

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of:)
)
A National Broadband Plan for Our Future) GN Docket Nos. 09-47, 09-51, 09-137
)

Comments of USTelecom on NBP Public Notice # 25

On December 1, 2009, the Commission issued its twenty-fifth Public Notice seeking comment on specific issues related to its efforts to develop and deliver to Congress a Broadband Plan by February 17, 2010. In Public Notice #25,¹ the Commission explains that it is considering 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 the circuit switched PSTN system to an IP-based communications world.” In light of this, *Public Notice #25* asks for comments to identify the relevant policy questions that an NOI on this topic should raise in order to assist the Commission in considering how best to monitor and plan for this transition.

To some degree, the breadth of *Public Notice #25* encapsulates much of the inquiry previously teed up by the Commission in this proceeding—that is, what steps should the Commission take in its role as regulatory agency to facilitate the deployment of new technology

¹ *Comments Sought on Transition From Circuit-Switched Network to All-IP Network*, NBP Notice #25, GN Docket Nos. 09-47, 09-51, 09-137 (rel. Dec. 1, 2009) (“Public Notice #25”).

broadband networks. Indeed, the Commission asked the nearly identical question in its *IP-Enabled Services NPRM* where it stated that the Commission’s “aim in this proceeding is to facilitate this transition [to IP-enabled services], relying wherever possible on competition and applying discrete regulatory requirements only where such requirements are necessary to fulfill important policy objectives.”² Indeed, in that NPRM, the Commission proceeded to identify certain specific aspects of the existing regulatory framework-- including provisions relating to disability access, consumer protection, emergency 911 service, law enforcement, and privacy—that it expected would continue to have relevance as communications migrates to IP-based networks.³ The Commission emphasized that other questions, particularly those involving traditional economic regulation, “would start from the premise that IP-enabled services are minimally regulated.”⁴

In the five years since the Commission initiated the *IP-Enabled Services* proceeding, the deployment of IP-based networks has increased exponentially. According to Cisco, from 2005 to 2009, North American IP traffic doubled from 917 Petabytes to 3.666 Exabytes per month, a 41% compounded annual growth rate. Cisco projects that North American IP traffic will continue to grow at a compounded annual growth rate of 38 to 39% from 2009 through 2013, to 13.4 Exabytes per month, driven predominantly by growth of IP video.⁵ The transition to IP-

² *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36 (FCC 04-28 rel. March 10, 2004) at para. 5.

³ *Id.*

⁴ *Id.*

⁵ 2005 (North America): Cisco Systems, Inc., *Global IP Traffic Forecast and Methodology, 2006-2011* (updated January 14, 2008) at p. 3. 2009 – 2013 (North America and the United States and Canada separately): Cisco Systems Inc., *Cisco Visual Networking Index Forecast and Methodology 2008-2013* (June 9, 2009) at p. 4 and *Visual Networking Index Forecast Widget* available at http://www.cisco.com/en/US/netsol/ns827/networking_solutions_sub_solution.html (visited December 16, 2009). The United States generates approximately 88% of North American IP traffic.

based networks is well underway and has taken place *in spite of* a great deal of uncertainty created by the lack of clear declarations by the Commission as to the rules applicable to IP-based traffic. In particular, many of the issues identified by the Commission in the *IP-Enabled Services NPRM* as likely having continued relevance for IP-based networks – including inter-carrier compensation, universal service, emergency and disability access – remain the subject of uncertainty and, in some cases, wasteful disputes.

Nonetheless, and despite the increasing rate of deployment of IP-based networks, the Commission must take care not to make policy under the mistaken presumption that such technology will completely replace circuit-switched networks anytime soon. Especially in lower-density, higher-cost areas of the country, the reliance on the existing PSTN network will continue to be the most economical wireline network technology for delivering both voice and broadband services to consumers. Incumbent local exchange carriers are continuing to invest billions of dollars both to upgrade the ability of existing networks to deliver faster and faster broadband and to extend the reach of these networks to the most costly areas to deploy. The Commission must, accordingly, recognize that policies that ignore the importance of the PSTN or undermine carriers' ability to maintain and upgrade these networks are counter-productive to the goal of universal broadband service.

