, *The Dawn of the Stupid Network*, ACM Networker 2.1, at 24-31 (February/March 1998) (available at <http://www.isen.com/papers/Dawnstupid.html>).

<sup>4</sup> See *NPRM* at n.13 (“[W]hile a century of PSTN development has given rise to relatively few opportunities for user customization, a mere decade of widespread commercial use has produced a dizzying array of IP-enabled services.”).

<sup>5</sup> *NPRM* ¶ 4 (“[W]hereas enhanced functionalities delivered via the PSTN typically must be created internally by the network operator and are often tied to a physical termination point, IP-enabled services can be created by users or third parties, providing innumerable opportunities for innovative offerings competing with one another over multiple platforms and accessible wherever the user might have access to the IP network.”).

Because of the openness of the Internet, service providers do not need to own any infrastructure to offer service. This drastically reduces barriers to entry and increases competition. For example, Internet voice providers such as Vonage can compete in the local voice market without duplicating the incumbents' facilities or relying on the incumbents' facilities.

The Internet allows innovators to decouple voice from the physical copper telephone network, making it potentially available over any IP-enabled network including cable, fixed wireless, fiber, or satellite. The infrastructure that delivers Web pages, email, and text files can also carry voices and moving pictures. In this environment, voice is just one class of application, which can be implemented in many different ways. The Internet, which originally came into most homes on the copper infrastructure built for other purposes, has now become the transport on which new services including voice are riding. Because all these services are IP-based, there are no firm barriers between them. A picture can talk; a voice command can call up an image; a chat can be voice or text or both.

### **C. New and Innovative IP-Enabled Services and Products**

The application of voice on the Internet is continuing to emerge in many and varied ways. Personal computers increasingly offer VoIP capability. For instance, modern-day operating systems as well as online gaming support VoIP. The increased deployment of consumer broadband, with its always-on connectivity, will also fuel the growth of these services. A new group of entrepreneurs, such as Vonage, IceNet, PointOne, and Voiceglo.com, have begun offering innovative voice applications to residential and small business consumers who have broadband connections, including unlimited local and long-distance calling and on-line call logs.

Vonage, for example, recently announced a package of unlimited local and long distance calling for \$29.99 per month.<sup>6</sup>

Some innovative VoIP services originate and terminate on the PSTN, but are only possible through use of an advanced IP communications network and are not possible or practical with use of only the legacy circuit-switched network. For instance, PointOne's Star (\*) Call IP service provides users with access to real-time information such as stock quotes and driving directions, the ability to communicate with IM, as well as other advanced features. The service is available during every voice communications session on the PointOne network. Users access this information by "dialing" a predefined key combination at any point during a "call" during which time the other user is placed on hold. When the user is done accessing this feature, the call is rejoined.

With Free World Dialup ("FWD") 3.0, users of different broadband technologies (cable, DSL, Ethernet, satellite, etc.) can place calls over the Internet to other FWD members without ever accessing the PSTN. Unlike a traditional calling arrangement in which long distance calls generate usage-sensitive charges, FWD subscribers use a broadband connection and VoIP capability to make calls for free.

The extraordinary success of Yahoo Japan's voice over broadband service is confirmation of the potential for voice applications to drive the deployment of broadband and for broadband customers to use their high-speed connections for voice communications.<sup>7</sup> IBM and Cisco recently announced a joint development plan regarding VoIP.<sup>8</sup>

---

<sup>6</sup> Vonage's service offerings are available at <http://www.vonage.com/rate.php>

<sup>7</sup> See *Yahoo! BB Comprehensive Broadband Service Progress Report* (Oct. 7, 2003) (Yahoo IP telephony service "BB Phone" users exceed three million mark) (available at: [http://www.softbank.co.jp/en/newsrelease/2003release/e031007\\_2.htm](http://www.softbank.co.jp/en/newsrelease/2003release/e031007_2.htm)). Commercial service was

IP-enabled products also offer innovative new features such as the ability to access voicemail from e-mail, to conference large groups, to select which area code a telephone will use, and to use the same phone extension anywhere there is an Internet connection. Voice is also being added to a variety of Internet-based applications, including Webcams that use VoIP for videoconferencing and instant messenger software for voice, text, and video chat.

IP-enabled services are also experiencing growth in deployment by enterprises for their internal networks.<sup>9</sup> Corporations and other large institutions are adding voice capability to their Internet connections and data networks in order to save money and increase efficiency. For instance, the United States Department of Commerce added voice capability to its data network. Deployment in the enterprise environment ranges from point solutions, which involve the installation of key applications to address pressing problems, to network upgrades and more global solutions intended to establish a unified network capable of carrying data and voice traffic.

#### **D. Advantages of IP Networks over the Circuit-Switched PSTN**

The Internet and other IP networks offer an inherent efficiency, reliability, and functionality for communications, particularly those that combine different kinds of data, including digital voice traffic. The conventional circuit-switched PSTN works on the model that each customer's equipment must have a continuous connection (a "circuit") to a telephone

---

launched on April 25, 2002; approximately one year later the number of users broke the two million mark.

<sup>8</sup> Laurie J. Flynn, *I.B.M. and Cisco Planning Joint Internet Phone Venture*, N.Y. Times, May 18, 2004.

<sup>9</sup> A number of resources discuss business issues and technology considerations associated with enterprise deployment of VoIP. For example, the consulting firm Gartner has developed a five-layer model to assist enterprises planning to implement VoIP and IP telephony. See *Voice over IP: A Layered Look* (July 25, 2003) (available at: <http://www4.gartner.com/pages/story.php.id.9324.s.8.jsp>).

company switch, whether or not the connection is actually in use. For long-distance services, a continuous circuit must be established and maintained between each pair of users for the duration of a call, regardless of the amount of information sent through that path. By contrast, the Internet trades increased use of computer processing for a decreased use of transmission facilities and automatically re-routes packets around problems such as malfunctioning routers or damaged lines, without relying on a separate signaling network. As the cost of computer processing continues to decrease and the demand for communications bandwidth by consumers increases, IP networks increasingly offer a more economical and robust means for providing communication connections.<sup>10</sup> Moreover, unlike the PSTN, where service providers must either build their own or rely on the incumbents' infrastructure, the Internet allows new competitors to swiftly emerge because they do not need to own or construct any infrastructure.

