

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

IP-Enabled Services

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WC Docket No. 04-36

REPLY COMMENTS OF COMCAST CORPORATION

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EXECUTIVE SUMMARY

The first-round comments present a compelling case that the Commission should move promptly to establish a federal regime for services delivering Voice over Internet Protocol (“VoIP”). That regime should ensure that VoIP service providers have the rights they need to compete effectively. It should ensure that VoIP service providers also fulfill essential responsibilities. It should curtail the danger of unnecessary state and local regulation. It should not disadvantage those entities that are investing in the construction and operation of the competitive transmission facilities over which VoIP and other IP-enabled services will travel.

The number and variety of commenting parties reflect widespread interest in VoIP and underscore its importance as a source of long-awaited competition for voice services. At the same time, the comments demonstrate how different IP-enabled services will be from conventional circuit-switched services, delivering significantly enhanced services and features for consumers.

The record also shows the urgent need for regulatory clarity. Despite the FCC’s best efforts to signal the need for states to await Commission guidance before taking any regulatory actions in this area, various commenters have identified a number of states that have acted -- and many more that are considering acting -- in ways that entail premature regulation of this market. Even if most states heed the Commission’s signals, one simply cannot expect that all state commissions and all state and federal courts will refrain indefinitely from acting in this area. And the consequences of Commission delay can be severe. As the *Brand X* litigation vividly demonstrates, inaction by the FCC can lead other bodies to fill the void -- very possibly with actions that are contrary to the policies the FCC later decides to adopt.

The Commission deserves a great deal of credit for recognizing the importance of VoIP services and for taking steps necessary to move forward. The Notice sought and elicited the information and analysis that the Commission needs. Now that a comprehensive record has been developed, the Commission needs to make some key decisions.

In Comcast's view, the Commission should decide immediately what it can realistically hope to accomplish on this issue in the very near term and precisely what steps it will take to do so, disclose that plan to all stakeholders (including Congress, which has shown an avid interest and an inclination to act if necessary), and then follow through with timely decisions. Only with this focused approach can the Commission provide the certainty that the market demands and that is needed to prevent other actors from improperly filling the policymaking and regulatory void with burdensome and unnecessary regulation.

There is widespread consensus on the most critical issues. The record provides abundant support for the proposition that the Commission's immediate focus should be on VoIP specifically, not IP-enabled services generally. There is overwhelming support for the proposition that VoIP services should be governed exclusively (or almost exclusively) by a federal regime. There is substantial agreement about the regulatory regime that should apply. There is growing recognition that VoIP service providers should have access to the rights essential to compete. Virtually all commenters recognize that no "economic regulation" is needed. Nor are most other kinds of regulation.

The main responsibilities which the vast majority of parties recognize should apply to VoIP service providers are those dealing with universal service, law enforcement, public health and safety, and access by people with disabilities. These issues can be addressed while making only sparing use of the Commission's ancillary jurisdiction.

I. THE RECORD CONFIRMS THE IMPORTANCE OF VOIP.

The Commission's *Notice* drew an extraordinary response. Well over a hundred comments were submitted by a wide variety of parties, including many who do not typically participate in FCC rulemakings. Many of the commenting parties do not provide or otherwise deal with conventional telephone services directly but have a particularized interest in VoIP. Some do not even have a direct interest in VoIP service but have a generalized interest in the advancement of technology and the revitalization of the communications sector of the American economy.

The number and variety of commenting parties reflect widespread interest in VoIP and underscore its importance as a source of long-awaited competition for voice services. At the same time, the comments also demonstrate how different IP-enabled services will be from conventional circuit-switched services. It is now crystal-clear that VoIP offers not just a replacement for plain old telephone service ("POTS") but a whole lot more.

Numerous parties discuss ways in which VoIP innovations will deliver significantly enhanced services and features for consumers. For example, the "Fact Report" submitted by BellSouth, Qwest, SBC, and Verizon notes that "VoIP already offers features and functionality that are superior to those available on circuit-switched networks, and VoIP is expected to be able to offer an even greater array of new features and functionality in the future."³ AT&T describes "unique 'e-features' not available with POTS service," including "the option of sending 'talking' emails."⁴ Qwest describes its VoIP service as offering "voice capabilities, voice messaging, advanced call control, and a web-browser-based dashboard for subscriber management of call

³ Fact Report at 23.

