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

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

COMMENTS OF
THE WESTERN TELECOMMUNICATIONS ALLIANCE

Gerard J. Duffy
Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW (Suite 300)
Washington, DC 20037
Phone: (202) 659-0830
Fax: (202) 828-5568
E-mail: gjd@bloostonlaw.com

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Summary

The Western Telecommunications Alliance ("Western Alliance") believes that all service providers originating, transporting or terminating traffic on the public switched telephone network ("PSTN") should pay equitable compensation for their use of the PSTN; and that a broad base of telecommunications/information service providers should contribute to the Universal Service Fund. Hence, providers of Voice over Internet Protocol ("VoIP") and similar Internet Protocol ("IP")-enabled services should be required to pay access charges for their traffic that uses the PSTN, and to contribute to the Universal Service Fund.

VoIP calls are the functional equivalent of traditional voice telephone calls. They are marketed and furnished predominately as substitutes for domestic and international long distance voice calls; they include calls to and from telephone numbers assigned in accordance with the North American Numbering Plan and associated international agreements; they make use of the same customer premises equipment ("CPE") necessary to place and receive ordinary calls over the PSTN; and they are virtually indistinguishable, from the viewpoint of the average consumer, from traditional PSTN calls. In other words, VoIP calls constitute "telecommunications" and VoIP services constitute "telecommunications services" within the statutory definitions in Sections 3(43) and 3(46) of the Communications Act.

VoIP providers must pay the access charges that compensate local exchange carriers ("LECs") for use of their networks, and that enable LECs to continue to upgrade, operate and maintain local exchange and exchange access networks. In addition, VoIP payment of access charges will: (1) treat all interexchange carriers in a competitively neutral manner, and

eliminate incentives to evade access charges by "routing" traffic through VoIP facilities; and (2) minimize uneconomic investment by furnishing potential VoIP providers and customers with accurate feedback regarding the true costs of VoIP services.

VoIP providers must also be required to contribute to the Universal Service Fund. VoIP services are making increasingly significant use of (as well as imposing costs upon) the rural telecommunications infrastructure supported by the Universal Service Fund, and are rendered significantly more profitable and valuable because their customers can communicate with the millions of rural residents and businesses that are connected to the PSTN as a result of Universal Service Fund support. In addition, requiring VoIP providers to make the same Universal Service Fund contributions as their long distance toll competitors will promote competitive neutrality, and prevent VoIP providers from obtaining unwarranted competitive pricing advantages because they do not have to recover Universal Service Fund contributions from their customers.

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The Western Telecommunications Alliance ("Western Alliance") hereby submits its Comments with respect to the *Notice of Proposed Rulemaking*, FCC 04-28, released March 10, 2004 in this proceeding ("*NPRM*"). These Comments are focused upon the following two critical principles: (1) that all service providers originating, transporting or terminating traffic on the public switched telephone network ("PSTN") should pay equitable compensation for their use of the PSTN; and (2) that a broad base of telecommunications/information service providers should contribute to the Universal Service Fund. As regards this proceeding, providers of Voice over Internet Protocol ("VoIP") and similar Internet Protocol ("IP")-enabled services should be required to pay access charges for their traffic which uses the PSTN, and to contribute to the Universal Service Fund.

I. The Western Alliance

The Western Alliance is a trade association that was formed by the merger of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents approximately 250 rural telephone companies operating west of the Mississippi River.

Western Alliance members are generally small local exchange carriers ("LECs") serving sparsely populated rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange. Most members also generate revenues much smaller than the national telephone industry average, and rely upon access revenues and universal service dollars for the recovery of more than 50 percent of their costs.

Western Alliance members serve remote and rugged areas where loop and switching costs per customer are much higher than in urban and suburban America. Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these areas, the Western Alliance member not only is the carrier of last resort, but also is the sole telecommunications provider ever to show a sustained commitment to invest in and serve the area.

Western Alliance members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They must construct, operate and maintain their networks under conditions of climate and terrain ranging from the deserts of Arizona to the rain forests of Hawaii to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

Predictable and sufficient cost recovery is essential to Western Alliance members if they are to continue investing in and operating telecommunications facilities in high-cost rural areas, while providing quality services to their rural customers at affordable rates. Therefore, the Western Alliance has found it necessary to participate in this and other proceedings that may affect access charges and the Universal Service Fund.

