

Commission should address issues related to intercarrier compensation on a comprehensive basis in its pending proceeding.³

Verizon has previously explained that, to the extent that IP-enabled services, including VoIP services, use the PSTN to originate or terminate calls, they should pay access charges. This will compensate the incumbent for the costs of the network. It is also consistent with the Commission's current rules that generally require all users of the PSTN to pay access charges. It is clear that access charges do apply to VoIP traffic under the Commission's Part 69 rules. These rules broadly define access services to include "services and facilities provided for the origination or termination of any interstate or foreign telecommunication," and require local exchange carriers to assess access charges on all "interexchange carriers" that use "local exchange switching facilities" to provide such services.⁴ There is no dispute that these terms apply to the voice long distance service offered by VoIP providers that use the PSTN to originate and terminate long distance calls. Pac-West asserts, however, that VoIP providers are "non-carrier entities," *see, e.g.*, Pac-West Petition at 2, 4, 7. The Commission has not decided "whether interconnected VoIP services are telecommunications services or information services,"⁵ but, as Verizon has explained elsewhere, even if VoIP services were to be classified as information services, the ESP exemption would not apply, and access charges would be due.⁶

³ *See, Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, CC Docket No. 01-92, 20 FCC Rcd 4685 (2005).

⁴ *See* 47 C.F.R. §§ 69.2(b), 69.5(b).

⁵ *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order, WC Docket No. 04-36, FCC 05-116, ¶ 22 (rel. June 3, 2005).

⁶ *See* Comments of the Verizon telephone companies, *IP-Enabled Services; Petition of SBC Communications Inc. for Forbearance Under 47 U.S.C. § 160 from Application of Title II Common Carrier Regulation to "IP Platform Services"*, WC Docket Nos. 04-36 and 04-29 (filed May 28, 2004) ("*Verizon IP-Enabled Services Comments*"); Reply Comments of the Verizon telephone companies, *IP-Enabled Services; Petition of SBC Communications Inc. for*

First, although some have claimed that a “net protocol conversion” is required when VoIP traffic is exchanged with the PSTN, the Commission has long made clear that services that involve net protocol conversions do not fall within the scope of the ESP exemption if the conversion is “necessitated by the introduction of new technology” that is “introduced piecemeal, and appropriate conversion equipment is used within the network to maintain compatibility.”⁷ Indeed, the paradigm example of such basic protocol conversion service – “a carrier-provided end office analog to digital conversion that permits an analog terminal to be accommodated by a network that is evolving to digital status,”⁸ is directly analogous to VoIP traffic. Just as the network previously evolved from analog to digital, the network today is evolving from circuit-switched to IP technology, and carrier-provided protocol conversions are needed to permit IP terminals and equipment and TDM terminals and equipment to communicate with one another. In fact, the Commission itself previously found that packet switched transmission services – of which Internet protocol services are one type – are not inherently

Forbearance Under 47 U.S.C. § 160 from Application of Title II Common Carrier Regulation to “IP Platform Services”, WC Docket Nos. 04-36 and 04-29 (filed July 14, 2004) (“*Verizon IP-Enabled Services Reply Comments*”); Letter from Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, *IP-Enabled Services; Level 3 Communications Petition for Forbearance*, WC Docket Nos. 04-36 and 03-266 (filed Feb. 11, 2005).

⁷ *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3072, ¶ 70 (1987) (“*Computer III Order*”), *vac’d on other grounds, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *see also Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457, ¶ 4 n.13 (2004). There, the Commission explained that there are “three categories of protocol processing services that would be treated as basic services.” Namely, “protocol processing: (1) involving communications between an end user and the network itself . . . (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3) involving internetworking The first and third identified categories of processing services result in no net protocol conversion to the end user.” Plainly, then, the second category – the one relevant here – *does* involve a net protocol conversion but nonetheless is considered a basic telecommunications service, not an information service.

⁸ *Computer III Order*, ¶ 70.

