

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR  
3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7647  
WWW.SWIDLAW.COM

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
TEL. (212) 973-0111  
FAX (212) 891-9598

April 30, 2004

## VIA ELECTRONIC FILING

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

**Re: Notice of *Ex Parte* Meeting in WC 03-211, WC 04-36**

Dear Ms. Dortch:

Pursuant to Section 1.120(b)(2) of the Commission Rules, this letter serves to provide notice in the above-captioned proceedings of *ex parte* meetings with certain Federal Communications Commission ("FCC") staff. On April 29, 2004, the undersigned accompanied Mr. Jeffrey Citron, Chairman and CEO of Vonage Holdings Corp. ("Vonage") and Ms. Brooke Schulz, also of Vonage to meet with the following people: Christopher Libertelli, Senior Legal Advisor to Chairman Powell; Matthew Brill, Legal Advisor to Commissioner Abernathy; Daniel Gonzalez, Senior Legal Advisor to Commissioner Martin; Jessica Rosenworcel, Legal Advisor to Commissioner Copps; Scott Bergman, Legal Advisor to Commissioner Adelstein; William Maher - Wireline Competition Bureau Chief, Jeffrey Carlisle - Senior Deputy Bureau Chief, Michelle Carey, Chief - Competition Policy Division, Tom Navin, Deputy Chief - Competition Policy Division, Russell Hanser, Attorney Advisor - Competition Policy Division.

During these meetings Vonage discussed the attached material highlighting the Company's position concerning the importance of a timely ruling on the jurisdictional nature of its service in the context of its Petition for Declaratory Ruling. A limited but timely ruling finding that the Vonage service is jurisdictionally interstate and subject to the exclusive regulatory jurisdiction of the FCC would avoid any possibility of a conflict such as that which occurred between the Commission's *Cable Modem Declaratory Ruling* and the Ninth Circuit's decision in the *Brand X Internet Services v. FCC* cases. Any immediate ruling in this proceeding need *not* limit the Commission's ability to further address these services in the context of the *IP Enabled NPRM*. Vonage expressed its view that any finding by this Commission that Vonage's services are subject to this Commission's exclusive regulatory jurisdiction should articulate that such finding has no impact on the continued validity of

generally applicable state consumer protection laws, state fair trade practices, and generally applicable state laws governing billing and contractual disputes.

Pursuant the Commission's Rules, this letter is being submitted electronically to the Secretary for filing in the above-referenced proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read "W.B. Wilhelm, Jr.", with a stylized flourish at the end.

William B. Wilhelm, Jr.

Enclosures

cc: Christopher Libertelli  
Matthew Brill  
Jessica Rosenworcel  
Scott Bergman  
William Maher  
Jeffrey Carlisle  
Michelle Carey  
Tom Navin  
Russell Hanser

# VONAGE<sup>®</sup>

THE BROADBAND PHONE COMPANY<sup>™</sup>

THE COMMISSION SHOULD IMMEDIATELY FIND THAT  
VONAGE'S SERVICES ARE INTERSTATE AND SUBJECT TO  
EXCLUSIVE FEDERAL JURISDICTION

Ex Parte Presentation

WC Docket Nos. 03-211

---

## I. INTRODUCTION

On September 22, 2003, Vonage Holdings Corporation (“Vonage”) filed a Petition seeking a declaratory ruling that the Minnesota Public Utilities Commission (“PUC”) regulation of Vonage’s DigitalVoice<sup>™</sup> service was unlawful under federal law. Among several possible grounds for relief requested in the Petition, Vonage sought a ruling that its service should be deemed interstate in nature and therefore subject to this Commission’s exclusive jurisdiction. Petition at 27-28. Limiting relief on this narrow ground would allow the Commission to grant the Petition without having to reach the question of whether Vonage’s service should be classified as an information service or a telecommunications service.<sup>1</sup> Moreover, this narrow approach would be in keeping with the Commission’s decisions in the *AT&T Access Charge* and *pulver.com* proceedings, in which the Commission ruled without prejudice to the results in the generic *IP Enabled Services* proceeding.

