

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Proceeding on Motion of the Commission
To Examine Issues Related to the
Transition To Intermodal Competition in
the Provision Of Telecommunications
Services

Case No. 05-C-0616

**COMMENTS OF
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August 15, 2005

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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E911 Requirements for IP-Enabled Service Providers)	WC Docket No. 05-196
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COMMENTS OF AT&T CORP.

AT&T Corp. (“AT&T”) respectfully submits these comments on the Commission’s Notice of Proposed Rulemaking regarding E911 requirements for IP-enabled service providers.¹

SUMMARY

Concurrently with the release of this *NPRM*, the Commission adopted its *IP-Enabled Services Order*, imposing extensive and complex new requirements for providers of interconnected Voice over Internet Protocol (“VoIP”) services to extend enhanced 911 (“E911”) capabilities to their customers, no later than November 28, 2005. *Id.* ¶¶ 36-37.² This *NPRM* proposes to modify and further extend some of these

¹ First Report and Order and Notice of Proposed Rulemaking, FCC 05-116, *In the Matters of IP-Enabled Services*, WC Docket No. 04-36 (“*Order*”), and *E911 Requirements For IP-Enabled Service Providers*, WC Docket No. 05-196 (“*NPRM*” or “*Notice*”), released June 3, 2005, published in 70 Fed. Reg. 37,273 and 37,307 (June 29, 2005).

² Interconnected VoIP service is defined for purposes of the *Order* as bearing the following characteristics: “(1) the service enables real-time, two way voice communications; (2) the service requires a broadband connection from the user’s location; (3) the service requires IP-compatible CPE; and (4) the service offering permits users generally to receive calls that originate on the PSTN and to terminate calls to the PSTN.” *Order* ¶ 24.

requirements, by requiring, among other things, automatic location identification (“ALI”) for transient users of interconnected VoIP services, possibly by as early as June 1, 2006. AT&T recognizes the need to update the E911 system to keep pace with technological changes and fully supports the Commission’s efforts in this regard. AT&T is concerned, however, that adoption of still additional E911 requirements at this time may impede the implementation of the requirements already imposed by the *Order*, which AT&T and the rest of the industry are now diligently working to implement. Also, AT&T believes that valuable lessons may be learned from implementation of these recently adopted E911 requirements that will facilitate their extension, as proposed in the *NPRM*. Accordingly, AT&T urges the Commission to not adopt any new regulations at this time, but rather to allow carriers to focus their energies and resources on meeting the November 28, 2005, date and to gain some experience in operating under the new requirements before modifying them or extending them. Nor is extension of these E911 requirements to IP-based services other than fully interconnected VoIP necessary or warranted.

AT&T fully supports the Commission’s initiative with respect to availability of E911 capability for persons with disabilities who use interconnected VoIP services and urges the Commission to oversee a task force with members of the industry and the disability community to ensure their access needs are met. AT&T fully recognizes the need to safeguard the privacy of customer location information but believes that existing regulations, marketplace forces and contractual arrangements between IP providers and their customers are sufficient to achieve this objective.

BACKGROUND

In its *IP-Enabled Services Order*, the Commission took substantial steps to extend the coverage of E911 capability. The new rules it adopted require, among other things, that an interconnected VoIP provider must transmit all 911 calls, as well as a call back number and the caller's "Registered Location" for each call, to the public safety answering point ("PSAP"), designated statewide default answering point, or appropriate local emergency authority that serves the caller's Registered Location. These calls must be routed via the dedicated Wireline E911 network, carry ANI and, if necessary, pseudo-ANI, and the Registered Location must be available from or through the ALI database. *Id.* ¶¶ 37, 42.³

The *Order* also requires providers of interconnected VoIP services to obtain location information from their customers. Specifically, prior to the initiation of service, interconnected VoIP providers must obtain from each customer, prior to the initiation of service, the physical location at which the service will first be utilized. Providers of interconnected VoIP services that can be utilized from more than one physical location must provide their end users one or more methods of updating information regarding the user's physical location. Any method utilized must allow an end user to update his or her Registered Location at will and in a timely manner, including at least one option that requires use only of the CPE necessary to access the interconnected VoIP service. *Id.* ¶ 46.

³ An interconnected VoIP provider need only provide such call back and location information as the PSAP, designated statewide default answering point, or appropriate local emergency authority is capable of receiving and utilizing. *Id.* ¶ 42.

The *Order* (¶¶ 48-49) also requires interconnected VoIP service providers to comply with detailed customer notification requirements, specifying when E911 service may not be available; to obtain from customers affirmative acknowledgement of such notification by customers; and to distribute various warning materials.⁴ Finally, the *Order* (¶ 50) requires service providers to file detailed verification of their compliance with these requirements with the Commission.

The *NPRM* (¶ 57) seeks comment on whether the Commission should require steps to reliably and automatically provide location information to public safety answering points (“PSAPs”) for portable interconnected VoIP services. As the *NPRM* notes, “one of the central customer benefits of portable interconnected VoIP services is a lack of geographic restrictions.” *Id.* Interconnected VoIP users may use their service on a “nomadic” basis, connecting to the PSTN from fixed locations other than their Registered Location, wherever a broadband connection is available; or on a wireless “mobile” basis, moving between addresses during a call. The lack of a geographically fixed location for either type of call presents obvious difficulties in reliably and automatically determining the location of the customer, *i.e.*, providing ALI for E911 purposes.

The *NPRM* poses a number of questions directed to this issue. Among them are: what particular method should be used to automatically track the location of a VoIP user and whether this capability should be required as soon as June 1, 2006 (¶ 57); whether the Commission should extend its rules to require E911 capability for services other than

⁴ By Public Notice DA 05-2085, released July 26, 2005, the Commission’s Enforcement Bureau announced that it would not seek to enforce the affirmative acknowledgement requirement for a 30-day period past the July 29, 2005, effective date, subject to carriers filing specified reports by August 10.

fully interconnected VoIP services, specifically to one-way services (*i.e.*, either inbound-only or outbound-only) and IP-based services that do not require a broadband connection (§ 58); whether performance standards should be adopted (and a host of subsidiary provisioning and application issues) (§ 59); whether additional reporting or customer notification requirements are needed (§ 60); whether additional customer privacy protections are needed (§ 62), and how concerns for persons with disabilities should be addressed.

I. THE COMMISSION SHOULD NOT ADOPT ANY ADDITIONAL REQUIREMENTS UNTIL THE INDUSTRY GAINS EXPERIENCE IN IMPLEMENTING AND OPERATING UNDER THE RULES THAT BECOME EFFECTIVE ON NOVEMBER 28, 2005.

AT&T recognizes the need to extend E911 capability to a range of different IP-enabled applications to meet significant public safety concerns and it fully supports the Commission's efforts in this regard. Indeed, the benefits of IP-based E911 are likely to be substantial, and are expected to extend well beyond traditional wireline E911 capabilities. It is anticipated that individuals will be able to reach 911 emergency services from whatever peripheral device they are using -- including Blackberries and text messaging devices. It is also expected that IP technology will improve 911 accessibility for hearing-impaired and speech-impaired users. Furthermore, the integration of voice and data applications through VoIP promises to provide first responders with important real time data regarding the individual who placed a 911 call, or even details regarding the physical location from which such a call originated (*e.g.*, floor plans). Indeed, AT&T is exploring the possibility of these types of solutions.

However, two considerations militate against the imposition, at this time, of the new obligations described in the *NPRM*. First, the Commission has established an extremely ambitious date of November 28, 2005, for implementing the operational requirements of the *Order*.⁵ Many of the same resources necessary to carry out these requirements are also essential to analyzing and evaluating the additional requirements proposed in the *NPRM*. To even fully assess the viability of the Commission's new proposals in this short time-frame is not realistic and could threaten the industry's ability to meet the currently mandated November 28, 2005 date.

For example, many of the same AT&T research, technical and operations staff who are currently engaged in an intense effort to meet the November 28 deadline, have the subject matter expertise necessary to evaluate the new requirements discussed in the *NPRM* and simply cannot be available for both projects. Also, there would be substantial additional expense entailed in attempting to pursue both efforts simultaneously even if appropriate expertise could be found. Still further, it is not clear whether all of the various options the *NPRM* has proposed -- access jack inventory, wireless access point inventory, access point mapping and triangulation, HDTV signal triangulation and various GPS-based solutions -- are in a sufficiently advanced state of development to allow general implementation by the proposed June 1, 2006 date. *See id.* ¶ 57.

Moreover, it would be highly advisable to allow the industry to gain some experience in operationalizing the existing E911 requirements before the Commission imposes new ones. Issues are likely to arise that are currently unforeseen and will be evident only after November 2005, when the industry implements the operational

⁵ *See* 70 Fed. Reg. 37,273.

requirements of the June 3 *Order*. It is likely that the experience thus gained by the industry will help the Commission to make better decisions on exactly how to extend the general interconnected VoIP 911 requirements to nomadic or mobile users. It is also likely to result in a smoother, less costly and more user-friendly extension of E911 capabilities to the subset of interconnected VoIP customers who use it on a transient basis.

The Commission's prior experience in implementing E911 requirements for Commercial Mobile Radio Service ("CMRS") providers is instructive in this regard. After adopting what the Commission itself acknowledged was an "aggressive" deployment schedule,⁶ it found it necessary on two occasions to subsequently stay several of its requirements, and earlier this year, to grant yet additional waivers for requests to extend certain deadlines, including the year-end 2005 deadline requiring 95% penetration among subscribers of location capable handsets.⁷

The Commission and the courts have consistently recognized that actual experience is the best means for assessing the wisdom of a proposed course of action.⁸

⁶ *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 17 FCC Rcd. 14,841, ¶ 5 (2002).