“enhanced.”⁹ And it did so despite the fact that a net protocol conversion necessarily is required for customers of packet-switched services to communicate with other customers served by the PSTN.

Second, VoIP services that use the PSTN to originate or terminate calls do not fit within the stated rationale for the ESP exemption. On the contrary, the Commission has justified the exemption on the theory that ESPs use the local network in a way that is analogous to local businesses – to communicate with and provide enhanced services to their own customers – rather than as a conduit for a voice telephone call between two end user customers.¹⁰ Accordingly, “it is not clear that ISPs use the [public switched access] network in a manner analogous to the ways IXCs use it.”¹¹ Here, in contrast, VoIP providers *do* use the PSTN “in a manner analogous to IXCs” – to provide a transmission path between two people who wish to speak to one another. Accordingly, the ESP exemption is not applicable and access charges apply under existing rules to VoIP providers that use the PSTN to originate or terminate calls.

2. VoIP providers that obtain public NANP telephone numbers must comply with number portability requirements. Pac-West claims that “the obligations and applicability of the Commission’s number portability rules are entirely unclear as a result of granting the *SBC-IS Petition*.” Pac-West Petition at 4. In seeking the waiver, SBCIS committed that it would fully comply with all existing Commission numbering resource requirements, including local number

⁹ See *AT&T Frame Relay Order*, 10 FCC Rcd 13717, ¶ 41 (1995).

¹⁰ In other words, the ESP exemption is limited to an ISP’s use of the PSTN to reach its own subscriber for the provision of an enhanced service. It does not apply when an ESP (or the CLEC serving the ESP) uses the PSTN to reach a non-subscriber who receives a voice long distance call from another end user – as happens in a VoIP-to-PSTN call.

¹¹ Brief for the FCC at 71, *Southwestern Bell Tel. Co. v. FCC*, 8th Cir. Case No. 97-2618 (filed Dec. 17, 1997) (internal quotations omitted); see also *Access Charge Reform Order*, 12 FCC Rcd 15982, ¶¶ 344-48 (1997).

portability requirements. SBCIS Petition at 12. Verizon has explained, however, that in considering other requests for waivers, the Commission should state explicitly that VoIP providers must comply with number portability requirements, both for the numbers they obtain as a result of the waivers, and for numbers they port in at the request of customers. The Commission should make clear that the porting rules apply equally when a consumer wishes to port from a VoIP provider to a local exchange carrier.¹²

The Commission has consistently stated that “number portability promotes competition between telecommunications service providers” because it “allow[s] customers the flexibility to respond to price and service changes without changing their telephone numbers.”¹³ But to have effective competition, customers must be free to port numbers “in” to a provider without worrying that they won’t be able to port those numbers back “out” if they are dissatisfied.

Moreover, allowing VoIP providers to port numbers in without requiring them to port numbers out at a customer’s request has the potential to enable VoIP providers to “hoard” numbers. This would undermine the Commission’s efforts to manage numbering resources.

Finally, the Commission should make clear that VoIP providers must comply with industry number portability requirements and guidelines. These include NANC’s Provisioning Flows for LNP, the Ordering and Billing Forum’s Local Service Ordering and Provisioning Committees guidelines for the population and exchange of local service requests (LSRs) and

¹² As Verizon explained in its comments in the IP-Enabled Services NPRM, however, the Commission should not require LECs to port in numbers from a VoIP provider in the limited circumstance where a VoIP customer chooses an NPA-NXX designation that falls outside of the customer’s geographic rate center. Verizon IP-Enabled Services Comments at 52 n.128. See also *Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, 18 FCC Rcd 23697 at ¶ 43 (2003).

¹³ *Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, ¶ 4 (1998); *Telephone Number Portability; United States Telecom Association and CenturyTel of Colorado, Inc. Joint Petition for Stay Pending Judicial Review*, 18 FCC Rcd 24664, ¶ 7 (2003).

firm order confirmations (FOCs), and porting reciprocity. *See* Position Paper of the North American Numbering Council-Local Number Portability Administration Working Group, attached as Exhibit 1.

