

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to commence an investigation into Voice over) Case No. U-14073
Internet Protocol issues in Michigan.)

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At the April 28, 2005 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. J. Peter Lark, Chairman
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER

History of Proceedings

On March 16, 2004, the Commission commenced an investigation of Voice over Internet Protocol (VoIP) in Michigan. VoIP is a developing technology that may be used to transmit voice conversations over the Internet,¹ and is the focus of ongoing debates among state and federal regulators, legislators, and persons in the telecommunications industry. The Commission is aware of at least two types of VoIP transmission methodologies. One VoIP transmission methodology utilizes the public switched telephone network (PSTN). In some cases, licensed carriers provide VoIP directly to their customers. In other cases, unlicensed VoIP providers use licensed carriers' facilities and numbering resources to supply VoIP communications. The other form of VoIP

¹See, Newton's Telecommunications Dictionary, 19th Edition, CMP Books, 2003.

utilizes the Internet without utilizing the PSTN. The Commission requested comment on eight issues regarding VoIP activity in Michigan.

Comments were received from Heart of West Michigan United Way (HEART), Covad Communications Company, CenturyTel Midwest--Michigan, Inc., CenturyTel of Northern Michigan, Inc., CenturyTel of Upper Michigan, Inc., and CenturyTel of Michigan, Inc. (collectively, CenturyTel), Comlink, L.L.C., Sprint Communications Company Limited Partnership, the Michigan Emergency Telephone Service Committee (METSC), the Michigan Chapter of the National Emergency Number Association, Inc. (Michigan-NENA), the Association of Public-Safety Communications Officials--International, Inc. (APCO), SBC Michigan and SBC IP Communications, Inc., (collectively, SBC) Vonage Holdings Corporation (Vonage), Intrado Inc., the Michigan-Alliance of Information and Referral Systems (MI-AIRS), PAETEC Communications, Inc., Voice on the Net Coalition (VON), pulver.com, B & S Telecom, Inc., Verizon North Inc. and Contel of the South, Inc., d/b/a Verizon North Systems, the Michigan Exchange Carriers Association, Inc. (MECA), T2 Communications, L.L.C., Quick Communications, Inc. (Quick), the Michigan Cable Telecommunications Association, Inc. (MCTA), MCImetro Access Transmission Services LLC (MCI), One Star Long Distance, Inc., Luther Mathews, The Iserv Company, Incorporated, d/b/a The Iserve Company (Iserv), AT&T Communications of Michigan, Inc., and TCG Detroit (collectively, AT&T), the Competitive Local Exchange Carriers Association of Michigan (CLECA), LDMI Telecommunications, Inc., ACD Telecom, Inc. (ACD), McLeodUSA Telecommunications Services, Inc., Level 3 Communications, LLC (Level 3), and Jack Decker.² Topics included identification of known VoIP providers serving Michigan consumers, proper degree of regulation, telephone numbering resources, emergency calling, universal service fund

²All of these comments appear at: <http://efile.mpsc.cis.state.mi.us/efile/>.

(USF), access charge structures, abbreviated and toll-free dialing, quality of service, and various technical issues associated with VoIP.

VoIP Providers Serving Michigan

Several commenters identified themselves as companies that are already serving customers in Michigan through use of VoIP. These companies include Level 3, pulver.com, ACD, Vonage, and CenturyTel. Level 3 stated that it is a wholesale carrier that provides basic telecommunications services through use of VoIP. Vonage indicated that it currently advertises the availability of its service in the 248, 269, 313, 517, 586, 616, 734, and 810 area codes. ACD commented that it launched commercial and residential VoIP service on May 1, 2004. CenturyTel stated that it has the capability to enable customers to configure a VoIP platform to multiple locations over an existing data network for purposes of private voice networking. Pulver.com stated that it has 1,200 customers in Michigan.³ Iserv stated that it was not now providing VoIP, but probably would do so in the near future in a combined effort with a competitive local exchange carrier.

Subsequent to the Commission's commencement of this investigation, SBC requested and received numbering resources to conduct a VoIP trial in several metropolitan areas around the country, including Detroit.⁴ SBC did not discuss its VoIP trial in its comments. On January 28,

³On February 12, 2004, the Federal Communications Commission (FCC) declared pulver.com's Free World Dialup is an "unregulated information service" subject only to the FCC. *In the Matter of the Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service, Memorandum Opinion and Order*, WC Docket No. 03-45, released February 19, 2004. Free World Dialup was determined to be an Internet application without use of the PSTN.

⁴*In the Matter of the Administration of the North American Numbering Plan, Order*, CC Docket 99-200, June 17, 2004.