⁷ *Id.* ¶ 2; *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 18 FCC Rcd. 20,987, ¶¶ 1, 3 (2003); *In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, 20 FCC Rcd. 7709, ¶ 2 (2005).

⁸ *See, e.g., In the Matter of Application By Qwest Communications International, Inc.*, 17 FCC Rcd. 26,303, ¶ 430 (2002); *In the Matter of Implementation of the Telecommunications Act of 1996*, 17 FCC Rcd. 14,860, ¶ 145 (2002); *In the Matter of 2002 Biennial Regulatory Review*, 18 FCC Rcd. 4726, 4750 (2003). Or as the courts have frequently observed: "[A] month of experience will be worth a year of hearings." *Syracuse Peace Council v. FCC*, 867 F.2d 654, 660 (D.C. Cir. 1989), *citing American Airlines, Inc. v. CAB*, 359 F.2d 624, 633 (D.C. Cir.) (*en banc*), *cert. denied*, 385 U.S. 843

AT&T urges the Commission to use the opportunity presented by the imminent implementation of the requirements in its June 3 *Order* for the industry to gain additional experience in the operation of the E911 system in conjunction with interconnected VoIP services before extending those requirements to transient use of the service, with its even greater complexity. In order to assure a more orderly, efficient transition and to preserve the Commission's scarce resources that would be expended in overseeing an unduly "aggressive" transition schedule, the Commission should defer the adoption of any additional rules at this time.⁹

II. E911 REQUIREMENTS SHOULD NOT BE EXPANDED BEYOND FULLY INTERCONNECTED VOIP SERVICES.

The *NPRM* (§ 58) seeks comment on whether the Commission should extend the E911 obligations it has imposed on providers of fully interconnected VoIP services to other VoIP services that are not fully interconnected. In particular, it asks whether these obligations should apply to the send-only, or receive-only (*i.e.*, one-way) VoIP services and tentatively concludes that they should.¹⁰ Also, it asks whether the E911 requirements

(1966).

⁹ The *NPRM* (§ 59) also seeks comment on several ancillary issues, such as whether it should adopt performance standards for updating Registered Location information; the appropriate requirements for interconnected VoIP services in geographic areas where PSAPs are not connected to a Selective Router; treatment of wireless broadband connections; additional customer acknowledgement requirements; carrier reporting requirements, and other operational and administrative issues. Action on many of these items would also be premature because resolution of all of these issues would similarly benefit from the experience gained in implementing the November 2005 requirements.

¹⁰ Specifically, the *NPRM* proposes that: "[A] provider of a VoIP service offering that permits users generally to receive calls that originate on the PSTN and separately makes available a different offering that permits users generally to terminate calls to the PSTN should be subject to the rules we adopt in today's *Order* if a user can combine those

should apply to other services, such as IP-based voice services that do not require a broadband connection.

AT&T believes that these proposals are ill-conceived and should be rejected. With respect to one-way calling, such applications (for example, inbound 8YY calling or outbound telemarketing calling) differ significantly from the “regular telephone” service with two-way capability that customers have become accustomed to associating with E911 service. Hence, there is no reasonable customer expectation that E911 capability will be available with such applications. This is a factor the *Order* (§ 23) deemed significant in determining whether to impose E911 obligations on a particular service. Moreover, VoIP providers have no reliable way of knowing the precise use that a customer may make of a particular service. Even if a customer purchases a service with inbound capability and a separate service with outbound capability from the same vendor, it is the customer, not the vendor who controls use of the service. The vendor would not necessarily know if and when the customer chose to combine these services in a particular application and if and when it chose to use them separately. The burden to provide E911 capability cannot reasonably be based on the VoIP provider when it does not have the information necessary to determine whether such capability is required. Indeed, the requirement becomes even more untenable in a multi-vendor environment -- which is now the rule, not the exception among business customers -- where no carrier necessarily knows a customer’s entire service inventory or its intended applications for the services they purchase.

separate offerings or can use them simultaneously or in immediate succession.”

The most rational approach is not to distinguish between inbound and outbound services, but rather to assign responsibility for E911 compliance to the carrier who provides a customer's local service at a particular location. It is that carrier who assigns the telephone number for a particular location and has the requisite customer, local service and E911 infrastructure information to assure the proper provision of the service. It would make no sense to place E911 obligations on a carrier who provided, for example, a stand-alone outbound (much less inbound) long distance calling service to a customer that obtained local service from another carrier. The E911 obligation naturally follows from the provision of the local service, not outbound or inbound long distance services. Neither is a replacement for a customer's local service. In both instances the customer must obtain local service separately and the imposition of E911 responsibility on any other party would be redundant and confusing.

Extending E911 requirements to services that do not require a broadband connection (*e.g.*, dial-up VoIP) is ill-advised for essentially this same reason. Such services invariably ride over local service that is E911 compliant and imposition of a separate narrowband obligation is unnecessary.

III. TO IMPLEMENT DISABILITY MEASURES IN ACCORDANCE WITH SECTION 255 OF THE ACT, THE COMMISSION SHOULD APPOINT A TASK FORCE THAT INCLUDES REPRESENTATIVES OF THE DISABILITY COMMUNITY AND AFFECTED SEGMENTS OF THE INDUSTRY.

The Commission asks whether persons with disabilities currently can use interconnected (and other) VoIP services to directly call a PSAP via a TTY, and seeks comment on whether "there are any steps that the Commission needs to take to ensure that people with disabilities who desire to use interconnected VoIP service obtain access

to E911 services.”¹¹ This objective comports with the mandate of Section 255 of the Communications Act (47 U.S.C. § 255) that manufacturers of telecommunications and customer premises equipment (“CPE”), and telecommunications carriers, ensure that their offerings are accessible to and usable by persons with disabilities “if readily achievable.”¹²

Currently, in many cases hearing and speech-impaired customers who use TTYs to call E911 PSAPs cannot reliably use interconnected VoIP services to place text relay calls that originate or terminate over the PSTN. This is primarily due to VoIP packet loss compensation methods that result in an unsatisfactory level of transmission for carriers to properly connect emergency calls, and for end users to provide emergency information.¹³

¹¹ *NPRM* ¶ 63. The *NPRM* also asks for comment on the basis of the Commission’s authority to impose any obligations that commenters propose. While Section 255, by its terms, imposes requirements only on manufacturers and providers of telecommunications services (not information service providers), the Commission has recognized that it has authority to impose the same accessibility requirements on information services under its ancillary Title I jurisdiction. See *Implementation of Sections 255 and 251 (a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996*, 16 FCC Rcd. 6417, ¶ 93 (1999) (“*Disability Access Order*”). The Commission’s assertion of ancillary jurisdiction over information services is well-settled, having been upheld by the Court of Appeals over twenty years ago. *Computer and Communications Indus. Ass’n. v. FCC*, 693 F.2d 198, 213 (D.C. Cir. 1982). Hence the Commission has ample authority to impose appropriate requirements to implement Section 255.

¹² If such access is not “readily achievable,” the equipment or service must be made “compatible” with peripherals or specialized CPE commonly used to allow access by persons with disabilities, if such compatibility is “readily achievable.” See 47 U.S.C. § 255(d). The term “readily achievable” means “easily accomplished and able to be carried out without much difficulty and expenses.” 47 C.F.R. §§ 6.3(g), 7.3(h). Moreover, application of the Section 255 criteria requires a case-by-case analysis of the offering in question. See generally *Disability Access Order* ¶¶ 43-70.

¹³ For example, in a TTY call originated call over the PSTN using Baudot or Turbocode® protocols, loss of a single packet in the PSTN-to-VoIP translation could render the dialed number and / or the caller’s typed message unintelligible. Similar, but less serious, distortion may also occur with the 300/1200/2400 bps ASCII protocol when

In some preliminary, geographically limited testing, AT&T has found VoIP-to-VoIP and PSTN-to-PSTN transmission accuracy to be satisfactory. However, VoIP-to-VoIP calls are still infrequent, and high volumes of VoIP-to-PSTN calling will continue for the foreseeable future. Hence, there is a critical need to resolve this technical issue.

Additionally, with present technology carriers are unable to assure that all E911 calls by unregistered callers using TTYs over VoIP will be routed automatically to the same PSAP as other E911 callers. This operational obstacle has already been recognized by the Commission in the context of relay calls. Caller ID information is not transmitted to relay centers on calls completed using VoIP, and communications assistants (“CAs”) at those centers must obtain emergency callers’ geographic locations from those end users. Moreover, relay centers lack access to the databases used to route other E911 traffic, and therefore must rely on alternate databases to locate a PSAP in the caller’s area. For these reasons, the Commission has waived until January, 2008 the requirement that TRS centers route VoIP emergency calls to the PSAP nearest the caller, but rather has allowed centers to route such calls to the “appropriate PSAP” reflected in their internal databases.¹⁴

the PSTN-to-VoIP translation is affected by packet loss. Most TTYs can communicate in ASCII, Baudot and Turbocode® protocols.

