

SUMMARY OF FRONTIER'S COMMENTS

If a service assigns numbers under the North American Numbering Plan and allows the subscriber to make and receive voice calls from POTS telephones on the PSTN, the service should be regulated as the POTS that it is. POTS should be defined as a service that allows its customers to call and be called by PSTN telephones. There is nothing special about IP technology that requires or allows Federal preemption or some form of regulation that differs from the light regulation that applies to every other Competitive Local Exchange Carrier or non-dominant interexchange carrier that is providing POTS. Light-handed CLEC POTS regulation would bring with it a resolution of “social” issues such as E-911, CALEA and USF funding.

Such a “call and be called” service is subject to the jurisdiction of both the Commission and state regulatory commissions pursuant to 47 U.S.C. §152(b). Jurisdictionally local traffic delivered directly or indirectly between a “call and be called” service provider and the PSTN should be subject to reciprocal compensation or a bill-and-keep agreement under the Telecommunications Act of 1996 and the rules that implement the Act. Jurisdictionally long distance traffic should be subject to state or Federal access charges under the same rules that apply to any other interexchange traffic.

The Commission must not pick technological or competitive winners and losers. If it exempts VoIP POTS from regulatory requirements that apply to traditional POTS, or provides other financial benefits to VoIP POTS, it will force all providers to become members of the protected class regardless of what is appropriate for the protection of consumers and national security, and regardless of the true economic costs and benefits of a VoIP network.

To discourage further cheating, the Commission should require all carriers, including VoIP carriers, to pass all SS7 information and to use separate trunk groups for long distance traffic when connecting to the PSTN.

TABLE OF CONTENTS

I.	<u>Introduction</u>	1
II.	<u>Title II POTS Regulation Of “Call And Be Called” Services Is Required To Protect Mass-Market Consumers</u>	3
III.	<u>The Commission Must Not Pick Winners And Losers By Tilting The Playing Field In Favor Of One Technology</u>	6
IV.	<u>The Commission Should Require Carriers To Transmit All SS7 Data And Use Access Trunks For Access Traffic</u>	9
V.	<u>Conclusion</u>	10

Frontier urges the Commission to keep in mind two basic regulatory principles – the protection of the mass-market consumer from unnecessary danger and unreasonable practices, and the necessity in today’s competitive environment for the Commission not to pick technological or competitive winners and losers. Frontier believes that these considerations dictate that the Commission should approach VoIP regulation using the following common sense principles:

- (1) If a service connects with the Public Switched Telephone Network (PSTN), assigns telephone numbers in accordance with the North American Numbering Plan, and allows customers to call and to be called by any telephone on the PSTN, then that service should be regulated as the POTS that it is. A workable definition is whether a service allows a voice customer to call and be called by POTS telephones on the PSTN.
- (2) Absent a statutory change, the regulation of such a “call and be called” service is split between the Commission and state regulatory commissions pursuant to 47 U.S.C. §152(b). There is nothing special about IP technology that requires or allows exclusive Federal regulation or discriminatory regulatory benefits to be awarded to VoIP competitors. If IP technology is indeed a disruptive force that will replace the circuit switched network as a result of its allegedly superior technology and costs, then it will succeed on its own merits in the marketplace without special help from the Commission.
- (3) As tentatively concluded at ¶33 of the NPRM, any service provider sending traffic to the PSTN should be subject to similar compensation obligations regardless of how the traffic originates. A “call and be called” service provider should be subject to the requirement to negotiate reciprocal compensation or a bill-and-keep arrangement

under the Telecommunications Act of 1996 for jurisdictionally local traffic. The provider (or a carrier under contract with the provider to terminate the provider's traffic) should be subject to existing intrastate and interstate access charges for long distance traffic, the same as any other interexchange carrier.

II. Title II POTS Regulation Of "Call And Be Called" Services Is Required To Protect Mass-Market Consumers.

The Commission must never lose sight of its regulatory responsibility to protect consumers from unreasonable and dangerous actions of carriers. As has been fully set forth in Frontier's Comments in the Vonage proceeding, WC Docket No. 03-211, some VoIP providers do not participate in E-911 service, and instead provide nothing more than the translation of a 911 emergency call to a POTS number at a local Public Safety Answering Point (PSAP). An emergency call to such a POTS number may never be answered because the line is busy, the line is not necessarily dedicated to emergencies and therefore does not have the same priority as emergency lines, or the PSAP may have switched to a secondary location as the result of an emergency or a service disruption such as a cable cut. Even if the PSAP answers the POTS number, the PSAP will have no location information, and not even a callback number unless Caller ID works on the call.

