

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matters of	)	
	)	
A National Broadband Plan for our Future	)	GN Docket No. 09-51
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended By the Broadband Data Improvement Act	)	GN Docket No. 09-137
	)	

**COMMENTS OF THE VOICE ON THE NET COALITION -  
NBP PUBLIC NOTICE #25**

The Voice on the Net Coalition (VON Coalition)<sup>1</sup> hereby submits these comments in response to the Commission’s request for comments on whether to issue a Notice of Inquiry (NOI) relating to the appropriate policy framework to facilitate and respond to the transition in technology and services from the circuit-switched telephone networks to IP-based networks.<sup>2</sup> The transition to IP services and networks is happening and will continue to happen across all platforms. The Commission has the opportunity in the near future to facilitate and promote this transition by making decisions in a number of open

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<sup>1</sup> The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. VON Coalition members are developing and delivering voice and other communications applications that may be used over the Internet. VON Coalition members include Cisco, Covad, Google, iBasis, Intel, Microsoft, New Global Telecom, Skype, T-Mobile and Yahoo.

<sup>2</sup> See Public Notice, DA 09-2517, GN Dockets 09-47, 09-51, 09-137 (December 1, 2009).

proceedings – and without the need for another NOI -- that will encourage further investment and development in IP networks and applications by carriers, developers and the financial community.

## DISCUSSION

The past three years have seen an explosion in the investment and the adoption of IP services and IP networks.<sup>3</sup> The convergence of voice, video and data challenge traditional notions of how consumers use their telephones and television sets. This evolution now means that all devices, phones, televisions, and computers, are each performing more and more functions and leveraging off the other. Voice over Internet Protocol (VoIP) has become the obvious choice for residential, business and government users seeking to reduce costs while increasing functionality.<sup>4</sup>

The Commission has helped facilitate public acceptance of IP services by limiting regulation of IP-enabled voice to those services that are a replacement for traditional phone service, imposing requirements only where necessary to protect consumers or aid public safety.<sup>5</sup> The Commission has wisely refused to broadly regulate new services, simply because they may offer certain, similar functionality to traditional telecommunications services.<sup>6</sup> The Commission must maintain this balance – regulating only when it must to correct for market failures or consistent with its public safety mandates.

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<sup>3</sup> See, e.g., Rethinking Voice as an App, at <http://www.technologyreview.com/communications/24239/?a=f>.

<sup>4</sup> Report: VoIP market grew to \$20.7 billion, FierceVoIP, at <http://www.fiercevoip.com/story/ip-telephony-grew-10-percent-q3-2009/2009-12-10>.

<sup>5</sup> See, e.g., *E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245 (2005); *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, 20 FCC Rcd 14989 (2005).

<sup>6</sup> For example, the Commission refused to act on petition filed in 1996 by the America's Carriers Telecommunications Association, which was seeking a ruling that providers of Internet phone software and hardware should be regulated as common carrier. See Public Notice, DA 96-414, RM No. 8775 (March 25, 1996).

**Broadband.** Internet availability and adoption must be universal. The transition to an all-IP world must not leave behind any geographic areas of the country or classes of users. While most users have access to at least one broadband option, there are still areas where there is no Internet access or only dial-up may be available. Also, problematically, large classes of users, including seniors, minority groups and low income individuals do not own computers or purchase Internet services when they are available.

As required by Congress as part of the stimulus legislation passed earlier this year, the Commission is in the midst of the development of a monumental National Broadband Plan that seeks to address these lingering issues of adoption and availability.<sup>7</sup> Once released in February, the report is expected to provide a complete picture of where we are today, where we want to be tomorrow and how we can best get there. This effort, along with the more than \$7 billion allocated by Congress to fund the expansion of broadband seeks to address issues related to broadband deployment as well as adoption. These efforts will provide grants to the states to complete mapping efforts that will identify unserved areas, provide funding to anchor institutions (such as schools and libraries) to encourage robust future proof broadband connectivity, and encourage adoption of broadband and access to compelling online content and services. Finally, the VON Coalition supports the Commission's initiative to examine current spectrum allocations, with the prospect that additional spectrum may be allocated for wireless broadband.<sup>8</sup>

The Commission should also seriously consider a complete overhaul of the current universal service program. A first step would be to consider proposals to include

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<sup>7</sup>A *National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket No. 09-51 (April 8, 2009).