In light of the Minnesota PUC’s appeal to the U.S. Court of Appeals for the Eighth Circuit of the District Court’s *Vonage* Order, timely Commission action on Vonage’s Petition is crucial. Indeed, the Commission recognized as much in its *Amicus Brief* filed in the Eighth Circuit proceeding, in which the Commission asked the Court to hold the PUC’s appeal in abeyance pending decisions in this and the *IP Enabled Services* dockets.<sup>2</sup> Specifically, the Commission cited the importance of avoiding a conflict such as that between the Commission’s *Cable Modem Declaratory Ruling* and the Ninth Circuit’s decision in *Brand X Internet Services v. FCC*, 345 F.3d 1120 (9<sup>th</sup> Cir. 2003). *Amicus Br.* at 27 n.5. The Commission cannot, however, assume that its request to hold the case in abeyance will be granted. Vonage therefore urges the Commission to grant its Petition on the narrow jurisdictional grounds discussed herein and in the Petition.

---

<sup>1</sup> Vonage, of course, believes that DigitalVoice is properly classified as information service, as the District Court determined in *Vonage v. Minnesota PUC*, 290 F. Supp. 2d 993 (D.Minn. 2003) (“District Court *Vonage* Order”), and as Vonage explained in its Petition and Reply Comments.

<sup>2</sup> See Brief of the United States and the Federal Communications Commission as *Amici Curiae*, *Vonage Holdings Corp. v. Minnesota PUC*, Appeal No. 04-1434 (U.S. Court of Appeals for the Eighth Circuit April 21, 2004).

## II. THE COMMISSION SHOULD GRANT VONAGE'S PETITION WITHOUT FURTHER DELAY

### A. The Commission Should Declare that the Commission has Exclusive Jurisdiction over Vonage's Interstate Service

#### 1. Vonage's Services are Interstate Services

As the Commission has recognized, "section 2(a) of the [Communications] Act ... give[s] the Commission exclusive jurisdiction over interstate communications." *FWD Order n.57* (citing 47 U.S.C. § 152(a)). Section 2(a) explicitly precludes state regulation of interstate communications services. Thus "questions concerning the duties, charges and liabilities of telegraph or telephone companies with respect to interstate communications service are to be governed solely by federal law and ... the states are precluded from acting in this area." *Ivy Broadcasting Co. v. American Tel. & Tel. Co.*, 391 F.2d 486, 491 (2d Cir. 1968). Consistent with the statutory scheme, courts have affirmed Commission decisions displacing state regulation of interstate communications on the grounds that "interstate communications ... are placed explicitly within the sphere of federal jurisdiction by the plain language of the Communication Act." *National Ass'n of Regulatory Util. Comm'rs v. Commission*, 746 F. 2d 1492, 1501 n.6 (D.C. Cir. 1984). The Commission therefore has the authority to preclude state regulation that impermissibly intrudes on the Commission's exclusive domain over interstate communications.<sup>3</sup>

Vonage's service is clearly interstate in nature. First, as the Petition explains, Vonage customers can only access the service over broadband Internet connections, such as that provided by DSL and cable modem service providers. Both Congress and the Commission have recognized that the Internet is inherently interstate and that applications, such as Vonage's DigitalVoice service, that use the Internet are interstate services as well. Indeed, the Act itself refers to the Internet as jurisdictionally interstate. See 47 U.S.C. §230(f)(1) (defining the "Internet" as the "international computer network of both Federal and non-Federal interoperable packet switched data networks"); see also *Reno v. ACLU*, 521 U.S. 844, 849-850 (describing the Internet as "an international network of interconnected computers").

Consistent with §230, the Commission has consistently found that applications provided over the Internet are interstate in nature. For example, the Commission has observed that IP relay services are inherently interstate because the first leg of an IP Relay call comes over the

---

<sup>3</sup> As explained by the Supreme Court, federal law and policy is exclusive and can preempt state action: (1) when Congress expresses a clear intent to preempt state law; (2) when there is outright or actual conflict between federal and state law; (3) where compliance with both federal and state law is in effect physically impossible; (4) where there is implicit in federal law a barrier to state regulation; (5) where Congress has legislated comprehensively, thus occupying an entire field of regulation; or (6) where the state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress. *IP-Enabled Services NPRM*, ¶ 41 (citing, *inter alia Louisiana Pub. Serv. Comm'n v. Commission*, 476 U.S. 355, 368-69 (1986)).

Internet.<sup>4</sup> Accordingly, the Commission permitted the full recovery of IP Relay costs from interstate funds. Because DigitalVoice services are transmitted over the Internet there can be no question that they are jurisdictionally interstate.

