

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
IP-Enabled Services) WC Docket No. 04-36
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COMMENTS OF 8X8, INC.

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Dated: May 28, 2004

SUMMARY

As a provider of technology and services using IP to enable voice, video and data communications, including Voice over Internet Protocol (“VoIP”), 8x8 urges the Commission to act now to ensure that this vibrant service sector can continue to flourish, bringing consumers innovative, quality IP service choices. Although the NPRM raises many interrelated issues, adoption of an appropriate federal regulatory framework for IP-enabled services (“IPES”) must occur as soon as possible to avoid adverse state rulings that could preclude the Commission from achieving its stated policy objectives. States are already taking action on VoIP services that could lead to judicial action precluding establishment of federal policies, such as occurred in the Ninth Circuit Court of Appeals’ *Brand X* decision. Accordingly, the time to establish federal policy is upon us.

In determining the appropriate approach to regulation of IP-enabled services, these services should be treated as interstate information services, and should be regulated consistent with a network layers approach. Under such a regime, content and application layers should remain unregulated. Lower logical and physical layers should only be regulated to the extent that such regulations are truly necessary to protect against undue market power. Furthermore, federal preemption is necessary because of the impossibility of separating the Internet, or any service offered over it, into intrastate and interstate components.

The risks of inaction are substantial. Archaic and unworkable regulatory requirements developed in the era of monopoly control of the wireline telephone infrastructure simply should not apply to the dynamically competitive IP-enabled services markets. If the Commission does not act quickly and affirmatively to assert jurisdiction over IPES and preempt state regulation, state commissions are likely to impose burdensome certification, tariffing, reporting and pre-approval requirements on providers of VoIP and other IP-enabled services. The glacial pace of

state regulation can only inhibit competitive development in the fast-paced Internet industry in which IPES are evolving. If allowed to continue, this mismatch will irreparably harm Internet technology companies that are based in the United States.

8x8's services fall squarely within the definition of information services. Packet8 voice and video services require specialized computer equipment and involve a net protocol conversion. As such these services fall within the Commission's definition of information services, which are not regulated under Title II of the Communications Act. 8x8 urges the Commission to exercise regulatory forbearance in order to promote the public interest in having a vibrant market for IPES.

Moreover, public safety, including emergency communications, will be enhanced by IP-enabled services. In response to market demand, the industry is working diligently and quickly to ensure access to emergency services are available for VoIP services, and such services have the potential to exceed current standards for public safety. Likewise, IPES present many enhancements for access to communications by the disabled community. It is clear from industry efforts that market forces are appropriately disciplining providers to ensure that the public safety and disabled access needs are being met. No regulatory action by the Commission is necessary and accordingly the FCC should maintain a hands-off approach as industry reaches solutions in these areas.

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8x8, Inc. (“8x8”), through its attorneys, submits these comments pursuant to the Federal Communications Commission’s (“FCC’s” or “Commission’s”) Notice of Proposed Rulemaking in the above-captioned proceeding.¹ On February 12, 2004, the Commission adopted a Notice of Proposed Rulemaking on the issue of IP-Enabled Services (“IPES”).² As a provider of technology and services using IP to enable voice, video and data communications, including Voice over Internet Protocol (“VoIP”), 8x8 is directly affected by the FCC’s determinations in this proceeding. 8x8 urges the Commission to act now to ensure that IPES can continue to flourish, bringing consumers a wide range of innovative, quality services.

INTRODUCTION & BACKGROUND

I. 8X8’S TECHNOLOGY AND ITS BENEFITS TO CONSUMERS

As a means of introduction, 8x8 offers the following background information about its technology and the Packet8 service.

¹ In the matter of IP-Enabled Services, *Notice of Proposed Rulemaking*, WC Docket No. 04-36, DA 04-28 (Feb. 12, 2004 IPES NPRM).

² *Id.*

A. 8X8'S TECHNOLOGY OFFERS CONSUMERS IP VOICE AND VIDEO PHONE SERVICES OVER THE INTERNET

8x8 and its subsidiaries develop and market technology for Internet Protocol ("IP") voice and videophone communications. 8x8 offers IP voice and videophone services that enable its customers to utilize IP-terminal adapters, computer software and IP-based videophones over virtually any broadband connection to the Internet. 8x8 is a publicly traded company on the NASDAQ SmallCap market (ticker symbol EGHT). Further details regarding the company can be obtained by consulting 8x8's annual report on Form 10-K for the fiscal year ending March 31, 2004 as filed with the Securities and Exchange Commission ("SEC").

8x8's service is marketed under the brand name Packet8. The Packet8 service is accessed by 8x8's customers via each customer's existing Internet connection. 8x8 does not supply Internet connectivity. Rather its customers obtain and pay for their own broadband access. 8x8's Packet8 customers use special customer premise equipment (CPE) to access voice and video communications services. When a Packet8 customer orders service from www.packet8.net, the company provides that customer with either an 8x8 Desktop Terminal Adapter model 310 (DTA-310) or an 8x8 Desktop Videophone model 326 (DV326). These devices are pictured below:



8x8 DTA-310



8x8 DV326

Both the DTA-310 and the DV326 have a single RJ-45 (Ethernet) jack that serves as their only means of connecting to the Internet and to the “outside” world. These devices are not compatible with any telephone network connection, and are not required to conform to Part 68 of the Commission’s regulations regarding telephone network equipment.

The DV326 is a fully self-contained videophone that incorporates a handset, speaker, camera and display. When the DV326 videophone calls another DV326 videophone’s Packet8 telephone number, a high-speed instant-on video communication is established between the videophones solely over the IP network.

When a Packet8 customer dials an outbound telephone number on either the DTA-310 or the DV326 (outbound call), either device sends control information via the broadband connection over the Internet to 8x8’s data centers in California. If the caller is dialing a telephone number of another Packet8 subscriber, or a telephone number of an affiliated third party partner’s IP network, the California server routes the call over the Internet to the IP network location of the destination being called. If the caller is dialing a telephone number located on the PSTN, the call is handed off in the IP domain to a third-party telephone carrier partner who terminates the call for 8x8 on the PSTN.

Inbound telephone calls for a Packet8 customer’s telephone number are received by 8x8 from third-party telephone carriers in the IP domain at 8x8’s data center in California, and the call is routed over the Internet to the IP network location of the Packet8 customer’s DTA-310 or DV326 endpoint. All connectivity by 8x8 to the PSTN is provided to 8x8 by third party, regulated telecommunications carriers using the third party carrier’s facilities. Apart from its data center in California, which operates entirely at the application layer in the IP domain, 8x8 has no facilities for the transmission or switching of voice, video or data on the PSTN network.