⁴ AT&T Comments at 12.

handling and messages.”⁵ It adds that enhanced features and functions include “call logs, unified messaging, programmable ‘do not disturb’ periods, ‘locate me’ functionality, virtual conference call functionality, and video telephony.” The Voice-on-the-Net (“VON”) Coalition and many other parties describe other innovative features that are currently being offered.⁶ Virtually every commenting party recognizes that the features and functions available today, impressive as they are, pale in comparison to those that will develop in the coming years.

II. THE RECORD ALSO SHOWS THE URGENT NEED FOR REGULATORY CLARITY.

First-round comments confirm that the problem of regulatory uncertainty is very real. Despite the FCC’s best efforts to signal the need for states to await Commission guidance before taking any regulatory actions in this area,⁷ various commenters have identified a number of states that have acted -- and many more that are considering acting -- in ways that entail premature regulation of this market.⁸ In fact, in the time since first-round comments were filed, one state has ordered a company providing an IP-based service to “cease and desist” until it complies with various state law requirements.⁹ That provider “concluded that it is not possible for the company to both comply with [the state’s order] and stay in business,” and accordingly it

⁵ Qwest Comments at 3-4.

⁶ *See, e.g.*, VON Coalition Comments at 4.

⁷ *See, e.g.*, R. Scott Raynovich, *Powell: VoIP Regs “Grave Mistake,”* Light Reading (June 22, 2004) (quoting FCC Chairman Michael Powell as saying, “There are some dozen states taking an aggressive stance with VoIP, and they are making a grave mistake.”).

⁸ *See, e.g.*, VON Coalition Comments at 22-23 (discussing New York, California, Michigan, and Utah).

⁹ *Wash. Exchange Carrier Ass’n (“WECA”) v. LocalDial Corp.*, Docket No. UT-031472, Order No. 08, 2004, WL 1372952 (Wash. U.T.C. June 11, 2004) (the service in question may not meet all of NCTA’s tests for the use of the term “VoIP”).

“ceased providing all VoIP services, both intrastate and interstate, to its customers in all states in which the company has been operating.”¹⁰

Even if most states heed the Commission’s signals, one simply cannot expect that *all* state commissions and *all* state and federal courts will refrain indefinitely from acting in this area. And the consequences of Commission delay can be severe. As the *Brand X* litigation vividly demonstrates, inaction by the FCC can lead other bodies to fill the void¹¹ -- very possibly with actions that are contrary to the policies the FCC later decides to adopt.¹²

III. THE FCC NEEDS TO MAKE SOME KEY DECISIONS PROMPTLY.

Over the past six months and more, the Chairman and various Commissioners have made a number of statements that were strongly supportive of VoIP. Each Commissioner to one degree or another has acknowledged the need for a light regulatory touch and for providing regulatory certainty sooner rather than later. These messages have been expressed in public fora, in individual speeches, and in separate statements.¹³ But sending “signals” is no longer enough; at this juncture, concrete and focused action is essential.

¹⁰ See Letter from Arthur A. Butler, Counsel for LocalDial Corporation, to Carole J. Washburn, Secretary, Wash. U.T.C., *in re WECA v. LocalDial Corp.*, Docket No. UT-031472 (June 22, 2004), available at <<http://www.wutc.wa.gov>>.

¹¹ *In Brand X Internet Servs. v. FCC*, 345 F.3d 1120 (9th Cir. 2003), *petitions for cert. pending*, a three-judge panel reviewing an FCC Declaratory Ruling declined to give *Chevron* deference to the Commission’s reasonable interpretation of an ambiguous statute, concluding that it was required instead to follow what it believed to be the holding of a previous panel’s decision that had been issued before the FCC completed its deliberations.