2005, SBC Internet Services, Inc. (SBCIS), was granted a waiver of Section 52.15(q)(2)(i) of the FCC's rules, permitting the allocation of numbering resources to SBCIS without state licensure.⁵

Oversight of VoIP Services

On February 12, 2004, the FCC found that an entirely Internet-based VoIP service was an unregulated information service.⁶ On the same day, the FCC began a broader proceeding to examine what its role should be in this new environment of increased consumer choice and what it can best do to meet its role of safeguarding the public interest.⁷ On October 19, 2004, former FCC Chairman Michael Powell informed the 2004 VON Conference in Boston that he intended to propose a "minimal, well-harmonized regulatory environment" for VoIP services that would be subject to exclusive federal jurisdiction.⁸ Subsequently, in an order issued on November 12, 2004, the FCC preempted an order of the Minnesota Public Utilities Commission that applied its traditional telephone company regulations to Vonage's "DigitalVoice" service, which has the capability of completing calls via the PSTN.⁹

General Comments

In the Commission's investigation, comments were split between incumbent carriers and VoIP providers. MECA urged the Commission to very carefully consider the effect that any regulatory

⁵In the matter of the administration of the North American Number Plan, order, CC Docket No. 99-200, January 28, 2005.

⁶*See, In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45

⁷*In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking.

⁸http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-253325A1.doc

⁹Vonage Holdings, WC Docket No. 03-211, November 12, 2004.

policy for VoIP traffic might have on rural communities and subscribers. MECA supported requiring VoIP providers in Michigan to obtain certification as telecommunications providers. MECA also argued that the Commission's rules and regulations should apply to VoIP providers.

The MCTA insisted that VoIP providers that offer services that meet a certain baseline test should enjoy certain rights and accept certain responsibilities in their provision of this new generation of services.¹⁰

SBC believed that there is no economic justification to regulate retail prices for incumbent wireline telecommunications if VoIP, wireless, and numerous other providers are free to structure, bundle, enhance, or price their competing services as they choose.

Companies providing VoIP services commented that regulations should ensure that competition can thrive by focusing on the means by which the customer gains access to the PSTN. They suggested that VoIP providers should not be subject to the same form of regulation traditionally applied to telephone utilities. For example, VON stated that regulation of a VoIP provider should not depend upon whether communications originate or terminate on the PSTN. Further, pulver.com urged the Commission to refrain from taking any action to regulate VoIP in any form.

Numbering Resources

Due to the recent increase in the number of area codes in Michigan, comment was requested on the access and use of numbering resources by VoIP providers. Vonage stated that "it is entirely possible that service such as Vonage will eliminate the need for customers to have separate wireline, wireless, and facsimile telephone numbers." VON indicated that "not all VoIP providers (e.g. Free World Dialup) use North American Numbering Plan (NANP) numbers." However,

¹⁰MCTA Comments, *Balancing Responsibilities and Rights: A Regulatory Model for Facilities-Based VoIP Competition*, NCTA Policy Paper, February 2004, Attachment.

pulver.com commented that "...through arrangements pulver.com has with 3rd party carriers, calls may terminate on the Public Switched Telephone Network."

MECA expressed concern that VoIP providers could avoid the utilization requirements imposed on certified service providers. According to MECA, the practice of some VoIP providers offering customers telephone numbers on any available area code, regardless of whether the customer lives in that area, could lead to a faster exhaustion of available numbers. However, MCI observed that numbers that are stranded in low population density rate centers could be made useful again in VoIP applications.

Local number portability did not raise as much concern with MECA. According to MECA, "the same technical requirements and standards ordered by the FCC for wireline and wireless carriers" should apply." AT&T added "this is an issue that may be resolved by following the national number portability rules and standards that will develop as VoIP develops."

Licensed carriers nationwide have equal access to telephone numbering resources. However, at this time, most unlicensed VoIP providers must develop partnerships with licensed carriers to acquire telephone numbers to provide to customers.¹¹ The Commission has provided comments to the FCC urging denial of numbering resources to unlicensed providers to protect the current 10-digit numbering system.¹² Although the Commission is not aware of efforts by VoIP providers to acquire large amounts of numbering resources, Michigan's recent need for area code relief demonstrates the need for more vigilance to ensure that telephone numbers are acquired and used appropriately.

¹¹See, footnote 5, *supra*.

¹² Reply Comment, *In the Matter of SBC IP Communications, Inc. Petition for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-2004, August 31, 2004.

