

1. On August 19, 2005, Sprint Communications L.P. (hereafter “Sprint”) filed its Response in Opposition to the Movants’ respective Motions to Dismiss. *See, generally, Response in Opposition*.

2. Sprint’s position appears to be, in summary, that the service it proposes to provide is not, and cannot be found to be VoIP (Voice over Internet Protocol) service; instead, it is “basic local exchange service.” Response in Opposition at 1-2. For this reason, Sprint considers the ILECs’ Motions to be ill-taken.

3. While the Staff is of the opinion that the ILECs’ *Motions* should be denied, for the reasons set forth in its *Response* dated August 18, 2005, it does not necessarily therefore concur in Sprint’s position, for several reasons.

4. Sprint argues that its service is telephone service as opposed to internet service (e.g., information service) because voice calls made by end users do not transit the Internet; because end users need not purchase equipment other than that normally used to access the public switched telephone network (PSTN); because end users need not have broadband access; because Sprint’s service is not “nomadic”, which is to say that calls can only be made or received at the end users’ homes; and because Sprint’s service does not utilize Transmission Control Protocol/Internet Protocol (“TCP/IP”). Response in Opposition at 4-7. Sprint argues that these are the criteria set forth in the *Vonage Preemption Order*. Response in Opposition at 7, *see also Memorandum Opinion and Order, In the Matter of Vonage Holdings Corporation: Petition for Declaratory*

Ruling Concerning an Order of the Minnesota Public Utilities Commission, FCC No. 04-267, WC Docket No. 03-211 (released November 12, 2004).

5. In the *Vonage Preemption Order*, however, as the Staff noted in its Response, see Staff Response, ¶¶5-6, the FCC specifically declined to decide the question of whether the VoIP service in question was a telecommunications service or an information service, determining that it had the authority to preempt the relevant state requirements in either case. Vonage Preemption Order, ¶¶20-22.

6. The FCC continues to be considerably less certain than Sprint regarding whether to characterize any specific IP-enabled service as a telecommunications service that is subject to state regulation, or an information service that is not. In its *IP-Enabled Services NPRM*, the FCC provisionally defined VoIP as: “to include any IP¹-enabled services offering real-time, multidirectional voice functionality, including, but not limited to, services that mimic traditional telephony.” *Notice of Proposed Rulemaking*, ¶3, n.7, In the Matter of IP-Enabled Services, FCC No. 04-28, 19 FCC Rcd 4863; 2004 FCC Lexis 1252, WC Docket No. 04-36 (rel. March 10, 2004) (hereafter “IP-Enabled Services NPRM”); see also *First Report and Order and Notice of Proposed Rulemaking*, ¶24, In the Matters of IP-Enabled Services / E911 Requirements for IP-Enabled Service Providers, FCC No. 05-116; WC Docket Nos. 04-36, 05-196 (released June 3, 2005) (hereafter “VoIP 9-1-1 Order”).

7. The FCC further stated that:

¹ “IP” is an acronym for “Internet Protocol.” IP-Enabled Services NPRM, ¶8.

[T]he term "IP-enabled services," as it is used [in this NPRM] includes services and applications relying on the Internet Protocol family. IP-enabled "services" could include the digital communications capabilities of increasingly higher speeds, which use a number of transmission network technologies, and which generally have in common the use of the Internet Protocol. Some of these may be highly managed to support specific communications functions.

IP-Enabled Services NPRM, ¶1, n.1

The FCC made very clear the fact that it might elect to treat different kinds of IP-enabled services differently, depending upon what such services are intended to do. IP-Enabled Services NPRM, ¶¶35-37.

8. As the Staff pointed out in its *Response*, Staff Response, n.1, and as Sprint confirms in its *Response in Opposition*, *Response in Opposition*, Response in Opposition at 3-4, Sprint does indeed propose to provide service through use of the internet Protocol. Inasmuch as the FCC has (1) not issued rules applicable to IP-enabled services; and (2) suggested that it might well characterize and treat different kinds of IP-enabled services differently for regulatory purposes, the Commission should hesitate to give credence to Sprint's blanket statement that it is providing local telephone service. Accordingly, it is the Staff's opinion that, as of now, the ICC has the authority and wide discretion to treat the VoIP service at issue in this arbitration as it deems appropriate. That said, the FCC's ultimate decision in the *IP-Enabled Services* rulemaking – a decision regarding which Staff can offer no insight either to substance or timing – may well profoundly affect the Commission's decision in this proceeding.

9. The Staff continues to urge that the Movants' Motions to Dismiss be denied, on the bases set forth in Staff's *Response*.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully Submitted,

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