

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON D.C. 20554**

In the Matter of: )  
 )  
Petition for Declaratory Ruling that pulver.com’s )  
Free World Dialup is neither Telecommunications ) WC Docket No. 03-45  
nor Telecommunication Service. )

**REPLY COMMENTS  
OF THE MICHIGAN PUBLIC SERVICE COMMISSION**

**I. Introduction:**

In this proceeding, Pulver.com submitted a petition to the Federal Communication Commission (FCC) requesting a Declaratory Ruling that Pulver.com’s Free World Dialup is neither “telecommunications” nor “telecommunications service” as these terms are defined in Section 153(a) of the Telecommunications Act of 1996. The Michigan Public Service Commission (MPSC) is concerned about the implications of this petition on the current regulatory structure and offers the following reply comments to Pulver.com’s petition<sup>1</sup>.

**II. Pulver.com’s petition:**

Pulver.com claims that it’s “point-to-point broadband Internet protocol (‘IP’) voice communications, is neither ‘telecommunications’ nor a ‘telecommunication service’ as these terms are defined in Section 153(a) of the Telecommunications Act of 1996”<sup>2</sup>.

Pulver.com lists the following five reasons in support of their contention that Free World Dialup (FWD) does not fall under the Title II regulatory framework:

1. *No fee for service* - member must purchase equipment and a broadband connection (“pulver.com certifies, but does not sell”<sup>3</sup> IP phones and softphones).

2. *Members only* – registration and configuration is necessary before the user is able to make voice over Internet protocol (VoIP) calls to other FWD members.
3. *No access to public switched network (PSTN) or cellular networks* – FWD members are only capable of calling other FWD members.
4. *The telephone number is a “FWD number”<sup>4</sup> not a North American Numbering Plan (NANPA) number* – FWD members are assigned a FWD five digit number.
5. *“FWD provides no transmission capabilities”<sup>5</sup>*

### **III. SIP<sup>6</sup> phone to SIP phone Scenario:**

Pulver.com, Qwest Communications International, Inc. (Qwest), Cisco Systems, Inc. (Cisco), Worldcom and The International Softswitch Consortium each filed comments and all agree that a call placed by a FWD member, with a SIP phone, to another FWD member, also with a SIP phone, does not use the PSTN. First a potential FWD member “A” (originator of the call) and potential FWD member “B” (recipient of the call) must have a broadband connection and be “on-line”<sup>7</sup> (This statement is redundant since one of broadband’s principal features is that it is “always on”, just as a regular telephone connected to the PSTN always has a dial tone). Second, these potential FWD members must purchase a SIP phone or softphones (if using a personal computer). FWD’s website has conveniently listed a number of “Pulver.com certified” devices which presumably are more adequate for this service. Third, the potential FWD members must register and configure their five digit FWD number. During the registration process the potential member must submit the

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<sup>1</sup> Petition for Declaratory Ruling that pulver.com’s Free World Dialup is neither Telecommunications nor a Telecommunication Service filed on February 5<sup>th</sup>, 2003.

<sup>2</sup> Pulver.com’s petition, pg. 1.

<sup>3</sup> Pulver.com’s petition, pg. 4.

<sup>4</sup> Pulver.com’s petition, pg. 4.

<sup>5</sup> Pulver.com’s petition, pg. 4.

<sup>6</sup> SIP (Session Initiation Protocol) is a signaling protocol which uses Real Time Protocol for actual communication.

following information: first name, last name, country, e-mail address, home address, user name, password, and how the person heard about FWD. Personal information may also be included on the FWD member's profile such as nickname, home telephone number, work telephone number, mobile telephone number, and personal interest. In addition, there are six boxes, which the FWD member must check unless it wants to opt-in to 3<sup>rd</sup> party mail, pulver mail, mail forwarding, unlisted number, and unlisted presence.

Why would a FWD member want to provide their personal telephone numbers when the FWD member is presumably only able to make "point-to-point broadband IP voice communications" with other FWD members? Pulver.com as well as the companies supporting Pulver.com fail to answer this question. Not enough information has been provided to properly address this issue.

