

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554**

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

**COMMENTS OF THE TEXAS DEPARTMENT OF INFORMATION  
RESOURCES**

The Texas Department of Information Resources (“Texas DIR”) through its attorney, the Office of the Attorney General of Texas, Consumer Protection and Public Health Division, Public Agency Representation Section files these initial comments pursuant to the Notice of Proposed Rulemaking released by the Commission in this proceeding (“*IP NPRM*”).<sup>1</sup>

Texas DIR respectfully requests that the Commission carefully consider the various ways in which private networks make use of Internet Protocol (“IP”) - based services in order to avoid crafting overly broad regulation of IP-enabled services that may inadvertently extend to cover private networks. Should the Commission adopt regulations over IP-enabled services, it should ensure that they do not preempt existing state contractual agreements. Moreover, to the extent that IP-enabled services, such as Voice over Internet Protocol (“VOIP”), are marketed as a replacement for traditional telephone service, the Commission should ensure that such services meet a minimum level of quality of service and consumer protections similar to those that apply to traditional telephone service.

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<sup>1</sup> *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, adopted Feb. 12, 2004, rel. Mar. 10, 2004 (“*IP NPRM*”); see 69 Fed. Reg. 16193, March 29, 2004.

Texas DIR is an agency of the state of Texas. Through its Telecommunications Services Division, Texas DIR manages the Texas Agency Network (“TEX-AN”) and the Capitol Complex Telephone System (“CCTS”). TEX-AN is a system of communications services and supplies managed by Texas DIR to “meet all the state agencies intercity telecommunications requirements”<sup>2</sup> through vendor contracts. CCTS provides “centralized telephone service for state agencies, each house of the legislature, and legislative agencies in the capitol complex”<sup>3</sup> As part of managing these *private networks*, Texas DIR is responsible for the (1) acquisition of facilities, telecommunications services and equipment necessary to run these networks; (2) promulgation of guidelines and operating procedures; (3) publication of telephone directories for both networks; and (4) development of a billing system for services provided over the networks.<sup>4</sup>

The TEX-AN and CCTS are *not* common carriers, but rather *private networks* operated for the benefit of eligible state and local governmental entities in the state of Texas (hereinafter “end-users”).<sup>5</sup> The CCTS network connects a group of 43 state buildings located within the Capitol Complex in downtown Austin to the public switched telephone network (“PSTN”) via private branch exchange (“PBX”) service. CCTS

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<sup>2</sup> 10 TEX. ADMIN. CODE §207.1(1).

<sup>3</sup> *Id.* at §207.1(2).

<sup>4</sup> *Id.* at §207.1(3), (4), and (5).

<sup>5</sup> Entities that are eligible to use the TEX-AN and CCTS networks include all state agencies, each house of the legislature, legislative agencies, institutions of higher education, local governments, and private institutions of higher education engaged in distance learning initiatives through the receipt of federal funds. *Id.* at §§207.3 and 207.2(4) and (14).

supports approximately 24,000 stations for 94 different state entities housed within the Capitol Complex.<sup>6</sup>

The TEX-AN network, on the other hand, is a statewide network that provides a comprehensive menu of inter-city voice and data communications services to end-users. TEX-AN is one of the largest government-operated networks in the country, generating approximately 400 million minutes of long distance usage annually and serving over 4,500 locations with more than 25,000 circuits statewide. In July 1999, Texas DIR awarded multi-year contracts to 25 different vendors to develop the architecture for the current TEX-AN network (“TEX-AN 2000”). The primary objective of the procurement process was to develop a suite of telecommunications and information products and services that would not only meet the present communications needs, but would also offer the scalability, reliability, and infrastructure to meet future needs. AT&T and SBC-Texas were awarded core network services contracts. Both companies provide compatible, secure, flexible, and cost-effective networking solutions using Asynchronous Transfer Mode (“ATM”) and Frame Relay technologies and switches.<sup>7</sup>

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<sup>6</sup> CCTS provides the following services to its end-users: (1) local telephone service, (2) five-digit extension dialing, (3) voice mail service, (4) automatic calling distribution (“ACD”), and (5) conference bridge service.

