

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

In the Matter of)	
)	
Vonage Holdings Corporation)	WC Docket No. 03-211
)	
Petition for Declaratory Ruling Concerning)	
an Order of the Minnesota Public Utilities)	
Commission)	

COMMENTS OF 8X8, INC.

Bryan Martin (bryan.martin@8x8.com)
Chief Executive Officer
8X8, INC.
2445 Mission College Boulevard
Santa Clara, CA 95054
Tel: 408-727-1885
Fax: 408-980-0432

Christy C. Kunin (ckunin@graycary.com)
Larry A. Blosser (lblosser@graycary.com)
Michael A. Schneider (mschneider@graycary.com)
GRAY CARY WARE & FREIDENRICH, LLP
1625 Massachusetts Avenue, NW, Suite 300
Washington, D.C. 20036
Tel: 202-238-7700
Fax: 203-238-7701

Counsel for 8x8, Inc.

Dated: October 27, 2003

SUMMARY

As a provider of Voice over Internet Protocol (“VoIP”) technology and services, 8x8 supports the relief sought by Vonage in its Petition and urges the Commission to act now to ensure that this vibrant service sector can continue to flourish, bringing consumers innovative, quality IP service choices.

VoIP services as provided by 8x8 and Vonage fall squarely within the definition of information services. The VoIP services require specialized computer equipment and involve a net protocol conversion. As such these services fall within the Commission’s definition of information services, which are not regulated under Title II of the Communications Act.

As Judge Davis concluded in *Vonage Holdings Corporation v. Minnesota Public Utilities Commission*, federal policy precludes state regulation of these services. Judge Davis’s clarification of federal law mandating that the Internet remain unregulated has addressed the precise situation raised in the *Vonage Petition*, but does not obviate the need for action now by this Commission. Other states have taken steps toward the Minnesota posture. Forcing the industry to litigate each state’s assertion of jurisdiction individually should be avoided in the interest of certainty and consistency. Accordingly, the issues raised in the *Vonage Petition* are still ripe for immediate Commission action.

Requiring VoIP providers to comply with state laws governing providers of telephone service is inconsistent with the federal policies aimed to limit regulation of nascent technologies. Moreover, these rules are unsuitable for IP Communications and in many cases cannot be complied with due the nature and efficiencies of IP routing, or are unnecessary and unreasonable in light of the manner in which VoIP providers are offering service.

8x8 also agrees with Vonage that preemption is necessary because of the impossibility of separating the Internet, or any service offered over it, into intrastate and interstate components.

While suitable alternatives may develop in the future, the current IP network does not enable providers to identify the geographic nature of the traffic traversing the Internet. Assertions of state regulatory authority over IP communications raise significant policy issues that implicate the broader Internet community.

Finally, 8x8 supports Vonage's request that the Commission find that the certain specific E911 requirements imposed by the Minnesota Commission are in conflict with federal policies. While 8x8 and other VoIP providers seek to provide access to emergency services in conjunction with their VoIP offerings, the existing requirements, which are tethered to and dependent upon the PSTN, neither work in an IP environment nor take advantage of the significant enhanced capabilities of the IP network.

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8x8, Inc. (“8x8”), through its attorneys, submits these comments pursuant to the Federal Communications Commission’s (“FCC’s” or “Commission’s”) Public Notice in the above-captioned proceeding.¹ On September 22, 2003, Vonage Holdings Corporation (“Vonage”) filed a petition requesting that the Commission preempt an order of the Minnesota Public Utilities Commission (“Minnesota Commission”) requiring Vonage to comply with state laws governing providers of telephone service.² Vonage argues that it is a provider of information services (and not a telecommunications carrier or common carrier subject to Title II of the Communications Act of 1934).³ Specifically, Vonage asks that the Commission find that the certain specific E911 requirements imposed by the Minnesota Commission are in conflict with federal policies.⁴ Finally, Vonage states that preemption is necessary because of the impossibility of separating the Internet, or any service offered over it, into intrastate and interstate components.⁵ As a provider

¹ Public Notice, Pleading Cycle Established for Comments on the Vonage Petition for Declaratory Ruling, WC Docket No. 03-211, DA 03-2952 (Sept. 26, 2003).

² Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211 (filed Sept. 22, 2003) (“*Vonage Petition*”).

³ *Id.* at 12.

⁴ *Id.* at 24.

⁵ *Id.* at 27.

of Voice over Internet Protocol (“VoIP”) technology and services, 8x8 supports the relief sought by Vonage in its Petition and urges the Commission to act now to ensure that this vibrant service sector can continue to flourish, bringing consumers innovative, quality IP service choices.

INTRODUCTION & BACKGROUND

I. 8X8’S TECHNOLOGY OFFERS CONSUMERS IP VOICE AND VIDEO SERVICES OVER THE INTERNET

8x8 and its subsidiaries develop and market technology for Internet Protocol (IP) voice and video communications. 8x8 offers IP voice and video services that enable its customers to utilize IP-terminal adapters, computer software and IP-based videophones over virtually any broadband connection to the Internet. 8x8 is a publicly traded company on the NASDAQ SmallCap market (ticker symbol EGHT). Further details regarding the company can be obtained by consulting 8x8’s quarterly report on Form 10-Q for the quarter ending June 30, 2003 as filed with the Securities and Exchange Commission (SEC).

8x8’s service is marketed under the brand name Packet8. The Packet8 service is accessed by 8x8’s customers via each customer’s existing Internet connection. 8x8 does not supply Internet connectivity. Rather its customers obtain and pay for their own broadband access. The IP endpoints (terminal adapters and videophones) on the Packet8 network can call or be called by any regular telephone on the Public Switched Telephone Network (“PSTN”), and this connectivity to the PSTN is provided over third-party, regulated telecommunications carrier facilities. Additional information about Packet8 can be found on the Internet at

<http://www.packet8.net>.

II. VOIP TECHNOLOGY AND SERVICES OFFER SIGNIFICANT PUBLIC BENEFITS

The Internet has revolutionized the way people communicate. VoIP technology extends the power of the Internet to voice communications, and benefits the public with cost savings, improved sound quality, and greater competition among service providers. As such, these services epitomize the dynamic competitive marketplace this Commission's policies have sought to foster. The VoIP industry however is still in its infancy, and now, at a time when the technology sector has been set back by a major economic downturn, inconsistent treatment and a heavy-handed regulatory environment threaten to stifle growth and innovation in IP communications. 8x8 urges the FCC to take action to help ensure that the public is not deprived of the benefits that VoIP technology has to offer.

A. VoIP Communication is Less Expensive and More Efficient than Traditional Telephone Services

VoIP communication is routed using "packet switching," and is more efficient than traditional circuit switching, which requires a dedicated phone line for each call.⁶ Because packet-switched networks can handle many voice calls and other electronic communications simultaneously over the same connection, they are more efficient and less expensive than traditional circuit-switched networks. Due to the highly competitive nature of Internet business, these savings are passed on to consumers, resulting in lower communications costs for individuals and businesses.⁷

⁶ NEWTON'S TELECOM DICTIONARY 629 (16th ed. 2000)

⁷ Marcelo Rodriguez, *Leaving the Phone Company Out of the Loop: Advances in Internet Telephony Slash Bills and Irk Bells*, San Jose Mercury News (Aug. 2003) at <http://www.bayarea.com/mld/mercurynews/business/6478054.htm>.

B. VoIP Can Provide Superior Sound Quality and Increased Functionality Beyond What is Possible Using Traditional Telephone Services

With advances in VoIP technology and the increasing availability of broadband connections to the Internet, the quality of VoIP services has improved dramatically. Voice over IP services are already at a point where the services provided can surpass the sound quality that is available over a traditional circuit switched network, and further improvements will surely follow if the industry is allowed to mature.⁸ The open nature of the Internet as a platform for VoIP services also allows for innovative new features, such as the ability to take your phone number with you when you travel, advanced voice-mail management, individualized call-handling methods, sophisticated call-blocking mechanisms, and the ability to send and receive full motion video in connection with voice transmission, as is the case with 8x8's Desktop Videophone model 325 (DV325) device.⁹

C. VoIP Offers Increased Competition and Lower Barriers To Entry

Historically, voice communications have been controlled by a few companies who owned the underlying proprietary architecture of our telecommunications network. The Internet by contrast is an open architecture, with low barriers to entry for companies such as Vonage and 8x8, which provide competition in the market for voice communications. These low barriers to entry create a highly competitive business environment for VoIP services, and compel VoIP providers to innovate and create higher quality and more diverse offerings.