II. VoIP Service Is A Telecommunications Service

VoIP and other IP-enabled voice services are the functional equivalent of traditional voice telephone calls. Virtually all VoIP services are being marketed and furnished today as substitutes, alternatives, and competitors to long distance voice calls.[1] They are predominately pitched and provided as inexpensive ways to make domestic and international toll calls, including calls to telephone numbers assigned in accordance with the North American Numbering Plan and associated international agreements. Most VoIP and other IP-enabled voice services do not require the parties to the calls to use customer premises equipment ("CPE") different from the CPE necessary to place and receive ordinary touch-tone calls over the PSTN. Moreover, from the viewpoint of the average consumer, improvements in VoIP technology and voice quality increasingly mean that a call is a call is a call, whether routed in whole or part over the PSTN, the Internet, cable television lines and/or wireless facilities. Even though IP networks may be technically and administratively different from the PSTN, users increasingly are unable to discern the types or identities of the networks and facilities over which their voice calls are carried.

VoIP and other IP-enabled voice calls transmit, between or among points specified by their users, information of the users' choosing, without change in the form or content of the information, as sent or received. These voice services are generally offered for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. Hence, VoIP and other IP-enabled voice call services constitute "telecommunications" and "telecommunications services" within the statutory definitions in Sections 3(43) and 3(46) of the Communications Act. Even if some IP-enabled voice services offer different optional "bells and whistles" or add-on calling features than PSTN voice services, their core voice services remain telecommunications services.

It should be noted that the New York State Public Service Commission ("NYSPSC") on May 19, 2004 determined that Vonage Holdings Corporation's ("Vonage's") VoIP service is a

[1] See, e.g., "Special Report: Voice Over IP," *Business Week*, January 6, 2004.

competitive telephone service that "enables subscribers to complete telephone-like calls to other subscribers over the Internet and to subscribers of local telephone companies using landline networks." State of New York Public Service Commission Press Release No. 04038/03C1285 (Rochester, NY, May 19, 2004). Indicating that it "should not create unfair regulatory advantages for some providers over others," the NYSPSC required Vonage to obtain a Certificate of Public Convenience and Necessity, and indicated that its ultimate regulation would "target core public policy concerns without unnecessarily interfering with the free flow of markets and the development of innovative services and technologies."

The concerns of some Commissioners about limiting the growth and development of IP-enabled services by imposing expensive and burdensome Title II common carrier regulation upon them can be alleviated by forbearing from unnecessary regulation pursuant to Section 10 of the Communications Act. At the same time, incentives to game the regulatory system by routing traditional long distance toll traffic wholly or partially over VoIP facilities can be minimized by applying forbearance in a competitively neutral manner, and reducing the traditional Title II regulatory requirements imposed upon LECs and interexchange carriers where such requirements are no longer necessary due to increasing competition from wireless and VoIP services. However, in addition to the basic interconnection and public safety requirements applicable to all carriers, VoIP and other IP-enabled voice providers should be subject at least to the requirements to pay access charges and contribute to the Universal Service Fund.

III. VoIP Providers Must Pay Access Charges

Access charges compensate LECs for use of their networks, and enable the continued upgrade, operation and maintenance of local exchange and exchange access networks. As the

Commission is well aware, local exchange networks (and particularly the "last mile" segment of local exchange networks) are the most difficult and expensive portion of the PSTN to construct, maintain and operate. In many rural areas, this "last mile" segment extends for 10, 20 and even 50 miles through rugged and sparsely-populated terrain.

During recent years, access charge revenues have declined substantially, dropping from $21.423 billion in 1997, to $18.449 billion in 1998, to $18.105 billion in 1999, to $17.017 billion in 2000, to $15.096 billion in 2001. See *Universal Service Monitoring Report*, CC Docket No. 98-202 (2003), Table 1.2, Telecommunications Industry Revenues by Service. Some of these reductions are the result of the CALLS Order[2] and the MAG Order[3]; others are the result of efforts by LECs and regulators to restructure and reduce access rates to eliminate alleged "implicit" subsidies. At present, interstate access charges are set at just and reasonable levels that are affordable by interexchange carriers (including VoIP and other IP-enabled voice providers) and that compensate LECs for the use of their networks by interexchange traffic.

