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

In the Matter of the	)	
	)	WC Docket No. 03-211
Vonage Holdings Corp.	)	
Petition for Declaratory Ruling	)	
	)	

COMMENTS OF SUREWEST COMMUNICATIONS

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Summary

SureWest Communications recognizes that in certain cases it can be and will be increasingly difficult to place a particular service or new technological configuration in one of two categories: "information service" or "telecommunications". SureWest also recognizes that the Commission should take a fresh look in such cases, and be mindful to make a full analysis, rather than automatically imposing "legacy" regulations on a new service. However, in this case the Vonage DigitalVoice service is properly classified as telecommunications, with resulting common carrier obligations.

The inescapable fact is that the Vonage voice service is the functional equivalent of telephone service. The Petition filed by Vonage Holdings Corporation ("VHC") concedes this point, and it must do so in light of the fact that VHC advertises its service as telephony. While VHC casts aspersion on functional analysis as a "quack like a duck" argument, the fact is that the Vonage service doesn't just walk and quack like a duck, it also advertises itself as a duck. If VHC is asking the Commission not to believe VHC's advertisements that Vonage voice service is telephony, then VHC is either engaging in consumer fraud or regulatory arbitrage. The use of functional analysis of services in making regulatory distinctions is often appropriate, and it is regularly employed by the FCC, for example in the context of the Universal Service Fund ("USF") and commercial mobile radio services. Indeed, the *Universal Service Report* often cited in the Vonage Petition states that "the classification of a service under the 1996 Act depends on the functional nature of the end-user offering."

The Petition's arguments that the Vonage voice service is an information service are fatally flawed. VHC first argues that the Vonage service meets the "net protocol conversion" test of enhanced services, in that in its PSTN-to-computer/computer-to-PSTN calls, the PSTN side of the call is in TDM format, while the computer side of the call is in IP format. However, this argument does not cover the Vonage computer-to-computer service, where there is no net protocol conversion. So at best, VHC reliance on this argument is insufficient in and of itself. Furthermore, it appears that the net protocol conversion test is itself outdated, due to advances in technology in the last twenty years. That is, other services which are certainly regulated as telecommunications, create a net protocol conversion. For example, many PCS/cellular providers use a CDMA or GSM transmission protocol. If a subscriber with such a service calls someone with fixed service on the PSTN, then a net protocol conversion occurs: the PCS/cellular call is originated in CDMA or GSM, and terminated in TDM. Accordingly, either VHC's analysis is flawed, or the validity of the net protocol conversion test has been superceded by advances in digital technology.

The Petition asserts that while the Vonage voice service *uses* telecommunications, it does not *provide* telecommunications. The *use/provide* distinction is not valid in this case. It is true that some information services use but do not provide telecommunications services, for example, services that provide subscribers interaction with stored data. This is not the case with the Vonage voice

service. The purpose of the Vonage voice service is not to provide data to a subscriber, but rather to transport and transmit the subscriber's voice to the called party, and *vice versa*. The only data provided by VHC to its subscribers is the software needed for the Vonage service. However, the software is not an end in itself, but rather is only a means for enabling the transmission of the subscriber's voice. People do not subscribe to Vonage for the purpose of downloading Vonage software; they subscribe for the purpose of making phone calls. To the extent that Vonage subscribers must have software provided by VHC in order to enable the service, perhaps that software is an "application". But the service itself is the transmission of voice calls, not the provision of the "application". By analogy, purchasers of the FedEx service must use only a FedEx envelope, however the service provided by FedEx is not the sale of an envelope itself, but rather a carrier service of transporting the content in that envelope. Thus, at its core, the service provided by Vonage to its subscribers is the transmission of voice calls, *i.e.,* telecommunications. While VHC is a user of services in its relationship with its network facility providers, this does not transform VHC's carrier relationship with its own subscribers, any more than the use of other underlying facilities by a "traditional" common carrier reseller, or the purchase of access service by an interexchange carrier would. Just as carrier resellers and interexchange carriers are still carriers, Vonage is a provider of telecommunications.

