

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 255 of the)
Telecommunications Act of 1996)
Access to Telecommunications Services,)
Telecommunications Equipment, and)
Customer Premises Equipment)
By Persons with Disabilities)

WT Docket No. 96-198

COMMENTS OF TELEGLOBE COMMUNICATIONS CORPORATION

Teleglobe Communications Corporation ("Teleglobe"), a major provider of domestic and international voice, data and Internet backbone services,¹ hereby submits its comments in the captioned proceeding. Teleglobe fully supports the goals of section 255 of the Communications Act and agrees with the Commission's tentative determination, in its Further Notice of Inquiry ("NOI"), that Voice-over-Internet-Protocol ("VOIP") and other advanced technologies should not "leave people with disabilities behind."² As the record in this proceeding confirms, however, VOIP in its present and foreseeable forms presents no issue of accessibility by persons with disabilities.³ Until such an issue is plausibly and specifically identified, there is no reason to expect that classification of VOIP as a telecommunications service – with the potential such a decision presents for

¹ Teleglobe is the international operating arm of Teleglobe Inc., a global provider of broadband voice and data communications service and facilities. Teleglobe's principal operating subsidiaries in the United States are Teleglobe USA, Inc., providing primarily carrier's carrier services, and Teleglobe Business Solutions, Inc., providing corporate and commercial services.

² *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198, Report and Order and Further Notice of Inquiry, FCC 99-181, ¶ 175 (rel. Sept. 29, 1999)("NOI").

³ *Id.* ¶ 179.

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regulatory burdens that go well beyond the requirements of section 255 - will achieve any benefit for persons with disabilities. Similarly, until such an accessibility issue is identified, the Commission will have no basis to assert ancillary jurisdiction over VOIP as "imperative for the achievement" of the Commission's obligations under section 255.⁴ Accordingly, the Commission should continue its pro-consumer policy of non-regulation of advanced information services, including VOIP. If accessibility issues are brought to the Commission's attention in the future, the Commission can address those questions through an exercise of ancillary jurisdiction that is narrowly tailored to those accessibility issues of which the Commission has notice.

By declining to impose new regulatory burdens on VOIP service, the Commission also will send a constructive signal to regulators in other countries. Through its operating subsidiaries in Europe, Asia and the Americas, Teleglobe has experienced first-hand the evolution of telecommunications markets and regulation, and the difficulty that policy makers abroad often have in reconciling the need to encourage the growth of the Internet with the contrary tendency to treat new networks and media under laws and polices designed for a traditional telephone environment. It is therefore critical that the Commission, in addressing Internet issues of first impression, do so with the understanding that policy makers abroad are keenly aware of U.S. policy developments and often use the U.S. as a model for their own actions. The Commission should ensure that the outcome of this proceeding reflects its well-founded view that the Internet must remain free from unnecessary regulation.

I. VOIP Presents No Issue Of Accessibility For Persons With Disabilities

A telecommunications or information service might present accessibility issues in either of two ways. First, a service might require a user interface, whether hardware- or software-defined, that presents difficulties for persons with disabilities that it does not

⁴ *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177 (1968).

present for other persons. Second, a service might transmit or process inputs from persons with disabilities less accurately or efficiently than it transmits or processes inputs from other persons. VOIP presents neither of these kinds of issues.

First, VOIP does not create a new or unfamiliar user interface. As the NOI points out, VOIP services are accessed through existing telephones and personal computers.⁵ Like other services accessed through those devices, VOIP services are reached by dialing telephone numbers or "clicking" on screen-displayed icons. To the extent these methods of accessing VOIP may be thought to present compatibility issues, therefore, those problems more properly should be addressed by the Commission's rules for customer premises equipment.

Similarly, VOIP is in no sense inferior to circuit-switched service as a transmission technology. VOIP services transmit inputs from disabled persons, including the "TTY tones" and "speech patterns and voice outputs from alternative and augmentative communications devices" mentioned in the NOI, with the same or better fidelity than circuit-switched telephone services provide.⁶ As the refinement of VOIP continues, the transmission quality of these services can be expected to improve still further. There is no reason, therefore, to anticipate any degradation of the present, high level of accessibility of VOIP services to persons with disabilities.

The record in the rulemaking phase of this proceeding reinforces the conclusion that VOIP is accessible to persons with disabilities. Although a number of commenters suggested that section 255 obligations should be imposed upon VOIP services, not one of those commenters identified a specific accessibility problem - actual or potential - that those services may present. So, for example, the National Association of the Deaf ("NAD") notes with approval the Commission's statement, in its Report to Congress on

⁵ NOI ¶ 177.

