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

In the Matter of	)	
Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements	)	CC Docket No. 02-33; CC Dockets Nos. 95-20, 98-10

REPLY COMMENTS OF GENUITY SOLUTIONS, INC.

Genuity Solutions, Inc. ("Genuity")[1] hereby replies to the comments responding to the Commission's Notice of Proposed Rulemaking ("*Notice*")[2] addressing the regulatory framework for wireline broadband Internet access services.

Genuity agrees with the Commission and the great majority of commenters that advanced, broadband Internet access should be available to all Americans. Some commenters, however, would have the Commission undermine this goal by prematurely regulating voice services transmitted by Internet Protocol ("IP") technology, also known as voice-over-Internet-Protocol ("VOIP") service. These commenters argue that in the absence

[1] Genuity is a wholly owned subsidiary of Genuity Inc., which was created when GTE Corporation ("GTE") spun off its Internet backbone and related data business as a condition of the merger of Bell Atlantic Corporation and GTE. *GTE Corporation and Bell Atlantic Corporation,* 15 FCC Rcd 14032 (2000). Genuity is a facilities-based Internet infrastructure supplier offering a comprehensive set of managed Internet access, web hosting and value-added e-business services, such as virtual private networks for secure data transmission and security services. Genuity operates a global network consisting of domestic broadband fiber optic cable, points of presence where Internet access is provided to end users and secure data centers. Genuity is commonly regarded as a Tier 1 Internet backbone provider.

[2] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) ("*Notice*"). All comments filed on May 3, 2002, in CC Docket Nos. 02-33, 95-20 and 98-10 will hereinafter be shortcited.

of VOIP regulation, rapid migration of circuit-switched voice services to IP technology will prevent a "consistent approach" to the eventual deregulation of telecommunications.[3] Those concerns are not supported by the facts, and in any case this proceeding is not the appropriate time or vehicle for the Commission to reconsider the regulatory status of VOIP services. Rather, the Commission should address regulating such services, if at all, only after: (1) VOIP is better defined and entrenched in the marketplace; (2) a complete record concerning VOIP is developed; and (3) the Commission has in place an updated policy framework for advanced services.

A. Continued Non-Regulation Of VOIP Will Not Lead To Widespread Avoidance Of Common-Carrier Obligations

Some commenters suggest that continued classification of wireline Internet-based services as information services, as tentatively proposed in the *Notice*, will lead to the unplanned deregulation of wireline voice services as "the circuit switched network [is] replaced by a network providing all services as applications traveling over digital packet-switched facilities using IP-protocol."[4] This concern is entirely misplaced. The Commission has always treated VOIP as a non-regulated information service, and neither

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[3] *See, e.g.*, Comments of the California Internet Service Providers Association at 11; Comments of Allegiance Telecom, Inc. at 15-16; Comments of DSLnet Communications, LLC at 5, 16; Comments of Cbeyond Communications LLC at 21-22.

[4] Comments of Cbeyond Communications at 21-22 (citation omitted). Strangely enough, these commenters do not argue that common-carrier regulation of VOIP would, in itself, confer any public interest benefit. Instead, they contend that asymmetrical regulation of circuit-switched and IP-based voice services will complicate the important task of "establishing an appropriate deregulatory framework for provision of telecommunication services going forward." Comments of Cbeyond Communications LLC at 22; Comments of the California Internet Service Providers Association at 11; Comments of Allegiance Telecom, Inc. at 16; Comments of DSLnet Communications, LLC at 16. The commenters do not explain why extending an admittedly obsolete regulatory model to a new technology, as a step toward comprehensive removal of that model, would benefit the public interest. In fact, such a regulatory initiative would be a needless step backward that would only hamper the deployment of IP-based voice applications to consumers.

the regulatory advantages of that classification, nor the evolving technology of IP communications, has yet resulted in widespread migration of voice services to IP-based platforms. Accordingly, there is no reason to anticipate -- and no evidence in the record to suggest -- that a decision merely to continue the present classification of VOIP as an information service will cause the rapid demise of circuit-switched voice telephone services and the regulations to which those services are subject.