⁸ Tiffany Kary, *Net Telephony Poised to Take Off?*, News.com (May 2002) at <http://news.com.com/2100-1033-930014.html>.

⁹ *Leaving the Phone Company Out of the Loop*, *supra*, note 7.

D. VoIP Offers a Decentralized and Redundant System of Communication

The Internet was originally developed to provide our military with a method of communication that could withstand a nuclear strike.¹⁰ The system was designed to be decentralized, such that if cities were destroyed communication could continue between the remaining cities. The packet-switched architecture of the Internet makes the system more reliable and less vulnerable to widespread outage in the event of a failure in part of the network. The utilization of this robust and reliable network for voice, data and video communications provides a benefit to the public and could prevent consumers from losing communications capabilities in the event of a network failure.

E. VoIP Adds Value to Broadband Internet Access and Should Spur Broadband Adoption

The availability of VoIP services adds value to existing broadband connections, and provides added incentive for the adoption of broadband Internet access by consumers. Ubiquitous broadband connectivity will open the door for a host of new services that require a large installed base of connected users. Examples include broadband delivery of full-length motion pictures, as is being made available in conjunction with several major film studios,¹¹ or the further adoption of the ASP model for software distribution, where consumers access computer applications that are hosted on the Internet. Widespread adoption of broadband Internet access is a goal worthy of the FCC's attention, and VoIP could be the "killer app" that provides the needed value and incentive to drive adoption of the technology.

¹⁰ See Walt Howe, *A Brief History of the Internet: An anecdotal history of the people and communities that brought about the Internet and the Web* (April 2001) at <http://www.isoc.org/internet/history/>.

DISCUSSION

III. VOIP SERVICES ARE INFORMATION SERVICES AND SHOULD NOT BE SUBJECT TO STATE REGULATION

VoIP services provided by 8x8 and Vonage are neither “telecommunications” nor a “telecommunications service” and the provider of VoIP is not a telecommunications carrier or common carrier subject to Title II of the Communications Act of 1934.¹² Rather, these services fall within the Commission’s definition of information services under the regulatory framework set forth in the *Stevens Report*, and are not regulated under Title II of the Communications Act.

A. Under Federal Policy, VoIP Services are Information Services

The FCC’s most extensive policy statement regarding IP telephony is contained in its Universal Service Report to Congress, released April 10, 1998, and is generally referred to as the *Stevens Report*.¹³ In describing the various types of IP telephony available, the FCC examined what it labeled as “computer-to-computer” IP telephony and “phone-to-phone” IP telephony, and suggested that ISPs over whose facilities the voice packets traveled would not be treated as telecommunications carriers:

In the case of “computer-to-computer” IP telephony, individuals use software and hardware...to place calls between two computers connected to the Internet....The Internet service providers over whose networks the information passes may not even be aware that particular customers are using IP telephony software....Without regard to whether ‘telecommunications’ is taking place in the

¹¹ Feature films are currently available on an on-demand basis via the Internet at <http://www.cinemanow.com>. CinemaNow offers a film library containing over 3,000 feature length films from more than 100 licensors including 20th Century Fox, Disney, Miramax, MGM, Warner Bros., Lions Gate Entertainment, Lot 47 Films, Vanguard Cinema and Visionbox Media.

¹² Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (as amended).

