

ORIGINAL

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 Sections 255 and
251(a)(2) of the Communications Act of
1934, as Enacted by the
Telecommunications Act of 1996

WT Docket No. 96-198

Access to Telecommunications Services,
Telecommunications Equipment and
Customer Premises Equipment by Persons
with Disabilities

REPLY COMMENTS OF NET2PHONE, INC.

Net2Phone, Inc. ("Net2Phone") hereby submits its reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Further Notice of Inquiry*, FCC 99-181 ("*Notice*"), in the above-captioned proceeding.¹ The *Notice* was released together with the Commission's Section 255 rules, which address access by people with disabilities to telecommunications services in the information age. In the *Notice*, the Commission seeks comment on how Internet Protocol ("IP") telephony and

¹ 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 Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, Report and Order ("*Order*") and *Further Notice of Inquiry*, WT Docket No. 96-198, FCC 99-181 (released September 29, 1999).

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computer-based equipment may affect accessibility to telecommunications services for people with disabilities. *Notice* at ¶¶ 176-180. In particular, the Commission sought to develop a record with respect to the impact of phone-to-phone IP telephony on the disability community and whether there is a need for Commission action finding IP telephony to be a telecommunications service subject to Section 255 of the Act in order to ensure access. *Notice* at ¶ 179.

Net2Phone is committed to maintaining a dialogue with consumers with disabilities and their advocates in order to better understand the needs of people with disabilities. As shown below, the record demonstrates that no material current access problems have been identified, and the industry is moving responsibly to address potential future concerns in the appropriate standards bodies. Moreover, precipitous action affecting the regulatory classification of IP telephony in the absence of a full and complete record regarding the implications of any particular result is likely to have collateral consequences that stifle innovation and competition, thus harming the public interest. Accordingly, the Commission should refrain from making a determination regarding the regulatory classification of IP telephony in this proceeding.

I. BACKGROUND.

Net2Phone is a leading provider of voice-enhanced Internet communications services to individuals, business and telephone carriers. Net2Phone utilizes its IP network and technologies to route voice, fax, video, and other value-added applications worldwide, including e-mail by phone and e-commerce solutions. People use Net2Phone services for sophisticated, cost-effective communications from telephones, PCs and fax machines to stations throughout the world, while avoiding inflated foreign carrier

charges. Net2Phone also develops and markets technology and services for IP voice and e-commerce solutions for the web and other IP networks.

II. THE FCC'S "HANDS-OFF" APPROACH TO THE INTERNET HAS DELIVERED SUBSTANTIAL BENEFITS TO THE PUBLIC.

Beginning with its *Computer Inquiry* proceedings,² the Commission has refrained from regulating computer/communications services, so-called "enhanced services," because the market for such services has been competitive and consumers have derived substantial benefits from this competition.³ In its *Universal Service Report to Congress*, the Commission maintained the distinction between regulated "telecommunications

² In the mid-sixties, the Commission began a series of proceedings, known as the *Computer Inquiry* proceedings, to address the convergence and interdependence of communications and data processing technologies. *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities, Tentative Decision*, 28 FCC 2d 291, 295 (1970); *Final Decision and Order*, 28 FCC 2d 226 (1971), *aff'd in part sub nom. GTE Serv. Corp. v. FCC*, 474 F.2d 724 (2d Cir.), *decision on remand*, 40 FCC 2d 293 (1973); *In the Matter of Section 64.702 of the Commission's Rules and Regulations (Computer II)*, 77 FCC 2d 384 (1980) (*Final Decision*), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III)*, Report and Order, Phase II, 2 FCC Rcd 3072 (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*, 5 FCC Rcd 7719 (1990), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied, California v. FCC*, 4 F.3d 1505 (9th Cir. 1993); *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991), *recon. dismissed in part, Order CC Docket Nos. 90-623 and 92-256*, 11 FCC Rcd 12513; *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, 13 FCC Rcd 6040 (rel. Jan. 30, 1998).