¹⁴ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 19 FCC Rcd. 12,475 (2004) (“2004 TRS Order”); *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 18 FCC Rcd. 4761 (2003) (waiver for Internet Protocol (“IP”) relay calls). For Video Relay Service (“VRS”), the current waiver for emergency call handling extends to January 1, 2006. See *2004 TRS Order*, 19 FCC Rcd. at 12,522, ¶¶ 117-118 (2004).

These technical and operational impediments to processing the large majority of TTY calls to PSAPs over VoIP preclude making such E911 calls “readily achievable” at this time, and require resolution on an industry-wide basis.¹⁵ Any proposed solution that is not sound from the start and adequately field tested (a process that is unavoidably time consuming) could be a serious and clearly unacceptable setback for both users and the industry. Accordingly, AT&T submits that the Commission should appoint a task force to investigate and address solutions to these issues. In addition to personnel from an organization with appropriate technical expertise, the task force should include representatives from the disability community and from affected segments of the industry to bring varied perspectives to the evaluation of these issues. The Commission should direct the task force to publicly report its findings by the June 1, 2006 date referenced in the *NPRM* (¶ 57), and thereafter at periodic intervals determined by the Commission in light of the initial report’s findings. This process is best calculated to allow a resolution of these matters in a manner that will best serve end users, carriers, and the public interest.¹⁶

Pending these solutions, however, TTY users can successfully use their equipment in conjunction with PSTN/wireline service to directly access PSAPs for emergency calling, or on a VoIP-to-VoIP basis where available, rather than through relay

¹⁵ The current TRS waiver for processing emergency calls placed over VoIP is subject to periodic progress reporting by carriers concerning the ability to process such traffic. *See 2004 TRS Order*, 19 FCC Rcd. at 12526, ¶ 140. AT&T notes that to date no entity that has filed such reports has indicated that there is any near term solution to these problems.

¹⁶ The task force described above can also address appropriate resolution of technical and other obstacles to making E911 service using VoIP accessible to persons with other forms of disabilities in addition to hearing and speech impairments.

centers. For the reasons described above, this procedure is a more reliable and faster means for those users to obtain any emergency assistance that they may require. Moreover, to better assure that TTY users are aware of this capability, the Commission should explicitly require relay providers to include instructions on that procedure in outreach programs they are obligated by Commission order to conduct,¹⁷ as well as in the mandatory notification on the introductory pages of their relay websites that the Commission has already required in its TRS proceedings.

IV. THE COMMISSION SHOULD NOT ADOPT ANY ADDITIONAL CONSUMER PRIVACY REGULATIONS AT THIS TIME.

The *NPRM* (¶ 62) notes that implementation of its new E911 rules will necessarily result in interconnected VoIP service providers maintaining a list of their customers' registered locations and asks whether it should adopt additional regulations to protect the privacy of such information. As the *Notice* recognizes (*id.* and *n.179*), the customer proprietary network information ("CPNI") provisions of Section 222 of the Act, 47 U.S.C. § 222, do not currently apply to interconnected VoIP service providers. AT&T urges the Commission to not extend these requirements beyond their current reach.

In determining whether to apply new regulations, the Commission must strike a balance between the need for additional consumer protection against the risk that overregulation may unduly burden service providers and stunt the growth of newly emerging services. Interconnected VoIP services are already subject to a broad array of federal and state consumer protection laws and there is no demonstrated need to add additional regulations for this particular type of information.

¹⁷ See *2004 TRS Order*, 19 FCC Rcd. at 12,512, ¶ 96.

Furthermore, there is intense and ever increasing competition in the marketplace for the provision of VoIP services. One public website lists 60 business and nearly 100 residential VoIP providers nationwide.¹⁸ The ready availability of numerous alternative vendors, provides a strong incentive for IP service providers to fulfill customers' expectations that their privacy will be protected. Any service provider who did not do so would be at great risk of losing in the marketplace. As Commissioner Abernathy observed in the context of Internet services, "the robustly competitive market for ISP services gives providers ample incentive to engage in consumer-friendly practices and punishes providers that fail to do so."¹⁹

Still further, many VoIP service providers, including AT&T, have strong privacy policies that govern their relationships with their customers. These policies are well-publicized and readily available to consumers on public websites. AT&T's privacy policy is publicly accessible (*see* <http://www.att.com/privacy>), is provided at the time of subscription as one of the terms and conditions under which VoIP Service is provided, and commits the Company to protect "customer identifiable" information which an individual or other customer reasonably expects to be kept private." AT&T, consistent with industry best practices, does not share customer identifiable information without customer consent. The policy defines "customer identifiable information" as "information that, when associated with an individual identifies that individual, for example, a customer's name, address, telephone number, and e-mail address." While

¹⁸ <http://www.voip-info.org>

¹⁹ Notice of Proposed Rulemaking, *Appropriate Framework for Broadband Access to the Internet over Wireless Facilities*, 17 FCC Rcd. 3019, 3070 (2002) (Separate statement of Commissioner Kathleen Q. Abernathy).

location information standing alone would not be “customer identifiable information,” records that would provide the history of a subscriber’s movements, when associated with a name or phone number, would be considered “customer identifiable information.” AT&T also has contractual provisions regarding privacy in its customer contracts for AT&T’s CallVantage Service, committing “always to respect [the customer’s] privacy” and providing a link to the AT&T Online Privacy Policy website for additional information.²⁰

These kinds of existing incentives to protect customer’s privacy have proven to be -- and should continue to be -- fully adequate to protect the privacy of interconnected VoIP services customers. AT&T urges the Commission to not adopt additional regulations unless and until experience shows they are needed.

²⁰ See AT&T CallVantage Service Subscriber Agreement, ¶ 4(a), available electronically at: <https://www.callvantage.att.com/cvterms>.

CONCLUSION

For the foregoing reasons, AT&T urges the Commission to not adopt, at this time, any of the new requirements proposed in the *NPRM*, but to actively pursue additional solutions for disabled users, and monitor industry experience in implementing the requirements already imposed by its *IP Enabled Services Order*, in order to allow the industry additional time to develop solutions to the issues presented in the *NPRM*.

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Introduction

In a fully competitive telecommunications market where consumers move freely among service providers to obtain the mix of services they want, market forces can be far more effective than regulation in ensuring that consumers receive quality services at competitive prices. This Commission has long been a national leader in ensuring that its regulatory policies are in balance with market conditions. To keep pace with the rapidly evolving market, the Commission, again, can trim unnecessary regulation of pricing and service quality, yet continue to promote public safety (*e.g.* E911 availability), facilitate consumer choice (*e.g.*, ensuring customers can change carriers efficiently; managing numbering resources; overseeing inter-carrier and inter-technology interconnection and traffic transfers), and protect market segments that, for whatever reasons, carriers do not otherwise wish to serve.

Going forward, the continued development of fully competitive telecommunications markets in New York will require a level of regulatory consistency that does not now exist. Providers offering services using wireline, cable, and wireless technology are already competing with one another to satisfy consumer demands for voice, video and data and this competition will only intensify over time. For reasons more historical [and political] than analytical, today each technology is regulated and taxed differently, resulting in *de facto* regulatory handicapping. In order to enable firms to provide New York consumers - both business and residence – innovative, high quality services at competitive prices, this very uneven playing field needs to be changed. All providers – regardless of the technology they use - should be afforded uniform, technology-indifferent opportunities to serve New York consumers and be subject to only

those minimal regulatory obligations necessary to protect consumer health and safety and that are not otherwise being met.

Achieving these objectives will require more than simply changing some of the Commission's existing rules. Much of the work that needs to be done is subject to federal jurisdiction. The Commission, however, still has an important role to play. It is vital that a state as large and important as New York continue to voice its views with the FCC on federal matters with New York implications. In those areas subject to state jurisdiction, and depending on its assessment of state law, it is possible, perhaps likely, that new legislation will be required to enable the Commission to impose a uniform framework across much of the industry, including cable telephony and wireless services providers.

Comments

I. THE NEW YORK TELECOMMUNICATIONS MARKET IS BECOMING INCREASINGLY COMPETITIVE.

This Commission has long preferred allowing market forces to produce affordable goods and services. As a result, New York has been rewarded with the earliest innovations in pricing and customer options.¹ In the nine years since the Commission's *Competition II* order,² breathtaking changes have occurred in the delivery of voice and data communications services. In the voice market, wireless providers have quickly

¹ As just one example, the first facilities-based competitive local exchange provider in modern history, Teleport, was established in New York City. Contrary to the whispered warnings of the supposed "dangers" that such an enterprise might pose for local competition, Teleport never jeopardized the quality or the affordability of local telephone service. And in the aftermath of the September 11, 2001, attacks, Teleport's facilities proved to be a valuable component of the public network.