¹³ *Federal-State Joint Board on Universal Service*, Report to Congress, FCC 98-67, 13 FCC Rcd. 11501 (1998) (“*Stevens Report*”).

transmission of computer-to-computer IP telephony, the Internet service provider does not appear to be ‘provid[ing]’ telecommunications to its subscribers.¹⁴

Phone-to-phone IP telephony was tentatively defined as a service in which the provider meets all four of the following conditions:

(1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched network; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan and associated international agreements; and (4) it transmits customer information without net change in form or content.¹⁵

To date the FCC has not exercised its regulatory jurisdiction over any form of IP telephony, and has not classified any interstate IP telephony provider as a “telecommunications carrier,” preferring instead to permit the nascent industry to grow.¹⁶ Federal legislation is also clear with regard to Congress’s intent to keep the Internet free from regulation by the federal and state governments: “It is the policy of the United States...to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”¹⁷ Accordingly, developers of VoIP technology have relied on statements by the FCC in *Stevens Report*, articulating a “hands off” policy for voice applications on the Internet.¹⁸

Earlier this month, Judge Davis of the United States District Court in the District of Minnesota enjoined Minnesota’s attempted regulation of Vonage, ruling the attempted regulation

¹⁴ *Id.* at ¶ 87 (footnote omitted).

¹⁵ *Id.* at ¶ 88.

¹⁶ *Id.* at ¶ 92.

¹⁷ 47 U.S.C. § 230.

¹⁸ *Stevens Report* at ¶ 26.

was preempted by federal law and that enjoining such regulation was in the public interest.¹⁹

Judge Davis indicated, “State regulation would effectively decimate Congress’s mandate that the Internet remain unfettered by regulation.”²⁰ Judge Davis’s clarification of federal law mandating that the Internet remain unregulated has addressed the precise situation raised in the *Vonage Petition*, but does not obviate the need for action from this Commission. As discussed more fully below, other states have taken steps toward the Minnesota posture. Forcing the industry to litigate each state’s assertion of jurisdiction individually should be avoided in the interest of certainty and consistency. Accordingly, the issues raised in the *Vonage Petition* are still ripe for immediate Commission action.

B. VoIP Services are Information Services Because They Use Specialized CPE

Like Vonage, 8x8’s Packet8 customers use special customer premise equipment (CPE) to access voice and video communications services.²¹ When a Packet8 customer orders service from www.packet8.net, the company provides that customer with either an 8x8 Desktop Terminal Adapter model 310 (DTA-310) or an 8x8 Desktop Videophone model 325 (DV325) device. These devices are pictured below:

¹⁹ *Vonage Holdings Corporation v. Minnesota Public Utilities Commission*, Civil No. 03-5287 (MJD/JGL), Slip Op. at 22 (D. Minn., Oct. 16, 2003).

²⁰ *Id.* at 2.

²¹ *See Vonage Petition* at 1.



8x8 DTA-310



8x8 DV325

Both the DTA-310 and the DV325 equipment utilize a single ethernet RJ-45 connection as their only means of connecting to the Internet and to the “outside” world. These devices are not compatible with any telephone network connection, and are not required to conform to Part 68 of the Commission’s regulations regarding telephone network equipment. In fact, if the DTA-310 or DV325 are connected (mistakenly) to a regular telephone network interface, these devices may be electrically harmed as a result of that connection due to this incompatibility. The DTA-310 does provide a regular telephone input connector to which a regular telephone device (with Part 68 certification) is connected, *but it is impossible to access the Packet8 voice and video communications service with a regular telephone device without utilizing a DTA-310 terminal adapter.* The DV325 does not utilize any external telephone device, though it can call or be called (audio call only) from any telephone on the Public Switched Telephone Network (PSTN).

The DV325 is a fully self-contained videophone that incorporates a handset, speaker, camera and display. Like the Multimedia Terminal Adapter (MTA) device described by Vonage,²² the DV325 videophone can be called (audio only) using a regular telephone number.

²² Vonage Petition at 5.

It can also call any regular telephone number in the world and establish a voice connection.

When the DV325 videophone calls another DV325 videophone's Packet8 telephone number, a high-speed instant-on video communication is established between the videophones solely over the IP network.

When a Packet8 customer dials an outbound telephone number on either the DTA-310 or the DV325 (outbound call), either device sends control information via the broadband connection over the Internet to 8x8's data center in California. If the caller is dialing a telephone number of another Packet8 subscriber, or a telephone number of an affiliated third party partner's IP network, the California server routes the call over the Internet to the IP network location of the destination being called. If the caller is dialing a telephone number located on the PSTN, the call is handed off in the IP domain to a third-party service provider partner who terminates the call for 8x8 on the PSTN.

