

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the matter of

IP-Enabled Services

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WC Docket No. 04-36

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation
401 9th Street, N.W.
Suite 400
Washington, D.C. 20004
(202) 585-1909

July 14, 2004

SUMMARY

VoIP services that provide real time, two-way voice services that are offered directly to the public for a fee and use the telephone number system of the North American Numbering Plan must be classified as telecommunications services, as they are direct substitutes for traditional wireline voice service. The technology used to deliver services should not drive the degree or type of regulation. Rather, regulation should be imposed only as necessary to curb market power and to achieve public safety and public interest objectives.

Sprint agrees that the regulation applied to VoIP and all competitive voice services should be minimized. The FCC should use its authority under Section 10 of the Communications Act to forbear from economic regulation of competitive telecommunications services. However, it is imperative that all competitive providers, including VoIP providers, have interconnection rights and access to UNEs and telephone numbers. Moreover, the FCC must ensure that all competitive providers share in the obligations to support universal service, disabled access and 911 services.

Irrespective of the classification of VoIP service, it is clear that VoIP providers must compensate other carriers for their use of the PSTN. Sprint urges the FCC to complete its efforts to reform the access system; however, until such reform is implemented, VoIP providers must be required to pay the same access charges its direct competitors currently pay. The FCC should issue an immediate ruling on this issue.

Finally, Sprint encourages the FCC to work with the states to minimize the impact of differing regulations by multiple jurisdictions upon all competitive voice providers. The FCC must take an active role in promoting uniform policies that can be followed in every jurisdiction. Nonetheless, where state regulation of competitive services goes beyond minimal regulation, the FCC should use its authority pursuant to Section 253 to preempt such regulation.

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Sprint Corporation (“Sprint”), by its attorneys, hereby submits its reply comments in the above-captioned rulemaking.¹

I. REAL TIME, TWO-WAY VOICE SERVICES ARE PROPERLY CLASSIFIED AS TELECOMMUNICATIONS AND ALL COMPETITIVE VOICE SERVICES SHOULD BE MINIMALLY REGULATED.

VoIP services that provide real-time, two-way voice services that are offered directly to the public for a fee and use the telephone number system of the North American Numbering Plan are direct substitutes for traditional circuit-switched and packet-switched wireline voice services and must be defined as telecommunications services. Delivery of voice services *via* new technology (IP) does not change the fact that providers are still offering basic, voice services.² The FCC’s long-standing policy to tailor regulation to the services offered, not the technology employed, cannot be ignored.³ Services should not be regulated based on the technologies over

¹ See *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (“*NPRM*”).

² Consistent with Congress’ intent to adopt the general framework of the *Computer Inquiries*, these voice services are to be regulated -- and deregulated as appropriate -- as “basic” services under the 1996 Act’s definition of “telecommunications services.”

³ Comments of Sprint Corporation at 8-12. In Section 332, Congress elected to address directly issues specific to the wireless industry.

which they are delivered, but rather based on the substitutability of the services provided. Otherwise regulation will skew the investments made in new technologies and ultimately diminish consumer welfare.

Virtually all commenters in this proceeding agree that regulation of VoIP services should be minimal and should occur only where it is necessary to satisfy fundamental legislative policies. Sprint agrees. Indeed, minimal regulation should apply to all competitive voice providers -- regardless of the technology employed to deliver those services.⁴ The FCC can, and in the absence of market power, should use its forbearance authority under Section 10 to minimize economic regulation of all competitive voice services under Title II.

Moreover, there is some consensus among commenters that certain rights and obligations, arising out of Title II, should apply to VoIP service providers. First, VoIP providers terminating calls on other networks must pay equitable compensation for the use of those facilities. Concomitantly, VoIP service providers that terminate calls over their own network should be equitably compensated for that service.⁵ Second, VoIP providers must have interconnection rights and access to UNEs and telephone numbers. Third, VoIP providers should share the obligations to support universal service, disabled access and 911 services as all other competitors do. It follows then that VoIP services should be classified as

⁴ Only those voice providers that have market power should be subject to economic regulation pursuant to Title II.

⁵ Similar to the regulation of CLEC access charges, VoIP terminating access rates should be held to the rates charged by the incumbent LEC in order to avoid any opportunity the provider has to exploit its terminating access bottleneck. *See generally Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers, Seventh Report and Order, 16 FCC Rcd 9923 (2001).*

telecommunications services and be subject to the provisions and policies of Title II in order to more quickly effectuate these goals.

Those commenters asserting that VoIP services should be regulated as information services have not adequately demonstrated that the FCC can extend to VoIP providers all the rights established in Title II, such as interconnection and access to numbers, through Title I ancillary jurisdiction. As demonstrated in Sprint's comments, the classification of POTS-equivalent services using internet protocol as information services and the efficacy of the FCC's Title I ancillary jurisdiction to establish the necessary rights and obligations is tenuous. Interconnection rights, access to UNEs and telephone numbers all hinge on the services provided being "telecommunications." No commenter proposing to classify VoIP as information service offers an analysis that adequately addresses how VoIP providers can obtain the rights to UNEs, interconnection, and telephone numbers found in Title II through the FCC's Title I ancillary jurisdiction. By classifying VoIP services -- the functional equivalents of POTS -- as information services, the FCC risks appellate reversal and the perpetuation of the uncertainties that exist today, defeating the very purpose of this proceeding.

