BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matters of	:	
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Appropriate Framework for Broadband Access to the Internet over Wireline Facilities	:	CC Docket No. 02-33
	:	
Universal Service Obligations of Broadband Providers	:	
	:	CC Docket No. 01-337
Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services	:	
	:	
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements	:	CC Docket Nos. 95-20, 98-10
	:	
Conditional Petition of the Verizon Telephone Companies for Forbearance Under 47 U.S.C. § 160 (c) with Regard to Broadband Services Provided Via Fiber to the Premises; Petition of the Verizon Telephone Companies for Declaratory Ruling or, Alternatively, for Interim Waiver with Regard to Broadband Services Provided Via Fiber to the Premises.	:	WC Docket No. 04-242
	:	WC Docket No. 05-271
Consumer Protection in the Broadband Era		

COMMENTS OF THE
PUBLIC UTILTIES COMMISSION OF OHIO

On September 23, 2005, the Federal Communications Commission ("Commission") issued a *Notice of Proposed Rulemaking* ("*NPRM*") seeking comment as to whether there is a need for non-economic regulatory requirements to ensure that all broadband Internet access service providers, regardless of the underlying technology, meet certain consumer protection needs.[1] Specifically, the Commission asks whether it should use its Title I ancillary jurisdiction to impose upon broadband Internet access service providers consumer protection requirements similar to those currently imposed upon providers of traditional telephone services. The Public Utilities Commission of Ohio ("Ohio Commission") believes that many of the consumer protections applicable in the area of traditional telephone services are relevant to the provisioning of broadband Internet service and should also be applied to broadband Internet access service providers offering telephone service. As such, the Ohio Commission appreciates the opportunity to provide comment on this matter to the Commission in this proceeding.

In providing comment to the Commission, the Ohio Commission wishes to highlight the importance of consumer protection requirements for broadband Internet access service providers who offer telephone service based on voice over Internet protocol ("VoIP"). Although the Ohio Commission would also recommend similar consumer protections relative to

VoIP-based telephone service without regard to whether broadband Internet access is bundled together with telephone service, we recognize that there are other pending FCC dockets addressing the regulatory regime for VoIP generally. Consequently, the Ohio Commission's comments in this docket pertain only to broadband Internet access service providers that offer VoIP-based telephone service bundled with broadband Internet access. As a related matter, the Ohio Commission will address the issue of federal and state involvement in its introductory paragraphs. The Ohio Commission's substantive comments below pertain to CPNI, slamming, truth-in-billing, and Section 214 discontinuance.

Although the Ohio Commission has not reached a determination as to the functional equivalence or market substitutability of VoIP-based telephone service when compared to traditional telephone service, we recognize that VoIP is often marketed as a substitute for telephone service.[2] By identifying itself as a telephone service, broadband Internet access providers that offer VoIP-based telephone service may lead consumers to have the same expectations regarding fair business practices that they have of comparable providers of traditional telephone services. Further, the Commission apparently recognized one of these expectations in its recent requirement

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[1] *In The Matter Of Consumer Protection in the Broadband Era,* WC Docket No. 05-271, 20 FCC Rcd 16366, (2005) (hereinafter *NPRM*).

[2] *See, e.g.*, www.vonage.com/help_vonage.php. On its website, Vonage, a leading VOIP service provider, states that it is "an all-inclusive phone service that can replace your current

that VoIP providers include 911 service as a part of their service offerings.[3] Therefore, in the limited context of its consumer-focused recommendations in this docket, the Ohio Commission submits that some of the same core consumer protections required for traditional telephone should be applied to VoIP-based telephone service offered by broadband Internet access service providers – regardless of the outcome of pending jurisdictional disputes concerning VoIP services.[4]

To the extent that the Commission continues to preempt the States with regard to VoIP consumer protection regulation, the Ohio Commission encourages the Commission to include and involve the States in the enforcement of any consumer protections that the Commission would apply to broadband Internet access providers offering VoIP-based telephone services. In the Ohio Commission's opinion, the States are in the best position to respond to the needs of their consumers. State government is often the first stop for consumers seeking assistance with a telecommunications related problem and, unlike the FCC which must respond to consumers from fifty states, each state government is only responsible for responding within its jurisdiction. In its *NPRM*, the Commission refers to such a division of

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phone company." In addition, Vonage also claims that it "gives you great phone service and more."

[3] *In the Matters of IP-Enabled Services and E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 04-36 and WC Docket No. 05-196, 2005 WL 1323217 (June 3, 2005).

