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## **Google to FCC: Your Call Cannot Be Completed at This Time . . .**

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Nowadays even the FCC has trouble keeping track of who the phone companies are.

It used to be easy. You could always tell by the helpful operators and the bell symbol on the trucks. The companies did one thing: carry voice calls. They did it very well. And they were closely regulated by the FCC.

Now matters are a little more complicated. The FCC still regulates some phone company services, but not all. The regulated category is called “telecommunications service”: namely, anything that is offered to the public, for a fee, to carry the customer’s information to a destination chosen by the customer without a change in content. This includes traditional voice phone service. But it leaves out most Internet services, which accordingly are not regulated.

The definitional boundary picked up a few dents and kinks over the years. One anomaly is VoIP, offered over the unregulated Internet, but as a substitute for regulated voice service. The FCC regulates it in certain respects, not in others. Another quirk is access to the Internet over phone-company DSL. Although DSL includes a component that looks a lot like telecommunications service, the FCC opted nonetheless to deregulate the service entirely.

Then came Google Voice. As readers of [commllawblog.com](http://commllawblog.com) know, a GV subscriber gets a new phone number, local in a region of the subscriber’s choosing. Calling that number rings all the customer’s phones, wherever they are: office, home, cell, etc. Different callers can be automatically routed to different phones, or forwarded selectively to still other phones, or fed different voice mail greetings, or given different rings, or blocked altogether. All the voice mails from all the phones end up in one place, where they can be read in printed form, like emails, or listened to online from anywhere. There are provisions for setting up conference calls, and for recording phone conversations for online storage. And all this is free.

But GV refuses to connect its customers to certain rural areas that impose high access charges for terminating calls. If GV is a telecommunications service, that refusal is illegal.

Out went a letter from the FCC to Google. Does GV offer service to the public? For a fee? Does GV indeed block calls to some destinations? In other words: is GV a telecommunications service that breaks the law?

- ☎ Google answered. To no one's surprise, the company is adamant that GV is not a telecommunications service. It musters the evidence:
- ☎ GV users must subscribe to at least one telecommunications service before they can sign up. That makes GV just an add-on, rather than a telecommunications service itself.
- ☎ GV partners with CLECs – local phone companies other than big incumbents – to provide calling features. (Implication: GV is not the phone company here; the CLECs are.)
- ☎ GV is a free service, except for outbound international calls. (Implication: With no fee, GV cannot be a telecommunications service.)
- ☎ GV is offered only by invitation to avoid overloads as the system expands. But anyone can request an invitation. And GV intends eventually to make the service available without one. (Google did *not* attempt the argument that GV, not being offered to the public, for that reason cannot be a telecommunications service.)
- ☎ GV is a web-based software application that qualifies as an “information service,” a category mutually exclusive with telecommunications service. (Implication: Being one, GV cannot also be the other.)
- ☎ GV does not connect calls to certain high-cost U.S. destinations. (But if GV is not a telecommunications service, it is free to pick and choose which calls to complete.)

The smart money says the FCC will go along with Google's view, and leave GV alone.

But that opens a different problem. As phone-like services draw more of their functionality from the Internet, the old distinction between regulated telecommunications services and everything else becomes harder to maintain. No one wants to impede new Internet offerings, like GV, that improve communications. But neither do we want to wake up one morning and find the core telephone system is gone. (Especially in those rural areas that lack other options.) It will take some serious regulatory work to re-align the old rules with the newly emerging reality. The sooner the FCC begins, the less disruptive that process will be.