Before the
MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion to Establish Retail Billing and Termination Practices for Telecommunications Carriers	))))))	D.T.E. 06-8

JOINT REPLY COMMENTS OF 8x8, INC., LIGHTYEAR NETWORK SOLUTIONS, LLC, AND VOICEPULSE INC.

William B. Wilhelm, Jr.
Jonathan S. Frankel
BINGHAM MCCUTCHEN LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Telephone: (202) 373-6000
Facsimile: (202) 424-7643

Counsel for 8x8, Inc., Lightyear Network Solutions, LLC, and VoicePulse Inc.

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I. INTRODUCTION

8x8, Inc. ("8x8"), Lightyear Network Solutions, LLC ("Lightyear"), VoicePulse Inc. ("VoicePulse") (together, the "Commenters"), submit these reply comments in the above-referenced case. The Commenters are Voice over Internet Protocol ("VoIP") providers.[1] The Commenters understand that this proceeding will examine telecommunications carrier consumer protection requirements in Massachusetts (the "Rules and Practices Relating to Telephone Service to Residential Customers" ("Practices")), and the need to revise those requirements given the current competitive marketplace environment in Massachusetts, and whether to subject VoIP services to such consumer protection and service quality obligations. The Commenters welcome the opportunity to provide information to the Massachusetts Department of Telecommunications and Energy ("Department") on such an important proceeding for Massachusetts consumers of communications services.

The Commenters support the Department's efforts to examine the need for consumer protections and service quality requirements for residential and small business consumers in

[1] Lightyear also operates as a CLEC, but limits its comments in this proceeding to its VoIP operations.

Massachusetts. However, the Commenters emphasize that VoIP services are offered in a highly competitive marketplace, and that the Federal Communications Commission ("FCC") has undertaken several proceedings and decisions aimed at the regulation of VoIP and other IP-enabled services.

Further, like all other businesses, the Commenters are subject to existing consumer protection and fraud laws and regulations applicable to all businesses. Thus, the real question of this proceeding is whether the Commenters and other VoIP providers should be subject to heightened regulations that have traditionally applied to telephone utilities. However, legacy telephone regulations apply to common carriers because such services have been historically provided by monopoly providers, unrestrained by competitive forces. In a competitive market like that for VoIP applications and services, such regulations are not necessary as competitive forces restrain the behavior of VoIP service providers. Given the federal regulatory oversight over VoIP services, and the competitive environment in which VoIP is provided, the Commenters strongly recommend that the Department refrain from regulating VoIP services.

I. THE COMMENTERS SERVICES PERFORM A "NET PROTOCOL CONVERSION," AND ARE RIGHTLY DEFINED AS INFORMATION SERVICES UNDER FEDERAL LAW

The Department's Notice of Inquiry in the above-captioned proceeding does not distinguish between different VoIP services, nor does it discuss the similarities or differences between VoIP and traditional wireline communications services. However, in order to determine if, or how, VoIP should be regulated, the Department should understand how most VoIP services are provided, and how such services differ from traditional wireline telephone services.

The full range of VoIP services differ markedly from each other. One type of VoIP service, termed computer-to-computer or peer-to-peer, does not interconnect with the Public

Switched Telephone Network ("PSTN") at all. Indeed, the FCC recently found that one form of computer-to-computer VoIP service was neither "telecommunications," nor a "telecommunications service" under federal law.[2] The Commenters urge the Department to analyze the specifics of each VoIP offering and not to make sweeping generalizations when VoIP services are fundamentally different from one another, and from traditional telephone service, in numerous ways.

The Commenters provide a form of VoIP service, enabling customers with broadband Internet connections and specialized Customer Premises Equipment ("CPE") to communicate without using a telephone line. The Commenters' service permits intercommunication between the incompatible protocols used on the Internet and on the PSTN. These services are innovative Internet offerings that, like e-mail, instant messaging, Internet conferencing, 2-way video communications, and other as yet undreamed of services, permit customers to communicate over the Internet. Although it resembles traditional telephone service in some respects, it has crucial technical and functional differences.

First, unlike some other services that rely on Internet Protocol transmission, the Commenters' customers *cannot* typically access their VoIP service by "dialing in" over the PSTN.[3] The Commenters' customers access the service over a high-speed Internet connection provided by a third-party telecommunications carrier, satellite or cable company. Because these services are accessed over the Internet, they can be used anywhere a broadband Internet

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2 *See Petition for Declaratory Ruling that Pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, FCC-04-27 (rel. Feb. 19, 2004) ("*Pulver Order*").

