Florida Cable Telecommunications Association

Steve Wilkerson, President

VIA HAND DELIVERY

February 28, 2003

Ms. Blanca S. Bayo, Director
Division of the Commission Clerk
And Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: COMMENTS - Voice-Over-Internet-Protocol Services
Undocketed Workshop, January 27, 2003

Dear Ms. Bayo:

Enclosed for filing are the original and 15 copies of the Comments of the Florida Cable Telecommunications Association, Inc. and the Southeastern Competitive Carriers Association to the undocketed workshop on January 27, 2003, regarding Voice-Over-Internet Protocol Services.

Copies of the Comments have been served on the parties of record. Please acknowledge receipt of filing of the above by stamping the duplicate copy of this letter and returning the same to me.

Thank you for your assistance in processing this filing. Please contact me with any questions.

Sincerely,

Martin McDonnell
Attorney for SECCA

Michael A. Gross
Attorney for FCTA

Enclosure

cc: All Parties of Record

246 East 6th Avenue • Tallahassee, Florida 32303 • (850) 681-1990 • FAX (850) 681-9676 • www.fcta.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of the Florida Cable Telecommunications Association, Inc. and the Southeastern Competitive Carriers Association to the undocketed workshop on January 27, 2003, regarding Voice-Over-Internet-Protocol Services have been served upon the following parties by U.S. Mail this 25th day of February 2003:

Samantha Cibula, Esq.
Division of Legal Service
Florida Public Service Commission
2540 Shumard Oak Blvd
Tallahassee, FL 32399

Floyd Self, Esquire
Messer, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
P.O. Box 1876
Tallahassee, FL 32302

BellSouth Telecommunications, Inc.
Nancy White/James Meza III
c/o Ms. Nancy H. Sims
150 S. Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Ausley Law Firm
J. Jeffry Wahlen
P.O. Box 391
Tallahassee, FL 32302

Blooston Law Firm
Benjamin Dickens
2120 L Street, NW
Suite 300
Washington, DC 20037

CNM Network, Inc.
4100 Guardian Street
Simi Valley, CA 93063

Gibson, Dunn & Crutcher, LLP
Robert Metzger/Joseph Scavetta
333 South Grand Avenue
Los Angeles, CA 90071

Harriett Eudy
Northeast Florida Telephone
11791 110th Street
Live Oak, FL 32060

McWhirter Law Firm
Joseph McGlothlin/Vicki Kaufman
117 S. Gadsden St.
Tallahassee, FL 32301

Sprint
Susan Masterton/Charles Rehwinkel
(MC FLTLHO0107)
P.O. Box 2214
Tallahassee, FL 32316-2214

Verizon
Kimberly Caswell
FLTC0007
201 North Franklin Street
P.O. Box 110
Tampa, FL 33601-0110

ALLTEL Corporate Services, Inc.
Steve Rowell/Bettye Willis
One Allied Drive
Little Rock, AR 72203-2177

Coral Telecom, Inc.
Angela Green

2292 Wednesday Street, Suite 2
Tallahassee, FL 32308-4334

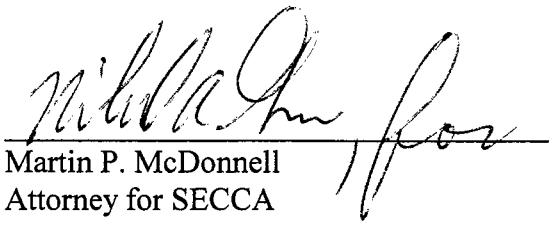
Chris Burke
Tom McCabe
c/o David B. Erwin
127 Riversink Road
Crawfordville, FL 32327

Frontier Communications of the South, Inc.
180 South Clinton Avenue
Rochester, NY 14646-0700

ITS Telecommunications Systems, Inc.
P.O. Box 277
Indiantown, FL 34956-0277

NEFCOM
Ms. Harriet Eudy
11791 110th Street
Live Oak, FL 32060-6703

TDS Telecom/Quincy Telephone
107 Franklin Street
Quincy, FL 32351



Martin P. McDonnell
Attorney for SECCA

Michael A. Gross
Attorney for FCTA

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:	**UNDOCKETED**
Staff Workshop Regarding Voice-over-Internet-Protocol Services	**February 28, 2002**

COMMENTS OF THE FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION AND THE SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION

The Florida Cable Telecommunications Association ("FCTA") and the Southeastern Competitive Carriers Association ("SECCA") respectfully submit these comments regarding the issue of Voice-over-Internet-Protocol ("VoIP") communications.