#### **E. Impact and Benefits of IP-Enabled Services**

The development of IP-enabled services, including VoIP, is having a profound and beneficial impact on the United States and the world. Below are just some of the benefits of IP-enabled services.

**1. Cost Savings for Consumers.** Use of IP-enabled services is drastically reducing the cost of communications and creating demand for broadband communications that have much greater capacity and functionality than is offered by the PSTN. Because VoIP technology converts voice into Internet data and routes the data as packets, a voice call utilizes less transmission capacity – using up to 90 percent less bandwidth than a traditional PSTN call --

---

<sup>10</sup> *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, Order*, WC Docket No. 02-361, FCC 04-97 (April 21, 2004) (“*AT&T Declaratory Ruling*”), at ¶ 3 (“VoIP uses available bandwidth more efficiently than circuit-switched telephony and allows providers to maintain a single IP network for both voice and data.”).

making VoIP calls less expensive and more efficient.<sup>11</sup> Taking advantage of these differences, some entities can offer unlimited local and long distance calling for as little as \$29.95 per month. Internet telephony could save consumers between 40 percent and 60 percent on their phone bills.<sup>12</sup> The number of Internet-based phone lines is projected to grow from well under a million in 2002 to more than 5 million by the end of 2004.<sup>13</sup> Another study has found that the average narrowband household could save \$8 per month by upgrading to broadband and using VoIP.<sup>14</sup> In the United States, hundreds of thousands of immigrants use VoIP to dramatically lower the cost of communicating with friends and relatives outside of the United States, through either personal computer-based VoIP or VoIP used by prepaid calling card companies. Phone-to-gateway network configurations, such as those offered by Callipso, provide those without a computer or broadband service what is often their only access to the benefits of the Internet.

**2. *Reduced Operational Costs.*** The ability to use the Internet to provide voice eliminates the need to build a costly infrastructure, thereby reducing barriers to entry and facilitating competition. Moreover, IP networks are based on software and require less expensive hardware than that used with circuit-switched networks, thus making the network easier to modify and maintain, resulting in reduced operational costs. Experts estimate that a packet-switched network costs about one-third of a circuit-switched system with a 50-60 percent

---

<sup>11</sup> <http://www.fwcs.co.uk/voip.htm>

<sup>12</sup> Charles E. Ramirez, *Internet Phone Use Grows: Less Costly Service Is to be Offered by Major Firms in '04*, Detroit News, December 28, 2003.

<sup>13</sup> *Net Phones Start Ringing Up Customers*, Business Week, December 29, 2003, at 45 (citing study by Adventis Corp.).

<sup>14</sup> Parks Associates, *VoIP: At Last a Killer App?* (January 2004) (available at <http://www.parksassociates.com>).

reduction in operating costs.<sup>15</sup> The cost savings achieved by converging voice and data applications in one network make VoIP attractive for enterprises that have already deployed an IP network.

**3. *Advanced Features.*** IP-enabled service providers are using broadband enabled VoIP to deliver innovative new features that go beyond traditional PSTN features.<sup>16</sup> For example, with an adapter and a broadband connection, consumers can now port phone numbers to any location, such as a hotel or vacation home. Consumers can also customize their telephone service, such as establishing a “quiet time” when calls are automatically routed to voice mail. Features such as Web-based call logs and voicemail enable users to review calls placed and received by date and time. Once limited to mobile phones, features such as distinctive rings, which alert users to the identity of a caller, are now available to VoIP consumers.

**4. *Increased Competition.*** New providers of IP-enabled services are entering the market at unprecedented rates. Almost every major telecommunications provider is planning to offer Internet-based voice service to take advantage of the technology’s lower costs and its capacity to deliver new and innovative services. While established telecommunications companies have been some of the first to enter the VoIP market, any entrepreneur with a bright idea and access to the Internet can provide a voice service. VoIP is enabling a host of new non-traditional competitors to enter the local voice market, spurring competition with the incumbent local exchange carriers (“ILEC”). Unlicensed wireless technology is also enabling competitors to offer VoIP without the need for a broadband connection. Net2Phone and IDT Corporation recently announced plans to offer the first commercial WiFi phone service in the United States,

---

<sup>15</sup> Bernard Simon, *A Bright New Day for the Telecom Industry, if the Public Will Go Along*, New York Times, January 12, 2004.

<sup>16</sup> See comparative features of broadband voice providers at <http://www.roffe.net/voip/>

allowing users in the Ironbound section of Newark, NJ to bypass local phone companies and make domestic and international phone calls using VoIP and a wireless connection to the Internet.<sup>17</sup>

**5. Increased Infrastructure Investment.** The growth of Internet voice is breathing new life into the technology sector, helping to increase investment in high-tech companies such as chipmakers, computer manufacturers, network equipment vendors, and service providers. U.S. carriers spent an estimated \$2 billion on VoIP equipment in 2003, an increase of approximately 10 percent from 2002.<sup>18</sup> In contrast, spending in the overall telecommunications equipment market declined by 20 percent in 2003. Investment in VoIP equipment is estimated to grow by 50 percent in 2004.<sup>19</sup> As the telecommunications sector begins its recovery, VoIP will be essential to sustaining robust growth and investment.

**6. Accelerated Broadband Deployment.** VoIP may be the long awaited “killer application” for driving broadband subscribership.<sup>20</sup> There are already signs that consumers are flocking to broadband in order to take advantage of new broadband VoIP calling plans. The Yankee Group predicts that VoIP could spur new growth in untapped markets and

---

<sup>17</sup> “IDT to Deploy America's First Commercial WiFi Phone Service; Ironbound Section of Newark, New Jersey To Be First Area Covered” (available at <http://www.80211news.com/publications/page207-822462.asp>).

<sup>18</sup> Steve Rosenbush, *Telecommunications: Strong Signals the Bad Times Are Over*, Business Week, January 12, 2004, at 100.

<sup>19</sup> Similarly, one study predicts that the market for all VoIP equipment, about \$1 billion in 2002, is likely to reach almost \$4.3 billion in 2006. See *Getting the Value From VOIP* (November 13, 2003) (available at: [http://www.lightreading.com/document.asp?doc\\_id=42831&site=lightreading](http://www.lightreading.com/document.asp?doc_id=42831&site=lightreading)) (citing *Infonetics Research Inc., Next Gen Voice Quarterly Worldwide Market Share and Forecasts* (August 2003)).

