

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of:)	
)	
International Comparison and Consumer)	GN Docket No. 09-47
Survey Requirements in the Broadband)	
Data Improvement Act)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Inquiry Concerning Deployment of)	GN Docket No. 09-137
Advanced Telecommunications Capability)	
to All Americans in a Reasonable and)	
Timely Fashion, and Possible Steps to)	
Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications Act)	
of 1996, as Amended by the Broadband Data)	
Improvement Act)	

**COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC.
-- NBP PUBLIC NOTICE # 25**

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I. INTRODUCTION AND SUMMARY

Qwest Communications International Inc. (Qwest) submits these comments in accord with the Federal Communications Commission's *Public Notice* in the above-referenced dockets.¹ The Commission already has a mature, well-developed record in regard to the transition to an all-IP network which is actually ripe for an imminent ruling, or was ripe under the prior Commission administration. Qwest is cognizant of, and respects, the Commission's desire to make its own independent evaluation on these issues, but the Commission need not issue a *Notice of Inquiry (NOI)* as the vehicle for this evaluation. There is a lot of valuable information in the IP-enabled Services docket, and most of it is still pertinent. The Commission should

¹ *Public Notice*, GN Docket Nos. 09-47, 09-51, and 09-137 "Comment Sought on Transition from Circuit-Switched Network to All-IP Network," NBP Public Notice #25, DA 09-2517 (Dec. 1, 2009).

utilize this record, perhaps with an opportunity for parties to refresh the record, to render determinations on these vital issues pertaining to IP-enabled services. In fact, many, if not all, of the questions the Commission poses in this Public Notice have been addressed in the IP-enabled Services docket.

The Commission should not tether determinations as to IP-enabled services issues to its National Broadband Plan (NBP) because that will mire the NBP in issues that have occupied the Commission for over five years. The Commission should finalize and implement its NBP and address the IP-enabled services issues on a separate track.

II. THE COMMISSION NEED NOT FORMULATE A *NOI* IN REGARD TO IP-ENABLED SERVICES

A. The Commission Has Developed a Robust and Comprehensive Record in Regard to IP-enabled Services

The Commission does not need to, nor should it, issue an NOI relating “to the appropriate policy framework to facilitate and respond to the market-led transition in technology and services, from the circuit switched PSTN system to an IP-based system.”² The Commission already has a well-developed record in the 2004 proceeding it initiated to address IP-enabled services.³ In fact, the record elicited in that proceeding is arguably ripe for the Commission to issue an order, but the Commission may want to provide commenters an opportunity to refresh the record. There is no need, however, to enlist a “start from scratch” approach that a Notice of Inquiry would entail.

The record elicited pursuant to the *IP-Enabled Services NPRM* addresses the issues the Commission suggests in the *Public Notice* and more. The Commission in 2004 was quite

² *Id.* at 2.

³ *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004) (*IP-Enabled Services NPRM*).

cognizant that it was on the threshold of “a profound transformation of the telecommunications marketplace, as the circuit switching technology of yesteryear is rapidly giving way to IP-based communications.”⁴ In its Comments on the *IP-Enabled Services NPRM*, Qwest argued for continued deregulation of true IP-enabled services,⁵ allowing only for the “possibility of limited federal regulation where demonstrably necessary to advance the critical ‘social policy’ objectives reflected in the Act.”⁶ Qwest contended that only such an approach would provide the correct investment incentives.⁷ Based on statutory definitions and Commission precedent, we then posited that all IP-enabled services should be classified as information services.⁸ And the terms of the Act and the nature of the IP-enabled services counseled for exclusive federal jurisdiction.⁹

Qwest also commented on more granular regulatory concerns by stating that the Commission should exercise its ancillary jurisdiction to apply regulations to IP-enabled services and applications but only upon a demonstrable showing of necessity to achieve an important objective under the Act.¹⁰ On a practical basis, this argued for not applying common carrier regulation to IP-enabled services, including IP voice. But IP-enabled services that traverse the PSTN should be subject to intercarrier compensation obligations irrespective of whether the traffic originated on the PSTN, on an IP network, or on a cable network. Qwest also supported

⁴ Qwest 2004 Comments, WC Docket No. 04-36, filed May 28, 2004 at 1, *quoting*, Separate Statement of Commissioner Kathleen Q. Abernathy, IP-Enabled Services, WC Docket No. 04-36, FCC 04-28 (2004) (Qwest 2004 Comments).