Additional information about the Packet8 service can be found on the Internet at <http://www.packet8.net>.

B. IP-ENABLED SERVICES HAVE THE POTENTIAL TO REVOLUTIONIZE HOW PEOPLE COMMUNICATE

IP technology extends the power of the Internet and broadband services to data, voice and video communications, and is beginning to offer significant benefits to the public, in terms of cost savings, improved sound quality, and greater competition among service providers. Providers of IP-enabled services epitomize the dynamic competitive marketplace this Commission's policies have sought to foster. The IP-enabled services industry, however, is still in its infancy. Now, at a time when the technology sector is just beginning to recover from the recent severe economic downturn, the looming specter of burdensome and unnecessary regulation threatens to stifle growth and innovation in IP-enabled services. 8x8 urges the FCC to take action to help ensure that the public is not deprived of the benefits that IP technology is capable of delivering, by refraining from imposing unnecessary regulations and preempting state regulation of IP-enabled services offerings from emerging, innovative companies on the Internet.

IP-enabled services can be delivered more efficiently and, therefore, less expensively than traditional telephone services by utilizing the Internet. IP networks use "packet switching," a more technologically advanced alternative to traditional circuit switching, which requires a dedicated phone line for each call.³ Because modern packet-switched broadband networks can handle many voice "calls" (or voice and video communication sessions) along with e-mail, file transfer or other electronic communications simultaneously, they are more efficient and less expensive than traditional circuit-switched networks. Due to the highly competitive nature of the

³ NEWTON'S TELECOM DICTIONARY 629 (16th ed. 2000)

Internet sector, these savings are passed on to consumers, resulting in lower communications costs for individuals and businesses.⁴

IP-enabled voice services can provide superior sound quality and increased functionality as compared with traditional telephone services. Advances in signal processing technology, combined with the increasing availability of broadband connections to the Internet, have resulted in dramatic improvement in the sound quality of speech carried over IP networks. Voice over IP (“VoIP”) services are already at a point where the sound quality can be measurably superior to “toll quality” voice telephony delivered via traditional circuit switched networks, and further improvements will surely follow if the industry is allowed to mature.⁵ The open nature of the Internet as a platform for IP-enabled services facilitates the development of innovative new features, such as the ability to take your phone number with you when you travel, advanced voice-mail management, individualized call-handling methods, sophisticated call-blocking mechanisms, and the ability to send and receive full motion video in connection with voice transmission, as is the case with 8x8’s Desktop Videophone model 325 (DV326) device.⁶

VoIP also offers increased competition and lower barriers to entry than has been the case with the market for traditional telephone services. Historically, voice communications have been controlled by a few companies who owned the underlying proprietary architecture of our telecommunications network. The Internet by contrast is an open architecture, with low barriers to entry for companies such as 8x8, which provide competition in the market for voice

⁴ Marcelo Rodriguez, *Leaving the Phone Company Out of the Loop: Advances in Internet Telephony Slash Bills and Irk Bells*, San Jose Mercury News (Aug. 2003) at <http://www.bayarea.com/mld/mercurynews/business/6478054.htm>.

⁵ Tiffany Kary, *Net Telephony Poised to Take Off?*, News.com (May 2002) at <http://news.com.com/2100-1033-930014.html>.

⁶ *Leaving the Phone Company Out of the Loop*, *supra*, n.5.

communications. These low barriers to entry create a highly competitive business environment for VoIP services, and compel VoIP providers to innovate and create higher quality and more diverse offerings.

VoIP services can provide a robust and resilient communications network to consumers. VoIP services, like Packet8, offer advantages to consumers because they are based on a decentralized and redundant network. Because the Internet was originally developed to provide our military with a method of communication that could withstand a nuclear strike, the network was designed to be decentralized, such that if cities were destroyed communication could continue between the remaining cities.⁷ The packet-switched architecture of the Internet makes the system more reliable and less vulnerable to widespread outage in the event of a failure in part of the network. The utilization of this robust and reliable network for voice, data and video communications provides a benefit to the public and can prevent consumers from losing communications capabilities in the event of a network failure. For example, Packet8 subscribers in Virginia were able to continue to use their broadband connections via cable modem to make and receive calls during a PSTN outage in the aftermath of Hurricane Isabel.

DISCUSSION

II. A LAYERED APPROACH TO REGULATION OF IP-ENABLED SERVICES STRIKES THE MOST APPROPRIATE BALANCE

As the Commission seeks to classify the various types of IP-enabled services, it should focus on developing an approach that clearly distinguishes those services that fall within the established telephony framework from those that do not. In the NPRM, the Commission

⁷ See Walt Howe, *A Brief History of the Internet: An anecdotal history of the people and communities that brought about the Internet and the Web* (April 2001) at <http://www.isoc.org/internet/history/>.

requests comment on various possible classifications of IPES.⁸ Of those identified in the NPRM, 8x8 urges the Commission to adopt a layered approach. An analytical framework based on network layers is best suited to assist the Commission in determining when, if ever, regulation is appropriate. It also offers industry participants and potential investors in these emerging services a much-needed degree of regulatory certainty.

In contrast, some other suggested methods of classifying IPES create the potential for onerous and stifling regulation. Some are likely to stymie innovation and limit the utility of IPES. This is especially true of classification methods that are ill-defined and susceptible to varying interpretations and potentially inconsistent application. Functional equivalence and substitutability, in particular, give rise to a substantial risk that significant and unjustifiable monopoly-based regulation will be imposed on these nascent competitive offerings. Such regulation could squelch innovation in this vibrant sector. To make matters worse, it could lead to consumer and investor confusion and loss of feature functionality. Inappropriate and onerous regulation, such as is currently applied to telecommunications carriers in many states, may compel providers to limit the utility or convenience of their offering to avoid falling within these burdensome classifications. Such arbitrary imposition of outdated regulatory regimes runs completely contrary to the stated purpose of this NPRM to “start from the premise that IP-enabled services are minimally regulated.”⁹ As the Commission noted, “[t]hese services have arisen in an environment largely free of regulation and the great majority, we expect, should remain unregulated.”¹⁰ Looking to functional equivalence and substitutability for imposition of

⁸ IPES NPRM ¶¶ 35-37.

⁹ IPES NPRM ¶ 5.

¹⁰ *Id.* ¶ 35.

regulation is more likely to result in imposition of outdated requirements that are unnecessary in the highly competitive market for IPES.

