

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

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

**COMMENTS OF CABLEVISION SYSTEMS CORP.**

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Cablevision Systems Corp. (“Cablevision”), through its attorneys and on behalf of its affiliates and subsidiaries, hereby files its Comments on the Commission’s *Notice of Proposed Rulemaking* (“*Notice*”) issued in the above-referenced matter.<sup>1/</sup>

**INTRODUCTION AND OVERVIEW**

The combination of emerging Internet technologies and significant investment in broadband networks has spurred numerous companies to develop new services on the IP platform.<sup>2/</sup> These new IP services signal the arrival of true competitive options for all communications users, particularly residential customers. It has been eight years since the Telecommunications Act of 1996 was enacted, and competition has developed in a manner not anticipated in 1996. IP services have emerged outside the legacy regulatory framework, driven by technological advancements and business case analyses – not regulatory fiat.

The communications needs of customers are changing dramatically as evidenced by the proliferation of cell phone usage and the decline in traditional circuit-switched usage.<sup>3/</sup>

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<sup>1/</sup> *In the Matter of IP-Enabled Services*, 19 FCC Rcd 4963 (2004) (“*Notice*”).

<sup>2/</sup> Cablevision has invested five billion dollars in upgrading its infrastructure in just six years.

<sup>3/</sup> For example, most wireless providers offer unlimited local, regional, and long distance calling plans for one low price. See Dan Meyer, *Carriers Try To Pick up Marginal Users With Cheap Calling Plans*, RCR WIRELESS NEWS, Mar. 11, 2002, at 3. Indeed, more than four percent of consumers (and 12 percent of adults under 24) rely solely on their wireless phone and have discontinued their wireline service entirely. See Brad Stone, *Technology: Cutting the (Phone) Cord*, Newsweek, Dec. 8, 2003; see also FCC Chairman Powell: *Another 70 Million Americans to Have Freedom to Switch Wireless Carriers and Keep Their Phone Number on Monday*, News Release (rel. May 21, 2004)

Similarly, new Voice over Internet Protocol (“VoIP”) applications allow consumers to redefine their communications needs. VoIP applications are appealing because providers can create unique service packages that permit a consumer to design a cost-effective product/package that is specifically tailored to meet individual needs.<sup>4/</sup> Examples of these innovative products and services include integrated messaging, voice e-mails, and interactive Web portals. The spectrum of VoIP offerings shortly will be augmented with others as unimaginable as the World Wide Web once was.

While some VoIP services provide certain features and functions that are similar to traditional telephony, many of these services already combine voice and data in ways that go far beyond the functionality offered by traditional telephony services. As discussed more fully below, Cablevision’s Optimum Voice service makes the future promise of enhanced functionality a reality today for more than four million consumers.<sup>5/</sup>

Application of legacy regulations to new VoIP services like Optimum Voice will siphon resources away from increased investment and development of IP-enabled services toward compliance with unnecessary regulations. It is critical that the Commission permit IP-enabled services to continue to grow and evolve in a minimal regulatory environment. VoIP is an

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(noting that nearly 229,000 people have transferred their wireline number to their wireless phone since November 24, 2003).

<sup>4/</sup> See, e.g., Kudlow & Kramer: Interview with Chairman Michael K. Powell, CNBC Television (Nov. 19, 2003) (stating that VoIP communication is “a life-style changing new fantastic technology” and “the most vibrant innovation to come into the American economy, the global economy, in decades, centuries even”); *In the Matter of IP-Enabled Services*, Separate Statement of Commissioner Jonathan S. Adelstein (Feb. 12, 2004) (“IP. . . is integral to an explosion of choices for consumers, such as phones in PDAs, voice through Instant Messaging-like services, not to mention lower prices on the services we are accustomed to.”).