The Commission recognizes both local number portability and thousands-block number pooling as numbering concerns and competitive issues. As VoIP providers acquire customers in both rural and metropolitan areas, it is imperative that customers be able to change to VoIP service while keeping their current telephone number. A VoIP provider that is not capable of providing number portability restricts its own competitive edge and uses telephone numbering resources unnecessarily.

Access Charge Structure

Due to the FCC *Order*¹³ regarding access charges on VoIP services, this topic will not be further discussed by the Commission.

Abbreviated and Toll-Free Dialing

Comments were very limited regarding abbreviated, or N-1-1, dialing and toll-free dialing. MI-AIRS, the organization charged with ensuring that 2-1-1 call centers meet specific criteria, expressed concern that as VoIP becomes more prevalent, unless 2-1-1 dialing works with VoIP in the same fashion as it works for traditional telephone service, the value of 2-1-1 service will be diminished. HEART, a 2-1-1 call center, urged the Commission to monitor and establish procedures to ensure that non-profit organizations such as itself are protected from cost and other burdens arising from VoIP. Level 3 and CLECA commented that providing abbreviated and toll-free dialing are competitive issues that should not be regulated.

Abbreviated dialing 2-1-1 (human services), 7-1-1 (telecommunications relay service), and 4-1-1 (directory assistance) are defined in the context of basic local exchange providers in the

¹³*In the Matter of the Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, WC Docket No. 02-361 FCC 04-97, rel'd April 21, 2004.

Michigan Telecommunications Act, MCL 484.2101 *et seq.* (MTA).¹⁴ The Commission is persuaded that its jurisdiction over these matters is prescribed by the MTA, which is currently silent with regard to the obligation of VoIP providers to ensure that their customers have the ability to reach N-1-1 destinations. Accordingly, the Commission urges revision of the MTA to address VoIP service providers to ensure these services remain viable. The Commission disagrees with Level 3 and the CLECA that abbreviated and toll-free dialing should be competitive issues.

Federal and State Law Enforcement

Quick provided some insight into the issue of VoIP and law enforcement. According to Quick, avoidance of the Communications Assistance for Law Enforcement Act (CALEA) was one of the driving forces in the development of VoIP. Quick cited the desire to make voice conversations secure, private, and free from snooping from various government agencies around the world. Quick stated that VoIP technology renders messages virtually undetectable, untraceable, and not subject to CALEA traps and other surveillance techniques.

The Commission notes that the FCC has issued a Notice of Proposed Rulemaking and Declaratory Ruling on the CALEA and its relationship to VoIP.¹⁵ The Commission concurs with the FCC's ruling that "Congress intended the scope of CALEA's definition of 'telecommunications carrier' to be more inclusive than that of the Communications Act." Given the scope of the FCC proceeding, the Commission finds that the ability for VoIP services to be CALEA compliant should be addressed at the federal level.

¹⁴Section 214 (2-1-1), Section 315 (7-1-1), and Section 360 (4-1-1).

¹⁵In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services, *Notice of Proposed Rulemaking and Declaratory Ruling*, ET Docket No. 04-295, RM-10865 (FCC 04-187), rel'd August 9, 2004.

Access to Emergency Calling

The METSC, Michigan-NENA, and the APCO agreed that their organizations are deeply concerned that the rapid and unregulated deployment of VoIP service could have a serious, negative effect on 9-1-1 emergency communications. According to them, the public has an expectation that telephone services will provide enhanced 9-1-1 (E 9-1-1) capability. The METSC, Michigan-NENA, and the APCO are concerned that the public will perceive that delays and misrouted calls are attributable to the public safety answering point (PSAP) or the network providers, when the cause of such problems might be the VoIP system.

Intrado suggested that the problems identified by the METSC, Michigan-NENA, and the APCO may not be with VoIP technology, but with the 9-1-1 system. According to Intrado, many Internet telephony providers want to provide 9-1-1 services to their customers, but cannot do so because they cannot interconnect with the 9-1-1 system.¹⁶ AT&T added that “[b]ecause there are so many permutations possible for VoIP service, it is not appropriate to apply blanket E-9-1-1 obligations on VoIP.”

Unfortunately, recent headlines illustrate the importance of all citizens having access to 9-1-1 services. The danger posed by a VoIP provider’s refusal to provide access to the 9-1-1 system or to clearly disclose the lack of 9-1-1 access became apparent earlier this year when a Texas family that subscribed to VoIP service tried to call 9-1-1 during a break-in. Two occupants of the residence were shot by an intruder while a third occupant tried in vain to use the 9-1-1 system from a VoIP phone to summon assistance. The Texas Attorney General subsequently sued

¹⁶Intrado Inc., “VoIP and 9-1-1 – The Technology is Not the Problem,” Emergency Number Operations, February/March 2004, attachment to Comments to the MPSC, Case No. U-14073, April 2, 2004.