<sup>8</sup> Data Sought on Uses of Spectrum, NBP Public Notice #26, GN Docket 09-51 (December 2, 2009).

broadband access as a supported service for lifeline and link-up eligible consumers.<sup>9</sup> For more than a decade, the Commission was able to use these important federal programs to expand the availability of basic telephone services to those most in economic need.

Similarly, the transition to an all-IP network will require modification of the subsidy system to ensure universal availability of broadband, and this can be done in the context of the open Universal Service Fund docket.<sup>10</sup>

**Universal Service Fund.** The FCC announcement on December 11, 2009, that the first quarter 2010 contribution rate for the first time will exceed 14 percent was a sobering reminder that universal service reform must be a top priority for the Commission.<sup>11</sup> From a contribution methodology perspective, there is almost unanimous agreement that reliance on interstate revenues to fund USF will not be sustainable as consumers utilize new forms of communications that do not align with existing definitions for telecommunications. After more than a decade, carriers continue to struggle with a Form 499 that does not adequately account for service bundles that include what were once called local and long distance services (but today do not recognize geographic boundaries), software, account management features, and information services.<sup>12</sup> There is also continued confusion as to the responsibility of payment by wholesale and retail

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<sup>9</sup> See, e.g., Policies to Increase Broadband Adoption at Home, by Robert D. Atkinson, published by the Information Technology & Innovation Foundation (November 2009).

<sup>10</sup> Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008).

<sup>11</sup> Proposed First Quarter 2010 Universal Service Contribution Factor, CC Docket 96-45, DA 09-2588 (December 11, 2009).

<sup>12</sup> See, e.g., Public Notice, Comment Sought on Request for Universal Service Fund Policy Guidance Requested by the Universal Service Administrative Company, DA 09-2117 (September 28, 2009).

providers, service providers to the government, international service providers and providers of managed services.<sup>13</sup>

The VON Coalition continues to support a numbers- or connections-based contribution methodology that will remove the guesswork from the payment process. For example, the Commission reports that as of December 31, 2008 there were 667 million telephone numbers assigned to end users.<sup>14</sup> VON's support for a numbers or connections approach reflects the importance of putting in place a framework that promotes IP services and does not damage the ability of IP services to emerge and grow.

From the expense side, the Commission must phase out funding of legacy networks and provide high cost support only for next generation networks – whether provided by incumbent carriers or others (including recipients of the federal stimulus dollars). As noted above, broadband access should be a supported service for lifeline and linkup, and for that to be successful, additional dollars paid in high cost areas must be used for the installation of broadband technology and networks that will allow all consumers to enjoy the benefits of the Internet and IP-enabled services. The Commission must recognize that next generation broadband networks can provide all services required for USF high cost support (though the Commission should revisit whether all those services are still necessary) and should have an equal opportunity to serve high cost areas and receive funding, if needed.

**Intercarrier Compensation and Interconnection.** To ensure that all Americans are able to take advantage of IP services, the Commission must reform intercarrier compensation

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<sup>13</sup> See, e.g., Comment Sought on Petition of Stratos Government Services, Inc. for Declaratory Ruling or Clarification Regarding Universal Service Fund Contributions, Public Notice, DA 09-2125 (September 28, 2009).

<sup>14</sup> Numbering Resource Utilization in the United States, NRUF data as of December 31, 2008, FCC Industry Analysis and Technology Division (September 2009).

so that current, artificially low prices for circuit switched connectivity do not deter consumers from making rational purchasing decisions for IP services. As the Commission defines a transition path to a forward looking compensation system, it must ensure that any solution it pursues does not harm the use of IP services. In order to achieve this and to rationalize the payment schemes, the VON Coalition supports a bill and keep system for all traffic, which would require carriers to recover their costs from end users, or, in limited circumstances, from an explicit subsidy, instead of through economically irrational intercarrier charges. In the alternative the Commission should consider a terminating access charge rate no higher than \$.0007 for all traffic, which the VON Coalition suggests will resolve many of the disputes before the Commission related to access pumping and call blocking.

Whatever changes are adopted, the Commission should not perpetuate the existing inefficient system by moving backward and applying legacy carrier access charges to VoIP traffic. The FCC should also exclude from legacy carrier access charges 1) any information service that uses VoIP; 2) offers one-way VoIP services; and/or 3) enables free VoIP services to consumers.<sup>15</sup> This policy will encourage the further innovation and development of IP communications, and prevent further litigation between telecommunications carriers and VoIP providers.<sup>16</sup>

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<sup>15</sup> The Commission should also classify as 'information services' those applications that involve net protocol conversion, namely by originating calls on IP networks and terminating on circuit-switched networks, or conversely by originating on circuit-switched networks and terminating on IP networks (collectively 'IP/PSTN' services).

