

**STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re. IP-Enabled Services, WC Docket No. 04-36.

More than two decades ago, the Commission made the courageous decision to fence off information services – the precursors of today’s internet – from traditional monopoly regulation. This approach was embraced by Congress in that 1996 Act. The Commission’s pro-competitive and deregulatory policies allowed competition to flourish and helped usher in a period of growth and innovation unlike any other in our nation’s history. Today, we issue an item that follows in that tradition of fostering innovation and consumer choice. The item recognizes that we have entered an Age of Personal Communications. IP-enabled services and the proliferation of IP devices enable consumers to increasingly choose innovative, personalized Internet applications and content.

As new and innovative ways to communicate have emerged, so too have calls for us to examine the appropriate public policy for highly innovative, highly efficient services based on Internet Protocol. In this comprehensive Notice of Proposed Rulemaking, we seek comment on how applications that use IP are changing our communications network and the very assumptions on which our current regulatory policies are based.

Our starting point – and our most important finding – is the recognition that all IP-enabled services exist in a dynamic, fast-changing environment that is peculiarly ill-suited to the century old telephone model of regulation. Competitive market forces, rather than prescriptive rules, will respond to public need much more quickly and more effectively than even the best intentioned responses of government regulators. Indeed, our best hope for continuing the investment, innovation, choice and competition that characterizes Internet services today lies in limiting to a minimum the labyrinth of regulations and fees that apply to the Internet. All too often, these edicts can thwart competition even among traditional telecommunications providers.

While IP-enabled services should remain free from traditional monopoly regulation, rules designed to ensure law enforcement access, universal service, disability access, and emergency 911 service can and should be preserved in the new architecture. In today’s Notice, we seek comment on whether and how to apply discrete regulatory requirements where necessary to fulfill important federal policy objectives.

Above all, law enforcement access to IP-enabled communications is essential. The Communications Assistance for Law Enforcement Act (CALEA) requires telecommunications carriers to ensure that their equipment is capable of providing surveillance capabilities to law enforcement agencies. CALEA requirements can and should apply to VoIP and other IP enabled service providers, even if these services are “information services” for purposes of the Communications Act. Nothing in today’s proceeding should be read to suggest that law enforcement agencies should not have the access to communications infrastructure they need to protect our nation. On the contrary, all IP-enabled services should consider the needs of law enforcement as they continue to develop innovative technologies. Nevertheless, the technical

issues associated with law-enforcement access to VoIP communications are both novel and complex, and, ultimately, worthy of their own separately docketed proceeding. To address these issues, we intend to initiate a CALEA rulemaking proceeding in the near future. The new proceeding will address the scope of covered services, assign responsibility for compliance, identify the wiretap capabilities required by law enforcement and provide acceptable compliance standards.

IP networks cost much less to build and operate. As in so many other areas, I believe VoIP can help control high universal service costs in order to ensure that every American has affordable telephone service. As the item notes, however, IP services ride atop a physical layer that, in many areas, is still expensive to build and maintain. To continue to ensure the entire nation has access to vital communications services, the NPRM considers distinguishing service providers that offer interconnection with the nation's public switched telephone network from those that do not. To determine the precise scope of support obligations in the new IP world, today's action quite properly seeks comment on a number of complex funding questions. Yet it does not – and cannot – change the existing obligations of providers to comply with our rules, especially our rules requiring providers of traditional long distance services to pay fair compensation for using the public switched telephone network. During and after the transition to next generations communications networks, the Commission can and will fulfill its statutory obligation to ensure that every American has access to the network at an affordable price.

As we move forward, the Commission will also hold a series of “Solutions Summits” to tackle how a VoIP provider can best respond to the needs of various communities where the market may not readily respond. We will be asking leaders in the law-enforcement, first-responder and disabled communities to come together to talk about creative ways to address some of these issues. It is my hope that industry can take the lead in solving some of the real problems that stem from the migration from the monopoly analog world to the competitive new digital world of communications. If leaders from industry and the government work together to identify issues, study them and stay vigilant, we can rely on enterprise and entrepreneurship to respond to many public needs. Our first “Solutions Summits” will be held on March 18 and will address E911 issues.