<sup>5/</sup> See, e.g., Cynthia Brumfield, *VoIP Lessons from Cablevision*, VOIP MONITOR, May 12, 2004; *Cablevision Is Adding 3200 Consumer VoIP Lines per Week in New York*, CONVERGE! NETWORK DIGEST, May 10, 2004, available at <http://www.convergedigest.com/DSL/lastmilearticle.asp?ID=11068>; Ted Hearn, *Sinking VoIP Costs Cheer Op Exes*, MULTICHANNEL NEWS, Feb. 16, 2004; Martha McKay, *Growth of Internet Phone Service Is Loud, Clear*, THE RECORD, Feb. 8, 2004; Matt Stump, *VoIP’s Definitely Getting Out There*, MULTICHANNEL NEWS, Dec. 1, 2003.

information service under the Act, and this regulatory classification appropriately gives the Commission the greatest legal flexibility to ensure a deregulatory environment. The goal of any regulatory framework should be to refrain from imposing any regulation on VoIP unless such regulation is deemed essential to the public interest, and even then, that regulation should be adapted to the characteristics of VoIP technology.<sup>6/</sup> A national broadband policy that eliminates the regulatory uncertainty that has been exacerbated by disparate treatment of VoIP by numerous states<sup>7/</sup> can only be achieved by a uniform federal regime for VoIP services. This regulatory framework would enable the continued development and deployment of innovative, high-value VoIP services and provide numerous consumer benefits.

#### **I. CABLEVISION'S OPTIMUM VOICE SERVICE MAKES THE FUTURE PROMISE OF ENHANCED FUNCTIONALITY A REALITY**

In November 2003, Cablevision launched Optimum Voice, its digital voice-over-cable service, throughout its service area of more than 4 million homes.<sup>8/</sup> Optimum Voice uses state-of-the-art digital technology and Cablevision's broadband network to deliver high-quality digital voice service to its customers. Customers connect their phone to the back of the cable modem and make and receive "calls" both on and off Cablevision's IP network.<sup>9/</sup> Specifically, Optimum

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<sup>6/</sup> Industry consensus, rather than regulation, is the appropriate approach to address current technological limitations that may exist with IP-enabled services. For example, CableLabs has been working with the cable industry to standardize equipment and technology to enable greater VoIP interoperability.

<sup>7/</sup> Compare Case 03-C-1285, *Complaint of Frontier Telephone of Rochester, Inc. Against Vonage Holdings Corp. Concerning Provisions of Local Exchange and Interexchange Telephone Service in New York State in Violation of the Public Service Law*, Order Establishing Balanced Regulatory Framework for Vonage Holdings Corporation (N.Y.P.S.C. May 21, 2004) (finding that Vonage is a telephone corporation and must comply with the Public Service Law) with Florida Senate Bill 654 (adopted and effective May 23, 2003) (finding that it is in the public interest to leave the provision of VoIP services "free from unnecessary regulation, regardless of the provider").

<sup>8/</sup> Alan Breznick, *Cablevision Races to Early Lead in Cable VoIP*, CABLE DATACOM NEWS, Apr. 1, 2004. Optimum Voice is today available to more than four million homes in Cablevision's service area across Long Island, northern New Jersey, southern Connecticut, Westchester, the Bronx, and Brooklyn.

<sup>9/</sup> Whole house wiring also is available so that every jack in the house can connect to the cable modem and become IP-enabled.

Voice calls are carried over Cablevision's hybrid fiber coaxial cable network to the cable modem termination system ("CMTS") located at Cablevision's headend.<sup>10/</sup> The call travels from the CMTS through an IP transit network to a softswitch (call management server) and a media gateway (interfaces with a licensed carrier).<sup>11/</sup> Cablevision purchases telecommunications termination services from a licensed carrier to transport calls from the softswitch/media gateway to the public switched telephone network ("PSTN"). Once on the PSTN, the licensed carrier transports the call and pays intercarrier compensation to the extent applicable. If the call is being terminated to another Optimum Voice subscriber, the call never leaves Cablevision's IP network.<sup>12/</sup>

