

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

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

COMMENTS OF USA DATANET CORPORATION

USA Datanet Corporation (“USA Datanet” or “Company”), by its attorneys, submits these comments in response to the notice of proposed rulemaking regarding IP-enabled services released on March 10, 2004 in the above-captioned docket.¹ USA Datanet urges the Commission to avoid imposing unnecessary regulations by addressing specific issues with targeted regulations rather than attempting to craft sweeping categories intended to shoehorn new technologies, including IP-enabled applications, into regulatory classifications adopted for circuit-switched technologies.

USA Datanet was an early “first adopter” of IP technology and a pioneer in the deployment of many different IP-based services, including voice applications. USA Datanet installed the nation’s first production SONUS network so that it could provide high quality and reliable IP-based services, including voice applications, to its customers. The Company chose to build its IP-based data network from the ground up rather than modify an existing network optimized for circuit-switched services because USA Datanet seeks to offer its customers the full range of benefits that IP-based services can make available. USA Datanet now uses its network

¹ In the Matter of IP-Enabled Services, Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 04-28 (rel. March 10, 2004).

to provide communications services to several hundred thousand residential and small business customers.

It is crucial to the continued development of IP-enabled services and competition that the current uncertainty regarding the regulatory framework that will apply on a prospective basis to such services is resolved quickly, including the critical issues raised in the intercarrier compensation and universal service proceedings. However, it is equally important that the FCC resolve those critical issues without imposing unnecessary regulations on emerging technologies. Therefore, USA Datanet urges the Commission to address specific issues with targeted regulations rather than craft sweeping tests in an attempt to shoehorn new technologies, including IP-enabled applications, into regulatory classifications adopted for circuit-switched technologies.

I. A “ONE SIZE FITS ALL” TEST FOR CATEGORIZING IP-ENABLED SERVICES WOULD NOT SERVE THE PUBLIC INTEREST OR BE THE BEST MEANS FOR ACHIEVING THE GOALS OF THE ACT

The NPRM solicits “comment regarding how, if at all, we should differentiate among various IP-enabled services to ensure that any regulations applied to such services are limited to those cases in which they are appropriate.”² USA Datanet respectfully submits that no single test would be appropriate for differentiating among various IP-enabled services, particularly because the defining characteristic of the only common factor between these services – Internet Protocol – is the diversity of applications it supports. As such, the functional and economic factors listed in the NPRM might be appropriate for distinguishing between various services for some purposes but not others.³

² NPRM, ¶ 35.

³ *Id.*, ¶ 37.

A more complete description of USA Datanet's service offerings illustrates not only why its services are "information service" under the Act, but also why it would be inappropriate to categorize IP-enabled services based upon whether they also support voice applications. As explained above, USA Datanet built its network specifically so that the Company could offer its customers the "*capability* for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications" See 47 U.S.C. 153(20) (emphasis added). Voice is only one aspect of the capabilities that USA Datanet can offer customers via its IP-based network. Indeed, one of the most innovative aspects of USA Datanet's network – as well as the services that USA Datanet offers via the network – is the flexibility it permits customers to have in choosing how, when and where to communicate, access, manipulate, store, and forward information.

The way in which the National Federation of the Blind ("NFB"), one of USA Datanet's customers, uses the capabilities of the Company's IP-based network illustrates why the mere fact that a customer could use its service provider's IP-network to place a phone-to-phone voice call should not automatically lead to the conclusion that the service offered is a "telecommunications service" subject to access charges. Specifically, the NFB relies on the capability for Interactive Information Services that USA Datanet offers via its IP-based network to provide its NFB-NEWSLINE®, which enables those who cannot read conventional print to have access 24 hours a day, seven days a week to dozens of newspapers, including USA Today, the New York Times, the Washington Post, the Los Angeles Times, the Wall Street Journal and dozens of local papers, simply by dialing a toll-free number using any telephone. Users can choose that day's, the previous day's, and the previous Sunday's issue of each newspaper on the service. The menu, which uses synthetic speech, allows users to change the speed and voice quality, spell out, or

search for words, capabilities made possible because of USA Datanet's IP-based network. For more information about the NFB-NEWSLINE®, see <http://www.nfb.org/newsline1.htm>.

This revolutionary application receives digital transmissions from newspapers on the morning of publication, reformats the data for conversion to synthetic speech, and uploads the data to USA Datanet's IP/Web application platform. A user can access the NFB-NEWSLINE® by dialing a toll-free or local number. Calls to the NFB-NEWSLINE® are terminated to USA Datanet's Data Center, and when a caller selects the NFB application, the call is then connected by USA Datanet's network to the IP/Web application platform that supports the NFB-NEWSLINE® service. The NFB's "America's Jobline®" works in the same way to provide people who cannot see or read standard video display terminals, or who do not have or cannot use standard computers, with interactive audible access to job information. For more information about NFB's "America's Jobline®", see <http://www.nfb.org/jobline/enter.htm>. Attachment 1 provides a diagram of how these interactive information services are provided. The diagram shows that the services of USA Datanet manipulate the application's layers and provide end users with the capability of engaging in a net protocol conversion, both of which qualify the service as an information service.