Today's notice recognizes that we simply cannot contort the character of the Internet to suit our familiar notions of regulation. We will not dumb down the genius of the web to match the limited vision of a regulator. At the same time, we remain committed to making special efforts to target those areas most in need of public protection. Working together, we will ensure that the promise of these new innovative technologies and services is realized for all Americans.

**STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re. IP-Enabled Services, WC Docket No 04-36

With this NPRM, the Commission launches an inquiry into a revolutionary set of services and applications. We stand at the threshold of a profound transformation of the telecommunications marketplace, as the circuit-switching technology of yesteryear is rapidly giving way to IP-based communications. In the IP world, voice communications, once restricted to a dedicated, specialized network, represent but one application — one species of bits — provided alongside many others. Although I firmly believe that prescriptive regulation in many instances will prove unnecessary, I strongly support this effort to develop an appropriate regulatory framework. Indeed, it may seem paradoxical but it is undoubtedly true that we can ensure freedom from regulation only if we commence a regulatory proceeding.

While it is premature to say precisely what this framework will look like, there is no question that the time is right for the Commission to build a record. As service providers are developing business plans and courts and state commissions are starting to reach potentially divergent conclusions about the rules of the road, the risks of inaction are great. This Commission must step forward and provide guidance, or providers may be subject to a patchwork of inconsistent rules. The promise of IP-enabled services is too great to risk such an outcome.

As we conduct this rulemaking, I will keep an open mind but at the same time I will be guided by some overarching predispositions. *First*, I believe that the regulatory framework for IP-based services must be predominantly federal. A federal scheme will facilitate nationwide deployment strategies and avoid the burdens associated with inconsistent state rules. Moreover, most forms of IP communications appear to transcend jurisdictional boundaries, rendering obsolete the traditional separation of services into interstate and intrastate buckets. *Second*, I am deeply skeptical about the application of economic regulation to these nascent services. Public-utility regulations have traditionally been imposed on local exchange carriers to restrain their market power. Services such as VOIP, by contrast, appear to have low barriers to entry and it does not appear that any provider occupies a dominant market position. Rather than reflexively extending our legacy regulations to VOIP providers, we need to take this opportunity to step back and ascertain whether those rules still make sense for *any* providers, including incumbents. *Third*, notwithstanding my interest in maintaining a light touch, I am committed to ensuring that our regulatory approach meets certain critical social policy objectives. As most policymakers at the federal and state level have recognized, we will need to find solutions to guarantee access to 911 services, the ability of law enforcement agencies to conduct surveillance, the preservation of universal service, and access by persons with disabilities. Some of these goals may well be achieved without heavy-handed regulation, but I am willing to support targeted governmental mandates where necessary.

Finally, although the NPRM appropriately refrains from proposing actual service categories and classifications at this early stage, I strongly support taking action to clarify the existing state of the law. The NPRM asks many broad questions about the regime we will establish at the

conclusion of this rulemaking, but we plainly have rules on the books *today* — rules concerning interstate access charges and universal service contributions, among other things — that appear to apply to some services offered in the marketplace. Providers have filed petitions for declaratory rulings because clarity is sorely needed: most notably, some interexchange carriers are paying access charges for terminating so-called phone-to-phone IP calls, whereas some are not. This disparity distorts competition as well as the flow of capital. In an upcoming order or orders, I urge my colleagues to provide as much clarity as possible regarding our existing rules in the interest of our shared goal of promoting regulatory certainty

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re IP-Enabled Services, WC Docket No 04-36

After two years of dialogue on classifying, reclassifying and declassifying services, in this proceeding the Commission finally focuses on the consequences of a Title I approach on a whole range of public safety, emergency response, universal service and disabilities access policies that we have a duty to protect. I have long advocated that we do this.

But I limit my support to concurring here because this proceeding on IP-enabled services strikes me as getting rather too close to final conclusions. In this Notice, we seem to be judging IP-related services without defining them. We ask questions about how to classify these ill-defined services, but then presume, or at least suggest, the answers. The impression is left that we are asking what rules we should apply *when* we relocate whole services and technologies to Title I from Title II. Were we eventually to take this route, we would be rewriting the 1996 Act—from top to bottom. This agency has no right to substitute its reclassification wishes for the will of Congress.

So I will support this Notice only with the understanding that, once we have a full record, our options remain completely open.