Moreover, as the Petition explains, the nature of Vonage's service makes it impossible to divide the service into distinct intrastate and interstate components. As a result, any attempt to fetter Vonage's service in one state (such as Minnesota) would affect Vonage's service in other states. As the Petition explains, Vonage's service is inherently portable; customers can use the service anywhere they can attach their equipment to a broadband internet connection. Petition at 29 & n. 58. Further, Vonage cannot determine the actual physical location of its users.<sup>5</sup> Because Vonage customers can take their service anywhere in the United States — for that matter anywhere in the world — Vonage can never be sure of “the actual physical location” of customers using Vonage service. Petition at 28-29.<sup>6</sup>

Since Vonage cannot assure that its customers are not accessing the service in Minnesota, Vonage cannot assure compliance with the PUC's order. *See* Petition at 29. As the Petition explained, a customer in Minnesota may have Vonage service using a non-Minnesota telephone number. Conversely, subscribers in other states may use Minnesota numbers for their Vonage service. Further, any Vonage customer could, in theory travel to Minnesota at any time and connect their MTA computer to a broadband internet connection, without Vonage's knowledge. Because Vonage does not know where its customers are located when using DigitalVoice, and cannot prevent them from traveling to Minnesota and using Vonage service in that state, any effort to comply with Minnesota's regulatory system would be inexact and undoubtedly would require blocking some interstate traffic. The Commission should not permit such a result, regardless of whether Vonage is deemed to be providing information services or telecommunications services.

Because DigitalVoice service cannot be divided into distinct intrastate and interstate components, the Commission should assert exclusive federal control over Vonage services and preclude state regulation that would require Vonage to block interstate transmissions. This assertion of exclusive jurisdiction is warranted “where it is not possible to separate the interstate and intrastate aspects of a particular matter.”<sup>7</sup> The Commission recently applied this

---

<sup>4</sup> *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 17 FCC Rcd 7779, ¶¶ 1, 15 (2002) (“*IP-Relay Order*”).

<sup>5</sup> The Commission recognizes that with Internet based services there is “no automatic way to determine whether any call is intrastate or interstate. This is because Internet addresses do not have geographic correlates, and there is currently no Internet address identifier that can automatically give the location of the caller.” *IP-Relay Order*, 17 FCC Rcd 7779, at ¶ 15.

<sup>6</sup> The Commission has previously recognized that the Internet allows users to “access information with no knowledge of the physical location of the server where that information resides.” *Report to Congress* ¶ 64.

<sup>7</sup> *Texas Office of Pub. Util. Counsel v. Commission*, 183 F.3d 393, 422 (5th Cir. 1999) (citing *Pub. Serv. Comm'n of Maryland v. Commission*, 909 F.2d 1510, 1515 (D.C. Cir. 1990)).

inseverability doctrine in its decision to preclude state regulation of pulver.com's Free World Dial Up service. *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27 (rel. Feb. 19, 2004) ("*FWD Order*") at ¶ 22. The Commission based its jurisdictional analysis in part on its finding that "it is impossible or impractical to attempt to separate FWD into interstate and intrastate components." *Id.* The Commission further found that such separation would be impossible because pulver.com's "technology does not enable Pulver to determine the actual physical location of an underlying IP address." *Id.* Thus, the Commission's jurisdictional analysis found pulver.com's offering similar "to those previously deemed exclusively interstate by the Commission where it has applied its "mixed use" rule." *Id.*

The Commission has historically used the mixed-use doctrine to bar state intrusions on its exclusive authority to regulate interstate communications. For example, the Commission found a California regulation that established a default line blocking policy to be unlawful because it precluded the transmission of Caller ID information on interstate calls, and the effect of that regulation was not severable so that it could only affect intrastate calls.<sup>8</sup> Further, the Commission asserted exclusive federal regulation of fixed wireless antennas because use of such antennas "in [interstate communications] is inseverable from their intrastate use, regulation of such antennas that is reasonably necessary to advance the purposes of the Act falls within the Commission's authority."<sup>9</sup> Similarly, when the Commission granted GTE's request to tariff the DSL Internet transport service sold to ISPs the Commission acknowledged that some of the transmissions passing over an Internet access line may be intrastate in nature, but that the interstate component was not *de minimis*.<sup>10</sup>

Similar considerations warrant an assertion of exclusive Commission jurisdiction in this case. Because Vonage can never know the physical location of its customers when they are using Vonage's service it is impossible for Vonage to determine whether a particular transmission is intrastate or interstate.<sup>11</sup> Without the ability to isolate Minnesota intrastate transmission from interstate transmissions the PUC cannot enforce its order with respect to

---

<sup>8</sup> *Rules and Policies Regarding Calling Number Identification Service -- Caller ID*, 10 Commission Rcd. 11700, ¶¶ 85-86 (1995).