3 Customers can access Packet8 voice services via an "always on" dialup connection, which is how many 8x8 customers traveling overseas gain access to the service in lieu of the presence of a high speed connection. However, it is unlikely that anybody would use a dialup IP service to replace a traditional telephone line.

connection is available. Thus, the Commenters' customers may use their service in any state, or virtually anywhere in the world, so long as they have access to a high-speed Internet connection. Further, the physical location of users on the Internet cannot be accurately determined, as a technical matter, so it is impossible for the Commenters to identify the point of origin or termination of a customer's transmission.

Second, to use the Commenters' VoIP services, customers must possess special customer premises equipment ("CPE"), namely, a computer running special software code that provides these VoIP services. The customer also must usually install a router that is used to share the high speed Internet connection at the customer premise between the computer and the VoIP services equipment. The Commenters' customers must subscribe to a third-party provided broadband Internet access service, and then install compatible computer equipment that encodes audio signals as digital packets (or vice versa) and transmits and receives those packets over an Ethernet connection.[4] Most customers use a specialized computer called a Multimedia Terminal Adapter ("MTA"), which contains a digital signal processing computer unit that performs digital-to-audio and audio-to-digital conversions, and has a standard telephone jack connection. Although a customer can connect conventional analog telephone sets to the MTA computer for use with the Commenters' services, a conventional telephone will not work with these services unless connected to computer hardware or software that generates the digital packets.

Once the customer has installed and configured their computer equipment and the requisite software, the customer can place and receive "calls" to anyone with a telephone number (including other VoIP customers) by establishing a connection to a server over the Internet.

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[4] In order to use the Commenters' services through a DSL connection, a router is required. As a practical matter, most cable modem users probably also use routers, so that they can attach other devices (such as a personal computer) to the modem.

Packets sent by the customer's MTA or computer are routed over the public Internet to these servers. It is there that the Commenters' services begin. If the IP packets the Commenters receive are destined to a station on the PSTN, the server converts the information received in the packets to a TDM digital signal, and obtains a connection to the PSTN station using the services of an unaffiliated common carrier.[5] This is the third aspect that distinguishes the Commenters' services from telecommunications services. Namely, the Commenters perform a net protocol conversion from IP to TDM to PSTN communications and from TDM to IP on PSTN.[6]

Fourth, the Commenters are end users of telecommunications services. The Commenters purchase local telephone service from carriers nationwide to enable access to their networks from the PSTN, and also purchase service from interexchange carriers for termination of traffic from their networks to the PSTN. When the Commenters purchase local exchange service, they are assigned telephone numbers (like any other end-user), which they use in providing their information services to their customers. Because VoIP customers may receive calls from users

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5 If, however, the transmission is to be connected to another VoIP user, then it is not converted to a TDM signal, and instead the server routes a new set of IP packets to the second user. VoIP-to-VoIP "calls" never travel over the PSTN, and thus constitute purely "computer-to-computer" communications and are expressly exempted from the FCC jurisdiction as recently determined by the FCC in the *Pulver Order*.

Further, 8x8 does not own or operate any PSTN gateways, so the company always directs the IP traffic as IP packets to its unaffiliated common carriers. The conversion to TDM occurs within a gateway owned and operated by the carrier. 8x8 does not convert to TDM except at the CPE end of the network, where the MTA converts received IP traffic back to TDM format.

6 Modern telephone networks rarely use analog transmission except on all or part of the local loop connection between a "plain old telephone service" user and the central office. Typically, the user's communication is converted into a synchronous digital format ("Time Division Multiplexed" or TDM) at the switch line port, or at an intermediate digital loop carrier terminal. All intermediate switching and routing of the communication ordinarily occurs in the TDM digital format. Thus, the Commenters do not perform any digital-to-analog conversions in its network, but only converts from asynchronous IP packets to TDM or vice versa, except for 8x8, as detailed in footnote 4.

on the PSTN, the Commenters associate each of their customers with one or more telephone numbers. The telephone number associated with the VoIP customer is not tied to the customer's physical location like with traditional telephone service. Rather, the telephone number is mapped to the digital signal processor contained in the customer's computer, enabling the VoIP service provider to identify and serve the customer over any Internet connection.