Vonage, the VoIP provider. Michigan’s Attorney General Michael A. Cox issued a consumer alert warning VoIP customers of the uncertainty of 9-1-1 services.

The Commission supports the efforts of emergency organizations to ensure that customers dialing 9-1-1 will reach a PSAP. It is important to recognize that the Emergency Telephone Service Enabling Act (ETSEA), MCL 484.1101 *et seq.*, defines a service supplier as “a person providing a telephone service or a CMRS¹⁷ to a service user in this state.”¹⁸ This definition currently relieves VoIP providers from the responsibility of providing direct access to emergency personnel on 9-1-1 calls. The Commission concurs with the public safety organizations that VoIP customers who dial 9-1-1 should immediately reach a trained responder who can provide emergency assistance. The requirement that all VoIP providers register with the Commission will enable the Commission to assist PSAPs, emergency organizations, and VoIP customers in ensuring timely emergency assistance is provided.

Although the Commission is persuaded that the provision of communications services through use of VoIP over the PSTN is an evolution in voice communications that affects the public interest, the Commission concludes that VoIP over the PSTN is an unregulated telecommunications service because the Commission is not authorized by the MTA¹⁹ to enforce any registration or certification requirements or to address 9-1-1 issues involving VoIP providers.

The Commission believes that it should not be without clear and unequivocal authority to take reasonable steps to protect rights ensured to Michigan business and residential end-users by the MTA. The MTA grants authority to the Commission to study and remain informed on a number

¹⁷Commercial Mobile Radio Service.

¹⁸MCL 484.1102(bb).

¹⁹MCL 484.2101 *et seq.*

of issues such as USF²⁰ and Internet access provider locations.²¹ The MTA also includes among its purposes the encouragement of “the introduction of new services, the entry of new providers, [and] the development of new technologies.” MCL 484.2101(2)(d). It is unreasonable to expect the Commission to be in position to make informed judgments regarding the encouragement of new services, providers, and technologies absent the ability to gather information and otherwise study these matters.

For these reasons, the Commission is persuaded that it should ask the Legislature to specifically empower it to assess the effect of VoIP service on Michigan’s citizens, to adopt non-intrusive registration and certification mechanisms by which customer complaints regarding voice communication services may be forwarded to the appropriate companies, and to ensure that all citizens of this state have the benefit of enhanced 9-1-1 services. Such legislation would not be banned by the FCC’s decision in *Vonage Holdings*, which dealt with a state’s more persuasive regulatory framework.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 *et seq.*; 1969 PA 306, as amended, MCL 24.201 *et seq.*; and the Commission’s Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 *et seq.*

b. The Commission should request the Legislature to amend the MTA so as to specifically empower the Commission to assess the effect of VoIP service on Michigan’s citizens, to adopt non-intrusive registration and certification mechanisms by which customer complaints regarding

²⁰MCL 460.2202(e).

²¹MCL 460.2202(g).

voice communication services may be forwarded to the appropriate companies, and to ensure that all citizens of this state have the benefit of enhanced 9-1-1 services.

c. Monitoring of numbering resources will continue to ensure proper assignment and alleviate potential area code relief.

d. The Commission should support efforts to include VoIP providers in the definition of “service supplier” in the ETSEA.

e. The ability for VoIP services to be CALEA compliant should be determined at the federal level.

f. The docket in this matter should be closed.

THEREFORE, IT IS ORDERED that:

A. The Commission requests the Legislature to amend the Michigan Telecommunications Act so as to specifically empower the Commission to assess the effect of Voice over Internet Protocol service on Michigan’s citizens, to adopt non-intrusive registration and certification mechanisms by which customer complaints regarding voice communication services may be forwarded to the appropriate companies, and to ensure that all citizens of this state have the benefit of enhanced 9-1-1 services.

B. Monitoring of numbering resources shall continue to ensure proper assignment and alleviate potential area code relief.

C. The Commission shall support efforts to include Voice over Internet Protocol providers in the definition of “service supplier” in the Emergency Telephone Service Enabling Act.

D. The ability for Voice over Internet Protocol services to be compliant with the Communications Assistance for Law Enforcement Act shall be determined at the federal level.

E. The docket in this matter shall be closed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chairman

(S E A L)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of April 28, 2005.

/s/ Mary Jo Kunkle

Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

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By its action of April 28, 2005.

Its Executive Secretary