3. Traditional common carrier regulation of VoIP and other IP-enabled services is unnecessary and would affirmatively harm consumers. Pac-West claims that the Waiver Order allows SBCIS to interconnect with telecommunications carriers, but imposes no reciprocal duty on SBCIS to allow other carriers to “interconnect directly with SBC-IS’ facilities.” Pac-West Petition at 7. Pac-West further claims that the Waiver Order allows SBC, in conjunction with SBC-IS, to evade its interconnection obligations, to engage in unlawful discrimination, and to engage in a price squeeze. *Id.* at 7-10. Pac-West urges the Commission to clarify “[t]his potential for harm” and to impose “additional obligations . . . on SBC when dealing with its affiliate.” *Id.* at 8, 10.

The question of what regulation, if any, should apply to VoIP providers is squarely raised in – indeed, it is the whole purpose of – the Commission’s IP-Enabled Services NPRM. That docket, and not a limited proceeding dealing with a waiver of certain numbering requirements, is the appropriate place to address the types of issues Pac-West has raised. Verizon has explained in some detail why economic regulation of IP-enabled service providers is neither necessary nor appropriate,¹⁴ and will not repeat that discussion here. Briefly, however, economic regulation is both unnecessary and affirmatively harmful where competition is thriving, as it is among providers of VoIP and other IP-enabled services.

¹⁴ *See Verizon IP-Enabled Services Comments; Verizon IP-Enabled Services Reply Comments.*

Congress, the Commission, and economists all agree that competition is superior to regulation as a means of protecting consumers and encouraging investment.¹⁵ Moreover, in a competitive market, economic regulation is not only unnecessary but affirmatively harmful because it will deter investment and job growth and will suppress the innovation that consumers are demanding. Economic regulation distorts investment decisions, handicaps regulated companies in the marketplace, and ultimately retards the growth and development of the market as a whole, to the ultimate detriment of consumers. Economic regulation of IP-enabled services or broadband services would stifle the incentives to invest in new technologies and undermine the statutory goal of encouraging the further deployment of broadband telecommunications capability to originate and receive high-quality voice, data, and video telecommunications.¹⁶ The Commission, therefore, should eliminate burdensome regulations that inhibit full and fair competition. Specifically, the Commission should refrain from imposing any of the *Computer Inquiry* requirements on Bell companies that provide IP-enabled services; it should declare that all providers of VoIP and IP-enabled services are “non-dominant”; and, contrary to Pac-West’s

¹⁵ The Commission has recognized that “[c]ompetitive markets are superior mechanisms for protecting consumers by ensuring that goods and services are provided to consumers in the most efficient manner possible and at prices that reflect the cost of production.” *Access Charge Reform Order*, 12 FCC Rcd 15982, ¶ 263 (1997) (stating that “using a market-based approach should minimize the potential that regulation will create and maintain distortions in the investment decisions of competitors as they enter local telecommunications markets”), *petitions for review denied, Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998); *see also Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, ¶ 173 (1994) (stating that “in a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service set by carriers who lack market power”).

¹⁶ *See* Telecommunications Act of 1996, § 706(a) (reprinted at 47 U.S.C. § 157 note). Moreover, Congress has declared that it is the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.” 47 U.S.C. § 230(b)(2).

claims, it should forbear from applying the traditional economic regulations of Title II to these services.

Instead, the Commission also should ensure that all providers of IP-enabled services are subject to the same deregulatory policy, regardless of the underlying broadband technology used to provide the service. By treating all providers equally, the Commission will ensure that competition rather than regulation selects the strategies and technologies that will succeed. Providers of IP-enabled services may be telephone companies, cable companies, wireless companies, satellite companies, power companies, applications providers, software companies, content companies, or others. The Commission should adopt a forward-looking, market-based policy framework for *all* competitors. Ensuring that particular technologies are not singled out for uneven regulatory burdens will allow competition to drive decisions about the products and services that providers will offer which, in turn, will encourage technological innovation with respect to IP-enabled services and further benefits to customers.¹⁷