VoIP providers ask the Commission to trust them to solve these problems, but the Commission should recall its experience with the cellular industry in providing location information on emergency calls. It is a fair characterization to state that the Commission has been required to drag some cellular providers into compliance. What is still more concerning is that some VoIP providers are already providing 911 service over standard 911 trunks and are providing Automatic Location Information (for the primary location of the VoIP subscriber),

while other VoIP providers are not. Frontier submits that the Commission would not be well advised to trust all VoIP providers to solve these problems on a voluntary basis.

The same problems exist with the Communications Assistance for Law Enforcement Act (CALEA), pursuant to which VoIP providers are claiming an exemption as information service providers pursuant to 47 U.S.C. §1001(8)(C). The Commission cannot trust VoIP POTS providers to determine an appropriate level of compliance. Frontier submits that it is high time to declare that “call and be called” services are not information services. Absent such a finding, criminals and terrorists will be inclined to conduct their activities over VoIP services so as to reduce the likelihood of court-ordered wiretaps and traces.

The principle of consumer protection also applies to the availability of the Commission and state commissions as forums for consumer complaints, particularly for consumers who are risk of losing POTS with minimal notice at the discretion of the VoIP provider. Vonage, for example, posts terms of service on its website that allow Vonage not only to terminate service for any reason at any time, but further to charge a substantial fee for disconnection. Consumers have only 7 days to raise a dispute and the dispute must be made in writing.¹ Vonage is free to discontinue dial tone service at any time for any reason.² Vonage charges a \$39.99 fee for disconnection by the customer.³ All disputes are subject to mandatory arbitration under the Commercial Arbitration Rules of the American Arbitration Association.⁴ These rules require the claimant to pay an initial fee deposit of \$125 toward the charges of the arbitrator.⁵ If a court case is brought, the consumer has already agreed to personal and exclusive jurisdiction of the courts

¹ Vonage Terms of Service, §4.2, http://www.vonage.com/features_terms_service.php (accessed 5/21/04).

² Vonage Terms of Service, §4.4. The Commission should view this as an intolerable life and safety risk.

³ Vonage Terms of Service, §4.6.

⁴ Vonage Terms of Service, §6.1.

⁵ AAA Commercial Arbitration Rules, Supplementary Procedures for Consumer Related Disputes, §C-8 (available online at <http://www.adr.org/>).

of New Jersey.⁶ Vonage has a tool on its web site to allow customers to determine whether Vonage offers inward number portability in any particular area.⁷ A single line consumer who ports his or her telephone number to Vonage will no longer have any landline telephone service. Once the numbers are ported, the customer is entirely at the mercy of Vonage's terms of service if he or she wishes to keep any dial tone service at all.

VoIP service has graduated from a computer-to-computer hobbyist service to a mass-market service heavily marketed to single line residential consumers. Light-handed regulation is required to ensure basic consumer protections. There is no reason to regulate VoIP POTS any differently from the POTS provided by any other Competitive Local Exchange Carrier.

To the extent VoIP POTS is provided, as indeed it is provided, to large business customers, the same regulatory protections may not be necessary. In such a case, any regulation relaxed for VoIP POTS should be relaxed for traditional POTS. It is not the technology that may warrant regulatory relaxation in this situation; it is the nature of the customer and the function of the service. The Commission and state regulatory commissions should consider relaxation of regulations for all providers of service where consumer protections are not required. Otherwise the regulators would be not only be improperly picking winners and losers, but doing so without a rational basis.

Regulation of "call and be called" VoIP services with the light hand that applies to CLEC POTS would carry with it a simple resolution of the "social" problems such as E-911 service, CALEA and USF contributions. A "call or be called" provider would have the same responsibilities as any other provider of POTS. If any POTS provider believes that any of the light-handed CLEC regulatory requirements are too onerous, despite that fact that literally

⁶ Vonage Terms of Service, §6.2.

