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EX PARTE

VIA ELECTRONIC FILING

October 28, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW, Room TW-A325
Washington, DC 20554

RE: *In the Matters of IP-Enabled Services, WC Docket No. 04-36; Vonage Holdings Corporation Petition for Declaratory Ruling, WC Docket No. 03-211*

Dear Ms. Dortch:

On Wednesday, October 27, 2004, Cronan O'Connell and Melissa Newman, in person, and Andrew Crain and Robert McKenna, by phone, all representing Qwest Communications International Inc. ("Qwest"), met with Jessica Rosenworcel, Legal Advisor to Commissioner Michael Copps, to discuss the IP-Enabled Services proceeding and the VoIP (Voice over Internet Protocol) application in particular. Qwest reviewed its ongoing roll-out of VoIP services which necessitates the Federal Communications Commission ("Commission") to act now, at a minimum, to declare VoIP services jurisdictionally interstate so as not to disrupt the aggressive deployment by Qwest as well as all VoIP service providers. In particular, while it is possible to view federal jurisdiction as a matter of preempting state regulation where it can be shown to be appropriate under the *Louisiana Public Service Commission* line of cases, such is not the best approach. Under *Louisiana Public Service Commission* the Commission must assume that state regulation continues for all identifiable intrastate services and facilities unless they cannot be reasonably severed from interstate service (from a regulatory perspective) and state regulation of the intrastate service would impede the Commission's ability to carry out its regulatory responsibilities over interstate services. Thus, based to a large extent on 47 U.S.C. § 152(b), the Commission must start with a presumption of non-preemption, and can lawfully preempt only to the extent necessary to implement federal jurisdiction over interstate services.

However, preemption is not required in the case of interstate services, which are within the direct jurisdiction of the Commission under the Act. Preemption is also not required in the case of intrastate services where the Commission has been granted jurisdiction under the 1996 Act. Finally, preemption is not required in the case of the Internet or IP-enabled services, where the Commission has received a direct regulatory mandate to establish and control overall policy on a nationwide basis pursuant to 47 U.S.C. § 230(b)(2). The Commission acting to secure and act on this federal jurisdiction is not a matter of Commission preemption. It is instead a matter of exercise of valid Commission jurisdiction conferred by the Act over the Internet.

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What this statutory structure does is reverse the presumption inherent in 47 U.S.C. § 152(b). The Commission has plenary jurisdiction over all aspects of the Internet and IP-enabled services unless it (the Commission) affirmatively finds that state regulation of a particular aspect of the Internet would not impede the Commission's carrying out of its own statutory mandate to secure the maximum deployment of the Internet free from federal or state regulation. In others words, only those aspects of the Internet or IP-enabled services that the Commission affirmatively determines are subject to state regulatory authority can fall within state jurisdiction.

We should note here that this essential finding does not resolve many of the other critical Internet issues now being considered by the Commission, including whether to regulate the underlying transmission facilities providing access to the Internet. While Qwest is of the opinion that it is vital that the Commission recognize that these facilities are an essential part of the Internet, the jurisdictional analysis that Qwest seeks here does not resolve these questions—it only settles the identity of the agency that is entrusted with resolving them. In other words, the jurisdictional issue should be determined outside of issues of how such jurisdiction will be exercised once it has been finally established.

Lastly, Qwest articulated that its VoIP service offering is similar in all aspects to the Vonage offering. Therefore, assuming that the Commission is preparing to assert interstate jurisdiction on VoIP services, **there is no legal rationale for Commission action on jurisdiction which would exempt one VoIP service provider over another given that these providers are offering the same services.** At a minimum, the VoIP service should be defined as a service that is an interstate information service which originates in Internet Protocol via unique Customer Premise Equipment over a broadband facility. During these discussions, Ms. Rosenworcel asked various questions about how the Qwest VoIP service is routed both within and outside the local calling area. The attached drawings reflect the network configuration of the Qwest VoIP service and the attached handouts reflect all of the information presented during the meeting.

In accordance with Commission Rule 1.49(f), this *ex parte* letter is being filed electronically *via* the Electronic Comment Filing System for inclusion in the public record of the above-referenced dockets pursuant to Commission Rule 1.1206(b)(2).