⁶ *Id.* ¶ 179.

universal service, that some phone-to-phone VOIP services might be classifiable as telecommunications services, but NAD offers no specific reason why imposition of section 255 obligations on VOIP providers will benefit those with hearing disabilities.⁷ Similarly, the American Foundation for the Blind points out that disabled consumers should be able to “receive and transmit messages in whatever manner is most convenient,” specifically including “voice over Internet,” but suggests no specific way in which VOIP service is any less accessible than other services accessed through telephones and personal computers.⁸ The American Council for the Blind, Access Living of Metropolitan Chicago and the CPB/WGBH National Center for Accessible Media speak in equally general terms, stating simply (and in nearly identical language) that “[v]oice mail, interactive telephone prompt systems, and Internet telephony . . . must be made accessible” if the intent of section 255 is to be achieved.⁹ None of these comments identifies a single accessibility issue posed by VOIP. Accordingly, the record provides no basis on which the Commission may conclude that VOIP presents actual or potential accessibility issues for persons with disabilities.

II. The Commission Should Not Classify VOIP As A Telecommunications Service For Purposes Of Section 255

One of the Commission's great success stories is its decision, first made in 1980 and maintained consistently since that time, to permit enhanced data services and

⁷ Comments of the National Association of the Deaf, *Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1966: Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, WT Docket No. 96-198 (“Section 255 Rulemaking Proceeding”) at 14.

⁸ Reply Comments of the American Foundation for the Blind, *Section 255 Rulemaking Proceeding* at 10 (filed Aug. 14, 1998).

⁹ Comments of D. Alfred Ducharme, Director of Governmental Affairs, American Council of the Blind, *Section 255 Rulemaking Proceeding*, ¶ 13; Comments of Thomas D. Benziger, Access Living of Metropolitan Chicago, *Section 255 Rulemaking Proceeding*, ¶ 3; Comments of The CPB/WGBH National Center for Accessible Media, *Section 255 Rulemaking Proceeding* at 6.

Internet-based technologies to develop without the burden of common-carrier regulation.¹⁰ With the deployment of new technologies, such as VOIP, which promise to bring a qualitative improvement in the range of Internet Protocol ("IP") -based services available to consumers, demands to subject these technologies to common carrier regulation by classifying them as telecommunication services have increased. In the NOI, the Commission asks for comment on the latest such proposal - *i.e.*, the proposal that VOIP services be classified as "telecommunications services" for the purposes of section 255 of the Communications Act.¹¹

First, reclassification of VOIP is not necessary to serve any purpose of section 255. As discussed above, no commenter has identified a single, specific accessibility issue posed by VOIP services. Accordingly, nothing in the record justifies the drastic measure of reclassifying VOIP as a telecommunications service.¹²

Second, and more fundamentally, the classification of VOIP as a telecommunications service would create a potential jurisdictional basis for the imposition of extensive regulatory obligations on this emerging technology – an action

¹⁰ See *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, Tentative Decision and Further Notice of Inquiry and Rulemaking, 77 FCC 2d 384 (1980), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981); *affirmed sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 983 (1983); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, Phase II, 2 FCC Rcd 3072, 3081-82 (1987) (*Phase II Order*), *recon.*, 3 FCC Rcd 1150 (1988), *further recon.*, 4 FCC Rcd 5927 (1989), *Phase II Order vacated, California v. FCC*, 905 F.2d 1217 (9th Cir. 1990), *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991), (*BOC Safeguards Order*), *recon. dismissed in part*, Order, CC Docket Nos. 90-623 and 92-256, 11 FCC Rcd 12513 (1996); *BOC Safeguards Order vacated in part and remanded, California v. FCC*, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1427 (1995), *on remand*, 10 FCC Rcd 8360 (1995), Further Notice of Proposed Rulemaking, CC Docket No. 95-20, FCC 98-8 (rel. Jan. 30, 1998).

¹¹ NOI ¶ 178.