<sup>7</sup> TEX-AN 2000 products and services include: (1) **Long Distance Voice Services** – (i) 1+ LD voice service, (ii) dedicated LD service (DSO, TI or T3 circuits), (iii) switched access service (IntraLATA, InterLATA, Interstate, and International), and (iv) toll-free LD service; (2) **Data Transport Services** – (i) Internet access service (speeds of 56k up to OC3), (ii) ATM and Frame Relay data circuits (DS0 to OC12) (consists of data access circuit, network port and permanent virtual circuit), and (iii) network presence in every LATA (18 throughout state); (3) **Additional Communications Services** – (i) point-to-point circuits (mileage sensitive), (ii) access to fiber of the Greater Austin Area Telecommunications Network (GAATN), (iii) access to a gigabit Ethernet network within the Capitol Complex (CAPNET), (iv) conference bridge services, (v) DSL broadband service, (vi) satellite broadband service, and (vii) H.323 videoconferencing service; (4) **Convenience Contracts** – (i) calling cards, (ii) interpreter services, (iii) local telephone services, (iv) wireless services, (v) pagers and paging services, (vi) web hosting and web development, (vii) firewall services, and (viii) payphone long distance service; and (5) **Communications Supplies** – telephone and communications parts, supplies and equipment from a wide variety of suppliers at discount rates.

Like many private networks, TEX-AN and CCTS utilize technologies that could be characterized as IP-enabled services. For instance, Texas DIR recently placed into service dedicated IP-based circuits from Austin to Dallas, and Austin to Houston as part of the TEX-AN backbone network in order to route network voice traffic from end-users in the Capitol Complex in Austin and end-users in Dallas and Houston. This is an example of how IP-based technology is being utilized to reduce the cost of inter-city voice traffic within the TEX-AN network. IP-based services have also been incorporated into the menu of TEX-AN 2000 communications products and services. H.323 videoconference service is one such example. Texas DIR offers this service, not as a cost-saving measure, but for the robustness of the service and the demand that it meets among end-users. Such evaluation of IP-based technology is an on-going process that is part of managing the TEX-AN and CCTS networks.

Aside from the TEX-AN network making use of IP-based services, network end-users may purchase network components from TEX-AN in order to develop their own IP-based services. For instance, many state agencies have created virtual private networks (“VPNs”) utilizing data services offered under TEX-AN 2000. These VPNs, which can be accessed by employees via the Internet, increase worker productivity by allowing employees to work from home or while traveling. For these reasons, the adoption of VPNs is widespread among business organizations nationwide.<sup>8</sup> In addition, many state

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<sup>8</sup> *Adoption of IP VPNs Continues Among U.S. Organizations*, In-Stat/MDR Market Alerts, February 10, 2003. This online news service is available at <http://www.instat/marketalerts.asp>. (A recent survey performed by In-Stat/MDR found that “of 200 large U.S. organizations (business, government, education) surveyed, 89% currently have an IP VPN (Virtual Private Network) or plan to have one within two years. ... [A]mong existing IP VPN implementations, most are currently in-house IP VPNs, where end-users purchase and manage their own VPN equipment on premises, and send traffic over the public Internet. 91% of current VPN users implement in-house VPNs as opposed to using outsourced IP VPN services.” The survey also found that about half of all organizations using or planning to use IP VPNs plan to carry voice traffic on the VPN, signaling a trend towards convergence of all traffic on the VPN. These

agencies are following the national trend among many large business organizations of adopting IP PBX systems in order to reduce costs and converge data and voice communications.<sup>9</sup> And most recently, the state's public health agencies working together with Texas DIR implemented a statewide IP-based network for routing all 211 system calls.<sup>10</sup>

A closer examination of TEX-AN 2000 would reveal additional services and network components that could meet the description of IP-enabled service. Suffice it to say that Texas DIR (and end-user agencies), like any rational business organization, evaluates IP-based technologies and where appropriate incorporates them into the network or makes them available to end-users through procurement contracts from eligible vendors.