¹² One local franchising authority is now considering a proposal to establish service standards for high-speed cable Internet, even though it has no authority to do so under either the Commission’s or the 9th Circuit’s classification of that service. See Amit R. Paley, *Montgomery Weighs Cable Modem Regulations*, WASH. POST, July 7, 2004, at B1.

¹³ *E.g.*, Notice, Statement of Commissioner Abernathy (“I firmly believe that prescriptive regulation will prove unnecessary As service providers are developing business plans and courts and state commissions are starting to reach potentially divergent conclusions about the rules of the road, the risks of inaction are great. This Commission must step forward and provide guidance”); Opening Remarks of Commissioner Copps at Voice-Over-Internet-Protocol Forum, Washington, D.C., (Dec. 1, 2003), available at <<http://www.fcc.gov/voipforum.html>> (“VoIP Forum”) (“We don’t come early to this issue and it is increasingly apparent that Commission action is needed soon. . . . It’s incumbent on us to identify good policy going forward and

The Commission deserves a great deal of credit for recognizing the importance of VoIP services and for taking steps necessary to move forward. The *Notice* sought and elicited the information and analysis that the Commission needs. Now that a comprehensive record has been developed, the Commission needs to make some key decisions.

In Comcast's view, the Commission should decide immediately what it can realistically hope to accomplish on this issue in the very near term (for example, the next 6 months) and precisely what steps it will take to do so, disclose that plan to all stakeholders (including Congress, which has shown an avid interest and an inclination to act, if necessary), and then follow through with timely decisions. Only with this focused approach can the Commission provide the certainty that the market demands and that is needed to prevent other actors from improperly filling the policymaking and regulatory void with burdensome and unnecessary regulation.¹⁴

IV. THERE IS A BROAD CONSENSUS FOR ACTION ON MANY KEY ISSUES.

Even with the huge number and volume of comments, there is widespread consensus on the most critical issues. The record provides abundant support for the proposition that the

not just shoehorn VoIP into statutory terms or regulatory pigeonholes without adequate justification. It's no slam-dunk that the old rules even apply. . . . Question marks have haunted VoIP for too long."); Opening Remarks of Commissioner Martin at the VoIP Forum ("When confronted with such fundamental questions as those raised by VoIP, the Commission's paramount task is to facilitate market certainty and stability by setting out a clear regulatory framework.").

¹⁴ The Commission should not be diverted by efforts to complicate this proceeding with issues already pending elsewhere. In particular, the Commission should avoid being drawn into reviewing in this proceeding all of the various arguments -- from ILECs and CLECs alike -- regarding the ILECs' unbundling obligations under Section 251(c). Those issues have received abundant attention in the Triennial Review proceeding and should not be permitted to mire this proceeding in the same interminable controversies.

Nor should this proceeding be the vehicle for addressing long-standing controversies regarding intercarrier compensation. Those issues were important and ripe for Commission action even without the advent of VoIP services. Time Warner Inc. is clearly correct in asserting that the Commission should "redouble its efforts to reform the inter-carrier compensation regime to eliminate currently existing disparities and arbitrage opportunities," but in the interim VoIP providers should be subject to the existing regime, including access charges. *See* Time Warner Inc. Comments at 16.

Commission's immediate focus should be on VoIP specifically, not IP-enabled services generally, and that the agency needs to provide marketplace certainty sooner rather than later. There is also widespread agreement that there should be exclusive federal jurisdiction with respect to virtually all aspects of VoIP regulatory policy, that regulatory obligations of VoIP service providers should be light, and that certain specified public health and safety objectives should be safeguarded.¹⁵

There is overwhelming support for the proposition that VoIP services should be governed exclusively (or almost exclusively) by a federal regime. Most descriptions of VoIP service offerings indicate that they will be offered on an interstate basis. Many of the service offerings provide for unlimited calling for a single price. Distinctions between "local" and "long distance," like differences between "intrastate" and "interstate," have been obliterated. A wide variety of commenters recognize that the role of state regulators must be reasonably limited.¹⁶ Even some courageous state regulators have taken this position.¹⁷

There is growing recognition that VoIP service providers should have access to the rights essential to compete. As stated by NCTA, "VoIP providers must be assured of certain rights,

¹⁵ Notably, these same principles are all featured in the three bills pending before Congress: H.R. 4129, introduced by Representative Pickering (R-MS), and S. 2281, introduced by Senator Sununu (R-NH), both referred to as the *VoIP Regulatory Freedom Act of 2004*, and H.R. 4757, introduced by Representatives Stearns (R-FL) and Boucher (D-VA), referred to as the *Advanced Internet Communications Act of 2004*.