VHC's reliance on the *Universal Service Report* is misplaced: in analyzing computer-to-computer calls, the *Report* suggests that an Internet service provider does not appear to be providing telecommunications to its subscribers; however, VHC admits that it is not an ISP. Similarly, while the Petition relies on the *Report*'s four part test for classification of IP telephony, the *Report* uses that test only for analyzing phone-to-phone IP telephony, yet Vonage does not provide phone-to-phone service.

It is clear that Vonage voice service as described in the Petition must be classified as a telecommunications service. However, even if the Commission were to classify it as an information service, then Commission policies mandate that any Vonage voice service provided over the PSTN must comply with certain basic requirements. SureWest has long supported the broad regulatory relief and appropriate deregulation of ILECs mandated by the 1996 Telecommunications Act. Nevertheless, certain basic requirements of the Act should be required of all providers of local voice service, regardless of their technology or their regulatory classification. These requirements include interconnection with other providers of local voice service, and number portability. Promotion of public safety and national security require that all providers of local voice service must comply with 911 and CALEA obligations. The principle of competitive neutrality provides that regardless of the regulatory classification, if the Vonage voice service uses the PSTN to transport, originate or terminate calls, it must contribute to the federal USF and other applicable state and federal charges. Lastly, prevention of regulatory arbitrage mandates that if the Vonage voice service uses LEC networks to complete interexchange voice calls, then VHC should be required to pay the LEC access charges that support the costs of providing access service.

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COMMENTS OF SUREWEST COMMUNICATIONS

SureWest Communications, by its attorneys, hereby files these Comments in response to the *Public Notice,* DA 03-2952, released September 26, 2003, seeking comments on the Petition for Declaratory Ruling ("Petition") filed by Vonage Holdings Corporation ("VHC") requesting preemption of a ruling by the Minnesota Public Utilities Commission ("MPUC") that VHC's services are common carriage, subject to state regulation of telephony. As shown below, while it is increasingly difficult to classify certain services as either "telecommunications" or "information services", the Vonage voice service is properly classified as telecommunications. However, regardless of the classification given to VHC's technology, if VHC's service uses the public switched telephone network ("PSTN") to complete local voice calls, then long-standing and critical Commission policies require that VHC comply with certain basic requirements imposed on local exchange carriers and other providers of local voice service. Similarly, VHC must contribute to the Universal Service Fund, and if VHC's service uses

the network of local exchange carriers ("LECs") to complete interexchange calls, then VHC must pay applicable access charges to those LECs.

I. Introduction

SureWest is a facilities-based provider of telecommunications services, located in Northern California. Through its subsidiary companies, SureWest provides incumbent local exchange, competitive local exchange, interexchange, cable television, broadband and PCS services. SureWest's subsidiary SureWest Telephone Company ("STC") is an incumbent local exchange carrier serving subscribers Placer County. STC currently serves approximately 137,000 access lines.

SureWest sees the future as one of increasing importance for advanced communications technologies,[1] but it believes that the public interest is best fulfilled if the Commission addresses local voice services in a manner consistent with the long-standing principles of regulatory parity, competitive neutrality, and promotion of public safety and national security. While SureWest has long supported the broad regulatory relief and appropriate deregulation of incumbent local exchange carriers mandated by the Telecommunications Act of 1996, it recognizes that certain basic requirements of that Act should be expected and required of all providers of local voice service, regardless of the technology used by such providers. These requirements must include the availability of interconnection with other providers of local voice service, and number

[1] SureWest has the largest fiber-to-the-home ("FTTH") deployment in the U.S., with approximately 10,000 homes wired with fiber in its service area. SureWest's customers represent over 20 percent of the total FTTH market in the nation, according to figures released by market research firm Render Vanderslice & Associates. As an industry leader in advanced technology services, SureWest has a unique understanding of Internet protocol ("IP") technologies.