<sup>20</sup> *NPRM* ¶ 5 (“IP-enabled services generally – and VoIP in particular – will encourage consumers to demand more broadband connections, which will foster the development of more IP-enabled services.”).

enable entirely new business models. At present, only about 20 percent of Americans have subscribed to broadband.<sup>21</sup> Among those who do not have broadband, approximately 70 percent report that broadband is too expensive.<sup>22</sup> VoIP, however, can overcome price barriers by dispersing the cost across both products – voice and broadband. While broadband penetration rates currently drive VoIP adoption, VoIP could become the application to drive future broadband adoption.<sup>23</sup> One study estimates that widespread adoption of broadband could add \$500 billion to the economy<sup>24</sup> and generate more than 1.2 million jobs.<sup>25</sup> In the next five years, the proliferation of VoIP services will create huge opportunities for consumers and even greater growth for broadband providers.

7. ***Emergency Services.*** VoIP is also able to deliver advanced emergency services, such as the ability to deliver reverse 911 and to conference in rescue workers on the way to an emergency scene. As Chairman Powell recently noted:

“The 911 system is vital in our country, but it is limited functionally. In most systems, it primarily identifies the location from which the call was made. But an Internet voice system can do more. It can make it easier to pinpoint the specific location of the caller in a large building. It might also hail your doctor, and send a text or Instant Message alert to your spouse.”<sup>26</sup>

---

<sup>21</sup> The Yankee Group, *VoIP: Influencers and Drivers in the Emerging Broadband Telephony Market* (April 22, 2004).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Robert W. Crandall and Charles L. Jackson, *The \$500 Billion Opportunity: The Potential Economic Benefit of Widespread Diffusion of Broadband Internet Access* (July 2001).

<sup>25</sup> Stephen B. Pociask, TeleNomic Research LLC, *Building a Nationwide Broadband Network: Speeding Job Growth* (February 25, 2002) (available at: <http://www.newmillenniumresearch.org/event-02-25-2002/jobspaper.pdf>).

<sup>26</sup> *Remarks of Chairman Powell, The National Press Club* (January 14, 2004) (available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-242885A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-242885A1.doc)).

Some local governments are already using VoIP to deliver advanced emergency benefits. For example, Herndon, Virginia is using a VoIP system that automatically displays a picture of a missing child and possible suspects to VoIP phones equipped with special screens used by municipal workers.<sup>27</sup> Moreover, the Department of Commerce has combined its voice system with its emergency broadcast system, creating a reverse 911 system whereby users are contacted in the case of an emergency.<sup>28</sup> Eventually, IP networks will allow PSAPs to lower costs and to move more quickly in the event of an emergency.<sup>29</sup> Moreover, an IP-enabled PSAP will be better equipped to handle multimedia information and better respond to people with disabilities who may rely upon text- or video-enabled signing to communicate in an emergency.

**8. Rural America.** IP-enabled services are also benefiting rural America.

One of the goals of universal service is to provide affordable voice communications to rural America, and no technology offers more promise for achieving this goal than VoIP.<sup>30</sup> Experts estimate Internet telephony could save consumers between 40 percent and 60 percent on their phone bills.<sup>31</sup> Moreover, VoIP is the application that will drive broadband deployment, including in rural America where access to broadband lags behind the rest of the nation.

---

<sup>27</sup> *Net Phones Start Ringing Up Customers*, Business Week, December 29, 2003, at 45.

<sup>28</sup> William Jackson, “*With VoIP, Digital Department Comes of Age at Commerce*” (available at: [https://secure.cio.noaa.gov/hpcc/docita/files/with\\_voip\\_digital\\_department\\_comes\\_of\\_age\\_at\\_commerce\\_09162003.pdf](https://secure.cio.noaa.gov/hpcc/docita/files/with_voip_digital_department_comes_of_age_at_commerce_09162003.pdf)).

<sup>29</sup> *Testimony of Professor Henning Schulzrinne, Department of Computer Science, Columbia University at FCC’s Internet Policy Working Group E911 Solutions Summit* (March 18, 2004) (available at: <http://www.fcc.gov/ipwg/E911SummitHenning.pps>).

<sup>30</sup> *Testimony of Tom Evslin, CEO, ITXC, at FCC’s VoIP Forum* (December 1, 2003) (available at: <http://www.fcc.gov/voip/voipforum.html>).

<sup>31</sup> Charles E. Ramirez, *Internet Phone Use Grows: Less Costly Service Is to be Offered by Major Firms in '04*, Detroit News, December 28, 2003.

**9. Disabled Persons.** IP-enabled services are also providing new opportunities for the disabled. The National Federation of the Blind uses IP-based phone services to provide a free newspaper reading service that uses voice synthesis to allow users to change voice speed and to search for words.<sup>32</sup> Avaya has just released a program that allows the functionality of a phone to be accessible to the blind without requiring any changes to the phone.<sup>33</sup> Blind employees at the Department of Education use IP communications to check e-mail remotely through the Department's voicemail system.<sup>34</sup> Trace Center and Gallaudet University are currently working with Cisco on a technique that would allow every phone within the organization to be instantly capable of text communication simply by installing a software program on the call manager server. This enables a deaf person to communicate in text (or in text and voice) without needing any special equipment and without changing the software on the phones.<sup>35</sup> The Washington School for the Deaf in Vancouver, Washington has used IP communications to afford equal access to communications services to deaf, hard-of-hearing, and hearing employees alike.<sup>36</sup>

---

<sup>32</sup> *Free Service to Those Who Cannot Read Regular Newsprint!* (available at: <http://www.nfb.org/newsline1.htm>); see also USA Datanet Corporation *ex-parte*, WC Docket No. 02-361 (February 2, 2004).

<sup>33</sup> Gregg C Vanderheiden Ph.D, *Access to Voice over Internet Protocol* (December 2003) (available at: <http://www.tracecenter.org/docs/2003-NMRC-VoIP-Access/>).

<sup>34</sup> News Release, *Cisco IP Communications System Improves Productivity for Disabled at Washington School for the Deaf and U.S. Department of Education* (available at: [http://newsroom.cisco.com/dlls/2004/prod\\_020904c.html](http://newsroom.cisco.com/dlls/2004/prod_020904c.html)).

<sup>35</sup> Gregg C Vanderheiden Ph.D, *Access to Voice over Internet Protocol* (December 2003) (available at: <http://www.tracecenter.org/docs/2003-NMRC-VoIP-Access/>).