Optimum Voice offers subscribers of Cablevision's high-speed Internet service a cost-effective and convenient voice service that includes unlimited local, regional, and long distance calling across the United States and Canada for a flat rate of \$34.95 per month.<sup>13/</sup> The service also includes five custom-calling features (caller ID, call waiting, call return (\*69), three-way calling, and call forwarding) and fully functioning E-911 service. In addition to the aforementioned basic features, Optimum Voice provides subscribers with "Enhanced Voicemail" and "My Optimum Voice," an interactive web portal that allows subscribers to access and manage their call features as well as view their calling history. In the first quarter of 2004,

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<sup>10/</sup> The CMTS provides complementary functionality to a cable modem to enable data connectivity to a wide-area network. The headend is the control center of Cablevision's cable television system where incoming signals are amplified, converted, processed, and combined into a common cable for transmission to subscribers.

<sup>11/</sup> Media gateways "bridge" calls between the IP network and the public switched network.

<sup>12/</sup> Currently, this is the case for calls between Optimum Voice subscribers that are served by the same softswitch. Calls that stay on the Cablevision network are similar to Skype or Free World Dialup calls because such calls do not touch the PSTN. See *Petition for Declaratory Ruling that pulver.com's Free World Dialup Is Neither Telecommunication Nor a Telecommunications Service*, 19 FCC Rcd 3307, ¶ 12 (2004) ("*pulver.com Order*") (noting that pulver.com "merely facilitates peer-to-peer communication").

<sup>13/</sup> International calling and simultaneous ring (where inbound calls ring on up to four separate phone lines) will be available in the coming months.

Optimum Voice gained 42,000 subscribers, representing an acquisition rate of approximately 3,200 subscribers per week. Effective March 31, 2004, Optimum Voice had 71,000 subscribers.

With features like “Enhanced Voicemail” and “My Optimum Voice,” Cablevision is pioneering the delivery of enhanced functionality. “Enhanced Voicemail” enables remote and secure access to voicemail via a telephone or the Internet (including the web portal) at any time and from anywhere. Customers can access their voicemail by opening up attachments to e-mails or by directly accessing the “My Optimum Voice” web portal and checking messages.

Customers also can elect to have “Enhanced Voicemail” send “copies” of their voicemail messages to three different e-mail addresses to receive voicemail messages as sound (or .wav) files.<sup>14/</sup> Customers can receive text notification of voicemail messages at one additional e-mail address. If a message is marked “urgent” by the caller, customers can further receive notification of the voice message via a live call to any telephone number designated by the subscriber or a page alert to a pager.

Customers can control these enhanced capabilities of their VoIP services by using “My Optimum Voice,” an interactive web portal that allows subscribers to access and manage their calling features, including “Enhanced Voicemail,” call forwarding, and call waiting. For instance, subscribers can access “My Optimum Voice” by clicking on a link to listen to a real-time stream of their voicemails on-line when they are away from home or the office. Customers may also click on a link to download and save the file in order to maintain a record of the voicemail for the future. Likewise, “My Optimum Voice” allows subscribers to identify specific locations or devices for calls to be forwarded or to activate/de-activate call-waiting capabilities,

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<sup>14/</sup> If subscribers have audio cards installed in their computers, .wav files permit voicemail messages to be played over the speakers of the computer.

and permits the customer to modify a selection *wherever* and *whenever* necessary over the World Wide Web. “My Optimum Voice” also provides consumers the ability to access and organize their calling history at the click of a button. Customers can organize their call records by date, by caller, or by time received.

Optimum Voice has the technical capability and currently is exploring providing subscribers with integrated desktop software capabilities that would allow them to initiate and receive calls on their personal computers (“PCs”) using desktop dialing. With PC integration, subscribers could see voicemail message waiting indicators that alert them to incoming voicemail messages. “Click-to-conference” capability would permit subscribers to initiate or add users to a conference bridge via their computer.