Inbound telephone calls for a Packet8 customer's telephone number are received by 8x8 in the IP domain at 8x8's data center in California, and the call is routed over the Internet to the IP network location of the Packet8 customer's DTA-310 or DV325 endpoint. 8x8 partners with third-party service provider partners who originate inbound IP traffic to our network. In other words, when a phone call originates from a telephone connected to the PSTN, that call is handled by a third-party service provider over the PSTN and through the IP domain until it is handed off to our IP network for routing and termination by 8x8 to the Packet8 customer's IP device.

Clearly, by using the DV325 videophone, and other IP-appliances like it, 8x8, like Vonage and other providers, require the customer to use CPE different from the CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched network.

C. VoIP Services are Information Services Because They Involve a Net Protocol Conversion

Also like Vonage, 8x8 performs a net protocol conversion as part of its service offering:²³ the specialized Packet8 CPE described above converts voice, video and data information into a new protocol that can be then transmitted over the public Internet. On the Packet8 service, all communications that originate or terminate at either an 8x8 DTA-310 or an 8x8 DV325 do so via an Internet data connection. In fact, the video capabilities of the DV325 videophone are only available because of these Internet resources: the videophone includes settings that enable a user to send and receive anywhere between 64 kilobits per second up to 640 kilobits per second. This type of video communications capability is not available via regular telephone connections, and is not compatible with regular telephone networks. Like Vonage, Packet8 associates a regular telephone number with the DV325 videophone, and permits voice-only communications to and from the PSTN, but video data from the videophone can never be routed to the PSTN because of the network incompatibility of the data protocol utilized on the Packet8 service.

When sending a voice or video call over the Internet, 8x8 performs the following data protocol conversion functions. First, the analog signals of a telephone handset connected to the DTA-310, and the analog video and audio signals input to the DV325 videophone, are converted into digital representations of the analog data. Next, the audio (and video) components are then compressed into a bitstream of data that is substantially smaller than the original data. After compression, the audio and video data are converted into packetized equivalents suitable for transmission over ethernet data networks. The streams are then sent in packetized format under the direction of control signals (Packet8, like Vonage, uses the Session Initiation Protocol (SIP)

²³ *Vonage Petition* at 6.

as its control mechanism). All of the data and protocol conversion from the original analog signals is performed in the endpoint before a SIP data stream is sent across an IP network and/or the Internet. A DTA-310 or DV325 also receives such SIP messages and data streams and is responsible for decoding them before they are converted back into analog audio and/or video signals for display to an end user.

IV. STATE REGULATION OF VOIP CONFLICTS WITH FEDERAL MANDATES AND CREATES INTOLERABLE UNCERTAINTY

A. State Regulation of VoIP Creates Intolerable Market Uncertainty

As a public company, 8x8 has seen first hand the impact of uncertainty in the market on the ability to bring new technology and services to market. In the past few months, 8x8 and other prominent VoIP providers have received letters from Wisconsin²⁴ and California²⁵ seeking to assert jurisdiction over the provision of VoIP services. The Public Service Commission of Wisconsin, in its letter to 8x8 declared that a VoIP provider “could not legally provide resold intrastate services in Wisconsin,” and therefore “any customer bills for intrastate services provided are void and not collectible.”²⁶ As a public company, such regulatory actions trigger a disclosure event for 8x8, because of the potential impact such regulation could have on 8x8’s business.²⁷ California, as the largest economy in the U.S., represents a huge market for VoIP services. The impact of the California Public Utilities Commission actions asserting jurisdiction is therefore significant, especially since these state actions are being taken without any

²⁴ Letter from Gary A. Evenson, Public Service Commission of Wisconsin to Regulatory Compliance Officer, 8x8, Inc. (Aug. 13, 2003) (“Wisconsin PSC Letter”) (attached hereto as Exhibit A).

²⁵ Letter from John M. Leutza, California Public Utilities Commission to Bryan Martin, 8x8, Inc. (Sept. 22, 2003) (attached hereto as Exhibit B).

²⁶ Wisconsin PSC Letter at 1.