portability. Promotion of public safety and national security justifies the imposition of 911 service and CALEA requirements on providers of local voice services. Furthermore, if a service provider is going to use the PSTN to provide local voice service, then principles of competitive neutrality and prevention of regulatory arbitrage require that such provider contribute to the federal Universal Service Fund ("USF") and other applicable state and federal charges, which supports the breadth and reliability of the PSTN. Such principles also require that if a service uses LEC networks to complete interexchange calls, then the provider should be required to pay LEC access charges that support the related costs of providing access service.

II. Vonage Voice Services are Properly Classified as Telecommunications.

At its core, the VHC Petition seeks a ruling that its services are "information services" and not "telecommunications" services. SureWest recognizes that in certain cases it can be and will be increasingly difficult to place a particular service or technological configuration in one of those two categories. SureWest also recognizes that the Commission should take a fresh look in such cases, and be mindful to make a full analysis, rather than automatically imposing "legacy" regulations on a new service. However, in this case the Vonage DigitalVoice service is properly classified as telecommunications, with resulting common carrier obligations. This conclusion applies to the Vonage PSTN-to-computer/computer-to-PSTN configuration[2] as well as to the

[2] Described at Petition, page 6.

Vonage-computer-user-to-Vonage-computer-user configuration.[3] The Commission must make a finding on these critical issues in a timely manner.

A. Functional Analysis is a Common and Valid Regulatory Tool, and Vonage Voice Service is the Functional Equivalent of Telephony.

The obvious and inescapable fact is that the Vonage service is the functional equivalent of telephone service. The VHC Petition concedes this point,[4] and indeed it has no choice but to make that concession, in light of the fact that VHC advertises its service as telephony.[5] While VHC casts aspersion on the MPUC's functional analysis as a "quack like a duck" argument, the fact is that the Vonage service doesn't just walk and quack like a duck, it also advertises itself as a duck. If VHC is asking the Commission not to believe VHC's own advertisements that Vonage voice service is telephony, then VHC is either engaging in consumer fraud or regulatory arbitrage. The Commission should not enable the perpetration of either of those acts in this proceeding.

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[3] Described at Petition, page 7 ("Vonage-to-Vonage 'calls' never travel over the PSTN, and thus constitute purely 'computer-to-computer' communications ...."). In regards to computer-to-computer service, SureWest's comments apply only to the extent that a fee is charged to the subscriber, and the primary use of the service is transmission of voice calls. Other computer-to-computer services might be analyzed differently. *See also* note 15 *infra*.

[4] Petition at page 17 ("Vonage customers use the service as an alternative to placing conventional telephone calls, and can place 'calls' to ordinary telephone numbers...").

[5] Petition at Exhibit 1 to attached MPUC Complaint ("Vonage DigitalVoice is an all inclusive home phone service .... With Vonage DigitalVoice you get unlimited local and long distance calling....") and Exhibit 2 to attached MPUC Complaint ("Vonage, a leading provider of digital telephone service .....").

Notwithstanding VHC's criticism of the MPUC, the fact is that the use of functional analysis of services in making regulatory distinctions is often appropriate, and it is regularly employed by the FCC. Examples of such analysis include:

> -The Universal Service First Report and Order defined the services that can be supported by federal USF to include "DTMF signaling or its functional equivalent...." *See* 12 FCC Rcd 8776, 8809 (1997) at para. 61. *See also* Section 54.101(a)(4) of the Commission's rules which also includes "single party service or its functional equivalent" as a supported service.
>
> -Section 20.3(b) of the Commission's rules defines "commercial mobile radio service" to include the "functional equivalent of such a mobile service described in paragraph (a) of this section."
>
> -The TCPA Reconsideration Order held that fax modem boards are the "functional equivalent" of telephone facsimile machines for the purposes of TCPA. 10 FCC Rcd 12391, 12405 (1995).