Customer convenience likewise dictates against using interconnection/NANP or Peer-to-Peer/Network formulations for regulatory classification purposes. The ability to communicate with subscribers on the PSTN and other similar criteria that some have suggested as a classification framework are the very features that enhance the value and usability of IPES for consumers. Imposing onerous regulation on service providers offering such capabilities, especially those who utilize third-party certificated carriers who are already subject to such regulation, forces the service providers into a “Catch 22” situation of either satisfying customers’ needs and demands at the cost of subjecting their businesses to substantial regulatory burdens or refusing to develop features sought by customers to avoid falling within a category that is subject to regulation. The resultant inhibition of innovation and service providers’ inability to respond to consumer demand would not serve the public interest and should be avoided by the Commission.

In order to foster innovation and remain truly technology neutral, the Commission should adopt a network layer approach as the basis for regulatory classification. 8x8 believes that a network layer model best enables the Commission to continue its efforts to rationalize the regulatory treatment of different technologies that are subject to varying and sometimes conflicting statutory or regulatory mandates. As detailed in MCI’s December 2003 Public Policy Paper entitled: *A Horizontal Leap Forward*,¹¹ a layered approach, whereby upper layers of

¹¹ Richard S. Whitt, *A Horizontal Leap Forward: Formulating A New Public Policy Framework Based on the Network Layers Model* (Dec. 2003) (*A Horizontal Leap Forward*).

content and applications are largely unregulated and the lower logical and physical layers are regulated to the extent necessary to address undue market power:

MCI proposes a robust set of layering principles, built on the sound notion of “respecting the integrity of the layers.” This framework encompasses both the “unregulated” e-commerce and e-business space, and the “regulated” telecommunications space. MCI’s Layers Model conceptualizes four network layers – Physical Layer (with separate Access and Transport components), Logical Layer (IP), Applications Layer, and Content Layer. Such a framework helps achieve important objectives, including: (1) avoids unsupportable legacy distinctions between services, networks, and industries; (2) appropriately separates upper layers (user applications and content) from lower layers (physical and logical networks); (3) groups and segregates pertinent public policy issues; (4) provides insights about the interdependence of different layers; (5) highlights interconnection between networks and functional layers; (6) focuses selectively on curtailing pockets of market power within and between individual layers; and (7) preserves the “innovation commons” of the Internet.

In particular, the MCI Layers Model targets the lower network layers for regulation based on the existence of undue market power, rather than legacy service or industry labels. This framework concomitantly fosters maximum innovation by leaving otherwise-competitive content and applications markets unfettered by regulation.¹²

Another benefit of a layered model is that many of the thorny regulatory issues are much more easily resolved with such an approach. Consistency across transmission media, technologies and facilities is more easily achieved.

As Chairman Powell already recognizes, the FCC desperately needs a new theory to encompass all forms of IP-based services and applications. The layers approach offers a compelling way to frame the issue. In the coming IP world, voice service becomes just another application – in this case, audio bits – that “ride on top of” the IP protocol. So, too, data bits and video bits and any other bits would be treated from an engineering perspective as any other element of the Applications Layer. There no longer is any necessary tie between the service being offered – two-way interactive voice service – and the underlying network used to provide the service – IP transport (see Figure 9 below). In point of fact, regulation of the

¹² *A Horizontal Leap Forward* at iv.

upper layer application simply makes no sense where there no longer is an automatic correlation to a fixed lower layer platform technology.¹³

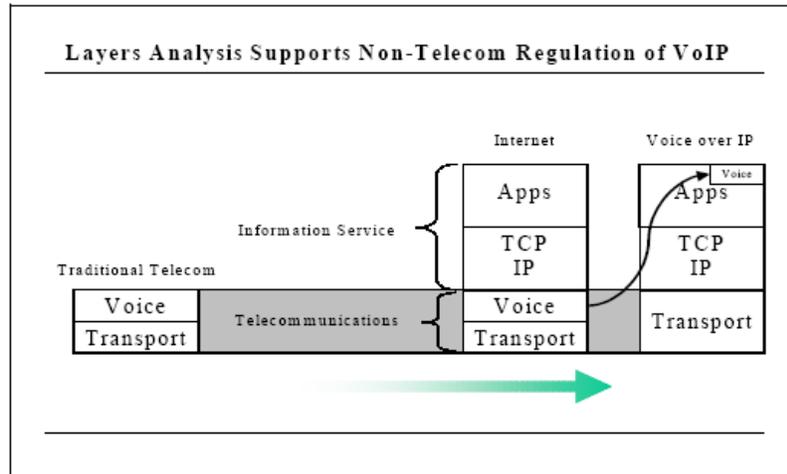


Figure 9

Accordingly, 8x8 urges the Commission to consider a layered approach for the classification of IP-enabled services. A layers analysis, such as that described above, is best suited to ensure appropriate levels of regulatory oversight where necessary, without chilling innovation or giving rise to unacceptable levels of market uncertainty.

III. THE FCC MUST CLARIFY THAT IPES ARE INTERSTATE SERVICES IN ORDER TO PREVENT INCONSISTENT AND JURISDICTIONALLY INAPPROPRIATE STATE REGULATION

It is essential that the Commission act quickly to address jurisdictional issues for IP-enabled services. The FCC has correctly signaled its belief that IPES are *interstate* services.¹⁴ However, several states are rapidly moving to exert jurisdiction over such services. Without swift and decisive action by the FCC, the window of opportunity will close, and there will be no clear path to the development of an effective national policy permitting the continued growth and

¹³ *A Horizontal Leap Forward* at 56 (footnote omitted).

¹⁴ 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 (Feb. 19, 2004) ("*Free World Dialup Opinion*").

development of this crucial business sector. As the states reach independent jurisdictional conclusions about IPES without clear guidance from the Commission, the results will vary widely, creating uncertainty and inefficiency for companies that provide IP-enabled services. The pace of state regulatory action also directly conflicts with the competitive development required in the fast-paced Internet industry in which IPES are evolving. If allowed to continue, this mismatch will irreparably harm Internet technology companies that are based in the United States.

A. IPES ARE JURISDICTIONALLY INTERSTATE

The FCC should rule that IP-enabled services are jurisdictionally interstate in nature. This conclusion is supported, in large measure, by the fact that Internet traffic, unlike traditional telephone traffic is not routed based upon the geographic location of the network end points. Partly as a consequence of the differences between circuit-switched and packet-switched networks, and partly because application layer service providers (including 8x8) offer services independent of the underlying transport layer, it is often not possible for IPES providers like 8x8 to determine whether Internet communications are between individuals within the same state or across international borders.