¹² Also, as discussed further below, any accessibility questions that do arise can be addressed by the more limited - and appropriate - device of an exercise of the Commission's ancillary jurisdiction.

the Commission has wisely avoided so far, with resultant benefits to U.S. consumers. As a Working Paper of the Commission's Office of Plans and Policy has pointed out:

The FCC did not seek to apply legacy Title II regulations to the Internet as it developed and flourished - the first email programs in the 1970s, interactive newsgroups in the 1980s, and the World Wide Web in the 1990s all grew up over the nation's telephone lines free from regulation. The next generation of Internet technologies should be treated in a similar manner . . . *The FCC's challenge is to maintain its hands-off approach to the Internet in an era when traditionally regulated services, such as voice telephony, are offered over traditionally unregulated mechanisms, like the Internet Protocol.* The Commission's instinct, as it has always been, should be to permit market forces to work, because competition leads to the widest variety of consumer choices.¹³

Similarly, in its Report to Congress of April 10, 1998, the Commission recounted in detail the history of its policy of non-regulation of enhanced services and concluded, as to VOIP service in particular, that new regulatory obligations should not be imposed on that service "in the absence of a more complete record focused on individual service offerings."¹⁴

The Commission can fully satisfy its legislative obligations under section 255 without abandoning this longstanding policy of non-interference with new and innovative information technologies. Accordingly, the Commission should not reclassify VOIP as telecommunications service for purposes of section 255.

III. The Record Does Not Support The Exercise Of Ancillary Jurisdiction Over VOIP

Before it can assert ancillary jurisdiction over a service, the Commission must find that it "has subject matter jurisdiction over the communications at issue and the

¹³ Jason Oxman, *The FCC and Unregulation of the Internet*, OPP Working Paper No. 31 at 24, 26 (July 1999) (emphasis added).

¹⁴ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, 11548 (1998).

assertion of jurisdiction is reasonably required to perform an express statutory obligation."¹⁵ Although the Commission undoubtedly has subject-matter jurisdiction over information services, including VOIP, any extension of section 255 obligations to VOIP service providers requires evidence that this assertion of ancillary jurisdiction is required to perform the express statutory requirement that telecommunications services shall be "accessible to and useable by persons with disabilities, if readily achievable."¹⁶

The Commission's decision, in this proceeding, to impose section 255 obligations on providers of voicemail and interactive menus is an example of the assertion of ancillary jurisdiction based upon a factual record.¹⁷ After reviewing specific assertions of commenters, the Commission found that persons with disabilities would be frustrated in their use of telecommunications equipment and services unless they also had access to the voice mail and interactive menus that have become increasingly prominent features of those services. The Commission therefore concluded that access to voicemail and interactive menus was reasonably necessary to perform its statutory obligations under section 255.¹⁸

The record in this proceeding does not support a comparable conclusion concerning ancillary jurisdiction over VOIP. As noted earlier, those commenters that urge the imposition of section 255 obligations on VOIP have not identified any actual or potential accessibility problem posed by those services. Accordingly, the Commission should exercise its ancillary jurisdiction over VOIP only when the need for such action has been demonstrated, and only to the extent "reasonably necessary" to address real-world accessibility issues.

¹⁵ See *United States v. Southwestern Cable Co.*, 392 U.S. at 177.

¹⁶ 47 U.S.C. § 255(c).

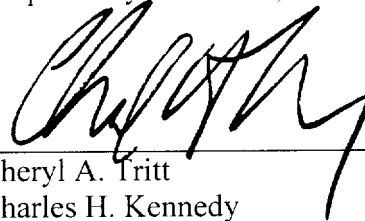
¹⁷ NOI ¶ 103.

¹⁸ *Id.*

Conclusion

Teleglobe fully supports the goals of section 255 of the Communications Act. Teleglobe also believes that all consumers, including persons with disabilities, are best served by the continued, unfettered development of advanced information services. Accordingly, the Commission should decline the invitation to depart from its beneficent policy of non-regulation of services – whether voice or data – provided by means of Internet Protocol.

Respectfully submitted,



Cheryl A. Tritt
Charles H. Kennedy
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-1510

Philip M. Walker
Charles A. Tievsky
Teleglobe Communications Corporation
11480 Commerce Park Drive
Reston, VA 20191-1506
(703) 755-2839

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Attorneys for Teleglobe Communications
Corporation

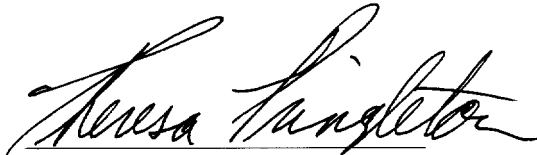
CERTIFICATE OF SERVICE

I, Theresa Pringleton, do hereby certify that copies of the foregoing **Comments** were hand delivered on this 13th day of January, 2000, to the following:

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., 5th Floor
Washington, DC 20554

Al McCloud
Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street SW, Room 6-A423
Washington, DC 20554

ITS, Inc.
1231 20th Street, NW
Washington, DC 20037



Theresa Pringleton