

Before The  
Federal Communications Commission  
Washington, D.C. 20554

In the matter of

Comment Sought on Transition from  
Circuit-Switched Network to All-IP  
Network –  
Comments -- NBP Public Notice #25

GN Docket Nos. 09-47, 09-51, 09-  
137

**COMMENTS OF  
THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
AND THE PEOPLE OF THE STATE OF CALIFORNIA  
Comments -- NBP Public Notice #25**

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The California Public Utilities Commission and the People of the State of California (CPUC or California) respectfully submit these comments in response to the Federal Communications Commission’s (FCC or Commission) Public Notice released December 1, 2009. The FCC seeks comments “to set the stage for the Commission to consider whether to issue a Notice of Inquiry (NOI) relating to the appropriate policy framework to facilitate and respond to the market-led transition in technology and services, from a circuit-switched [Public Switched Telephone Network] PSTN system to an IP-based communications world.”<sup>1</sup> The Commission invites comments that may help it “understand which policies and regulatory structures may facilitate, and which may hinder, the efficient migration to an all IP world.”<sup>2</sup> The FCC also asks for “comment on what policy areas should be understood in considering how best to prepare for the transition from the circuit-switched to the IP-based communications world.”<sup>3</sup>

In these Comments, the CPUC makes no explicit policy recommendations and instead concentrates on identifying issues that should be addressed by an NOI.

## **I. OVERARCHING ISSUES**

The transition from a circuit-switched world to an all IP-based world raises numerous policy issues. However, the issues and the responses will vary depending on the answers to some key policy questions. These overarching policy

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<sup>1</sup> *Comment Sought on Transition from Circuit-Switched Network to All-IP Network*, NBP Public Notice # 25, GN Docket Nos. 09-47, 09-51, 09-137, rel. December 1, 2009 (NOI), p. 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

questions are the following: 1) what communications services, if any, should be deemed “essential services” in an IP- based world; 2) what is the best regulatory scheme to govern provision of IP-based communications; and 3) what should be the States’ role in an all IP-based world? The answer to these overarching policy questions will help define what other policy issues need to be addressed and will impact how the various matters are resolved. However, some issues need to be addressed in an IP-based world, no matter who has jurisdiction over IP-based services, such as Carrier of Last Resort (COLR) obligations and back-up power issues.

## **II. SPECIFIC ISSUES**

California recommends, below, issues/questions to be raised in a further NOI on this matter. Our responses here are not meant to be a complete list of the issues that need to be addressed, but rather are intended to be a preliminary list of important matters that the CPUC has identified. Our response is focused on questions that address the future roles of the state and federal governments in the anticipated IP-based world.

### **A. Universal Service and Basic Voice Service**

Currently, universal provisioning of voice service is an existing important national and state policy. However, the transition to an all IP-based world requires a relook at how universal service is defined.

- Should government continue to define/treat voice service as an essential service to be provided to all? Should IP- providers of voice service be required to offer all the existing elements of basic local service<sup>4</sup>? Should IP providers of voice service be required to offer stand alone voice service?
- California has its own definition of “basic service” which must be provided by all local exchange carriers and carriers of last resort operating in California.<sup>5</sup> Should States retain authority to define “basic service” when voice services migrate to IP?
- Should broadband services be defined/ treated as essential services?
- Should the Federal government redefine basic service for purposes of provisioning IP-based voice and Internet Access in the context of universal service support? Should that definition continue to be a floor (minimum amount of services that must be provided in order to qualify for universal service support)?
- In an IP-based world will there be a need for one or more federal Universal Service Fund (USF) funding mechanisms? How should those programs work with state funding mechanisms?
- Currently Section 254 (b)(2) of the Communications Act of 1934 as amended (Act), requires the FCC to base policies for the preservation and

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<sup>4</sup> See 47 C.F.R. 501 (a).

<sup>5</sup> See CPUC D.96-10-066, Appendix B, 68 CPUC 2d 524.

advancement of universal service on the principle, among others, that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.”<sup>6</sup> What is the best mechanism(s) to ensure that this principle is met? Should broadband Internet access service be subsidized via the federal USF?