<sup>36</sup> News Release, *Cisco IP Communications System Improves Productivity for Disabled at Washington School for the Deaf and U.S. Department of Education* (available at: [http://newsroom.cisco.com/dlls/2004/prod\\_020904c.html](http://newsroom.cisco.com/dlls/2004/prod_020904c.html)).

**10. Government.** The federal government itself is adopting VoIP to achieve a wide variety of cost saving and service benefits. The Department of Commerce, Food and Drug Administration, Census Bureau, Environmental Protection Agency, and Peace Corps, among other governmental entities, use some form of VoIP technology.<sup>37</sup> One study suggests that governments at all levels could save as much as \$3-10 billion by using VoIP.<sup>38</sup> The National Aeronautics and Space Administration (“NASA”) used VoIP technology during a simulated mission to Mars.<sup>39</sup>

**11. Increased Worker Productivity.** IP-enabled services are also increasing the productivity of the American workforce by facilitating teleworking and a distributed workforce. For example, by dialing into a corporate IP PBX system, home-based workers can receive all of the features and benefits of the corporate VoIP network. IP-enabled services also allow businesses to connect remote offices and reduce the cost of communicating with overseas divisions. Use of IP networks also reduces operational costs because far fewer technicians are required to run and maintain an IP-based network.

The convergence of voice and data now allows companies to distribute work in new ways. JetBlue, for example, has established a “virtual call center” whereby reservation agents can answer VoIP calls at home that integrate passenger data with a consumer voice call.<sup>40</sup> The

---

<sup>37</sup> PlanetGov, *Multiservice/Convergence Technologies* (available at: <http://www.planetgov.com/ns/consulting/solcontech.htm>).

<sup>38</sup> *Government Could Save \$3-10 Billion with VoIP, Study Says* (available at: <http://www.forrelease.com/D20040211/nyw195.P1.02112004183814.23019.html>) (citing study by Alexis de Tocqueville Institution).

<sup>39</sup> News Release, *NASA’s Simulated Mars Mission Uses Shoreline IP PBX for Voice Communications* (January 26, 2004) (available at: <http://www.shoretel.com/STCorp/press/2004-01-26-2.aspx>).

<sup>40</sup> Heather Green, *Companies That Really Get It*, Business Week, August 25, 2003, at 144; Robert D. Hof, *Why Tech Will Bloom Again*, Business Week, August 25, 2003, at 64.

agents use special application software on a VoIP Softphone that connects them to the airline's Internet telephony switch, which routes customer reservations calls to them. These work-from-home agents handled 9.6 million calls in 2003. By allowing agents to work from home, IP technology has eliminated the need for a costly physical space and has driven major productivity improvements. Moreover, by cutting call center costs, the virtual call center decreases the pressure on companies such as JetBlue to establish call centers overseas.<sup>41</sup>

**12. *International.*** Perhaps the most dramatic impact of IP-enabled services has been in certain foreign markets, where VoIP has been a leading force for lowering costs to consumers, increasing competition, and increasing deployment of broadband. According to Telegeography, international VoIP traffic increased by 80 percent to 18.7 billion minutes, and comprised approximately 10.8 percent of all international call traffic.<sup>42</sup> International calling rates have dropped 80 percent over the last two decades, much of which can be attributed to low cost VoIP which accounts for 12 percent of international call traffic.<sup>43</sup> VON Coalition members have persuasively invoked the United States regulatory model in lobbying overseas governments, such that in former monopoly markets the first steps toward deregulation have included implementing low-cost VoIP. For example, one VON Coalition member enabled a local carrier in Bolivia to take advantage of deregulation and become a domestic and international long distance carrier on the day Bolivia deregulated its telephony markets. Less than two years later, that carrier now has more than 40 percent market share in several regions of the country and

---

<sup>41</sup> David Whelan, *The Slipper Solution: JetBlue has figured out how to please critics of offshoring--and company cost-cutters. Let call-center employees work at home*, Forbes (available at: <http://www.forbes.com/business/forbes/2004/0524/064.html>).

<sup>42</sup> NPRM at n.34 (citing *Telegeography 2004*).

<sup>43</sup> Mike Angell, *Internet Calling Posing A Threat To Landline Phone Companies*, Investors Business Daily (May 18, 2004).

averages 10-15 percent market share country-wide. Consumer rates for voice communications in Bolivia have been reduced 40 percent in a year. Similarly, rates to and from India have fallen remarkably since that country's April 2002 deregulation and are continuing to fall. Much of the voice traffic to and from India is now traveling over the Internet, with a recent iLocus study concluding that VoIP is positioned to account for over 60 percent of India's international long distance traffic by the year 2007.<sup>44</sup> India has been able to accomplish this because of the rapid deployment and flexibility afforded by VoIP.

#### **F. Gradual Development of IP-Based Services**

While IP-enabled services offer great promise, they are still in the nascent stages of development. The deployment of IP-enabled services, for example, has not had significant impact on the revenue of traditional, domestic, circuit-switched telephone companies. The use of VoIP by immigrants, in the enterprise setting, and by broadband consumers is not coming at the expense of ILEC revenues. Moreover, IP-enabled services have not been demonstrated to have a significant impact on universal service or access charge revenues.

One factor contributing to this minimal impact is the currently *de minimis* penetration rate for VoIP. While the number of Internet-based phone lines is projected to grow from well under a million in 2002 to more than 5 million by the end of 2004,<sup>45</sup> this represents a tiny fraction of the 113 million households where the traditional phone line will still be the primary line. Given that only approximately 60 percent of American households own PCs<sup>46</sup> and only 20

---

<sup>44</sup> *VoIP to grab 61 percent of ILD traffic by 2007, Convergence plus* (June 9, 2003) (available at: <http://www.convergenceplus.com/jun03%20india%20telecom%2002.html>).

<sup>45</sup> *Net Phones Start Ringing Up Customers*, Business Week, December 29, 2003, at 45 (citing study by Adventis Corp.).

<sup>46</sup> Jane Weaver, *Saying 'No Thanks' to the Internet: Online Growth in U.S. Flattens as Some Simply Opt Out* (April 16, 2004) (available at: <http://msnbc.msn.com/id/3078958/>); NTIA, *A Nation Online: How Americans are Expanding their Use of the Internet: a February 2002 Joint*

percent have access to broadband,<sup>47</sup> the number of people who can take full advantage of broadband-enabled VoIP applications is still limited.