1. INTRODUCTION AND SUMMARY.

In considering the best regulatory response (if any) to VoIP arrangements, FCTA and SECCA suggest that the Commission consider and be guided by the following principles.

First, figures are unavailable, but it is likely that the majority of VoIP communications are interstate or international in nature. This Commission undoubtedly has jurisdiction over intrastate telecommunications services in Florida. However, even if some VoIP services might fall into that classification, the key long-term decisions regarding VoIP will almost certainly be made at the federal level. Indeed, to the extent that interstate and intrastate VoIP activities are inextricably mixed — as they may well be — federal-level action would supercede any state-level action. For this reason, it would be completely reasonable for this Commission to defer any decision on matters relating to VoIP until after the Federal Communications Commission ("FCC") has issued binding rulings regarding it.

Second, the term "VoIP" covers a wide array of present and prospective technologies, ranging from computer-to-computer voice communications carried essentially entirely over the public Internet, to services that make use of the efficiency of packetized communications in saving bandwidth but which otherwise appear similar to traditional circuit-switched telephony, to entirely new networks that piggy-back voice communications on broadband information service networks — with numerous other variations. Any attempt to establish a single regulatory response to "VoIP" is certain to be unwise at this time, just as it would be unwise to try to regulate "the telecommunications industry" — including large incumbent local carriers, small incumbent local carriers, landline interexchange carriers, satellite-based services, wireless carriers, facilities-based alternative local carriers, resellers, pay phone providers, shared tenant services providers, and so on — with a single, undifferentiated regulatory scheme. Any suggestion for Commission regulatory action must be based on a carefully developed record that elucidates and respects these differences. Otherwise, any regulatory steps the Commission might take are likely to interfere with the ability of unfettered market forces to determine what technologies will win and lose with consumers. At present, however, no such record exists.

Third — and completely independent of how one might classify any particular VoIP offering — the Commission should exercise its discretion to regulate VoIP as little as possible, and to avoid imposing on VoIP the legacy subsidy obligations arising from regulatory decisions made decades ago, relating to the provision of "plain old telephone service" using 100-year old, circuit-switched technology. A forward-looking, pro-competitive, pro-innovation regulatory policy will find some way to deal with whatever difficulties and disruptions these new services might cause to the old regime ***other than*** saddling the new offerings with the same oppressive subsidy obligations that distort the current telecommunications landscape. The innovations that

VoIP arrangements make possible, in short, should be viewed by this Commission as a positive catalyst for change, not a threat to be crushed with the burden of subsidies — subsidies that every serious policymaker knows must sooner or later be eliminated anyway. Indeed, VoIP arrangements give the Commission an ideal opportunity to step back and watch market forces work, monitoring customer acceptance of new services, sensitivity to changes in price and service quality, and so on. No sound purpose would be served by homogenizing these different services by burdening them all with legacy regulatory obligations.

2. THE COMMISSION SHOULD DEFER ANY ACTION REGARDING VOIP TO THE FCC.

VoIP is not simply an issue for Florida. To the contrary, the use of VoIP arrangements to supplement traditional circuit-switched telephony primarily affects interstate and international communications. While some purely intrastate VoIP services undoubtedly exist, those services are almost certainly a very small part of the VoIP picture.

For these reasons, the Commission should be hesitant to take any definitive action with respect to the regulatory treatment of VoIP services. The overall phenomenon is nationwide and, to some extent, worldwide. In such a situation, state-specific responses are unlikely to achieve their ostensible goals. At best, a state-specific response to a worldwide phenomenon would have little or no effect. At worst, a well-intended, but misguided, state-specific response could cause entrepreneurs to withdraw from a state.

The FCC, of course, is well aware of the existence of VoIP services and the knotty regulatory issues they pose. After careful consideration of the questions of permitting new technologies to flourish, versus forcing them to bear the burden of subsidizing legacy networks using 100-year-old technology, the FCC wisely chose to leave these technologies alone — refusing to classify them as "telecommunications services" for regulatory purposes. *See*

Federal-State Joint Board on Universal Service, Report To Congress, 13 FCC Rcd 11501, ¶ 83 (1998) ("*Universal Service Report to Congress*").

