

Regulatory Considerations for Cable-Provided IP Telephony

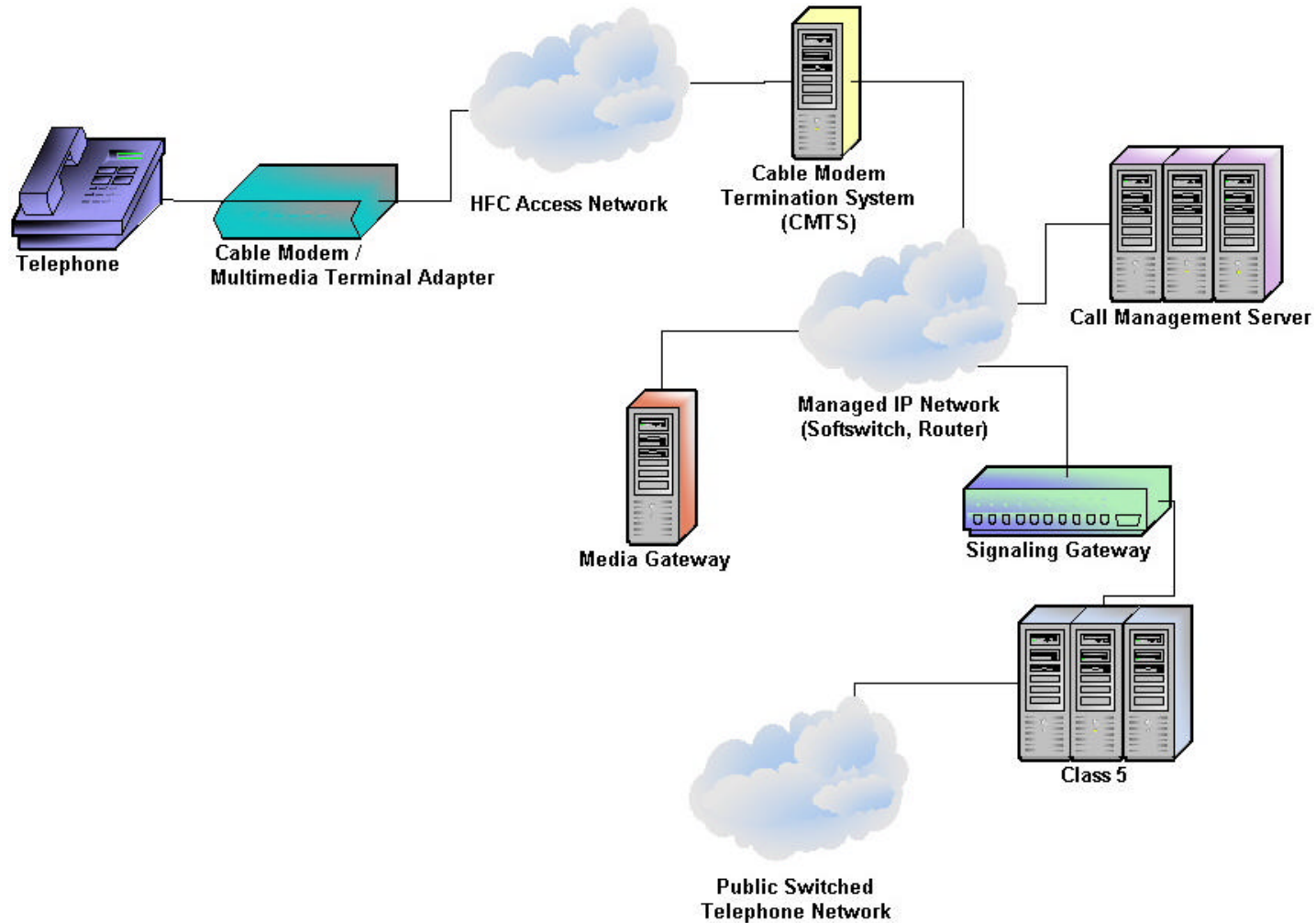
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What is Cable-Provided VoIP?

- 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 IP Telephony Network



Future Regulatory Landscape for VoIP Services Is Uncertain

- Definitions dictate regulatory status
 - 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.”

Past FCC Findings

- Information services are NOT “telecommunications services”
- Information services are interstate in nature
- ISPs are “end users” when they use the local telephone network
- ISPs generally are not subject to regulation (*e.g.*, access charges, USF contributions, and public safety and consumer protection requirements)

Phone-to-Phone IP Service Challenges

Established Definitions

- “Telecommunications” v. “Information service”
- unclear line with IP telephony
- 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

- Lacks characteristics of information service
- Stops short of finding that IP telephony constitutes “telecommunications service”
- Expressed intention to initiate proceeding to examine IP telephony
 - Focus on individual service offerings
 - Functionality is key; not technology
- Deferred decision on whether phone-to-phone IP providers should pay access charges

Recent FCC Actions and Pending Proceedings

- Cable Modem Ruling:
 - Cable modem service is an 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

FCC Pending Proceedings

- Wireline Broadband NPRM:
 - FCC questions whether decision to classify wireline broadband services as information services should affect obligations traditionally imposed on telecommunications service providers
 - What are universal service implications of voice traffic migrating to broadband platforms – will migration affect FCC's ability to support universal service in an equitable and non-discriminatory manner or lower or raise cost of providing service to consumers?

