

Statement of Jonathan S. Adelstein

Re: IP-Enabled Services, Notice of Proposed Rulemaking (2004) (Approving in Part, Concurring in Part).

Re: 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 (2004) (Concurring in Part and Dissenting in Part).

Today, we consider two items – a comprehensive Notice of Proposed Rulemaking and a declaratory ruling on a specific service – related to Voice over Internet Protocol (VoIP) and Internet Protocol (IP)-enabled services.

NPRM

With this Notice, we examine the extent and legal significance of the telecommunications industry's growing adoption of IP-enabled services. This technological evolution stems from the development of a common digital protocol, the "IP" in "VoIP." It is integral to an explosion of choices for consumers, such as phones in PDAs, voice through Instant Messaging-like services, not to mention lower prices on the services we are accustomed to. I am struck by the wealth of innovation occurring under the banner of "VoIP." As a consumer, I think we all have much to look forward to.

As a Commissioner, I think we take an important and responsible step today by opening a comprehensive Notice of Proposed Rulemaking on the regulatory issues associated with IP-enabled services. VoIP services have matured recently and it is apparent that VoIP providers have their sights set on that most mainstream of telecommunications markets – the residential consumer. VoIP providers point out that their services have the potential to provide a rich and diverse array of complementary non-voice applications that will stir demand. All indications are that IP is becoming the building block for the future of telecommunications.

Questions about what this evolution means for consumers, providers, and this Commission are far from simple. What they present, though, is an opportunity – indeed a necessity – for this Commission to facilitate that evolution. Today's items herald the Commission's role in promoting innovative technologies. At the same time, though, we are charged under the Communications Act with ensuring that the goals set out by Congress are fulfilled. Forging the right regulatory scheme to achieve these goals is our task and it is fundamental that we begin to wrestle with these issues in earnest.

I would like to thank Chairman Powell for his leadership on VoIP. The Chairman convened a forum on these issues in December that I found extremely useful. I have also appreciated his willingness to engage his colleagues in the deliberations over these items. We do not agree on every detail about how to move forward, but I appreciate his willingness to accommodate so many of my concerns as we start this larger rulemaking.

I fully expect that this Notice will allow us to develop a comprehensive record about the development of IP-enabled services. Chief among our tasks is to determine how the adoption of IP-enabled services affects those most fundamental telecommunications policies embodied in the Communications Act. The Act charges us to maintain universal service, which is crucial in delivering communications services to our nation's schools, libraries, low income consumers, and rural communities. We will need to look closely at how IP-enabled services affect our ability to fund and deliver those services. The support that our universal service programs bring to our nation's rural communities is critical, so I am particularly glad that this Notice seeks direct comment on issues of concern to Rural America.

As we go forward, we also must understand how IP-enabled services will affect the provision of 911, E911, and other emergency services; the ability of people with disabilities to access communications services; the application of our consumer protection laws; the ability of our law enforcement officials to rely on CALEA to protect public safety and national security; and other national priorities such as consumer privacy and network reliability. We must understand that our decisions can have disparate impact on particular communities. We raise many issues in today's NPRM, and we will need to reach out to the many and diverse interests of consumers, network providers of all types, hardware and software manufacturers, and federal, state and local policymakers.

I agree with my colleagues that there may be some questions that we need to answer about the regulation of VoIP services sooner rather than later. There are time sensitive issues on the table for us, such as the erosion of the base of support for universal service. This Commission has not hesitated in the past to address issues of regulatory arbitrage, and I think that we will have to look closely and quickly at some of the concerns that have been brought to our attention.

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In approaching these monumental tasks, however, I am concerned that we not get too far ahead of our record. The rapid and dynamic pace of the migration to IP and broadband services counsels for a full consideration of the issues wherever possible.

Many persuasive arguments were made as to why Pulver.com's Free World Dialup (FWD) is not telecommunications or a telecommunications service. I concur that this service is not telecommunications or a telecommunications service and in practice should remain largely unregulated. In particular, the peer-to-peer nature of FWD differs in significant respects from traditional "telecommunications services" that traditional phone companies have offered. However, I cannot fully join today's pulver.com Order because it reaches far beyond the petition filed by pulver.com and, regrettably, speaks prematurely to many of the important questions raised in today's NPRM.

Despite attempts to characterize this Order as limited to the specific facts of pulver.com's FWD, I am concerned that the decision speaks much more expansively. By deciding the

statutory classification of pulver.com's service as an interstate information service, the Order raises a host of questions about the continuing relevance of those most fundamental telecommunications policy objectives that Congress has entrusted to this Commission. At last December's VoIP forum, I talked about these concerns and was struck by how widely-held those concerns seemed to be.

Today's Order does not fully address these widely-acknowledged concerns. One might read this Order as silent on many of these ultimate issues, which strikes me as curiously dismissive given the magnitude of the responsibilities entrusted to us. Parsing more closely, the declarations about jurisdiction and the "unregulated" nature of the service seem to presume the outcome of the very rulemaking we launch today. Pulver.com's petition did not request a ruling on the appropriate jurisdictional classification, and many parties may be unaware that we planned to reach that question in this Order. With both the jurisdictional finding and the unaddressed implications of the statutory classification, I would have preferred that we defer these important policy considerations until the Commission has a more comprehensive record with the benefit of the participation of the many stakeholders who should be part of this debate.

One area where we did have participation was in the critical area of law enforcement. Legitimate concerns were raised by the Federal Bureau of Investigation and the Department of Justice. While the Department of Justice has acquiesced to the desire to open this inquiry, its clearly stated preference was to resolve CALEA matters as soon as possible. While I dissented from today's ruling that FWD is an information service, I am pleased that we commit to opening a CALEA proceeding very soon, and that the Justice Department has not objected to our moving forward in the interim.

For these reasons, I can only concur in part and dissent in part on the pulver.com Order and thus I can only concur in those portions of the NPRM where that item imports this overreaching analysis.

Finally, I would like to thank the Wireline Competition Bureau, and in particular, the Competition Policy Division. Bureau staff members, as well as my own staff, have spent countless hours and long nights working through complex issues. They are truly public servants of the highest caliber.