

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

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

**REPLY COMMENTS OF THE
CITY AND COUNTY OF SAN FRANCISCO**

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The Commission received approximately 150 comments representing a comprehensive range of interests. The vast majority of those commenters agree that the Commission should ensure that voice over Internet protocol (VoIP) services and providers comply with many of the social policy programs that the Commission has developed. Even commenters that represent current or potential providers of VoIP services recognize that VoIP providers should satisfy at least some of the existing policy programs imposed on telecommunications carriers. *See e.g.* Association for Local Telecommunications Services at 5; Covad Communications at 23; Telecommunications Industry Association at 10; Cablevision at 13-14.

But many of the industry commenters suggest that the Commission should allow the industry to comply with the social programs voluntarily, in whatever manner and whatever timeframe the individual industry participants deem appropriate. Voluntary compliance would be ineffective, and the Commission should reject such proposals. Numerous commenters offer real-world evidence that voluntary compliance with social policy programs is ineffective. The Department of Justice, for example, states (at iii) that “prior experience has demonstrated that relying on mere voluntary compliance – for a statutory mandate such as CALEA – is inadequate” Similarly, the American

Foundation for the Blind (at 2) has found that voluntary measures and market-based approaches have not and will not ensure reliable access for people with disabilities. *Accord*, Rehabilitation Engineering Research Center on Telecommunications Access (“RERCTA”) at 18-20.

The very nature of social programs is to ensure the availability of certain types of services, and ensure the availability of service to certain classes of people, that the market would otherwise be unlikely to provide. Some parties assert that VoIP services will enhance social programs. They assert, for example, that VoIP will increase universal service by lowering costs. *See e.g.*, VON Coalition at 2, 11. And that VoIP may offer new services that improve access by the disabled. *See e.g.*, RERCTA at 3-8; VON Coalition at 12. The City welcomes these benefits. But those advantages do not provide adequate assurance that market-based solutions will guarantee affordable, universal access to voice-based services. If the Commission desires to preserve social policies such as universal service, access by the disabled, and 911 services, it can not rely on voluntary measures.

Moreover, the Commission should not permit VoIP providers to avoid social policy regulations to which their competitors are subject. The Commission has generally applied those requirements to all providers of voice-grade service, including competitive local exchange carriers and wireless carriers. As the City stated in its initial comments, establishing an uneven regulatory playing field would not only give VoIP services an undeserved competitive advantage, it would also threaten the very existence of those social programs.

The City appreciates and shares the Commission's desire not to burden an emerging technology with unnecessary regulation. The Commission may well decide to forebear from imposing economic regulation on VoIP services. Indeed, all or nearly all parties who addressed that issue contend that economic regulation of VoIP is unnecessary and undesirable. But the converse is true for regulations to promote social policies. All or nearly all parties recognized the importance of protecting those programs.

The real question is whether the Commission can and should rely on voluntary compliance by VoIP providers. The answer is an emphatic no. Absent binding requirements, VoIP providers will devote resources toward developing the most profitable applications, and those will likely not include 911 service, universal service, or access by disabled persons. And VoIP providers will have no incentive to comply with consumer protection rules. In fact, the competitive pressure to sign up customers might encourage unregulated VoIP providers to disseminate false or misleading information.

Moreover, the Commission would have no way to enforce compliance with voluntary standards or recommendations. A better solution is to require VoIP providers to comply with requirements for 911 service, universal service contributions, access by disabled persons, and all other obligations imposed on their competitors (i.e., telecommunications carriers) at least until the Commission has had an opportunity to see how the VoIP market develops, and its impact on traditional telephone services. Then, if the Commission finds that particular regulations are not necessary for the public interest, the Commission may forebear from enforcing those regulations.

Conclusion

The Commission should determine that VoIP services that offer real-time voice-grade communications are telecommunications services. The Commission should require VoIP providers to comply with 911, universal service, consumer protection, and disability access requirements. The Commission should not rely on voluntary compliance with those programs.

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Respectfully submitted,

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