⁷ http://www.vonage.com/features_inp.php (accessed 5/21/04)

hundreds of CLECs are already in compliance with them, the provider would be free to petition the Commission or the applicable state regulatory authority for forbearance or waiver.⁸ This is precisely the process that the New York Public Service Commission has provided for Vonage. Order Establishing Balanced Regulatory Framework for Vonage Holdings Corporation, Case 03-C-1285, Complaint of Frontier Telephone of Rochester, Inc. Against Vonage Holdings Corporation Concerning Provision of Local Exchange and InterExchange Telephone Service in New York State in Violation of the Public Service Law (issued and effective May 21, 2004). The New York Public Service Commission's determination is well balanced and should be followed by the Commission.

III. The Commission Must Not Pick Winners And Losers By Tilting The Playing Field In Favor Of One Technology.

IP telephony may or may not be a disruptive technology. It may or may not offer superior features and lower costs. It may or may not be scalable to the extent that it can significantly replace all or portions of today's PSTN. The Commission cannot make these determinations, nor should it attempt to do so. The marketplace will determine the answers. If, however, the Commission provides substantial regulatory and economic advantages to providers that use IP in "call and be called" networks, the Commission will skew the marketplace and will improperly pick technological and competitive winners and losers. As the Commission states in ¶33 of the NPRM, there is absolutely no difference in the way an IP-originated call as compared to a TDM-originated call uses the PSTN when the call is terminated over the PSTN. If one class

⁸ Some VoIP providers may provide for calls to the PSTN but not assign numbers and therefore not allow calls from the PSTN in connection with their service. Frontier suggests that CLEC regulation is not necessarily appropriate for such providers. However, as proposed in the NPRM, the traffic they generate to the PSTN should be treated under the same rules applicable to any other provider's traffic. Frontier further suggests that such providers should contribute to Universal Service Funding with respect to their PSTN traffic, again on the same basis as any other service provider.

of long distance call is exempted from the payment of access charges and the other is not, the Commission will strongly motivate service providers to originate long distance traffic using IP regardless of whether it is economical at the originating end and regardless of whether it improves or degrades the quality of service, robustness and safety of the PSTN. If the Commission goes beyond an access charge exemption and relieves “call and be called” providers from other regulatory requirements and payments on the basis of the protocol they use, the economic motivations would be nearly inescapable.

VoIP “call and be called” providers now claim exemptions from the following regulatory requirements in addition to exemption from access charges when they terminate long distance traffic to the PSTN, and this is by no means an exhaustive list:

- Payment of Federal and state Universal Service Fund contributions
- Billing and collecting E-911 surcharges established by state law
- Participating in E-911 networks
- Participating in hearing-impaired relay networks
- Complying with CALEA
- Paying assessments for state regulatory commission expenses
- Filing state tariffs and interstate price lists
- Obtaining state Certificates of Public Convenience and Necessity
- Filing any data or reports with the FCC or state commissions
- Paying the gross revenue taxes that some states assess on regulated carriers
- Complying with rules prohibiting the termination of basic local service for nonpayment of enhanced or long distance service
- Providing notices before termination for nonpayment of basic local service
- Obtaining state regulatory approvals for the issuance of securities or the transfer of regulated assets
- Safeguarding and properly using Customer Proprietary Network Information

- Complying with prohibitions against “slamming” and “cramming”
- Responding to complaints filed against them before the Commission and state regulatory commissions

A decision exempting any class of “call and be called” services from all or a significant portion of these requirements would economically force all service providers to re-engineer their networks to fit into the protected class, and those without the economic capability to do so would probably fail, leaving subscribers without a provider of last resort.

Many hundreds of Competitive Local Exchange Carriers and non-dominant interexchange carriers now comply with all of these requirements. Requiring providers of VoIP “call and be called” services to do the same is not a major step. Allowing the use of IP technology to create an exemption from some or all of these requirements would establish VoIP as the model and the standard for the United States telecommunications network and VoIP providers as the only competitors able to survive in the marketplace. Regulation should be technologically and competitively neutral. If IP technology is truly the network of the future, it will establish itself without economic subsidies from the regulators.

