

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	FCC Docket No. 04-28
)	

**REPLY COMMENT OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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The Pennsylvania Public Utility Commission (PaPUC) submits this Reply Comment in response to the Federal Communication Commission's (FCC) Notice of Proposed Rulemaking regarding IP-Enabled Services (VoIP NOPR) released March 10, 2004. As an initial matter, the PaPUC's view relies on proceeding filings and could change in response to subsequent developments. In that event, a Supplemental Comment would be filed. Finally, our views should not be construed as evidence of a binding conclusion that the PaPUC would reach in any contested on-the-record proceeding.

I. Legal Classification of IP Services.

The PaPUC recognizes many parties are urging the Commission to decide the question of jurisdiction over IP Services as a matter of law under TA-96 and not as a matter of policy or technological expediency. Although the PaPUC appreciates the significant legal claims of the states, NARUC, and other Comments demonstrating that some IP Services, and VoIP in particular, may constitute telecommunications or telecommunications service under TA-96, the PaPUC also recognizes claims to the contrary. However, the PaPUC chooses to refrain from making any conclusive legal determinations at this time given our decision to monitor subsequent developments concerning Voice over Internet Protocol (VoIP) services at Docket No. M-00031707.

The PaPUC recognizes that TA-96 may not limit Title II to predetermined technological formats for providing telecommunications or telecommunications services and that TA-96's legislative history may not sustain the conventional view that Congress merely preserved the status quo precedent regarding the use of analog technology to provide telecommunications or data processing services. There is some merit to views that IP Services constituting the functional equivalent of, a replacement for, or a newer technology for providing, traditional communication functionalities might be tantamount to telecommunications or

telecommunications service provided to the public for a fee under TA-96. However, by the same token, we respect the considerable claim that IP Services are a *sui generis* technology which emerged as a result of a deregulatory paradigm and that preemptive legal determinations may undermine the benefits of that paradigm. Therefore, we await a legal determination by the Commission.

II. IP Services and Telecommunications or Telecommunications Facilities and Applications in TA-96.

The PaPUC recognizes that the facts in this record suggest a basis for concerns about distinguishing between IP facilities and services accessing those facilities. Since this matter was not examined in detail in our state proceeding, the PaPUC refrains from commenting on this matter at this time. We have not had the opportunity to consider the issue.

III. Title II Non-Rate Obligations and IP Services

The Commission should consider applying the non-rate obligations of Title II to IP facilities and services accessing PSTN facilities or services.

The PaPUC suggests that the Commission require only that any equipment or software accessing the PSTN comply with the Commission's Title II Non-rate obligations. The PaPUC further suggests that Title II Non-Rate obligations be limited to facilities and those services that may be classified by the Commission as telecommunications or telecommunications services. Finally, the PaPUC suggests that the Commission should refrain from imposing Title II Non-Rate obligations on services that the Commission does not classify as telecommunications or telecommunications services.

There are several reasons for this latter suggestion. First, these services are not tantamount to telecommunications or telecommunications services by the Commission's own classification. Second, these services are nascent and the entry

barriers to providers are low at this time. Finally, a decision to forebear from imposing Title II Non-Rate obligations on services other than those classified as telecommunications or telecommunications services by the Commission gives those service providers the time needed to develop solutions using a collaborative process. A consensus process modeled on the Internet Engineering Task Force is preferable.

IV. Specific NOPR Non-Rate Issues and IP Services.

Regardless of the classification accorded IP facilities and services by the Commission, the PaPUC offers the following:

a. *Telecommunications Relay Service (TRS).* Section 255 authorizes TRS contributions although the Commission requires only TRS contributions from carriers providing interstate telecommunications. The PaPUC suggests that the Commission consider contributions from providers of facilities and those services that may be classified by the Commission as telecommunications or telecommunications services so long as any final regulatory scheme is not too oppressive, overly burdensome, nor hampers the development of this technology. Services not otherwise classified by the Commission as telecommunications or telecommunications services should be given the time they need to ensure that their services are TRS compliant and then, and only then, should the Commission consider their contribution role.

b. *Disability Access.* Section 255 of TA-96 requires that persons with disabilities have access to telecommunications services and telecommunications equipment. The Commission applied Section 255 in its *Disability Access Order*¹ and set those forth its requirements at 47 CFR §§6.1-7.23. The PaPUC suggests that the Commission consider compliance with these obligations by providers of facilities and those services that may be classified by

¹ In re: Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, 16 FCC2d 6417, 6451-5453

the Commission as telecommunications or telecommunications services so long as any final regulatory scheme is not too oppressive, overly burdensome, nor hampers the development of this technology. Inclusion of other equipment appended to the PSTN should occur only after solutions emerge from a consensus process modeled on the Internet Engineering Task Force.

c. *Universal Service.* Section 254 of TA-96 requires the Commission to ensure that telecommunications are reasonable and affordable. The Commission applies universal service obligations to “every telecommunications carrier that provides interstate telecommunications services” and “any other provider of interstate telecommunications” which, as stated in the *pulver.com* decision, means transmission because the heart of “telecommunications” is transmission.