The wisdom of that choice is shown by the continued growth of services based on these new and innovative technologies. That growth, in turn, has once again brought the matter before the FCC; AT&T has requested that the FCC rule that VoIP services are not subject to exchange access charges under current law. *See Wireline Competition Bureau Seeks Comment on AT&T's Petition For Declaratory Ruling That AT&T's Phone-To-Phone IP Telephony Services Are Exempt From Access Charges,* Public Notice, DA 02-3184 (rel. Nov. 18, 2002). Comments and reply comments on this matter were submitted to the FCC over the last several months. It seems an unproductive use of ***this*** Commission's resources to try to develop a state-specific regulatory policy regarding these matters when the same issue is front-and-center with the FCC.[1]

This is particularly true given the — at a minimum — jurisdictionally mixed nature of many VoIP arrangements. For example, the FCC has concluded as a general matter that connections to the Internet are, essentially, inherently interstate in nature. *See, e.g.,* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Inter-Carrier Compensation for ISP-Bound Traffic, *Order on Remand and Report and Order,* 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"). While it is conceivable that the FCC will retreat from this approach in the context of VoIP, it is at least equally likely that the FCC will conclude

---

[1] Indeed, in the short time since AT&T's petition was filed, another VoIP provider, using a somewhat different combination of technology and market approach, asked the FCC to declare that ***its*** new offering should be declared neither telecommunications nor a telecommunications service. *See Pleading Cycle Established for Comments on pulver.com Petition for Declaratory Ruling,* Public Notice, DA 03-439 (FCC rel. Feb. 14, 2003).

that VoIP arrangements are preemptively subject to interstate regulatory authority. Any such conclusion would render state-level regulatory activity in this sphere a waste of time.[2]

In these circumstances, the better part of valor for the Commission on this topic is, clearly, to take no action at all. As noted, the key issues have just been briefed to the FCC. It is certainly possible that the FCC will for one reason or another fail to act on the matter within a reasonable time, creating more pressure for states to act. But we are a long way from being able to conclude that the FCC will simply let the issue lie. Given the overwhelmingly interstate nature of the VoIP phenomenon, this Commission should give the FCC time to consider and to act, rather than trying to fashion a state-specific response to an interstate, international issue.

3. VoIP Comes in Many Shapes And Sizes.

Another factor counseling caution in any state-level effort to impose any particular regulatory obligations on "VoIP" arrangements is that the term covers a wide range of technologies and end user offerings. It would make no sense for the Commission to try to adopt a "one-size-fits-all" regulatory approach to a highly heterogeneous situation.

At the Staff workshop, incumbent carriers understandably focused on a type of VoIP that they believe to be closest to traditional telephony — so-called "phone-to-phone" VoIP. In so doing they seek to argue that VoIP is "really" just like plain old telephone service and so "really" should be subject to the same regulatory burdens as apply to that type of service.

---

[2] This is not to say that one cannot imagine a purely "intrastate" version of some VoIP services. But one can equally well imagine a variety of purely "intrastate" connections between end users and ISPs (such as downloading content from in-state web sites, sending email to others in the same state, etc.). The existence of examples of purely intrastate Internet use did not deter the FCC from declaring ***all*** connections between end users and ISPs to be a form of interstate access services, subject to mandatory FCC rules governing such access. *See generally ISP Remand Order, supra.* It is unclear why the FCC would choose to apply a different conclusion to VoIP arrangements.

That particular claim is addressed in the next section. Here, the point is that there are a number of different actual and potential VoIP technologies, and that there is no reason to think that the same regulatory response should apply to each of them.

Three such technologies bear mention here. First, the cable industry's research arm, CableLabs, has spent years developing the PacketCable™ architecture to enhance the capabilities of high-bandwidth information services offered using a cable system.[3] One potential application of the PacketCable™ architecture is to provide a voice communications capability. The functioning service would allow an end user to plug a normal telephone into a standard RJ-11 jack and send and receive voice communications. Those communications would be entirely in packetized format for calls within a given system and between compatible systems. Assuming that a cable system chose to offer interconnection with the public switched telephone network ("PSTN"), it would be necessary to "dumb down" the communications arrangements to be compatible with traditional telephony standards.[4]

A more modest — but still innovative — VoIP arrangement is that provided by firms such as Vonage (www.vonage.com). Vonage piggy-backs on a pre-existing high-bandwidth connection to the Internet to provide an interesting voice communications service in which the end user subscribing to the service can select the area code to and from which calls will be

---

[3] Information about CableLabs in general, and PacketCable™ architecture in particular (including the detailed technical specifications for the architecture) is available at www.cablelabs.com. More specific information about PacketCable™, including the detailed technical specifications for the entire architecture, can be found at www.packetcable.com.