¹⁶ See, e.g., TIA Comments at 8 ("State efforts to regulate VoIP would invade the sphere of interstate commerce regulation and be impermissible under principles of federal supremacy."); AT&T Comments at 8 ("the Commission should preempt those state regulations that would have the effect of negating the federal policies that the Commission establishes"). See also ITAA Comments at 24; Motorola Comments at 4-7; Nortel Comments at 13-14; BellSouth Comments at 11-14.

¹⁷ See Edie Herman, *State Regulators Urge FCC To Preempt Them From VoIP Oversight*, COMM. DAILY, at 4-5 (June 23, 2004) (quoting California PUC Commissioner Susan Kennedy as saying "What's needed is a clear decision that IP is interstate This is a global industry; we need a national policy."); Lynn Stanton, *Two State Regulators Ask FCC To Assert Jurisdiction Over VoIP*, TRDaily (June 22, 2004) (quoting Florida PSC Commissioner Charles Davidson as saying, "The FCC needs to assert its jurisdiction in this area [because VoIP services are] clearly interstate communications.").

regardless of their regulatory classification, in order to ensure the full deployment of existing and new VoIP services and applications.”¹⁸ NCTA and Comcast detailed these rights in some detail; others made the same point to a lesser degree.¹⁹

There is overwhelming support for the notion that only minimal regulation should be applied to VoIP services that exchange traffic with the PSTN (presumably no regulation or rights should apply to services that do not touch the PSTN). Virtually all commenters recognize that no “economic regulation” is needed. Most providers of IP services further explain that public policy should minimize all legal and regulatory responsibilities -- but not at the expense of public health and safety, law enforcement, universal service, and access for people with disabilities. (There is greater division, however, on the issue of “consumer protection,” as discussed below.)

There is substantial agreement about the regulatory regime that should apply, even among parties who take differing views as to the appropriate regulatory classification of VoIP services.²⁰ It is also apparent that essentially the same regulatory regime can be established

¹⁸ NCTA Comments at 21.

¹⁹ See NCTA Comments at 21-22; Comcast Comments at 7-8 & App. A. See also, e.g., Time Warner Inc. Comments (at 2; 16-17) (VoIP service providers should have “the right to interconnect with incumbent LECs, to receive universal service subsidies, to have new customers port their existing telephone number, to obtain telephone numbers, to have subscribers’ telephone numbers included in directory listings, and to have access to necessary databases, including E-911 databases); SBC Comments at 51 (acknowledging need for access to numbers); Charter Comments (at 11-14) (emphasizing interconnection and numbering resources); Level 3 Comments (at 30-33) (discussing interconnection in detail); Sprint Comments at 29-30 (focusing on interconnection, UNE, and numbering resources).

²⁰ Even though some parties differ as to the proper regulatory classification of VoIP services, the differences diminish upon closer examination. In fact, many of the apparently conflicting comments are not really at odds but rather result from focusing on services with differing capabilities.

Those entities which focus mainly on services that are the functional equivalent of POTS find that the correct classification for such services is as Title II telecommunications services. See, e.g., Sprint Comments at 12-18. Those entities that highlight the many enhanced features that are and increasingly will be incorporated in VoIP services naturally perceive that these services are Title I information services. See, e.g., VON Coalition Comments at 19-21. Still others note that VoIP services will come in different forms and, depending on their capabilities, will fall on one side of the line or the other. See, e.g., USTA Comments at 18-21.

regardless of the regulatory classification and analytic path chosen to get there.²¹ The main regulatory responsibilities which the vast majority of parties recognize should apply to VoIP service providers are those dealing with universal service, law enforcement, public health and safety, and access by people with disabilities.

