

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
SBC Communications, Inc. Petition for)	WC Docket No. 04-29
Forbearance Under Section 10 of the)	
Communications Act From Application of)	
Title II Common Carrier Regulation to “IP)	
Platform Services”)	

**COMMENTS OF THE
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

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SUMMARY

The Commission should make clear in this proceeding, as the *IP NPRM* suggests, that all service providers who utilize the facilities of local exchange carriers (LECs) to originate or terminate interexchange telecommunications services have equal obligations to compensate LECs for such use. Further, to the extent that IP-enabled services are functionally the same as the interstate telecommunications services provided by traditional carriers (*i.e.*, utilize NANP resources, rely on the Public Switched Telephone Network (PSTN) for call completion, etc.), they should be required to bear equal obligations to contribute to federal universal service mechanisms.

In determining regulatory classifications of services in this or related proceedings, the Commission should take care not to limit the ability of carriers to tariff basic transmission services where such traditional regulatory approaches remain in the public interest. Specifically, NECA carriers who wish to retain the ability to tariff their basic digital subscriber line (DSL) transmission services should continue to be permitted to do so notwithstanding characterization of such services as “broadband” transmission. An apparent advantage of SBC’s proposal to forbear from regulating “IP Platform” services is that this approach appears to leave traditional regulation of basic DSL transmission services in place where marketplace circumstances warrant, such as the primarily rural areas served by NECA tariff participants.

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COMMENTS

The National Exchange Carrier Association, Inc. (“NECA”) submits these Comments in the above-captioned proceedings.¹

I. INTRODUCTION

The Commission, via its *IP NPRM*, seeks comment on the proper regulatory treatment of Internet Protocol (IP)-enabled services. Comments are also requested on

¹ IP-Enabled Services, WC Docket No. 04-36, *Notice of Proposed Rulemaking*, 19 FCC Rcd 4863 (2004) (*IP NPRM*); Pleading Cycle Established for Comments on Petition of SBC Communications Inc. for Forbearance Under Section 10 of the Communications Act from Application of Title II Common Carrier Regulation to “IP Platform Services,” *Public Notice*, WC Docket No. 04-29, 19 FCC Rcd 2640 (2004); Wireline Competition Bureau Extends Comment Deadlines for SBC’s “IP Platform Services” Forbearance Petition, *Public Notice*, 19 FCC Rcd 5607 (2004). (*SBC Public Notices*).

SBC Corporation's petition for forbearance from application of Title II common carrier regulation to "IP Platform" services.²

IP-enabled services range from futuristic combinations of voice, video, data and e-mail applications to those that look, feel and act just like "plain old telephone service" ("POTS"). The regulatory issues raised by deployment of IP-enabled services are profound. Proponents of deregulation and/or non-regulation rightly point out that traditional regulatory models do not apply well to services that combine telecommunications functions in ways that make new services difficult to classify under 1980's-era "basic" and "enhanced" distinctions. But to the extent that IP-enabled services functionally replicate, and compete directly in the marketplace with, traditional telephone services, it is unclear how the Commission can rationally apply traditional regulatory mechanisms to one type of provider but deregulate others simply on the basis of the technology employed to provide services.

Regardless of how the Commission chooses to adapt its regulations to fit new technological and marketplace developments, NECA believes that the Commission should make clear in this proceeding, as the *IP NPRM* suggests, that all service providers who utilize the facilities of local exchange carriers (LECs) to originate or terminate interexchange telecommunications services face equal obligations to compensate LECs for such use and to contribute to universal service mechanisms. As a corollary matter, the Commission should assure that, to the extent that IP-enabled services are functionally the same as the interstate telecommunications services provided by traditional carriers

² Defined by SBC as those services "that enable any customer to send or receive communications in IP format over an IP platform." Petition of SBC Communications Inc. for Forbearance, WC Docket No. 04-29 (Feb. 5, 2004) at i.

(i.e., utilize North American Numbering Plan (NANP) resources, rely on the Public Switched Telephone Network (PSTN) for call completion, etc.), they should be required to bear equal obligations to contribute to federal universal service mechanisms.

The Commission should also take care when determining regulatory classification of services in this or related proceedings not to limit the ability of carriers to tariff basic transmission services where such traditional regulatory treatment remains in the public interest. As discussed below, NECA carriers who wish to retain the ability to tariff basic digital subscriber line (DSL) transmission services should continue to be permitted to do so notwithstanding characterization of such services as “broadband” transmission.