II. THE COMMENTERS' VOIP SERVICES ARE SUBJECT TO EXCLUSIVE FEDERAL JURISDICTION

As detailed above, the Commenters are "information service" providers under federal law. As such, the Commenters' VoIP services are not subject to Department jurisdiction. As such, state laws and regulations that apply to telephone service are inapplicable to the Commenters' service offerings. Additionally, even assuming that the Commenters did offer a telephone service (which they do not) the Department would still lack jurisdiction over these services as they are inherently interstate services subject only to the FCC's exclusive jurisdiction. The FCC has asserted exclusive federal jurisdiction over most forms of VoIP services, including those offered by the Commenters. The FCC is also actively engaged in setting such regulations, and has sought information from interested parties on the implementation of consumer protection and service quality rules for VoIP.

A. The FCC Has Asserted Exclusive Jurisdiction over VoIP Regulation

As already noted by several parties to this proceeding,[7] the FCC has asserted exclusive federal jurisdiction over the regulation of VoIP and other IP-Enabled Services. Specifically, in the *Vonage Order*, the FCC preempted individual state telecommunications regulation of Vonage's inherently interstate service. In doing so, the FCC stated that state telecommunications

[7] *See, e.g.*, Comments of Level 3 Communications, LLC at 1-2; Comments of XO Communications Services, Inc. in Response to Notice of Inquiry, at 5; Initial Comments of Comcast Phone of Massachusetts, Inc., at 5-7.

regulation would conflict with the creation of a nation-wide approach for the regulation of VoIP.[8] The Commenters' VoIP services qualify for the FCC's exclusive jurisdiction given the functional and operational similarities between these "computer-to-phone" services.

In the *Vonage Order*, the FCC also considered the practicality of using "proxies," like telephone numbers or billing addresses, to jurisdictionally separate VoIP communications.[9] Unlike the PSTN, IP addresses do not contain information that allows the service providers or other parties to derive the geographic location of the Internet communication. Because the Commenters map a telephone number to an IP address associated with their customers computing device,[10] a telephone number associated with a rate center in particular state could be used from any location in the world where broadband Internet access is available. Further, the service is portable so that at any given time, the VoIP customer could be using the service from an overseas location so long as broadband Internet access is available, yet a user of the Commenters' service could initiate and receive communications through the use of a telephone number associated with a rate center in the United States.[11] As such, if a Commenters' VoIP customer happened to have a billing address in Massachusetts, this would not necessarily mean the service was used inside the state.[12]

Significantly, in the *Vonage Order*, the FCC rejected the utility of its end-to-end analysis and determined that it was infeasible to jurisdictionally separate out any intrastate component of

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8 *See generally*, Memorandum Opinion and Order, *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267 (rel. Nov. 12, 2004) ("*Vonage Order*").

9 *See id.* at 19 FCC Rcd. 22,421-24.

10 *See id.* at 19 FCC Rcd. 22,408.

11 *See id.* at 19 FCC Rcd. 22,421-22.

12 *See id.* at 19 FCC Rcd. 22,422.

computer-to-phone VoIP traffic.[13] As such, the Department may not apply the FCC's end-to-end test to jurisdictionally separate a VoIP service when the FCC has explicitly rejected this analysis.

The FCC also found that it was impossible to determine the end point of a VoIP communication (and thereby separate intrastate service) due to the complexities associated with separating out a single packet stream when an end user is performing multiple tasks over the same broadband connection. In the *Vonage Order*, the FCC stated that:

> [The impossibility of locating the geographic end point] results from the inherent capability of IP-based services to enable subscribers to utilize multiple service features that access different websites or IP addresses during the same communication session and to perform different types of communications simultaneously, none of which the provider has a means to separately track or record. For example, a [Vonage] user checking voicemail or reconfiguring service options would be communicating with a Vonage server. A user forwarding a voicemail via e-mail to a colleague using an Internet-based e-mail service would be "communicating" with a different Internet server or user. An incoming call to a user invoking forwarding features could "terminate" anywhere the [Vonage] user has programmed. A communication from a [Vonage] user to a similar IP-enabled provider's user would "terminate" to a geographic location unknown either to Vonage or to the other provider. These functionalities in all their combinations form an integrated communications service designed to overcome geography, not track it.[14]

Accordingly, the FCC's *Vonage Order* clearly stands for the proposition that Vonage's service, as well as the Commenters' services that operate similarly to Vonage's, are exclusively interstate in nature.

The Communications Act of 1934 establishes "a system of dual state and federal regulation over telephone service."[15] Although states retain authority over certain purely intra-state matters, "questions concerning the duties, charges and liabilities of telegraph or telephone

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[13] *See id.* at 19 FCC Rcd. 22,419-21.