<sup>9</sup> *Promotion of Competitive Networks in Local Telecommunications Markets*, 15 Commission Rcd. 22983, ¶ 107 (2000).

<sup>10</sup> *See GTE Tel. Operating Cos. GTOC Transmittal No. 1148*, 13 Commission Rcd. 22466 ¶¶ 22, 25(1998) ("*GTE DSL Order*").

<sup>11</sup> The Commission recently acknowledged that the interstate nature of the Internet called for a uniform and consistent regulatory approach that would be unlikely if left to 50 separate state commissions. ("Uniformity and consistency are particularly important in the regulatory treatment of internet services because of the Internet's interstate (and international) architecture and the lack of any necessary correlation between service provider and physical locations." Brief of the United States and the Federal Communications Commission as *Amici Curiae*, *Vonage Holdings Corp. v. Minnesota PUC*, Appeal No. 04-1434 (U.S. Court of Appeals for the Eighth Circuit April 21, 2004) at 24.

Vonage's intrastate services without interfering with Vonage's ability to provide at least some jurisdictionally interstate services over interstate communications facilities. Such interference is unjustifiable under the Act's exclusive grant of authority to the Commission to regulate interstate communications services. Because the Commission's authority encompasses both interstate information services and interstate telecommunications services, an assertion of exclusive federal authority precluding Minnesota's impermissible regulation does not require the Commission to reach the classification issue.

**B. Comments before the Commission and State Commissions Overwhelmingly Agree that VoIP Services Are Inherently Interstate**

In addition to the multiple proceedings filed at the Commission, state commissions are also conducting proceedings to assess the regulatory treatment of VoIP services. In these proceedings the overwhelming sentiment of commenting parties is that Vonage's services are interstate. Attached to this document is an analysis of comments in several of these proceedings, particularly the Commission's own proceeding regarding the Vonage Petition, a Petition filed by Level 3 Communications,<sup>12</sup> and the proceeding open at the California PUC.<sup>13</sup> The opinion and analysis by the parties consistently supports Vonage's position here that its services are exclusively interstate. This analysis comes from a cross section of the communications industry and includes Regional Bell Companies, Interexchange carriers, equipment manufacturers, CLECs, and cable telephony providers.<sup>14</sup>

**III. THE IP-ENABLED SERVICES NPRM DOES NOT PRECLUDE THE COMMISSION FROM PROMPT ACTION ON THE LIMITED RELIEF THAT VONAGE REQUESTS IN ITS PETITION**

Since Vonage filed its petition in September, 2003, the Commission has resolved two other petitions, one by pulver.com and one by AT&T, that raised issues related to the Commission's regulation of VoIP services. Although the Commission sought comment on the global issues raised by the rapid introduction of IP enabled services into the market, the Commission still resolved these two petitions that raised issues falling within the ambit of the NPRM. The Commission should do the same here.

In the *FWD Order*, the Commission found that the Free World Dialup service was an unregulated information service and that "state regulations that seek to ... subject [the service]

---

<sup>12</sup> *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(b)(1) and Rule 69.5(b)*, WC Docket No. 03-266.

<sup>13</sup> *Order Instituting Investigation on the Commission's Own Motion to Determine the Extent to Which the Public Utility Telephone Service Known as Voice over Internet Protocol Should be Exempted from Regulatory Requirements*, Investigation No. 04-02-007 (CA PUC Feb. 11, 2004).

<sup>14</sup> See Exhibit A, attached to this presentation, for an analysis of the comments in the Vonage proceeding and the Level 3 proceeding currently pending before the Commission and the CPUC's Investigation regarding VoIP service.

to public-utility type regulation would almost certainly pose a conflict with [the Commission's] policy of nonregulation" of information services. *FWD Order* ¶ 15. The order further clarified, however, that the Commission's findings had no bearing on the outcome of similar issues raised in the NPRM and "was confined to the FWD service as described in th[e] Order." *Id.* at n. 55.