Sincerely,
/s/ Cronan O'Connell

Attachments

Copy:
Jessica Rosenworcel (jessica.rosenworcel@fcc.gov)

Qwest[®]



Spirit of Service

**IP-Enabled Services –
Voice over Internet Protocol Application
WC 04-36**

October 2004

IP-Enabled Services

A VoIP Discussion

- ❑ **Update of Qwest offering**
 - Definition, Network Overview and Rollout
 - Same service offering as Vonage today
- ❑ **Regulatory Jurisdiction**

Qwest IP-Enabled Services: VoIP Offering

Definition

- An Interstate Information Service
- Originates in Internet Protocol via CPE
- Originates over a broadband connection
- Includes applications such as voice messaging, advanced call control, and web browser-based dashboard for subscriber management of call handling and messages
- Requires a net protocol conversion when terminating calls to the PSTN
- Requires the customer to have an IP address and a unique 10-digit telephone number

❑ Network Overview -- see drawing

❑ Rollout

- Business services introduced in August 2004, both inside and outside the region
- Residential services to follow

Qwest VoIP Service is similar in all Aspects to Vonage VoIP Service

Qwest

Vonage

- | | | |
|--|---|---------|
| 1. An Interstate Information Service | → | 1. Same |
| 2. Originates in Internet Protocol via CPE | → | 2. Same |
| 3. Originates over a broadband connection | → | 3. Same |
| 4. Includes applications such as voice messaging, advanced call control, and web browser-based dashboard for subscriber management of call handling and messages | → | 4. Same |
| 5. Requires a net protocol conversion when terminating calls to the PSTN | → | 5. Same |
| 6. Requires the customer to have an IP address and a unique 10-digit telephone number but not necessarily tied to physical location | → | 6. Same |
| 7. Portable Service as long as the customer has access to a broadband connection | → | 7. Same |

Jurisdiction: All IP-Enabled Services, Including the VoIP Application, Must Be Subject to Exclusive Federal Jurisdiction On One of Two Mutually Compatible Bases

- **IP-Enabled Services are Inherently Interstate in Nature**
 - IP-enabled services are primarily interstate
 - Interstate and intrastate cannot be separated
 - Regulation of interstate disrupted by state regulation of intrastate
 - Standard (*Louisiana Public Service Commission*) preemption analysis applies
 - State regulation of “intrastate” IP-enabled services would disrupt FCC interstate jurisdiction

Jurisdiction: All IP-Enabled Services, Including the VoIP Application, Must Be Subject to Exclusive Federal Jurisdiction On One of Two Mutually Compatible Bases

- Section 230(b)(2) Requires that the FCC Treat IP-Enabled Services the same as Interstate Services**
 - All direct regulation of IP-enabled services reserved to FCC**
 - State regulation of intrastate services may be preempted if interferes with FCC regulation of IP-enabled services**

Jurisdiction: All IP-Enabled Services, Including the VoIP Application, Must Be Subject to Exclusive Federal Jurisdiction On One of Two Mutually Compatible Bases

- IP-voice applications cannot be treated apart from all IP-enabled services**
 - IP-voice applications not generally distinguishable from other IP-enabled services**
 - Multiple IP packets on a broadband pipe**
 - IP-voice end points portable, and originating number does not demonstrate location of originating caller**

Adverse Policy Implications of FCC's Failure to Assert Federal Jurisdiction

- ❑ **Up to 51 Jurisdictions with 51 different rules and regulations**
 - **Potential for any one of these 51 jurisdictions to shut down a VoIP provider's national operations**
 - MN – intends to apply both economic and rate regulation
 - NY – Requires certificate and tariffs
 - NE – intends to enforce certification and rate filing requirements. Also, NE open a proceeding to determine whether to apply intrastate USF
 - UT – intends to require provisioning intervals among other metrics as well as contribute to the “Poison Control Center”

- ❑ **Fulfillment of the FCC's charge to “encourage the deployment ...of advanced telecommunications capability to all Americans” hinges upon policy issues that require action now**
 - **Incentives for continued investment in Broadband facilities**
 - Changes in regulation penalize “first movers” in the industry
 - Changes in regulation disrupt existing customers
 - **Broadband is a key underpinning to the future world economy**
 - Do we want to remain 13th on the list?