Optimum Voice also has the technical capability and is currently exploring integration of its advanced digital services into the television, going well beyond the world of the PC or a traditional phone. Digital set-top boxes currently used by Cablevision customers to receive video services would permit subscribers to use their television sets to manage their Optimum Voice services, including accessing caller ID information, viewing voicemail message indicators, and obtaining direct access to the “My Optimum Voice” web portal. “Click-to-dial” capability also would be accessible via the set-top box. With set-top box integration, not only could a subscriber decide to send an incoming call to voicemail if he were in the middle of viewing a show, but also choose to play the voicemail message back via the television during a commercial.

IP-enabled services are the gateway to the future, and the current and planned options available with Optimum Voice demonstrate that the enhanced functionality available to consumers today is merely a glimpse of the future promise of IP-enabled services. While others

are still envisioning the ability of their products' "future potential to provide enhanced functionality,"<sup>15/</sup> Optimum Voice provides that functionality today at an alternative price.

## **II. IP-ENABLED SERVICES, SUCH AS THOSE OFFERED BY CABLEVISION, ARE PROPERLY CLASSIFIED AS INFORMATION SERVICES**

Regulators have long recognized that lighthanded regulation of nascent services and technologies is essential to the continued development and promotion of technology-rich products.<sup>16/</sup> To date, most IP-enabled services have flourished under a deregulatory environment to the benefit of consumers based on their classification as "information services."<sup>17/</sup> When it comes to VoIP services, there is no reason to modify the current classification of IP-enabled services as information services or to rely on new means of distinguishing or classifying IP-enabled services as suggested by the *Notice*.<sup>18/</sup> The definitions established in the Act, the Commission's prior findings, and court decisions provide sound analytical tools for the regulatory classification of IP-enabled services and would prevent the Commission from making unnecessary distinctions among different VoIP applications. Accordingly, VoIP and other IP-

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<sup>15/</sup> *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457, ¶ 13 (2004) ("AT&T Phone-to-Phone Order").

<sup>16/</sup> *pulver.com Order* ¶ 19 (noting that declaring Free World Dialup to be an information service "will facilitate the further development of FWD and Internet applications like it and these offerings, in turn, will encourage more consumers to demand broadband service"); Opening Remarks of FCC Commissioner Michael Copps at the FCC Forum on Voice over Internet Protocol (VoIP) (Dec. 1, 2003) (commenting that the Commission must examine VoIP and develop "good policy going forward and not just shoehorn VoIP into statutory terms or regulatory pigeon-holes without adequate justification."); *The Nascent Services Doctrine*, Remarks of FCC Commissioner Kathleen Q. Abernathy before the Federal Communications Bar Association New York Chapter (July 11, 2002) (stating that "regulators should exercise restraint when faced with new technologies and services [because] [s]uch restraint [will] facilitate the development of new products and services without the burden of anachronistic regulations, and in turn promote the goal of enhancing facilities-based competition").

<sup>17/</sup> Examples include X-Box Live, AOL Talk, Skype, and Session Initiated Protocol ("SIP") phones. See, e.g., David Bloom, *Sony's Adaptation*, DAILY VARIETY, August 27, 2002, at 6; Discussion with David Gang, Executive Vice President for AOL Products, August 6, 2003; Jim Louderback, *Internet Telephony Shoot-Out: Skype vs. SIPphone*, October 17, 2003, available at <http://www.extremetech.com/article2/0,3973,1358862,00.asp>.