While it may be argued that SIP phone to SIP phone calls do not touch the PSTN, and hence should not be regulated, much like e-mail, it appears that is not the only way a FWD member may place a call. Daniel Berninger, manager of Pulver.com and founder of FWD, stated "**while it is now possible to use a standard phone to call someone using Internet telephony, the opposite isn't yet the case**".<sup>8</sup> According to this assertion, a FWD member could use their regular PSTN phone and call a SIP phone. Daniel Berninger explains how: "if you want to call France, you dial 011 and then 33, which is France's country code. If you want to call an Internet phone, you dial 011 and then 87810 followed by the number. In our case, we assign six-digit numbers to people using our service."<sup>9</sup> SBC Communications, Inc. (SBC), in opposition to Pulver.com's petition, stated "FWD service will become an ENUM<sup>10</sup> registrar, which will enable callers from outside the FWD community to call FWD

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<sup>7</sup> Pulver.com's petition, pg. 3.

<sup>8</sup> "Country code opens gate to web phoning", *Chicago Tribune*, Chicago, Ill., February 15<sup>th</sup>, 2003.

<sup>9</sup> "Country code opens gate to web phoning", *Chicago Tribune*, Chicago, Ill., February 15<sup>th</sup>, 2003.

<sup>10</sup> ENUM: tElephone NUmber Mapping, E, 164 NUmber Mapping.

members<sup>11</sup>.<sup>12</sup> In fact, the number “87810” that Daniel Berninger refers to is the gateway VISIONng<sup>13</sup> has been assigned since May 16, 2002 by the International Telecommunications Union (ITU) to participate in ENUM<sup>14</sup>. VISIONng and FWD are currently testing ENUM. The question remains: is FWD’s service an ENUM trial disguised as a “free communication service”? Not enough information has been presented to address this issue adequately.

#### **IV. What is ENUM?**

Jeffrey Ganek, Chairman & CEO Neustar, Inc, describes ENUM as “a master registry of telephone numbers and associated Internet addresses. ENUM will enable us to go online...type in a friend’s phone number...and make his or her telephone ring. Or we’ll be able to use a telephone to send a message to a friend’s Palm Pilot. The point is...with ENUM we’ll be creating a seamless translation between switched telephone networks and IP networks so that people can communicate regardless of the technology or services involved – wireless, Internet (including email and instant messages), telephone, or even PDA. ENUM also facilitates Voice over IP by providing a mechanism that enables callers on the public telephone network to easily connect with IP Telephony users...and vice versa.”<sup>15</sup>

Neustar is presently testing ENUM as well as Telcordia Technologies, VeriSign, NetNumber and many other companies and countries. ENUM Forum, an independent group consisting of multiple telecommunications and Internet companies (including AT&T, Cisco, SBC, Verizon, and Qwest), is finalizing a 130 page document named “Specifications for United States Implementation of ENUM”. The Federal agencies involved are the

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<sup>11</sup> See [http://biz.yahoo.com/bw/0302103102182\\_1.html](http://biz.yahoo.com/bw/0302103102182_1.html).

<sup>12</sup> WC 03-45, comments filed by SBC on March 14<sup>th</sup>, 2003, pg. 2.

<sup>13</sup> See <http://www.visionng.org>

<sup>14</sup> See <http://www.itu.int/itudoc/itu-t/enum/enum-app.pdf>.

<sup>15</sup> Telecom Policy Summit 2001, Washington, D.C., October 1<sup>st</sup>, 2001, pg. 1-2. Sponsored by pulver.com. [www.neustar.biz/pressroom/files/announcements/TelecomPolicySummit.pdf](http://www.neustar.biz/pressroom/files/announcements/TelecomPolicySummit.pdf)

Department of State -ITAC Study Group A-, the Department of Commerce –NTIA-<sup>16</sup> and the Federal Communications Commission –North American Numbering Committee (NANC)-<sup>17</sup>. They are in the process of deciding whether the United States of America should “opt in” or not. Among several concerns expressed in the ENUM Forum document are concerns about security and privacy.

## **V. Security and Privacy:**

The Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI), based on their authority to implement the Communications Assistance for Law Enforcement Act (CALEA), “are concerned that if certain broadband telecommunications carriers fail to comply with CALEA due to a misunderstanding of their regulatory status, criminals may exploit the opportunity to evade lawful electronic surveillance.”<sup>18</sup> Jeff Pulver appears to provide the solution: “With regard to the CALEA issue raised, I feel this should be an Internet access provider issue, not an Internet application issue. It is much easier to build the wire tap function into the access method which is infrastructure based, rather than on every Internet application that comes along.”<sup>19</sup> It seems unclear who will be responsible for providing a secure environment during the deployment of these new technologies. In light of current events, security is critical and questions still remain as to how this technology will comply with existing requirements.