VoIP and other IP-enabled voice providers that use the PSTN to originate, transport and/or terminate their traffic should be required to pay access charges. The Western Alliance agrees with the Commission that, as a policy matter, any service provider that sends traffic to or through the PSTN should be subject to similar compensation obligations, irrespective of where the traffic originates. *NPRM* at para. 61. As indicated above, VoIP and other IP-enabled voice providers are marketing and furnishing the functional equivalent of interstate and international

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[2] *Access Charge Reform, Price Cap Performance Review for LECs*, CC Docket Nos. 96-262 and 94-1, Sixth Report and Order, *Low-Volume Long-Distance Users*, CC Docket No. 99-249, Eleventh Report and Order, 15 FCC Rcd 12962 (2000) (CALLS Order); *Access Charge Reform, Price Cap Performance Review for LECs, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service,* CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Order on Remand, FCC 03-164 (rel. July 10, 2003).

[3] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001).

toll service, and satisfy the statutory definition of "telecommunications carriers." Therefore, the Commission can readily require them to pay access charges under the existing language of Section 69.5(b) of its Rules if they sent traffic to or through the PSTN. Moreover, a clear statement of this requirement by the Commission would serve the public interest by: (1) equitably compensating LECs for the use of their networks, and enabling them to continue to invest in and upgrade their critical and expensive "last mile" infrastructure; (2) treating all interexchange carriers in a competitively neutral manner, and minimizing incentives to evade access charges by "routing" traffic through VoIP facilities; and (3) minimizing uneconomic investment by furnishing potential VoIP providers and customers with accurate feedback regarding the true costs of their VoIP services.

LEC Compensation and Investment. **A**ccess charges form one of the three primary revenue streams[4] of Western Alliance members and other rural telephone companies. As VoIP traffic grows while the obligation of some VoIP providers to pay access charges remains uncertain, rural telephone companies are suffering greater and greater reductions of their critical access revenues. To the extent that VoIP providers do not pay for their use of LEC networks, LECs must make up for their resulting revenue shortfalls by raising their local service rates, by increasing the access charges they impose upon non-VoIP interexchange carriers, and/or by seeking and obtaining increased universal service support. When LECs cannot recover the full amounts of these revenue shortfalls, they will have less money to maintain, upgrade and expand their infrastructure. In fact, if VoIP providers and others are allowed to reap significant profits from long distance and other expanded calling area services without paying for their use of LEC

[4] The other two revenue streams are local service charges (including subscriber line charges) and universal service support.

networks, LECs will have virtually no incentive to continue to construct, upgrade, maintain and operate their expensive "last mile" facilities.

Competitive Neutrality for All Interexchange Carriers. VoIP providers should be subject to the same access charges as the traditional interexchange carriers against whom they are competing for customers. This will ensure that VoIP and other long distance service providers compete on a level playing field, and that VoIP providers do not receive an unjust and unreasonable preference over competing toll service providers that must pay access charges. As indicated above, not only does exemption of VoIP providers from access charges enable them to terminate their traffic on critical and expensive PSTN facilities for free, but also further disadvantages their interexchange carrier competitors by requiring them to pay higher access charges because of VoIP free ride.

In addition, subjecting VoIP providers to access charges will eliminate non-economic incentives for traditional interexchange carriers to route calls through IP facilities solely or primarily for the purpose of evading access charges.

Economic Feedback and Incentives for VoIP Providers. After more than a decade of Internet hype, boom and bust, the only certainty is that nascent and future IP services will be distributed unpredictably along a broad spectrum from rousing market successes at one extreme to dismal market failures at the other. The most efficient, effective and equitable way to evaluate the profitability and viability of VoIP providers is to require them from the very beginning to bear all of the costs of providing their services (including access charges and other costs of using the facilities of other entities). Relieving VoIP providers of the obligation to pay access charges merely delays the inevitable day of reckoning if their revenues do not cover their actual costs, and makes it likely that their investors will suffer greater losses, and that their employees and customers will experience greater disruptions. In other words, VoIP providers should pay access charges and similar expenses for using the resources of others, so that their service offerings can be evaluated at any early date on the basis of accurate economic signals, and so that resources will not be devoted to VoIP services in lieu of alternatives that produce greater economic welfare.