³ *Internet Over Cable: Defining the Future in Terms of the Past*, OPP Working Paper No. 30, Barbara Esbin, Associate Bureau Chief, Cable Services Bureau, Office of Plans and Policy, Federal Communications Commission, (August 1998) at 30.

services” and unregulated “information services” in the context of Internet and IP offerings.⁴ This “hands-off” policy towards the Internet has contributed to its explosive growth which, as Chairman Kennard recently remarked, is “transforming the telecommunications industry, and providing tremendous benefits to citizens around the world.”⁵

The Commission further noted in its *Report to Congress* that it had not yet formally considered the legal status of IP telephony and declined to take any formal action at that time,⁶ explaining that it would not be “appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings.”⁷ The Commission correctly recognized the need to have as complete information and input as possible “when dealing with emerging services and technologies in environments as dynamic as today’s Internet and telecommunications markets.”⁸ As a result, IP telephony remains treated as an unregulated information service.

⁴ See *In the Matter of Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) (*Report to Congress*). In the *Report to Congress*, the Commission reaffirmed its determination that “telecommunications services” and “information services” are separate and distinct categories of services and largely correspond to its prior classifications of “basic” and “enhanced” services. *Id.* at 11520-11526.

⁵ *Internet: The American Experience*, Chairman William E. Kennard, U.S. Federal Communications Commission to the Conference on “Internet & Telecommunications: The Stakes,” Paris, France, January 28, 2000 (as prepared for delivery).

⁶ *Report to Congress*, at 11541.

⁷ *Id.*

⁸ *Id.* at 11544.

Under this regulatory regime, IP telephony, like the Internet itself, has become a competitive force in transforming traditional telecommunications services for the benefit of consumers worldwide. “IP telephony serves the public interest by placing significant downward pressure on international settlement rates and consumer prices . . . [and] [i]n some instances, IP telephony providers have introduced an alternative calling option in foreign markets that otherwise would face little or no competition.”⁹ As a leading IP telephony provider, Net2Phone is aggressively deploying IP telephony services worldwide, bringing these benefits to consumers in the process.¹⁰ The Commission should be very careful not to take any action in this proceeding that would threaten the loss of such benefits.

III. THERE IS NO NEED FOR COMMISSION ACTION WITH RESPECT TO THE REGULATORY CLASSIFICATION OF IP TELEPHONY IN THIS PROCEEDING.

The record in this proceeding confirms that a Commission determination on the regulatory status of IP telephony under Section 255 of the Act is not needed at this time to ensure that people with disabilities have access to telecommunications services in the information age. The record contains no specific evidence of any material access issues involving the provision of IP telephony services that are not already being addressed by the industry. Apart from the compatibility issues for TTY¹¹ and other relay services now

⁹ *Id.*

¹⁰ See *Changing Colors*, Brain Quinton, Internet Telephony, Dec. 13, 1999 at 38 (describing Net2Phone’s plans to give away free carrier-class H.323 IP voice gateways to service providers and POTs carriers).

¹¹ “A TTY is a piece of equipment that employs interactive text-based communications through the transmission of coded signals across the standard telephone

being worked on by industry groups, “[o]ther [access] issues are more hypothetical.”¹² For example, some commenters have raised “potential” access problems for the disability community that could arise if IP telephony services effectively replace traditional telecommunications services.¹³ That, of course, is not the case today.

Nor is there any other reason for bringing IP telephony within the mandate of Section 255. In imposing accessibility obligations on voicemail and interactive menu services, the Commission correctly declined to extend such obligations to other information services.¹⁴ The agency noted that “[u]nlike voicemail and interactive menus, other information services ... do not have the potential to render telecommunications services themselves inaccessible.”¹⁵ Many such information services “are alternatives to telecommunications services” and are not “essential to their effective use.”¹⁶ There has been no showing here that the “voicemail rationale” could apply to IP telephony.

More importantly, many commenters have acknowledged the industry efforts currently underway to ensure that access and compatibility issues relating to TTY and

network.” *Notice* at 20, ¶ 30 n.88.

¹² Comments of Gregg C. Vanderheiden, Ph.d, Trace R & D Center, University of Wisconsin-Madison and Judith E. Harkens, Ph.d, Gallaudet University, Technology Assessment Program, at 10 (filed Jan. 13, 2000).

¹³ *See* Comments of the National Association of the Deaf at 3-11 (filed on Jan. 13, 2000); *see also* Comments of Telecommunications For the Deaf, Inc. and the Consumer Action Network, at 6-11 (filed on Jan. 13, 2000); Comments of Self Help for Hard of Hearing People, Inc., at 3-9 (filed Jan. 14, 2000).

¹⁴ *Notice* at ¶¶ 107-108.

¹⁵ *Id.* at ¶ 107.