- In an IP-based world, can IP voice be distinguished from the broadband service that enables it for purposes of universal service funding?
- Many states have their own universal service programs and many of the programs provide support for services beyond what the current federal universal service programs provide. For example, California has a Deaf and Disabled Telecommunications Program (DDTP) that provides qualified disabled individuals with equipment on a loan basis to enable their access to the PSTN. If the federal government preempts state jurisdiction over IP services, should states be authorized to continue or to establish state universal service programs? If so, what would be the best method for determining contributions from IP services to state funds?
- In an IP-based world, what are the best ways to collect funding for state and federal USF mechanisms? How will the FCC best make use of state commissions and their traditional rate making and universal service functions?

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<sup>6</sup> 47 U.S.C. 254(b) (2).

## **B. COLR Obligations**

Today COLR obligations are mostly borne by incumbent local exchange carriers (LEC).<sup>7</sup> These obligations ensure that all persons have access to voice telecommunications service. The question of whether and how to guarantee access to IP voice service, and possibly to broadband Internet access service, to everyone must be resolved as we transition to an IP world.

- In an all-IP world, should the government continue to guarantee that all persons have access to at least one facilities-based voice service provider?
- Is COLR status the only viable method to guarantee voice service availability in all areas of a State?
- Should COLR obligations continue to be a state responsibility?
- Given multiple facilities -based providers offering IP-based voice services into a home, who should bear the COLR responsibilities?
- Should all facilities-based providers that receive support from federal or state universal service programs be subject to COLR obligations?
- Should reverse auctions be the basis for establishing COLRs? Should COLR designation be given to a single service provider in a geographic region based on which service provider offers the lowest rate for a preset minimal level of service?

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<sup>7</sup> In California, a few other carriers besides incumbent LECs have qualified to be COLRs.

- What should be the criteria for determining the fitness of a COLR? Should the states or the federal government determine the parameters of such an auction process? Who shall decide the minimal level of service and other COLR obligations?
- On what basis might common carrier obligations, if they are to be retained for some entities, be carved out in an all IP-based communications world?

### **C. Interconnection**

The entrance of IP-enabled voice and data providers into the communications market implicates many issues pertaining to interconnection. Changes to the current interconnection rules are necessary to ensure continued interconnection and a level playing field among all facilities-based providers.

- Should some or all of the general duties required of telecommunications carriers by Section 251(a) and (c) of the Act be expanded to include all facilities based providers of IP-based services?
- Should any or all facilities-based IP enabled providers be required to provide resale and unbundled elements similar to LEC requirements under Section 251(b)?
- Should the Sec. 251(f) (1) exemption for certain rural carriers be eliminated? Should this be a matter to be determined at the state level as currently provided?

- Should States retain their role in the interconnection regime established in Sections 251 and 252 of the Act in an all IP-based environment? Should IP service providers seeking interconnection in a state be subject to the arbitration authority of States to resolve their interconnection disputes?

#### **D. Intercarrier Compensation (ICC)**

The current federal intercarrier compensation scheme is in need of reform. Such reform should address compensation for traffic sent to, or received from, an Internet Service Provider. The FCC has received numerous comments on access charge reform, including special access charge reform. We do not raise any new questions here. We again urge the Commission to issue a proposed decision in these ongoing ICC proceedings as soon as possible.

#### **E. Emergency Services**

##### **1. Loss of Separately Powered PSTN Communication Network**

One of the key transition issues that must be addressed as the nation evolves to an IP-based world is the loss of a separately powered communications system. Unlike communications over the traditional PSTN, some IP-based services require a power supply from a customer's premise. A power outage is of particular concern because it could impede a customer's access to emergency services.

- Should there be a requirement that IP-voice providers provide back-up power at the customer premise? How would such a requirement be enforced?

- Alternately, would education of customers be adequate to address this issue?  
Who should be required to educate the customer?
- Should the states be allowed to require back-up power if there is no federal mandate, and be allowed to set the duration for back-up power to meet each State's individual, unique circumstances?
- Should there also be comparable back-up power requirements on the facility provider side -- so that not only the end-user customer is assured of back-up power but so too the service and application providers using the foundational broadband facility?

## **2. E-911**

The California designated entity to implement 9-1-1 has a central role in ensuring that all residents have reliable and free access to 911. Currently, the California PUC has jurisdiction to regulate rates of 9-1-1 data base intrastate access services. If state jurisdiction over IP is pre-empted, then the following questions arise:

- Who should establish and enforce E 9-1-1 reliability standards for IP-based service providers?
- Should states continue to have the authority to require tariffs and establish rate levels for the transport, switching and delivery of E9-1-1 voice and data to the Public Switched Answering Points (PSAPs) in an all IP-based world?

