

Regulatory Considerations for Cable-Provided VoIP Services

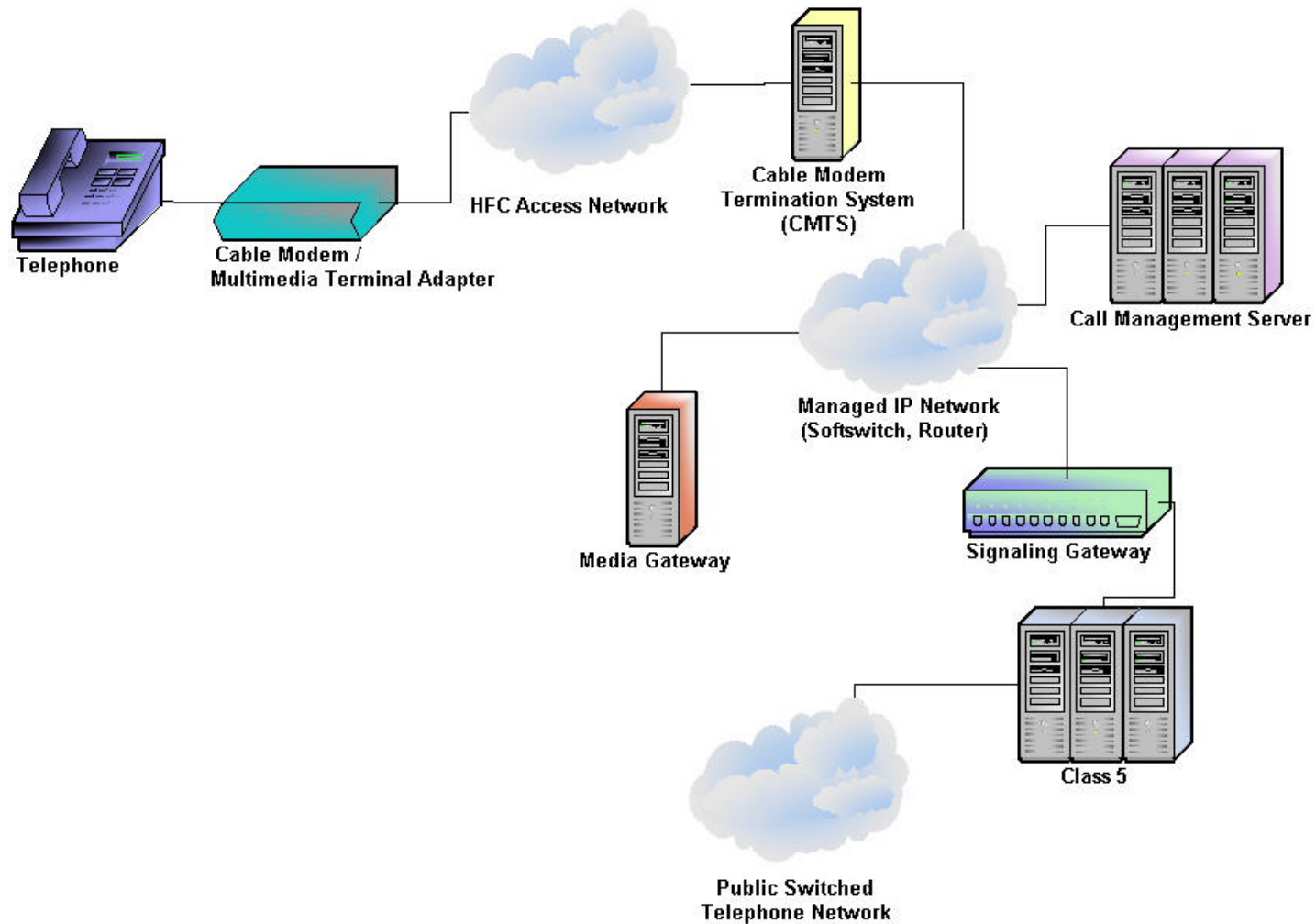
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What is Cable-Provided VoIP?

- Per the PacketCable model, the elements of a VoIP cable network include:
 - Cable Modem/Multimedia Terminal Adapter (MTA);
 - An HFC access network;
 - A cable modem termination system (CMTS);
 - A managed IP network that includes a media gateway, signaling gateway and call management server; and
 - Access to the PSTN

Possible Configurations of a Cable-Provided VoIP Network



Will Historical Definitions Define the Future Regulatory Landscape for VoIP Services?