Moreover, should the FCC classify VoIP services as information services and then invoke Title I to regulate them as telecommunications services, it would raise the spectre of potential future regulation of non-VoIP information services (such as ordinary internet access service) and risk all the success previously brought by distinguishing POTS from information services.

Importantly, classification of VoIP as information services may threaten the goals of universal service.⁶ Universal service goals cannot be achieved if certain providers of fully substitutable services are excluded from contributing to universal service.⁷ It is clear from the statute that Congress intended equitable and nondiscriminatory contributions to universal service.⁸ All providers that share in the benefits of universal service -- networks are more valuable as a direct result of the increased number of people connected -- must contribute in order to sustain and increase the value of those networks. And, of course, separate and apart from the economic efficiency gains, the societal benefits to maintaining universal service are self-evident.

Significant shifts of TDM traffic to IP are underway. Inviting arbitrage by exempting VoIP providers from contributing directly to the universal service fund will have dire consequences for universal service policy as the revenue base needed to support it quickly

⁶ See Comments of Sprint Corporation at 30-33. The specific language in Section 254 requiring entities providing telecommunications service to contribute to universal service may foreclose the extension of its requirements to information service providers.

⁷ VoIP providers' assertions that they already contribute to universal service as end users and should not be required to directly contribute to the universal service fund are either disingenuous or sorely misinformed. Comments of Skype, Inc. at 5; Comments of Pac-West Telecomm, Inc. at 18-19; Comments of Vonage Holdings Corp. at 47-48; and Comment of Nuvio Corporation at 11. These "indirect contributions" -- based on the wholesale costs of only one input of the services they offer -- are nothing more than the charges all end users pay, in clear contrast to the startlingly substantial contributions carriers make -- based on the retail revenues they receive -- to the universal service fund. Direct contributions based on the gross retail revenues from interstate telecommunications services are both quantitatively and qualitatively different from the indirect costs these entities now incur, and are required from a host of providers, including, for example, cellular, PCS, paging and satellite providers, among many others.

⁸ See 47 U.S.C. § 254(b)(4).

erodes. Congress' objective "to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, nation-wide and worldwide wire and communications service with adequate facilities at reasonable charges...." will be severely disserved.⁹

II. THE FCC SHOULD ISSUE AN IMMEDIATE RULING THAT VOIP PROVIDERS MUST PAY ACCESS CHARGES FOR THE USE OF ANOTHER PROVIDER'S FACILITIES AND ANY REFORMS TO THE ACCESS REGIME SHOULD BE APPLIED TO VOIP SERVICES.

Irrespective of how the FCC classifies VoIP providers, they must pay access charges when they use the facilities of another provider.¹⁰ The current regulatory regime requires that providers of interexchange services pay for access when their calls originate or terminate on another provider's facilities.¹¹ When a VoIP provider uses the PSTN, it must compensate that carrier for the costs it imposes on the network provider.

The FCC has not required information service providers to pay switched access charges imposed upon interconnecting carriers.¹² But this policy was established in the context of value-

⁹ See 47 U.S.C. § 151.

¹⁰ See also Comments of Alcatel North America at 19; PointOne at 33 ("[A]ny service provider that sends traffic to the PSTN should be subject to similar compensation obligations"); and Comments of 8x8, Inc. at 23 ("[T]o the extent the facilities of carriers are being used to complete calls, appropriate compensation should be provided.").

¹¹ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, First Report and Order, 12 FCC Rcd 15982, ¶¶ 67-68 (1997) ("Access Charge Reform Order").

As noted in our comments, an inequity remains for CMRS carriers' ability to collect access charges from interexchange carriers that use wireless networks. See *In the Matter of Sprint PCS and AT&T Corp. Petitions for Declaratory Ruling Regarding CMRS Access Charges*, Declaratory Ruling, 17 FCC Rcd 13192 (2002). This should be remedied in the Commission's proceeding on intercarrier compensation.

¹² See *NPRM* at n. 179.

added, non-voice services -- not services that are direct substitutes for POTS. The FCC's decisions to withhold such an access charge payment obligation have been based (and survived court appeals) on the factual predicate that ISPs do not use the LEC network to the same degree or in the same manner as do interconnecting carriers, and further, that their services do not compete with telephone services. The rationales for exempting ISPs from access charges simply do not hold in the context of VoIP services.