²⁷ 8x8 Announces Receipt of Notification From Public Service Commission of Wisconsin (Sept. 12, 2003) at http://www.8x8.com/news_events/releases/2003/pr091203.asp.html.

proceedings in which to develop and explore the significant issues surrounding regulation of these nascent services. Market reaction to such uncertainty is well recognized by this Commission, which has sought to bring some certainty to the financial markets in the Telecom Sector.²⁸ In addition to the Wisconsin and California activity, several other states are exploring issues related to state regulation of VoIP services, including Alabama, Colorado, Florida, Missouri, New York, North Carolina, Ohio, Pennsylvania, Utah and Washington.

Like most emerging technologies, the development and improvement of VoIP requires investment in research and development. Fortunately, the benefits that VoIP holds for the public has attracted individuals and institutions willing to invest in its future. However, the prospect of regulation of VoIP by the individual states creates uncertainty in the market due to fear of inconsistent regulation or, as is in the case of Minnesota, regulation that cannot be complied with due to the technological differences between the PSTN and the Internet.²⁹ This uncertainty surrounding the regulation of VoIP services, if not addressed, will have a chilling effect on the development and further growth of VoIP and could deprive the public of the substantial benefits that this new technology has to offer.

B. VoIP Services, Like the Internet, Cannot be Jurisdictionally Separated

8x8 concurs in Vonage's conclusion that there is no technical mechanism for separating IP traffic that traverses the Internet into intrastate and interstate components.³⁰ Like Vonage, 8x8 does not provide the customer's underlying Internet or network connectivity; Packet8 is an

²⁸ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, 96-98, 98-147, Report & Order & Order on Remand, FCC 03-36 at ¶ 6 (rel. Aug. 21, 2003) (noting the Commission's intention to bring "certainty" that "will help stabilize the telecommunications industry, yield renewed investment in telecommunications networks, and increase sustainable competition in all telecommunications markets for the benefit of American consumers.").

²⁹ *Vonage Petition* at 26.

³⁰ *Id.* at 27.

application that runs on top of an existing broadband Internet connection. The IP address information available to the IP customer premise equipment and software applications used by both Vonage's and 8x8's services contain no information regarding the physical, geographic location of the communications equipment or underlying network. It is not currently possible to determine which voice and video calls initiated or received by these IP devices are intrastate vs. interstate. Because of the "practical impossibility" of determining whether a call is interstate or intrastate, the FCC should move to preclude state regulation of this jurisdictionally mixed-service.³¹

While current technology cannot segregate traffic, there are several possible future solutions to this location issue. First, Internet and other data service providers could include location information in the Dynamic Host Configuration Protocol (DHCP) request that is usually used to acquire a dynamic IP address from such a network provider when first connecting to a particular network. Geographic location information could theoretically be included as part of the DHCP query since the underlying Internet service provider does presumably know the geographic location of the broadband access point (or in the case of wireless, the location of the antenna that the wireless network devices are associating with). However, this type of location information is not currently offered by any Internet or data service provider, and raises privacy and other technical and legal issues that have not historically been addressed by Internet access providers. Also, all home and business routers would need to propagate any geographic information received from their Wide Area Network (WAN) connection to the private, Local Area Network (LAN) devices, and none of these data routers currently support such a capability.

³¹ See, e.g., *MTS and WATS Market Structure*, 4 FCC Rcd. 5660, ¶¶ 6-9 & n.7 (1989).

Second, in the future, Global Positioning System (GPS) or some similar technology could be incorporated into the client appliances that are accessing the Internet connection, thereby deriving direct geographic location information about the service subscriber. There are practical limitations to this technology (such as the fact that it does not work reliably indoors and requires specialized hardware that is not yet available in mass market, cost-effective forms).

Accordingly, 8x8 concurs with Vonage that the technical infeasibility of identifying the geographic location issue of Internet users necessitates preemption.³²

C. The E911 Requirements Imposed by the Minnesota Commission Conflict with Federal Policies

8x8 supports Vonage's request that the Commission find that the certain specific E911 requirements imposed by the Minnesota Commission are in conflict with federal policies. IP-based communication service like Vonage cannot technically offer 911 services that are comparable to the services offered by traditional wireline LECs due to the lack of access to incumbent LEC E911 trunks. In addition to the comments provided by Vonage, 8x8 believes that the only viable solution to this issue is to allow enhanced 911 services via direct IP access to the Public Service Access Point (PSAP). Although the exact minute-to-minute geographic location of an IP communications subscriber would remain an issue, such an interconnect mechanism would permit improvements in the types of access that could be offered to consumers, including the transmission of video (from a videophone device such as 8x8's DV325 videophone), e-mail notifications and other IP signaling mechanism that would enhance the amount of information provided to the PSAP. 8x8 respectfully submits that, instead of limiting the development of IP communications technologies and their deployments by requiring