² Case 94-C-0095, *Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, Opinion No. 96-13, *Opinion And Order Adopting Regulatory Framework*, issued May 22, 1996 ("*Competition II*").

seized pricing leadership and have forced landline long-distance carriers to abandon the decades-old practice of differentiating rates based upon the time of day that a call is placed or the distance between the calling and called parties. Largely exempt from carrier access charges, wireless carriers have been able to promote “free” long distance and blur the historic distinction between local and long-distance services.³ According to FCC statistics, wireless subscribership in New York State grew from 4.8 million in December 1999 to more than 10.8 million in December 2004, a growth of over 124%.⁴ The number of wireless subscribers now rivals the number of landline switched access lines in New York State (12.1 million as of December 2004).⁵ Nationally, by December 2004, wireless lines actually *exceeded* landline switched access lines.⁶

Cable television (“CATV”) companies are now rapidly entering the market to compete for voice communications customers, not so much as IXCs or CLECs but rather as purveyors of communications bundles of greater scope than IXCs or CLECs are currently able to offer. After years of steady investment in their portion of the communications infrastructure, CATV companies have largely completed the process of upgrading their networks to the 750 MHz platforms that can be used to provide not only

³ Landline interexchange carriers are subject to access charges on calls placed between local calling areas. By contrast, wireless calls between the same points are often not subject to access charges because the local calling areas of wireless carriers are Major Trading Areas (“MTAs”) which are geographically substantially larger than landline local calling areas. A wireless carrier’s cost of terminating calls within an MTA are substantially below the access charges an IXC pays to terminate the same call. This artificial cost advantage has helped wireless carriers rapidly gain customers and market shares.

⁴ *Local Telephone Competition: Status as of December 31, 2004*, Industry Analysis and Technology Division, Wireless Competition Bureau of the Federal Communications Division, dated July 2005 (“*2004 Competition Status Report*”), Table 13.

⁵ *Id.*, Table 6.

⁶ As of December 31, 2004, there were 177,946,979 end-user switched access lines and 181,105,135 wireless lines nationwide. *Id.*, Tables 6 and 13.

hundreds of channels of video entertainment but also high-speed Internet services and landline telephony.

Both Time Warner Cable (“Time Warner”) and Cablevision Systems Corporation (“Cablevision”) have established themselves as significant competitors in the enterprise market, and are now moving quickly into the residential market. Time Warner is deploying residential telephony in all 31 of its divisions, including its clusters in New York State, which includes service areas in New York City, Albany, Syracuse, Rochester, Binghamton, and elsewhere in New York State. By year end 2004, Time Warner Cable, which serves 11 million cable television subscribers nationwide, already had 220,000 subscribers for its new Digital Phone service and was positioned to increase its telephony customer base “significantly” in 2005.⁷ Similarly, Cablevision, which primarily serves Long Island and other portions of the greater New York City metropolitan area, increased the number of its Optimum Voice residential telephone customers from approximately 28,700 at year-end 2003 to approximately 272,700 by year-end 2004, an increase greater than eight-fold.⁸ In addition to its Optimum Voice service, which is a voice-over-Internet-protocol (“VoIP”) application, at year-end 2004, Cablevision served approximately 9,400 residential customers in Long Island and portions of southern Connecticut by means of switched telephone service.⁹

In addition to competition from ILECs, IXCs, CLECs and CATV providers, other firms offer advanced telephone services over a broadband connection using VoIP technology. AT&T, for example, offers unlimited local and domestic long distance over

⁷ *Time Warner Annual Review 2004*, <http://ir.timewarner.com/downloads/2004AR.pdf>, at p. 22.

⁸ Cablevision Systems Corporation’s 2004 Form 10-K, mimeo, at 4-5 (*see*: http://www.cablevision.com/index.jhtml?pageType=sec_filings, at 3-4.)

⁹ *Id.*

its CallVantagesm service for \$29.99. SBC intends to market the service to mass market customers once its merger with AT&T is finalized.¹⁰ Another mass market VoIP provider, Vonage, offers unlimited local and domestic long-distance calling for \$24.99 per month.¹¹ According to *Business Week online*, at year-end 2004 Vonage served 390,000 phone lines, a 400% increase over 2003. By May 2005, Vonage had more than 650,000 lines, was adding more than 15,000 per week, and was projected to have about 1.2 million lines by year-end 2005.¹² And while customers need a broadband connection to use VoIP services, broadband subscription rates are growing at a spectacular rate: Between year-end 1999 and year-end 2004, high-speed services for Internet access increased in New York State from 186,504 lines to 2,808,553 lines.¹³ For those broadband customers, the incremental monthly cost of unlimited local and long-distance calling is less than \$30.

The vast majority of New York retail customers already have access to multiple providers motivated to compete on price, technology, features and service quality. The upgrade of landline, wireless, and CATV networks will give retail customers multiple providers of broadband services, all competing to satisfy consumer demand for the full

¹⁰ See: <http://www.usa.att.com/callvantage/index.jsp?soac=64529>),. SBC intends to market CallVantage both within and beyond SBC's service territory after the SBC-AT&T merger. *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer Of Control*, WC Docket No. 05-65, *Description of the Transaction, Public Interest Showing and Related Demonstrations*, filed February 21, 2005, http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517309094 and http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517309095, p. 43.

¹¹ Vonage's Premium Unlimited Plan. See: http://www.vonage.com/products_premium.php.

¹² "Vonage Raises \$200M," by Justin Hibbard, *BusinessWeek online*, May 5, 2005, http://www.businessweek.com/the_thread/dealflow/archives/2005/05/vonage_raises_2.html

¹³ *High-Speed Service for Internet Access: Status as of December 31, 2004*, Industry Analysis and Technology Division, Wireless Competition Bureau of the Federal Communications Division, dated July 2005, http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0705.pdf, Table 7.

range of communications services (voice, data and video).¹⁴ While there may still remain aspects of regulated telephony that may require Commission oversight, it is also reasonable to say that much of the rationale for rules governing Commission-regulated retail telephone services – the absence of market forces – no longer exists.

II. THIS COMMISSION HAS AUTHORITY TO MODIFY REGULATION WHERE COMPETITION IS SUFFICIENTLY DEVELOPED TO CONSTRAIN THE MARKET.

In adopting the *Competition II* order nine years ago, the Commission observed that its regulation would necessarily change as the market becomes more competitive:

We are embarking on the transition to that market environment. . . . The regulatory framework described herein is intended to facilitate competitive choice and protect captive consumers during the transition to fully competitive markets. Should genuine customer choice emerge, the framework contemplates our re-examining the continuing need for regulatory protections and the elimination of those that become unnecessary.

Ultimately, we envision fully competitive local exchange markets throughout New York State. Multiple carriers will provide a full and expanding range of services to meet the needs and desires of all types of telecommunications users. Consumers will shop among local service providers to find the package of capabilities, price, and quality that best meets their individual needs. They will be able to switch easily to a different service provider if dissatisfied with their current provider or tempted by a better deal. *Should such an environment develop most, if not all, regulation of the local exchange market would be eliminated.*¹⁵

¹⁴ See: "Battle for the Bundle: Cable, Phone, Internet Companies Seek All-in-One Customers," by Yuki Noguchi, *Washington Post*, August 8, 2005, page D01, <http://www.washingtonpost.com/wp-dyn/content/article/2005/08/07/AR2005080700585.html>

¹⁵ *Id.*, at 2-3 (emphasis supplied).

The 1996 *Competition II* order wisely acknowledged that the Commission's "regulatory framework must be designed for the present transitional market, not for yesterday's monopoly nor for the fully competitive market that may ultimately develop."¹⁶ The *Competition II* order did not anticipate, however, that the most aggressive and effective competition would come from wireless, CATV and VoIP providers not subject to the Commission's jurisdiction. Chairman Flynn recently noted in testimony before the New York State Standing Committee on Corporations, Commissions and Authorities that companies now "compete on the basis of satisfying customer needs and expectations and ... recognize that regulators, in competitive markets, can no longer assure them of earning adequate profits on their investments." The Commission confronts a situation in which market conditions justify a change in regulation but the Commission cannot exercise regulatory authority over all participants in the current telephony marketplace and therefore cannot adjust regulation to fit the market power of each competitor.

It is well established that a regulator, while respecting jurisdictional boundaries, nonetheless should monitor the whole market and, to the extent possible within the ambit of its own authority, adopt regulatory changes that will promote fair competition. Consistent with this principle, the Commission should certainly take into account the degree of regulation, if any, being imposed upon firms offering services that compete directly with ones regulated by the Commission. To the extent that a firm offering

¹⁶ *Competition II*, at 4. Recently Telecommunications Director Robert Mayer, when addressing the Commission regarding the expiration of the Verizon Incentive Plan (VIP), described regulation "as a surrogate for competitive markets, and when market conditions constrain the exercise of market power, certain regulatory burdens can be relaxed. We can now trust the market to provide some measure of service quality discipline, though we do not rely exclusively on this aspect." Minutes of New York Public Service Commission Session, February 9, 2005.

services that are not regulated by the Commission is subject to few or no price, service quality, or reporting regulations and it is apparent that customers have few if any practical obstacles to switch their patronage from one provider of a given service to another, regulations applicable to providers of regulated services should be relaxed, to the extent permitted by statute, to the same degree as the non-regulated providers enjoy.

III. THE COMMISSION CAN FURTHER RELAX ITS REGULATION OF PRICING AND SERVICE QUALITY.

The *Initiating Order*¹⁷ acknowledges that rapid and significant changes in the telecommunications market have highlighted the need to reassess existing regulations in light of marketplace realities. Staff's Telephone Regulatory Convergence Matrix – with the columns for cable, wireless and VoIP left starkly empty – makes a dramatic statement about the application of existing regulations to certain technologies and not others, and underscores the fact that, today, the Commission has been put in the untenable position of putting its regulatory thumb on the marketplace scales.