With these points in mind, USTelecom responds to the specific questions posed by *Public Notice #25* by identifying just a few of the regulatory issues implicated by the transition to IP-based services. As emphasized by the Commission in the *IP-Enabled Services NPRM*, the rise of IP-based networks, not to mention other competitive networks and application-based services, has dramatically increased the competitiveness of the communications landscape. As a result, that NPRM got it right when it stated that the Commission's aim should be to "rely[] whenever

possible on competition and apply[] discrete regulatory requirements only where such requirements are necessary to fulfill important policy objectives.”⁶ This guiding principle should apply to all networks. Nonetheless, there are policies that promote public safety or consumer protection that will continue to be relevant.

Inter-carrier Compensation and Universal Service: At the risk of sounding like a broken record (or perhaps more appropriately in this context, a broken MP3 player), the Commission’s failure to reform inter-carrier compensation and universal service regimes designed for a switched-circuit world continue to act as a drag on investment in and deployment of broadband networks. Tremendous amounts of resources are currently being spent in disputes over ambiguities in the Commission’s existing rules and schemes to game the anachronistic inter-carrier compensation scheme that prices similar functions very differently. Moreover, the current universal service support system is both unsustainable and fails, on both the contribution and distribution sides, to adequately account for the growing importance of broadband networks.

The Commission must take real steps to reform the current inter-carrier compensation and universal service regimes in order to ensure efficient investment incentives for broadband networks generally. Of course, such reform need not wait for the issuance of another Notice of Inquiry, as suggested by *Public Notice #25*. The Commission already has an enormous record on these issues and broad support has been developed around the outlines of what steps the Commission should take. The recent filing by several mid-size ILECs, referred to as the Broadband Now Plan, is the most recent proposal advocating many of these consensus steps. The Commission should move quickly to take on inter-carrier compensation and universal

⁶ *IP-Enabled Services NPRM* at para 5.

service as a critical part of facilitating the deployment of broadband, via whatever technology, to all Americans.

Consumer Protection: Basic consumer protection and privacy rules should not be dependant upon the technology utilized by a particular network. Nonetheless, IP-based networks present some new challenges directly the result of the capabilities of IP technology.

Public Safety: As IP-based services become more and more common substitutes for switched-voice services, it is imperative that fundamental public safety obligations, such as E911 service, be established. The Commission has taken steps in this regard, at least with respect to inter-connected voice-over-IP-services, but further action may still be necessary to ensure that consumers have access to emergency services. Similarly, the Commission should inquire as to appropriate actions to ensure law enforcement access for authorized wiretapping purposes.

Disability Access: Similarly, the Commission should take reasonable steps to ensure access to these new technologies by the disabilities community. Disability access should apply equally to similar services, irrespective of the technology used.

Regulatory Jurisdiction: As the Commission pointed out in the *IP-Enabled Services NPRM*, IP-based networks in which packets are “routed across a global network with multiple access points defy jurisdictional boundaries.”⁷ The Commission needs to provide greater clarity concerning regulatory authority over such networks and traffic. It should be pointed out in this context that the determination as to jurisdictional authority over IP traffic is not determinative of the rules that should therefore be applied. For example, a determination as to which regulatory agency or agencies have authority to set the rules for inter-compensation for IP traffic does not answer the question of what inter-carrier compensation rates should be applied to any particular traffic.

⁷ *IP-Enabled Services NPRM* at para 4.

As the Commission recognized in the IP-Enabled Services NPRM, while economic regulation should be kept at a minimum, clarity and a level playing field for these types of public interest rules will remain appropriate as networks transition to IP-based technologies.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

A handwritten signature in blue ink that reads "Jonathan Banks". The signature is written in a cursive style.

By: _____

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December 22, 2009