

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

In the Matter of)	
)	
Petition of Union Electric Company)	WC Docket No. 13-307
D/B/A Ameren Missouri for Declaratory)	
Ruling Concerning VoIP Service Offered)	
Using Cable One's Pole Attachments)	

COMMENT OF COMPTTEL

COMPTTEL respectfully submits these comments in response to the Commission's Public Notice seeking comment on a petition for declaratory ruling filed by Union Electric Company d/b/a Ameren Missouri (Ameren) on June 24, 2013. In its petition, Ameren requests that the Commission issue a declaratory ruling that the VoIP service offered over Cable One's attachments is a "telecommunications service" for purposes of determining the appropriate pole attachment rental.¹ The service at issue in this proceeding clearly falls within the statutory definition of a "telecommunications service" and the Commission does not need to act for other entities - such as state commissions or a court - to recognize this fact in fulfilling their respective roles.² Nevertheless, given that the classification of interconnected managed VoIP services has been a point of dispute in a number of other proceedings in addition to this one, it would benefit the industry greatly for the Commission to confirm that managed VoIP services, such as the one offered by Cable One, are

¹ Petition at 9.

² See e.g., ORDER, *In the Matter of the petition of SPRINT SPECTRUM L.P. for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish interconnection agreements with MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN*, Before the Michigan Public Service Commission, Case No. U-17349, Dec. 6, 2013 (The PSC found the facts in the case before it similar to other situations where the FCC found the service to be a telecommunications service and concluded that AT&T Michigan is required to provide Sprint with IP interconnection).

“telecommunications services.” As COMPTTEL has addressed this issue in a number of proceedings, we summarize our position below and, hereby, incorporate those comments by reference in this proceeding.³

The Act defines “telecommunications service” “as the offering of telecommunications – which is the transmission of information of the user’s choosing without change in the form or content of the information as sent and received⁴ - for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of facilities used.*”⁵ In accordance with the definition, whether the carrier uses Internet Protocol (“IP”) or TDM equipment in providing a service is irrelevant to the classification of the service. Indeed, the Commission has explicitly rejected the theory that a service using IP transmission technology is necessarily an information service merely because it uses IP. For example, in its Notice of Apparent Liability for Forfeiture regarding Compass Global Inc., the Commission states:

Compass argues this service is not a telecommunications service because it is an “enhanced/information service” that receives and transmits communications exclusively in Internet Protocol. Compass argues that its service must be an information service because it utilizes only IP and does not transmit voice traffic using traditional methods.

We [the FCC] reject Compass’ argument. The Act says the term “information service” means “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing but does not include any use of any such capability

³ Specifically COMPTTEL incorporates the Comments of COMPTTEL, *In the Matter of Connect America Fund et al*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 and 96-45, filed on Aug. 24, 2011, Apr. 18, 2011, Apr. 2, 2011; Comments of COMPTTEL, *In the Matter of Petition for Declaratory Ruling Regarding Direct IP-to-IP Interconnection Pursuant to Section 251(c)(3) of the Act*, WC Docket No. 11-119, filed Aug. 15, 2011.

⁴ 47 U.S.C. 153 (50).

⁵ 47 U.S.C. 153(53)(*emphasis added*).

for the management, control, or operation of a telecommunications system or the management of a telecommunications service.” The Commission has said that the definitions of “telecommunications service” and “information service” do not hinge on the particular type of facilities used, but on the functions available. Thus, the fact that Internet Protocol is used exclusively as transport for the traffic has no bearing on whether these voice and data services are appropriately considered telecommunications service.⁶

The Commission also, in its *IP-in-the-Middle Order*, concluded that the provider of a call that originates in TDM, is converted from its existing format into an IP format, and then converted back to TDM (IP- in-the-middle) is providing a telecommunications service.⁷ This is true whether only one or multiple providers are involved in the IP transport.⁸ As the Commission additionally explained, even to the extent there is a protocol conversion, “[t]he protocol processing that takes place incident to phone-to-phone IP telephony does not affect the service’s classification...because it results in no net protocol conversion *to the end user.*”⁹ To the extent that protocol conversions take place in IP phone-to-phone services “they appear to be

⁶ Notice of Apparent Liability for Forfeiture, *In the Matter of Compass Global, Inc. Apparent Liability for Forfeiture*, FCC 08-97, File No. EB-06-IH-3060, NAL/Acct. No. 200832080083, FRN No. 0009690256, ¶¶ 17 and 18 (2008) *emphasis added*.