Certain retail service quality regulations have become obsolete with the advance of competition. For example, the reporting requirements in 16 NYCRR, which call for ILECs, CLECs and IXCs to report on customer trouble report rates, and business and repair office call answer times can be eliminated without negatively impacting competition or customers because, as noted in the *Instituting Order*, “[i]n the consumer (residential and small business) market, traditional wireline companies now compete with wireless and cable television companies in both the local and long-distance telephony markets, and with the increasing use of the Internet, customers are less dependent on their

¹⁷ Case 05-C-0616, *Proceeding on Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services*, Order Initiating Proceeding and Inviting Comments (June 29, 2005) (“*Initiating Order*”).

traditional telephone carrier for communications.”¹⁸ With customers able to choose from so many options, carriers have strong incentives to provide high quality service. To do otherwise is to risk losing customers. Moreover, requiring some carriers to submit quality of service reports, but not others, merely imposes added costs on the reporting carriers and leaves them less able to compete. Discontinuing the retail service quality reporting requirements in 16 NYCRR Part 609 would help level the playing field.

Earlier this year, the Commission decided to discontinue the service quality incentive plan which had been applicable to Verizon’s provision of retail service. The Commission should now revisit the performance standards in 16 NYCRR Part 603 and relieve CLECs of the obligation to track and report on customer troubles and call answer times. These requirements, developed decades ago, are no longer necessary. In today’s environment, carriers that fail to resolve customer complaints or fail to answer the telephone promptly will simply lose customers to carriers that do. The potential loss of customers is a very effective regulator of service quality.

Even without the Part 603 reports, the Commission will still have information available regarding carriers’ performance. The Office of Consumer Services tracks customer complaints and keeps the Commission abreast of carriers’ performance levels. Moreover, the Quick Response System developed by the Office of Consumer Services provides an effective and efficient means of focusing companies’ attention on specific service quality issues. These mechanisms will provide the Commission with all of the information it needs and will help ensure that the Commission fulfills its statutory obligation to protect the interests of New York’s telecommunications customers.

¹⁸ *Initiating Order*, at 3.

The same market forces that can be relied upon to regulate retail service quality will also constrain service providers' pricing behavior. Any carrier that fails to provide quality service at reasonable prices risks losing its customers. The Commission should revisit Public Service Law § 92(2)(c)'s 2.5% limitation on rate increases. Market forces have rendered the 2.5% ceiling unnecessary and obsolete.

IV. WHILE THE FCC IS PRIMARILY RESPONSIBLE FOR ENSURING THAT IP-ENABLED SERVICES PROVIDE ACCESS TO E911 AND THAT IP-ENABLED SERVICES ARE AVAILABLE TO PERSONS WITH DISABILITIES, THIS COMMISSION WILL HAVE AN IMPORTANT ROLE.

As consumers migrate to IP-enabled services in large numbers, regulators will want to ensure that carriers are able to provide E911 and access for individuals with disabilities. While AT&T acknowledges the need for continued regulatory oversight in these areas, in the wake of the FCC *Vonage Order*, the responsibility for developing uniform national rules applicable to interstate IP-enabled service lies primarily with the FCC. AT&T has cautioned the FCC against moving faster than the technology permits. Likewise, further nationwide development is needed before VoIP can be made uniformly available to persons with disabilities. AT&T recognizes the Commission's interest in ensuring that New York citizens receive the full benefits of E911 and disability access developments at the national level and urges the Commission to make its views known to the FCC.

Recently, the FCC took a major step forward with its June 3, 2005 *VoIP E911 Order*¹⁹ requiring providers of *interconnected*²⁰ VoIP services to supply E911 to their customers within 120 days, whether the customer is using the service at home or away from home.²¹ This comprehensive order underscores the FCC's commitment to oversee the development and implementation of E911 solutions for IP-enabled services, and that the FCC intends to work closely with all interested parties, including state commissions, to ensure that a cohesive, standardized process can be implemented on a nationwide basis.

Various industry groups have recognized the challenges in achieving compliance by that date. To help address those challenges, New York should be an active participant in the federal-state task force on VoIP E911 enforcement recently announced by FCC Chairman Kevin Martin in an effort to facilitate and expedite delivery of VoIP E911.²²

Despite the challenges, the industry is making substantial progress towards satisfying the FCC's benchmarks for deploying 911 and E911 capabilities for IP-enabled services. For its part, AT&T has made great strides in developing an E911 system for interconnected VoIP services. AT&T is in the midst of rolling out E911 services to all of

¹⁹ *In the Matter of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-196, FCC 05-116, First Report And Order And Notice Of Proposed Rulemaking (June 3, 2005) ("*VoIP E911 Order*").

²⁰ The term "interconnected" refers to the ability of the user generally to receive calls from and terminate calls to the public switched telephone network (PSTN), including commercial mobile radio service (CMRS) networks. *Id.*, at n. 1. The FCC regards its E911 compliance action as a logical outgrowth of its *Vonage Order* which found that interconnected VoIP services cannot be separated into interstate and intrastate components and thus the FCC has responsibility to determine whether certain regulations apply.

²¹ Because the FCC does not rule on whether "interconnected VoIP services" are telecommunications service or information services, it relies primarily on its Title I ancillary jurisdiction to encompass both types of services, as well as its plenary authority over numbering under Section 251(e). *VoIP E911 Order*, at ¶¶ 26-33. The FCC also finds that imposition of E911 obligations on interconnected VoIP providers is consistent with Section 706's objective of spurring broadband deployment.

²² http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260312A1.pdf

its residential AT&T CallVantage VoIP users in New York state and nationwide in efforts to meet the FCC mandate for VoIP E911 by November 28, 2005. When their VoIP services are migrated to E911, customers are so informed and also advised that their VoIP services are still subject to power and broadband limitations.

As part of its efforts, AT&T has an agreement with Intrado to enable 911 dialed calls by AT&T CallVantage service customers to be completed to PSAPs. Intrado has established a process for geocoding the service address provided by the VoIP end-user so that it corresponds to a public safety answering point for the geographic location specified by the caller.²³ AT&T notes that on July 7, 2005, New York City was the site of the first deployment of Intrado's commercial VoIP E911 solution as utilized by various VoIP providers including AT&T.

AT&T and other industry members are working hard to develop more comprehensive technical solutions and standards that will allow users to have access to a more robust complement of 911 capabilities, comparable, and even superior, to traditional wireline E911. As a member of a coalition of VoIP providers (the "Voice on Net," or "VON," Coalition), AT&T is working with the National Emergency Number Association ("NENA") and others to develop standards and procedures for implementing an enhanced 911 capability for VoIP services. Multiple vendors are already seeking to offer solutions.

While not in the scope of current mandates for VoIP E911 compliance, the benefits of fully IP-enabled E911, referred to as "Phase 3" or "I-3" by NENA and

²³ AT&T's IP-based services in the enterprise market will also provide 911 functionality, using AT&T's own network capabilities to route 911 calls to the PSAP associated with the IP user's customary location.

industry members, are expected to be substantial, and are expected to extend well beyond traditional wireline E911 capabilities. It is anticipated that individuals will be able to reach 911 emergency services from whatever peripheral device they are using — including Blackberries and text messaging devices. It is also expected that IP technology will improve 911 accessibility for hearing-impaired and speech-impaired users.²⁴ Furthermore, the integration of voice and data applications through VoIP promises to provide first responders with important real time data regarding the individual who placed a 911 call, or even details regarding the physical location from which such a call originated (*e.g.*, floor plans).

Resolving these challenges will take a sustained national effort. The FCC is “. . . mindful that development and deployment of these services is in its early stages, that these services are fast-changing and likely to evolve in ways that [the FCC] cannot anticipate, and that imposition of regulatory mandates, particularly those that impose technical mandates, should be undertaken with caution.”²⁵ On June 3, 2005, the FCC also issued a VoIP E911 NPRM asking additional questions regarding VoIP E911 capabilities and possibilities. A copy of AT&T’s August 15, 2005 comments is attached as Appendix A.

As with E911 issues, solutions for ensuring that disabled individuals have access to IP-enabled services will require national attention. At the FCC, AT&T has advocated for the extension of the disability rules codified at 47 U.S.C. § 255 to IP-enabled voice

²⁴ The FCC appears to recognize the potential of IP-based E911 for hearing-impaired and speech-impaired individuals and has posed a series of question about it in its NPRM. *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (“*IP-Enabled Services NPRM*”), at ¶ 63.

²⁵ *IP-Enabled Services NPRM*, at ¶ 53.

services (although not to IP-enabled advanced features at this time).²⁶ AT&T has long been at the forefront of ensuring that its telecommunications services are accessible to individuals with disabilities, and it is now at the forefront of making VoIP services accessible as well. To make sure the entire industry — manufacturers and service providers — are sufficiently focused on developing accessibility measures, AT&T has urged the FCC to exercise its ancillary jurisdiction in extending to VoIP providers the general § 255 mandate to implement “readily achievable” measures.²⁷ AT&T encourages this Commission to support an FCC mandate to that effect.

V. THE COMMISSION WILL NEED TO FACILITATE CONSUMER CHOICE.

Consumer benefits are maximized when robust competition occurs on a level playing field. Regulation must not favor or disfavor any particular method of delivering telecommunication services to end-users. It should, however, neutralize any technical obstacles or market imperfections that in certain circumstances could prevent end-users from freely moving from one carrier to another.