[14] *Vonage Order* at 19 FCC Rcd. 22,419-21 (internal citations omitted).

[15] *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 360 (1986).

companies with respect to *interstate* communications service are to be governed solely by federal law and [] the states are precluded from acting in this area."[16] The dividing line between the regulatory jurisdictions of the FCC and states depends on "the nature of the communications which pass through the facilities and not on the physical location of the lines."[17]

Because of the nature of the Internet and the Commenters' VoIP services, it is technically impossible to apply Massachusetts's regulations without also affecting the interstate components of these services. On traditional telephone networks, it is usually possible to determine the jurisdiction of traffic on a call-by-call basis, because the carrier provides a physical connection to the end user, and therefore can determine where that user is located. The same is not true of Internet traffic as the Internet has no system for determining the geographic location of users. This means that the Department cannot exercise jurisdiction with respect to the Commenters' VoIP services without also interfering with the Commenters' ability to provide at least some jurisdictionally interstate information services over interstate facilities. Federal law preempts state action that would affect interstate communications: "questions concerning the duties, charges and liabilities of telegraph or telephone companies with respect to *interstate* communications service are to be governed solely by federal law and ... the states are precluded from acting in this area."[18] Because the Commenters cannot, as a practical matter, stop offering

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[16] *Ivy Broadcasting Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 491 (2d Cir. 1968) (emphasis added); *see also NARUC v. FCC*, 746 F.2d 1492, 1498 (D.C. Cir. 1984) ("Interstate communications are totally entrusted to the FCC ....").

[17] *Id.* (quotation and citations omitted).

[18] *Ivy Broadcasting Co. v. Am. Tel. & Tel. Co.*, 391 F.2d 486, 491 (2d Cir. 1968) (emphasis added). *See also National Ass'n of Regulatory Util. Comm'rs v. FCC*, *supra* (affirming rules precluding states from regulating WATS service because "interstate communications ... are placed explicitly within the sphere of federal jurisdiction by the plain language of the Communications Act").

intrastate service in Massachusetts without also affecting interstate services subject to the FCC's jurisdiction, Massachusetts can not unilaterally regulate such VoIP services. The FCC declared as such in the *Vonage Order*, and recently restated its position on its exclusive jurisdiction over computer-to-phone VoIP in its *VoIP USF* order:

> On November 9, 2004, the Commission adopted the *Vonage Order*, in which it preempted an order of the Minnesota Public Utilities Commission (Minnesota Commission) that applied Minnesota's traditional "telephone company" regulations to Vonage's DigitalVoice service – an interconnected VoIP service under the definition subsequently adopted by the Commission. ... [T]he Commission held that DigitalVoice cannot be separated into interstate and intrastate communications for compliance with Minnesota's requirements without negating valid federal policies and rules. The *Vonage Order* made "clear that this Commission, not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to DigitalVoice and other IP-enabled services having the same capabilities."[19]

In establishing its exclusive jurisdiction over these types of VoIP services, the FCC specifically noted that the interstate nature of these services requires federal, not state, oversight.

Additionally, as noted above, the FCC has also preempted state jurisdiction over "computer-to-computer" VoIP traffic in the *Pulver Order*,[20] noting that the FCC's traditional end-to-end approach to determining a communication's jurisdiction has relevance for a circuit-switched network, but it has little or no relevance with regard to computer-to-computer VoIP services.[21] When a VoIP customer calls another VoIP customer using any of the Commenters' services, that communication is necessarily transmitted in IP format just like Pulver's "computer-to-computer" VoIP service.

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19 *VoIP USF Order*, ¶ 14 (internal citations omitted).

20 *See generally Pulver Order.*

21 *See Pulver Order*, at ¶ 21.

The Commenters acknowledge that there may be differences between Pulver's VoIP offering (Free World Dialup or "FWD") and some other IP-enabled services that intersect the PSTN. However, the end-to-end analysis used by the FCC in the *Pulver Order* would similarly apply to other VoIP services that originate or terminate on the Internet or privately managed networks. The IP portion of a communication using both IP and the PSTN translates the relevant PSTN telephone number into an IP address. There is no means to identify the location of the IP address as the communication protocols utilized to transmit data over the Internet do not contain such information. Even if the IP address is mapped to a certain device, in many cases the device is portable to any other Internet broadband-enabled port, so the physical location is ultimately unknown. End users of VoIP and other IP-enabled services can change the destination of the IP address to another device or another location without the knowledge of the service provider. Thus, even for IP-PSTN communications, the IP end point is unknown and irrelevant. Further, the FCC determined that "state-by-state regulation of a wholly Internet-based service is inconsistent with the controlling federal role over interstate commerce required by the Constitution."[22]