In *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, the Commission determined that AT&T's routing of phone-to-phone traffic over AT&T's Internet backbone network meant that the specific AT&T service at issue was classified as a telecommunications service and accordingly AT&T was obligated to pay interstate access charges for termination of such traffic. WC Docket 02-361, Order, FCC 04-97 ¶ 1 (rel. April 21, 2004). As it did in the *FWD Order*, the Commission stated that its resolution of AT&T's petition was based on its narrow application of the law to the unique service AT&T provides. *Id.*

As it did in the *AT&T Order* and in the *FWD Order*, the Commission should decide Vonage's petition based on the unique interstate nature of Vonage's DigitalVoice service. Such a ruling could be narrowly tailored to assert exclusive federal jurisdiction over the regulation of Vonage's DigitalVoice service which is clearly distinct both from the services that pulver.com and AT&T provide.

Further, making such a ruling now is in the public interest, as the Commission's assertion of exclusive federal authority over regulation of Vonage's service would best serve the public. While the Commission examines the "jurisdictional questions more broadly in our IP-Enabled Services Notice of Proposed Rulemaking, [the Commission] best serve[s] the public by being clear as to the nature of [the Commission's] authority over the specific service at issue in this petition." *FWD Order* ¶ 15; *See also AT&T Order* at ¶ 2.

#### **IV. CONCLUSION**

The Commission should immediately declare that it has exclusive jurisdiction over Vonage's interstate services, and that the Minnesota PUC's regulation of Vonage's DigitalVoice service is an intrusion on that authority because it is inherently impossible to separate any service offered over the public Internet (regardless of its regulatory classification) into distinct interstate and intrastate components. The pending NPRM and the Commission's action in the *FWD Order* and the *AT&T Order* specifically contemplate that the Commission should make this determination regarding Vonage's narrow, service specific petition without regard to the timing of action on the pending NPRM.

# VONAGE<sup>®</sup>

THE BROADBAND PHONE COMPANY<sup>™</sup>

---

Commenting parties in a broad assortment of federal and state proceedings considering the regulatory treatment of Voice over Internet Protocol (“VoIP”) services agree that Vonage’s services or functionally similar VoIP services are interstate in nature and subject to exclusive federal authority. This addendum cites some of the comments filed by the broad range of parties that support Vonage’s position that the Commission should declare that Vonage’s services are interstate and subject to exclusive federal jurisdiction.<sup>1</sup>

In these three proceedings alone at least 23 other parties including trade associations, equipment suppliers, software companies, IXCs, CLECs, RBOCs, think tanks and VoIP providers have submitted comments averring that a Vonage type VoIP service is inherently interstate in nature, and should be subject to exclusive Federal jurisdiction. These parties include 8x8, the American Electronics Association, AT&T, Bell South, Broadwing Communications, the California Cable and Telecommunications Association, Cisco, Covad, Cox, the High Tech Broadband Coalition, Global Crossing, ICG Telecom, Level 3, MCI, Motorola, Nextel, Pac-West, the Progress and Freedom Foundation, SBC, the Telecommunications Industry Association, USA DataNet, Verizon, and the Voice on the Net Coalition.

## **8x8 Inc.**

### Vonage Proceeding

- While the Minnesota District Court has permanently enjoined the Minnesota Public Utilities Commission order, the FCC should still act to avoid a situation where the industry must litigate each state’s assertion of jurisdiction. (p.8) 8x8 agrees with Vonage that there is no technical mechanism for separating out the IP traffic that traverses the Internet into intrastate and interstate components. (p.13) The IP address information available to the CPE and software applications used by both services contain no information regarding the physical, geographic location of the communications equipment or underlying network. Because of the practical impossibility to separate out

---

▪ <sup>1</sup> Citations from the following three proceedings are provided: *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211 (Vonage Proceeding); *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(b)(1) and Rule 69.5(b)*, WC Docket No. 03-266 (Level 3 Proceeding); *Order Instituting Investigation on the Commission’s Own Motion to Determine the Extent to Which the Public Utility Telephone Service Known as Voice over Internet Protocol Should be Exempted from Regulatory Requirements*, Investigation No. 04-02-007 (CA PUC Feb. 11, 2004) (California Proceeding)

the traffic, the FCC should preclude state regulation of this jurisdictionally mixed service. (p.14)