[4] *Minnesota Public Utilities Commission, et al. v. FCC*, Case Nos. 05-1069, 05-1122, 05-3114 and 05-3118 (8th Cir.).

regulatory responsibility when it cites to the "functional" approach recently advocated by the National Association of Regulatory Utility Commissioners ("NARUC") with regard to the role states should play in enforcing any broadband Internet access service consumer protection requirements that may be adopted by the Commission.[5] Under this approach, the Commission would be primarily responsible for establishing rules, while the responsibility of enforcing such rules would be assumed by the states.[6] The Ohio Commission agrees with NARUC's functional approach and encourages the Commission to adopt this division of regulatory responsibility should the Commission continue to pre-empt the states from establishing and enforcing their own VoIP consumer protection regulations.

If the Commission continues to preempt the States entirely in the area of VoIP-based telephone service consumer protection regulation, the Ohio Commission encourages the Commission to establish VoIP-based telephone service consumer protection requirements and to enforce these requirements in Ohio as well as any other state in which consumers are subscribing to VoIP-based telephone service. The Ohio Commission recognizes that many requirements that were developed to protect consumers in a monopoly environment would not be appropriate. That is not to say, however, that VoIP-based telephone service offerings should not be subject to any consumer

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[5] *NPRM* at ¶ 158 citing *NARUC Legislative Task Force Report on Federalism and Telecom* (July 2005) (hereinafter *NARUC Report*).

protections. Just as any other business-consumer relationship is subject to basic consumer protections, so should the VoIP-based telephone service provider-subscriber relationship be afforded certain basic consumer protections. Consumers switching from traditional telephone services to VoIP-based telephone services have benefited from and have come to rely upon consumer protection for traditional telephone services. Without state or federal consumer protection regulations that are consistently enforced, these same consumers would be left to fend for themselves when dealing with VoIP service providers. As VoIP continues to grow in popularity, this void in regulation will increasingly affect a significant segment of consumers of voice communications services. Consequently, the Ohio Commission believes that it is of the utmost importance for the Commission to establish and enforce certain VoIP consumer protections – regardless of the outcome of the pending jurisdictional disputes concerning VoIP services.

CPNI

In the *NPRM*, the Commission asks whether it should extend privacy requirements, such as the CPNI requirements of the Telecommunications Act ("the Act"), to providers of broadband Internet access service.[7] The Commission asks, for example, if it should adopt rules under its Title I authority to forbid broadband Internet access service providers from

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[6] *See id.* citing *NARUC Report* at 8.

disclosing, without customer approval, information about its customers obtained through the provision of their broadband Internet access service. The Ohio Commission believes that it should.

The Commission's current CPNI rules protect the account and usage information of customers of traditional telephone services and limit the usage of such information by the telecommunications provider for marketing and other purposes without the explicit approval of the customer. The rationale for these restrictions is that carriers are in a unique position to collect sensitive personal information in which customers have a privacy interest. VoIP-based telephone service providers stand in the same unique position. The Ohio Commission recommends that the Commission adopt similar privacy protection rules for providers of VoIP-based telephone service. As a first step, the Ohio Commission believes that the Commission should apply its CPNI rules to the providers of VoIP-based telephone service to disallow the sale, disclosure, sharing, or use of such information for any other purpose, including marketing, with limited exceptions, without the consumer's verifiable consent.

In addition, the Ohio Commission recommends that the Commission consider consumer privacy policy in a much broader context than CPNI due to the susceptibility of the Internet to breaches in security. Such breaches in Internet security pose a threat to consumer privacy on a larger scale and

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[7] *Id.* at ¶ 149.

scope than that of traditional telephone services. A provider of VoIP-based telephone service may be able to gather financial, medical, and other sensitive or private information about subscribers as well as the patterns of a subscriber's Internet usage. For the most part, such information is not currently protected under the Commission's CPNI rules for providers of traditional telephone services. Therefore, the Ohio Commission recommends that the Commission adopt rules to protect against this potential threat to the security of personal information of subscribers using VoIP-based telephone service. The Ohio Commission also recommends that the Commission limit the information collected by broadband Internet access providers offering VoIP-based telephone service to only that information necessary to establish and maintain an account and to provide service, unless there is clear notice and verifiable and explicit consumer consent.

Finally, the Ohio Commission recommends that the Commission require that broadband Internet access service providers take reasonable measures to protect CPNI and any other consumer data it possesses to prevent loss or inadvertent public disclosure or theft. The Ohio Commission believes that in the event of loss or theft of CPNI or other customer information, broadband Internet access services providers offering VoIP-based telephone service should be required to fully and immediately disclose such a loss or theft to the affected consumers. Only through such a requirement will consumers of broadband Internet access services truly be

able to protect and maintain their privacy and confidential personal information.