As noted by the U.S. Court of Appeals for the Eighth Circuit, the FCC's determination not to impose access charges on ISPs was due, in part, because the FCC believed that ISPs use the local networks differently than do interexchange carriers.¹³ Against challenges that the agency's exemption was discriminatory, the Eighth Circuit upheld the FCC precisely because the FCC had reasonably concluded that ISPs provide services distinct from telecommunications services:

[T]he Commission's actions do not discriminate in favor of ISPs, which do not utilize LEC services and facilities *in the same way or for the same purposes* as other customers who are assessed per-minute interstate access charges. n* As this Court noted in *Competitive Telecommunications*, even where two different sets of carriers seek to use LEC network services and facilities that might be "technologically identical," the services and facilities provided by the LEC are "distinct" if the carriers are making different uses of them.

n* ISPs subscribe to LEC facilities in order to receive local calls from customers who want to access the ISP's data, which may or may not be stored in computers outside the state in which the call was placed. An IXC, in contrast,

¹³ See *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 542-4 (8th Cir. 1998) *vacated & remanded*, *Ameritech Corp., et al. v. FCC, et al.*, 526 U.S. 1142 (1999), *reinstated, in part*, *Southwestern Bell Tel. Co. v. FCC*, 199 F.3d 996 (8th Cir. 1999).

uses the LEC facilities as an element in an end-to-end long-distance call that the IXC sells as its product to its own customers.¹⁴

VoIP services, defined to be traditional voice equivalents, not only use LEC networks in the same manner as traditional voice services, they also compete directly with those services. To treat them differently violates specifically Section 254(c)'s mandate that contribution obligations be equitable and nondiscriminatory and more broadly, reasoned decisionmaking principles. *See generally Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965).

That VoIP providers "already pay" access charges as end users is irrelevant;¹⁵ end user charges are not the equivalent of paying access charges for terminating and originating calls on another provider's network. Moreover, assertions that the impact of VoIP on access charge revenues is minimized by the fact that carriers are compensated through purchasing business lines also miss the mark.¹⁶ Carriers do not recover the costs imposed on their networks when VoIP providers purchase business lines.¹⁷ This problem is exacerbated now that VoIP providers are *terminating* calls on other carriers' networks (for which *no* business lines are purchased). This problem must be remedied expeditiously.

The FCC should reject the notion that because the current access regime needs reform, VoIP providers should not have to pay access charges until that reform is complete or the alternative argument that they should only have to pay the much lower reciprocal compensation

¹⁴ *Id.* at 542, citing *Competitive Telecommunications*, 117 F.3d at 1073 (emphasis added).

¹⁵ Comments of Skype, Inc. at 5; Comments of Nuvio Corporation at 11; Comments Pac-West Telecomm, Inc. at 24; Comments of 8x8, Inc. at 23.

¹⁶ *See, e.g.*, Comments of the VON Coalition at n. 73.

¹⁷ *Cf. Access Charge Reform Order* at ¶ 346.

paid on interconnecting local calls.¹⁸ Sprint supports the FCC's efforts to reform its access regime, and has urged the Commission to promptly address the need for a more efficient structure. Realistically, the FCC's efforts will take some additional time to be completed successfully. Until such reform occurs, there is no sound reason to relieve VoIP providers of the access obligations to which IXCs are subject. The economic distortions created by imposing inequitable and uneven requirements upon directly competing entities are too significant to be brushed aside, and the economic dislocations imposed on recipients of compensation -- the LECs -- could impair universal service.

Sprint urges the FCC to issue an immediate ruling that VoIP providers must pay access charges, even if that requires a ruling separate from deliberation on the larger issues presented in the *NPRM*. All interexchange calls should be treated similarly, regardless of the technology used to provide the calls. The *NPRM* tentatively concludes that:

[A]ny service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.¹⁹

Many commenters agree.²⁰ Whether VoIP services are classified as information services or telecommunications services, it is clear the FCC has the authority -- indeed the obligation -- to

¹⁸ Comments of VON Coalition at 27-28; Comments of Vonage Holdings Corp. at 47; Comments of PointOne at 33; Comments Pac-West Telecomm, Inc. at 24; Comments of Pulver.com at 22; Net2Phone, Inc. at 26.

¹⁹ *NPRM* at ¶ 61.

²⁰ See, e.g., Comments of ALTS at 5; Comments of CenturyTel at 11-13; Comments of NASUCA at 70-73; Comments of NECA at 3-5; Comments of OPASTCO at 3; Comments of Time Warner Telecom at 41-42; and Comments of Verizon at 43-47.

require VoIP providers to pay access charges.²¹ The FCC should issue an immediate, stand-alone ruling on this matter in this proceeding. Whatever the course of action on the broad issues raised in the NPRM, it is clear that the FCC should issue a decision on access charges without delay.

III. REGULATION BY MULTIPLE JURISDICTIONS IMPOSES COSTS AND SHOULD BE LIMITED.

Carriers offering nationwide service must conform their practices to differing regulations produced by multiple jurisdictions. Sprint is acutely aware of the costs and burdens faced by entities that are regulated in multiple jurisdictions. Indeed, the record demonstrates that costly and varying state regulation can damage the very progress national policy seeks to promote.

There are several states that recognize the problems faced by national providers in meeting multiple sets of regulations, and they have expressed their willingness to work with the FCC to find solutions.²² Moreover, several states agree that VoIP – and indeed all voice services -- should be minimally regulated.²³ Sprint believes the Commission should work with the states to more actively consider ways in which they can reduce burdens on all competitive voice providers. The FCC must take an active role in promoting uniform policies to ease the burden on competitive providers. Indeed, most states are concerned about the same public interest goals as

²¹ Even if the FCC were ultimately to rule that VoIP services involving a net protocol change should be treated as information services, it has the authority to narrow the information services “exemption” from access charges to non-VoIP information services.

²² *See, e.g.*, Comments of Maine PUC at 4 and Comments of Nebraska PSC at 7.