⁷ Order, *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, FCC 04-97, ¶ 1 (2004)(“IP-in-the-Middle Order”)[“When the call reaches AT&T’s network, AT&T converts it from its existing format into an IP format and transports it over AT&T’s Internet backbone. AT&T then converts the call back from the IP format and delivers it to the called party through local exchange carrier (LEC) local business lines. We clarify that... the service that AT&T describes is a telecommunications service....”]

⁸ *Id.* at ¶ 1.

⁹ *Id.* at ¶ 7 (*emphasis added*).

“internetworking” conversions, which the Commission has found to be telecommunications services.”¹⁰

The Commission, instead, must look at the nature of the service purchased by the end user when classifying this service – not the network technology used by the provider of the service. As the Commission has found consumers view interconnected VoIP services the same as traditional voice telephone services.¹¹ This is because the nature of the telephone call or communication does not change because a carrier uses IP technology. In fact, AT&T recently responded to Congress that its own market research shows that in many cases consumers who use VoIP do not even realize that they are using a VoIP service (as compared to plain old telephone service).¹² Of course, this isn’t surprising as most consumers still use the same CPE and phone jacks to obtain the service and the functionality of the service is the same. Specifically, as the Commission has determined, IP telephony services “enable real-time voice *transmission*.”¹³ Moreover, the Commission has already decided to apply many of the Title II regulations that apply to plain old telephone service to interconnected VoIP services, including, for example, number portability requirements and CPNI

¹⁰ *Id.* at ¶ 12.

¹¹ See Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund *et al.*, WC Docket No. 10-90 *et al.*, FCC 11-161, ¶ 946, n. 1906 (2011), citing *Telephone Number Requirements for IP-Enabled Services Providers; et al.*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket No. 95-116, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19547, ¶ 28 (2007) (recognizing that interconnected VoIP services increasingly are viewed by consumers as a substitute for traditional telephone services).

¹² See Letter from Keith K. Krom, AT&T, to Charlotte Savercool, Committee on Energy and Commerce, Mr. James Cicconi’s Responses to the Questions for the Record, at 3 (Jan. 16, 2014).

¹³ Report and Order and Further Notice of Inquiry, *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, FCC 99-181, ¶ 177 (1999).

obligations.¹⁴ Some (if not all) of these obligations could be called into question given the D.C. Circuit Court of Appeals decision in *Verizon vs. FCC*,¹⁵ if the Commission doesn't confirm VoIP is a telecommunications service.

In conclusion, the packet switching deployed in IP networks and the circuit-switching deployed in the PSTN are transmission technologies used to route traffic.¹⁶ Managed VoIP providers are providing real-time voice transmission for a fee to the public just as TDM providers of voice service. Therefore, just like TDM voice services, managed VoIP service is a telecommunications service. The Commission should confirm that Cable One's voice service, and other such interconnection managed VoIP services, are telecommunication services. The benefits of the Commission's confirmation of this fact extend beyond this proceeding. In particular it will be a catalyst to carriers' ability to enter in IP-to-IP interconnection agreements and consumers experiencing the innovation that is possible through such interconnection.

¹⁴ See *Telephone Number Requirements for IP-Enabled Services Providers; et al.*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket No. 95-116, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007); See also, *Implementation of the Telecommunications Act of 1996 et al*, CC Docket No. 96-115 and WC Docket No. 04-36, FCC 07-22, ¶ 57 (2007).

¹⁵ *Verizon vs. FCC*, Case No. 11-1355, Jan. 14, 2014 (D.C. Circuit split op).

¹⁶ See Final Decision, Before the Public Service Commission of Wisconsin, Docket 6720_DR-101, p. 11, n. 9 (2010)(“Wisconsin Final Order”) [“Within “transmission,” “Internet protocol” or “IP-enabled” refer to services whose functional transmission mode is digital packetized transmission, as opposed to traditional circuit-based time division multiplexed (TDM) transmission. The digital IP-enabled mode typically will involve diverse routing of packets over networks, whether proprietary or the Public Internet, before re-assembly for delivery to the ultimate destination. “IP-enabled” is contrasted to current PSTN electronic switched circuit transmission in which a specific electronic circuit pathway, through Signaling System 7 (SS7), is established and disassembled for each communication.”]

Respectfully submitted,

/s/

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