II. ALL PROVIDERS OFFERING INTERSTATE INTEREXCHANGE TELECOMMUNICATIONS SERVICES ON A COMMON CARRIER BASIS SHOULD FACE EQUAL OBLIGATIONS TO COMPENSATE OTHER CARRIERS FOR THE USE OF THEIR NETWORKS AND TO CONTRIBUTE TO UNIVERSAL SERVICE MECHANISMS.

The *IP NPRM* makes clear, as a general matter, that interstate telecommunications service providers, IP-enabled or not, that make use of the PSTN in ways that are functionally indistinguishable from the ways in which traditional PSTN services make use of the network should receive similar regulatory treatment.³ Such non-discriminatory treatment requires, at a minimum, that interstate service providers that make use of NANP resources, either by assigning such resources to subscribers or sending voice traffic to such resources, and deliver voice traffic to LECs for termination, provide fair compensation to LECs in the form of terminating access charges to the same extent that other service providers must pay such charges. It also requires that such service

³ *IP NPRM* at ¶ 61. See also, e.g., Comments of NECA in WC Docket No. 03-211 (filed Oct. 27, 2003, WC Docket No. 02-361 (filed Dec. 18, 2002); Joint Comments of NECA *et al.* in WC Docket No. 03-266 (filed Mar. 1, 2004), WC Docket No. 04-52 (filed Apr. 7, 2004).

providers contribute to federal Universal Service Fund (“USF”) mechanisms on a comparable basis. Existing federal communications law compels this outcome, as do the sound overarching principles —universal service, fair competition and competitive neutrality— that continue to guide federal telecommunications policy.

A. Internet Protocol is a Technology, Not a Ticket for a Free Ride.

In recent years, a number of entities have gone to the Commission to request special exemptions from the Commission’s cost recovery rules by way of stamping their services with an “Internet” label.⁴ These carriers attempt to gain a free ride from intercarrier compensation and universal service contribution obligations by conjuring up the mystery, excitement and difference that the Internet label connotes, as well as to elicit sympathy from those who believe regulators must, at all costs, “keep hands off” the Internet.

AT&T, for example, attempted to avoid the payment of access charges simply by utilizing IP technology within its own network.⁵ The Commission correctly rejected the

⁴ See, e.g., Petition for Declaratory Ruling that Inflexion Communications’ ExtendIP VoIP Service is Exempt from Access Charges, WC Docket No. 04-54 at 2 (filed Feb. 27, 2004) (*Inflexion Petition*); Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 03-266 (filed Dec. 23, 2003) (*Level 3 Petition*); Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211 at 1 (filed Sept. 22, 2003) (*Vonage Petition*); and Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (filed Oct. 18, 2002) (*AT&T Petition*).

⁵ See, e.g., McLean & Brown, Special Edition Issue Update, “Calling Rural America: Preserving Affordable Connectivity,” http://www.mcleanbrown.com/special_issues.html (viewed May 24, 2004) (Apr. 4, 2004) at 4.

attempt.⁶ Consistent with prior Commission determinations regarding the use of protocol conversion to facilitate basic service,⁷ it found that AT&T's use of IP in the middle of phone-to-phone calls did not change the nature of the call or the service itself.⁸

The logic of the *AT&T Order* and prior decisions is readily applied to “broadband phone service” providers⁹ who provide their subscribers with a NANP phone number and connect their calls to the PSTN.¹⁰

NECA recognizes that some IP service providers offer numerous features in conjunction with basic telephony services. At some point, IP-enabled enhancements may serve to transform the fundamental nature of the service offerings in ways that have dramatic implications for the Commission's traditional Title II regulatory regime.

But this is not the case with respect to providers that offer services that “look and feel” like plain old telephone service, and that are marketed to the public in direct

⁶ Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, *Order*, 19 FCC Rcd 7457 (2004) (*AT&T Order*).

⁷ See *AT&T Order* at ¶¶ 4 and 7, and n.13.

⁸ *Id.* at ¶12. See also concurring statement of Chairman Michael Powell.

⁹ *E.g.*, Vonage,(which calls itself the “Broadband Phone Company.” [Http://vonage.com](http://vonage.com) (viewed May 19, 2004).

