

# Issues for Cable-Provided VoIP Services



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# Is IP Telephony the Best Future Course for Cable?

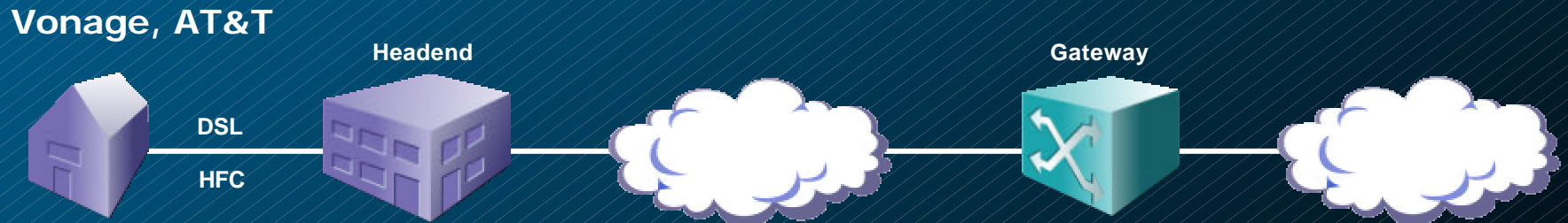
(courtesy of Glenn Russell and Eric Rosenfeld, CableLabs)



End-to-end control of QoS, Provisioning, PSTN Interconnect, Back-Office, Operational Support



Control customer, Provisioning Integration, Back-Office, Operational Support, Outsource: PSTN interconnect



No MSO control over the customer 'last mile', QoS

# Cable-Provided IP Telephony under the Current Legal and Regulatory Framework

- Historically, definitions have dictated regulatory status and classification
  - Telecommunications services are subject to common carrier regulation at the federal and state level, including economic, public safety, and consumer protection regulation,
  - Information services are not subject to traditional common carrier regulation

# Cable-Provided IP Telephony under the Current Legal and Regulatory Framework (cont'd)

- In 1998, the FCC reviews application of definitions to VoIP
  - FCC stops short of finding that IP telephony is a telecom service
    - Offers tentative definition for phone-to-phone IP telephony
    - Commits to initiate a future proceeding
  - Since 1998, phone-to-phone IP-based services and voice applications of broadband services explode:
    - Peer-to-peer services: Skype, Kazaa, pulver
    - 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

# Cable-Provided IP Telephony under the Current Legal and Regulatory Framework (cont'd)

- FCC begins to review VoIP and IP-enabled services again in 2004 after substantial pressure from states
  - Jurisdiction
    - Pulver Decision – Free World Dialup (FWD)
    - FCC Vonage Order
  - Pre- and post-2004 classifications matter
    - Cable Modem Order, Brand X, and FNPRM
    - Wireline Broadband NPRM
    - AT&T Phone-to-Phone Order
    - IP-Enabled Services NPRM
    - CALEA NPRM

# FCC Reviews Jurisdictional Nature of Certain IP-Enabled Services – Pulver Decision (February 2004)

- FCC finds Free World Dialup (FWD) 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

# FCC Reviews Jurisdictional Nature of Certain IP-Enabled Services – Vonage Order (November 2004)

- FCC finds (in response to Vonage's preemption request) that Vonage's service is interstate and preempts the Minnesota PUC's entry requirements
  - Ruling does not address information/telecom distinction
  - Ruling extends to other IP-enabled services that have the same basic characteristics as Vonage's service: (1) a requirement for a broadband connection from the user's location; (2) a need for IP-compatible CPE; and (3) a service offering that includes a suite of integrated capabilities and features
  - Ruling does not address applicability of Minnesota's general laws governing entities conducting business in the state (such as taxation, fraud, general commercial dealings, marketing, advertising, and other business practices)
  - Ruling reiterates that applying the end-to-end analysis to Internet-based services is difficult, if not impossible
  - Sections 706 and 230 key components of review of policies for IP-enabled services
- Order appealed by many state regulatory commissions

# FCC Addresses Classification of Services – VoIP NPRM (February 2004)

- FCC adopts NPRM to address legal and regulatory framework for IP-based services, including VoIP services
  - Seeks to categorize different IP-based services
    - Consumer perception
    - Interconnection with PSTN
  - Asks how each category should be classified
  - Asks what, if any, regulations should apply to each category
- In conjunction with NPRM, FCC conducts “Solutions Summits” on public policy issues: CALEA, 911, disability access

# FCC Addresses Classification of Services – AT&T Petition for Declaratory Ruling Order (April 2004)

- FCC finds AT&T’s “phone-to-phone” VoIP service to be a telecommunications service subject to access charges
- AT&T’s service:
  - Uses ordinary CPE with no enhanced functionality
  - Originates and terminates on the PSTN
  - Undergoes no net protocol conversion and provides no enhanced functionality to end users due to provider’s use of IP technology
- FCC finds end users do not receive service differently than traditional long distance service