²³ *See, e.g.*, Comments of New York Department of Public Service at 3; Comments of the People of the State of California and the California PUC at 34; Comments of the Arizona Corporation Commission at 2; and Comments of Nebraska Public Service Commission at 2.

the FCC -- for example, preserving universal service -- rather than economic regulation. The goal should be to formulate consistent and economically rational policies that can be followed in every jurisdiction. Where a state's regulation of competitive voice services goes beyond minimal regulation, the FCC should use its authority under Section 253 to preempt such regulation.

The FCC can and should take the lead on all issues affecting the national investment in communications infrastructure. The Communications Act gives the FCC new and sweeping responsibilities for the restructuring and economic rationalization of the telecommunications industry. The Supreme Court's decision in *Iowa Utilities Board* made clear the 1996 Act altered the Communications Act division of federal-state authority in fundamental ways.²⁴ The decision explained that Section 152(b)'s preservation of state authority over intrastate matters must necessarily yield to the FCC's exercise of Section 201(b) authority to carry out the provisions of the Communications Act, including the Telecommunications Act of 1996.²⁵ In this light, it is equally clear that the Commission has not begun to consider the broad authority granted to it by Section 253(d) to preempt state and local regulations. Section 253(d) provides the FCC the authority to preempt any statute, regulation or legal requirement of a state or local government when they "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."²⁶ Economic burdens may be as great as

²⁴ *AT&T v. Iowa Utilities Bd.*, 525 U.S. 366 (1999).

²⁵ *Id.* at 377-81 and n.8 ("After the 1996 Act, Section 152(b) may have less practical effect. But that is because Congress, by extending the Communications Act into local competition, has removed a significant area from the States' exclusive control").

²⁶ 47 U.S.C. §§ 253(d) & (a).

those which make entry physically difficult. Where state regulation overrides federal goals established by the 1996 Act and/or FCC policy or impedes competition, the FCC can and should use its authority to preempt such regulation.

IV. CONCLUSION

Sprint respectfully requests that the Commission promptly adopt its VoIP policies consistent with its comments and reply comments submitted in this proceeding.

Respectfully submitted,

SPRINT CORPORATION

/s/ Richard Juhnke

Richard Juhnke

David Nall

Norina Moy

Sprint Corporation
401 9th Street, N.W.
Suite 400
Washington, D.C. 20004
(202) 585-1912

July 14, 2004

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **REPLY COMMENTS OF SPRINT CORPORATION** was sent by United States first-class mail, postage prepaid, on this the 14th day of July to the parties on the attached page.


Christine Jackson

July 14, 2004

Henk Brands, Esq.
Paul, Weiss, Rifkind,
Wharton & Garrison LLP
1615 L Street, NW
Washington, DC 20036

Donna N. Lampert, Esq.
Lampert & O'Connor, P.C.
1750 K Street, NW, Suite 600
Washington, DC 20006

Howard J. Symons, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, NW
Washington, DC 20004

Michael L. Ginsberg, Esq.
Utah Division of Public Utilities
Office of the Attorney General
160 East 300 South P.O. Box 140857
Salt Lake City, Utah 84114-0857

Jill M. Lyon, VP & General Counsel
UTC/UPLC
1901 Pennsylvania Ave., NW, Fifth Floor
Washington, DC 20006

Anthony M. Rutkowski, VP for Regulatory Affairs
VeriSign Communications Services Division
21355 Ridgetop Circle
Dulles, VA 20166-6503

Robert M Gurss, Director, Legal & Government Affairs
APCO International
1725 DeSales Street, NW, Suite 808
Washington, DC 20036

Steven N. Teplitz, VP & Associate General Counsel
Time Warner Inc.
800 Connecticut Avenue, NW
Washington, DC 20006

Daniel L. Brenner, Esq.
National Cable & Telecommunications Assoc.
1724 Massachusetts Avenue, NW
Washington, DC 20036

James A. Bachtell, Esq.
Institute for Public Representation
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001
Counsel for USCCB, et al.

Greg Abbott, Esq.
Texas Commission on State Emergency
Communications
Public Agency Representation Section
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Albert Kramer, Esq.
American Public Communications Council
2101 L Street, NW
Washington, DC 20037-1526

Brian Cute, Director for Regulatory Policy
VeriSign Government Relations
1666 K Street, NW, Suite 410
Washington, DC 20006-1227

James R. Hobson, Esq.
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Ave., NW, Suite 1000
Washington, DC 20036-4320
Counsel for NENA

NASUCA
8300 Colesville Road, Suite 101
Silver Spring, MD 20910

Nicholas P. Miller, Esq.
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Ave., NW, Suite 1000
Washington, DC 20036
Counsel for the Local Government Coalition

Mr. Walter Wolnik
Cable Advisory Committee
4 Boltwood Avenue, Town Hall
Amherst, MA 01002

Elizabeth A Noel, People's Counsel
Office of the People's Counsel for D.C.
1133 15th Street, NW, Suite 500
Washington, DC 20005-2710

Paul W. Schroeder, VP, Policy Research & Technology
American Foundation for the Blind
820 First Street, NE, Suite 400
Washington, DC 20002

Russell Hanser, Esq.
Competition Policy Division
445 12th Street, SW
Washington, DC 20554

To-Quyen T. Truong, Esq.
Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Ave., NW, Suite 800
Washington, DC 20036
Counsel for Cox Communications, Inc.