¹⁰ In contrast to the *AT&T Order*, the Commission recently found that pulver.com's “Free World Dialup” (FWD) service was an unregulated interstate information 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*, 19 FCC Rcd 3307 (2004) (*FWD Order*). The classification was expressly limited, however, only to the extent FWD facilitates free communications over the Internet between FWD members using broadband connections. Further, the Commission specifically declined to extend its classification holdings to the legal status of FWD “to the extent it is involved in any way in communications that originate or terminate on the public switched telephone network, or that may be made via dial-up access.” *FWD Order* at n.3.

competition with services provided by traditional common carriers.¹¹ The fact that these services use Internet Protocol during some portions of a call simply makes no difference from the end user's perspective, and shouldn't make any difference from a regulatory perspective. There is nothing special about Internet Protocol, compared to other protocols, when it is being used to provide basic telephone service over the PSTN.¹²

This is becoming apparent at the state level. Last week, for example, the New York Public Service Commission ("NYPSC") determined that Vonage is a telephone corporation as defined by state law.¹³ In reaching that conclusion, the NYPSC described how Vonage made use of Internet technology, its own facilities, and the facilities of other

¹¹ According to the marketing of Packet8, another VOIP provider, all a subscriber need do is: "Pick up the phone, hear dial tone and dial the telephone number of your choice. When you get an incoming call the phone rings the same as any phone. There are no extra numbers, no special routines to follow and no, you do not talk on your computer." <http://www.packet8.net/about/index.asp> (viewed May 17, 2004).

¹² VOIP providers seeking to avoid payment of intercarrier compensation obligations posit scenarios where, for example, a peer-to-peer Internet messaging service provider that already provides point-to-point voice communications abilities between subscribers adds a "value-added" paid feature that permits calls from the instant messaging software application to any NANP resource on the PSTN. Indeed, Skype reportedly has announced plans to do just that. *See* http://www.theaustralian.news.com.au/common/story_page/0,5744,9524843%255E15306,00.html (viewed May 25, 2004). As with other IP-enabled services, however, the LEC still will be required to terminate the call and will expend resources to do so, and the IP service provider and its subscribers will benefit directly from the existence of the PSTN. Entities that offer such services could reasonably be expected to pay access charges and contribute to universal service in the same manner as similarly-situated providers.

¹³ NYPSC, 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, Case 03-C-1285, Order Establishing Balanced Regulatory Framework For Vonage Holdings Corporation (issued May 21, 2004) (*NYPSC Order*).

carriers to enable calls from NANPA-administered phone numbers to “telephone customers throughout the world.”¹⁴

The NYPSC rejected the contention that Vonage’s service is an “information service” and therefore exempt from state regulation, because a Vonage customer’s voice is transmitted “without any change in form or content of the conversation” and Vonage offers customers no capability “to manipulate or interact with stored data.”¹⁵ In the end, the NYPSC found that Vonage “is a relatively small competitive provider of local exchange and interexchange services that should be subject to, at most, the same limited regulatory regime to which comparable circuit switched competitive carriers are currently subject to in New York.”¹⁶

Last month, the Canadian Radio-television and Telecommunications Commission (CRTC) announced its preliminary decision that:

voice communication services using IP that utilize telephone numbers based on the North American Numbering Plan and provide universal access to and/or from the Public Switched Telephone Network (PSTN) (referred to in this public notice as "VoIP" services) have functional

¹⁴ *Id.* at 3-4, 10.

¹⁵ *Id.* at 12.

¹⁶ *Id.* at 2 . As the Commission’s *IP NPRM* notes, the Minnesota Public Utilities Commission decided in September 2003 that Vonage offers a “two-way communication that is functionally no different than any other telephone service,” and directed the company to comply with all state statutes and rules relating to the offering of telephone service and to remit 911 fees to the state. *NPRM* at n. 114, *citing* Complaint of the Minnesota Department of Commerce Against Vonage Holding Corp Regarding Lack of Authority to Operate in Minnesota, Docket No. P-6214/C-03-108. Order Finding Jurisdiction And Requiring Compliance (Issued Sept. 11, 2003) at 8-9. That decision was later vacated by a federal district court judge, who found the service to be an information service exempt from state regulation. *Vonage Holdings Corp. v. Minn. P.U.C.*, 290 F.Supp.2d 993, (D. Minn. 2003). The MNPUC is appealing the district court’s decision to permanently enjoin the PUC from enforcing its order. MNPUC, Press Release, “Minnesota PUC to Appeal Federal Court Decision,” (Feb. 13, 2004), <http://www.puc.state.mn.us/docs/vonagepr04.pdf> (viewed May 25, 2004).