The use of functional analysis was appropriate in the above cited cases, and is equally appropriate here. Indeed, in analyzing the regulatory status of IP telephony, the Joint Board on Universal Service Report to Congress states that "the classification of a service under the 1996 Act depends on the functional nature of the end-user offering." 13 FCC Rcd 11501, 11543 (1998) ("*Universal Service Report*") at para. 86 (emphasis added).

In sum, Commission precedent, including the precedent most heavily relied upon by VHC, supports use of a functional analysis in making the regulatory classification of an IP telephony service, and such an analysis shows that the Vonage service is the functional equivalent of telephone service, and thus is telecommunications.[6]

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[6] No one contests the principle that plain old "telephone" service is classified as telecommunications. *Cf.* Second Computer Inquiry, 77 FCC 2d 384, 419 (1980) ("*Computer II*") (defining basic service as common carrier offerings such as telephone service).

B. The Arguments in the Petition Supporting a Classification of Information Service are Fatally Flawed.

The Petition's assertion that the Vonage voice service is an information service is based on three basic arguments. As shown below, these arguments are fatally flawed.[7]

1. *The Net Protocol Conversion Argument Applies Only to Part of the Vonage Service and Appears to Be Invalid.*

Recognizing that the 1996 Telecommunications Act's definition of "information service" is based on the definition of "enhanced services" created by the Commission in the *Computer II* proceeding, VHC argues that the Vonage service meets the "net protocol conversion" test of enhanced services. Petition at pages 12-13. Specifically, VHC asserts that in its PSTN-to-computer/computer-to-PSTN calls, the PSTN side of the call is in TDM format, while the computer side of the call is in IP format. Petition at page 6. There are two problems with this argument however. First, this argument does not cover the Vonage computer-to-computer service, where there is no net protocol conversion.[8] So at best, this argument is insufficient in and of itself. Furthermore, it appears that the net protocol conversion test is itself outdated, due to advances in technology in the last twenty years. That is, other services which are certainly regulated as telecommunications, create a net protocol conversion. One example of such a service is PCS/cellular. Many PCS/cellular providers use a CDMA or GSM

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[7] SureWest recognizes that a Federal District Court in Minnesota has recently ruled that the Vonage service is an information service. However, the Commission is not bound by that precedent, especially in light of the fact that much of the language in the Court's opinion appears to be identical in many places to that in VHC's pleadings.

[8] VHC concedes that services that do not result in a net protocol conversion are classified as basic services. Petition at note 20, *citing* Communications Protocols Order, 95 FCC 2d 584, 596 (1983).

transmission protocol. If a subscriber with such a service calls someone with fixed service on the PSTN, then a net protocol conversion occurs: the PCS/cellular call is originated in CDMA or GSM, and terminated in TDM. However, the Commission has already classified cellular and broadband PCS as telecommunications services,[9] yet according to VHC's analysis of the net protocol conversion test, cellular and PCS could be classified as information services. Clearly such a result is unacceptable. A similar result occurs with wireline telephone calls between SureWest's FTTH subscribers and traditional telephone subscribers: the call is originated or terminated in the IP format on the FTTH side, and terminated or originated in TDM format on the traditional telephone side. Nevertheless, FTTH telephony is regulated as telecommunications. Accordingly, either VHC's analysis is flawed, or the validity of the net protocol conversion test has been superceded by advances in digital technology.[10]

In sum, at best the net protocol test supports VHC's request for only part of the Vonage service, but in fact, either VHC's use of the test is invalid, or the validity of the test itself has been superceded by technology, and is no longer determinative.