<sup>18/</sup> *Notice* ¶ 37.

enabled services should be classified as information services under Title I of the Communications Act.<sup>19/</sup>

**A. The Act, Commission Precedent, and Case Law Support the Classification of IP-Enabled Services as “Information Services”**

VoIP services plainly offer the “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications,” and therefore, fit within the definition of “information service” in the Act.<sup>20/</sup> Indeed, even services that function as both telecommunications services and information services, but are inseparable from the end user’s perspective, have been deemed to be information services.<sup>21/</sup> As the Commission found in the *pulver.com* and *AT&T Phone-to-Phone* decisions, IP-enabled services are interactive services that offer consumers enhanced and additional functionality or a “variation in experience or capability” beyond that of traditional telephony.<sup>22/</sup> Unlike the service offered by AT&T in the *AT&T Phone-to-Phone Order*, Optimum Voice offers subscribers far more than basic transport of telephone calls.<sup>23/</sup> Subscribers can use Optimum Voice to manage information, retrieve stored information, and specifically customize their service to fit their individual needs. These functions involve

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<sup>19/</sup> 47 U.S.C. §§ 151-61.

<sup>20/</sup> 47 U.S.C. § 153(20). In addition, IP-enabled services fall within the Commission’s definition of “enhanced service” because they are “services, offered over common carrier transmission facilities used in interstate communications, which (1) employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber’s transmitted information; (2) provide the subscriber additional, different, or restructured information; or (3) involve subscriber interaction with stored information.” 47 C.F.R. § 64.702(a).

<sup>21/</sup> *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶ 39 (1998) (“*Report to Congress*”) (stating that “when an entity offers transmission incorporating the ‘capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,’ it does not offer telecommunications. Rather, it offers an ‘information service’ even though it uses telecommunications to do so.”); *see also id.* ¶ 58 (“An offering that constitutes a single service from the end user’s standpoint is not subject to carrier regulation simply by virtue of the fact that it involves telecommunications components.”).

<sup>22/</sup> *AT&T Phone-to-Phone Order* ¶ 17; Statement of Chairman Michael K. Powell on *AT&T Phone-to-Phone Order*, at 1; *pulver.com Order* ¶ 11.

<sup>23/</sup> *Cf. AT&T Phone-to-Phone Order* ¶ 12.

significant subscriber interaction and direction, the true hallmark of the information service classification.<sup>24/</sup>

As the Minnesota federal district court found in the *Vonage* case, classifying IP-enabled services as information services also supports Congress's clear mandate that the Internet and Internet-based services "remain unfettered by regulation."<sup>25/</sup> Indeed, Congress expressly has stated that it is the policy of the United States "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."<sup>26/</sup> The Commission likewise recognized in the *Computer Inquiry* proceedings that information services would "continue to burgeon and flourish best in" an unregulated environment.<sup>27/</sup> The current and potential mix of applications available with Cablevision's Optimum Voice service truly demonstrates the fruits of a deregulatory environment.<sup>28/</sup> Accordingly, VoIP services should be classified as information services consistent with the Commission's statutory mandates and prior findings.<sup>29/</sup>

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<sup>24/</sup> *Report to Congress* ¶ 59 ("If the user can receive enhanced functionality, such as manipulation of information and interaction with stored data, the service is an information service.").

<sup>25/</sup> *Vonage Holdings Corporation v. Minnesota Public Utilities Commission, et al.*, 290 F. Supp. 2d 993, 994 (D. Minn. 2003), *appeal pending*, *Minnesota Public Utilities Commission v. Vonage Holdings Corp.*, No. 04-1434, Notice of Appeal (8th Cir. filed Feb. 13, 2004).

<sup>26/</sup> 47 U.S.C. § 230(b)(2). Section 706 of the Act also imposes on the Commission an affirmative obligation to encourage the deployment of advanced services. 47 U.S.C. § 157nt.

<sup>27/</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384, ¶¶ 127-28 (1980) (subsequent history omitted); *see also Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 88 FCC 2d 512, ¶ 83 n.34 (1981) (determining "that efficient utilization and full exploitation of the interstate telecommunications network would best be achieved if [information] services are free from public utility-type regulation") (subsequent history omitted).

<sup>28/</sup> There has been general discussion about classifying VoIP services under Title II as "telecommunications services." While the Commission has forbearance authority under Title II, it is not clear whether such forbearance would translate into state forbearance. Thus, to achieve a deregulatory environment under a Title II classification, the Commission would need to preempt explicitly state regulations inconsistent with the Commission's goal for a deregulatory regime.