Accordingly, the Texas DIR is concerned that Commission efforts to regulate IP-enabled services may inadvertently extend to cover private networks, such as TEX-AN and CCTS. Texas DIR would ask the Commission to carefully consider how private networks make use of IP-based products and services in order to avoid crafting

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observations and conclusions are derived from the report, End-User Demand and Perspectives on IP VPNs, which is available for purchase from In-Stat/MDR.)

<sup>9</sup> *IP PBXs Represent Strong Growth Opportunity in Otherwise Mature PBX Market*, In-Stat/MDR Market Alert, May 11, 2004. This online news service is available at <http://www.instat/marketalerts.asp>. (The high-tech market research firm In-Stat/MDR found that within the mature PBX market, there is a transformation from taking place that "is the result of a shift away from digital, circuit-switched voice communications toward a convergence of voice and data communications networks, signified by the use of Internet Protocol (IP) and packet switching as the underlying communications technology. Consequently, while the growth of the overall PBX market is tied closely to the rate of general economic growth, the replacement market comprised of IP-based systems is expected to grow much faster. There are both cost benefits and user benefits that are driving the adoption of IP PBX systems. Cost benefits derive from lower operational expenses and, eventually, lower capital expenditures from deploying standards-based equipment and converging voice and data networks. User benefits consist of potential productivity gains by employees using applications such as unified messaging and presence management." These observations and conclusions are derived from the report, IP PBXs: A Market Hitting The Tipping Point, which is available for purchase from In-Stat/MDR.)

<sup>10</sup> The Texas 211 system is a program that directs callers who dial the digits 2-1-1 to public health and human service organizations and resources in their local communities.

regulations that may have the unintended consequence of regulating private networks. Such an outcome would be contrary to the public interest given that private networks are not common carriers, and end-users of such networks do not have the same expectations regarding the use of IP-based services as the general public may have when considering, for example, substituting VoIP service for traditional telephone service. As the examples above demonstrates, the use of IP-based services within the context of the TEX-AN and CCTS networks is intended to address network efficiencies and meet specific end-user needs.

In addition, Texas DIR is concerned that the Commission may adopt regulations over IP-enabled services that may disturb the contractual relations between Texas DIR and TEX-AN vendors and suppliers. Should the Commission adopt regulations covering specific IP-enabled services, it should make clear that such rules are subject to any existing contractual obligations, and that state contractual rights are not preempted by any new federal regulations. This will ensure that state investments in communications networks, such as TEX-AN and CCTS, are not devalued as the result of unintended consequences, and prevent the renegotiation of existing contractual agreements.

Beyond managing the state's largest private network, Texas DIR is also a consumer of communications services. From the consumer perspective, any IP-enabled service, such as VoIP service that is marketed as a replacement for traditional telephone service, should be subject to a minimum level of quality of service and a bundle of consumer protections similar to those that apply to traditional telephone service. As Texas DIR looks to the future, it is committed to a policy of technology neutrality as it relates to the underlying technology utilized by vendors who may deliver voice service to

the state, so long as quality of service, and consumer protections, remain in effect. Texas DIR would expect no less through the procurement process. Texas DIR is not about to accept substandard quality of service in voice communications, compromise privacy protections related to end-user customer proprietary network information, and forego consumer protections and public safety measures in exchange for a small discount in price. The Commission should ensure that VoIP providers who market their services as substitutes for traditional telephone service be held to similar quality of service standards and consumer protections as currently apply to traditional telephone service.

Texas DIR appreciates the opportunity to submit these initial comments in the *IP NPRM*, and respectfully requests that the Commission carefully consider the various ways in which private networks make use of IP-based services in order to avoid crafting regulations over IP-enabled services that may inadvertently extend to regulate private networks. Additionally, should the Commission adopt regulations over IP-enabled services, it should ensure that they do not preempt existing state contractual agreements. Finally, to the extent that certain IP-enabled services, such as VoIP service, are marketed as replacements for traditional telephone service, the Commission should incorporate appropriate quality of service standards and consumer protections applicable to those IP-enabled services.

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Respectfully submitted,

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#### Certificate of Service

I certify that a copy of these comments is being served on or before May 28, 2004 by regular or overnight mail, fax, or via e-mail on the Commission Secretary and other personnel required by the public notice.

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