The PaPUC suggests that the Commission consider universal service contributions from providers of facilities and those services that may be classified by the Commission as telecommunications or telecommunications services so long as any contribution structure is not too oppressive, overly burdensome, nor hampers the development of this technology. The PaPUC also suggests that the Commission should not now mandate universal service contributions from those services that may not be classified by the Commission as telecommunications or telecommunications service because those services are nascent, industry needs time to develop solutions, and an assessment may be obtained from the provider’s facilities. Finally, the PaPUC suggests that the states, for their part, also be permitted to assess universal service contributions from the same providers on the same terms and conditions.

d. *E911.* Section 251 of TA-96 gives the Commission the general authority to make available communications on a national basis, with adequate facilities, for promoting safety of life and people with *wire and radio communication* (emphasis added). The modernizing PSTN uses wire and radio to provide communication. The Commission previously recognized that a national

solution is appropriate because state-by-state variations would yield mutually incompatible systems according to the 1994 E-911 Order at 9 FCC Rcd 6170, 6172, para. 11.

The PaPUC suggests that the Commission mandate E-911 capability based on a national standard for any facilities or services that the Commission may classify as telecommunications or telecommunications service using wire or radio. To achieve this, the PaPUC suggests that the Commission immediately create a consensus-based process to focus on immediate solutions to ensuring that facilities and those services that may be classified as telecommunications or telecommunications services by the Commission are E-911 compliant

In the interim, the PaPUC offers for the Commission's consideration a "Provide or Pay" policy for facilities and those services that the Commission may classify as telecommunications or telecommunications services until a solution is developed. Under this approach, facilities and those services that the Commission may classify as telecommunications or telecommunications services must either provide E-911 sufficient to meet the Commission's requirement or, in the alternative, remit a reasonable fee to those carriers able to provide that service.

e. Communications Assistance for Law Enforcement

Agencies (CALEA). Section 1001(8) of CALEA requires that telecommunications services be CALEA-compliant, the obligation may not apply to information services, and an industry-standard constitutes a safe harbor for ensuring compliance. The Commission has stated that the slight definitional differences between the definitions of "telecommunications" in TA-96 compared to the definition set forth in CALEA is not particularly controlling. Some parties in the pending CALEA petition proceeding allege that the Commission cannot impose CALEA on information services.

The PaPUC suggests that the Commission consider using a collaborative process in light of the work currently underway on technology that can identify

and prioritize packets using an IP-based MultiProtocol Label Switching (MPLS) in software routing packages.

f. *Intercarrier Compensation.* The notes to Section 157(a) of TA-96 empower the Commission to remove barriers to infrastructure investment for advanced services. The Commission's prior experience with uncertainty and telecommunications arbitrage, particularly in the reciprocal compensation disputes, is instructive. The Commission previously exempted Enhanced Service Providers (ESPs) from common carrier obligations and also prohibited the recovery of access charges from those Internet Service Providers (ISPs) classified as ESPs. This exemption, however, does not mean that no charges are allowed because such a result would undermine investment in, or continuing the quality of, the PSTN. At the current time, facilities and those services that the Commission may classify as telecommunications or telecommunications services are provided mostly over transmission facilities or services even though an ISP's service is information. Some parties advocate access charges for all IP Services that originate and terminate on the PSTN. Others argue for a bill and keep regime. The Commission is examining intercarrier compensation in a pending proceeding at 16 FCCR 9610 (2001).