### G. “Hands-Off” Regulatory Approach to IP-Enabled Services

The growth of IP-enabled services has been propelled in part by the U.S. Government’s “hands-off” regulatory approach. Since the inception of voice over the Internet, the Commission has consistently declined to regulate. The Commission articulated its policy in its 1998 *Universal Service Report to Congress*, which discusses various scenarios for what it called “IP telephony.”<sup>48</sup> The *Report to Congress* discusses the difficulty of categorizing VoIP and the extent to which many of its deployments have characteristics of unregulated, information services.<sup>49</sup> As a result, the Commission expressly deferred any definitive pronouncements regarding VoIP, including phone-to-phone VoIP. *Report to Congress* ¶ 83. As the Commission explained, “[w]e recognize that new Internet-based services are emerging, and that our application of statutory terms must take into account such technological developments. . . . We

---

*Study by the U.S. Economics and Statistics Administration and the National Telecommunications and Information Administration* (February 2002) (available at: <http://www.ntia.doc.gov/ntiahome/dn/>).

<sup>47</sup> Instate/MDR, *Reaching Critical Mass: The US Broadband Market* (March 2004) (available at [www.instat.com](http://www.instat.com)).

<sup>48</sup> *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶¶ 83-93, 98 (1998) (“*Report to Congress*”) (also referred to as the “Stevens Report”). The *Report to Congress* addressed many of the issues raised in a 1996 petition for rulemaking asking that IP telephony software and hardware providers be classified as common carriers. *Id.* at ¶ 83 n.172; see *America’s Carriers Telecommunications Association, Provision of Interstate and International Interexchange Telecommunications Service via the “Internet” by Non-Tariffed, Uncertified Entities, Petition for Declaratory Ruling, Special Relief, and Institution of a Rulemaking*, RM-8775 (filed March 4, 1996).

<sup>49</sup> As noted in a 1999 Commission Working Paper, “[a]s more services are offered that use the Internet Protocol in a packet-switched environment, it becomes increasingly difficult to determine where the telecommunications service ends and the information service begins.” Jason Oxman, *The FCC and the Unregulation of the Internet*, OPP Working Paper No. 31, at 22. “Despite this difficulty, however, it remains important for the FCC to maintain the unregulated status of data services offered over telecommunications facilities.” *Id.*

do not believe . . . that it is appropriate to make any definitive pronouncements [regarding VoIP] in the absence of a more complete record focused on individual service offerings.” *Id.* ¶ 90.

In February of this year, the Commission continued its policy of refraining from regulating VoIP when it declared that pulver.com’s FWD offering was an unregulated information service.<sup>50</sup> The Commission stated that its decision “formalize[d] [its] policy of nonregulation to ensure that Internet applications remain insulated from unnecessary and harmful economic regulation at both the federal and state levels.” *Id.* ¶ 1.

In contrast, two months after the FWD decision, the Commission ruled that AT&T’s phone-to-phone IP telephony service is a telecommunications service upon which interstate access charges may be assessed. *See AT&T Declaratory Ruling*. The Commission’s decision, however, was limited to one type of service, *i.e.*, an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the PSTN; and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology. *Id.* ¶ 1. The Commission was careful to note that its decision “in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Intercarrier Compensation* proceeding.” *Id.* ¶ 10. The Commission expressly limited the scope of its decision and did not reverse or limit its “hands off” regulatory approach to Enhanced Service Providers, which the Commission had previously exempted from paying access charges “to avoid disrupting the industry segment.” *Id.* at 14 n.60.

---

<sup>50</sup> *Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications nor a Telecommunications Service, Memorandum Opinion and Order*, WC Docket No. 03-45, FCC 04-27 (February 19, 2004) (“*FWD Order*”).

On the international stage, the Commission has consistently and repeatedly voiced its support for the non-regulation of advanced technologies, including VoIP. For example, Chairman Powell urged attendees at the International Telecommunications Union's Second Global Symposium for Regulators to give "broadband and digital technologies" a minimally regulated environment "that is nurturing and will allow them to blossom and develop into the great platform that we envision."<sup>51</sup> Referring specifically to VoIP, Chairman Powell noted that "[i]n the United States we have yet to choose to regulate IP telephony and are confident of that decision. We do not assume it is simply a new form of an old friend."<sup>52</sup> In 2002, Commissioner Martin noted that "VoIP presents an incredible opportunity for consumers worldwide and we have found our approach has encouraged its development. At the same time, VoIP challenges settled definitions and preconceptions about what is voice and data, who provides which technology, and which regulatory boxes they should occupy."<sup>53</sup> As International Bureau Chief Donald Abelson recently explained with respect to the Commission's consideration of the regulatory status of VoIP, "Nobody has figured out the magic solution. Few countries are as advanced as we. . . . They're all watching us, frankly, to see what we do."<sup>54</sup>

*NPRM.* In the above-captioned *NPRM*, the Commission is seeking comment on the impact IP-enabled services have had and will continue to have on the communications landscape. *NPRM* ¶ 1. The Commission asks whether it can best meet its role of safeguarding the public interest by continuing its established policy of minimal regulation of the Internet and the services

---

<sup>51</sup> *Remarks of FCC Chairman Michael K. Powell*, ITU 2<sup>nd</sup> Global Symposium for Regulators, Geneva, Switzerland (December 4, 2001).

<sup>52</sup> *Id.*

<sup>53</sup> *Welcoming Remarks by Commissioner Kevin J. Martin to the African VoIP Conference*, Supercomm 2002, Atlanta, Georgia (June 5, 2002).

<sup>54</sup> *Abelson: Internet Issues Could Arise At ITU Conference*, TR Daily (May 20, 2004).

provided over it. *Id.* ¶ 2. The Commission seeks comment on whether it should establish categories of IP-enabled services and, if so, what factors should distinguish the various categories. *Id.* ¶¶ 35-37. Of these categories, the Commission asks which should be classified as “telecommunications services” and which as “information services.” *Id.* ¶¶ 42-44. The Commission also seeks input on the appropriate basis for asserting federal jurisdiction over the various categories of IP-enabled services. *Id.* ¶¶ 40-41. Finally, the Commission asks which specific regulatory requirements or benefits should apply to the specific categories of IP-enabled services. *Id.* ¶¶ 45-74.

