

April 20, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Via Electronic Filing

Re: Oral Ex Parte Presentation:

In the Matter of IP-Enabled Services, WC Docket No. 04-36;

**In the Matter of United States Department of Justice, Federal Bureau of
Investigation and Drug Enforcement Administration Joint Petition for**

Rulemaking to Resolve Various Outstanding Issues Concerning the

**Implementation of the Communications Assistance for Law Enforcement Act,
RM-10865;**

**In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP
Telephony Services Are Exempt from Access Charges, WC Docket 02-361.**

Dear Ms. Dortch:

This notice is being filed pursuant to Section 1.1206(b)(2) of the Commission's rules. On April 19, 2004, the undersigned counsel to 8x8, Inc. ("8x8") and Bryan Martin, Chairman and CEO of 8x8, met with Tom Navin, Russell Hanser, Terri Natoli, Christi Shewman, and Darryl Cooper of the Competition Policy Division of the Wireline Competition Bureau and with Jennifer McKee of the Pricing Policy Division of the Wireline Competition Bureau.

The purpose of the meeting was to provide Bureau staff working on the above-referenced dockets with an introduction to 8x8 and its Packet8 service and to explain 8x8's perspective on some of the issues currently under consideration by the Commission. Mr. Martin provided a brief description of 8x8 and its evolution from its early beginnings in video compression to the present day. He explained the features of the types of "end point" devices supported on the Packet8 network (the DTA-310 Desktop Terminal Adapter and desktop video phones, including the forthcoming DV-326.) He provided an overview of the services available to Packet8 residential and business customers, and the recently announced Virtual PBX offering. He explained that, although Packet8's residential and virtual PBX service offerings provide unlimited minutes of calling to numbers on the PSTN in the US and Canada, 8x8 pays a per-minute rate to the CLECs providing call-termination services. International calls are subject to per-minute charges and are handled by duly authorized carriers with whom 8x8 has agreements for international call termination. 8x8 has a number of traffic interchange or peering agreements with other VoIP providers, permitting Packet8 subscribers, for

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example, to communicate directly with Free World Dial-up members, or to forward calls to Free World Dial-up accounts, without touching the PSTN.

8x8 is in the early stages of formulating its comments in response to the IP-Enabled Services Notice of Proposed Rulemaking. While the Commission staff is to be congratulated on the comprehensiveness of the NPRM, the existence of so many questions is indicative that the NPRM is only the first step in what promises to be a lengthy process. The need to ask so many questions is also a sign that the existing regulatory system is broken. The Commission should avoid trying to force-fit new IP-enabled services, "applications" offered independently of the underlying transmission "networks," into the traditional common carrier mode. If VoIP were classified as a common carrier service, the barriers to entry would be formidable. Only a company the size of AT&T or MCI, with battalions of regulatory experts already in place to support its other service offerings, might mount a credible challenge to the incumbents. The initial set of phone-to-phone offerings by AT&T and others have IP in the middle, and may provide some cost savings to the carriers, but these are transitional offerings, and not indicative of the potential of IP-enabled services.

One of the lessons regulators can learn from the first decade of the Internet era is that innovation can prosper in an environment free from unnecessary regulation. If the FCC maintains the largely hands-off approach to the Internet and IP-enabled services, a small 75-person company out in Silicon Valley with no network assets can compete head-to-head with other new entrants, as well as with established carriers. Service quality standards, dispute resolution procedures and other consumer protection measures that were appropriate when the owner of the transmission network was also the monopoly service provider, are unnecessary and inappropriate for VoIP services offered in a competitive market. The existence of a competitive market for end-user VoIP applications drives companies to provide responsive customer service and to offer innovative features.

VoIP providers will deliver emergency calling services, or 911/E-911, as the result of market forces. Currently, the Packet8 service does not support 911, but 8x8 is a signatory to the agreement between the VON Coalition and the National Emergency Number Association ("NENA"), and 8x8 is committed to working with NENA on a pilot project/proof of concept demonstrating the feasibility of direct IP communications to public safety answering points ("PSAPs"). Although the long-term goal is to upgrade PSAPs and the supporting network to take full advantage of the capabilities of IP networking to deliver voice, video and data, 8x8 and other industry participants are planning near-term solutions that will, for example, enable 911 calls dialed from a Packet8 customer's pre-registered device to be routed via the legacy public safety network to a PSAP console, rather than to the ten-digit administrative number associated with the emergency services center.

Mr. Martin described some of the important differences between a "closed" VoIP offering such as Packet8, where the end point devices remain under the control of the service provider, and an "open" system such as Free World Dial-up, which is intentionally open to experimentation and grants access to any number of end point devices. This is significant in the context of CALEA. Because every device on the Packet8 network is known to the network control center and addressable, 8x8 can readily implement a wiretap order. It is a simple matter of a few keystrokes to instruct a Packet8 endpoint to deliver a media stream to an intercept location. This is not necessarily true of all forms of VoIP, particularly those where the service provider designs the

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system to be intentionally open; Free World Dial-up is an example of such an open system. 8x8 has not yet been served with a wiretap order, but is confident that a wiretap could be implemented quickly and inexpensively. 8x8 is concerned with one aspect of the CALEA petition, specifically the request by law enforcement agencies that any new technology be submitted to the FBI for its evaluation and prior approval. The history of Silicon Valley and the Internet has shown that innovation thrives on speed, with new generations of hardware and the services they enable coming to market at an ever-increasing pace. The costs and delays associated with a CALEA-driven prior approval requirement would disrupt this cycle of innovation and put U.S. companies at a competitive disadvantage to their foreign competitors.

Please refer any questions regarding this matter to the undersigned.

Sincerely,

Gray Cary Ware & Freidenrich LLP

[Filed electronically]

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cc: Tom Navin
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