Most recently, in the *Free World Dialup Opinion* the Commission recognized the irrelevance of geography to the flow of information over the Internet. The Commission commented on the inability of Internet application providers to determine geographic location of end users, stating “even if the [Free World Dialup] member’s locations were somehow relevant to their use of Free World Dialup, Free World Dialup’s portable nature without fixed geographic origination or termination points means that no one but the members themselves know where the

end points are.”¹⁵ This inability to distinguish between intrastate and worldwide traffic on the Internet creates a strong need for the Commission to declare such traffic inherently interstate. Failure to do so will permit each state to regulate IPES traffic worldwide due to the inability of the providers to distinguish between interstate and intrastate traffic. This artificially extended state authority, when combined with inconsistent regulation, threatens to undermine the federal policy of preserving the free market that exists for the Internet and other interactive computer services.¹⁶

B. ADVERSE STATE RULINGS THREATEN TO UNDERMINE THIS FEDERAL SCHEME

It is critical that the FCC act now to clarify the jurisdictional boundaries of regulation of IPES. Many states are not waiting for the Commission to determine whether IPES are interstate or intrastate in nature, and have already begun to regulate.

Most recently, May 21, 2004 the New York Public Service Commission issued an order concluding that VoIP services offered by Vonage Holdings Corporation (“Vonage”) are telecommunications services and imposed certification, tariffing and other New York State regulatory requirements.¹⁷ The New York Commission specifically justified its decision in part on their impression that “neither Congress nor the FCC has preempted state law.”¹⁸

California similarly is not waiting for the Commission to clarify jurisdictional issues relating to IPES. California’s Public Utilities Commission has tentatively concluded that VoIP is

¹⁵ *Free World Dialup Opinion* at 15.

¹⁶ 47 U.S.C § 230(b)(2).

¹⁷ 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 (May 21, 2004) (“*New York Order*”).

¹⁸ *New York Order* at 13.

a telecommunications service and has initiated an expedited proceeding to determine how to regulate these emerging services.¹⁹ In response to requests to defer the California proceeding until reply comments were filed in this NPRM, the California Public Utilities Commission determined that it would not be efficient for the California Commission to await further FCC action as a means of factoring in the ongoing process at the FCC.²⁰

The Minnesota Public Utilities Commission has also attempted to regulate VoIP services as telecommunications services. In response to Minnesota's attempted regulation of VoIP, Judge Davis of the Minnesota District Court ruled that such regulation was preempted by Congresses' express policy statements regarding state regulation of the Internet.²¹ The need for Judge Davis to clarify federal law mandating that the Internet remain unregulated illustrates the need for the Commission to act now to clearly classify IPES as interstate "information services" to avoid the need for further judicial intervention.

The need for action by the Commission to clarify these issues is further demonstrated in the Ninth Circuit Court of Appeals decision in *Brand X Internet Services v. FCC*.²² In *Brand X*, the Ninth Circuit applied its own precedent, determining that Internet services provided over cable lines are subject to state regulation, *despite the FCC's own determination to the contrary*. The court in *Brand X* was able to justify its decision, in part, because "[t]he FCC did not initially

¹⁹ 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 04-02-007.

²⁰ 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 04-02-007, Joint Commissioners' Ruling Denying Motion to Modify Schedule for Reply Comments (May 11, 2004) ("*California Ruling*") at 3.

²¹ *Vonage Holdings Corporation v. Minnesota Public Utilities Commission*, Civil No. 03-5287 (MJD/JGL), Slip Op. at 22 (D. Minn., Oct. 16, 2003).

²² *Brand X Internet Services v. Federal Communications Commission*, No. 02-70518 (Ninth Cir. Oct 6,

take a position on the regulatory classification of cable modem service.”²³ Just as in the case of cable modem service, if the FCC does not take a clear position with respect to the classification of IPES generally, the courts will. 8x8 believes that the Commission is better equipped to make these jurisdictional determinations than the courts, and urges the Commission to act now to prevent another judicial decision like *Brand X* from emerging.

If the Commission does not act quickly and affirmatively to assert jurisdiction over IPES and preempt state regulation, state commissions are likely to impose burdensome certification, tariffing, reporting and pre-approval requirements on providers of VoIP and other IP-enabled services. As an example of the scope of possible regulation, here is an excerpt from the recent *New York Order* summarizing the position of Frontier Telephone of Rochester on the regulatory obligations to be imposed on Vonage, as a “telephone corporation” under New York law.

...Frontier asserts that Vonage should be required to comply with a number of laws, rules, and orders, including but not limited to:

- the requirement to pay its share of Commission expenses (§18a);
- the requirement to file tariffs for local and intrastate long distance (§92(1));
- the requirement to obtain Commission approval to issue securities (§101 and 16 NYCRR Part 37);
- requirements to provide 911 emergency calling;
- NYSPSC complaint procedures (16 NYCRR Part 12);
- rules covering provision, suspension and termination of service (16 NYCRR Part 609);
- the obligation to file NYSPSC annual reports as a CLEC (16 NYCRR Part 641);
- the requirement to offer per-line or all-call Caller ID blocking;
- The requirement to enter into traffic exchange agreements;
- Sales tax and 911 surcharges (Tax Law §1105/County Law §305).

New York Order, *supra* n.17, at 6-7.

2003) (“*Brand X*”).

²³ *Brand X* at 14756.

The burden of complying with different, and often onerous, regulatory requirements in each of fifty states plus the District of Columbia is likely to be substantial, even for existing providers of long distance telecommunications or cable providers. Of particular concern to 8x8— as a small company seeking capital to accommodate the rapid expansion of customer demand, and accustomed to the fast pace of business in the broader technology sector – are regulatory requirements, such as the one in New York Public Service Law §101, that carriers obtain prior commission approval to issue securities. In the absence of federal preemption, state commissions will be free to impose their individual certification, tariffing, reporting and other requirements on providers of IPES. Some may forbear from imposing the full range of regulatory obligations, but others will be unwilling or unable to do so. A small company like 8x8, with fewer than 100 employees, would be unnecessarily slowed by such regulation, with a corresponding loss of competitive speed which vitally differentiates such companies from larger competitors, and would be unable to continue to competitively serve a global market with innovative, emerging IP-enabled voice and video services.

IV. THE APPROPRIATE LEGAL AND REGULATORY FRAMEWORK WILL RECOGNIZE THAT IPES SERVICES ARE INFORMATION SERVICES

8x8's VoIP offerings are neither "telecommunications" nor a "telecommunications service" and the provider of VoIP is not a telecommunications carrier or common carrier subject to Title II of the Communications Act of 1934.²⁴ Rather, these services fall within the Commission's definition of information services under the regulatory framework set forth in the *Stevens Report* and in the *Free World Dialup* and *AT&T* decisions, and should not be subject to common carrier regulation under Title II of the Communications Act.

²⁴ Communications Act of 1934, 47 U.S.C. §§ 151 *et seq.* (as amended).