An additional concern which should be addressed is how will a user’s privacy be protected? The Federal Trade Commission (FTC) and the FCC are in the process of

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<sup>16</sup> Letter from Nancy F. Victory (NTIA) to the U.S. Department of State, February 2003.  
[http://www.ntia.doc.gov/ntiahome/ntiageneral/enum/enum\\_02122003.htm](http://www.ntia.doc.gov/ntiahome/ntiageneral/enum/enum_02122003.htm)

<sup>17</sup> Letter from Michael K. Powell (FCC) to the U.S. Department of State, February 2003.  
[http://www.fcc.gov/commissioners/powell/gross\\_enum\\_letter-021303.pdf](http://www.fcc.gov/commissioners/powell/gross_enum_letter-021303.pdf)

<sup>18</sup> WC 03-45, comments by The Department of Justice and the Federal Bureau of Investigations, March 14, 2003, pg. 7.

<sup>19</sup> <http://pulver.com/google-news/18mar03/fwdsupport.html>

developing a National Registry to protect consumers from telemarketers<sup>20</sup>. Simultaneously, new databases that link telephone numbers and e-mail addresses are being created. Problems could arise if consumers are more exposed to SPAM<sup>21</sup> and other intrusions through this technology.

## VI. 911:

FWD advertises itself as:

“Free. No more per-minute charges or monthly fees. **If you have broadband access**, you simply signup, get configured and begin enjoying telephone communications *the way they should be*. Free.”<sup>22</sup>

It appears FWD compares the “telephone communications” they offer with the telecommunication carriers’ service. However, unlike FWD, traditional telecommunication carriers offer a reliable “telephone communication” with 911 capabilities<sup>23</sup>. Consumers need to be informed of the lack of 911 or “VoIP services sold to compete directly with traditional voice systems provide what appears to the user as telephone must be considered as requiring E911 capabilities equal to the systems it is in competition with.(...) There is no less a telecommunication service than a carrier who owns switches and networks.”<sup>24</sup> Consumers may assume, incorrectly, that this technology will provide them with access to 911 when an emergency arises. In addition, if both telephones (PSTN and SIP) coexist in the house, serious confusion could occur in an emergency situation.

## VII. Conclusion:

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<sup>20</sup> CG 02-278, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*.

<sup>21</sup> SPAM: unsolicited e-mail.

<sup>22</sup> <http://www.freeworldialup.com>

<sup>23</sup> Michigan has abbreviated dialing 9-1-1, 7-1-1, 2-1-1.

<sup>24</sup> CC 94-102, *Revision of the Commission’s Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems*, comments by Washington State Enhanced E911 Program, February 18, 2003, pg. 10.

Pulver.com describes FWD as a SIP phone to SIP phone voice communication over the Internet. The three case scenarios listed below are not mentioned in the petition:

1. *standard (PSTN) phone to SIP phone voice communication*: is possible (according to Daniel Berninger, FWD founder.)
2. *SIP phone to standard (PSTN) phone voice communication*: not yet possible (according to Daniel Berninger).
3. *standard (PSTN) phone to SIP phone voice communication*: not possible.

If the U.S.A. does, in fact, opt-in to ENUM and designates a national Country Code, the last two scenarios would be possible and the regulatory framework of the service offered by FWD would definitely be questionable. It would appear, since they use the PSTN, that they would fall under the same “box” as AT&T’s VoIP<sup>25</sup>. As stated in the AT&T VoIP proceeding, the MPSC strongly supports choice and competition, and provides a favorable regulatory climate that would encourage providers of VoIP into Michigan. However, VoIP is not a new, untried technology requiring protection from regulatory mandates and industry transactions. VoIP is an evolutionary change in our existing telecommunications technology, whose providers must acknowledge their responsibilities to the telecommunications network and its customers.

This petition is unfounded and incomplete. In addition, the implementation of ENUM could have serious implications for this petition as well as for AT&T’s petition. The MPSC requests an in-depth analysis, involving all interested parties and the state regulatory bodies to properly study this evolution of existing telecommunications technology and the corresponding regulatory issues. An appropriate analysis of the issues should avoid the potential long-term problems created by providing a hasty, uninformed short-term solution.

Respectfully submitted,

**MICHIGAN PUBLIC SERVICE  
COMMISSION**

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<sup>25</sup> WC 02-361, *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, October 18, 2002.