Through the *Vonage Order* and *Pulver Order*, the FCC has exercised its jurisdiction over all forms of VoIP service provided by the Commenters. Given the inherently interstate nature of these types of VoIP service, the FCC's assertion of jurisdiction over computer-to-phone and computer-to-computer forms of VoIP makes sense. It would be impossible for the Department or the Commenters to accurately determine the jurisdictional end points of most VoIP traffic. As

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[22] *See Pulver Order*, at ¶ 16.

such, Department regulation over these types of services would directly contravene the FCC's numerous orders asserting exclusive jurisdiction over VoIP services.[23]

B. The FCC is Actively Engaged in Examining the Need for Regulating VoIP Services

The FCC's assertion of exclusive jurisdiction over computer-to-computer and computer-to-phone VoIP has allowed the agency to set nation-wide regulations on several VoIP-related issues. For example, the FCC has required "interconnected" VoIP service providers ("IVPs") to deploy E911 service[24] and contribute to the Universal Service Fund.[25]

Besides universally applicable E911 and USF obligations (for IVPs), the FCC has also established a broad proceeding on the proper scope of VoIP regulation in the *IP-Enabled Services* proceeding.[26] Specifically, in the *VoIP NPRM*, the FCC requested information on

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[23] Several federal courts have likewise preempted state regulation over VoIP services. *See, e.g., Vonage Holdings Corp. v. Minnesota Public Utilities Comm'n*, 290 F. Supp. 2d 993 (D. Minn. 2003), *aff'd*, 394 F.3d 568 (8th Cir. 2004); *Vonage Holdings Corp. v. New York State Pub. Svc. Comm'n*, Preliminary Injunction, S.D.N.Y., Case No. 04 Civ.4306(DFE) (July 16, 2004).

[24] *See IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 & 05-196 (rel. June 3, 2005). The FCC established a four-part test for determining whether a VoIP provider is subject to E911 and USF regulation as an IVP. The FCC has stated that interconnected VoIP services are only those services that: (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN. *See VoIP E911 Order*, ¶ 24; *VoIP USF Order*, ¶ 15.

[25] *See Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, 1998 Biennial Regulatory Review –Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, Number Resource Optimization, Telephone Number Portability, Truth-in-Billing and Billing Format, IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116 & 98-170, WC Docket No. 04-36, FCC 06-94 (rel. June 27, 2006) ("*VoIP USF Order*").

[26] *See IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36 (rel. Mar. 10, 2004) ("*VoIP NPRM*").

whether to adopt consumer protection requirements for VoIP and other IP-enabled services, including privacy, slamming, billing, and service quality standards.[27] The inclusion of these issues in the *VoIP NPRM* demonstrates the FCC's position that it retains primary jurisdiction over VoIP consumer protection and service quality matters.

Given the FCC's assertion of exclusive federal jurisdiction over computer-to-computer and computer-to-phone forms of VoIP, and its willingness to adopt public-policy oriented national regulations aimed at IVPs, the Commenters respectfully request that the Department allow the FCC to continue this process with respect to customer service and quality standards. Otherwise, the Department could risk the FCC undoing the time-consuming work of the Department through the preemption of Department rules aimed at VoIP.

III. HIGHTENED COMPETITION IN THE VOIP MARKET PROTECTS CONSUMERS

A. Competitive Market Forces Ensure Consumer Benefits

While the Commenters note that the FCC has asserted exclusive jurisdiction over VoIP services, and that the Department would have a difficult time in separating the interstate and intrastate portions of VoIP service, the Commenters also note that there is little need for the Department to set service quality or consumer protections for VoIP services generally. Consumer protection and service quality regulations have been adopted in markets where competition is either non-existent (*e.g.*, due to monopoly control over transmission facilities and services) or not robust enough to produce adequate consumer benefits through reasonable terms of service or quality standards. However, strong competition persists between VoIP providers as well as other providers of communications services, which drives consumer benefits and protections in the VoIP market.

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[27] *See VoIP NPRM*, ¶¶ 71-72.

