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San Antonio, Texas 78215



January 16, 2004

The Honorable Debra Bowen
California State Senate
State Capitol, Room 4040
Sacramento, CA 95814

Re: VoIP Services – Informational Hearing

Dear Senator Bowen:

The attached white paper sets forth, in summary form, SBC's position on regulatory treatment for Voice over IP ("VoIP") services and provides background on SBC's current VoIP offering. We appreciate the opportunity to share our position with you, and we are pleased to be able to provide the Committee with the information it needs to better understand the important and complex issues surrounding these new and innovative services.

SBC encourages regulators to keep IP-based services free of regulation in order to spur growth and maintain the incentives for innovation. The rapid development of the Internet and IP-based services market has been a direct consequence of the existing "hands-off" regulatory environment for these services. A "hands-off" policy will encourage advances in IP technologies, which will result in new and innovative services for customers.

Some IP-based services may have important public policy implications; for example, in funding universal service, ensuring emergency preparedness (e.g., E911), network integrity and security (e.g., CALEA), as well as protecting customer privacy concerns. We look forward to participating in a public discussion and industry dialogue to ensure these important issues are addressed in the new IP world.

Not all services that have been characterized as "VoIP" should be included within the category of unregulated IP services. Some providers are using the VoIP label to avoid access charges when they use SBC's network to complete calls to traditional telephone customers. We are looking to the FCC to quickly address this issue on a national basis, and to promptly put an end to this arbitrage.

It is increasingly important to quickly establish a national framework for resolution of issues associated with the Internet and IP-based services. Implementation of a consistent and holistic national policy can ensure that the same rules apply to all providers of these IP services, and that there is regulatory parity for competing technologies. We believe that the Federal Communications Commission is best

Hon. Debra Bowen

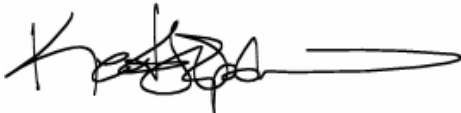
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positioned to resolve these issues, and that inconsistent state regulations will create confusion and increase costs.

I look forward to meeting with you in the near future to discuss these issues in greater detail. Please do not hesitate to call on me at any time.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Keith J. Epstein', with a long horizontal flourish extending to the right.

Keith J. Epstein
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cc: Randy Chin, Senior Consultant
Senate Committee on Energy, Utilities & Communications



What are Voice over IP (VoIP) Services?

- The terms "Voice over IP", "VoIP," "IP Telephony" and "Internet Telephony" have been used to refer to a variety of services that employ the Internet Protocol (IP) for voice transmissions, but there is no agreement as to the meaning of these terms.
- Whether a service is a VoIP service should be based on the features and functionality of the service, rather than merely the name that the provider has given to the service.

Some Examples of VoIP Services are:

- The use of software and hardware at the customers' premises to place calls between two computers connected to the Internet. For example, a user installs software on a personal computer equipped with a sound card and microphone, connects to the Internet through an ISP, locates another user who is running compatible software and is also connected to the Internet, and then initiates a call to the other user. Such services do not interact with the legacy circuit-switched network and, for this and other reasons, are not necessarily ripe for large-scale mass-market adoption.
- Vonage's DigitalVoice service allows any user with a broadband connection (DSL, cable modem, satellite, etc.) to initiate voice communications in the IP format over IP technology to make calls anywhere in the world over the Internet. This service does interact with the legacy circuit-switched network.
- SBC's HIPCS product, described below, interacts both with the customer's corporate LAN and the legacy circuit-switched network to provide a host of communications management, mobility and broadband applications, including voice applications.

SBC Encourages Regulators to Keep IP Services Free of Regulation in Order to Spur Growth and Innovation

- The rapid development of the Internet and IP-based services market has been a direct consequence of the existing "hands-off" regulatory environment for these services. A "hands-off" policy will encourage advances in IP technologies, which will result in new and innovative services for customers.
- Some IP-based services may have important public policy implications; for example, in funding universal service, ensuring emergency preparedness (e.g., E911), network integrity and security (e.g., CALEA), as well as protecting customer privacy concerns. We look forward to participating in a public discussion and industry dialogue to ensure these important issues are addressed in the new IP world.
- Not all services that have been characterized as "VoIP" should be included within the category of unregulated IP services. Some providers are using the VoIP label to avoid access charges when they use SBC's network to complete calls to traditional telephone customers. We are looking to the FCC to quickly address this issue on a national basis, and to promptly put an end to this arbitrage.
- It is increasingly important to quickly establish a national framework for resolution of issues associated with the Internet and IP-based services. Implementation of a consistent and holistic national policy can ensure that the same rules apply to all providers of these IP services, and that there is regulatory parity for competing technologies.

SBC's VoIP Offering

- SBC has created SBC IP Communications, Inc. to offer its first VoIP services to the public. Its first service offering is called the "Hosted IP Communications Service" ("HIPCS"), which utilizes customer LANs, Internet Access arrangements, and IP Telephony Gateways.
- HIPCS is not a telecommunications service, but rather is an interstate broadband information service that utilizes Internet Protocol technology to provide customers an integrated suite of applications that includes Internet access and robust call management and call routing functionality. The service initially supports both voice and data service using the IP protocol. Video services may also be supported over the same network.

