

FHH Telecom Law January 2004

FCC Readies for Voice over Internet

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Voice-Over-Internet-Protocol, or VoIP, promises enormous changes in how Americans use telephone service. On legacy "circuit-switched" telephone technology, every phone call travels on its own pair of wires, or its own dedicated slice of a shared fiber-optic facility. A VoIP call, in contrast, sends each speaker's voice as packets of data intermingled over the Internet, like pieces of email or web page images. VoIP calls can be less expensive than conventional phone calls because Internet protocols can pack more much traffic onto a line than a circuit-switched network can.

As VoIP call quality improves and equipment prices fall, Washington regulators must soon face the question whether to treat VoIP like Internet service, which is largely unregulated, or like telephone service, which is subject to regulation on a host of specific issues, including nondiscriminatory service, 911, and access for the disabled, along with national security concerns, including law enforcement access to digital calls (often called "CALEA," after the governing statute). Also at issue are the "access charges" long distance companies must pay to conventional local telephone companies for connecting to the end user, as well as contributions by telephone companies to federal and state funds designed to promote universal access to phone service.

A recent FCC open forum on VoIP gives the best insight so far into the agency's thinking. Chairman Powell showed his cards most plainly, stating that "no regulator, either federal or state, should tread into this area without an absolutely compelling justification for doing so." While Powell made clear he sees a need to address consumer issues such as 911, universal service, and service for the disabled, and national security issues such as CALEA, he maintains that should be possible without broader telephone regulation, which could impose hundreds of other rules on VoIP providers, including access charges. But the Chairman also noted it may be difficult to regulate VoIP in any event, due both to the malleability of VoIP services and the ability of service providers to move off shore, as have providers of spam and Internet gambling.

Commissioner Copps wants the FCC to act quickly, before VoIP has a broader impact on the network. He suggested VoIP is no longer a nascent technology, and thus perhaps less needy of protection. Indeed, we should anticipate questions regarding the definition of a "nascent service" for this purpose arising in the upcoming VoIP rulemaking proceeding. Only Commissioner Adelstein explicitly called for regulating VoIP as "telecommunications" -- *i.e.*, on the same footing as telephone service. He expressed particular concern with regulatory arbitrage and the universal service fund, asserting that

the FCC must determine how underlying carriers are compensated for carrying third parties' traffic. Many VoIP providers use the conventional telephone network, he said, and "we cannot afford to let the rise of VoIP undercut the very networks that carry it." Commissioner Abernathy favors a "light touch" in regulating VoIP for the present, although she shares the concern that VoIP providers both use the conventional network and undercut traditional carriers' incentive to invest in it. But for now, at least, the Chairman appears to have majority support for minimal regulation.

A panelist at the forum, Kevin Werbach, challenged the common view that VoIP is merely a substitute for traditional telephony. He noted that Yahoo's Instant Messaging Service has a VoIP component, as does the popular Internet gaming service X-Box and the "push-to-talk" components of non-Nextel wireless services. Werbach also claims the growth of VoIP will shift billing models from those based on time and distance, as now, to new forms based on bandwidth and services provided. Jeff Pulver, the CEO of VoIP provider Pulver.com, observed that local telephone companies can use VoIP to avoid the networks of the long-distance carriers. A panelist from UBS Investment Research argued there is not much need for investment in the traditional network anymore, and that carrier investment is primarily in new technologies.

Michael Gallagher, awaiting confirmation as Administrator of the National Telecommunications and Information Administration, asked the FCC to address VoIP quickly to minimize regulatory arbitrage, so that it does not become a "red light district" or "grey market" of telecom. State regulators variously called for a hands-off approach, technology-neutral regulation, and different regulatory structures for different situations. Commissioner Charles Davidson of the Florida PSC noted a distinction between VoIP service to end users and VoIP as transport, pointing out the two may need different policies. Prof. Vanderheiden of the University of Wisconsin explained that access for the disabled requires government mandates because it is never addressed by market forces. He gave numerous examples of how VoIP services could benefit people with disabilities.

Three petitions now before the FCC seek rulings on how different aspects of VoIP should be regulated. Some or all of these may be wrapped into a broader rulemaking the Chairman has promised to launch early this year, while others may be decided at the announcement of the rulemaking. Whatever the FCC's decisions, it is clear the growth of VoIP will have a major impact on telecommunications technology, services, and economic structure.