California Proceeding

- Packet8 and other VoIP technologies are interstate information services, and state regulation of them would contravene the policies established in the 1996 Act. (p.8)

**American Electronics Association**

California Proceeding

- Federal preeminence over VoIP regulation is clearly established based on Congressional intent, FCC rulings, and federal court rulings. (p.2, 3, 5)

**AT&T Corporation**

Level 3 Proceeding

- It is impossible to determine the geographic endpoints of IP calls; and exclusive FCC jurisdiction exists to IP services unless they can be shown to be entirely intrastate. (p.4-10)

California Proceeding

- Quotes the *Vonage v. Minnesota Public Service Commission* case for the proposition that because state and federal laws conflict, federal law is supreme. (p.12)

**Bell South Corporation**

Vonage Proceeding

- In light of: (1) all the state activity concerning VoIP service; and (2) potential inconsistent judicial construction of a federal statute; it is clear that the FCC must develop a national framework for VoIP. (p.3-4).

**Broadwing Communications, LLC**

Level 3 Proceeding

- IP-enabled services are non-geographic in nature, and there is no logical reason to develop a system to track the route that packets take over the packet-switched network. (p.5)

**California Cable and Telecommunications Association**

California Proceeding

- California Public Utilities Commission jurisdiction will likely be affected by FCC or court decisions focusing on the regulatory status of VoIP. (p.5)

## **Cisco Systems, Inc.**

### Vonage Proceeding

- The Minnesota Public Utilities Commission and other states lack jurisdiction because Vonage's service is an interstate service. Further, Vonage cannot determine the location of its user and it is portable. (p.4-5) Where it is impossible to separate out interstate and intrastate components of a call, the FCC has exclusive authority. (p.5) While state commissions lack jurisdiction to regulate information and interstate services, they are prepared to do so absent a declaratory ruling from the FCC. (p.5)

## **Covad Communications Company**

### California Proceeding

- "Covad believes that its VoIP services, when they are rolled out, will most likely involve jurisdictionally interstate traffic, most appropriately regulated at the federal level." (p.3)

## **Cox California Telecom, LLC**

### California Proceeding

- "It is premature and not in the public interest for [the CPUC] to move to set broad-ranging State policy given the possibility that such regulation may be preempted or may need to be significantly revised in light of certain imminent federal mandates." (p.23-24)

## **Global Crossing North America, Inc.**

### Level 3 Proceeding

- The FCC should assert its authority over the entire field to ensure that national policies be developed, and avoid a patchwork of state regulation on interstate IP telephony. (p.6)

## **The High Tech Broadband Coalition**

### Vonage Proceeding

- Since Vonage cannot determine the jurisdictional nature of any given call, the FCC should declare that it is an interstate service exempt from regulation by state commissions. (p.3) Internet services generally, and Vonage's service in particular, cannot easily be separated into interstate and intrastate components. (p.8) The portability of Vonage's service exacerbates the problem in identifying the jurisdictional nature of a specific Internet transmission on a real-time basis. (p.9) Vonage's service falls outside state commission jurisdiction because of the FCC's "mixed use" rule which allows the FCC to assert federal jurisdiction over jurisdictionally mixed traffic so long as the interstate traffic is not de minimis. (p.10)

## **ICG Telecom Group, Inc.**

### Level 3 Proceeding

- The FCC has acknowledged the difficult issues in imposing the circuit-switched regulatory regime on VoIP, such as whether LECs can even determine whether VoIP calls are interstate or intrastate in nature; however, the FCC recently ruled that certain forms of VoIP such as Pulver.com’s Free World Dialup Service are jurisdictionally interstate in nature. (p.3)

California Proceeding

- VoIP providers generally cannot track the jurisdictional nature of VoIP traffic. (p.7)

**Level 3 Communications LLC**

Level 3 Proceeding

- The lack of ability to determine the physical location of the IP end-point makes VoIP service interstate in nature, and urges the Commission to take exclusive jurisdiction. (p.56-67)

California Proceeding

- “Because enhanced VoIP services are inherently interstate in nature, the FCC must be allowed to establish fundamental regulatory principles before states act to impose a patchwork of unique regulations themselves.” (p.2)

**MCI**

California Proceeding

- The Internet is inherently interstate as data moves across a global network, and therefore VoIP is not subject to state regulation; the California Public Utilities Commission should avoid federal preemption by refraining from imposing regulatory burdens on VoIP services. (p.27-31)