<sup>16</sup> Eventually all traffic will originate and terminate on IP networks, and until then service providers will look for opportunities to exchange traffic in ways to avoid or reduce access payments. See, e.g., Sprint Establishes New Voice over IP (VoIP) Community Solution to Provide Significant Cost Savings to Wholesale VoIP Customers, at <http://www.fiercewireless.com/press-releases/sprint-establishes-new-voice-over-ip-voip-community-solution-provide-significant-cost>.

Moreover, to resolve questions concerning phantom traffic, the Commission should focus on identifying the carrier to be billed and should resolve the compensation component by affirming that terminating carriers are not permitted to impose access charges on any VoIP traffic. Appropriate phantom traffic rules should reflect the following principles:

#### Call Signaling Protections for Terminating Carriers

- All providers in the call stream must pass, without modification, signaling details except where not feasible with network technology deployed at the time the call was originated
- Telecommunications carriers are required to insert valid carrier identification information for billing purposes
- VoIP providers and carrier partners are not required to insert calling party number where not generated by originating party

Any intercarrier compensation structure should also confirm that carriers who sell wholesale services to VoIP providers are subject to Title II interconnection and compensation rights and obligations with regard to the VoIP traffic. In particular, Section 251 of the Communications Act allows competitive local exchange carriers to obtain interconnection and unbundled network elements that enable them to provide wholesale telecommunications to third party end users such as VoIP providers that offer retail VoIP products and services.

**Federal Preemption of IP-Enabled Services.** In 2004, the Commission issued two seminal decisions concerning IP communications. In the *Pulver Order*, the Commission found that Free World Dialup, a directory service that facilitated computer-to-computer communications over the Internet, was an information and not a telecommunications

service.<sup>17</sup> In the *Vonage Order*, the Commission found that Vonage's interconnected VoIP service was preempted from state regulation.<sup>18</sup> Though the *Pulver Order* was never challenged on appeal and the *Vonage Order* has been repeatedly upheld by federal courts, five years later VoIP providers continue to resist attempts by state regulators to tax and regulate VoIP services, including those pending today in Connecticut,<sup>19</sup> Louisiana,<sup>20</sup> Texas<sup>21</sup> and Vermont.<sup>22</sup>

VoIP and other IP services have been successful in the marketplace because they have remained largely free from traditional, federal telecommunication regulation and totally unfettered and unencumbered from state regulation. As part of its efforts to facilitate IP services, the Commission should take every opportunity to confirm the broad federal preemption of VoIP and other IP-enabled services, including most immediately in response to the petition filed by the Kansas and Nebraska Public Service Commissions seeking to impose state Universal Service Fund charges on nomadic VoIP providers.<sup>23</sup> Moreover, the Commission should confirm that interconnected VoIP and other IP-enabled services and applications are, to the extent they are regulated at all, information services, not subject to Title II requirements or obligation (including compensation), and only subject to the Commission requirements that are specifically imposed following a rulemaking that demonstrates such requirements are needed to promote public safety or

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<sup>17</sup> Memorandum Opinion and Order, 19 FCC Rcd 3307 (2004).

<sup>18</sup> Order, 19 FCC Rcd 22404 (2004, affd. Minnesota Pub. Util. Comm'n v. FCC, 483 F.3d 570 (8<sup>th</sup> Cir. March 21, 2007).

<sup>19</sup> Scope of Proceeding and Request for Written Comments, Connecticut Department of Public Utility Control Docket No. 08-07-15PH02 (August 5, 2009).

<sup>20</sup> Rulemaking to Study the Possible Development of Rules Applicable to Voice Over Internet Protocol, Louisiana Public Service Commission Docket No. R-28268 (July 23, 2009).

<sup>21</sup> Request for Comment, Rulemaking Related to the Regulatory Treatment of Voice Over Internet Protocol Services, Public Utility Commission of Texas Project No. 37614 (November 10, 2009).

<sup>22</sup> Proposal For Decision, Investigation into Regulation of Voice over Internet Protocol Services, Docket No. 7316 (released December 9, 2009).

<sup>23</sup> Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling, WC Docket No. 06-122.