characteristics that are the same as circuit-switched voice telecommunications services. In the Commission's preliminary view, its existing regulatory framework should apply to VoIP services, including its determinations related to forbearance. The Commission considers, on a preliminary basis, that to the extent that VoIP services provide subscribers with access to and/or from the PSTN along with the ability to make and/or receive calls that originate and terminate within the geographic boundaries of a local calling area as defined in the Incumbent Local Exchange Carriers' (ILECs) tariffs, they should be treated for regulatory purposes as local exchange services, and be subject to the regulatory framework governing local competition.¹⁷

It is incumbent upon the Commission to heed this logic and ensure that no entity benefits from unjust advantages simply because of the technologies it opts to employ to provide service.

B. IP-enabled service providers must take into account their use and need of the PSTN.

Petitioners seeking exemption from intercarrier compensation obligations routinely fail to account for the fact that the services they provide depend on the existence of a reliable, ubiquitous PSTN and the viable carriers that operate it. Absent the PSTN, VOIP subscribers would only be able to call other “pure” VOIP subscribers. Moreover, the broadband telephone market itself depends on the availability of reliable

¹⁷ CRTC, Regulatory framework for voice communication services using Internet Protocol, Telecom Public Notice CTC 2004-2 (Apr. 7, 2004) <http://www.crtc.gc.ca/archive/ENG/Notices/2004/pt2004-2.htm> (viewed May 25, 2004).

high-speed connections to the Internet.¹⁸ To a great extent, these connections are supplied via DSL services offered by LECs as an outgrowth of the PSTN.¹⁹

Some networks are more expensive than others to maintain, particularly those deployed by small rural LECs. These companies depend on three principal revenue streams: end user revenues, access charges, and USF support.²⁰ Take away or restrict one of these sources and many NECA members will be unable to continue to provide basic service, let alone deliver the advanced services that the American public increasingly demands. Without these networks in place, the IP-enabled services that the Commission wishes to promote will be available only to urban and suburban end users with access to low-cost communications networks, and the country will become literally and figuratively disconnected.

C. Service providers terminating interexchange traffic on LEC networks should pay for their use of the network in the form of access charges pending reform of intercarrier compensation mechanisms.

¹⁸ Vonage, the largest standalone VOIP service provider, has approximately 155,000 subscribers. http://vonage.com/media/pdf/pr_05_17morgan_04.pdf (viewed May 19, 2004). In contrast, the PSTN comprises some 183 million access lines. FCC, "Local Telephone Competition: Status as of June 30, 2003," Table 1, http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom1203.pdf (viewed May 19, 2004).

¹⁹ About one-third of all high-speed connections, totaling about 7.6 million, are provided via DSL services. FCC, "High-Speed Services for Internet Access: Status as of June 30, 2003" (Dec. 2003), Table 1, http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd1203.pdf (viewed May 27, 2004).

²⁰ According to a recent study by the National Telecommunications Cooperative Association (NTCA) based on data corresponding to 60% of member companies, state and federal USF mechanisms account for 30% of rural ILEC revenue; access charges, 26%, and traditional end user sources, 27%. See NTCA, "Bill And Keep: Is It Right For Rural America?," submitted as an *ex parte* in CC Docket No. 01-92 (filed Mar. 10, 2004), Figure 11.

A basic precept of the interconnected PSTN is that network operators receive fair compensation from those who make use of their networks.²¹ The current Calling Party's Network Pays (CPNP) mechanism is the product of more than a century of cooperative effort by federal and state regulators working together to ensure that costs of commonly-used network facilities are fairly and reasonably allocated between jurisdictions, carriers and customers. That policy recognizes that network operators have a fundamental right to recover at least a portion of the costs of providing exchange access service from those carriers that request the service on behalf of their own customers.