- The Communications Act of 1934, as amended:
 - Telecommunications: “the 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.”
 - Telecommunications service: “the offering of telecommunications for a fee directly to the public ... regardless of facilities used.”
 - Information service: “the offering of a capability for generating, acquiring, storing, transforming, processing ... information via telecommunications.”

Distinctions Between Telecommunications Services and Information Services

- Regulation
 - Telecommunications services are subject to common carrier regulation at the federal and state level
 - Economic, public safety, and consumer protection regulation (*e.g.*, access charges, USF contributions, and public safety and consumer protection requirements)
 - Providers of information services are not subject to traditional common carrier regulation
 - Providers of information services are “end users” when they use the local telephone network
- Jurisdiction
 - Telecommunications services are subject to state or federal regulation based on the jurisdiction of the transmission
 - Information services are interstate in nature

Phone-to-Phone VoIP Service Challenges

Established Definitions

- “Telecommunications service” or “information service” - unclear line with VoIP service
- FCC offered a tentative definition in 1998:
 - Phone-to-Phone IP Telephony defined as instances in which a service provider:
 1. Self-proclaims providing voice telephony or facsimile transmission;
 2. Allows customers to use the same handsets used for PSTN calls;
 3. Permits calls to ordinary telephone numbers; and
 4. Transmits calls without making any net change in form or content.

FCC Proceeds With Caution in 1998

- FCC finds IP telephony lacks the characteristics of an information service
 - But, stops short of finding that IP telephony constitutes a “telecommunications service”
- FCC expresses intention to initiate proceeding to examine IP telephony
 - Focus on individual service offerings
 - Functionality is key, not technology
- FCC defers decision on whether phone-to-phone VoIP service providers should pay access charges

Evolution of Services

- Since 1998, phone-to-phone IP services and voice applications of broadband services have evolved:
 - Peer-to-peer services: Skype, Kazaa, SIPphone
 - Gaming, X-Box Live
 - Multimedia conferencing
 - High-power call centers
 - Unified messaging, AOL Talk
 - Expanded call management and screening
 - Availability awareness
 - Relocation and location scheduling

Recent Actions and Pending Proceedings

- IP-Enabled Services NPRM:
 - NPRM adopted in February to address legal and regulatory framework for IP-based services, including VoIP services
 - Seeks to categorize different types of IP-based services
 - Asks how each category should be classified
 - Asks what, if any, regulations should apply to each category
 - FCC will conduct “Solutions Summits” on public policy issues: CALEA, 911, Section 255
 - Most commissioners appear to favor lighthanded approach with emphasis on public policy and social regulations

Recent Actions and Pending Proceedings

- Pulver Decision:
 - Order adopted in February 2004 finding Free World Dialup to be an interstate information service
 - Concludes FWD is neither telecommunications nor a telecommunications service as those terms are defined by the Act
 - Confirms long-standing policy of non-regulation under which Internet-based services remain free from unnecessary and harmful regulation at both the federal and state levels
 - Finds traditional end-to-end analysis inapplicable in context of FWD
 - Determines state-by-state regulation of a wholly Internet-based service is inconsistent with the federal role over interstate commerce

Recent Actions and Pending Proceedings

- Cable Modem Ruling:
 - Cable modem service is an interstate information service
 - FCC defines cable modem service as “a service that uses cable system facilities to provide residential subscribers with high-speed Internet access, as well as many applications or functions that can be used with high-speed Internet access”
 - Integrated offering – telecommunications component not separable
- Cable Modem NPRM:
 - Factors for evaluating stand-alone telecommunications service and whether regulations should apply
 - Tentative conclusion that forbearance is justified
- Brand X Appeal
- Wireline Broadband NPRM

Recent Actions and Pending Proceedings

- Minnesota PUC Decision:
 - Finds Vonage's service is "telephone service," which is not specifically defined by statute
 - Orders Vonage to seek CPCN, file 911 plan, and submit tariffs in compliance with state law
 - Takes functional approach – Vonage offers service no different than any other telephone company
 - Determines there is no federal preemption with respect to telephone services provided using VoIP technology
- Vonage Petition for Declaratory Ruling:
 - Seeks preemption of Minnesota PUC decision that Vonage offers "telephone service"
 - Argues state regulation of Internet services would be inconsistent with federal law and Congressional intent to leave the Internet unregulated