<sup>29/</sup> The *Brand X* case is distinguishable on legal and factual grounds, and thus, does not compel a different result for cable-provided VoIP services. *See Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9th Cir. 2003); *see also* Comments of National Cable & Telecommunications Association, WC Docket No. 04-36 (filed May 28, 2004).

**B. Regulatory Classifications Should Not Be Made Based on the Current or Potential Substitutability of Services**

Cablevision's Optimum Voice service demonstrates that today's flavors of IP-enabled services offer consumers functionality well beyond that of traditional telephony. As a result, basing regulatory classification decisions on "substitutability" for traditional telephony is inappropriate.<sup>30/</sup> How a VoIP service is viewed or used differs from subscriber to subscriber and will change frequently over time, even for a particular subscriber. This makes it nearly impossible to draw valid, definitive regulatory classifications with long-term application.

Rapid changes in technology will lead to a class of future IP-enabled services significantly different from the VoIP services available today.<sup>31/</sup> While some IP-enabled services may provide functions similar to traditional telephony, these services also provide consumers with enhanced functionality and, if left unfettered by overly burdensome regulation, will continue to evolve into services that offer even greater enhanced functionality when compared to plain old telephone service.<sup>32/</sup> In light of the present and evolving functional differences between IP-enabled services and traditional telephony, it would be inappropriate and stifling to nascent IP services to make comparisons based on substitutability. Rather, the Commission's established approach – grounded in the language of the Act and consistent with precedent – provides a more

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<sup>30/</sup> Notice ¶ 37.

<sup>31/</sup> See, e.g., *Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701 (b)(1), and Rule 69.5(b)*, Petition for Forbearance, WC Docket No. 03-266, at 11-14 (filed Dec. 23, 2003) (describing the myriad of IP-enabled services already available today and that will be available in the future).

<sup>32/</sup> See, e.g., Herb Kirchoff, *VoIP Advocates Urge States to Keep Hands Off*, COMMUNICATIONS DAILY, Sept. 9, 2003 (stating that traditional telephony is a "network-level function" whereas VoIP is "an Internet application just like unregulated e-mail and file sharing" that can follow its users everywhere, over any network); Speech of Chairman Michael K. Powell before the Academic and Telecom Industry Leaders at the University of California (UCSD) (Dec. 9, 2003) ("Stop thinking of voice as just the telephone. It's just an application running on an IP network.").

workable and objective method for classifying services. Accordingly, IP-enabled services should be classified as information services under Title I of the Act.

### **III. CABLE-PROVIDED VOIP AND OTHER IP-ENABLED SERVICES ARE INTERSTATE SERVICES SUBJECT TO THE COMMISSION'S JURISDICTION**

As the *Notice* suggests, the Commission's assertion of federal jurisdiction in the *pulver.com Order* should be extended to other IP-enabled services.<sup>33/</sup> The Commission's authority and federal jurisdiction over Internet-based services, such as VoIP services, is well-established.<sup>34/</sup> While the Commission's traditional end-to-end analysis may be appropriate for the circuit-switched environment, in the Internet-based world, the concept of "end points" has no relevance because the Internet allows communications to be portable, without fixed geographic origination or termination points.<sup>35/</sup> It is difficult to determine whether IP-based calls are purely intrastate or interstate, and attempting to do so will only perpetuate the unnecessary application of an outdated, irrelevant regulatory structure to nascent VoIP products. The Commission previously noted in the 1998 *Report to Congress* that it might be difficult for VoIP service providers themselves to determine whether VoIP calls are interstate or intrastate.<sup>36/</sup> The

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<sup>33/</sup> *Notice* ¶ 40.