Since 1984, IXCs have paid access charges to LECs for the exchange access services provided by the LECs. To a LEC terminating a toll call, how the call is transported to the LEC, whether over the IXC circuit-switched or IP-enabled networks, is immaterial. The LEC still must terminate the call. While current intercarrier compensation regimes are currently under review,²² the Commission's rules still require that LECs allocate network costs to access elements and that LECs recover these costs via tariffed access charges.²³ To the extent that IP-enabled services generate interexchange traffic on the PSTN, they should be subject to access charges to the same extent as any other provider offering similar services.²⁴

²¹ See Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd 9610 (2001) (*Intercarrier Compensation NPRM*) at ¶¶ 19-21.

²² *Id.*

²³ See generally Part 69 of the Commission's Rules, 47 C.F.R §69.1 *et seq.*

²⁴ The Commission indicated as much in its *IP NPRM*. Referring to access charges, the FCC noted its belief that "any service provider that sends traffic to the PSTN should be subject to similar compensation obligations." *IP NPRM* at ¶ 61.

The Commission asks whether reciprocal compensation mechanisms should apply to termination of interexchange VOIP traffic.²⁵ This would not be appropriate for several reasons. First, existing reciprocal compensation arrangements were not intended to compensate LECs for providing exchange access service to VOIP providers' interexchange traffic. Reciprocal compensation arrangements are intended for situations where local carriers originate and terminate traffic on each other's networks.²⁶ Further, as numerous parties have pointed out in other Commission proceedings, reciprocal compensation rates based on existing TELRIC methods do not adequately cover costs assigned to access elements under current rules. Disparities between access rates and reciprocal compensation rates would only encourage uneconomic arbitrage between "traditional" interexchange services and VOIP providers.

Finally, reciprocal compensation arrangements are not ubiquitous. They are established only per the terms of individually negotiated interconnection agreements. With little more than a few dollars in venture capital and some software standing in the way of the creation of a VOIP service, it cannot reasonably be expected that small LECs would be able identify all VOIP service providers making use of their networks and induce them to enter into interconnection agreements. The administrative burdens placed on small LECs would be overwhelming. Such a scenario inevitably would lead to the *de*

²⁵ *Id.* at ¶ 62. *See also*, Level 3 Petition; Comments of AT&T in WC Docket No. 03-266 (filed March 1, 2004); Comments of CompTel/ASCENT in WC Docket No. 03-266 (filed March 1, 2004); Comments of MCI in WC Docket No. 02-366 (filed March 1, 2004).

²⁶ In establishing the reciprocal compensation mechanism, the Commission specifically noted that, "The Act preserves the legal distinctions between charges for transport and termination of local traffic and interstate and intrastate charges for terminating long-distance traffic." Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, *First Report and Order*, 11 FCC Rcd 15499 at ¶ 1033 (1996).

facto imposition on LECs of a “bill and keep” regime, whereby VOIP providers simply get a free ride on the LEC’s network.²⁷

Application of access charges to VOIP traffic depends, in part, on the availability of call identification information. Some VOIP services offer features, not contemplated by the original establishment of NANP resources, that permit end users to disassociate a NANP telephone number from a geographical area. These technical differences, among others, complicate efforts to identify the jurisdiction and proper billing treatment of IP-enabled calls. The Commission has determined in similar circumstances, however, that where jurisdiction of particular circuits is indeterminate but is known to have a significant interstate component, the entire facility should be treated as interstate.²⁸ It has also determined that Internet traffic cannot reliably be separated into intrastate and interstate components and so is properly classified as interstate.²⁹

²⁷ In contrast, filed tariffs at the state and/or federal levels that establish a rate for terminating traffic on a default basis could provide a firm legal basis for assessment of charges notwithstanding failure of individual interexchange carriers to make arrangements with LECs for service provisioning. The Commission should affirm that carriers are permitted to file such tariffs for interstate traffic. Moreover, to ensure proper billing under such mechanisms, LECs generally need to know the identity of the originating carrier and either the calling party number or some other indication of the call jurisdiction. The Commission should ensure that any regime applied to IP-enabled services includes a requirement for all parties involved in call termination to populate and pass along necessary call detail information.