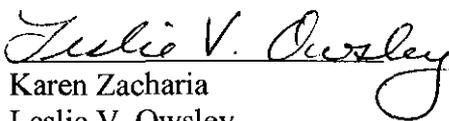
¹⁷ See 47 U.S.C. § 157 note (encouraging the Commission to deploy advanced telecommunications services “without regard to any transmission media or technology”); see also News Release, *FCC Launches Inquiry, Proposes Actions To Promote the Deployment of Advanced Telecommunications Services By All Providers* (FCC Aug. 6, 1998) (“The Commission concluded that Congress made clear that the Communications Act is technologically neutral and is designed to ensure competition in *all* telecommunications markets”).

CONCLUSION

Pac-West's petition raises significant, inter-related issues that the Commission is already considering in other proceedings. Those issues should be resolved on a comprehensive basis in those dockets, rather than being decided on a piecemeal basis in the context of a limited waiver of the Commission's numbering rules. As a result, Pac-West's petition for clarification should be denied.

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

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LNPA WG Position on Porting of Telephone Numbers Used by VoIP Service Providers

It has been brought to the LNPA-WG's attention that consumers who are served by some VoIP voice service providers have found it difficult to impossible to port their telephone number to another voice service provider. Consumers who are served by a VoIP provider should not be forced to give up their number, whether it be ported in or native, if they subsequently decide to use a different service provider - whether VoIP, CMRS or wireline.

When discussing Local Number Portability, the FCC has consistently stated that "number portability promotes competition between telecommunications service providers".¹ In the Telephone Number Portability order released in November of 2003, the FCC stated "number portability promotes competition between telecommunications service providers, allowing customers the flexibility to respond to price and service changes without changing their telephone numbers".² Recently in the Vonage Petition for Declaratory Ruling concerning an Order of the Minnesota PUC, the FCC compared DigitalVoice to CMRS (wireless) service "... we would find DigitalVoice *far more similar* to CMRS, which provides mobility, is often offered as an all distance service, and needs uniform national treatment on many issues"³ On February 1st, the FCC issued a waiver to SBCIS granting permission to obtain numbering resources directly from the North American Numbering Plan Administrator (NANPA) and/or Pooling Administrator (PA) for use in deploying IP-enabled services, including Voice over Internet Protocol (VoIP). In that waiver, the FCC states that "SBCIS will be responsible for processing port requests directly rather than going through a LEC".⁴

The LNPA-WG members believe that these FCC rulings have made it clear that service providers offering voice services utilizing NANP numbers must allow consumers to port their telephone numbers. Consequently, wireline and wireless service providers have been porting numbers to VoIP service providers as requested. However, some VoIP providers are either not allowing customers to port their TNs to another carrier or are making it very difficult.

The LNPA-WG would like to work with NANC to provide guidance on this issue and believes a documented statement of clarification would be helpful. The LNPA-WG has included the following statement in their Best Practice matrix, and the LNPA-WG requests that NANC forward the statement to the FCC with NANC's endorsement.

" VoIP service providers along with Wireless and Wireline service providers, have the obligation to port a telephone number to any other service provider when the consumer requests, and the port is within FCC mandates. Porting of telephone numbers used by VoIP service providers should follow the industry porting guidelines and the NANC Inter-Service Provider LNP Operations flows. "

¹ Telephone Number Portability, CC Docket No. 95-116, *Third Report and Order* , FCC 98-82, rel. May 12, 1998 at para. 4.

² Telephone Number Portability, CC Docket No. 95-116, *United States Telecom Association and CenturyTel of Colorado, Inc. Joint Petition for Stay Pending Judicial Review*, FCC 03-298, Rel. November 20, 2003 at para. 7.

³ WC Docket No. 03-211, *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, FCC 04-267, Rel. November 12, 2004, at para. 22

⁴ CC Docket No. 99-200, *Administration of the North American Numbering Plan*, FCC 05-20, Rel. February 1, 2005, at para. 9