³² *Vonage Petition* at 31.

compliance with legacy regulations, that the Commission look towards how the overall 911 system can be improved and enhanced through the application of the new IP-based communication technologies.

Despite the technical impracticalities of providing full E911 capabilities, companies like Vonage and 8x8 are working on ways to provide their customers with 911 type services. The openness and competitive environment of the Internet fosters innovation at a much greater rate than has been the case with incumbent telecommunications providers. Unlike telecommunications providers who have historically held monopoly power over their respective markets due to very high barriers to entry in their industry, providers of applications over the Internet must compete in a highly competitive and market driven environment. For this reason 911 type services are developing not as a result of regulatory pressure, but due to market demand for such services. The highly competitive nature of the VoIP industry provides incentive for companies to provide services that customer's value without the need for regulatory imposition.

8x8's takes issue with Minnesota's E911 requirement, not because 8x8 feels that 911 services should not be implemented by VoIP providers, but because the requirements that Minnesota has demanded are not technologically feasible, due to the underlying architecture of the Internet. Minnesota's infeasible requirements on VoIP providers illustrates the threat that is posed by the individual states' regulation of VoIP. It is not possible to provide VoIP services without potentially violating Minnesota's proposed regulation, because due to the nature of the Internet VoIP providers are not able to determine where calls originate and terminate. For this reason Minnesota's regulation of VoIP would impact the provision of VoIP services nationwide and conflict with federal law for the reasons discussed above.

While 8x8 disagrees with Minnesota's regulation of VoIP providers regarding E911 services due to their technological infeasibility, the company is firmly committed to the proposition that VoIP users should have the benefit of similar, technically feasible, alternatives. For this reason, 8x8 is in the process of developing 911 type functionality that will be provided to Packet8 customers. However, while 8x8 and other VoIP providers seek to provide public safety alternatives in conjunction with their VoIP offerings, the existing requirements, which are tethered to and dependent upon the PSTN, neither work in an IP environment nor take advantage of the significant enhanced capabilities of the IP network.

CONCLUSION

For the reasons set forth herein, 8x8 urges the Commission to help foster growth and innovation in the emerging VoIP services market by granting the relief sought in the *Vonage Petition*.

Respectfully submitted,

8X8, INC.

Bryan Martin (bryan.martin@8x8.com)
Chief Executive Officer
8X8, INC.
2445 Mission College Boulevard
Santa Clara, CA 95054
Tel: 408-727-1885
Fax: 408-980-0432

By: 
Christy C. Kunin (ckunin@graycary.com)
Larry A. Blosser (lblosser@graycary.com)
Michael A. Schneider (mschneider@graycary.com)
GRAY CARY WARE & FREIDENRICH, LLP
1625 Massachusetts Avenue, NW, Suite 300
Washington, D.C. 20036
Tel: 202-238-7700
Fax: 203-238-7701

Counsel for 8x8, Inc.

Dated: October 27, 2003

Exhibit A

**Letter from Gary A. Evenson, Acting Administrator, *Telecommunications
Division of the Public Service Commission of Wisconsin*, to
Regulatory Compliance Officer, *8x8, Inc.*
(August 13, 2003)**



Public Service Commission of Wisconsin

Burneatta Bridge, Chairperson
Ave M. Ble, Commissioner
Robert M. Garvin, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

August 13, 2003

Regulatory Compliance Officer
8x8, Inc.
2445 Mission College Blvd.
Santa Clara, CA 95054-1214

Re: Offering Intrastate Telecommunications Services in Wisconsin without Certification

To Whom It May Concern:

On August 7, 2003, the Public Service Commission (Commission) became aware that 8x8, Inc., (8x8) was offering intrastate telecommunications services in Wisconsin. Pursuant to company issued press releases, 8x8 launched Voice over Internet Protocol (VoIP) local phone services in Wisconsin in November 2002. Please note that without certification in Wisconsin, 8x8 **legally cannot provide resold intrastate services** in Wisconsin. In addition, any customer bills for intrastate services provided are void and not collectible.