Slamming

The Commission also seeks input as to whether its consumer protections against the unauthorized change of a subscriber's selection of a provider of telephone exchange or toll service should be extended in some form to apply to providers of broadband Internet access service. Thus far, VoIP-based telephone service providers have offered bundled "all distance" calling packages. The Commission's slamming rules were enacted to protect consumers from the unauthorized switching of long distance carriers. Federal slamming rules do not protect consumers from the unauthorized switching of basic local telecommunications service. In Ohio, the federal slamming rules are complimented by the state's slamming laws which, in combination, prohibit the unauthorized switching of local and long distance telecommunications. Ohio believes the prohibition against unauthorized switching of a customer's account should be extended to consumers of VoIP-based telephone service providers.

Such consideration is warranted and even necessary because the Internet environment may, in fact, prove to be more hospitable to slamming than traditional telephone services. The underlying technology of the Internet is vulnerable to manipulation by invasive programming and

hijacking techniques that might be used to slam VoIP customers in ways that have not been considered or are even possible with traditional telephone services. Consequently, the Ohio Commission believes that it is a reasonable expectation that consumers of VoIP-based telephone service, like consumers of traditional telephone services, will not have the providers of their service changed without their authorization. Therefore, the Ohio Commission recommends that the Commission consider extending its slamming rules to providers of VoIP-based telephone services to prohibit the unauthorized change of a consumer's VoIP-based telephone service provider.

Truth-in Billing

The Commission has adopted truth-in-billing rules to ensure that traditional telephone services providers' bills are clear and accurate and provide consumers with the ability to comparison shop service offerings, as well as, protect themselves from unwanted slamming and cramming violations. Comments are now sought as to whether the Commission should exercise its authority under Title I to impose similar requirements on broadband Internet access service providers. In support of its query, the Commission cites the experience, during 2005 specifically, of its Consumer and Governmental Affairs Bureau. The Bureau received complaints about the billing practices of broadband Internet access service providers, including

complaints related to double billing, billing for unexplained charges, and billing for cancelled services.[8]

Like the Commission's Consumer and Governmental Affairs Bureau, the Ohio Commission's Call Center has also received a number of consumer contacts involving digital service line providers (DSL). From January 1, 2005, through October 1, 2005, the Ohio Commission's Call Center received over 450 DSL-related consumer contacts with the majority concerning marketing and billing practices. Consumers complain that their bills are not always broken down so that the amount owed for DSL can be distinguished from that owed for local service. Furthermore, consumers complain that service representatives provide incomplete or inaccurate information.

The Commission, through its truth-in-billing rules, has required that providers of traditional telephone services adhere to basic bill format provisions such as identifying the name of the service provider associated with each charge on a consumer bill; prominently displaying a provider's free-of-charge telephone number on a bill; clearly distinguishing each provider's services and charges on a bill; and using a "plain language" description of each provider's services rendered. The Ohio Commission believes that consumers of VoIP-based telephone service are entitled to the same level of billing information and clarity since new service offerings can prove to be confusing to consumers. Indeed, such "common sense" bill format

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[8] *Id.* at ¶ 153.

requirements are all the more critical for consumers of broadband Internet access providers offering VoIP-based telephone service because of the bundled nature of the services provided. By virtue of the services being offered over a broadband network, entertainment services and Internet access service are often marketed to consumers in a bundle that includes VoIP service. With these bundled arrangements, consumers need to clearly see both the price and a plain language description of each service provided so as to better be able to comparison shop for these individual services. Furthermore, it is not inconceivable that the bills of broadband Internet service providers may be utilized for other vendors' services, as has been the practice with the bills of traditional telephone services providers. The Ohio Commission believes that for consumers to be able to protect themselves from potential slamming and cramming situations, it is essential that consumers know the nature of the services being provided, the identity of the company providing the service for which they are being billed, and a contact number to enable them to reach these service providers.

Finally, by virtue of the fact that broadband Internet access providers offering VoIP-based telephone service identify themselves as providers of telephone service, consumers have the same expectations of their VoIP-based telephone service providers in terms of accurate and understandable consumer bills that they have of comparable providers of traditional telephone services. Consequently, the Ohio Commission believes that

consumers of VoIP-based telephone services offered by broadband Internet access service providers should receive no less protection from the Commission in terms of billing content and format requirements than consumers of traditional telephone services. The Ohio Commission therefore recommends that the Commission adopt truth-in-billing requirements for broadband Internet access service providers offering VoIP-based telephone comparable to those currently imposed upon providers of traditional telephone services.