A. VOIP APPLICATIONS ARE INFORMATION SERVICES

The Commission, in the *Free World Dialup* and *AT&T* orders recently provided further clarification regarding the distinction between what it has labeled “computer-to-computer” IP telephony and “phone-to-phone” IP telephony.²⁵ In the *Free World Dialup* order, the Commission concluded that the Free World Dialup application, which allows its users to communicate with each other using specialized CPE over their existing broadband connections, was offering an information service and not telecommunications. Free World Dialup is considered “computer-to-computer” IP telephony because the calls are initiated and terminated using a computer and a broadband connection.

In the *AT&T* order, the Commission classified AT&T’s “phone-to-phone” IP telephone service as a telecommunications service. AT&T’s system used the Internet to route calls placed and received through its traditional circuit-switched service. The Commission concluded that AT&T was providing telecommunications service, in part because AT&T’s users did not “place or receive calls any differently than they do through AT&T’s traditional circuit-switched long distance service.”²⁶

IPES applications, such as 8x8’s Packet8 VoIP application share many of the attributes, as is illustrated by the Commission’s reasoning in the *AT&T* and *Free World Dialup* orders, of “computer-to-computer” applications.

Much like the Free World Dialup service, 8x8’s Packet8 service relies on users to provide their own broadband access. In the *Free World Dialup* order the

²⁵ Petition for Declaratory Rule 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 (Feb. 19, 2004) (“*Free World Dialup*”); Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361, Memorandum Opinion and Order, FCC 04-97 (April 14, 2004) (“*AT&T*”).

²⁶ *AT&T* at page 9.

Commission observed that “Free World Dialup is not ‘telecommunications’ ... Pulver neither offers nor provides transmission to its members. Rather, Free World Dialup members ‘bring their own broadband’ transmission to interact with the Free World Dialup server.” In much the same way, IP-enabled applications like Packet8 lack the characteristics of “telecommunications” because users provide their own “transmission” in the form of a broadband connection to the Internet obtained by users from a third party provider.

IPES applications like Packet8 are also similar to the Free World Dialup service because of the enhanced services that they provide to users. In the *Free World Dialup* order the Commission concluded that Free World Dialup was an information service because Free World Dialup offered “a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”²⁷ Free World Dialup provided services such as voice mail and the ability for its members to determine whether other members were available to talk.²⁸ Like Free World Dialup, IP-enabled applications such as Packet8 offer a variety of interactive services including voicemail and email notification. The capacity of IP-enabled services to provide information services in addition to simple voice transmission distinguishes these IP-enabled services from telecommunication services like AT&T’s, which the Commission determined offered its users “only voice transmission with no net protocol conversion.”²⁹

8x8 and other providers of IP-enabled applications face the same challenges in determining the geographic location of users as providers of services like Free World Dialup. This lack of location data means that it is impracticable, or even impossible, for providers of services like Packet8 to distinguish jurisdictionally intrastate traffic from jurisdictionally

²⁷ *Free World Dialup* at 7 (paragraph 11).

²⁸ *Id.*

²⁹ *AT&T* at ¶ 12.

interstate traffic. This distinguishes such services from phone-to-phone IP services like AT&T's, where calls both originate and terminate on stations on the PSTN, such that AT&T can readily distinguish the point of subscriber location and therefore, intrastate and local calls from interstate traffic. The fact that IP-enabled Service providers neither know nor need to know where their subscribers are geographically located in order to provide services, is a reason to refrain from regulation. Just as “[a]ttempting to require Pulver to locate its members for the purpose of adhering to a regulatory analysis that served another network would be forcing changes ... for the sake of regulation itself, rather than for any particular policy purpose,” imposing similar requirements on IPES providers who face the same challenges is contrary to the spirit of the 1996 Act.³⁰

The inability of IP-enabled service providers to determine the geographic location of their users also implicates the same Commerce Clause considerations that were applied by the Commission in the *Free World Dialup* order. As the Commission explained in the *Free World Dialup* order, the Commerce Clause of the Constitution denies “the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce.”³¹ The Commission further stated that “[t]he nature of Free World Dialup as an Internet application not bound by geography may well render an attempt by a state to regulation any theoretical intrastate Free World Dialup component an impermissible extraterritorial reach.”³² The inability of providers of IP-enabled services, including 8x8, to identify the geographic location of their users, invokes the same Commerce Clause concerns that apply to “computer-to-computer” IP

³⁰ *Free World Dialup* at 15.

³¹ *Id.* at 16 (citing *Cotto Waxco Co. v. Williams*, 46 F.3d 790, 793 (8th Cir. 1995)).

³² *Free World Dialup* at ¶ 16.

applications like Free World Dialup. Just like Free World Dialup, because of the way that the Packet8 application is offered, “one state’s regulation of [it] may have the practical effect of requiring those same regulations to be applied to [8x8’s] service for all users.”³³

The recent judicial decision in *Vonage Holdings Corp. v. Minnesota Pub. Utils. Comm’n*³⁴ further supports the characterization of VoIP services as “information services” under the 1996 Act. In *Vonage Holdings*, Judge Davis of the United States District Court for the District of Minnesota enjoined Minnesota’s attempted regulation of Vonage, ruling that the attempted regulation was preempted by federal law and that enjoining such regulation was in the public interest.³⁵ Judge Davis observed that “[s]tate regulation would effectively decimate Congress’s mandate that the Internet remain unfettered by regulation.”³⁶

B. REGULATORY FORBEARANCE FOR IP-ENABLED SERVICES IS GOOD PUBLIC POLICY

Congress has clearly expressed its goal of preserving “the vibrant and competitive free market that presently exists for Internet and other interactive computer services, unfettered by Federal or State regulation.”³⁷ Regulation of the emerging IP-enabled services market would undermine the highly competitive environment that currently exists. The low barriers to entry based on the open and public nature of the Internet have allowed small companies to provide innovative solutions that surpass the offerings of large incumbent telecommunications carriers. Imposing complex legacy telecommunications regulation on fledgling application providers will

³³ *Free World Dialup* at ¶ 23.

³⁴ 290 F. Supp. 2d 993 (D. Minn. 2003), appeal pending (“Vonage Holdings”).

³⁵ *Vonage Holdings Corporation v. Minnesota Public Utilities Commission*, Civil No. 03-5287 (MJD/JGL), Slip Op. at 22 (D. Minn., Oct. 16, 2003).

³⁶ *Id.* at 2.

³⁷ 47 U.S.C. § 230.

create burdensome barriers to entry and hurt competition. At the same time, the highly competitive nature of the market for IP-enabled services, particularly VoIP, is already providing the incentive for the creation of industry solutions to problems that might require regulatory intervention in a less competitive environment.