⁵ True IP-enabled services would not encompass “IP in the middle” services, *i.e.*, services that originate and terminate on the PSTN but at some point in between are routed over IP networks.

⁶ Qwest 2004 Comments at 4.

⁷ *Id.* at 5.

⁸ *Id.* at 15.

⁹ *Id.* at 25-36.

¹⁰ *Id.* at 36.

the principle that the “cost of the PSTN should be borne equitably among those that use it in similar ways.”¹¹ But true IP-enabled services should be allowed to avoid access charges through invocation of the ESP exemption. Qwest then proceeded to expound on the proper regulatory treatment for 911/E11,¹² disability access,¹³ universal service contributions,¹⁴ and CALEA.¹⁵

In addition to its Comments at the time, Qwest also joined with its fellow RBOCs (BellSouth, SBC and Verizon) in generating a comprehensive report on the state of competition in the VoIP market.¹⁶ The report examined competitive ability, usage and growth of IP voice services, the economics of providing IP voice, and quality/functionality issues.

In July, 2004, Qwest reiterated and reinforced the Comments it had made on IP-enabled services in May, 2004.¹⁷ Specifically, Qwest identified “overwhelming” support for the proposition that IP-enabled services are information services, and that state regulation of IP-enabled services should be preempted.¹⁸ Qwest also urged the Commission to reject attempts at backdoor regulation via regulation of the underlying transmission component of IP-enabled

¹¹ *Id.* at 41.

¹² *Id.* at 42-44.

¹³ *Id.* at 44-46.

¹⁴ *Id.* at 46-47.

¹⁵ *Id.* at 47-50. As noted below, each of these issues were subsequently addressed by the Commission, at least on an interim basis.

¹⁶ See BellSouth, Qwest, SBC and Verizon, *Competition in the Provision of Voice Over IP and Other IP-Enabled Services*, WC Docket No. 04-36, filed May 28, 2004.

¹⁷ Qwest 2004 Reply Comments, WC Docket No. 04-36, filed July 14, 2004 at 8-18 (Qwest 2004 Reply Comments).

¹⁸ *Id.* at 18-35.

services.¹⁹ We also advocated that the Commission should not limit the application of the ESP exemption to true IP-enabled services.²⁰

B. The Commission Has Been Making Decisions on IP-enabled Services

Concurrent with its examination of IP-enabled services pursuant to the *IP-Enabled Services NPRM*, the Commission has been making decisions, some interim in nature, on particular regulatory treatment of IP-enabled services or application. In fact, just one month before and one month after issuing the *IP-Enabled Services NPRM*, the Commission addressed the regulatory treatment of pulver.com's Free World Dialup service and AT&T's Phone-to-Phone IP Telephony Services.²¹ While recognizing that it had just initiated an omnibus proceeding to address IP-enabled services, the Commission felt it needed to clarify the application of its rules to these particular services because of the importance of the issue to the telecommunications industry. In particular, the Commission felt it needed to act given the differing interpretations of its rules by similarly situated carriers.²² The determination was made with no intent to prejudge the ultimate determination as to regulatory treatment in the IP-enabled Services rulemaking or the Intercarrier Compensation rulemaking proceeding.²³ The Commission found that pulver.com's Free World Dialup VoIP service was an unregulated

¹⁹ *Id.* at 35-41.

²⁰ *Id.* at 41-44.

²¹ See *In the Matter of 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 (2004) (*Pulver.com Order*).

²² See *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, Order, 19 FCC Rcd 7457, 7458 ¶ 2 (2004).

²³ *Id.*

information service,²⁴ but that AT&T's Phone-to-Phone VoIP service was a telecommunications service.²⁵

The Commission has also made interim determinations on other issues pertaining to IP-enabled services and applications. In 2007, the Wireline Competition Bureau granted a petition for declaratory ruling by Time Warner Cable affirming that wholesale telecommunications carriers are entitled to obtain interconnection with ILECs to provide wholesale telecommunications services to other service providers (including VoIP-based providers).²⁶

The Commission has also made determinations, some interim in nature, in regard to 911/E911,²⁷ CALEA,²⁸ Universal Service Fund,²⁹ CPNI,³⁰ disability access and TRS,³¹ Local

²⁴ *Pulver.com Order*, 19 FCC Rcd at 3312-13 ¶ 10.