The same IP-based technologies that enable the NFB-NEWSLINE® and "America's Jobline®" can be used to provide any end user with the capability of accessing any digital text in an audible format. For example, USA Datanet customers on business trips can use any telephone to secure access to any digital data in an audible format. The tremendous potential of this type of IP-based application increases exponentially when combined with other capabilities that the Company's network make possible that simply are not present with a circuit switched network or the functional equivalent. Perhaps the single most powerful capability of the USA Datanet

design is its “Mid-Call Event Triggers,” which are technically feasible because the underlying network uses Session Initiation Protocol (“SIP”). This underlying IP technology allows USA Datanet’s customers to escape the limitation associated with traditional “One Call – One Circuit” communication network and USA Datanet to build virtually unlimited advanced calling information services. These services can range in scope from simple Call Re-Origination (a feature which allows multiple calls to be made in serial fashion), to sophisticated voice, data and multimedia applications discussed in following sections of this pleading.⁴ As such, a USA Datanet customer could (1) initiate a call through the USA Datanet platform from any standard telephone, (2) listen to a newspaper article that has been converted to synthetic speech on the Company’s IP/Web application platform, (3) decide that a colleague should hear the same article and conference in that colleague by calling her mobile phone, (4) listen to the newspaper article with the colleague, (5) decide that they should both review a recent press release by the customer’s company and access the digital text of the release in an audible format, and (6) decide that all of the employees of the customer’s company be aware of an inaccuracy in the press release and send an e-mail message to those employees created using voice commands. Of course, the order of these steps can be reversed, and individual steps (as well as others) can be added or deleted or replicated during the course of the same call. Indeed, the person initiating a call or transaction has such flexibility due to USA Datanet’s underlying IP-based network that the caller need not decide which steps or actions she intends to take, or even the identity of the recipient, if any, of the resulting communications, before initiating the call or transaction.

⁴ Other Advanced Call Capabilities include network based speed dialing, voice mail, and other information retrieval applications. These features will be enhanced over time to include call management, presence capabilities, and real time unified communications.

USA Datanet's network also supports Enhanced Internet Call Waiting ("EICW"), which unites voice and data applications. EICW will allow dial-up Internet customers to manage their communications in real time while connected to the Internet. Specifically, upon establishing a dial-up Internet connection, a customer will automatically notify the Company's network that they are going online. If the customer subsequently receives a phone call while online, a call management screen will appear and allow the customer to decide whether to (1) ignore the call, (2) take the call, (3) send the call to voicemail, (3) chat with the caller via text messaging, (4) establish a voice chat session, or (5) play a pre-recorded message.⁵

Although these comments describe only a few of the many capabilities that USA Datanet's network facilitates, the examples discussed above demonstrate that the type of IP-based technology deployed by the Company offers customers the capability for engaging in multiple protocol conversions during a single "call" or "transaction," including text-to-voice, voice-to-text, text-to-text (*e.g.*, newspaper text to instant message or e-mail text) and voice-to-voice (*e.g.*, conversation to audio file that can be attached to an e-mail, sent as an instant message, or stored as a voicemail message). In other words, thanks to USA Datanet's IP-based network, customers can generate, acquire, store, transform, process, retrieve, utilize, or make available any type of information via telecommunications.

The services that USA Datanet offers fall squarely within the Act's definition of "information services," even if a customer chooses not to use all of these capabilities during a

⁵ The Company's network also supports call management services like USA Datanet's "Family Communications Tree," which will allow members of a family or group to receive their calls and messages individually from the same local number. Specifically, calls to a particular family or group of users can be placed using a single number that terminates on USA Datanet's network, at which point the caller is asked to identify the specific party the caller wishes to contact. Based upon individual preset preferences of the party identified by the caller, the call would be forwarded to (1) an alternate number (or simultaneously to multiple numbers) for the called party, (2) a voicemail box for the called party, (3) a prerecorded message from the called party, or (4) a personal message to be played while the calling party is placed on hold until the called party is located.

particular call (*e.g.*, the customer chooses only to engage in a real-time voice conversation during a phone-to-phone call), because inherent in the network supporting the services is the “*capability* [offered to end users] for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications” *See* 47 U.S.C. 153(20) (emphasis added).

As the description of USA Datanet’s services illustrates, it would be inappropriate to subject IP-enabled services to the entire panoply of common carrier regulations designed for circuit-switched services merely because they also offer the capability for real-time voice communications. Rather, the Commission should examine the specific need at hand (*e.g.*, universal service, intercarrier compensation, 911 services, CALEA) and adopt targeted regulations designed to meet those needs, which very well may result in different criteria for applicability for the different regulations. The Act provides the Commission with the flexibility to adopt narrowly targeted regulations in order to achieve specific statutory goals. In this manner, the Commission can best encourage the development of market driven solutions to the challenges that providers of IP-enabled services face while ensuring that all of the goals of the Act are met.

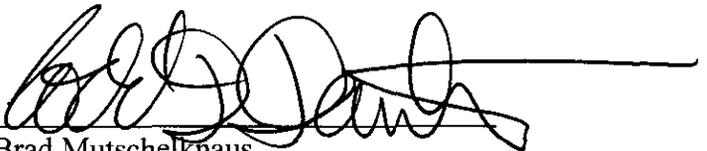
In any event, the Commission should look at IP-based applications holistically, just as it has always done when distinguishing between information and telecommunications services under the Act. The Commission has never divided services into segments in order to apply a different analysis on a segment-by-segment basis. Indeed, there is no basis under the Act or the FCC’s rules and policies for dividing a service or application into discrete segments or links in order to apply the statutory definitions for “telecommunications service” and “information service.”

II. CONCLUSION

For the foregoing reasons, USA Datanet urges the Commission to address specific issues with targeted regulations rather than craft sweeping tests in an attempt to shoehorn new technologies, including IP-enabled applications, into regulatory classifications adopted for circuit-switched technologies.

Respectfully submitted,

By:



Brad Mutschelknaus

Todd D. Daubert

KELLEY DRYE & WARREN LLP

1200 19th Street, N.W., Suite 500

Washington, D.C. 20036

(202) 955-9600

Counsel to USA Datanet, Inc.

Attachment

Dated: May 28, 2004

ATTACHMENT 1