²⁸ The Commission has previously applied the “mixed use standard” to situations where it was impractical or impossible to separate out interstate from intrastate traffic carried over a shared facility. *IP NPRM* at ¶ 39, citing *FWD Order* at ¶¶ 21-22 (itself citing GTE Telephone Operating Cos., GTE Tariff No. 1, GTOC Transmittal No. 1148, CC Docket No. 98-79, *Memorandum Opinion and Order*, 13 FCC Rcd 22466, 22468 (1998) (*GTE Order*) at ¶ 5; MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, *Memorandum Opinion and Order*, 97 FCC 2d 682 (1983).

²⁹ *ISP-Bound Traffic Order* at ¶ 52, remanded in part, *WorldCom, Inc. v. FCC*, 288 F.3d 429, (D.C. Cir. 2002) .

This suggests that at some point all VOIP traffic should be treated as interstate on a default basis. Or possibly a percent interstate usage (“PIU”) factor, with or without a “safe harbor,” could be employed. Alternatively, the NANP resource or originating IP address³⁰ utilized by IP-enabled service providers could potentially serve as a proxy for the purpose of defining the call’s origination point.

D. Providers of common carrier interstate telecommunications services that depend on the PSTN must be required to contribute to federal Universal Service mechanisms.

IP-enabled service providers that offer the same or substantially the same common carrier telecommunications services as those offered by other carriers, and that rely on the existence of a ubiquitous PSTN, should be required to contribute to USF mechanisms.

As the *IP NPRM* notes, such determinations may be difficult in some instances.³¹ Nevertheless, the Commission’s contribution rules already distinguish among different types of carriers (resellers vs. carriers’ carriers or CMRS vs. landline, for example) and different types and amounts of revenues. Regulators are adept at categorizing and striking balances. In any event, the Commission is considering an overhaul of contribution methodology³² into which it will need to factor the onset of communications via new

³⁰ See, for example, <http://www.geobytes.com/IpLocator.htm> (viewed May 20, 2004).

³¹ See *IP NPRM* at ¶ 64.

³² See Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, CC

technologies while continuing to pursue universal service objectives. The point is simple: unless the Commission finds a way to require all carriers providing PSTN-based telecommunications services to contribute fairly to universal service mechanisms, those mechanisms will quickly become unsustainable.

III. LECS SHOULD BE PERMITTED TO CONTINUE TO TARIFF DSL ACCESS SERVICES.

The *IP NPRM* seeks comment on whether economic regulation, including tariffing requirements, should be applied to providers of IP-enabled services.³³

Simultaneously, the Commission seeks comment on SBC's petition seeking forbearance from Title II regulation of the "IP platform" and associated services.³⁴

Regardless of other decisions the Commission may reach in these interrelated proceedings, to best promote the continued deployment of advanced services and networks in rural areas, the Commission must ensure that tariffing and pooling options remain available to rural carriers that seek to offer basic DSL transmission services.

The Commission has recognized that widespread broadband infrastructure deployment has become "the central communications policy objective of the day,"³⁵ and has explained that its broadband policymaking is guided by a number of principles, including the Congressionally mandated goal to encourage the ubiquitous availability of

Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, *Report and Order and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 24952 (2002).

³³ *IP NPRM* at ¶¶ 73-74.

³⁴ *SBC Public Notices*.

³⁵ See, e.g., *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, *Notice of Proposed Rulemaking*, 17 FCC Rcd 3019 at ¶ 1 (2002).

broadband to all Americans.³⁶ Parties arguing in favor of advanced service deregulation correctly point out that imposition of unnecessary economic regulation on new services is more likely to impede than foster investment and innovation.

And yet, mandatory deregulation of standalone broadband transmission services, may also impede the progress of broadband deployment in some areas. As the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”) has previously pointed out to the Commission, “[t]he economic and market conditions experienced by small ILECs vary widely, and regulatory requirements and classifications that might impede the efforts of some rural carriers to provide advanced services in high-cost areas might prove beneficial to others.”³⁷

NECA’s pool members operate in sparsely populated areas of the country and continue to face widely varying geographic, demographic, technological and economic challenges when deploying advanced telecommunications. Since 1989, NECA has conducted biennial surveys of the technical capabilities of small rural carriers that participate in NECA’s Traffic Sensitive (TS) tariff, publishing this information as the *NECA Access Market Survey*.³⁸ NECA’s 2003 AMS shows that over half of the surveyed companies serve areas greater than 200 square miles, often from a single switch.³⁹ Many companies offering DSL via the NECA tariff serve study areas with fewer than 5000 access lines. These companies typically serve fewer than ten customers

³⁶ *Id.* at ¶ 3.