V. CERTAIN POINTS OF CONFUSION SHOULD BE CLARIFIED.

Despite the large measure of consensus on most key issues, the first-round comments include some assertions that have the potential to sow unnecessary confusion. Certain of these subjects warrant a brief discussion so that the Commission is not deterred from taking the necessary actions in the near term.

A. The Necessary Regime Can Be Implemented Without Making Substantial Use of the Commission’s Ancillary Authority.

Although there is widespread agreement about the importance of protecting specific public health and safety, law enforcement, and universal service interests, there is some debate about how such interests can best be protected. In particular, there is the issue of the extent to which protecting these interests will require use of the Commission’s “ancillary authority” over VoIP services that are classified as information services. Although the Commission’s ancillary

This last view is the one that provides the insight most useful to the Commission’s decisionmaking. The mere use of the Internet Protocol in an offering that otherwise consists of the indiscriminate offering of a pure transmission capability is a Title II transmission service. At the same time, there is no credible argument that a service that includes various “capabilities for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications” is anything other than a Title I information service. *See* 47 U.S.C. § 153(20). Thus, it is clear that VoIP services can be designed to be Title II telecommunications services or Title I information services. It is also clear that all these services will be competing with one another, so the Commission should strive as much as possible to apply the same regime to both.

²¹ A “Title I plus” approach can be used to achieve the same result as a “Title II minus” approach. In fact, Time Warner Inc. suggests that, once the Commission determines the regime it wishes to establish, it should then justify that result with reference to both sets of legal theories; “[w]hichever classification the Commission chooses, it should ensure regulatory certainty by making clear that, in the alternative, it reaches the same conclusions under the other classification.” Time Warner Inc. Comments at 3, 25. This approach may provide the greatest degree of protection against second-guessing by the courts. And it will avoid skewing competition among VoIP services that have differing levels of “enhancements.”

authority is not so narrow as some parties suggest,²² it is important to underscore that issues such as universal service, wiretapping, 911/E911, and disabilities access can be addressed while making only sparing use of the Commission’s Title I powers; the Commission can achieve most if not all of what it needs to by using tools other than ancillary authority.

- *Universal service*: Section 254(d) requires universal service contributions by “[e]very telecommunications carrier that provides interstate telecommunications services” But the last sentence of this subsection gives the Commission power that extends beyond telecommunications carriers; it specifies that “[a]ny other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.” Given that every information service by definition includes a “telecommunications” (but not “telecommunications service”) component, it is manifestly in the public interest that VoIP services that are offered as substitutes for conventional circuit-switched telecommunications services should share in the responsibility for providing universal service support.
- *Wiretapping*: The Communications Assistance to Law Enforcement Act (“CALEA”) defines “telecommunications carrier” differently than does the Communications Act. CALEA reaches any provider of “wire or electronic communication switching or transmission service” if the Commission finds (1) “that such service is a replacement for a substantial portion of the local exchange service,” and (2) “it is in the public interest to deem such person or entity to be a telecommunications carrier for purposes of this subchapter.”²³ For these reasons, and without prejudice to the classification of services for purposes of the Communications Act, the cable industry has supported law enforcement’s request for issuance of a declaratory ruling that CALEA applies to VoIP services meeting the four-part test.²⁴

²² Although the Commission cannot use ancillary jurisdiction as some sort of blanket authority to pursue whatever public policy objectives it finds worthy, it can appropriately use ancillary jurisdiction “to promote express statutory purposes with respect to services ‘enmeshed in,’ ‘comparable to,’ ‘essentially indistinguishable from’ and ‘directly competitive with’ services in the market over which it has express authority.” MCI Comments at 30-31 (citing cases). Thus, “some IP-enabled voice applications may potentially be viewed as a substitute for traditional common carrier voice services, and narrowly focused regulation to advance an express purpose of Title II in those cases could be an appropriate exercise of the Commission’s ancillary jurisdiction.” *Id.* at 34. *See also* Time Warner Inc. Comments at 23 (“Because the VoIP services that fall within our proposed category, by definition, are potential substitutes for circuit-switched telephony, the Commission may exercise its ‘ancillary jurisdiction’ under Title I to impose regulation reasonably necessary to complement the regulatory landscape that the Commission has developed for traditional telephony.”).