<sup>34/</sup> *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 104 F.C.C.2d 958 (1986) (subsequent history omitted); *GTE Telephone Operating Cos., GTOC Tariff No. 1, GTE Transmittal No. 1148*, 13 FCC Rcd 22466, ¶ 16 (1998) (determining that DSL transmission services used to provide Internet access services are interstate services); *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, 17 FCC Rcd 4798, ¶ 59 (2002) (finding that cable modem services are interstate services); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, ¶ 17 (2002) (tentatively concluding that wireline broadband Internet access services are interstate services); *Vonage Holdings Corporation v. Minnesota Public Utilities Commission, et al.*, 290 F. Supp. 2d 993, 994 (D. Minn. 2003) (noting Congress's mandate that the Internet remain unfettered by state regulation), *appeal pending, Minnesota Public Utilities Commission v. Vonage Holdings Corp.*, No. 04-1434, Notice of Appeal (8th Cir. filed Feb. 13, 2004).

<sup>35/</sup> *pulver.com Order* ¶ 21.

<sup>36/</sup> *Report to Congress* ¶ 91.

Commission recently reaffirmed this finding in the *AT&T Phone-to-Phone Order*, in which the Commission noted that determining the jurisdictional nature of IP services might be difficult.<sup>37/</sup> Given the inability to separate the intrastate and interstate components of VoIP services,<sup>38/</sup> IP-enabled services should be subject to exclusive federal authority.<sup>39/</sup>

The recent proliferation of inconsistent state decisions regarding the regulatory status of VoIP services further supports the Commission's assertion of federal jurisdiction.<sup>40/</sup> As discussed above, both Congress and the Commission have recognized the need for a unified federal regime for Internet-based services that focuses on investment and innovation rather than regulation. A patchwork of conflicting and overly burdensome state regulations would only frustrate these goals, and inevitably would undermine continued investment in and deployment of new and exciting services and applications for consumers.<sup>41/</sup> As Chairman Powell has stated, "I don't know whether it's Internet or telephone, but I know it's not local," and thus, the

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<sup>37/</sup> *AT&T Phone-to-Phone Order* ¶ 20.

<sup>38/</sup> See, e.g., *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation*, 7 FCC Rcd 1619, ¶ 7 (1992) (determining voicemail services were jurisdictionally mixed and could not be separated into interstate and intrastate components).

<sup>39/</sup> Exercise of federal authority over IP-enabled services would not prevent the limited application of state consumer protection laws to these services.

<sup>40/</sup> Compare Investigation No. 04-02-007, *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*, Order Instituting Investigation (C.P.U.C. Feb. 11, 2004) (tentatively concluding that VoIP services interconnected with the PSTN qualify as public utility telecommunications services); Docket No. P-6214/C-03-108, *In the Matter of the Complaint of the Minnesota Department of Commerce Against Vonage Holding Corp Regarding Lack of Authority to Operate in Minnesota*, Order Finding Jurisdiction and Requiring Compliance (Minn. P.U.C. Sept. 11, 2003) (ordering Vonage to comply with state law by seeking authority, filing a 911 plan, and submitting tariffs) (subsequent history omitted) with Docket No. 03M-220T, *Investigation into Voice Over Internet Protocol (VoIP) Services*, Order Closing Docket (Colo. P.U.C. Dec. 17, 2003) (stating that "we believe the most prudent course is to take no action with respect to VoIP pending FCC action"); Docket No. 000075-TP, *Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, Order on Reciprocal Compensation (Fl. P.S.C. Sept. 10, 2002) (finding "a broad sweeping decision on this particular issue would be premature at this time").

<sup>41/</sup> Cf. *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375 n.4 (1986); *NARUC v. FCC*, 880 F.2d 422, 429 (D.C. Cir. 1989); *California v. FCC*, 39 F.3d 919, 931-33 (9th Cir. 1994) (affirming the FCC's authority to preempt state regulation of jurisdictionally mixed enhanced (information) services).