²⁵ *See In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd at 7465-71 ¶¶ 12-19.

²⁶ *See In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513-14 ¶¶ 1-2 (2007).

²⁷ *See In the Matters of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005), *aff'd sub nom., Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

²⁸ *See In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; 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; 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; Consumer Protection in the Broadband Era*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005), *aff'd sub nom., Time Warner Telecom v. FCC*, 507 F.3d 205 (3d Cir. 2007).

²⁹ *See In the Matter of Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North*

Number Portability,³² Section 214 discontinuance,³³ Section 251 obligations (particularly interconnection),³⁴ and regulatory fees.³⁵ Some of these determinations are in accord with the principle, endorsed by Qwest, that the Commission should exercise its ancillary jurisdiction to apply regulations to IP-enabled services and applications only upon a demonstrable showing of necessity to achieve an important objective under the Act.³⁶ Thus, the Commission would not

American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; IP-Enabled Services, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006).

³⁰ See *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007), aff'd sub nom., Nat'l Cable & Telecom. Assoc. v. FCC, 555 F.3d 996 (D.C. Cir. 2009).*

³¹ See *In the Matters of IP-Enabled Services; Implementation of Sections 255 and 251(a)(2) of The Communications Act of 1934, as Enacted by The Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Report and Order, 22 FCC Rcd 11275 (2007).*

³² See *In the Matter of Telephone Number Requirements for IP-Enabled Services Providers; Local Number Portability Porting Interval and Validation Requirements; IP-Enabled Services; Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues; Final Regulatory Flexibility Analysis; Numbering Resource Optimization, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007), aff'd sub nom., National Telecoms. Coop. Ass'n v. FCC, 563 F.3d 536 (D.C. Cir. 2009).*

³³ See *In the Matter of IP-Enabled Services, Report and Order, 24 FCC Rcd 7801 (2009).*

³⁴ See *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers, Memorandum Opinion and Order, 22 FCC Rcd 3513 (2007).*

³⁵ See *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2007, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15712 (2007).*

need to revisit these determinations. Some other determinations were clearly intended to be interim in nature and the Commission may decide to revisit those determinations. But the Commission should certainly not start from a blank slate in regard to these determinations when there is a substantial record in regard to many of these determinations already in place.

C. The Commission's Recent Attempt at Comprehensive Intercarrier Compensation Reform Further Developed the Record on IP-enabled Services

In 2008, the Commission issued a *FNPRM* in an attempt to achieve comprehensive intercarrier compensation reform.³⁷ While that attempt did not succeed, it did provide carriers an opportunity to restate or reevaluate their positions on IP-enabled services and applications. Qwest addressed IP-enabled services in the context of the Commission's overarching ICC proposal. Qwest addressed the regulatory treatment of IP/PSTN traffic.³⁸ For this particular traffic, Qwest noted as a policy matter, it made no sense to treat IP/PSTN traffic any different than any other traffic on the PSTN. The best way for the Commission to facilitate this would be by either ruling that its ESP exemption does not apply to such traffic, or as Qwest proposed, forbearing from the application of the ESP exemption to this traffic.³⁹ The Commission, if it took the latter approach, would need to clarify that the location of the ISP POP would no longer

³⁶ Qwest 2004 Comments at 36.

³⁷ See *In the Matters of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Lifeline and Link Up, Universal Service Contribution Methodology, Numbering Resource Optimization, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic, IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475 (2008).

³⁸ IP/PSTN traffic is any service that "allows a customer to originate a communication on an IP network and terminate it on a circuit-switched network." Comments of Qwest Communications International Inc., WC Docket Nos. 05-337, *et al.*, filed Nov. 26, 2008 at 14, n. 18 (Qwest 2008 Comments).

³⁹ *Id.* at 14-17.

be relevant for purposes of determining jurisdiction. The Commission would also need to clarify how interconnection/access would work for IP/PSTN traffic.⁴⁰

D. If the Commission Feels It Needs Additional Information It Should Ask to Refresh the Record As Opposed to Using a *NOI*

At any rate, for purposes of these Comments, it is not necessary to get into the vagaries of particular regulatory issues. The Commission merely needs to be aware that it already had a record that addresses regulatory treatment of IP-enabled services, and to issue a *NOI* now would be to virtually eviscerate this valuable record. Qwest reiterates that not only have the pros and cons of various regulatory treatments been extensively discussed; so have the granular issues and implications that emanate from such treatment. The Commission could easily issue an order based on the record as it stands, because the core issues are legal and policy determinations. Given the ever-changing technology, the Commission may decide to refresh the record. But the Commission should ask carriers to focus on certain core issues that remain unresolved.