**Motorola, Inc.**

Vonage Proceeding

- First, the FCC should grant the Vonage petition and preclude regulation by the Minnesota PUC under the “impossibility doctrine.” (p.14-15); second, the FCC should immediately assert exclusive federal jurisdiction over all regulation of VoIP services that share the same or similar characteristics as the Vonage service until the Commission establishes a national policy for VoIP regulatory treatment; (p.13) third, the Commission should launch a broader rulemaking to address in a comprehensive manner the regulatory issues raised by Vonage and other VoIP-related petitions filed with the FCC in the last year. (p.2)

California Proceeding

- The California Public Utilities Commission should refrain from regulating VoIP as the FCC’s NPRM will likely set forth a national VoIP framework, and could control the extent of state jurisdiction. (p.3)

**Nextel of California, Inc.**

California Proceeding

- “As the transmission of VoIP communications is not jurisdictionally ‘intrastate’ the obligations the Commission seeks to impose are within the FCC’s exclusive regulatory purview.” (p.6)

**Pac-West Telecom, Inc.**

California Proceeding

- The California Public Utilities Commission should suspend its investigation as its “tentative” conclusion that VoIP is a public utility service over which it has jurisdiction could conflict with the nationwide policies being developed at the federal level. (p.2)

**The Progress and Freedom Foundation**

Level 3 Proceeding

- “VoIP is inherently interstate in nature,” giving the FCC sole discretion on aspects of its regulatory treatment. (p.1-2)

California Proceeding

- The California Public Utilities Commission ignores the fact that there is no difference between local and long distance services when utilizing IP networks, and that the Commission should realize that “VoIP is an interstate service” and that the “[t]he analysis should begin, and end, there.” (p.1-3)

**SBC Communications, Inc.**

Level 3 Proceeding

- SBC notes that it recently filed a petition requesting the FCC declare IP services “interstate information services”. (p.30)
- In SBC’s Reply Comments, it lists parties agreeing with SBC’s conclusion that IP-PSTN services are interstate in nature and subject to exclusive FCC jurisdiction, including AT&T, Verizon, and Global Crossing. (p.14-15)

California Proceeding

- The Joint Opening Comments of SBC California and SBC-IP question the California Public Utilities Commission’s authority to conduct a proceeding aimed at regulating

VoIP as the service is most properly classified as an interstate service, and therefore is subject generally to FCC jurisdiction. (p.3)

### **Telecommunications Industry Association**

#### California Proceeding

- The California Public Utilities Commission lacks the jurisdiction to regulate VoIP as the service is inherently interstate in nature, which makes it impossible for the Commission to determine that it is an intrastate telecommunications or telephone service. (p.1)

### **USA DataNet Corporation**

#### Vonage Proceeding

- The FCC should find that Vonage is offering an interstate service in light of the Minnesota District Court decision. (p. 2)

### **Verizon Telephone Companies**

#### Vonage Proceeding

- Broadband access to the Internet, upon which Vonage's service relies, has been found to be jurisdictionally interstate. These facilities and the services they support need a single, coherent national policy if they are to grow and thrive. Economic regulation of the Internet and broadband services by the individual states can only undermine these goals. (p.3) Thus, it is legally appropriate for the FCC to assume jurisdiction over all Internet-based services under the inseverability doctrine. (p.12)
- FCC jurisdiction over such services is also good policy since there is general consensus that the Internet and the broad deployment of broadband access are good things, that will benefit consumers and the economy generally. (p.13)

#### Level 3 Proceeding

- An IP-caller can place a call from any broadband access point, and as such, there is no way to geographically locate the IP-caller. (p.4-6)

#### California Proceeding

- In its comments, Verizon California, Inc. asserts that the defining hallmark of IP networks is that they operate without regard to jurisdictional boundaries, and that FCC jurisdiction is the correct result because of legal distinctions and sound public policy. (p.9-12)

### **Voice on the Net ("VON") Coalition**

#### Vonage Proceeding

- Given the inseparability of intrastate and interstate Internet traffic, the FCC should find all VoIP traffic to be interstate as consistent with other FCC decisions on jurisdictionally-mixed services. (pp.16-17)

California Proceeding

- Scarce resources should not be spent by the California Public Utilities Commission regulating VoIP when it is likely that the FCC or courts will assert exclusive federal jurisdiction. (p.11)