



further expand the scope of this deregulatory framework to ensure that competitive IP-enabled services, including certain VoIP services, are classified as unregulated information services.<sup>3</sup> There is understandably debate concerning whether and to what extent interconnected NANP-based VoIP services should be subject to Title II regulation.<sup>4</sup> There is no serious dispute, however, that IP-enabled applications, including VoIP applications, that ride atop private VoIP networks and components, should not be subject to Title II regulation as a telecommunications service.<sup>5</sup> The Communications Act and Commission precedent support and, indeed, compel such a deregulatory approach.

Tellme also cautioned that “[t]he Commission must therefore be wary of classifying an IP-enabled information service as a ‘telecommunications service’ based on a dated statutory interpretation that may no longer have relevance in an IP environment.”<sup>6</sup> As Tellme explained in its comments, under both the *Computer III* regime and the 1996 Act, the Commission has traditionally classified directory assistance (“DA”) services as meeting the definition of an enhanced service; it has nonetheless distinguished between traditional and more advanced DA

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2004)[“8x8 Comments”]; Comments of Nortel Networks, WC Docket No. 04-36, at 9 (filed May 28, 2004)[“Nortel Comments”]; Verisign, Inc., WT Docket No. 04-36, at 4-6 (filed May 28, 2004)[“Verisign Comments”].

<sup>3</sup> See Covad Comments at 15-17; Verizon Comments 16-30; Verisign Comments at 4-6; Comments of Telecommunications Industry Association, WT Docket 04-36, at 4-5 (filed May 28, 2004)[“TIA Comments”]; Comments of Qwest Communications International Inc., WT Docket No. 04-36, at 14-24 (filed May 28, 2004)[“Qwest Comments”]; Comments of Motorola, Inc., WT Docket No. 04-36, at 11-12 (filed May 28, 2004)[“Motorola Comments”]; Net2Phone Comments at 8-12; Virgin Mobile USA, LLC, WT Docket No. 04-36, at 4-6 (filed May 28, 2004)[“Virgin Mobile Comments”]; Comments of Vonage Holdings Corp., WT Docket 04-36, at 28-36 (filed May 28, 2004)[“Vonage Comments”].

<sup>4</sup> See, e.g., Comments of Time Warner Inc., WT Docket 04-36, at 7-9 (filed May 28, 2004)[“Time Warner Comments”]; Comments of Citizens Utility Board, WT Docket 04-36, at 29-30 (filed May 28, 2004)[“CUB Comments”]; Level 3 Comments at 22-24; Comments of National Association of State Utility Consumer Advocates, WT Docket 04-36, at 1, 5 (filed May 28, 2004)[“NASUCA Comments”].

<sup>5</sup> See, e.g., Covad Comments at 16-17, 22-33; Verizon Comments 21-24; Comments of IEEE-USA, WT Docket 04-36, at 3 (filed May 28, 2004)[“IEEE-USA Comments”]; Qwest Comments at 22-24; Vonage Comments at 5-6, 29-33.

<sup>6</sup> Tellme Comments at 6.

services, carving out the former as an “adjunct to basic” service, while leaving the latter regulated as an enhanced or information service.<sup>7</sup>

Numerous commenters, however, warned that a simplistic “walks like a duck” analytical approach fails to address the realities of IP-enabled services.<sup>8</sup> Pointone in particular argues that the Commission’s regulatory paradigm should “not depend on outmoded references to the device used to deliver the service” and cautions that such services “invalidate[] the categories delineated in the *Stevens Report*.”<sup>9</sup> As Tellme explained in its comments, any of its services resembling traditional directory assistance are incidental to its other IP-based services, and to the extent that Tellme’s services using IP have a parallel, “it is Internet browsing, *not* traditional directory assistance.”<sup>10</sup> Similarly, as Pointone notes, the simple fact that a consumer accesses a particular service via dialing numbers on a telephone does not render it a telecommunications service.

The record in this proceeding thus far is consistent with Tellme’s support for an “information services” definition that casts a wide net that continues to include voice activated interactive services like its own.<sup>11</sup> The Commission itself has already moved in this direction, finding that “[t]he fact that [an] information service ... happens to facilitate a direct disintermediated voice communication, among other types of communications” does not render

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<sup>7</sup> *Id.* at 6-8.

<sup>8</sup> Net2Phone Comments at 6-8; Vonage Comments at 6-8; Comments of Cisco Systems, WT Docket No. 04-36, at 7-10 (filed May 28, 2004); Qwest Comments at 22-24.

<sup>9</sup> Comments of Pointone, WT Docket 04-36, at 17-18 (filed May 28, 2004)[“Pointone Comments”]. Pointone notes that it “offers an information service that may originate and terminate on a ‘phone’ on the PSTN” that “enables users to access real-time information such as stock quotes or driving directions, and even enables communication through instant messaging.” *Id.*

<sup>10</sup> Tellme Comments at 8.

<sup>11</sup> See Verisign Comments at 6-11 (Commission should treat IPES signaling and directory services as an information service); VON Coalition Comments at 12 (describing information services that enable the blind to use a newspaper reading service that uses voice synthesis to allow users to change voice speed and to search for words and Cisco service enabling the blind to use IP communications to check e-mail remotely through the voicemail system).

it a telecommunications service.<sup>12</sup> The Commission should reaffirm its hands-off approach to information services regulation by preserving and expanding upon the outcome reached in its *pulver.com* decision, thereby affording providers of IP-enabled applications and services the deregulated environment and certainty they need to continue to develop and deploy the innovative and advanced services and products that consumers desire.

Respectfully submitted,

**TELLME NETWORKS, INC.**

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<sup>12</sup> See *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd 3307, ¶ 12 (2004)