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[9] *See, e.g.,* Interconnection First Report and Order, 11 FCC Rcd 15499 (1996) at para. 993 (finding that Commercial Mobile Radio Service providers such as cellular and PCS are "telecommunications carriers" and stating "[w]e believe, as a general matter, that all telecommunications carriers that compete with each other should be treated alike regardless of the technology used unless there is a compelling reason to do otherwise."), and Universal Service Report and Order, 12 FCC Rcd 8776, 9175 (1997) (finding that qualifying telecommunications services include cellular and PCS).

[10] It is due to factors such as the possible invalidity of the net protocol conversion test that SureWest believes that the Commission should merge this proceeding into a broader rulemaking proceeding on the regulatory status and regulation of Voice over Internet protocol ("VOIP") services.

2. *The Vonage Voice Service Does Not Merely "Use" Telecommunications, Its Core Function is to Provide Telecommunications Services to its Subscribers.*

The Petition asserts (at page 13) that "[l]ike any information service, of course, Vonage's VOIP service *uses* telecommunications to deliver information to its users, but Vonage does not *provide* telecommunications." (emphasis in original). However, while the use/provision distinction is valid in classification of some services as information services, it is not valid here.

It is true that some information services use but do not provide telecommunications services. These information services would include, for example, services that provide subscriber interaction with stored data. In such a case, the service provider uses telecommunications to provide the service to the subscriber, *i.e.*, to provide data to the subscriber. This is not the case with the Vonage voice service, at least as described in the Petition. The purpose of the Vonage voice service is not to provide data to a subscriber, but rather to transport and transmit the subscriber's voice to the called party, and *vice versa*. The only data provided by VHC to its subscribers is the software needed for the Vonage service. However, the software is not an end in itself, but rather is only a means for enabling the transmission of the subscriber's voice. People do not subscribe to Vonage for the purpose of downloading Vonage software; they subscribe for the purpose of making phone calls.[11] VHC's advertisements do not

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[11] VHC also provides to its subscribers the hardware necessary for use of the Vonage service. To the extent that Vonage subscribers must have software provided by VHC in order to enable the service, perhaps that software is an "application". But the service itself is the transmission of voice calls, not the provision of the "application". By analogy, purchasers of the FedEx service must use only a FedEx envelope, however the service provided by FedEx is not the sale of an envelope itself, but rather a carrier service of transporting the content in that envelope.

describe the sale of software; rather, they describe a phone service that requires use of software.[12]

At its core, the service provided by Vonage to its subscribers is the transmission of voice calls, *i.e.,* telecommunications. VHC's relationship to its subscribers is one of a provider of transmission service, *i.e.*, a carrier. And while VHC is a user of services in its relationship with its network facility providers, this does not transform VHC's carrier relationship with its own subscribers, any more than the use of other underlying facilities by a "traditional" common carrier reseller, or the purchase of access service by an interexchange carrier would. Just as carrier resellers and interexchange carriers are still carriers, Vonage is a provider of telecommunications. Y

3. *Reliance on the Universal Service Report for Vonage Computer-to-Computer Voice Service is Completely Misplaced.*

There appear to be three types of IP telephony: "phone-to-phone", "computer-to-computer", and "computer-to-phone" ("computer-to-PSTN" as described in pages 6-7 of the Petition). VHC does not provide phone-to-phone service (which the Commission has already suggested is telecommunications). The flaws in VHC's arguments as to why its computer-to-PSTN service is an information service have been set forth above.

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[12] According to trade press reports, in a letter to the California PUC, VHC stated that Vonage service "involves the transmission of audio information." TRDaily, October 22, 2003, found at http://www.tr.com/online/trd/2003/td102203/index.htm. VHC has apparently conceded that Vonage service is a transmission service. While VHC apparently denies it, in fact transmission of information is the core of telecommunications services. The description of voices as "audio information," while creative, is irrelevant: any digital transmission of voices on a telephone or cellular phone call could be described as the transmission of "audio information," but that does not transform a telephone call into a different service.

This leaves VHC's arguments regarding its computer-to-computer service, which rely on language in the *Universal Service Report*. Such reliance is completely misplaced.