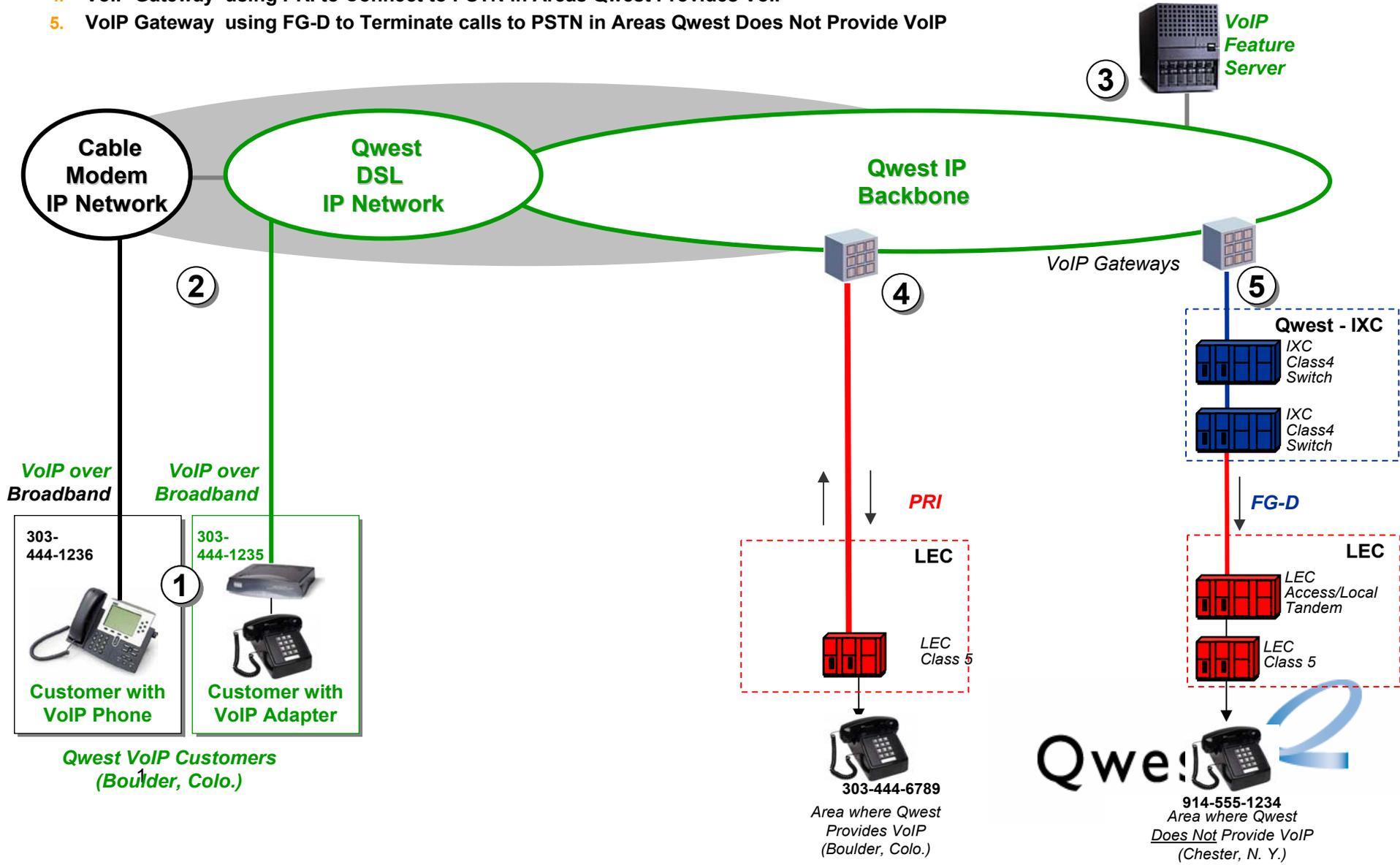
FCC Action is Necessary Now

- ❑ **The FCC should immediately adopt a definition of VoIP Services that clarifies:**
 - It is subject to the FCC’s exclusive jurisdiction as an Interstate Information Service
 - Originates in Internet Protocol via CPE
 - Originates over a broadband connection

- ❑ **To eliminate uncertainty and delay in the deployment of VoIP as well as all IP-Enabled services**

VoIP Network Components

1. VoIP Phone or VoIP Adapter at Customer Location
2. Broadband Access (e.g. IP over: DSL, T1, or Cable modem)
3. VoIP Feature Server in Hosting Center on Qwest IP Backbone (Provides "Class 5 Functionality")
4. VoIP Gateway using PRI to Connect to PSTN in Areas Qwest Provides VoIP
5. VoIP Gateway using FG-D to Terminate calls to PSTN in Areas Qwest Does Not Provide VoIP



Scenario 3: VoIP Call to Offnet LD PSTN

1. Call leaves customer location in VoIP format on Broadband connection
2. VoIP Feature Server in Qwest Hosting Center on IP Backbone directs call to appropriate VoIP Gateway
3. Call gets converted from VoIP to TDM and delivered to "offnet" LEC over FG-D
4. LEC directs call to PSTN customer