Ms. Regina Costa
Telecommunications Research Director
The Utility Reform Network (TURN)
711 Van Ness Ave., Suite 350
San Francisco, CA 94102

Joseph P. Benkert, P.C.
P.O. Box 620308
Littleton, CO 80162-0308
Counsel for Boulder Regional Emergency Telephone

Dennis J. Herrera, Esq.
Office of the City Attorney of San Francisco
1 Dr. Carlton B. Goodlett Place, City Hall, Rm.234
San Francisco, CA 94102

Karen Peltz Strauss, Esq.
KPS Consulting
2120 L Street, NW, Suite 400
Washington, DC 20007

Lee G. Petro, Esq.
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
Counsel for Telecommunications for the Deaf, Inc.

Terry D. Portis Ed.D
Executive Director
SHHH
7910 Woodmont Avenue, Suite 1200
Bethesda, MD 20814-7022

Joseph W. Waz, Jr., Esq.
Comcast Corporation
1500 Market Street
Philadelphia, PA 19102

James R. Coltharp, Esq.
Comcast Corporation
2001 Pennsylvania Ave., NW, Suite 500
Washington, DC 20006

Chérie R. Kiser, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
401 Pennsylvania Ave., NW, Suite 900
Washington, DC 20004-2608
Counsel for Cablevision Systems Corp.

Leonard J. Cali, Esq.
AT&T Corp.
One AT&T Way, Room 3A229
Bedminster, NJ 07921

Henry G. Hultquist, Esq.
MCI, Inc.
1133 19th Street, NW
Washington, DC 20036

James Kirkland, Esq.
Covad Communications
600 14th Street, NW, Suite 750
Washington, DC 20005

Andrew D. Lipman, Esq.
Swidler Berlin Shereff Friedman L.L.P.
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for Cbeyond; Globalcom; and Mpower

Robert J. Aamoth, Esq.
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Counsel for CompTel/Ascent

Robbin Johnson, Esq.
Cablevision Systems Corp.
1111 Stewart Avenue
Bethpage, NY 11714

David W. Carpenter, Esq.
Sidley Austin Brown & Wood LLP
10 South Dearborn Street, Bank One Plaza
Chicago, Illinois 60603
Counsel for AT&T Corp.

David L. Lawson, Esq.
Sidley Austin Brown & Wood LLP
1501 K Street, NW
Washington, DC 20005
Counsel for AT&T Corp.

Mark D. Schneider, Esq.
Jenner & Block LLP
601 13th Street, NW
Washington, DC 20005
Counsel for MCI

Teresa K. Gaugler, Assistant GC
888 17th Street, NW, Suite 1200
Washington, DC 20006
Counsel for ALTS

Jonathan D. Lee, Sr. VP, Regulatory Affairs
CompTel/Ascent
1900 M Street, NW, Suite 800
Washington, DC 20036

A. Sheba Chacko, Chief Regulatory Counsel
BT Americas Inc.
11440 Commerce Park Dr.
Reston, VA 20191

Kristen Neller Verderame, VP, U.S. Regulatory
BT Americas Inc.
2025 M Street, NW, Suite 450
Washington, DC 20036

Marty W. Weinstein, Esq.
General Communication, Inc.
2550 Denali Street, 10th Floor
Anchorage, Alaska 99503

William P. Hunt, III, Esq.
Level 3 Communications LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Blaine Gilles, Ph.D
9525 W. Bryn Mawr, Suite 140
Rosemont, IL 60018
WilTel Communications, LLC

Peter A. Rohrbach, Esq.
Hogan & Hartson LLP
555 13th Street, NW
Washington, DC 20004
Counsel for WilTel Communications

Michael J. Shortley, III, GC, North America
Global Crossing Limited
1080 Pittsford Victor Road
Pittsford, New York 14534

Elana Shapochnikov, Associate GC
Net2Phone, Inc.
520 Broad Street
Neward, NJ 07102-3111
Counsel for Net2Phone, Inc.

Thomas Jones, Esq.
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006
Counsel for Time Warner

Tina M. Pidgeon, Esq.
General Communication, Inc.
1130 17th Street, NW, Suite 410
Washington, DC 20036

John T. Hakahata, Esq.
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, NW, Suite 1200
Washington, DC 20036
Counsel for Level 3

Adam Kupetsky, Esq.
WilTel Communications, LLC
One Technology Center TC 15-H
Tulsa, OK 74103

Paul Kouroupas, VP, Regulatory Affairs
Global Crossing Limited
200 Park Avenue, 3rd Floor
Florham Park, New Jersey 07932

Chérie R. Kiser, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
701 Pennsylvania Ave., NW, Suite 900
Washington, DC 20004-2608
Counsel for Net2Phone, Inc.

Jim Tobin, Esq.
Morrison & Foerster LLP
2000 Pennsylvania Ave., NW, Suite 5500
Washington, DC 20006
Counsel for Pac-West Telecomm, Inc.