First VHC quotes extensively (Petition at page 16) from para. 87 of the *Universal Service Report* regarding computer-to-computer IP telephony. VHC asserts that the conclusion of that quote supports a finding that the Vonage computer-to-computer service is properly classified as an information service: "Without regard to whether 'telecommunications' is taking place in the transmission of computer-to-computer IP telephony, the Internet service provider does not appear to be 'provid[ing]' telecommunications to its subscribers." (emphasis added). The flaw in VHC's logic should be obvious: the *Report* suggests that an ISP would not be providing telecommunications in such a case, but VHC admits that it is not an ISP.[13] Accordingly, VHC cannot rely on para. 87 of the *Universal Service Report*.

The Petition also relies on the four part test for classification of IP telephony as telecommunications, set forth in para. 88 of the *Universal Service Report*. Page 17 of the Petition asserts that because the Vonage service does not meet two of the four criteria, the Vonage service cannot be classified as telecommunications. But there is a fatal flaw in VHC's argument: the *Universal Service Report* set forth the four part test as a test only for phone-to-phone IP telephony (*see* the first sentence of para. 88), but Vonage does not provide phone-to-phone service. Thus, even if the four part test was

[13] *See* Petition at page 4 ("Vonage customers can only access the service over a high-speed Internet connection provided by a third party...."), page 5 ("Vonage customers must subscribe to a broadband Internet access service...."), and page 7 ("Vonage does not provide ... Internet access....").

intended by the Joint Board to be definitive and applicable to specific providers (which apparently was not the case),[14] the test does not apply to Vonage service.[15]

III. Regardless of Regulatory Classification, Commission Policies Mandate That Local Voice Services Provided Over the PSTN Comply With Certain Basic Requirements.

As shown above, it is clear that Vonage service as described in the Petition must be classified as a telecommunications service. However, even if the Commission were to classify Vonage as an information service, then Commission policies mandate that any Vonage local voice service provided over the PSTN must comply with certain basic requirements. The public interest is best fulfilled if the Commission addresses such local voice services in a manner consistent with the long-standing principles of regulatory parity, competitive neutrality, prevention of regulatory arbitrage, and promotion of public safety and national security.

SureWest has long supported the broad regulatory relief and appropriate deregulation of incumbent local exchange carriers mandated by the 1996 Telecommunications Act. Nevertheless, certain basic requirements of the Act should be expected and required of all providers of local voice service, regardless of the technology used by such providers, or their regulatory classification. These

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[14] *See, Universal Service Report* at para. 83 ("We do not believe, however, that it is appropriate to make any definitive pronouncements [on the legal status of IP telephony] in the absence of a more complete record focused on individual service offerings.")

[15] The Petition also suggests that Vonage computer-to-computer calls "never travel over the PSTN....." Petition at page 7. While it is possible for such calls to travel over a completely proprietary private network (*e.g.,* within a corporate or educational campus), the vast majority of computers in the U.S. are not in such campuses, and thus cannot be accessed without use of the PSTN at some point in the transmission. Thus, if VHC is attempting to justify classification as an information service based on never using the PSTN, such justification is applicable only in a very small number of cases.

requirements include interconnection with other providers of local voice service, and number portability. Section 251(a)(1) of the Communications Act requires that all telecommunications carriers interconnect with the facilities of other telecommunications carriers. This obligation is clearly imposed on providers like VHC if they are providing telecommunications services. However, even if such entities are classified as providers of information services, the Commission should use its discretion under Title I of the Act to impose an interconnection requirement on them if they are providing local voice services. Failure to do so would be to ignore a key principle in the Act: a competitive market requires interconnection. Such carriers must also be required to comply with local number portability requirements. Other similarly situated providers of local voice service (LECs and CMRS providers) must comply with LNP, and fair competition means that Vonage must do the same.

