

FCC Treatment of Voice Over IP

Past, Present, Future

Russ Hanser & Jennifer McKee
Wireline Competition Bureau
Federal Communications Commission



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Computer Inquiry Definitions

● “Basic Service”

- Pure transmission capability offered on a common carrier basis for the movement of information.
- Subject to Title II common carrier regulation.

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Computer Inquiry Definitions (cont'd)

● “Enhanced Service”

- Involves computer processing, interaction with customer-supplied information, interaction with stored information.
- Not subject to Title II common carrier regulation no matter how extensive its communications component.

1996 Act Definitions

● “Telecommunications”:

- “[T]he transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”

1996 Act Definitions (cont'd)

● “Telecommunications Service” (“Basic”):

- “[T]he offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of facilities used.”
- Generally subject to Title II.

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1996 Act Definitions (cont'd)

● “Information Service” (“Enhanced”):

- “[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”
- Not subject to Title II.

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The 1998 “Stevens Report”

- Declined to draw any final conclusions in the absence of a more developed record.
- Computer-to-Computer VoIP: Not viewed as a telecommunications service.

The 1998 “Stevens Report” (cont’d)

- Phone-to-Phone VoIP: May be treated as a telecommunications service if:
 - provider holds itself out as providing voice telephony service;
 - CPE is the same as CPE used to place calls over the PSTN
 - customer can dial numbers assigned under the NANP; and
 - service transmits customer information without net change in form or content.

Pending Proceedings: AT&T

- Customers use ordinary CPE and 1+ dialing.
- Calls originate and terminate on circuit-switched PSTN facilities.
- AT&T routes calls over Internet backbone.
- Seeks ruling that access charges do not apply.

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Pending Proceedings: Pulver.com

- Closed network; members may only call other members.
- Specialized phones that use non-NANP numbers.
- Offered for free.
- Traffic is carried by the end user's ISP over existing BB facilities.
- Seeks ruling that service is neither "telecommunications" nor a "telecommunications service."

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Pending Proceedings: Vonage

- Specialized CPE; interconnects with PSTN.
- Seeks ruling that service is “information service” and that federal policy preempts state action in this area.
- Vonage also brought its claim to federal court, which held in Vonage’s favor.

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Moving Forward on VoIP

- Chairman Powell has indicated that the Commission will soon begin a rulemaking proceeding relating to VoIP.
- Likely to address definitional issues as well as the advisability of applying particular legal/regulatory requirements to the different varieties of VoIP service.

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Moving Forward on VoIP (cont'd)

- For example:
 - Should common carrier obligations apply?
 - Nondiscriminatory access
 - Just and reasonable rates and terms
 - At what level? Interstate or interstate and intrastate?

Moving Forward on VoIP (cont'd)

- Should access charges apply?
- Should universal service obligations apply?

Moving Forward on VoIP (cont'd)

- Should national security, public safety or other public interest requirements apply?
 - 911/E911?
 - CALEA?
 - Disability accessibility?