¹⁶ *Id.*

other relay services are addressed as IP telephony technology develops. The Voice on the Net (“VON”) Coalition, which includes Net2Phone, “is committed to IP voice applications being accessible as readily achievable and to considering the user requirements of people with disabilities in the development of new products and services.”¹⁷ As the VON Coalition has explained, standards work supporting TTY over IP networks is being carried on by the International Telecommunication Union, the Internet Engineering Task Force, and Cable Television Laboratories, Inc.¹⁸

Such industry fora are best positioned to ensure that technology is used to address the needs of the disability community as IP-based services continue to grow and evolve outside of government regulation. For example, the World Wide Web Consortium recently released guidelines for web page authoring tools to help websites become more accessible to people with disabilities.¹⁹ Accordingly, the record clearly shows that industry is already leading the effort to ensure that disability access issues will be considered in the development of IP telephony industry standards.

Access to both traditional services and new communications services made possible by the Internet is, without a doubt, vitally important to people with disabilities. But, for these new services to flourish and provide substantive benefits to the public, it is

¹⁷ Comments of the VON Coalition at i, (filed Jan. 13, 2000).

¹⁸ *Id.* at 6-12.

¹⁹ *Standards body Oks disabled accessibility guidelines*, Paul Festa, news.com, Feb. 3, 2000), available at <<http://home.cnet.com/category/0-1005-200-1541412.html>> (visited Feb 3, 2000).

equally important to ensure that unnecessary regulations do not stifle innovation and competition.

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.²⁰

As the Commission has recognized, classification of IP telephony as a regulated telecommunications service may have unintended adverse consequences for other important federal policies. For example, such an action would require the Commission to "face difficult and contested issues" relating to IP telephony in connection with access charges, universal service contributions, and international accounting rates.²¹ Moreover, the industry itself would be forced to reexamine its entire business model for the development of IP telephony offerings, thereby threatening the substantial public benefits created to date. The record before the agency in this proceeding remains far short of the "complete record focused on individual service offerings"²² deemed necessary to address such matters in the *Report to Congress*.

Given the wide range of potential issues and the voluntary industry efforts in addressing accessibility in IP-based services, Net2Phone urges the Commission to refrain from taking any action in this proceeding that would address the regulatory status of IP

²⁰ *The FCC and the Unregulation of the Internet*, Jason Oxman, Office of Plans and Policy, Federal Communications Commission, OPP Working Paper No. 31, at 26 (rel. July 19, 1999).

²¹ *Report to Congress*, at 11544-45.

²² *Id.* at 11541.

telephony. As GTE has noted, the Commission should carefully evaluate the new environment created by technological advances and consider the larger issues regarding the appropriate regulatory treatment of evolving services before evaluating the effect of new technologies on persons with disabilities.²³ Any needed government intervention to ensure accessibility to emerging communications services should follow, rather than lead, industry efforts.

If the Commission nonetheless believes it necessary to issue a decision on the application of Section 255 to IP telephony in this proceeding, the Commission should limit its decision in order to avoid any unintended consequences. Just as the Commission limited its decision with respect to voicemail and interactive menu services,²⁴ any decision to apply Section 255 requirements on IP telephony in this proceeding should not alter its current regulatory status nor should it be interpreted to support the application of additional provisions of the Act to IP telephony providers.²⁵

²³ Comments of GTE Service Corporation at 3 (filed Jan. 13, 2000).

²⁴ See *Order* at ¶ 108.

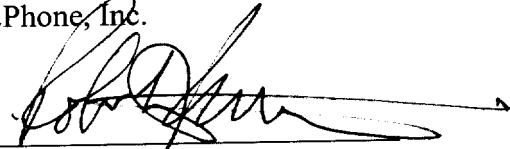
²⁵ Net2Phone's reluctant suggestion regarding such a limited ruling with respect to IP telephony should the Commission conclude that one is necessary should not be read as an endorsement of either the legal or policy rationales underlying the Commission's treatment of voicemail and interactive menu offerings in this proceeding.

IV. CONCLUSION

For the foregoing reasons, Net2Phone urges the Commission to refrain from taking action on the regulatory classification of IP telephony in this proceeding.

Respectfully submitted,
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CERTIFICATE OF SERVICE

On this 14th day of February 2000, I, Carol Hilton, hereby certify that the Reply Comments of Net2Phone, Inc. for the Further Notice of Inquiry in WT Docket 96-198 has been served upon the parties listed below via hand delivery:

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