²³ *See* 47 U.S.C. § 1001(8)(B)(ii).

²⁴ Reply Comments of NCTA, RM-10865 (filed Apr. 27, 2004). NCTA’s position was subject to two straightforward qualifications: first, that all similarly situated providers of VoIP be treated equally and, second, that responsibility for CALEA compliance must rest with the VoIP service provider, not the owner of underlying facilities that may be traversed. *Id.* at 2.

- 911/E911*: Market forces will go a long way in ensuring that VoIP service providers meet their customers' needs for 911 and E911 functionality; consumers are unlikely to risk their personal safety, and that of their families, in order to save a few dollars in communications costs. For this reason, many VoIP service providers are already working hard to develop the capabilities necessary to support 911 and E911 services.²⁵ As several parties explain, the National Emergency Number Association ("NENA") and various IP-enabled services providers have already made great progress on this front, and additional work is underway in the Alliance for Telecommunications Industry Solutions ("ATIS") and Emergency Services Interconnection Forum ("ESIF").²⁶ Given this progress, and the unique technical issues associated with providing E911 capabilities in a VoIP setting,²⁷ this is one area that may be amenable to a voluntary industry consensus solution, subject to FCC oversight. In addition, it appears that the powers in Sections 251(e)(3) and 615 of the Communications Act are not limited entirely to Title II telecommunications services; the former speaks in terms of a "universal emergency telephone number" to be used for "both wireline and wireless telephone service," and the latter is a broad mandate to the Commission to "encourage and support efforts by States to deploy comprehensive end-to-end emergency communications infrastructure and programs" (and it includes a directive to "consult and cooperate with [among others] the telecommunications industry . . .").
- Access for people with disabilities*. The combination of market forces, voluntary industry consensus solutions, and FCC oversight may be sufficient to ensure that VoIP services are designed to accommodate people with disabilities.²⁸ In the unlikely event that more direct regulatory intervention were to be required, the Commission will be able to draw on the fact that Section 255 reaches not just "provider[s] of telecommunications services" but also "manufacturer[s] of telecommunications equipment and customer-premises equipment."²⁹ It might also be noted that the

²⁵ See, e.g., NCTA Comments at 13-14 (describing multiple cable operators that currently include 911/E911 capabilities as part of their VoIP services). Comcast's VoIP services will likewise include such capabilities.

²⁶ See, e.g., VON Coalition Comments at 24-25; Qwest Comments at 42-43; Microsoft Comments at 19; SBC Comments at 101-102 (discussing ATIS, ESIF, and NENA efforts to address VoIP 911, primarily "the development of national standards," as well as RBOC-Telcordia contracts to "develop 911 interface specification standards that accommodate VoIP technologies for enterprise customers"; Verizon Comments at 54 (also discussing RBOC contracts with Telcordia).

²⁷ As some parties have noted, IP-enabled services may be able to include emergency notification capabilities that are vastly superior to those available with conventional circuit-switched service. See, e.g., VON Comments at 10-11; Nortel Comments at 10-13.

²⁸ The Commission has already convened a public forum where it reviewed the many ways in which disabilities access is being advanced without legal compulsion. See *FCC Announces Panelists for May 7, 2004 "Solutions Summit" on Disability Access Issues Associated with Internet-Protocol Based Communications Services* (WC Docket No. 04-36), Public Notice, DA 04-1246 (rel. May 3, 2004), available at ><http://www.fcc.gov/voip>>.

²⁹ See 47 U.S.C. §§ 255(b)-(c).

Commission has already used Title I powers to extend disabilities access requirements drawn from Section 255 to certain Title I information services without a judicial challenge.³⁰

B. The Commission Should Not Confuse The “Basic/Enhanced” Dichotomy With A Voice/Data Dichotomy.

As noted above, the result that the Commission reaches is more important than the legal theories or classifications that it uses to get there. Thus, as explained, either a “Title I-plus” approach or a “Title II-minus” approach can both be used to arrive at the same destination. Nonetheless, it is important that the Commission’s decision not be infected by errors regarding the differences between information services and telecommunications services.