# FCC Addresses Classification of Services – Communications Assistance for Law Enforcement Act NPRM (August 2004)

- CALEA currently applies to telecommunications carriers: any “person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire”
  - FCC has authority to reach any provider of “wire or electronic communication switching or transmission service to the extent that . . . such service is a replacement for a substantial portion of the local telephone exchange service”
- FCC tentatively concludes that facilities-based providers of any type of broadband Internet access service, whether provided on a wholesale or retail basis, are subject to CALEA (includes cable modem, wireline, satellite, wireless, powerline)
- FCC tentatively concludes that managed or mediated VoIP services are subject to CALEA
  - Includes VoIP services that offer voice communications calling capabilities whereby the VoIP service provider acts as a mediator to manage the communications between its end points and to provide call set-up, connection, termination, and party ID features, often generating or modifying dialing, signaling, switching, addressing, or routing functions for the user

# How Regulatory Status Affects Cable-Provided IP Telephony Service Providers' Rights and Obligations

- Telecommunications carriers have certain rights under Sections 251 and 252 of the Act
  - Right to interconnect with other carriers
  - Right to access the public switched telephone network (“PSTN”)
  - Right to obtain numbers directly and request number portability
  - Right to access UNEs
  - Right to receive cost-based pricing
  - Right to access rights-of-way
  - Right to collocate equipment at ILEC premises
  - Right to purchase services for resale
  - Right to obtain compensation for the transport and termination of traffic
  - Right to have disputes arbitrated or adjudicated
- Providers of information services have none of these rights

# How Regulatory Status Affects Cable-Provided IP Telephony Service Providers' Rights and Obligations

(cont'd)

- Key business and legal issues for cable companies providing IP telephony
  - Access charges or reciprocal compensation
  - Taxes, fees, and surcharges
  - Network design and equipment purchases
  - Public safety and consumer protection considerations
  - Features and functions to be provided

# 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 have been exempt from payment of access charges
    - AT&T Prepaid Calling Card Petition
- FCC adopts Further NPRM on Feb. 10 seeking comment on various proposals for intercarrier compensation reform
- Level 3 Petition for Forbearance - seeks forbearance from application of access charges to VoIP traffic (to the extent charges apply); March 2005 deadline for action
- Self Help - ILECs attempt to impose access charges and other termination fees on third-party partners/end users through interconnection agreements, tariffs, and lawsuits

# 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 NPRM)
  - FCC notes “accelerating development of new technologies like ‘voice over Internet’ increases the strain on regulatory distinctions” (USF Recovery NPRM)
  - FCC reviewing application of USF obligations to VoIP service providers (IP-Enabled Services NPRM)

# Taxes, Fees, and Surcharges

- Taxes - Level of taxation generally depends on classification of service under tax law
  - Federal Excise Tax
  - Internet Tax Freedom Act
  - State and local government taxes
  - Gross receipts taxes
  - Sales and use taxes
- Federal and State Surcharges
  - NANPA, LNP, TRS, USF, regulatory fees, and 911 fees

# Communications Assistance for Law Enforcement Act (CALEA)

- Requires providers to perform call intercepts and other electronic surveillance in response to requests from law enforcement
  - Outsourcing considerations
  - Equipment considerations – PacketCable™ solution

# 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 held industry workshop on Section 255 issues

# Emergency Services and Network Reliability

- FCC seeks comment on application of E911 rules to VoIP services
  - Customer location information tied to equipment (*e.g.*, cable modem or set top boxes) – information may not be sent automatically to PSAP
  - NENA and VON working together
  - FCC held industry workshop on 911 issues
  - Liability issues
- 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
  - Some VoIP services reliant on reliability of underlying broadband connection

# Numbering and Equal Access

- Local Number Portability
  - Only telecommunications carriers have right to port numbers
  - VoIP service providers must partner with a telecommunications carrier if customers seek to port numbers
- Obtaining Numbers
  - SBC IP granted waiver to obtain numbers directly from NANPA/PA subject to SBC IP complying with all FCC numbering rules and compliance requirements and pending outcome of generic IP-enabled services docket
  - FCC says similar requests will be granted
- Equal Access to Long Distance Carriers
  - Softswitch technology may not be capable of supporting customer long distance changes and choice of long distance carrier
  - Equal access not permitted with flat rate plans
  - Slamming rules apply once equal access applies

# States Have Attempted to Fill the Regulatory Void Left by the FCC

- New York
  - New York federal District Court preliminarily enjoins PSC decision; permanent injunction being reviewed
- Minnesota
  - Minnesota federal District Court permanently enjoins PUC decision
  - Eighth Circuit upholds District Court
- California
- Other states are closely monitoring and seeking comment: Pennsylvania, Ohio, Colorado, Washington, Alabama, Utah, North Dakota, Missouri, Vermont, Tennessee, Louisiana, Arizona, Colorado, Kansas
- NARUC adopts resolutions regarding information services and jurisdiction; looks to adopt more

# Is IP Telephony the Best Future Course for Cable? It Appears So

- Cable providers are well-positioned to benefit from the explosion of new IP-enabled services
- Ongoing regulatory uncertainty requires a careful analysis of all financial, contractual, and regulatory implications
- A well-developed business plan can permit the cable provider to anticipate the future regulatory landscape and establish products or relationships that will withstand the evolution of regulatory policies, consumer demand, and industry practices

# Questions?

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