To its great credit, the New York Commission has been a national leader in promoting the development of competition as a means of delivery quality services at just

²⁶ Section 255 requires a manufacturer of telecommunications equipment or CPE to ensure that such equipment is designed to be accessible to and usable by individuals with disabilities, if readily achievable, and requires a provider of a “telecommunications service” to ensure that its service is accessible to and usable by people with disabilities, if readily achievable. Where these goals are not readily achievable, section 255 requires that the equipment or service be made compatible with peripherals or specialized CPE commonly used to allow access to people with disabilities. See 47 U.S.C. § 255(d). Finally, section 251(a)(2) prohibits telecommunications carriers from installing network features, functions, or capabilities that do not comply with the guidelines and standards set forth in section 255.

²⁷ A copy of AT&T’s comments to the FCC regarding disability rules for IP-enabled voice services is attached as Appendix B.

and reasonable prices. Its *1996 Competition II Order*²⁸ established “parameters for a competitively neutral approach for maintaining affordable service for all New Yorkers in this new market driven environment[.]”²⁹ As part of the framework the Commission articulated eleven “foundation principles” designed to achieve its “objective . . . to remove barriers to competitive entry into the local markets and to establish a ‘level playing field’ for competing providers of local exchange service.”³⁰ The Commission’s principles related in large part to intercarrier connection, traffic exchange and compensation and to the ability of local exchange providers to obtain telephone numbers.³¹

Of course, the telecommunications market has changed dramatically since 1996. As the Commission itself noted, “[i]ntermodal competition flourishes,”³² and “thirty-nine incumbent carriers provide telephone service to over 12 million retail or wholesale lines.”³³ The Commission observed that carriers today are using alternative technologies such as VoIP,³⁴ cable telephony and wireless technology to meet the needs of New York

²⁸ Case 94-C-0095, *Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, Opinion and Order Adopting Regulatory Framework, Opinion No. 96-13 (May 22, 1996) (“*1996 Competition II Order*”).

²⁹ *Id.*, at 1.

³⁰ *Id.*, at 15-16.

³¹ Other principals related to unbundling of network elements and the special public interest in an incumbent carrier’s local loops.

³² *Initiating Order*, at 5.

³³ *Id.*, at 5.

³⁴ State regulators do not have jurisdiction to regulate IP-enabled service providers. *Vonage Holdings Corp. v. Minnesota Public Utilities Comm’n*, 290 F.Supp.2d 993 (2003) (entering permanent injunction against PUC order imposing state regulatory requirements upon Vonage); *Vonage Holdings Corp. v. New York Public Service Comm’n*, United States District Court for the Southern District of New York, Case 04-Civ.-4306, “Preliminary Injunction Order,” entered July 16, 2004; (internet applications used to facilitate voice communications constitute information services that may not be regulated by the states); *In the Matter of Petition for Declaratory Ruling that Pulver.com’s Free World Dialup Is Neither*

consumers, and the proliferation of those (and perhaps other) technologies will continue to accelerate.³⁵ In the wake of these changes, the Commission has asked “how pertinent [its 1996 *Competition II*] principles remain in this intermodal environment.”³⁶

A. SO THAT CONSUMERS ARE ABLE TO SELECT THEIR PROVIDER OF CHOICE, ALL CARRIERS MUST BE ABLE TO OBTAIN NUMBERING RESOURCES REGARDLESS OF THE TECHNOLOGY THEY DEPLOY, AND ALL CONSUMERS MUST BE ABLE TO RETAIN THEIR TELEPHONE NUMBERS WHEN THEY SWITCH CARRIERS.

The first four of the Commission’s principles relate to numbering resources and number portability:

- Customers must be able to call all valid telephone numbers.
- Telephone numbers are a common resource to be shared among carriers.
- Control of telephone numbers must shift from the incumbent carriers.
- Customers and competitors must have access to the telephone numbers and directory listings of all other carriers.

The Commission’s *Initiating Order* asks the parties to comment on the relevance of these principles in light of the intermodal competition emerging between wireline, cable and wireless carriers, and from the development of VoIP providers.³⁷ Here again, the FCC has primary jurisdiction over most numbering issues, but values input from state regulators.

Telecommunications Nor a Telecommunications Service, WC Docket No. 03-45, “Memorandum Opinion and Order” No. FCC 04-27, 19 F.C.C.R. 3307 (Feb. 19, 2004) (“FCC’s Pulver.com Order”), ¶¶ 1, 18.

³⁵ *Initiating Order*, at 5.

³⁶ *Id.*, at 18.

³⁷ *Id.*, at 18.

Customers must be able to call all numbers -- It is axiomatic that all customers must be able to call all valid telephone numbers. Currently most VoIP services obtain North American Numbering Plan (“NANP”) numbers via business arrangements with CLECs. Today all interconnected VoIP end-users are able to obtain numbers that can be called by anyone with access to the public switched network. In its *IP-Enabled Services NPRM*³⁸ proceeding, the FCC is considering, *inter alia*, numbering issues related to the deployment of innovative new services using a more efficient means of interconnection between IP networks and the public switched network.

Telephone numbers are a shared resource -- Telephone numbers are becoming a resource that must be shared not only among traditional telecommunications carriers, but also between such carriers and non-carrier IP-enabled service providers. Eventually this Commission will want to expand its Principle 2 to include IP-enabled service providers, but because the federal rules and requirements around such access to numbers have not been finalized, there is no reason for the Commission to address this issue at the state level at this time.

Contrary to the suggestion of the Commission’s Question 2 in the Appendix to the *Initiating Order*,³⁹ the availability to telephone numbers to VoIP providers will not cause premature number exhaust. At the FCC's request the NANC and its Future of Numbering Working Group are addressing the impacts of direct assignment of numbering resources to VoIP providers and whether any changes to the current regimen are required.⁴⁰

³⁸ *IP-Enabled Services NPRM*.

³⁹ *Initiating Order*, Appendix at 1 (“2. Do we need to implement additional number optimization measures in light of the potential demand for numbers by new competitors?”)

⁴⁰ See, e.g., http://www.nanc-chair.org/docs/nowg/Jul05_-_FoN_Working_Group_VoIP_Report.doc

Incumbent carriers no longer control telephone numbers -- Telephone numbers are now subject to the control of the NANP. It appears that will continue to be the case as IP-enabled services evolve and develop.

All carriers must have access to directory listings of other carriers -- Today ILECs must allow CLECs to place their customers' listing in the ILEC Directory Listings. Regulators – primarily the FCC with input from New York and other states – will need to address whether VoIP providers should have the same capability.

B. TRAFFIC EXCHANGE AND INTERCARRIER COMPENSATION RULES MUST BE RATIONALIZED IF COMPETITION IS TO BE SUSTAINABLE.

The Commission's *Initiating Order* notes that the Commission is "particularly interested in revisiting the intercarrier compensation structure established in [its 1996 *Competition Order II*] order."⁴¹ The Commission's two principles relating to intercarrier compensation are:

9. Local exchange carriers are entitled to compensation for the costs of the services provided to each other.
10. Compensation charges and rates should be cost-based, uniform, and encourage long-term efficiency.⁴²

Those principles reflect prior Commission thinking regarding reciprocal compensation⁴³ and have provided the basis for several subsequent Commission decisions.⁴⁴ Underlying these principles is the notion that the originating carrier should pay the termination costs

⁴¹ *Id.*, at 19.

⁴² 1996 *Competition II Order*, at 16; *Initiating Order*, at 18.

⁴³ Case 94-C-0095, *Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, Order Instituting Framework For Directory Listings, Carrier Interconnection and Intercarrier Compensation (September 27, 1995) ("*Intercarrier Compensation Order*"), at 10-15:

⁴⁴ Case 99-C-0529, *Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation*, Opinion And Order Concerning Reciprocal Compensation, Opinion No. 99-10 (August 26, 1999) ("*Reciprocal Compensation Order*").

of the terminating carrier; that is, the assumption is that the calling party is the cost-causer and that the calling party should pay.

The Commission’s interest in revisiting the reciprocal compensation issue is well justified. There is a growing body of evidence that, although apparently reasonable in the abstract, the principles of the Commission – and the assumption upon which they are based that the calling party should pay – are in fact unworkable and, worse, produce extremely inefficient results.

1. The Current Intercarrier Compensation System Is Broken.

As AT&T, together with the other members of the Intercarrier Compensation Forum (“ICF”),⁴⁵ has shown in numerous filings at the FCC, the current “calling party pays” approach is imposing massive transaction costs, both from **(a)** the continual, intrusive burdensome rate proceedings necessary to establish termination rates for the two principal intercarrier compensation systems (*i.e.*, the system of carrier access charges that applies to long distance traffic, and the intercarrier compensation rates that apply to the exchange of local exchange traffic) and **(b)** the substantial effort required to enforce the largely artificial regulatory distinctions that have been created between the two systems. The access charge and reciprocal compensation systems were developed years ago and implemented piecemeal in response to discrete regulatory needs. The FCC and the Commission have struggled—often on a technology-by-technology basis—to

⁴⁵ The members of the ICF are drawn from every sector of the industry. Over an 18 month period, they engaged in a rigorous, deliberative process to create a global solution to the interrelated network interconnection and intercarrier compensation issues. Over time, some participants dropped out, while others joined or rejoined, but all offered their diverse perspectives. The ICF Plan incorporates input from all these participants. It is a balanced plan that does not tilt in favor of any one industry segment. The current ICF members include AT&T Corp.; General Communications, Inc.; Global Crossing North America Inc.; Iowa Telecom; Level 3 Communications LLC; MCI, Inc.; SBC Communications Inc.; Sprint Corporation; and Valor Telecommunications, LLC.

determine when access charges apply, when reciprocal compensation applies, and when or if there are circumstances where neither applies. *Ad hoc* implementation has produced compensation rules that “apply different cost methodologies to similar services based on traditional regulatory distinctions that may have no bearing on the cost of providing service.”⁴⁶ Radically different obligations—including whether a carrier must pay or be paid by another carrier— for the same call using the same facilities can turn on the Byzantine system of regulatory rules that control into which of the many possible “boxes” carriers and their traffic are classified. As a result, providers spend millions of dollars each year disputing the level of the compensation rates, the structure of the rates, and the application of specific rates to specific types of traffic.