## **Discussion**

### **II. THE COMMISSION SHOULD CLASSIFY IP-ENABLED SERVICES AS INFORMATION SERVICES SUBJECT EXCLUSIVELY TO FEDERAL JURISDICTION**

#### **A. The Commission Should Avoid Any Attempt to Categorize IP-Enabled Services Into Existing Statutory Classifications**

The Commission asks whether it would be useful to divide IP-enabled services into discrete categories, and, if so, how those categories should be defined. *NPRM* ¶¶ 35-37. Once those categories are established, the Commission asks which should be classified as “telecommunications services” and which as “information services.” *Id.* ¶¶ 42-44.

Attempting to classify the “dizzying array”<sup>55</sup> of IP-enabled services into statutory boxes is a Herculean task that the Commission should refrain from undertaking. Classification of IP-enabled services will necessarily engender a degree of arbitrary line drawing that will create uncertainty for service providers and burdens for the Commission. As explained in a 1999 Commission Working Paper, “[a]s more services are offered that use the Internet Protocol in a

---

<sup>55</sup> *NPRM* at n.13 (noting the “dizzying array of IP-enabled services, ranging from presence management to multimedia conferencing to unified messaging”); *id.* ¶¶ 16-22 (discussing new IP-enabled services).

packet-switched environment, it becomes increasingly difficult to determine where the telecommunications service ends and the information service begins.”<sup>56</sup> This statement is no less true today. IP-enabled services include a wide variety of network architectures, technologies, and applications. IP traffic travels as indistinguishable packets of digital bits, thereby blurring the lines between traditional services and categories.

Ultimately, as networks move to an all IP-based world, all instant-messaging, video-conferencing, e-mail, IP television, and other technologies that utilize Internet communications are likely to have a VoIP component. The regulatory treatment decided in this proceeding will have a dramatic impact on how these future technologies will emerge. Consumer demand and not regulatory classifications should drive the evolution of these new IP-enabled products and services. For example, if “phone-to-phone” IP-enabled services are subject to different regulations than other IP-enabled services, this will prompt manufacturers to design devices that do not satisfy the definition of a “phone” rather than designing devices solely to meet consumer demand. Differential regulation is both undesirable and will lead to easy but uneconomic artifacts in implementation to escape regulation.

Even if the Commission were to establish categories of IP-enabled services, there will always be uncertainty as to which category applies to a particular IP-enabled product or service. The Commission cannot predict the future of IP-enabled products and services. There will inevitably be some services that straddle the line between one or more categories, leading providers of these services to seek clarification from the Commission. In turn, such a service-by-service determination as to which category applies to a particular IP-enabled service will lead to

---

<sup>56</sup> Jason Oxman, *The FCC and the Unregulation of the Internet*, OPP Working Paper No. 31, at 22.

uncertainty in the marketplace and will require an enormous expenditure of resources from both regulators and the regulated.

For these reasons, the Commission should clarify that all IP-enabled services are “information” services subject to the Commission’s ancillary jurisdiction under Title I of the Communications Act. Congress has provided the Commission with ancillary authority under Title I to impose regulations on information services as may be necessary to carry out its other mandates. *FWD Order* n.69. Using this authority, the Commission can selectively impose certain regulations on IP-enabled services only after a need for such regulation emerges as IP-enabled services evolve.

**B. IP-Enabled Services Are Interstate in Nature and Should Thus Be Subject Exclusively to the Commission’s Jurisdiction**

Separate and apart from its finding that IP-enabled services are “information” services, the Commission should also clarify in this proceeding that IP-enabled services are “interstate” in nature and therefore subject exclusively to the Commission’s jurisdiction. One of the inherent characteristics of IP-enabled services, and one of its advantages, is that it is entirely geographically neutral. There is no dedicated transmission facility required, there are no facilities required to be located locally. Internet traffic can travel anywhere in the world with no material difference in cost, and facilities which act on the call can be located anywhere.<sup>57</sup> Moreover, there is currently no method to identify or distinguish IP-voice from other IP traffic, or to determine the jurisdictional nature of the traffic. Any attempt by the provider to determine the content or jurisdiction of the transmission necessarily raises significant privacy issues that do not exist in the traditional circuit-switched environment.

---

<sup>57</sup> *NPRM* ¶ 4 (“Packets routed across a global network with multiple access points defy jurisdictional boundaries.”).

For this reason, IP-enabled services can only be considered interstate in nature. Given the complexities associated with IP services, including the inseparability of interstate and intrastate IP communications, it is for the Commission – not the individual states – to determine whether and how to regulate IP-enabled services. Section 2(a) of the Communications Act gives the Commission exclusive jurisdiction over interstate communications and precludes state regulation of interstate communications. 47 U.S.C. § 152(a); *see also FWD Order* n.57. As it did with FWD and Internet Service Provider traffic, the Commission should clarify that all IP-enabled services traffic, including VoIP, is jurisdictionally interstate, thereby placing it under the purview of federal regulators rather than state public utility commissions.<sup>58</sup>

By declaring all IP-enabled services traffic, including VoIP, to be jurisdictionally interstate, the Commission will be avoiding a patchwork of state regulation, which risks a chilling effect on innovation and competition:

If federal rules governing Internet telephony are problematic, state regulations seem even harder to justify. . . . There is a good argument that Internet services should be treated as inherently interstate. The possibility that fifty separate state commission could choose to regulate providers of Internet telephony services within their state[s] (however that would be defined), already may be exerting a chilling influence on the Internet telephony market.<sup>59</sup>

The specter of state-by-state regulation of VoIP resurfaced last week when the New York Public Service Commission (“NYPSC”) declared that Vonage is a “telephone corporation” under New

---

<sup>58</sup> *See FWD Order* ¶¶ 15-25; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking*, 14 FCC Rcd 3689 (1999) (subsequent history omitted); *In the Matter of Starpower Communications v. Verizon South, Inc.*, 17 FCC Rcd 6873, ¶ 30 (2002) (“ISP-bound traffic is jurisdictionally interstate.”).

<sup>59</sup> Kevin Werbach, FCC Office of Plans and Policy, *Digital Tornado: The Internet and Telecommunications Policy*, at 40 (March 1997).