The emerging IP-enabled services industry is particularly sensitive to regulation because of the need for investment to continue to advance the technology. The competitive market for services requires that companies continually improve and advance their technology and the quality of service that they offer consumers. This level of innovation requires a sustained high level of investment in research and development. This level of research and development has not been traditionally required of incumbent carriers due to lack of real competition. An uncertain or burdensome regulatory environment would deter investment and slow innovation of IP-enabled services.

C. PUBLIC SAFETY NEEDS AND THE NEEDS OF THE DISABLED WILL BE ENHANCED BY IPES AND DO NOT REQUIRE REGULATORY INTERVENTION

The Commission requested comment on whether E911 and Section 225 regulation is necessary for IP-enabled services. Competitive forces in the IP-enabled services market are already beginning to provide consumers with full access to emergency services without the need for regulatory intervention. These same competitive forces also provide motivation for service providers to offer feature-rich services at rates that are more affordable than current universal service offerings.

1. Providers of IP-Enabled Services Are Rapidly Developing and Deploying Public Safety Capabilities Such As E911

8x8 submits that the cooperative efforts of VoIP providers and the public safety community assure that E911 service will be available to VoIP subscribers on an accelerated timetable, making regulatory mandates unnecessary. As a signatory to the VON Coalition/NENA statement of principles, 8x8 is working with NENA and with 8x8's commercial partners to rapidly deploy E911 services to Packet8 subscribers. It is clear to all parties involved in the VON/NENA effort that the ultimate goal is to upgrade Public Safety Answering Points ("PSAPs") to enable them to receive location information sent via direct IP access. To this end, 8x8 is working with NENA toward a proof of concept technical trial to be launched by the end of 2004 to demonstrate the feasibility of an all-IP E911 platform.

While work continues toward this ultimate goal, the needs of consumers are being addressed. Packet8 subscribers will come to expect that calls to 911 will be routed appropriately and that dispatch operators will have access to the calling party's location. 8x8 is in the process of deploying an interim solution, slated to be rolled out over the next few months, to send 911 emergency calls (including location information registered by the subscriber) over the legacy E911 network to the appropriate PSAP. Unlike some earlier interim solutions, these calls will be routed directly to the dispatcher consoles, and not to the ten-digit administrative number of the PSAP. Given the rapid deployment of interim solutions and the accelerated progress toward an all-IP solution, there is no need for regulation requiring VoIP providers to offer E911 service. 8x8 must offer E911 services to meet customers' demands and is working with NENA toward the rapid deployment of next-generation all-IP E911 functionality, *with capabilities far superior*

to those supported by the legacy E911 network. 8x8 urges the Commission to first allow the market to address the needs of consumers before attempting to regulate a solution.

2. IP-Enabled Services Are Particularly Well-Equipped To Handle Access To Communications Services By The Disabled

Just as solutions are evolving to address public safety needs, the needs of the disabled can also be met without undue regulation. IP-enabled services are particularly well equipped to convey communications in a variety of formats. Enterprising companies have already created applications that allow email and faxes to be read to consumers over the phone, and advances in processing power and voice recognition software will allow services that transcribe voice communications into electronic text. As VoIP and related technologies evolve and find innovative and competitive ways to address the needs of hearing and speech impaired individuals, it would be counterproductive to impose the specific technical requirements of Section 225 of the Communications Act upon them.

3. If Allowed To Develop, IP-Enabled Services Could Exceed Current Standards for Public Safety and Services to the Disabled

The potential for enhanced communications through VoIP services if allowed to develop will result in improved public safety. The increased capacity to transmit data in connection with voice communications that IP-enhanced services could, for example, allow emergency response centers to forward to responders more data regarding the situation, such as floor plans that could increase the effectiveness of their response. VoIP could also provide enhanced communications options like video communications, or automatic email or voice alerts to relevant parties, in emergency situations. IP-enabled communications options could also provide a communications network that is more robust and resilient to attack than the traditional telephone network because of the decentralized architecture of the Internet. 8x8 respectfully submits that, instead of limiting

the development of IP communications technologies and their deployments by requiring compliance with legacy regulations, that the Commission look towards how the overall 911 and TRS systems can be improved and enhanced through the application of the new IP-based communication technologies.

D. INTERCARRIER COMPENSATION ISSUES SHOULD BE ADDRESSED GLOBALLY, RATHER THAN BY REQUIRING VOIP PROVIDERS TO OVERPAY FOR PSTN TERMINATION SERVICES

In the NPRM, the Commission states, “[a]s a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations”³⁸ without regard to the type of network on which the traffic originates. 8x8 agrees that, to the extent the facilities of carriers are being used to complete calls, appropriate compensation should be provided. However, the Commission must ensure that providers of IP-enabled services pay only once for the use of such facilities. Carriers providing PSTN origination and termination services for Packet8 traffic are currently receiving compensation from 8x8 indirectly, through the payments 8x8 makes to CLECs for the minutes of traffic originating or terminating on the PSTN. There is no compelling reason why service providers such as 8x8 should be required to pay additional intercarrier compensation in the form of access charges when the carriers are already being compensated by 8x8’s third party carrier partners. Such additional payments would increase the cost of services to consumers, as IP-enabled service providers would essentially be required to pay twice for the same service.

The current system of access charges is badly in need of reform. When a VoIP provider delivers voice traffic to a LEC via a terminating gateway located in a local telephone market, the LEC incurs precisely the same costs that it incurs in exchanging traffic with other LECs serving

the same geographic area, and the call should be treated as local traffic. The costs of terminating a call on the PSTN do not vary depending on where it originated. Compensation should be based on costs, not on where the call originated or which boundaries it crossed.

The differing rates for interstate access, intrastate access and the various forms of intercarrier compensation for the exchange of “local” traffic are artifacts of an outdated regulatory system based on geographic boundaries and the fixed, known location of physical lines linking subscribers within designated “rate centers.” Intercarrier compensation arrangements based on legacy political and network boundaries make no sense in an era of any-distance IP-centric networks. In recognition of this fact, policy makers at the state and federal levels have begun to consider wholesale reform of intercarrier compensation, a task that needs to be completed as quickly as possible. The narrower issue of the applicability of access charges to VoIP traffic is already under consideration by the FCC in response to a petition for forbearance filed by Level (3) Communications, which has been incorporated into this rulemaking.³⁹ The question of whether access charges, reciprocal compensation or some other form of compensation should apply to VoIP traffic terminated on the PSTN is appropriately resolved on a national basis.

In summary, LECs are already being compensated through the payments 8x8 makes to CLECs for the minutes of traffic originating or terminating on the PSTN. 8x8 accepts traffic that originated on the PSTN for delivery to Packet8 subscribers, but neither expects nor receives compensation from carriers. Treating 8x8 as a carrier, rather than as an end user customer of its carrier partners, would obligate 8x8 to compensate carriers for terminating 8x8-originated traffic

³⁸ IPES NPRM ¶ 61.