IV. The Commission Should Require Carriers To Transmit All SS7 Data And Use Access Trunks For Access Traffic.

The Commission’s regulations at 47 CFR §64.1601(a) require all carriers using Signaling System 7 (SS7) to transmit the Calling Party Number to interconnecting carriers on interstate calls. The basis of this regulation was initially to maximize the utility of Caller ID services to consumers. The SS7 data now serve another and equally important function, that of identifying the jurisdiction of a call so that the proper charges are applied.

Carriers across the United States are routing their calls in increasingly complex ways. It

is not uncommon for a long distance call to be routed through three or more service providers in between the originating and terminating service providers. It frequently happens that some or all of the SS7 data on a call gets “stripped” either intentionally or as a result of the type of connections used between carriers. As an example, Frontier has recently discovered that both the interstate and intrastate terminating calls of an interexchange carrier that uses IP within its network are delivered to Frontier’s network in Rochester, New York over local trunks from a Competitive Local Exchange Carrier that are subject only to reciprocal compensation. As proven by test calls, this routing takes place on calls originated in multiple area codes, yet the SS7 message identifies the calling number only as “585”, which is the area code for Rochester. No 7-digit number is provided, only the “585” number. This routing and designation have allowed this phone-to-phone IP-based interexchange carrier to escape the application of access charges, although it uses IP only within its network and performs no net protocol conversion.⁹

As another example, Frontier discovered that a wireless carrier with an interconnection agreement with Frontier providing for the payment of reciprocal compensation on intra-MTA calls was sending its traffic to Frontier over Feature Group C trunks from a neighboring Incumbent Local Exchange Carrier. The traffic on these Feature Group C trunks was not rated or billed because these trunks were supposed to be used only for “bill-and-keep” ILEC-to-ILEC Extended Area Service local traffic. The wireless carrier thus escaped the application of reciprocal compensation by routing its Frontier-bound traffic through the neighboring ILEC instead of over the direct interconnection trunks that had already been established between the wireless carrier and Frontier.

Frontier believes that these practices are widespread in the industry and getting worse.

⁹ This traffic is subject to access charges as found by the Commission in its Order, Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (released April 21, 2004).

Frontier endeavors to catch such cheating, but it is severely hampered in doing so when it does not receive the full SS7 data on all traffic. And given the frequent absence of appropriate records from the connecting carrier to enable mechanized billing of multi-jurisdictional traffic, even if the SS7 information is available it requires an expensive special study to catch the cheating because multiple carriers' local and long distance traffic is often commingled on single trunk groups. If the Commission decides, as it should, that IP-originated long distance traffic is subject to access charges when terminated to the PSTN, to avoid exacerbation of the cheating situation the Commission should not only require the transmission between carriers of all SS7 data, but should also require carriers interconnecting with the PSTN to segregate their access traffic onto separate trunk groups.

V. Conclusion.

Regulation of a service should depend on its function, not its technological underpinning. A service that is the functional equivalent of POTS must be regulated as POTS. The functional equivalent of POTS is a service that allows a customer to call and be called by POTS telephones on the PSTN. IP technology provides no basis to treat IP-originated or IP-terminated POTS any differently from TDM-originated or TDM-terminated POTS, whether the call is local or long distance. There is no reason or legal basis for the Commission to preempt state regulation of intrastate or local POTS of any flavor.

If the Commission makes the right decision and applies access charges to long distance traffic terminated to the PSTN regardless of its protocol of origin, the Commission should discourage further cheating by requiring all carriers to pass all SS7 information and to segregate their access traffic onto separate trunk groups when they interconnect with the PSTN.

Granting regulatory or financial benefits to VoIP POTS would pick both technological and competitive winners and losers. The wrong decision in this docket could dictate the future

of the telecommunications network of the United States without regard to consumer protections, national security or the true economic costs and benefits of IP technology.

Respectfully submitted,

FRONTIER AND CITIZENS COMMUNICATIONS



By: _____

Gregg C. Sayre
Associate General Counsel – Eastern Region
180 South Clinton Avenue
Rochester, New York 14646-0700
(585) 777-7270
gregg.sayre@frontiercorp.com

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Per NPRM, copies also to:

janice.myles@fcc.gov

qualexint@aol.com