Brad Mutschelknaus, Esq.
Kelley Drye & Warren LLP
1200 19th Street, NW, Suite 500
Washington, DC. 20036
Counsel to USA Datanet, Inc.

Peter Lurie, General Counsel
Virgin Mobile USA, LLC
10 Independence Blvd
Warren, NJ 07059

Bryan R. Martin, Chairman & Chief Executive Officer
8x8, Inc.
2445 Mission College Boulevard
Santa Clara, CA 95054

Philip L. Malet, Esq.
Steptoe & Johnson LLP
1330 Connecticut Ave., NW
Washington, DC 20036
Counsel for Nuvio Corporation

Michael F. Altschul, Senior VP & General Counsel
CTIA – The Wireless Association
1400 16th Street, NW, Suite 600
Washington, DC 20036

Tamar E. Finn, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007
Counsel for DialPad; ICG; Qovia; and VoicePulse

Ben H. Byon, Esq.
Tellme Networks, Inc.
1310 Villa Street
Mountain View, CA 94041

Staci L. Pies, VP, Governmental & Regulatory Affairs
PointOne
6500 River Place Blvd.
Building 2, Suite 200
Austin, TX 78750

Andrew D. Lipman, Esq.
Callipso Corporation
9332 Ramey Lane
Great Falls, VA 22066

Christy C. Kunin, Esq.
Gray Cary Ware & Freidenrich, LLP
1625 Massachusetts Ave., NW, Suite 300
Washington, DC 20036
Counsel for 8x8, Inc.

Jonathan Askin, General Counsel
Pulver.com
115 Broadhollow Road, Suite 225
Melville, NY 11747

Thomas M. Koutsky, VP, Law and Public Policy
Z-Tel Communications, Inc.
1200 19th Street, NW, Site 500
Washington, DC 20036

Henry Goldberg, Esq.
Brita Dagmar Strandberg
Skype, Inc.
1229 19th Street, NW
Washington, DC 20036

Bruce D. Jacobs, Esq.
Shaw Pittman LLP
2300 N Street, NW
Washington, DC 20037-1128
Counsel for the VON Coalition

Kevin Minsky, Esq.
United States Department of Justice
14800 Conference Center Drive
Chantilly, VA 20151

Hillary J. Morgan, Esq.
Defense Information Systems Agency
HQ DISA/GC, Bldg. 12, Room 4300
701 South Courthouse Road
Arlington, VA 22204

Marlys R. Davis, E911 Program Manager
King County E911 Program Office
7300 Perimeter Road South, Room 129
Seattle, WA 98108-3848

Scott Blake Harris, Esq.
Harris, Wiltshire & Grannis LLP
1200 Eighteenth Street, NW, Suite 1200
Washington, DC 20036

David L. Lawson, Esq.
Sidley Austin Brown & Wood LLP
1501 K Street, NW
Washington, DC 20005

Martina Bradford, Esq.
Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Ave., NW
Washington, DC 20036

Lauren H. Parsky, Esq.
Criminal Division
U.S. Department of Justice
850 Pennsylvania Ave., NW, Room 2213
Washington, DC 20530

John Beahn, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
Counsel for Virgin Mobile USA, LLC

ACUTA
152 West Zandale Drive, Suite 200
Lexington, KY 40503

Paula H. Boyd, Esq.
Microsoft Corporation
1401 Eye Street, NW, Suite 500
Washington, DC 20005

Chuck Crowders, VP, Government Affairs
AVAYA INC.
490 L'Enfant Plaza, SW, Suite 511
Washington, DC 20024

Charles Mathias, Director – Policy
Lucent Global Government Affairs
1100 New York Ave., NW, Suite 640 West Tower
Washington, DC 20005

Jonathan Jacob Nadler, Esq.
Squire, Sanders & Dempsey, L.L.P.
1201 Pennsylvania Ave., NW
Washington, DC 20044

Patrick W. Kelley, Esq.
Office of the General Counsel
J. Edgar Hoover Building
935 Pennsylvania Ave., NW, Room 7427
Washington, DC 20535

Michael L. Ciminelli, Esq.
Drug Enforcement Administration
U.S. Department of Justice
Washington, DC 20537

Keith H. Gordon, Esq.
New York State Attorney General's Office
120 Broadway
New York, NY 10271

Governor Brad Henry
National Governors Association
444 North Capitol Street, NW, Suite 267
Washington, DC 20036

D. Esther Chavez
Consumer Protection & Public Health Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548

Tina W. Gabrielli, Director of Intelligence
Coordination
United States Department of Homeland Security
Nebraska Avenue Complex
Washington, DC 20528

Thomas M. Sullivan, Chief Counsel for Advocacy
U.S. Small Business Administration
409 3rd Street, SW, Suite 7800
Washington, DC 20416

Christopher C. Kempley, Esq.
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Randolph L. Wu
People of the State of California & the California
PUC
505 Van Ness Avenue
San Francisco, CA 94102

Christine F. Ericson, Deputy Solicitor General
Illinois Commerce Commission
160 N LaSalle, Suite C-800
Chicago, Illinois 60601

John Ridgway, Telecommunications Mgr.
Iowa Utilities Board
350 Maple Street
Des Moines, Iowa 50319