³⁹ *Id.* ¶ 32 and n.110

on their networks. Such additional payments would unnecessarily and inappropriately increase the cost of VoIP services to consumers: VoIP providers (and the end user) would essentially be required to pay access charges twice. Such double recovery is precisely the type of regulatory imposition that must be avoided in order to encourage deployment of innovative IP-based services.

E. UNIVERSAL SERVICE REFORM SHOULD ENSURE THAT JURISDICTIONAL ISSUES RELATED TO IPES ARE CLEARLY RESOLVED

In the NPRM, the Commission seeks comment on how the regulatory classification of IPES will affect Universal Service funding.⁴⁰ As the Commission is well aware, Universal Service funding implicates many of the regulatory issues currently pending before the Commission, including the jurisdictional nature of the IP traffic transported over the Internet. 8x8's IP terminal adapters and videophones are nomadic in nature. In other words, they can be used anywhere in the world where there is a broadband connection, just as the Internet permits data transfers and e-mails anywhere in the world, including locations that bear no relation to the user's billing address or the number assigned to the user's account. Under these circumstances, it would be difficult if not impossible for 8x8 to identify the jurisdictional nature of traffic for purposes of contributing to federal and state universal service funds.⁴¹

As previously noted, 8x8 does not provide the customer's underlying Internet or network connectivity, but offers a suite of voice and video applications that run on top of an existing broadband connection. The IP address information that is available to 8x8 does not contain

⁴⁰ *Id.* ¶¶ 63-66.

⁴¹ Roy Mark, *VoIP Players to Tackle 911*, Internetnews.com (Mar. 2004) at <http://www.internetnews.com/xSP/article.php/3327711>.

complete and reliable information regarding the street address or geographic location of the communications equipment; a calling or called party may be using a VoIP terminal adapter or videophone with a particular jurisdiction's phone number in another state or country. If the Commission determines that VoIP providers must contribute to universal service programs, it will be necessary to address the practical issues involved in determining which users are communicating within a state and which are outside the state or country.

Another primary concern, particularly in state proceedings, is that the rapid migration of consumers from traditional POTS systems to broadband enabled VoIP applications may cause a dramatic erosion of funding for universal service programs. However, independent analysts' forecasts of the residential market for VoIP service do not support the concern that VoIP will account for 40 percent to 43 percent of total intrastate telecommunications revenues by 2008.

The VoIP industry, however, is still in its infancy. According to Parks Associates' January 2004 report, "Residential Voice-over-IP: Analysis & Forecasts," there were only about 100,000 residential subscribers to "Category 3 & 4" VoIP services⁴² in 2003. Reproduced below is Figure 1-2 from the Parks Associates report, showing projected subscriber and revenue through 2007.

⁴² Parks Associates divides VoIP services into four categories: Category One is phone-to-phone service, where the PSTN is used on both ends of the call, with IP transport in the middle (commonly used for domestic and long-distance international calling). Category Two includes services, such as Skype and Free World Dial-Up, which totally bypass the PSTN. Category Three consists of computer-to-phone services, of which Net2Phone is the best-known example. Category Four encompasses services using a specialized hardware device, generally referred to as an analog terminal adapter or ATA, to enable subscribers to use a conventional telephone set to make and receive calls. Category Four service providers include Vonage, Packet8, Time Warner and Cablevision, with LECs, DSL providers and cable MSOs as expected Category Four entrants.

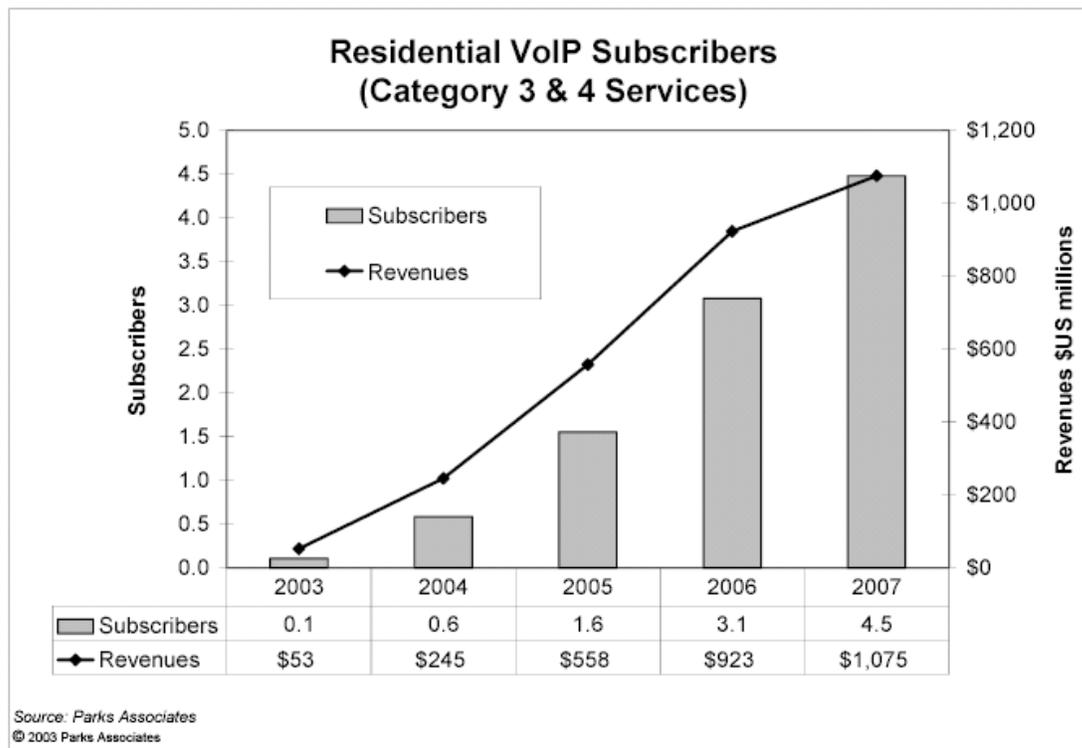


Figure 1-2 VoIP Forecast

FIGURE 1-2 COPYRIGHT PARKS ASSOCIATES. REPRINTED WITH PERMISSION.

Now, at a time when the technology sector has been set back by a major economic downturn, inconsistent treatment and a heavy-handed regulatory environment threaten to stifle growth and innovation in IP communications. But even allowing for a somewhat more rapid growth in residential VoIP than forecast by Parks Associates, any decrease in universal service funding will likely be offset by the reduced cost of providing telephony using VoIP. VoIP can be a more efficient, low-cost and feature-rich method of providing voice communications to rural customers and other underserved populations than the current POTS offering subsidized by universal service funds.