A handful of comments make the mistake of assuming that VoIP services must be treated like Title II telecommunications services because VoIP services involve voice or because they will compete with conventional Title II services. Neither assertion is correct.

It is *not* the case that those services that involve the transmission of voice rather than data are inherently or even presumptively Title II telecommunications services. The basic/enhanced dichotomy was never a voice/data distinction, and neither is the telecommunications services/information services dichotomy. In fact, the *Computer Inquiries* were not focused on separating voice from data but on separating one group of data services from another group of data services; from the outset the goal was to decide which types of data transmission and what levels of data manipulation would be regulated and to what degree. And the fundamental line that the Commission drew -- and the one that Congress codified via the Telecommunications Act of 1996 -- was between services that entailed nothing more than the pure transmission of

³⁰ See *In re Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417, ¶ 8 (1999).

information (“basic,” now “telecommunications services”) and services that entail additional use of computing power (“enhanced,” now “information services”).³¹

Thus, a data service can be basic or enhanced depending upon its characteristics, and so can a service transmitting voice.³² More specifically, a service offering the pure transmission of voice is a Title II telecommunications service. A service offering “capabilities for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications” -- including voice information -- is an information service.³³

Nor does the fact that a VoIP service competes directly with conventional circuit-switched voice services prevent it from being classified as an information service. Qwest rightly observes that the *Computer II* decision acknowledged that “some enhanced services are not dramatically dissimilar from basic services or dramatically different from communications as defined in *Computer Inquiry*,”³⁴ but this did not alter their classification. The key issue in classifying a service is to focus on its capabilities and, in particular, whether something more than mere transmission is being provided to the user.

C. In the Main, “Consumer Protection” Should Be Provided By The Competitive VoIP Marketplace.

Some parties propose that the Commission adopt “consumer protections” above and beyond 911/E911, disabilities, CALEA, and universal service. Comcast understands the reasons to subject VoIP to consumer protection rules that apply generally to all products and services, but

³¹ See 47 U.S.C. §§ 153(20), 153(43).

³² As Qwest correctly notes, the *Computer II* decision expressly recognized “that enhanced and basic services each may encompass ‘voice’ and ‘data’ capabilities.” Qwest Comments at 16.

³³ See 47 U.S.C. §§ 153(20).

³⁴ Qwest Comments at 16-17, 23.

not rules designed solely and specifically for “telecommunications services.” As Verizon notes, “there is no reason at this time generally to subject VoIP [service] providers to the wide range of consumer-protection obligations applicable to common carriers. The VoIP industry is highly competitive, and there are multiple providers prepared to offer service. Given the low barriers to entry, competitive forces should be allowed to dictate the kinds of protections that consumers desire.”³⁵ In this context, there is no conceivable need for legacy utility requirements (for example, bill content and format rules, allocation of payment mandates, disclosure and notification requirements, service quality standards), whether imposed at the federal, state, or local level.³⁶

It bears emphasis that additional problems would be caused by allowing consumer protection rules to be established at the state or local level. The rapid deployment and evolution of VoIP services would surely be impaired were 50 state PUCs -- or 30,000 local franchising authorities -- to be establishing their own rules, which could differ from one jurisdiction to another or potentially even impose conflicting requirements.

VI. CONCLUSION.

The Commission has now compiled the full record necessary to establish a regulatory regime for VoIP services. That record shows that a unified federal regime, with certain essential rights and limited regulatory responsibilities, should govern those VoIP services that meet NCTA’s four-part test. The record also shows the need for swift Commission action.

³⁵ Verizon Comments at 30 n.78.

³⁶ For more detail, see Comcast Comments at App. A.

As discussed above, Comcast respectfully suggests that the Commission promptly establish and announce -- and then implement -- an action plan to provide marketplace certainty as expeditiously as possible.

Respectfully submitted,

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