Thomas L. Welch, Chairman
Maine Public Utilities Commissioners
242 State Street-18 State House Station
Augusta, ME 04330-6845

The Minnesota Public Utilities Commission
85 7th Place East, Suite 500
Saint Paul, MN 55101-2198

Natelle Dietrick, Regulatory Economist
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

James Bradford Ramsey, General Counsel
NARUC
1101 Vermont Ave., NW, Suite 200
Washington, DC 20005

Montana Public Service Commission
1701 Prospect Avenue
Helena, MT 59620-2601

Jeanne M. Fix, President
New Jersey Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

Jim Petro, Attorney General of Ohio
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215-3793

William Irby, Director
Virginia State Corporation Commission Staff
Tyler Building
1300 East Main Street
Richmond, VA 23219-3630

Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Pkwy
Nashville, TN 37243-0505

Gunnar Hellström
Omnitor aB
Renathvägen 2
SE-121 37 Johanneshov
Sweden
VAT no: SE 5565584413-01

Francois D. Menard
PO Box 203
Pointe Du Lac, QC, Canada
G0X 1Z0

Shana Knutson, legal Counsel
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, Nebraska 68508

Dawn Jablonski Ryman, General Counsel
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Peter Bluhm, Esq.
112 State Street, Drawer 20
Montpelier, Vermont 05620-2701
For the Vermont Public Service Board

Charles Davidson, Commissioner
The Federation for Economically Rational Utility
Policy (FERUP)
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Donald Clark Jackson
17720 Vista Avenue
Monte Sereno, CA 95030-3245

Kristopher E. Twomey
LOKT Consulting
2501 Ninth Street, Suite 102
Berkeley, CA 94710
Counsel to Sonic.net

John W. Butler
Sher & Blackwell LLP
1850 M Street, NW, Suite 900
Washington, DC 20036

David N. Baker, VP for Law & Public Policy
EarthLink, Inc.
1375 Peachtree Street
Atlanta, GA 30309

Joel Bernstein, Esq.
Halprin Temple
1317 F Street, NW
Washington, DC 20004

David Certner, Director, Federal Affairs
AARP
601 E Street, NW
Washington, DC 20049

John W. Steadman, P.E., Ph.D.
President
IEEE-USA
1828 L Street, NW
Washington, DC 20036

Debbie Goldman, Esq.
Communications Workers of America
501 Third Street, NW
Washington, DC 20001

William A. Rogers, Director Public Policy
Computer & Communications Industry Assoc.
666 11th Street, NW, Sixth Floor
Washington, DC 20001

Timothy J. Simeone
Harris, Wiltshire & Grannis LLP
1200 18th Street, NW, Suite 1200
Washington, DC 20036
Counsel for Cisco Systems, Inc.

Donna T. Wonnell, Esq.
Independent Telephone & Telecommunications
Alliance
1300 Connecticut Ave., NW, Suite 600
Washington, DC 20036

Amy Healy, Director, Public Policy
Yellow Pages Integrated Media Association
Two Connell Drive, First Floor
Berkeley Heights, NJ 07922

Michael Petricone, VP, Technology Policy
Consumer Electronics Association
2500 Wilson Boulevard
Arlington, VA 22201

Mitchell F. Brecher, Esq.
Greenberg Traurig, LLP
800 Connecticut Ave., NW, Suite 500
Washington, DC 20006
Counsel for TracFone Wireless, Inc.

Ms. Jeanine Poltronieri
Motorola, Inc.
1350 I Street, NW, Suite 400
Washington, DC 20005-3305

Jeffrey A. Campbell, Director, Technology &
Comm.
Cisco Systems, Inc.
601 Pennsylvania Avenue, NW
Washington, DC 20004

Raymond L. Strassburger, Senior Counsel & VP
Global Government Relations
Nortel Networks
101 Constitution Ave., NW, 325E
Washington, DC 20001

Rhett Dawson, President
Information Technology Industry Council
1250 I Street, NW, Suite 200
Washington, DC 20005

The Computing Technology Industry Association
(CompTIA)
4350 N. Fairfax Drive
Arlington, VA 22203

Mr. Jim Tauer
SPI Solutions, Inc
1875 Old Alabama Road
Bldg. 900, Suite 910
Roswell, GA 30076

Virgil Rogers, Esq
nexVortex, Inc.
11428 Nightstar Way
Reston, VA 20194

Mr. Lee Tien
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Albert H. Kramer, Esq.
Dickstein Shapiro Morin & Oshinsky, LLP
2101 L Street, NW
Washington, DC 20037

Danny E. Adams, Esq.
Kelley Drye & Warren LLP
8000 Towers Crescent Drive, Suite 1200
Vienna, VA 22182

Derek R. Khlopin, Director, Law & Public Policy
Telecommunications Industry Association
2500 Wilson Blvd., Suite 300
Arlington, VA 22201

William T. Lake, Esq.
Wilmer Cutler Pickering LLP
2445 M Street, NW
Washington, DC 20037-1420
Counsel for SBC

Jack S. Zinman, Esq.
SBC Communications Inc.
1401 Eye Street, NW
Washington, DC 20005

Geoffrey M. Klineberg, Esq.
Kellogg, Huber, Hansen, Todd & Evans, PLLC
1615 M Street, NW, Suite 400
Washington, DC 20036-3209
Counsel for Verizon

Karen Zacharia, Esq.
Verizon
1515 North Court House Road, Suite 500
Arlington, VA 22201

Theodore R. Kingsley, Esq.
Bellsouth Corporation
675 West Peachtree Street, NE, Suite 4300
Atlanta, GA 30375-0001

John F. Jones, VP, Federal Government Relations
CenturyTel, Inc.
100 Century Park Drive
Monroe, Louisiana 71203

Karen Brinkmann, Esq.
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
Counsel for CenturyTel, Inc.