Section 214 Discontinuance

Under current rules adopted by the Commission pursuant to Section 214 of the Act, domestic providers of traditional telephone services planning to exit the market must first request authority to do so from the Commission and notify consumers who will be affected by the discontinuance. Through enforcement of this requirement, the Commission provides an essential protection to consumers who might otherwise unexpectedly find themselves without telephone service. The Commission now seeks comment as to whether this requirement should be extended to broadband Internet access service providers through the exercise of its Title I ancillary jurisdiction. Specifically, the Commission asks whether the multiplicity and availability of broadband Internet access service providers mitigates the need for such a requirement or, rather, whether the need for such a requirement grows

stronger as consumers become more dependent upon broadband Internet access services.

As competition in the telecommunications marketplace has grown, so too, has the need for proper notification by a carrier prior to exiting the market. As carriers enter the marketplace, others will invariably be forced out and leave. The Ohio Commission presently uses the notice required of domestic providers of traditional telephone services prior to disconnection as a means of monitoring the telecommunications marketplace. Often a Section 214 filing is the first indication to the Ohio Commission that a service provider is planning to exit the market. The Section 214 filing triggers an inquiry into how consumers of the exiting service provider will be notified of the discontinuance and migrated to an alternative service provider. The Section 214 discontinuance requirements provide the Ohio Commission a valuable tool to use to ensure that no Ohio telephone customer suddenly and without warning finds him or herself without telephone service. Since consumers of broadband Internet access services, specifically consumers of VoIP services, will likely turn to the Ohio Commission when service problems arise, the Ohio Commission believes that extending the requirements of Section 214 to broadband Internet access service providers offering VoIP-based telephone service is important in allowing the Ohio Commission to address the needs of all Ohio consumers of voice communications services, regardless of the technology being used.

With VoIP-based telephone service being marketed as a substitute for telephone service, more and more consumers will depend upon it in the same way that they have historically depended upon their traditional telephone services. One protection, which is vital to consumers maintaining continuous, uninterrupted voice communications service, is the Section 214 notice requirement. When a provider of VoIP-based telephone service plans to discontinue service, it is no less urgent for consumers of its service than it is for consumers of traditional telephone services to receive notice prior to such discontinuance as well as an opportunity to secure service with an alternative provider before losing service. Therefore, the Ohio Commission believes that consumers of VoIP-based telephone service, just as consumers of traditional telephone services, should receive notification from their service provider prior to discontinuance of service by that provider. To do otherwise, would leave VoIP-based telephone service consumers vulnerable to a service interruption without prior notification or an opportunity to make alternative service arrangements. Therefore, for the same policy reasons that justify requiring notice of traditional telephone service providers, the Ohio Commission recommends that the Commission exercise its Title I ancillary jurisdiction to extend the Section 214 notice requirements requirement to broadband providers of VoIP-based telephone service.

The dependence of the VoIP-based telephone service provider on the underlying facilities provider cannot be overlooked when considering the

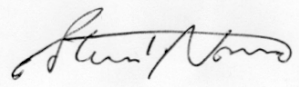
issue of Section 214 notice requirements. Often, the provider of the facilities, *i.e.*, the broadband connection over which the VoIP-based telephone service is carried can be, and often is, not the same entity as the provider of the VoIP-based telephone service. In fact, the provider of the broadband facilities may not even be aware that some portion of the traffic from a customer is VoIP traffic. However, the discontinuance of the broadband service severs the service of a VoIP-based telephone service consumer just as effectively as the discontinuance of the VoIP service itself. Therefore, in order to truly extend the consumer protection of the Section 214 notice requirements to all VoIP-based telephone service consumers, the Commission may wish to extend the Section 214 notice requirements to all providers of broadband Internet access service.

CONCLUSION

The Ohio Commission applauds the Commission's initiative in addressing the issue of consumer protections for broadband Internet access service consumers and appreciates the opportunity to provide comments to the Commission for consideration. In the opinion of the Ohio Commission, broadband Internet access services, especially VoIP-based telephone service, require certain consumer protections due to the nature of the service as well as the expectations created in the minds of consumers based on the manner in which such services are marketed. Subject to the outcome of the

jurisdictional disputes concerning VoIP, the Ohio Commission encourages the Commission to adopt NARUC's functional approach to the division of responsibility between the Commission and the States in enforcing broadband Internet access service consumer protections. Only through the active involvement of the States will any consumer protection regulations adopted by the Commission be most effectively enforced. Therefore, the Ohio Commission strongly encourages the Commission to adopt for broadband Internet access service provider, especially VoIP-based telephone service providers, consumer protections in the areas of CPNI, slamming, truth-in-billing and Section 214 discontinuance similar to those already applied to providers of traditional telephone services and to actively involve the States in their enforcement.

Respectfully submitted,



Steven T. Nourse
Principal Assistant Attorney General
Public Utilities Section
180 E. Broad Street, 9th Floor
Columbus, OH 43215-3793
(614) 466.4396
Fax: (614) 644.8764

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