Please note that certification is "required" regardless of the method used to offer intrastate telecommunications service. If a company decides to apply with this Commission to be certified as a reseller for intrastate services, it must comply with the application requirements and must provide the following information:

1. A notarized affidavit signed by a corporate officer confirming the dates for which 8x8 has been offering intrastate telecommunications services.
2. A report on 8x8's intrastate revenues between the beginning date of services in Wisconsin and the present as well as any efforts made to credit or refund Wisconsin customers for intrastate revenues billed and collected for intrastate services described above.
3. Efforts made, if any, to notify customers of 8x8's lack of authority to provide intrastate services during this period.

Application forms and instructions are available on the Commission's website at <http://psc.wi.gov>. Please note that any application for certification after the Commission becomes aware of operations in Wisconsin must be accompanied by the information requested above or the application will not be processed or approved. Refunds or credits due to Wisconsin customers must be applied in full before 8x8 is eligible for certification.

Fax: (608) 266-3957

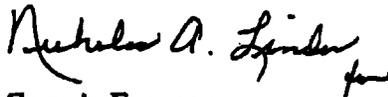
TTY: (608) 267-1479
E-mail: pscsecs@psc.state.wi.us

Regulatory Compliance Officer
8x8, Inc.
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These requirements must be satisfied regardless of whether 8x8 is actually granted certification as a reseller or certification as another type of telecommunications provider in the future. Failure to comply with the requirements set forth above may also result in a referral of the matter to the State of Wisconsin Attorney General for enforcement action. In the event that your company is certified by this Commission, the operation without certification may still subject the company to referral to the Attorney General for enforcement action and possible forfeitures.

Please respond by August 22, 2003. If you have any questions regarding this matter, please contact Chela B. O'Connor at (608) 267-9766, Chela.O'Connor@psc.state.wi.us or Judy Hein at (608) 266-2655, Judy.Hein@psc.state.wi.us.

Sincerely,



Gary A. Evenson
Acting Administrator
Telecommunications Division

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Exhibit B

**Letter from John M. Leutza, Director Telecommunications Division,
State Of California Public Utilities Commission, to
Bryan Martin, CEO, *8x8, Inc.*
(September 22, 2003)**

STATE OF CALIFORNIA
Governor

GRAY DAVIS,

PUBLIC UTILITIES COMMISSION

805 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 22, 2003

Mr. Bryan Martin, CEO
8XB, Inc.
2445 Mission College Blvd.
Santa Clara, CA 95054-1214

Dear Mr. Martin:

Based on our monitoring of the telecommunications market and actions being taken by other state regulatory commissions, the Telecommunications Division concludes that your company, 8XB, is offering intrastate telecommunications service for profit in California without having received formal certification from this Commission to provide such service.

The provision and regulation of local telephone service is under the jurisdiction of the California Public Utilities Commission. Section 234 of the California Public Utilities Code defines a telephone corporation as every corporation or person who owns, controls, or manages a telephone line for profit. Section 233 defines a telephone line as any asset used to facilitate telephone communication. Section 216 states that any telephone corporation that performs compensated service to any portion of the California public is a public utility. Section 1001 requires that a telephone corporation must first be certificated by the Commission to place a telephone line into service.

Please file an application with the Commission for authority to conduct business as a telecommunications utility no later than October 22, 2003. You will find details on how to accomplish this on the Commission's website at

<http://www.cpuc.ca.gov/static/industry/telco/information+for+providing+service/index.htm>

You may contact Richard Fish at 415-703-1923 for further information.

Yours truly,

John M. Leutza, Director
Telecommunications Division

Cc: President M. Peevey
Commr. C. Wood
Commr. L. Lynch
Commr. G. Brown
Commr. S. Kennedy

William Ahern, Executive Director
Angela Minkin, Chief Administrative Law Judge
Randolph R. Wu, Chief Counsel