- In the event that state jurisdiction over IP services or providers is preempted, should states continue to regulate the rates, access and use of 9-1-1 data bases that contain confidential, unpublished information?

## **F. Service Quality**

Service quality is obviously an important matter for customers of communications providers. Currently states have jurisdiction over the quality of voice service provided by LECs, and the “terms and conditions” of wireless service.

- Should there continue to be regulation of service quality? If so, should regulations be established at the federal or state level? If federal, given their proximity to subscribers, should states enforce federal service quality regulations?
- What carrier reporting requirements are necessary to maintain effective regulatory oversight of service quality?
- When IP-based voice service is utilizing facilities provided by another service provider, which provider should be responsible to remedy poor call quality and to report outages? Are states the most logical entity to resolve any resulting disputes? And where should providers report this information (FCC, State commissions or both)?

- Should states have authority to establish and enforce retail service quality and reliability standards?
- If service quality reporting becomes an exclusively federal responsibility, how could states have access to that data in a timely way? Should states have authority to track and report on outages of service providers? Should the public have access to the reports?

## **G. Consumer Protection**

### **1. State and Federal Roles**

State commissions have historically handled consumer protection issues involving the provision of traditional wireline service offered over the PSTN. In 1993, Congress also reserved to the states jurisdiction over the terms and conditions of wireless service.<sup>8</sup>

- How will State consumer protection laws apply in an all IP world?
- Should consumers have a single place in their State to register and resolve complaints and receive individual attention for IP-based services?
- Should Federal standards provide a useful complement to State actions? Should consumers have to wait for federal rulemakings every time a new issue arise.
- States have frequently been first to provide consumer relief when novel issues emerged like cramming or modem hijacking, with

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<sup>8</sup> 47 USC 332, Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993.

flexibility to stop bad practices when the company considered penalties the “cost of doing business.” Should states continue to have the flexibility to address novel issues in an all-IP environment?

## **2. Business Failures and Mass Service Migrations**

The CPUC has established rules to govern how competitive local exchange carriers (CLECs) must treat customers when a carrier voluntarily exits the market or sells its business to another entity. These rules govern such matters as how soon the customer must be notified of the termination of service.

- In an all IP competitive world, is there need for regulations to govern this issue? Should this be matter to be addressed in the contract between the provider and the subscriber?
- If there is a need for such regulation, should this matter continue to be a state consumer protection responsibility?

## **H. Directory Assistance & Listings**

Provision of directory assistance and white page telephone books are required elements of basic service in California for all ILECs today. However public listings of wireless telephone numbers are expressly prohibited unless a subscriber has given express consent to the inclusion of the subscriber’s telephone number.

- Is there a need for directory assistance or listing obligations in an all IP world?

- If yes, should all VoIP communications providers be required to provide directory assistance or listings of telephone numbers?
- Will States have authority to enforce existing directory, privacy and listing requirements when all providers, including ILECs, migrate to IP-based technologies?

### **I. Numbering Administration**

Presently, pursuant to the Act, the FCC has delegated authority to the states to implement new area codes and to assist in monitoring industry use of numbering resources.<sup>9</sup>

- What sort of numbering plan should exist in an all IP world and should states continue to have a role in administering the numbering plan if there are no state jurisdiction enforcement powers?
- If the states are preempted from exercising jurisdiction over VoIP services, should states retain authority to implement new area codes and monitor use of numbering resources? Who should have enforcement powers over carriers regarding their number use?

### **III. CONCLUSION**

The CPUC appreciates this opportunity to help fashion a further NOI on this very important matter. These issues are obviously of utmost importance to the CPUC and to the consumers in California. We look forward to continuing to work with the FCC as partners in fashioning the appropriate regulatory structure to

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<sup>9</sup> See 47 U.S.C. 251(e)(1).

guide the transition to an all IP-enabled communications future. Together we can ensure that the new paradigm facilitates the transition, encourages competition, promotes service quality, ensures strong enforcement of necessary regulations, and provides the consumer with the knowledge and tools essential to navigate in this new world.

Respectfully submitted,

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