

November 2, 2004

Chairman Michael K. Powell
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Dear Chairman Powell:

As innovators on the cutting edge of developing and delivering new Internet voice applications and features, we are writing to ask the FCC to rule that VoIP services are interstate in nature and if subject to regulation are subject to the exclusive but limited jurisdiction of the FCC.

We believe that, with the right public policies, VoIP can help deliver innovations and more affordable ways to communicate. VoIP can be a force for increased domestic and international competition, a platform for advanced services, a driver of broadband deployment, and an enabler of economic growth. But subjecting this transformative technology to a maze of 51 potentially wide-ranging and conflicting state rules could delay the deployment of IP services today, and stifle the development of as yet unimagined services for tomorrow.¹

One of the inherent characteristics of Internet and IP-enabled services, and one of its key advantages, is that it is entirely geographically neutral. By its very nature, IP-based services ignore state boundaries. The efficient routing of IP traffic depends on the free flow of packets over global networks irrespective of the kind of point-to-point routing of underlying networks. The web servers and soft-switches that enable IP services in many cases, can be located out of state, across the country, or even around the globe – making communications efficient, but state regulation impractical. But most importantly, IP services will give consumers an unprecedented level of control as to when, how and where they receive and send communications – making communications from an Internet café halfway around the world as easy as calling your next door neighbor.

And because the location of an IP-end of certain IP-enabled communications is unknown and irrelevant, it is impossible to determine which jurisdictional boundaries an IP communication crosses or precisely where the end user customer is located. For example, because VoIP customers can use their service in any state without the provider's knowledge, a VOIP provider could be required to proactively obtain certification in 51 different jurisdictions even if it is only providing service to customers in a few states. It just doesn't make sense.

There is currently no method to determine whether certain Internet packets should be subject to federal regulations while other Internet packets are burdened with, potentially, 51 different regulatory models depending on the state. Even if such technology could be developed for the Internet, it would still be practically and economically infeasible to segregate the intrastate components of VoIP services and regulate them separately without undermining the vast economic, consumer, and societal benefits that VoIP can deliver. State-imposed regulation could force VoIP providers to alter their networks solely for regulatory classification purposes, rather than to improve the service or efficiency of the

¹ While as of this time, only a small minority of states have attempted to impose economic regulation on VoIP providers, even these limited actions have caused disruption in the industry and led to costly litigation that could in the future be avoided by the FCC providing the necessary jurisdictional clarity now.

networks, thus driving up costs to consumers, stalling innovation, and slowing VoIP adoption – all without any economic justification.

Opponents of a ruling that VoIP is subject to the exclusive jurisdiction of the FCC argue that a federal framework for VoIP would hinder law enforcement, damage the 9-1-1 system, harm universal service and undermine consumer protections. As an initial matter, VoIP providers are voluntarily implementing 9-1-1 solutions and complying with law enforcement requests (which is also the subject of a separate FCC proceeding). Second, disgruntled consumers will still be able to avail themselves of state and federal consumer protection and privacy laws and, perhaps more importantly, a marketplace of choice that requires service providers to perform or fail. Finally, there is widespread agreement that access charges and universal service need to be reformed. Until that happens, it would be disingenuous to even consider applying these broken programs to VoIP. We are committed to working with the FCC and industry to develop comprehensive solutions to both the universal service and intercarrier compensation mechanisms. A finding on interstate jurisdiction will facilitate such solutions.

Therefore, we are asking the FCC to act quickly to establish a federal jurisdictional framework for VoIP services where subject to regulation. This will help unleash the job creating potential of IP and the Internet. Such a regime would preserve state involvement as needed, while allowing VoIP companies the freedom to find the best path to implementing the important social policy goals to which they are committed.

If the Commission, however, subjects this new technology to legacy regulations designed for the 100 year old telephone network or to a set of 51 conflicting regulatory models, consumers and business users will miss out on the new services, increased choices, new applications and features, and better prices that VoIP can deliver.

VoIP service is not another flavor of telephone service, just as the desktop PC was not another version of a typewriter or adding machine. VoIP is a new and improved frontier in communications that requires forward thinking approaches. We look forward to working with Congress, the FCC and the states, as well as rural, urban, and other interests, to forge original yet pragmatic solutions that enable consumers, businesses, and the economy to achieve the full promise and potential that VoIP can deliver.

Sincerely,

8x8	EDUCAUSE	Pulver.com	The VON Coalition
AT&T	ITAA	Qovia	USA Datanet
Avaya Inc	Level3	Skype	Voiceglo
Dialpad	MCI	Telic	
EDS	PointOne	Communications	

cc: Commissioner Kathleen Abernathy
Commissioner Jonathan Adelstein
Commissioner Michael Copps
Commissioner Kevin Martin