[4] *Id.* One interesting potential application of the PacketCable™ architecture, apart from interconnection with the PSTN (and in keeping with cable operators' traditional role as providers of entertainment-oriented programming), is the use of voice capabilities in connection with high-bandwidth Internet access to offer real-time multi-player interactive games, in which allowing physically dispersed participants to communicate directly would enhance the gaming experience. In this regard, interactive gaming is viewed as one of the few bright spots in the economic aftermath of the "dot bomb" crash. *See, e.g.*, "Special Report: The Business of Gaming," WIRED (January 2003) at 94-113.

treated as "local" — irrespective of the caller's physical location.[5] It appears that this service is provided using a combination of private facilities, the public Internet, and tariffed services from ILECs and/or CLECs.

Another VoIP arrangement is illustrated by the service described by pulver.com in its recent petition to the FCC.[6] Pulver offers an essentially private service, open only to high-speed cable modem customers who wish to call other similarly equipped customers — with no link to the PSTN at all. More details on pulver.com's approach to VoIP arrangements can be found at its web site. *See* http://pulver.com/reports/fwdfcc.html.

These are only three examples of the array of means by which the Internet Protocol can be used in the provision of some form of voice communications services. Also available are the different arrangements discussed and identified by the FCC in its 1998 *Universal Service Report to Congress.* There are undoubtedly other arrangements that are on entrepreneurs' drawing boards that have yet to be rolled out anywhere, even for testing purposes.

All of this means that any reasoned regulatory response to the VoIP phenomenon will have to be carefully crafted, based on a detailed record of what particular serving arrangements are being addressed. A regulatory declaration that "VoIP providers" in general have some set of obligations — or even that "phone-to-phone VoIP providers" have some set of obligations — would inevitably lead to ambiguity and confusion.

Small incumbent carriers who have been unable to wean themselves off of their dependence on access charges are understandably agitated by the prospect that a service that "looks like" traditional voice telephony could be offered to their customers without helping to

---

[5] *See, e.g.,* T. Hearn, "An Advantage for Vonage? VoIP Rival Rides Cable Pipe," MULTICHANNEL NEWS Vol. 24, No. 1 (January 6, 2003) at 1.

[6] *See* note 1, *supra.*

sustain that dependency. That agitation might even lead such carriers to be unable to distinguish services to which access charge obligations reasonably apply from other services. The Commission, however, has no reason to be agitated at all — at least on the current record. To the contrary, the most that the Commission should even consider doing at this point is opening a proceeding to develop the kind of detailed record about different VoIP arrangements upon which rational policy choices can be made.[7]

4. EVEN IF THE COMMISSION *COULD* IMPOSE TRADITIONAL REGULATORY BURDENS ON VOIP PROVIDERS, IT SHOULD REFRAIN FROM DOING SO.

Irrespective of the matters discussed above, there is a much more fundamental reason for the Commission to refrain from imposing traditional regulatory burdens on VoIP arrangements — the question of the basic regulatory policy that the State of Florida should have with respect to new and innovative technology. FCTA and SECCA believe that as an overarching matter of regulatory policy, this Commission should stand in favor of innovation, new technology, and reduction of regulatory burdens.

Applying this policy to the issue at hand, the question is not whether the Commission ***can*** impose regulatory burdens on VoIP arrangements (such as a requirement to pay traditional,

---

[7] Note, in this regard, that a showing by an ILEC (large or small) that it has been "deprived" of some amount of access charge "revenues" to which it was arguably "entitled" is a far cry from a showing that the Commission should do anything about it — or even that the ILEC has any sound claim to "make up" those revenues. Although traditional rate case analysis is largely a matter of historical interest, in general it remains the law that a regulated carrier cannot insist on regulatory intervention to increase its revenues without first showing that its existing revenues are so low as to be "confiscatory" — that is, insufficient to pay operating costs, cover depreciation allowances, service debt, and attract capital. It is perfectly natural for the introduction of any form of competition into a market to lower the previously-earned returns of the incumbent firm or firms. Even assuming that some ILECs are experiencing a loss of revenues due to the advent of some VoIP arrangements, in the absence of a showing from the ILEC that the lower revenues lead to earnings below a confiscatory level — a showing that plainly has not been made in this proceeding or, so far as FCTA and SECCA are aware, in ***any*** proceeding before this Commission — a perfectly reasonable regulatory response is to do nothing.

subsidy-laden access charges) but rather whether it ***should*** do so. In our view, the Commission should not.

As a general matter, regulators should act only when competitive forces fail to discipline the behavior of firms in the market. Traditional regulation is based on the idea that a "utility" such as a traditional ILEC has a "natural monopoly," so that competitive forces cannot adequately discipline market behavior. In such cases — in the absence of regulation — consumers suffer higher prices, lower service quality, and less rapid innovation than a competitive market would deliver. With VoIP, however, the very diversity of potential technological and business arrangements term means (among other things) that the Commission has an ideal opportunity to step back and watch the market develop. Precisely which VoIP arrangements entrepreneurs might want to try out in Florida remains to be seen; but as a matter of regulatory policy, this Commission should be ***encouraging*** these new alternatives to enter the marketplace, in order to observe how each might fare.