Andrew D. Crain, Esq.
Qwest Communications International Inc.
607 14th Street, NW, Suite 950
Washington, DC 20005

Roy E. Hoffinger, Esq.
Perkins Coie LLP
1899 Wynkoop Street, Suite 700
Denver, CO 80202
Counsel for Qwest

TCA, Inc. – Telcom Consulting Associates
1456 Kelly Johnson Blvd., Suite 200
Colorado Springs, CO 80920

William M. Ojile, Chief Legal Officer & Secretary
Valor Telecommunications of Texas, L.P.
201 E. John Carpenter Freeway, Suite 200
Irving, TX 75062

Gregory J. Vogt, Esq.
Wiley Rein & Fielding LLP
1776 K Street, NW
Washington, DC 20006
Counsel for Valor and Iowa Telecommunications

D. Michael Anderson, VP – External Affairs
Iowa Telecommunications Services, Inc.
P.O. Box 1046
Newton, Iowa 50208

Donald J. Elardo, Esq.
DJE Teleconsulting, LLC
9122 Potomac Ridge Rd.
Great Falls, VA 22066

Caressa D. Bennet, Esq.
Bennet & Bennet, PLLC
1000 Vermont Avenue, NW, 10th Floor
Washington, DC 20005
Counsel for Rural Carriers

Gerard J. Duffy, Esq.
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
Counsel for Interstate Telcom Consulting, Inc.

L. Marie Guillory, Esq.
NTCA
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Jan Reimers, President
ICORE, Inc.
326 S. 2nd Street
Emmaus, PA 18049

Richard A. Askoff, Esq.
NECA
80 South Jefferson Road
Whippany, NJ 07981

James W. Olson, Esq.
USTA
1401 H Street, NW, Suite 600
Washington, DC 20005-2164

Gerard J. Duffy, Esq.
Blooston, Mordkofsky, Dickens, Duff & Prendergast
2120 L Street, NW, Suite 300
Washington, DC 20037
Counsel for Western Telecommunications Alliance

Jeffrey H. Smith, VP – Division Manager Western
GVNW Consulting, Inc.
8050 SW Warm Springs Street, Suite 200
Tualatin, Oregon 97062

Gregg C. Sayre, Esq.
Frontier and Citizens Communications
180 South Clinton Avenue
Rochester, NY 14646-0700

Alice E. Walker, Esq.
Greene, Meyer & McElroy, P.C.
1007 Pearl Street, No. 220
Boulder, Colorado 80302
Counsel for Cheyenne River Sioux Tribe

James R. Hobson, Esq.
Miller & Van Eaton
1155 Connecticut Ave., NW, Suite 1000
Washington, DC 20036-4320
Counsel for NENA

Arturo Gandara, Chair, Public Policy Committee
Alliance for Public Technology
919 18th Street, NW, Suite 900
Washington, DC 20006

James A. Bachtell, Esq.
Georgetown University Law Center
600 New Jersey Avenue, NW
Washington, DC 20001
Counsel for USCCB, et al.

Paul M. Schudel, Esq.
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
*Counsel for Nebraska Rural Independent
Companies*

Stuard Polikoff, Esq.
OPASTCO
21 Dupont Circle, NW, Suite 700
Washington, DC 20036

David A. Irwin, Esq.
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., NW, Suite 200
Washington, DC 20036-3101
Counsel for America's Rural Consortium

Colleen L. Boothby, Esq.
Levine, Blaszak, Block and Boothby, LLP
2001 L Street, NW, Suite 900
Washington, DC 20036
Counsel for Ad Hoc

Walter Czerniak, President
The Association for Communications Technology
Professionals in Higher Education

Susan Grant, VP, Public Policy
National Consumers League
1701 K Street, NW, Suite 1200
Washington, DC 20006

Terry L. Etter, Assistant Consumers' Counsel
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485

Philip F. McClelland, Sr. Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101

Dian P. Callaghan, Administrative Director
Colorado Office of Consumer Counsel
1580 Logan Street, Suite 740
Denver, CO 80203

Agostino Cangemi, Deputy Commissioner & GC
New York City Dept. of Info. Technology (DoITT)
75 Park Place, 9th Floor
New York, NY 11201

Clarence A. West, Esq.
1201 Rio Grande, Suite 200
Austin, Texas 78701
Counsel for TCCFUI

William B. Wilhelm, Jr.
Swidler Berlin Shereff Friedman, LLP
300 K Street, NW, Suite 300
Washington, DC 20007
Counsel for Vonage Holdings Corp.

RERC on Telecommunications Access
800 Florida Avenue, NE
Washington, DC 20002