Given the requirement that most VoIP providers, including those offered by the Commenters, require their customers to have a third-party provided broadband Internet connection, and that such consumers need only obtain a relatively inexpensive (and sometimes free) piece of hardware or software in order to use a particular VoIP service, customers dissatisfied with their VoIP service have ample opportunity to transfer without any difficulty either to another VoIP provider, or to a traditional telephone or wireless service provider. Because VoIP consumers are not physically tied to a transmission facility to use most VoIP services, they are able to terminate the service of any inadequate VoIP provider and move to another. In those cases where customers chose to migrate to a new VoIP provider, they necessarily also migrate to the third-party telecommunications service provider (such as Pac-West) that supports that VoIP service. As such, VoIP customer migration affects both the VoIP service providers, as well as the underlying telecommunications service providers used to provide those information service.

Competition in the VoIP marketplace has also created many consumer benefits not often found with other forms of traditional communications services. For example, VoIP subscribers typically enjoy free trial periods, which allows them to determine whether a service meets their standard of quality prior to singing any contract or paying monthly fees for that service. VoIP services also often provide consumers with the option to cancel at any time, before any billing for the service commences. Additionally, increased competition in the VoIP market has led to extremely low service rates.

VoIP providers often include at no additional cost many features and functionalities that traditional telephone service consumers must purchase separately such as voicemail, call waiting, caller identification, call forwarding, three-way calling, customized ringing services, and other

features. Additionally, many VoIP customers benefit from automatic billing, Internet billing, and Internet VoIP account management services, giving those customers real-time access to their account, call records, and other useful information. Also unlike many other voice services, VoIP consumers typically do not face termination fees should they choose to migrate to a different voice service provider.

B. Traditional Wireline Service Consumer Protections are Inapplicable to VoIP Services

The Commenters emphasize that VoIP providers offering services in Massachusetts are already subject to state laws governing false advertising and business conduct generally just like any other business. These laws and regulations are sufficient to maintain consumer protections in the event the competitive market does not constrain improper business practices. Thus, the appropriate issue to be examined by the Department is whether VoIP providers should also be subject to consumer protection and service quality standards applicable to traditional wireline services.

While the highly centralized control over the facilities and services available to consumers has led to numerous consumer protection requirements in the traditional wireline market, the Commenters submit that many of these rules are simply inapplicable to VoIP services. For example, "slamming," (*i.e.*, the unauthorized change of service provider) is not possible with most VoIP services because such services, including those offered by the Commenters, require customers to have CPE specific to the service, as well as a third-party provided Internet access service. VoIP customers must configure the hardware and software associated with the service in order for the service to be functional. This prevents unauthorized changes of service as a VoIP provider would be technically unable to reconfigure the software or hardware associated with another VoIP service provider. Further, because VoIP services will not

work without configured hardware and software, VoIP providers could not "slam" consumers of traditional wireline or wireless services that do not have such hardware or software in place.

Also, VoIP providers do not control the underlying transmission facilities used to route VoIP calls. In the Commenters' experiences, the majority of VoIP service quality problems arise from the underlying broadband connection, not with the software or specialized VoIP equipment used to transmit the VoIP call. As the Commenters and other VoIP providers have no control over third-party provided broadband Internet connections, they cannot directly affect the service quality associated with that infrastructure.

IV. CONCLUSION

The Commenters respectfully submit that the Department lacks the jurisdiction to regulate the Commenters' VoIP service offerings. The FCC rulings in the *Vonage Order* and in the *Pulver Order*, as well as the rationale underlying those orders, demonstrates that a unified national approach to VoIP regulation is both technically required, as well as good public policy. Moreover, the FCC is actively examining the need for imposing regulations on VoIP providers.

The Commenters also submit that competition in the VoIP market, as well as existing state consumer protection regulations, already ensures that VoIP providers offer quality services and limit their terms of service in a manner that protects consumers. Unlike both traditional providers of wireline telecommunications service and wireless service providers, none of the Commenters control the underlying facility used by their customers to make use of the VoIP service. This allows consumers to migrate to another VoIP service or traditional wireline service if unhappy with the service quality or policies of their VoIP provider. Further, the competition between VoIP service providers and with incumbent providers of telephone service has produced

numerous consumer benefits and increased consumer welfare. For these reasons, the Department should not regulate VoIP service offerings.

Respectfully submitted,

William B Wilhelm / MS

William B. Wilhelm, Jr.
Jonathan S. Frankel
BINGHAM MCCUTCHEN LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Telephone: (202) 373-6000
Facsimile: (202) 424-7643

Counsel for 8x8, Inc., Lightyear Network Solutions, LLC, and VoicePulse Inc.

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