York law and is therefore subject to the jurisdiction of the NYPSC.<sup>60</sup> California,<sup>61</sup> Michigan,<sup>62</sup> and Utah<sup>63</sup> are considering similar action. Prompt action by the Commission to declare IP-enabled services as interstate in nature is essential to prevent these and other states from regulating VoIP and other IP-enabled services. As the Commission recently recognized in the *FWD Order*, state regulation would impose severe burdens on providers of IP-enabled services:

[I]f Pulver were subject to state regulation, it would have to satisfy the requirements of more than 50 state and other jurisdictions with more than 50 different certification, tariffing and other regulatory obligations. . . . [A]llowing the imposition of state regulation would eliminate any benefit of using the Internet to provide the service: the Internet enables individuals and small providers, such as Pulver, to reach a global market simply by attaching a server to the Internet; requiring Pulver to submit to more than 50 different regulatory regimes as soon as it did so would eliminate this fundamental advantage of IP- based communication. Certainly, it is this kind of impact Congress considered when it made clear statements about leaving the Internet and interactive computer services free of unnecessary federal and state regulation . . . . *FWD Order* ¶ 25.

States will always retain a role to protect consumers from fraud and other abusive practices, such as through complaints filed with a state Attorney General to enforce state consumer protection laws, but there is no need to subject IP-enabled services to traditional state public-utility-style consumer protection regulations. These regulations were adopted at a time

---

<sup>60</sup> *New York Public Service Commission, Order Establishing Balanced Regulatory Framework for Vonage Holdings Corporation*, Case No. 03-C-1285 (May 21, 2004).

<sup>61</sup> *California Public Utilities Commission, Order Instituting Investigation on the Commission's Own Motion to Determine the Extent to Which the Public Utility Telephone Service Known as Voice over Internet Protocol Should Be Exempted from Regulatory Requirements, Order Instituting Investigation*, Investigation 04-02-007 (mailing date February 19, 2004).

<sup>62</sup> *Michigan Public Service Commission, In the Matter, on the Commission's Own Motion, to Commence an Investigation into Voice Over Internet Protocol Issues in Michigan*, Docket U-14073 (issued March 16, 2004) (available at: [http://www.cis.state.mi.us/mpsc/orders/comm/2004/u-14073\\_03-16-2004.pdf](http://www.cis.state.mi.us/mpsc/orders/comm/2004/u-14073_03-16-2004.pdf)).

<sup>63</sup> *Utah Public Service Commission, In the Matter of an Investigation in the Regulation of Voice over the Internet Telephone Service (VoIP), Order Opening a Docket*, Docket No. 04-999-02 (January 22, 2004) (available at: <http://www.psc.state.ut.us/misc/04orders/Jan/0499902ood.htm>).

when there was a single provider of phone service. Now, in a competitive telecommunications environment, service providers cannot afford to provide consumers with anything but quality service.

### **III. SPECIFIC REGULATORY GOALS AS APPLIED TO IP-ENABLED SERVICES CAN BE ACHIEVED EITHER THROUGH VOLUNTARY EFFORTS OR THROUGH REFORM OF EXISTING REGULATIONS**

The Commission asks which particular regulatory requirements should apply to IP-enabled services. *NPRM* ¶ 48. The VON Coalition agrees that there are important social policy issues relating to IP-enabled services where the Commission and state regulators have a legitimate role. These legitimate concerns, however, can be addressed without having to declare IP-enabled services as “telecommunications services” or imposing heavy regulation on IP-enabled services. As discussed below, some of these requirements can be satisfied through voluntary efforts, some through reform of existing regulations, and certain requirements need not be applied to IP-enabled services at all.

#### **A. Certain Regulatory Goals Can Best Be Accomplished Through Voluntary Efforts Encouraged by the Commission**

The IP-enabled services industry has a proven track record of voluntarily addressing certain social policy goals, such as provision of emergency services and access to persons with disabilities. These goals can best be achieved through voluntary efforts encouraged by the Commission but without specific regulatory mandates. For example, with respect to 911/E911 service, representatives of the IP-enabled services industry have been voluntarily working with the National Emergency Number Association’s (“NENA”) VoIP/Packet Technical Committee and VoIP Operations Committee to assess the current state of 911 provisioning in VoIP

environments and to develop solutions.<sup>64</sup> In December 2003, NENA and members of the IP-enabled services industry agreed on a set of key elements for providing E911 to VoIP users.<sup>65</sup> The Commission acknowledges these voluntary efforts in the *NPRM*, noting that it “do[es] not presume at this point that direct regulation would be required” with respect to 911/E911 services. *NPRM* ¶ 56. The Commission has also played a vital role in facilitating these voluntary efforts by holding a “Solutions Summit” in March 2004 to address 911/E911 access by users of IP-enabled services.<sup>66</sup> There are important differences between the provision of 911 for traditional PSTN traffic and for IP traffic, but there is every reason to expect that technical solutions exist to provide users with reliable access to public safety services.<sup>67</sup>

The IP-enabled services industry has also undertaken voluntary efforts to ensure that persons with disabilities are provided access to IP services. For example, the IP-enabled services industry has worked to develop and implement technology that is interoperable with TTY devices. As with the case of emergency services, the Commission has played a vital role in facilitating voluntary industry efforts to afford persons with disabilities access to IP-enabled services by holding a “Solutions Summit” in May 2004.<sup>68</sup> Finally, it is worth noting that the

---

<sup>64</sup> Information about the NENA August 2003 VoIP conference, including presentations, is available at <http://www.nena9-1-1.org>.

<sup>65</sup> See *Press Release, Public Safety and Internet Leaders Connect on 9-1-1* (December 1, 2003) (available at: <http://www.nena.org/NENAVONVOIP%20press%20release%20FINAL%20112603.pdf>).

<sup>66</sup> *News Release, FCC Internet Policy Working Group to Hold First “Solutions Summit” on Thursday, March 18, 2004* (February 12, 2004).

<sup>67</sup> *NPRM* ¶ 53 (“We recognize, too, that IP-enabled services may enhance the capabilities of PSAPs and first responders – and thus promote public safety – by providing information that cannot be conveyed by non-IP-enabled systems.”).

<sup>68</sup> *Public Notice, FCC Announces Agenda for May 7, 2004 “Solutions Summit” on Disability Access Issues Associated with Internet-Protocol Based Communications Services*, WC Docket No. 04-36, DA 04-1051 (April 20, 2004).

deployment of IP-enabled services has had positive implications for access to communications by the hearing impaired. For instance, video relay service, an Internet-based video interpreting service for the deaf, now offers callers options involving web cameras for sign language.