We all marvel at the transformative potential of new IP services. They sizzle with possibility for consumers and businesses alike. But for this transformation to happen with real spark, we need keep some fundamentals in mind. For example, we need to address intercarrier compensation to create a level playing field that minimizes arbitrages and maximizes the opportunities for new technologies to flourish. And we must recognize the role that universal service will play to make sure that all areas of the nation are covered with the technologies to create a seamless communications system and a seamless country. IP applications will only revolutionize communications if everyone has access to really high capacity bandwidth. Only when everyone, everywhere in America has access to broadband, will the IP transformation we herald here really take place.

**STATEMENT OF
COMMISSIONER KEVIN J. MARTIN**

Re: IP-Enabled Services, WC Docket No 04-36.

I am glad that the Commission is moving forward today with a Notice of Proposed Rulemaking to address and clarify the regulatory status of Voice over Internet Protocol (VoIP) and Internet Protocol (IP)-enabled services. Today's NPRM recognizes the benefits that VoIP brings such as greater efficiency and that the Commission will approach VoIP with a light regulatory touch.

VoIP and IP based services will provide consumers with personalized applications and content resulting in more competition and greater choice. These IP services have the potential to spur further innovation and help drive the ubiquitous deployment of broadband and IP networks that will bring even greater benefits to consumers in the future.

As I have stated previously, as VoIP services move toward becoming a substitute for traditional telephony services, we need to carefully consider and address any questions and concerns regarding the obligations to provide traditional public safety services such as 911 and the ability to comply with law enforcement requirements. I thus support today's announcement that the Commission will soon initiate a comprehensive rulemaking to address law enforcement's needs relative to CALEA and that our decision today will not prejudice the outcome of that proceeding.

Today's decision, however, also raises many of the difficult questions that arise regarding VoIP's potential to displace traditional telephony services. I encourage all interest parties to comment on these issues. In particular, I will look with great interest, at how we should address many of the important public safety, law enforcement and consumer protection functions in a VoIP world.

I am also pleased that today's item recognizes the many different types of VoIP service offerings that currently exist, and that may potentially develop in the marketplace. The NPRM acknowledges that VoIP offerings, at times, may or may not need to use the public switch network ("PSTN") and asks how we should take their key distinctions into account. The item also makes clear that functionally equivalent services should be subject to similar obligations and that the cost of the PSTN should be born equitably among those that use it in similar ways.

As we move forward, we must ensure that our policies treat similar services in a similar fashion and that we do not create a regulatory framework that promotes potential arbitrage opportunities.

**STATEMENT OF COMMISSIONER JONATHAN S. ADELSTEIN
APPROVING IN PART AND CONCURRING IN PART**

Re: IP-Enabled Services, WC Docket No. 04-36

Re: Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, Memorandum Opinion and Order, WC Docket No. 03-45.

Today, we consider two items – a comprehensive Notice of Proposed Rulemaking and a declaratory ruling on a specific service – related to Voice over Internet Protocol (VoIP) and Internet Protocol (IP)-enabled services.

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With this Notice, we examine the extent and legal significance of the telecommunications industry's growing adoption of IP-enabled services. This technological evolution stems from the development of a common digital protocol, the "IP" in "VoIP." It is integral to an explosion of choices for consumers, such as phones in PDAs, voice through Instant Messaging-like services, not to mention lower prices on the services we are accustomed to. I am struck by the wealth of innovation occurring under the banner of "VoIP." As a consumer, I think we all have much to look forward to.

As a Commissioner, I think we take an important and responsible step today by opening a comprehensive Notice of Proposed Rulemaking on the regulatory issues associated with IP-enabled services. VoIP services have matured recently and it is apparent that VoIP providers have their sights set on that most mainstream of telecommunications markets – the residential consumer. VoIP providers point out that their services have the potential to provide a rich and diverse array of complementary non-voice applications that will stir demand. All indications are that IP is becoming the building block for the future of telecommunications.

Questions about what this evolution means for consumers, providers, and this Commission are far from simple. What they present, though, is an opportunity – indeed a necessity – for this Commission to facilitate that evolution. Today's items herald the Commission's role in promoting innovative technologies. At the same time, though, we are charged under the Communications Act with ensuring that the goals set out by Congress are fulfilled. Forging the right regulatory scheme to achieve these goals is our task and it is fundamental that we begin to wrestle with these issues in earnest.