B. Regulation of VOIP While It Is Still In The Early Stages Of Development Is Detrimental To Its Continued Growth And Viability

The Commission historically has avoided needless regulation of new technologies in an effort to speed their development and availability.[5] The Commission should continue to apply this policy to VOIP. VOIP, which began a few short years ago as a hardware and software application for desktop computers, has evolved into a technology with a wide variety of actual and potential uses and service configurations. Although these services already have brought a number of benefits to consumers -- including lower-cost service and downward pressure on international settlement rates[6] -- the technology still is developing and faces a number of technical and business challenges before it achieves its full potential. For example, IP vendors use a wide range of control standards, not all of which are interoperable with each other. With the proliferation of these standards, ubiquitous VOIP interoperability becomes even less likely.[7] Equipment makers and service providers

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[5] *See, e.g., Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, 11531-45 (1998) ("*Universal Service Report*") (declining to impose common-carrier regulations on IP telephony); *see also Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, 104 FCC 2d 958 (1986) ("*Third Computer Inquiry*") (declining to subject enhanced services to common-carrier regulation).

[6] *See Universal Service Report,* 13 FCC Rcd at 11545 ("IP telephony [service] serves the public interest by placing significant downward pressure on international settlement rates and consumer prices.") (citation omitted).

[7] *See* Edwin Mier, "The Enterprise VOIP Update," Network World Fusion, Aug. 27, 2001, at 2-4, available at http://www.nwfusion.com/research/2001/0827featside.html.

undoubtedly have the will and the talent needed to overcome these limitations and improve the value of VOIP services to consumers; but those efforts will be delayed if the Commission imposes needless regulatory burdens on these developing services.

Finally, premature regulation of VOIP would hinder the development of this technology internationally as well as domestically. As ITAA points out in its comments, the United States would have difficulty advocating non-regulation of the Internet by other national administrations if it was perceived as having imposed legacy regulation on an important Internet-based service in the United States.[8]

C. The Record Does Not Provide Sufficient Information For An Informed Decision Concerning The Regulatory Status Of VOIP

The Commission cannot support regulation of VOIP in the absence of a more complete record that focuses upon the specific characteristics of VOIP services and technologies. The Commission did not specifically address the regulatory treatment of VOIP in the *Notice*, except to ask generally whether parties expect voice traffic to migrate to broadband Internet platforms and, if so, how the Universal Service Fund ("USF") may be affected by that trend.[9] A handful of commenters address this general query, but none of the comments addresses the business or technology of VOIP services in detail. If the Commission decides to revisit the regulatory status of VOIP, it first must provide the public with the opportunity to comment on specific characteristics of VOIP and its impact on the communications market. Until that time, VOIP should remain unregulated.[10]

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[8] Comments of Information Technology Association of America ("ITAA") at 54.

[9] *See Notice*, at 3055.

[10] As the Commission pointed out in its 1998 *Universal Service Report* at 11503, "it is [not] appropriate to make any definitive pronouncements [concerning VOIP regulation] in the absence of a more complete record that focused on individual service offerings."

D. Any Regulation Of VOIP Must Be Based Upon An Improved Framework For Advanced Services Rather Than Legacy Common Carrier Regulations

The Commission has consistently refused to saddle information services generally -- and the Internet in particular -- with legacy common carrier regulations.[11] This policy is one of the Commission's great success stories, and has helped the United States become and remain a world leader in information services and technologies.[12]

Consistent with this principle, the Commission recognizes in the *Notice* that automatic extension of legacy regulations to new technologies might not serve the public interest.[13] The Commission also has initiated proceedings to review its policies regarding advanced services. The Commission should wait until it has developed an improved framework for advanced services regulation, and until the VOIP market more fully develops, before hobbling VOIP with legacy common carrier obligations. To do otherwise would negate the technological accomplishments already achieved and retard future VOIP development.

CONCLUSION

The Commission should refrain from addressing the regulatory treatment of VOIP services in the instant proceeding. VOIP remains a nascent technology, and to impose legacy common carriage regulations on this new technology without the benefit of a full record

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[11] *See, e.g.*, *Third Computer Inquiry,* supra note 5.

[12] In its *Universal Service Report*, the Commission recognized that IP telephony services do not fit within the traditional common carrier framework and abstained from applying those regulations to IP technology. *Universal Service Report,* 13 FCC Rcd at 11541-45.

[13] *See Notice* at 3023 ("The Commission will avoid simply extending existing rules that were crafted to govern legacy services provided over legacy networks.")

would be detrimental to the on-going development of these services. The Commission should therefore maintain its deregulatory approach to IP-based services generally, and VOIP services in particular.

Respectfully submitted,

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