Qwest's review of the record has identified the following open issues (but this is by no means an exhaustive list):

- Definition (telecommunications service vs. information service);⁴¹
- Jurisdiction (federal vs. state);
- Section 251 obligations – primarily Section 251(c) interconnection;⁴²
- Access to numbers;⁴³
- Consumer protection issues (slamming and Truth in Billing);
- VoIP over Wireless (application of Title III to VoIP services carried over wireless connections);

⁴⁰ *Id.* at 18.

⁴¹ At least in regard to those services it has not already evaluated, if it decides to adhere to those determinations it has already issued.

⁴² These obligations are intrinsically tied to definitional and jurisdictional determinations.

⁴³ Qwest Communications Corporation, on Behalf of its IP-Enabled Service Operations, Petition for Limited Waiver, CC Docket No. 99-200, filed Mar. 29, 2005.

- VoIP over Cable (application of Title VI to VoIP services carried over cable connections).

The Commission may decide to revisit some of the interim determinations it made in regard to IP-enabled services and applications and the application of certain regulatory mandates to said services and applications. If this is the case, the Commission should also indicate those determinations it may revisit so that parties may comment accordingly.

III. THE COMMISSION SHOULD NOT LET IP-ENABLED SERVICES ISSUES DELAY OR IMPEDE ITS DEVELOPMENT OF ITS NATIONAL BROADBAND PLAN

The Commission should maintain issues pertaining to IP-enabled services and applications on a separate track to its National Broadband Plan. The Commission is under tight statutorily-mandated timeframes for implementation of the NBP. And while Qwest would appreciate prompt resolution of the issues pertaining to IP-enabled services, Qwest is also realistic that the scope and breadth of the IP-enabled services proceeding does not lend itself to the speedy construction and implementation of the NBP. If the NBP is a sleek, high-speed bullet train, the IP-enabled services' proceeding is a lumbering locomotive. It is vital that both reach their destination in a timely manner, but attaching IP-enabled services to the NBP will either impede the NBP or lead to a rush to judgment on IP-enabled services issues. And while there are areas of overlap between the NBP and the IP-enabled services proceeding, the NBP's focus is to speed the deployment of broadband to all areas. The issues surrounding IP-enabled services relate to the eclipse of the PSTN and ascent of IP networks, and the regulatory and policy implications of such a transition. The Commission is still grappling with issues pertaining to the regulatory treatment of the PSTN; it would be impossible to resolve regulatory issues pertaining to IP-enabled services in the next few weeks or months.

Perhaps most importantly, if the NBP finally tackles all or some of the difficult issues necessary for intercarrier compensation reform, then determinations about IP-enabled services need to be made in the context of the altered ICC framework. As Qwest noted in regard to the Commission's last attempt at intercarrier compensation reform, any lack of clarity as to how the treatment of IP-enabled traffic fits within the context of a new compensation mechanism will simply perpetuate the opportunities for arbitrage and carrier disputes that plague the status quo.⁴⁴ The Commission should implement its NBP and any attempts at intercarrier compensation reform and then evaluate how IP-enabled services and applications fit within this framework.

IV. CONCLUSION

For the foregoing reasons, the Commission should address issues pertaining to IP-enabled services in the existing proceeding addressing said services. The Commission should also refrain from issuing a NOI on these issues but rely on the existing record, with an opportunity for commenters to refresh the record.

Respectfully submitted,

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⁴⁴ Qwest 2008 Comments at 14.

CERTIFICATE OF SERVICE

I, Eileen Kraus, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. -- NBP PUBLIC NOTICE # 25** to be: 1) filed with the FCC via its Electronic Comment Filing System in GN Docket Nos. 09-47, 09-51 and 09-137; and 2) served via e-mail on the FCC's duplicating contractor, Best Copy and Printing, Inc. at fcc@bcpiweb.com.

/s/Eileen Kraus

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