The Western Alliance is aware of VoIP vendor claims that VoIP networks will produce cost savings of as much as 30 percent. However, it is not clear how much of these alleged cost savings are the result of efficiencies inherent in VoIP technology, and how much they are due to the fact that most VoIP service providers are not paying access charges for their use of the PSTN and are not contributing to the Universal Service Fund. It is also not clear whether or how much any claimed VoIP efficiencies are capable of being realized in sparsely populated rural areas where there are few or no economies of scale. The best economic solution is to require VoIP providers to pay for all of the resources they use (including access to the PSTN), and let them compete in the marketplace on the basis of their packet-mode efficiencies, service quality, prices, and service options.

Conclusion. VoIP providers should be required to pay access charges for their use of the PSTN to originate, transport and/or terminate their traffic. This will fairly compensate LECs for the use of their facilities, and encourage the continued investment in expensive "last mile" facilities. It will also establish and maintain competitive neutrality between VoIP providers and the interstate and international toll carriers against whom they compete. Finally, it will furnish accurate economic feedback for VoIP providers themselves to evaluate the profits and prospects of their businesses.

IV. VoIP Providers Should Contribute to the Universal Service Fund

Section 254(d) of the Communications Act requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service." It also permits the Commission to require "[a]ny other provider of interstate telecommunications . . . to contribute to the preservation and advancement of universal service if the public interest so requires." 47 U.S.C. Sec. 254(d).

Providers of VoIP and other IP-enabled services are making increasingly significant use of (and imposing costs upon) the rural telecommunications infrastructure supported by the Universal Service Fund to originate, transport and/or terminate their traffic. Moreover, their services are made substantially more valuable (and, hence, capable of generating larger revenues and profits) due to the fact that their customers can communicate with millions of rural residents and businesses that might not have telecommunications service without the support provided by the Universal Service Fund. In light of the usage and other significant benefits they enjoy as a result of the Universal Service Fund, VoIP and other IP-enabled service providers should be required to contribute to it.

In addition, where VoIP and other IP providers are competing head-to-head with wireline and wireless providers, the competitive neutrality principle requires that VoIP and other IP-enabled services support Universal Service, just as other carriers do, in order to encourage a level playing field. Requiring VoIP and other IP-enabled services to make the same Universal Service Fund contributions as their long distance toll competitors prevents VoIP providers from gaining unwarranted advantages by the appearance of lower rates due to the fact that they do not make Universal Service Fund contributions or recover them from their customers.

The Western Alliance believes that VoIP and other IP-enabled service providers are “telecommunications carrier[s] that provide interstate telecommunications services,” and are therefore required to contribute to the Universal Service Fund on the same basis as the interstate telecommunications carriers against which they compete. Even if the Commission determines, for any reason, not to classify VoIP and other IP-enabled service providers as “telecommunications carriers” and is upheld by the courts, they are nonetheless "providers of interstate telecommunications" that may be required to contribute to the Universal Service Fund. In this latter instance, the public interest requires the Commission to exercise its discretion to include VoIP and other IP-enabled service providers as contributors to the Universal Service Fund for the usage, benefit and competitive neutrality reasons set forth above.

V. Conclusion

The Western Alliance believes that all service providers originating, transporting or terminating traffic on the PSTN should pay equitable compensation for their use thereof. In particular, VoIP and other IP-enabled service providers should be required to pay access charges for their traffic which uses the PSTN, and to contribute to the Universal Service Fund.

Respectfully submitted,
WESTERN TELECOMMUNICATIONS ALLIANCE

By /s/ Gerard J. Duffy
Gerard J. Duffy

Its Attorney

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast
2120 L Street, NW (Suite 300)
Washington, DC 20037
Phone: (202) 659-0830
Fax: (202) 828-5568
E-mail: gjd@bloostonlaw.com

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