- SBCIP does not hold itself out principally as providing voice service in connection with HIPCS, but rather markets the service as a communications management tool that offers users the benefit of accessing the service's many features wherever they can find a broadband or Internet connection; HIPCS requires Customer Premises Equipment ("CPE") different from that used in connection with the legacy circuit switched network.

What is HIPCS?

- The heart of HIPCS is a web-browser-based information and communications management tool (the "dashboard") that users can access from anywhere via the Internet. With this dashboard, a user can log onto the HIPCS system from wherever she may be to access all of the functions of HIPCS.
- HIPCS offers robust management of IP service consisting of both data and voice applications that cannot be integrated over today's circuit-switched networks or otherwise in the absence of computer mediation.
- HIPCS allows users to initiate calls from various numbers¹ using the HIPCS web-browser; through computer mediation manage the manner in which various types of calls route to them, regardless of their physical location;² detect other users on the network; filter unwanted messages; and, listen on their computers to stored voice mail messages delivered through unified messaging functionality.
- Many of HIPCS's capabilities (email, web access, computer mediated message storage, etc.) encompass the capability for manipulating information. In short, a customer primarily seeking a traditional telephony product would have no need for HIPCS and its enhanced features.

HIPCS must be classified as an Information Service

- HIPCS both enables and is enabled by Internet access. HIPCS's many features include those that are emblematic of Internet access, including email, web browsing and the use of the domain name system (DNS).
- HIPCS is a suite of computer-mediated applications that employ information manipulation and retrieval, store-and-forward capabilities, and processing functions that allow end users to route, manage and control their calls and communications setups.³
- HIPCS cannot properly be analogized to POTS or other telecommunications services that simply provide an end-to-end transmission of voice telephony. The fact that HIPCS includes voice functionality does not alter the analysis. HIPCS's voice capability is simply one application that rides over the same HIPCS network as the other applications associated with the service, and the packets carrying voice traffic are indistinguishable from the packets enabling the various other HIPCS applications.

Jurisdiction

- States do not have jurisdiction over HIPCS, which is an interstate service. Any attempt by States to impose tariffing and regulatory obligations on this intertwined package of enhanced functionality, Internet access and call management capabilities would impermissibly intrude on the clear federal policy to refrain from regulating the Internet and other IP-based offerings, as well as the FCC's general jurisdiction over interstate offerings.⁴

¹ A HIPCS user can, as an example, log onto the web browser over the Internet from a hotel and direct the system to initiate a call from the hotel phone or his cellular phone, without ever touching either of those pieces of equipment.

² A HIPCS user can actually define any number of discrete groups of potential callers (e.g., VIPs, other business contacts, friends, family, etc.) and have each group routed to the user in different ways (e.g., VIPs would continue to route through various options from the office number to an assistant to a cellular phone whereas friends would route directly to voicemail). And those routing protocols can be altered for each group depending on the time of day.

³ HIPCS is a service that offers the "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunication", and as such fits squarely within the definition of an information service under 47 U.S.C. §153(20). See also *Report to Congress, Federal-State Joint Board on Universal Service*, 13 FCC Rcd 11501, 11536, ¶73 (1998) ("*Universal Service Report*").

⁴ See, e.g., Memorandum Opinion and Order, *In re Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corp.*, 7 FCC Rcd 1619, 1621-1622, ¶¶12-16 (1992); *California v. Federal Communications Commission*, 4 F.3d 1505, 1515 (9th Cir. 1993).

- Because HIPCS uses the foundational protocol of the Internet to route and transport data, including any voice packets, it is impossible to separate out (and regulate) any discrete, intrastate communications services enabled by HIPCS.
- On the originating end of a HIPCS transmission, the packets associated with a voice transmission appear to the HIPCS packet router no different than the packets associated with the other applications (web browsing, changing call routing setups, email) that the user might be using at the same time.
- While a call initiated by a user may *look* like it originates at the user's desk, it may have in fact originated somewhere else entirely, including in another State.
- As with traditional Internet access, the key enabling equipment (web portals, feature servers, soft-switches) will in almost all cases be located outside the State in which the user is located.⁵

Vonage Holdings Corporation v. Minnesota Public Utilities Commission

- In striking down the Minnesota Public Utilities Commission's directive that Internet voice provider *Vonage Holdings Corporation* comply with Minnesota statutes and rules regarding the offering of telephone service, the US District Court for the District of Minnesota held that state regulation of these Internet-based voice services "would effectively decimate Congress's mandate that the Internet remain unfettered by regulation." *Vonage Holdings Corporation v. Minnesota Public Utilities Commission*, Civil No. 03-5287, slip op. at 2 (D. Minn. October 16, 2003).
- As the District Court noted, regulating IP telephony simply because it in part involves voice communication ignores the many complexities of the issue. *Id.* at 16-17

Conclusion

- States should resist any instinct to shackle these nascent, developing and innovative services and technologies with legacy forms of telephony regulation that could never reasonably have anticipated the sea change that certain forms of IP communications, like HIPCS, will cause.
- States should allow the FCC to set national policy in this area, as there are several VoIP dockets now pending in which it is expected that the FCC will clearly articulate America's policy towards these new and developing services.

⁵ Although HIPCS is an interstate information service, appropriate access charges nonetheless apply when HIPCS traffic terminates onto the traditional circuit-switched network.