Recent Actions and Pending Proceedings

- Minnesota Federal District Court:
 - Grants permanent injunction to Vonage
 - Finds Vonage is a provider of information services
 - Information services must not be regulated by state law
 - State regulation would undermine Congress's mandate that the Internet remain free
 - PUC's request for reconsideration denied
- Eighth Circuit Appeal:
 - PUC disagrees with finding that just because Vonage uses the Internet it provides an information service
 - Briefing schedule set for May
 - Vonage's FCC preemption petition remains active

Key Concerns of Regulators

- There are four key issues of concern with respect to the regulatory treatment of VoIP services:
 - Intercarrier compensation/USF
 - CALEA
 - Disability access (Section 255)
 - Emergency services and network reliability

Intercarrier Compensation

- Telecommunications carriers transfer payments for the use of their networks in the form of access charges or reciprocal compensation
 - Information services, including VoIP services, historically are exempt from payment of access charges
 - FCC is considering unified intercarrier compensation reform
 - Private negotiations
- AT&T Petition for Declaratory Ruling
 - Seeks ruling that its phone-to-phone VoIP services are exempt from access charges
 - ILECs advocate retroactive application of access charges to services that interconnect with PSTN
- Level 3 Petition for Forbearance
 - Seeks forbearance from application of access charges to VoIP traffic (to the extent charges apply)
 - Argues forbearance would minimize legal uncertainty pending the FCC's completion of uniform intercarrier compensation reform

Universal Service

- Contributions to USF based on interstate and international telecommunications services
 - FCC asks whether to apply USF obligations to facilities-based broadband providers (Wireline Broadband proceeding)
 - FCC notes “accelerating development of new technologies like ‘voice over Internet’ increases the strain on regulatory distinctions” (USF Recovery NPRM)

CALEA

- Communications Assistance for Law Enforcement Act (CALEA)
 - Applies to telecom carriers and providers of transmission services to the extent that such service is a replacement for a substantial portion of local exchange service
 - Homeland security concerns expected to shape CALEA standards for VoIP
 - Softswitches may not be CALEA compliant
 - Cable uses CALEA-compliant equipment; may satisfy safe harbor standard
 - FCC will hold industry workshop on CALEA issues
 - DOJ/FBI asked FCC to initiate generic proceeding on application of CALEA to broadband services

Disability Access

- Disability Access (Section 255)
 - Telecommunications services must be accessible and usable by individuals with disabilities
 - Applies to “all entities that make telecommunications services available” including voicemail and interactive menu services
 - FCC NOI seeks comment on VoIP disability issues regarding current industry efforts to develop accessible IP telephone equipment and 800 services
 - The FCC’s Technology Advisory Council (“TAC”) and the industry are working with standards bodies to eliminate the need for regulation
 - FCC will hold industry workshop on Section 255 issues

Emergency Services and Network Reliability

- 911 Emergency Services and Network Reliability
 - Customer location information tied to equipment (*e.g.*, cable modem or set top boxes)
 - FCC seeks comment on application of E911 rules to VoIP services
 - VoIP service may not have same built-in power source as PSTN and may be subject to service outages
 - Many states require backup power sources
 - VoIP service providers make comparisons to consumer experience with cordless phones
 - NENA and VON working together
 - FCC to hold industry workshop on 911 issues

States Enter the Debate

- States proceed cautiously in light of Minnesota decisions and FCC proceedings
- New York
 - Complaint proceeding applies access charges to US DataNet's VoIP services; relies on functionality test
 - Vonage/Frontier complaint proceeding evolves into generic proceeding
- California
 - Generic NPRM tentatively concludes VoIP is a public utilities telecommunications service when interconnected with the PSTN; applies functionality test
 - Service quality NPRM asks whether standards should apply to intrastate VoIP services

States Enter the Debate

- Filings by Time Warner Cable Information Services, LLC to provide VoIP services in the states:
 - North Carolina, Texas, Missouri, Ohio, South Carolina, California, Kansas
- Other states are closely monitoring and seeking comment on regulatory and classification issues:
 - Pennsylvania, Ohio, Colorado, Washington, Alabama, Utah, North Dakota, Missouri
- NARUC adopts resolution regarding information services:
 - Classification should be technology neutral and based on functionality of service, not facilities used

Regulatory Uncertainty Affects Numerous Business Decisions Concerning Implementation of Cable-Provided VoIP Services

- Network design and equipment purchases
- Services to be provided
- Taxes and surcharges to be paid
- Public safety and consumer protection considerations
- Customer disclosures

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