Regulators have long recognized that local voice service is integral to the promotion of public safety. For the same reasons that Congressional and Commission policies have mandated E911 obligations on CMRS providers, the provision of 911 service should be mandated for all providers of local voice service, including Vonage. Vonage itself apparently recognizes this principle, as the Petition describes the steps it is taking to try to provide a 911 service. Similarly, as national security concerns increase, both Congress and the Commission have recognized the need for providers of voice service to make their advanced networks available for lawful intercepts by law enforcement agencies. Accordingly, regardless of the regulatory classification of the Vonage voice service, the Commission should impose CALEA requirements on such services.

Longstanding Congressional and Commission policy has recognized the PSTN as a national asset. Federal USF is critical to maintaining the breadth and reliability of the PSTN, and federal policy is based on the principle that all carriers that use the PSTN benefit from its maintenance. Furthermore, the principle of competitive neutrality provides that regardless of the regulatory classification, if the Vonage voice service uses the PSTN to transport, originate or terminate calls, it must contribute to the federal USF. As the Commission has stated:

> ...competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor nor disfavor one technology over another.
>
> Universal Service Report and Order, 12 FCC Rcd 8776, 8801 (1997)

Indeed, allowing the Vonage voice service to use the PSTN without contributing to USF will create substantial incentives for carriers to use technologies that would be uneconomic, but for the ability to avoid USF contributions. This is no more than regulatory arbitrage. As FCC Chairman Powell recently stated in Congressional testimony:

> With each passing day, month and year the regulatory arbitrage bubble continues to expand ever more perilously and it is sure to eventually pop, like dot-coms of old. In the meantime, facilities-based investment and competition will take a back seat to regulatory arbitrage to the detriment of every local telecommunications consumer.
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> Written Statement of Chairman M. Powell (February 26, 2003)

Such principles also mandate that regardless of regulatory classification, if the Vonage voice service uses LEC networks to complete interexchange voice calls, then VHC should be required to pay the LEC access charges that support the costs of

providing access service. The Commission has already expressed significant concern about this very issue:

> Another source of regulatory arbitrage arises from the different rates that different types of service providers must pay for essentially the same types of calls. For example, the fact that an IXC must pay access charges to the LEC that originates a long-distance call, while an ISP that provides IP telephony does not, gives the provider of IP telephony an artificial cost advantage over providers of traditional long-distance service. Similarly, a long-recognized form of regulatory arbitrage is the ability of certain owners of private branch exchanges ("PBXs") to avoid paying access charges on long-distance calls (the "leaky PBX" problem). More generally, any discrepancy in regulatory treatment between similar types of traffic or similar categories of parties is likely to create opportunities for regulatory arbitrage. That is, parties will revise or rearrange their transactions to exploit a more advantageous regulatory treatment, even though such actions, in the absence of regulation, would be viewed as costly or inefficient.
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> Unified Intercarrier Compensation, NPRM, 16 FCC Rcd 9610, 9616 (2001)

The Commission must not throw the door wide open to regulatory arbitrage in this proceeding.

IV. Conclusion

The Vonage voice service is properly classified as telecommunications. However, even if the Commission were to classify Vonage as an information service, then Commission policies mandate that any Vonage local voice service must comply with certain basic requirements. The public interest is best fulfilled if the Commission addresses such local voice services in a manner consistent with the long-standing principles of regulatory parity, competitive neutrality, prevention of regulatory arbitrage, and promotion of public safety and national security. Similarly, if Vonage voice service uses LEC networks to complete interexchange calls, then VHC must pay applicable access charges to those LECs.

The Vonage voice service does not need to be aided by regulatory arbitrage to be an effective competitor with traditional telephony. Vonage appears to be a rapidly growing service that is already becoming an effective competitor. This service is based on regulatory arbitrage, and SureWest believes that the issues created by this service have critical importance, and should be addressed sooner rather than later, preferably in the context of an immediate rulemaking proceeding on VOIP services.

Respectfully submitted,

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