

## **SEPARATE STATEMENT OF CHAIRMAN MICHAEL K. POWELL**

*Re: IP-Enabled Services Notice of Proposed Rulemaking*

More than two decades ago, the Commission made the courageous decision to fence off information services – the precursors of today’s internet – from traditional monopoly regulation. This approach was embraced by Congress in that 1996 Act. The Commission’s pro-competitive and deregulatory policies allowed competition to flourish and helped usher in a period of growth and innovation unlike any other in our nation’s history. Today, we issue an item that follows in that tradition of fostering innovation and consumer choice. The item recognizes that we have entered an Age of Personal Communications. IP-enabled services and the proliferation of IP devices enable consumers to increasingly choose innovative, personalized Internet applications and content.

As new and innovative ways to communicate have emerged, so too have calls for us to examine the appropriate public policy for highly innovative, highly efficient services based on Internet Protocol. In this comprehensive Notice of Proposed Rulemaking, we seek comment on how applications that use IP are changing our communications network and the very assumptions on which our current regulatory policies are based.

Our starting point – and our most important finding – is the recognition that all IP-enabled services exist in a dynamic, fast-changing environment that is peculiarly ill-suited to the century old telephone model of regulation. Competitive market forces, rather than prescriptive rules, will respond to public need much more quickly and more effectively than even the best intentioned responses of government regulators. Indeed, our best hope for continuing the investment, innovation, choice and competition that characterizes Internet services today lies in limiting to a minimum the labyrinth of regulations and fees that apply to the Internet. All too often, these edicts can thwart competition even among traditional telecommunications providers.

While IP-enabled services should remain free from traditional monopoly regulation, rules designed to ensure law enforcement access, universal service, disability access, and emergency 911 service can and should be preserved in the new architecture. In today’s Notice, we seek comment on whether and how to apply discrete regulatory requirements where necessary to fulfill important federal policy objectives.

Above all, law enforcement access to IP-enabled communications is essential. The Communications Assistance for Law Enforcement Act (CALEA) requires telecommunications carriers to ensure that their equipment is capable of providing surveillance capabilities to law enforcement agencies. CALEA requirements can and should apply to VoIP and other IP enabled service providers, even if these services are “information services” for purposes of the Communications Act. Nothing in today’s proceeding should be read to suggest that law enforcement agencies should not have the

access to communications infrastructure they need to protect our nation. On the contrary, all IP-enabled services should consider the needs of law enforcement as they continue to develop innovative technologies. Nevertheless, the technical issues associated with law-enforcement access to VoIP communications are both novel and complex, and, ultimately, worthy of their own separately docketed proceeding. To address these issues, we intend to initiate a CALEA rulemaking proceeding in the near future. The new proceeding will address the scope of covered services, assign responsibility for compliance, identify the wiretap capabilities required by law enforcement and provide acceptable compliance standards.

IP networks cost much less to build and operate. As in so many other areas, I believe VoIP can help control high universal service costs in order to ensure that every American has affordable telephone service. As the item notes, however, IP services ride atop a physical layer that, in many areas, is still expensive to build and maintain. To continue to ensure the entire nation has access to vital communications services, the NPRM considers distinguishing service providers that offer interconnection with the nation's public switched telephone network from those that do not. To determine the precise scope of support obligations in the new IP world, today's action quite properly seeks comment on a number of complex funding questions. Yet it does not – and cannot – change the existing obligations of providers to comply with our rules, especially our rules requiring providers of traditional long distance services to pay fair compensation for using the public switched telephone network. During and after the transition to next generations communications networks, the Commission can and will fulfill its statutory obligation to ensure that every American has access to the network at an affordable price.

As we move forward, the Commission will also hold a series of “Solutions Summits” to tackle how a VoIP provider can best respond to the needs of various communities where the market may not readily respond. We will be asking leaders in the law-enforcement, first-responder and disabled communities to come together to talk about creative ways to address some of these issues. It is my hope that industry can take the lead in solving some of the real problems that stem from the migration from the monopoly analog world to the competitive new digital world of communications. If leaders from industry and the government work together to identify issues, study them and stay vigilant, we can rely on enterprise and entrepreneurship to respond to many public needs. Our first “Solutions Summits” will be held on March 18 and will address E911 issues.

Today's notice recognizes that we simply cannot contort the character of the Internet to suit our familiar notions of regulation. We will not dumb down the genius of the web to match the limited vision of a regulator. At the same time, we remain committed to making special efforts to target those areas most in need of public protection. Working together, we will ensure that the promise of these new innovative technologies and services is realized for all Americans.