The best — and possibly the only — way to do this is for the Commission to forego regulation — and legacy regulatory burdens — at this juncture, so as to study more fully the extent to which market forces will fully work in this market segment. The Commission can monitor customer acceptance of the new services, along with customer sensitivity to price changes, to differences in service quality, and to differing technological innovations. Equally interesting will be the response to these services by competitors, including incumbent LECs. If necessary, after considering what actually happens in the market, the Commission can step in — and regulate lightly, to the minimum extent required to protect consumers.[8]

---

[8] It is probably not surprising that, after decades upon decades of operating in protected regulatory enclaves, the main response of some incumbent LECs to the emergence of new, innovative services is to try to shoe-horn them into a pre-existing regulatory category — and, not coincidentally, a regulatory (note continued)...

In further support of this conclusion, consider the FCC's longstanding "ESP Exemption" applicable to ISPs and similar entities. From the inception of the interstate access charge regime in 1984, the FCC has taken the view that ISPs, in connecting to the PSTN, ***use*** interstate access services. Even so, the FCC has for nearly 20 years now repeatedly refused to require ISPs to pay the same traditional switched access charges that apply to other users of interstate access. The purpose of this exemption was precisely the recognition that saddling new technologies with subsidies designed to support a legacy network is bad public policy.[9]

This wise regulatory choice has been an unmitigated success. Today dozens of millions of Americans have access to the wealth of content and services available through the Internet, at generally affordable rates, because ISPs were able to connect to the PSTN and offer their services without having to worry about the high, subsidized access charges that have been such a source of controversy between traditional ILECs and traditional IXCs.

This same policy logic should be applied by this Commission to the issue of VoIP arrangements. It may be that there is some legal or regulatory theory under which this or that particular type of VoIP service ***could*** be subjected to traditional access charges. If that is so, then the Commission should view this situation as an opportunity to make clear that as a matter of public policy, Florida favors new and innovative technologies being deployed to offer innovative — or at least inexpensive — services to consumers.[10]

...(note continued)
category that would result in payment of large, subsidy-laden fees to those same incumbent LECs. There is no reason, however, for the Commission to take the same approach.

9 *See ISP Remand Order, supra,* for a discussion of the history of the ESP Exemption.

10 In this regard, it is noteworthy that the FCC has at least tentatively concluded that essentially ***any*** payment of intercarrier compensation — whether under the rubric of "reciprocal compensation" between LECs, or traditional "access charges" — has a tendency to distort competition by allowing one carrier to off-load its costs onto interconnected, competitive carriers. *See generally In Re Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001). For this (note continued)...

This is not to say that there will never arise a situation in which some ILEC is so dependent on subsidized access charges that some corrective action might need to be taken — for example with that ILEC's other rates — to deal with a particular problem. It ***is*** to say that the solution to the problem of ILECs who are overly dependent on access charges is not to stamp out innovative services by requiring those services to pay those charges.

5. CONCLUSION.

For the reasons stated above, the FCTA and SECCA respectfully suggest that the Commission should take no regulatory action with respect to VoIP arrangements, but that if action is taken, the Commission should affirm that regulatory policy in Florida is intended to promote, not suppress, new and innovative technology, including VoIP arrangements, and that such arrangements will not be subjected to traditional, subsidy-laden access charges.

...(note continued)
reason, the FCC is considering a unified intercarrier compensation regime that would exchange all traffic — including, over time, "access" traffic — on a "bill-and-keep" basis. While this is only a proposal, it does suggest that the trend in regulatory thinking is not to find ways to apply traditional access charges to additional types of services — it is to find ways to minimize or even entirely eliminate those charges.

Respectfully submitted,

SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION

Martin P. McDonnell, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 South Monroe Street
Tallahassee, FL 32301
850-681-6788
850-681-6515 (fax)
marty@reuphlaw.com

Attorney for SECCA

FLORIDA CABLE TELECOMMUNICATIONS ASSOCIATION

Michael A. Gross
Vice President, Regulatory Affairs &
Regulatory Counsel
Florida Cable Telecommunications Association
246 E. 6th Avenue
Tallahassee, FL 32303
850-681-1990
850-681-1990 (fax)
mgross@fcta.com

Attorney for FCTA