³⁷ See Comments of OPASTCO in CC Docket No. 01-337 (filed Apr. 22, 2002) at 2.

³⁸ NECA, 2003 Access Market Survey: Fulfilling the Digital Dream, http://www.neca.org/print/NECA_155_1152.asp (“2003 AMS”).

³⁹ *Id.* at 4-5.

per square mile and require extensive cable and transmission equipment to provide even basic services.⁴⁰

NECA TS pool participants currently provide standalone broadband transmission, including DSL access services, pursuant to the NECA Tariff F.C.C. No. 5 federal interstate special access tariff in accordance with the Commission's prior ruling that DSL transmission, when used to connect to the Internet, is an interstate service and "is properly tariffed at the federal level."⁴¹ NECA's tariff offers many "flavors" of DSL to adapt to the varying needs of different NECA members. Enhancements have been made to provide for increased data speeds, to include symmetric DSL at speeds up to 4 Mbps and ADSL from network transmission speeds up to 16 Mbps. The tariff has also been modified to allow for more connection options and discount programs for wholesale customers.

Current levels of broadband deployment in small rural markets⁴² simply would not be possible without the benefits of NECA's tariff and pools. Participation in NECA's tariff and pools provides for efficient and timely tariffing of new services as well as risk sharing among pool members. Pooling provides the stability necessary to encourage small rural companies to deploy advanced broadband services. NECA continually

⁴⁰ 2003 AMS at 5. NECA has also published studies that investigated the cost of providing broadband capability using digital subscriber line (DSL) technology to customers served by these rural telephone companies. NECA's "Rural Broadband Cost" study, published in June 2000, found that while many rural telephone companies were making broadband services available to their customers, others faced significant cost hurdles due to the nature of the rural serving areas. Available online at <http://www.neca.org/media/broadban.pdf>.

⁴¹ See *GTE Order* at ¶ 1.

⁴² Some 70% of NECA TS pool participants provide DSL under the terms of the tariff. 2003 AMS at 8.

updates the tariff to include the latest service arrangements and technologies. Tariff participants are spared the task of developing, filing and defending their own tariffs, saving time and money. Related revenue pools offer stable monthly cash flows and buffer members against unexpected demand reductions or increased costs caused by bankruptcies, natural disasters or loss of a large customer. The security that pooling offers also reduces the risks incurred when a carrier deploys a new technology.

One advantage of the “forbearance” approach to deregulating advanced services (as opposed to the “classification” approach) is that it permits continued application of traditional Title II regulation where warranted by marketplace and economic factors. In this regard, NECA notes that the deregulatory approach suggested in SBC’s Petition for Forbearance from Regulation of “IP Platform” Services appears to contemplate that carriers would be able to continue to tariff basic DSL transmission services.⁴³ Should the Commission decide to grant SBC’s petition, or take comparable action in the context of its IP-Enabled Services rulemaking, it should clarify that the tariff option remains available for basic DSL transmission services provided by rural companies to facilitate continued deployment of broadband services in rural America.

IV. CONCLUSION

The Commission should ensure that like services receive like regulatory treatment regardless of the technology used to provide the service. In particular, all service providers that utilize LEC facilities to originate or terminate interexchange telecommunications services should have equal obligations to compensate LECs for such

⁴³ See *SBC Petition* at 9-10.

use. Further, the Commission should assure that, to the extent that IP-enabled services are functionally the same as the interstate telecommunications services provided by traditional carriers (*i.e.*, utilize NANP resources, rely on the PSTN for call completion, etc.), they should be required to bear equal obligations to contribute to federal universal service mechanisms. Finally, in its review of the delivery of broadband transmission services, the Commission should take care not to limit the ability of carriers to tariff such services where it remains in the public interest to do so. Specifically, NECA carriers who wish to retain the ability to tariff their basic DSL transmission services should continue to be permitted to do so notwithstanding deregulatory treatments applied to broadband or IP Platform services in other contexts.

Respectfully submitted,

May 28, 2004

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the NECA's Comments was served this 28th day of May 2004, by electronic filing and first class mail, to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

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