Layered on top of the arbitrary distinctions between local/reciprocal compensation rates and toll/access rates is the extensive regulatory resource drain created by a “calling party pays” system. “Calling party pays” necessitates a complex scheme of intercarrier compensation based on “access” or “termination” costs that must be determined in resource intensive regulatory proceedings. Such proceedings, sometimes lasting years, are necessary for determining the “costs” of access or termination. These proceedings often involve questions about the efficiency and value of relative network architectures that are better left to the market to ultimately resolve. For example, CLECs and ILECs have long argued about whether a typical CLEC, which uses fewer switches and longer loops than a typical ILEC, should be able to charge the equivalent of an ILEC’s higher “tandem” switching rates for call termination over an end office switch that serves a geographic area comparable to that served by an ILEC’s tandem switch.

⁴⁶ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 05-33, 10 FCC Red 4685 (2005) (“*Further Notice*”), ¶ 5.

CLECs and ILECs also argue about whether carriers that specialize in terminating traffic to a specific kind of customer—such as ISPs—incur lower termination costs and should therefore be compensated less. And wireline LECs and wireless carriers argue about whether the latter incur higher termination costs than the former.

The calling party pays system has other intractable problems. One is the “terminating access monopoly”—the fact that, even though the overall market is competitive, the carrier serving any particular customer has a *de facto* monopoly over the traffic terminated to that customer and, thus, has both the incentive and the ability to charge the calling party’s carrier (whether a LEC or an IXC) above-cost rates for call termination. This phenomenon arises solely because the terminating carrier controls the only line associated with a given telephone number and typically lacks any direct relationship with, and thus any accountability to, the calling party who triggers the termination charges by placing a call to that number.⁴⁷

Underlying the Commission’s interpretations and applications of Principles 9 and 10 has been an assumption that the calling party is the “cost-causer” and that therefore the carrier whose customer places the call should reimburse the terminating carrier for the cost of completing the call. Such an assumption, however, no longer fits with the way in which telecommunications end users conceive of the telecommunications products that

⁴⁷ *In the Matter of Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, 16 FCC Rcd. 9923, 9934-5 ¶ 28 (2001) (“*CLEC Access Charge Order*”) (“The Commission [FCC] has previously noted the unique difficulties presented by the case of terminating access, where the called party is the one that chooses the access provider, but it neither pays for terminating access service, nor does it pay for, or choose to place, the call. It further complicates the case of terminating access that an IXC may have no prior relationship with a CLEC, but may incur access charges simply for delivering a call to the access provider’s customer. In these circumstances, providers of terminating access may be particularly insulated from the effects of competition in the market for access services. The party that actually chooses the terminating access provider does not also pay the provider’s access charges and therefore has no incentive to select a provider with low rates. Indeed, end users may have the incentive to choose a CLEC with the highest access rates because greater access revenues likely permit CLECs to offer lower rates to their end users.”) (notes omitted).

they are purchasing. When liberated from this outdated concept, it is possible to see that a “bill and keep” system of reciprocal compensation can satisfy the basic intent of Principles 9 and 10 that telecommunications carriers should be able to recover the costs of exchanging traffic with one another and eliminate the enormous problems and waste of the current system.

2. The Commission Should Urge the FCC to Implement a Uniform, National Bill and Keep System.

Today consumers understand that managing their telecommunications usage sometimes requires them to pay for receiving calls and call information. Consumers purchase voice mail and caller ID to manage *incoming* calls. Likewise, wireless users pay separately to *receive* phone calls. They control and manage incoming communications as easily as they control the calls they make. As the FCC has observed, “[d]evelopments in the ability of consumers to manage their own telecommunications services”—through caller ID, voice mail, and other means—“undermine the premise that the calling party is the sole cost causer and should be responsible for all the costs of the call.”⁴⁸

It is appropriate, therefore, to think of the bundle of services that a customer purchases as including the ability to receive communications. In other words, the customer is purchasing access to the network for all purposes, including receipt of phone calls. This means, simply, that the receiving party also “causes” some of the cost of a call. For example, the called party causes costs simply by listing its telephone number and agreeing to take a given call. Similarly, a called party’s network is also free to choose more or less costly terminating technology. Moreover, internet users consider the

⁴⁸ *Further Notice*, ¶ 17.

ability to receive e-mails and instant messaging as part of what they purchase when they purchase internet access.

A “bill and keep” system of intercarrier compensation is consistent with the way consumers use telecommunications services today. Under a bill and keep system, the end user pays for both the origination and termination functions provided by the end-user’s network access connection. Under this methodology, each carrier is generally expected to recover its network costs for two-way connectivity from its own end users (and from payments by explicit federal and state universal service mechanisms) instead of recovering them from other carriers.

In the past this Commission has acknowledged an earlier FCC’s attempt to restrict the use of “bill and keep” to situations where “traffic is roughly balanced in the two directions[.]”⁴⁹ Such a restriction is misguided, however. Indeed, a bill and keep system would actually eliminate uneconomic, perverse incentives created by traffic imbalances under the current system. Carriers would no longer have an incentive to acquire customers who specialize in terminating traffic, such as Internet Service Providers (“ISPs”). At the same time, a bill and keep system would not create a perverse incentive to acquire customers that specialize in originating traffic. As the FCC has explained, “[a] carrier must provide originating switching functions and must recover the costs of those functions from the originating end-user, not from other carriers. Originating traffic thus lacks the same opportunity for cost-shifting that reciprocal compensation provides with respect to serving customers with disproportionately incoming traffic.”⁵⁰ In other words,

⁴⁹ *Reciprocal Compensation Order*, at 2.

⁵⁰ *Further Notice*, ¶ 17.

to eliminate the incentives for arbitrage inherent in the reciprocal compensation regime, a bill and keep system is the better system precisely when traffic flows are out of balance.

AT&T is a member of the ICF, which has filed with the FCC a plan for reforming the intercarrier compensation system (“ICF Plan”) using a “bill and keep” concept. By eliminating the legacy system’s irrelevant distinctions between local and toll calls, and by abolishing the two disparate systems of reciprocal compensation and access that shift costs from certain customers to others, the ICF Plan allows all terminating carriers, regardless of technology, to recover costs directly from end users without having to depend on uncertain regulations. The ICF Plan also includes uniform regulatory treatment of circuit-switched services and packet-switched services, thereby lessening the pressure for economic regulation of VOIP.

This is not the place for a detailed discussion of the ICF Plan itself. We bring this plan to the Commission’s attention to demonstrate that (1) there is a solution to the problems of the intercarrier compensation system – an issue on which the Commission expressly sought comment,⁵¹ (2) that the solution is ultimately consistent with the underlying intent of Principles 9 and 10 that carriers have an opportunity to recover the costs of exchanging traffic, and (3) that the appropriate forum for implementing this solution is at the FCC.

At bottom, this is an issue about how carriers should recover the costs of generating and terminating calls that pass through more than one network—especially the switch and loop costs associated with the origination and termination functions. End users as a group inevitably will pay for those costs one way or another. They can

⁵¹ See, *Initiating Order*, at 19 (“We are particularly interested in revisiting the intercarrier compensation structure established in our last order.”)

continue to pay the costs inefficiently and indirectly through shifting support and unpredictable rates subject to perpetual regulatory intervention. Or, alternatively, they can pay the costs efficiently to their own carriers supplying their network connection, with rates established by a competitive market, with a predictable universal service safety net. The Commission should encourage the FCC to adopt this alternative approach.

VI. ALL CARRIERS MUST CONTRIBUTE TO THE COMMISSION'S TARGETED ACCESSIBILITY FUND.

The *Competition II* proceeding established principles for a universal service policy for New York's residential customers, and called for the creation of "an explicit, competitively neutral, targeted funding mechanism to support programs such as Lifeline, emergency services (911) and the Telecommunications Relay Service."⁵² To this end, the Commission established the Targeted Accessibility Fund (TAF) "as a necessary vehicle to ensure that new entrants both contribute to and provide universal service."⁵³ The Commission also noted that "as the transition to competition in the local exchange market proceeds, the TAF will become increasingly significant."⁵⁴ The TAF has proved to be a reliable and effective means of fulfilling the Commission's stated objectives and should be maintained.

The Commission's 1998 order exempted cellular services from any TAF charges, but noted that it "may review the necessity of assessing cellular service for universal service purposes, including the TAF, in such a manner and at such time as complies with

⁵² *1996 Competition II Order*, at 3.

⁵³ Cases 94-C-0095 and 28425, Opinion No. 98-10, (issued June 2, 1998)

⁵⁴ *Id.*

the Public Service Law.”⁵⁵ Today, seven years later, the industry has evolved to the point where wireless and cable telephony providers should contribute. Clearly, those carriers benefit from increased customer connectivity in the same way as other telecommunications carriers, including those, like AT&T, which currently contribute to the New York TAF.