FCC Pending Proceedings

- Universal Service Recovery NRPM:
 - FCC notes that “accelerating development of new technologies like ‘voice over Internet’ increases the strain on regulatory distinctions such as interstate/intrastate and telecommunications /non-telecommunications, and may reduce the overall amount of assessable revenues reported under the current system.”

FCC Pending Proceedings

- AT&T Petition for Declaratory Ruling:
 - Seeks ruling that its phone-to-phone IP telephony services are exempt from access charges
- Pulver.com Petition for Declaratory Ruling:
 - Seeks ruling that its Free World-Dialup Service is neither telecommunications nor a telecommunications service as those terms are defined by the Act

States Are Entering the Debate

- States are reviewing the application of traditional telecommunications service regulation to VoIP services
 - New York PSC decision applying access charges to US DataNet (an IXC using VoIP technology); relies on functionality test
 - Florida PSC interconnection decision to include phone-to-phone IP telephony in the definition of switched access traffic
 - CNM Networks, Inc. Petition for Declaratory Ruling
 - California PUC NPRM to amend service quality standards to apply to intrastate VoIP services; applies functionality test
 - Illinois Commerce Commission Order grants waiver of maintaining USOA for Verizon VoIP offering; Verizon files tariff for its VoIP offering

States Are Entering the Debate

- Some states seeking to regulate traditionally interstate services
 - California PUC decision to exercise jurisdiction over DSL services (jurisdiction concurrent with the FCC); relies on Section 414 of the Act to exercise its “traditional police powers to safeguard consumer health, safety, and welfare. . .”
- Other states are closely monitoring the issues
 - South Carolina, North Carolina, Nebraska, Colorado, Alabama, Kentucky, Tennessee
- NARUC adopts resolution recommending that the FCC ask the Joint Board to address jurisdictional and intercarrier compensation issues related to VoIP

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
- Classification of service must be consistent throughout public documents

Public Safety and Consumer Protection

- 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 expected to shape standards for VoIP
 - Softswitches may not be CALEA compliant
- Privacy
 - Carriers are required to protect the privacy of the customer proprietary network information (CPNI) of their subscribers
 - Many consumer advocates have expressed concern because IP networks place all data on a single line making monitoring and surveillance easier
 - Encryption technology may be necessary

Public Safety and Consumer Protection

- 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
 - Industry working with standards bodies to eliminate need for regulation
- Truth-in-Billing
 - Truthful, non-misleading telephone bills
 - Line items

Public Safety and Consumer Protection

- 911 Emergency Services
 - Customer information tied to equipment (*e.g.*, cable modem or set top boxes)
 - NY PSC requires LECs to provide access to 911
 - FCC seeks comment on application of E911 rules to VoIP services
- Network Reliability
 - 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

Public Safety and Consumer Protection

- Numbering
 - Access to Numbers
 - Only carriers can obtain numbers from NANPA
 - Competing submissions to NANC regarding effect of VoIP on number usage
 - ENUM
 - One number as single point of contact – mapping phone numbers into Internet addresses
 - FCC and NTIA have not formally committed US government to participate in an international agreement to standardize phone numbers developed by the ITU

Public Safety and Consumer Protection

- Interconnection, Local Number Portability, Resale, and Entry Regulation
 - Providers of telecom services are subject to requirements to interconnect, port numbers, resell telecom services, and must obtain approval before offering services
- Equal Access to LD Carriers
 - Softswitch technology may not be capable of supporting customer LD changes and choice of LD carrier
 - Slamming rules apply once equal access applies

Public Safety and Consumer Protection

- Taxes
 - Classification of service
 - Internet Tax Freedom Act
 - New York – Gross Receipts Tax applies to telecommunications services and/or carriers
 - Internet access services are not subject to the tax
 - New York – Sales and Use Tax applies to telephony service
 - Service is not considered telephony if it is merely an incidental element of a different or other service purchased by customer
- Federal or State Surcharges
 - NANPA, LNP, TRS, USF, regulatory fees, 911 fees

Cable-Provided VoIP Telephony

- Is it an information service because it is an add-on to your cable modem service?
- Is it a telecommunications service because of the functionality provided to subscribers?
- The answer . . .

The Answer

- For now, it appears to be up to the cable provider; however,
- Which path you choose has significant implications for your business

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