

Getting into the telephone business with VoIP –

Some regulatory and business considerations – Part I

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Voice over Internet Protocol (“VoIP”) is on everyone’s tongue these days, especially FCC Chairman Michael Powell’s. VoIP is more efficient and less expensive than circuit-switched telephony, allows for “killer apps,” and, in its purer forms, is portable. A subscriber to pulver.com’s Free World Dialup or Vonage’s DigitalVoice can make and receive calls anywhere in the world that he can find Internet access.

These advantages over Plain Old Telephone Service (“POTS”) are leading many independent cable operators to consider deploying VoIP. This article, the first of two parts, gives an overview of the regulatory treatment of VoIP. Next month, we’ll look at some business issues cable operators will want to consider when evaluating a possible VoIP launch.

How is VoIP over cable regulated? It’s not - yet. In March 2004, the FCC started a VoIP rulemaking that should answer important regulatory questions and remove some uncertainty. The proceed will address a broad range of issues including jurisdiction, 911/E911 obligations, CALEA compliance, USF contributions, and access charges. This rulemaking is still pending. To date, the only regulatory decisions directly addressing VoIP are three orders the FCC issued in 2004. These orders take the “if it walks like a duck and quacks like a duck” approach to VoIP: If the service resembles POTS, the FCC treats it that way. If not, hands off.

Free World Dialup - Not a duck. In February 2004, the FCC issued its pulver.com order, determining that pulver.com’s Free World Dialup VoIP service was an unregulated “information service.” Under the Telecommunications Act, “information services” are out of state regulators’ jurisdiction. The order was expressly limited to the FWD service, a free service where subscribers initiate peer-to-peer communications using a SIP phone or PC. The service does not use the public switched telephone network (“PSTN”) or ten-digit North American Numbering Plan (“NANP”) phone numbers. The Commission also used the pulver.com order to formalize its “policy of nonregulation to ensure that Internet applications remain insulated from unnecessary and harmful economic regulation at both the federal and state levels.” About a month later, the FCC issued its AT&T order, which reached a very different decision.

AT&T’s IP telephony - Quack. In its AT&T order, the FCC ruled that AT&T’s phone-to-phone IP telephony service is a “telecommunications service” on which interstate access charges may be assessed. What is the difference between AT&T’s service and the pulver.com service? AT&T’s service originates and terminates on the PSTN, and uses ordinary telephones and NANP numbers. A customer who subscribes to the service at his New York City address has to use the service from his apartment. Other than the fact that calls are transported over AT&T’s internet backbone, the service looks just like POTS.

Vonage - Not really a duck. In November 2004, the FCC issued an order finding that Vonage's DigitalVoice, a portable, peer-to-peer service that uses NANP numbers, was not subject to the jurisdiction of the Minnesota Public Utilities Commission.

Both Vonage's and AT&T's services use NANP numbers, so what is the difference? Vonage's service is not geographically bound to a state. Imagine two Vonage customers, both with Minneapolis numbers. One is traveling in China, and the other in France. Using his Vonage service, the customer in China can dial the other customer's Minneapolis number and reach him in Paris, or vice versa. The FCC therefore found that state jurisdiction over the service was inappropriate. In this order, the Commission also stated that "to the extent other entities, such as cable companies, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order."

Upshot. The FCC has made clear that it intends to regulate VoIP lightly, and cable operators providing a "portable" VoIP service can probably avoid many – if not all – state "telephone" regulations. But there are other issues to consider before entering the VoIP market. Next month: What the RBOCs are doing to strike back; what other cable operators are doing; and considerations for "partnering" with a turn-key provider.

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