Failure to include wireless carriers in the Commission's contribution scheme also creates competitive concerns between carriers. More and more, landline carriers, like AT&T, compete with wireless carriers for consumer and business telecommunications traffic. Where landline carriers' prices must reflect TAF and other contributions and wireless carriers' prices do not, the wireless carriers are given an unfair and artificial pricing advantage. This sort of cost advantage has helped fuel the wireless carriers' tremendous growth and has been a key cause of landline carriers' loss of traffic. Put simply, imposing social policy costs on traditional wireline carriers, but not on wireless carriers, is distorting the market and putting traditional wireline carriers at an unfair and inequitable competitive disadvantage. This disparity cannot be maintained.

Whether or not the Commission currently has enabling authority to establish wireless carrier contribution obligations is a legitimate legal issue. If the Commission finds that it does not currently have the requisite enabling authority, the agency should seek amendment to its enabling statute to assure that it can establish contribution obligations for all telecommunications carriers, including wireless and, to the extent not already included, cable telephony providers.

⁵⁵ *Id.*

VII. THE COMMISSION SHOULD CONTINUE TO MONITOR VERIZON'S PERFORMANCE IN PROVIDING OTHER CARRIERS FACILITIES THAT CONNECT END-USERS TO THE NETWORK.

Carriers still depend on Verizon for facilities used to connect to their end-user customers' locations. Until the Commission finds that the market for such facilities is fully competitive – that is, that carriers can obtain such facilities elsewhere in the same time frames and at comparable cost and quality as those facilities have been available from Verizon – the Commission should continue to monitor Verizon's performance in making such facilities available.

To date that performance has been extremely unsatisfactory. As demonstrated in the attached charts and tables, the performance of Verizon-North (the old NYNEX territory that includes New York) over the period January 2002 through March 2005 falls systematically and significantly below the performance of every other regional bell operating company ("RBOC") in the country.⁵⁶ Verizon-North's on-time percentage for the provisioning of special access circuits to AT&T has ranged from less than 30% to – on rare occasions – just over 50%. Over that same period, the *lowest* on-time monthly percentage of any non-Verizon RBOC in any month *exceeded* Verizon-North's *highest* on-time percentage in any month over the entire period. Not surprisingly, Verizon-North was "worst in class" in every month but one.

Verizon's inferior performance in the provisioning of special access circuits has a deleterious impact on New York's economy. Verizon's systematically poorer performance in New York and New England relative to the performance of RBOCs elsewhere (and indeed relative to Verizon elsewhere) makes it more difficult to attract

⁵⁶ See Appendix B. The heavy green line in the charts represents Verizon's on-time performance. The green shaded row in the data tables upon which the charts are based shows Verizon's monthly on-time performance.

large enterprise customers to New York and more difficult to retain those already here. Prompt, accurate, and efficient provisioning of special access circuits is critical to New York's economy, which is heavily dependent upon such information intensive industries as banking and finance.

The Commission has previously recognized Verizon's poor special access provisioning performance and the significance of such performance to the state's economy. On November 24, 2000, frustrated with its ability to obtain, through informal means, improvements in the service quality performance of Verizon for Special Access services, this Commission instituted a proceeding to accomplish that result.⁵⁷ The Commission's June 15, 2001, decision⁵⁸ found that, in its role as "the dominant provider of facilities for Special Services[,]"⁵⁹ Verizon's Special Access provisioning performance was significantly below Commission targets, and that Verizon treated other carriers less favorably than its own end users:⁶⁰

Because Verizon's facilities are used by carriers as they are entering the market, including the local market, on a facilities basis, Verizon's Special Services offerings are crucial for the

⁵⁷ Cases 00-C-2051 and 92-C-0665, Special Service Performance, Order Instituting Proceeding (November 24, 2000). *See, especially, id.*, at 4-5 ("At these discussions, the company projected improved results by October 1999; however, it did not realize these improvements. In February 2000, the company offered further service improvement commitments; however, Staff considered these inadequate, as the provisioning of Special Services continued to be unacceptable despite informal discussion with the company, Staff efforts to revise targets, and the company's efforts to improve practices and provision additional facilities.").

⁵⁸ Cases 00-C-2051 and 92-C-0665, Opinion And Order Modifying Special Services Guidelines For Verizon New York Inc., Conforming Tariff, And Requiring Additional Performance Reporting (June 15, 2001).

⁵⁹ *Id.*, at 9. *See also*, Cases 00-C-2051 and 92-C-0665, Order Denying Petitions for Rehearing and Clarifying Applicability of Special Services Guidelines (December 20, 2001) ("*Order Denying Rehearing Petitions*"), at 10 (Commission finds that subsequently submitted data found corroborate its earlier findings of Verizon's market dominance).

⁶⁰ *Id.*, at 9-10.

development of facilities-based competition in the local market, and for the New York economy.⁶¹

As a result of its findings, the Commission ordered Verizon to credit carriers and customers for missed installation commitments to construe any change by Verizon in a confirmed due date as a missed commitment date. The Commission also adopted three new metrics for wholesale Special Services ordering and provisioning, and further prescribed the manner in which its findings and rulings were to be implemented.

The Commission's December 20, 2001, *Order Denying Rehearing Petitions* rejected Verizon's contention that the Commission has no jurisdiction to order reporting of service quality performance related to special service circuits provided under federal tariff:

The Public Service Law gives the Commission broad authority to gather data. Because the Commission represents the people of New York State in proceedings before the Federal Communication's Commission (PSL §12) our data gathering jurisdiction is not limited to services subject to our direct jurisdiction. Verizon shall provide service quality information about all special services in order to allow the Commission to monitor performance.⁶²

As the attached charts demonstrate, the problems with Verizon's Special Service provisioning persist. The Commission should continue its leadership role to ensure that the enterprise market remains competitive. To that end, the Commission should continue to monitor Verizon's performance in making such facilities available to ensure that Verizon complies with its provisioning obligations and, as necessary, take appropriate action to rectify shortcomings in that performance.

⁶¹ *Id.*, at 10.

⁶² *Order Denying Rehearing Petitions*, at 9.

Conclusion

This Commission has long been a national leader in ensuring that its regulatory policies are in balance with market conditions. It can maintain that leadership role by once again trimming unnecessary regulation of pricing and service quality, by taking appropriate steps to ensure that New York consumers have access to emerging IP-enabled technology, and by ensuring that consumers can move freely among carriers regardless of the technology they select for their telecommunications needs. It will want to ensure that, in a market with multiple carriers using multiple technologies to serve customers, carriers exchange traffic in a rational manner, that carriers comply with obligations to make facilities available to other carriers, and that all carriers contribute equitably to fund social policy objectives such as Lifeline programs. Each of these objectives is important

to the development of the New York telecommunications market and the interests of New York consumers.

Respectfully Submitted,

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ATT Initial Comments
Case No 05-C-0616
Appendix B

	Jan02	Feb02	Mar02	Apr02	May02	Jun02	Jul02	Aug02	Sep02	Oct02	Nov02	Dec02
National												
Lec 1	2	3	4	3	4	2	3	4	4	3	5	5
Lec 2	4	4	5	5	5	5	6	6	6	6	6	6
Lec 3	6	5	3	4	3	4	5	3	2	1	2	1
Lec 4	1	2	2	1	2	1	1	1	1	2	1	2
Lec 5	5	6	6	6	6	6	4	5	5	5	3	3
VZN	8	8	8	8	8	8	8	8	8	8	8	8
VZS	7	7	7	7	7	7	7	7	7	7	7	7
Lec 6	3	1	1	2	1	3	2	2	3	4	4	4

ATT Initial Comments
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	Jan03	Feb03	Mar03	Apr03	May03	Jun03	Jul03	Aug03	Sep03	Oct03	Nov03	Dec03
National												
Lec 1	5	5	5	4	5	5	4	4	4	4	3	6
Lec 2	6	6	4	5	6	4	5	5	5	5	5	5
Lec 3	1	1	2	3	2	1	3	3	3	3	4	3
Lec 4	3	3	1	2	1	3	2	2	2	1	2	2
Lec 5	2	2	3	1	3	2	1	1	1	2	1	1
VZN	8	8	8	8	8	8	8	8	8	8	8	8
VZS	7	7	7	7	7	7	7	7	7	7	7	7
Lec 6	4	4	6	6	4	6	6	6	6	6	6	4

ATT Initial Comments
Case No 05-C-0616
Appendix B

	Jan04	Feb04	Mar04	Apr04	May04	Jun04	Jul04	Aug04	Sep04	Oct04	Nov04	Dec04
National												
Lec 1	4	5	6	3	2	3	4	4	6	6	5	5
Lec 2	6	4	4	4	4	5	3	2	3	2	4	1
Lec 3	3	2	3	2	1	4	1	1	2	1	1	3
Lec 4	2	3	2	5	5	2	5	3	4	4	3	2
Lec 5	1	1	1	1	3	1	2	5	1	3	2	4
VZN	8	8	8	8	8	8	8	8	8	7	8	8
VZS	7	7	7	7	7	7	7	7	7	8	7	7
Lec 6	5	6	5	6	6	6	6	6	5	5	6	6

ATT Initial Comments
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	Jan05	Feb05	Mar05
National			
Lec 1	5	6	4
Lec 2	3	2	1
Lec 3	1	1	2
Lec 4	2	4	3
Lec 5	4	5	5
VZN	8	8	8
VZS	7	7	7
Lec 6	6	3	6