As demonstrated in the cases of emergency services and access to persons with disabilities, certain regulatory goals as applied to IP-enabled services can best be achieved through voluntary efforts encouraged by the Commission but without specific regulatory mandates.

**B. The Commission Must Reform the Existing Regulatory Frameworks Governing USF and Intercarrier Compensation**

The VON Coalition believes that IP-enabled services already meet the goals of universal service and intercarrier compensation, and the Commission should accordingly refrain from imposing these requirements on providers of IP-enabled services. But before the Commission even considers whether to impose these requirements on IP-enabled services, the Commission must first reform the existing regulatory frameworks governing these obligations.

The VON Coalition has longed supported the goals of universal service, provided the funding mechanism is explicit and sustainable.<sup>69</sup> As an initial matter, it must be noted that if one of the goals of universal service is to provide affordable voice communications to rural America, then no technology offers more promise for providing more affordable communications, not only to rural America, but to all of America. Moreover, the deployment of VoIP has not been demonstrated to have had a significant impact on universal service funding because most use of VoIP has been focused on international traffic or enterprise deployment which is outside the

---

<sup>69</sup> Even under the current USF regime, VoIP providers contribute to universal service either directly or indirectly. When an information service provider purchases an underlying telecommunications input, this generates indirect contributions to universal service support mechanisms.

funding regime for universal service support. In the pending universal service rulemaking,<sup>70</sup> the VON Coalition has urged the Commission to move away from a USF contribution methodology based on end-user telecommunications revenues and to instead require carriers to contribute to the USF based on either the number of connections they provide to the public network<sup>71</sup> or the number of working telephone numbers they have.<sup>72</sup> A numbers- or connections-based contribution mechanism would better ensure the continued sustainability of the USF than any attempt simply to include IP-enabled and other information services in the current revenue-based mechanism.

As for inter-carrier compensation, the Commission should move away from a hodgepodge of implicit subsidies and towards a rational series of voluntary inter-carrier business arrangements.<sup>73</sup> At the federal level, Congress has required the Commission to eliminate inefficient implicit subsidies from interstate access charges. 47 U.S.C. § 254(e).<sup>74</sup> Rather than imposing legacy access charges adopted for a circuit-switched environment on IP-enabled

---

<sup>70</sup> *Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002).

<sup>71</sup> VON Coalition, Reply Comments, CC Docket No. 96-45 et al (May 13, 2002).

<sup>72</sup> VON Coalition, Reply Comments, CC Docket No. 96-45 et al (April 18, 2003).

<sup>73</sup> The impact of VoIP on access charges revenue is minimized by current rules governing access charges that accommodate ISP usage. Under an access charge exemption dating to the 1980's, ISPs compensate local exchange carriers through the purchase of business lines, not switched access.

<sup>74</sup> Chairman Powell recently remarked that "We must make all implicit subsidies explicit to ensure continued high-quality, affordable service and network investment. To that end, I applaud those states that have undertaken efforts to adjust retail rate structures and intra-state access charges." *Remarks of Michael K. Powell, Chairman, FCC, at the National Association of Regulatory Commissioners General Assembly*, Washington, DC (March 10, 2004) (available at: [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-244737A1.doc](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-244737A1.doc)).

services, the Commission should first overhaul the current access charge regime.<sup>75</sup> “Bill and keep” may well turn out to be an effective arrangement as it has been in much of the IP world. The Commission’s recent decision that interstate access charges may be imposed on AT&T’s particular form of phone-to-phone IP telephony demonstrates the problems of applying a legacy regime to a new and emerging technology. *See AT&T Declaratory Ruling*. IP-enabled service providers are now forced to spend inordinate resources determining whether their service falls within the lines drawn by the Commission and, if so, how to craft technical solutions to avoid such regulation. Such resources would be better spent developing new and innovative services for consumers. Moreover, the Commission’s decision has created uncertainty for investors, who can only speculate as to whether a particular IP-enabled service is subject to legacy access charges, perhaps even retroactively. Such uncertainty chills investment by slowing deployment of IP gateways and stunts innovation for this new technology. Finally, the decision is particularly bad for consumers. For many Americans who do not yet have or cannot afford a broadband connection, phone-to-phone VoIP is the only benefit of this new technology available. With the specter of legacy access charges, consumers may no longer be able to enjoy the benefits of this technology.

**C. Title II Consumer Protection and Economic Regulations Are Unnecessary for IP-Enabled Services**

Neither Title II consumer protection nor economic regulations are necessary for IP-enabled services. Assuming IP-enabled services are classified as unregulated information services, these Title II obligations would not apply. Nor should the Commission exercise its ancillary jurisdiction to extend these requirements to IP-enabled services.

---

<sup>75</sup> In 2001, the Commission initiated a proceeding to revise the intercarrier compensation regime. *Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking*, 16 FCC Rcd 9610 (2001).

Title II obligations intended to protect consumers, such as customer proprietary network information (“CPNI”) rules, rules prohibiting “slamming,” and “Truth-in-Billing” rules, are unnecessary for providers of IP-enabled services. *NPRM* ¶¶ 71-72. In a competitive telecommunications marketplace, VoIP providers must provide these types of basic consumer protections in order to attract or retain customers. If a VoIP provider does not offer such protections, it will lose customers to competitors who do.

The Commission also asks whether certain Title II economic regulations should apply to providers of IP-enabled services, such as common carrier, interconnection, and number portability requirements. *NPRM* ¶¶ 73-74. The historic reason for these types of regulations is the existence of monopoly providers and an infrastructure that made it nearly impossible for competitors to compete. In contrast, a provider of a VoIP service has no need to own or build the infrastructure on which the service is delivered and, since there are no historic or even nascent VoIP monopolies, there is simply no basis for such economic regulation of any such provider that does not have significant market power. In that case the costs of regulation are unmatched by any public benefit.

## **Conclusion**

For the reasons stated above, the VON Coalition requests that the Commission act consistently with the views expressed herein.

Respectfully submitted,

### **THE VON COALITION**

/s/Bruce D. Jacobs

Bruce D. Jacobs

Glenn S. Richards

David S. Konczal

**SHAW PITTMAN LLP**

2300 N Street, N.W.

Washington, D.C. 20037-1128

Telephone: (202) 663-8000

Dated: May 28, 2004