VoIP is already being used to introduce competition for the POTS offerings of the incumbent local exchange carriers even in relatively sparsely populated areas. Incumbent

suppliers of communication services, as well as new entrants, are well aware of the cost savings achievable by replacing circuit-switched telephony with VoIP. As broadband becomes more widely available, the potential cost savings of VoIP relative to circuit-switched telephony will become even more dramatically apparent, and incumbent carriers will be able to offer their customers, including those in rural and high-cost areas, a far more feature-rich service than current lifeline service, at a lower cost. Full development of these VoIP-based services and underlying technologies, however, cannot occur without a supportive regulatory environment, one that is free from burdensome and unnecessary regulation at all levels of government.

F. IP-ENABLED SERVICES CAN ACCOMMODATE LAW ENFORCEMENT NEEDS

As a provider of IP-enabled voice and video services, 8x8 is ready, willing and able to comply with lawful intercept requests in a timely, efficient and cost-effective manner. 8x8 is a party to the “Joint Statement of Industry and Public Interest” (“Joint Statement”) recently filed with the Commission in its pending docket on CALEA. Through its support of the Joint Statement, 8x8 expresses its agreement with the other members of a diverse group of Internet and telecommunications companies, trade associations, industry coalitions and public interest groups that granting the petition to extend CALEA to information services would be inappropriate, for the reasons set forth in the Joint Statement. In its reply comments in that docket, 8x8 highlighted its technical capabilities to render assistance to law enforcement agencies when presented with a court order authorizing lawful intercept. To the extent that the Commission wishes to address law enforcement issues in this proceeding, 8x8 urges the Commission to incorporate the record from that proceeding in its analysis here.

V. THE CONSUMER PROTECTION REGULATIONS REQUIRED UNDER A MONOPOLY REGIME ARE UNNECESSARY IN THE COMPETITIVE MARKET FOR IP-ENABLED SERVICES

Unlike customers of historically monopolistic telecommunications carriers, customers of VoIP services have a large degree of choice in selecting a service provider. Protective regulation may be necessary in a system where customers cannot easily and inexpensively choose their communications provider, but not with respect to VoIP services where customers can choose from a wide variety of providers.

A. IT IS UNNECESSARY TO EXTEND CPNI REQUIREMENTS TO VOIP AND OTHER IP-ENABLED SERVICES

Consumer privacy has not been an issue with respect to VoIP services because market forces allow consumers to choose a provider based on its privacy policies. In the traditional market for telecommunications services where consumers often had only one choice for voice communications, regulation was appropriate to ensure customer privacy. In the competitive market for VoIP services, consumers have numerous options for service and can choose the provider that meets their privacy needs. There is currently no regulatory prohibition on the use of customer information, however, 8x8 has adopted a privacy policy that legally binds it to maintain personal information in confidence.⁴³ Despite the lack of privacy regulation, our customers appreciate and demand that we respect their privacy.

⁴³ 8x8's privacy policy is available on the world wide web at <http://www.packet8.net/about/privacy.asp> and reads, in part, "8x8 is committed to respecting our customer's privacy. Once you choose to provide personally identifiable information, it will only be used in the context of your customer relationship with 8x8. 8x8 will not sell, rent, or lease your personally identifiable information to others."

B. CONSUMER PROTECTION ISSUES LIKE SLAMMING AND DECEPTIVE BILLING PRACTICES HAVE NOT BEEN ISSUES FOR CUSTOMERS OF VOIP SERVICES LIKE PACKET8

Many of the deceptive practices in the telecommunications industry that have required regulatory solutions are simply not present in the market for VoIP services. Some of these practices, like “slamming” are not possible due to technological differences in how VoIP services are delivered. 8x8’s Packet8 service, for instance, uses a specialized CPE that can only be used with the Packet8 service. A customer could not be unwittingly switched to 8x8’s service, because the VoIP service cannot be established without the new carrier shipping an end user device to the customer, and obtaining authorization to charge the user’s credit card, before such shipment takes place. Deceptive billing practices have not been a problem for customers of VoIP services for several reasons. First, customers have a number of alternatives for voice communications, and would not tolerate inaccurate billing for VoIP. Second, many VoIP providers offer subscriptions based on a flat rate monthly fee, so subscribers know what to expect in their bill. Lastly, many VoIP subscribers pay monthly service charges with their credit cards, and have a greater ability to dispute charges, via their credit card provider, if necessary, and resolve any billing issues more quickly that they would when working with a traditional POTS provider that does not provide online payments via credit card facilities.

There is no need to impose additional consumer protection regulations on VoIP providers. VoIP companies doing business in the United States are subject to the same consumer protection, unfair competition and privacy laws that all U.S. companies are subject to. To the extent VoIP companies conduct business in United States jurisdictions, basic state and federal consumer protection rules apply. Other providers of Internet-based services are sufficiently

regulated by existing general purpose consumer protection statutes. Email services, such as Hotmail, and Yahoo! Mail, offer communications services over the Internet, and consumers are protected without the need for special email-specific consumer protection efforts. The same principles hold true for VoIP service providers. Existing general-purpose consumer protection law, in conjunction with the involvement of credit card companies as potential intermediaries to disputes provides a high level of protection for users of VoIP services. There is currently no need for additional consumer protection regulations on VoIP providers such as 8x8.

**C. ECONOMIC REGULATION IS NOT APPROPRIATE FOR
“APPLICATIONS LEVEL” VOIP PROVIDERS**

There is no need to impose economic regulation on VoIP providers, particularly at the “application layer.” VoIP application providers, like 8x8, do not control any of the telecommunications network infrastructure that would require regulation due to lack of public negotiating power. VoIP services are offered to the public at-large, and are available on reasonable request. VoIP application providers face intense competition which would not permit unjust or unreasonable rates, terms or conditions to service. Interconnection and number portability are services that VoIP providers embrace as adding value to their offerings. Bundling of services and discriminatory provision of underlying transmission facilities are not issues for application providers, because subscribers already have access to the network facilities through their broadband Internet service provider. These economic regulations that have been most recently been imposed on the most “dominant” carriers, is not appropriate for application layer VoIP providers who are the least dominant players in the market for voice communications.⁴⁴

⁴⁴ Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61.

CONCLUSION

For the reasons set forth herein, 8x8 urges the Commission to help foster growth and innovation in the emerging VoIP services market by maintaining the distinction between telecommunications services and information services, and by continuing to respect Congress's clear public policy of nurturing the development of Internet based services.

Respectfully submitted,

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Dated: May 28, 2004