The PaPUC suggests that the Commission proceed cautiously so that any changes in the compensation regime are orderly and not disruptive. The PaPUC also suggests that the Commission continue the current access charge regime for facilities and those services that the Commission may classify as telecommunications or telecommunications services until a comprehensive solution emerges in the intercarrier compensation docket. The PaPUC takes no position at this time regarding the intercarrier compensation obligations for those services not otherwise classified by the Commission as telecommunications or telecommunications services.

g. NANPA, Directory Listings, and LNP. Section 47 CFR §51.219 (NANP Numbers) and Section 251(e) (equitable access to NANP numbers), Section 251(b)(2) (LNP), and 47 CFR 51.219 (Directory Listings) collectively authorize the Commission to ensure that facilities and those services that the Commission may classify as telecommunications or telecommunications service are provided the same rights and responsibilities as circuit-switched LECs.

The Commission should allow facilities and those services that may be classified by the Commission as telecommunications or telecommunications services to access NANP numbers on the same terms and conditions applicable to ILECs and CLECs. This includes a state's right to impose reasonable certification requirements or, in the alternative, minimal registration requirements for number conservation and consumer protection purposes. Access to scarce numbering resources is a right the abuse of which is best prevented at the state level.

This recommendation could ameliorate the current practice in which facilities and those services that the Commission may classify as telecommunications or telecommunications services could obtain numbers indirectly from a CLEC or ILEC in a partnering arrangement involving access to a Primary Rate Interface (PRI) ISDN line (Type 1 Interconnection).

The Commission may be able to end this practice by allowing facilities and those services those services that the Commission may classify as telecommunications or telecommunications services to obtain numbers using a Type 2 Interconnection involving access to end offices and tandem switches from the NANPA administrator or Pooling Administrator. However, states should be permitted to impose reasonable registration or certification requirements on those service providers in furtherance of a state's public policy and number conservation efforts. The Commission should amend Section 52.15(g)(2)(i) to achieve this goal. The Commission should also require the use of numbers within 60 days under Section 52.15(g)(2)(ii) and impose contributions for costs under Section 251(e)(2) and 47 CFR 52.17. Finally, the Commission should extend thousand-

number pooling requirements to facilities and those services that the Commission may classify as telecommunications or telecommunications services consistent with the First Numbering Order at 7621-22 and impose its reporting obligations under Section 52.15(f)(4)-(5) although this requirement may not be appropriate for the first five years unless there is evidence of abusive numbering practices.

h. *Directory Listings.* The Commission should permit facilities and those services that the Commission may classify as telecommunications or telecommunications services to obtain directory listing and database services on the same terms and conditions as they are currently provided to CLECs under 47 CFR 51.219. These facilities and those services that the Commission may classify as telecommunications or telecommunications services may be using the PSTN to provide transmission services or facilities as well as telecommunications services. This practice should be addressed by considering a policy giving all providers the same access as CLECS.

i. *Local Number Portability.* The Commission should treat facilities and those services that the Commission may classify as telecommunications or telecommunications services the same. This should include the obligation to provide LNP to conserve numbers and promote a consumer's use of consolidated services using less numbers. Facilities and those services that the Commission may classify as telecommunications or telecommunications services should port numbers to reduce the costs for accessing the PSTN and to promote number conservation.

j. *Consumer Protections: CPNI, Slamming & Cramming, Truth-In-Billing, and Service Discontinuance.* Section 222 of TA-96 empowers the Commission to prevent the unauthorized use and disclosure of Customer Proprietary Network Information (CPNI). Section 258 of TA-96 empowers the Commission to penalize slamming and cramming. Sections 201 and 258 of TA-96 empower the Commission to impose Truth-in-Billing obligations. The Commission uses Section 214(a) in bankruptcy proceedings to obtain the

Commission's approval before discontinuing service. Some parties claim that the Commission's authority only extends to carrier slamming and cramming under Title II but not information service slamming and cramming under Title I. Others claim that general consumer protections are adequate.

The PaPUC suggests that the Commission continue consumer protections for facilities and those services that the Commission may classify as telecommunications or telecommunications services. Other solutions may fail to protect consumer privacy. The Commission should not centralize consumer protections based on an expanded interstate role while referring enforcement to the state commissions or diluting consumer protection prohibitions on the ground that adequate remedies exist under general state law.

V. PREEMPTION UNDER TA-96.

The Commission should not preempt state authority over facilities or those services that the Commission may classify as telecommunications or telecommunications service so long as that authority is not too oppressive, overly burdensome, or hampers the development of this technology. The states should be co-sovereigns that are permitted to supplement federal regulatory efforts so long those efforts do not unduly interfere with the federal approach.

The PaPUC thanks the Commission for providing an opportunity to file a Reply Comment.

Respectfully submitted,
Pennsylvania Public Utility Commission

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