I would like to thank Chairman Powell for his leadership on VoIP. The Chairman convened a forum on these issues in December that I found extremely useful. I have also appreciated his willingness to engage his colleagues in the deliberations over these items. We do not agree on every detail about how to move forward, but I appreciate his willingness to accommodate so many of my concerns as we start this larger rulemaking.

I fully expect that this Notice will allow us to develop a comprehensive record about the development of IP-enabled services. Chief among our tasks is to determine how the adoption of IP-enabled services affects those most fundamental telecommunications policies embodied in the Communications Act. The Act charges us to maintain universal service, which is crucial in delivering communications services to our nation's schools, libraries, low income consumers, and rural communities. We will need to look closely at how IP-enabled services affect our ability to fund and deliver those services. The support that our universal service programs bring to our nation's rural communities is critical, so I am particularly glad that this Notice seeks direct comment on issues of concern to Rural America.

As we go forward, we also must understand how IP-enabled services will affect the provision of 911, E911, and other emergency services; the ability of people with disabilities to access communications services; the application of our consumer protection laws; the ability of our law enforcement officials to rely on CALEA to protect public safety and national security; and other national priorities such as consumer privacy and network reliability. We must understand that our decisions can have disparate impact on particular communities. We raise many issues in today's NPRM, and we will need to reach out to the many and diverse interests of consumers, network providers of all types, hardware and software manufacturers, and federal, state and local policymakers.

I agree with my colleagues that there may be some questions that we need to answer about the regulation of VoIP services sooner rather than later. There are time sensitive issues on the table for us, such as the erosion of the base of support for universal service. This Commission has not hesitated in the past to address issues of regulatory arbitrage, and I think that we will have to look closely and quickly at some of the concerns that have been brought to our attention.

Pulver.com

In approaching these monumental tasks, however, I am concerned that we not get too far ahead of our record. The rapid and dynamic pace of the migration to IP and broadband services counsels for a full consideration of the issues wherever possible.

Many persuasive arguments were made as to why Pulver.com's Free World Dialup (FWD) is not telecommunications or a telecommunications service. I concur that this service is not telecommunications or a telecommunications service and in practice should remain largely unregulated. In particular, the peer-to-peer nature of FWD differs in significant respects from traditional "telecommunications services" that traditional phone companies have offered. However, I cannot fully join today's pulver.com Order because it reaches far beyond the petition filed by pulver.com and, regrettably, speaks prematurely to many of the important questions raised in today's NPRM.

Despite attempts to characterize this Order as limited to the specific facts of pulver.com's FWD, I am concerned that the decision speaks much more expansively. By deciding the statutory classification of pulver.com's service as an interstate information service, the Order raises a host of questions about the continuing relevance of those most fundamental

telecommunications policy objectives that Congress has entrusted to this Commission. At last December's VoIP forum, I talked about these concerns and was struck by how widely-held those concerns seemed to be.

Today's Order does not fully address these widely-acknowledged concerns. One might read this Order as silent on many of these ultimate issues, which strikes me as curiously dismissive given the magnitude of the responsibilities entrusted to us. Parsing more closely, the declarations about jurisdiction and the "unregulated" nature of the service seem to presume the outcome of the very rulemaking we launch today. Pulver.com's petition did not request a ruling on the appropriate jurisdictional classification, and many parties may be unaware that we planned to reach that question in this Order. With both the jurisdictional finding and the unaddressed implications of the statutory classification, I would have preferred that we defer these important policy considerations until the Commission has a more comprehensive record with the benefit of the participation of the many stakeholders who should be part of this debate.

One area where we did have participation was in the critical area of law enforcement. Legitimate concerns were raised by the Federal Bureau of Investigation and the Department of Justice. While the Department of Justice has acquiesced to the desire to open this inquiry, its clearly stated preference was to resolve CALEA matters as soon as possible. While I dissented from today's ruling that FWD is an information service, I am pleased that we commit to opening a CALEA proceeding very soon, and that the Justice Department has not objected to our moving forward in the interim.

For these reasons, I can only concur in part and dissent in part on the pulver.com Order and thus I can only concur in those portions of the NPRM where that item imports this overreaching analysis.

Finally, I would like to thank the Wireline Competition Bureau, and in particular, the Competition Policy Division. Bureau staff members, as well as my own staff, have spent countless hours and long nights working through complex issues. They are truly public servants of the highest caliber.