Commission should be the “principle regulatory authority” for VoIP services and the “first in line to set the initial regulatory environment” for IP-enabled services.<sup>42/</sup>

#### **IV. IMPORTANT SOCIAL POLICY OBLIGATIONS MAY BE CRITICAL COMPONENTS OF VOIP SERVICES**

The interactive functionality offered by Optimum Voice and other IP-enabled services suggests that the appropriate treatment of these services is something other than traditional telephony regulation. As the Commission notes, traditional telephony regulation was designed to address market failures and protect customers from monopoly abuse in an era where choice was limited and the absence of alternatives demanded strict government oversight.<sup>43/</sup> There is simply no “compelling justification” for imposing burdensome, economic, and customer service regulations on IP-enabled services.<sup>44/</sup> Nor is there any need for the Commission to address the application of universal service or intercarrier compensation to VoIP service providers at this time.<sup>45/</sup> Rather, resolution of those issues should be deferred to the Commission’s pending dockets because it would be premature to impose these obligations on VoIP service providers without resolution of the critical issues to be addressed in those separate proceedings.<sup>46/</sup>

The “social policy” obligations raised by the Commission, however, may be critical components of VoIP services necessary for consumers to realize the true benefits of IP-enabled

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<sup>42/</sup> *Wireline*, COMMUNICATIONS DAILY, Dec. 10, 2003, at 9.

<sup>43/</sup> *Notice* ¶ 74.

<sup>44/</sup> Opening Remarks of FCC Chairman Michael K. Powell at the FCC Forum on Voice over Internet Protocol (VoIP) (Dec. 1, 2003) (stating that VoIP should remain as free from economic regulation as possible and that the burden should be on those wanting to apply regulation to the service).

<sup>45/</sup> *Notice* ¶¶ 61-66.

<sup>46/</sup> *Federal-State Joint Board on Universal Service, et al.*, 17 FCC Rcd 3752 (2002); *Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 (2001); *see also* Opening Remarks of Commissioner Michael J. Copps at the FCC’s Voice over Internet Protocol Forum (Dec. 1, 2003) (noting that addressing the VoIP issue may force the FCC to first deal with other pending proceedings); *Vonage Holding Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Comments of SBC Communications, Inc., WC Docket No. 03-211, at 5 (filed Oct. 27, 2003) (arguing that the FCC first needs to act on pending proceedings dealing with other Internet-based issues).

capability.<sup>47/</sup> For this reason, Cablevision already provides E911 service to its Optimum Voice subscribers. Likewise, Cablevision is capable of meeting the compliance requirements of the Communications Assistance for Law Enforcement Act (“CALEA”).<sup>48/</sup> Today, Cablevision meets every authorized law enforcement request. Cablevision supports the industry’s efforts to ensure that disabled persons also have access to IP-enabled services.<sup>49/</sup> Accordingly, public policy issues should be addressed in a manner that both ensures consumers have access to important elements of VoIP services and does not unduly burden VoIP service providers.

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<sup>47/</sup> Notice ¶ 50; *FCC Internet Policy Working Group To Hold First “Solutions Summit” on Thursday, March 18, 2004*, News Release (rel. Feb. 12, 2004) (discussing 911 issues).

<sup>48/</sup> *Joint Petition for Rulemaking to Resolve Various Issues Concerning the Implementation of the Communications Assistance for Law Enforcement Act*, RM-10865, Reply Comments of the National Cable & Telecommunications Association, at 4 (filed Apr. 27, 2004) (noting that “the cable industry, led by NCTA and CableLabs, has voluntarily sought to comply with the substance of CALEA’s requirements in developing its PacketCable architecture”).

<sup>49/</sup> Notice ¶ 58; *FCC Internet Policy Working Group To Hold Second “Solutions Summit” on Friday, May 7*, News Release (rel. Mar. 11, 2004) (discussing disability access issues).

**CONCLUSION**

For the foregoing reasons, Cablevision respectfully requests that the Commission find that IP-enabled services, specifically cable-provided VoIP services, are interstate, information services subject to the Commission's exclusive jurisdiction under Title I of the Act.

Respectfully submitted,

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