



The News Review

VoIP Debates to Determine Service's Fate in U.S.

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July 14 concluded a six month period during which the foundations for VoIP's future were established. This includes several significant FCC rulings, as well as a major Notice of Proposed Rulemaking (NPRM), regarding the treatment of VoIP services. Congress has also been involved as various bills detailing VoIP deregulation have been proposed. The common thread among all of these efforts is the acknowledgement that the old regulatory structure for telephone services should not hinder VoIP's development.

Telecom vs Information Services

Recent FCC rulings created a significant distinction between two different categories of IP-based voice services. February saw the FCC rule in favor of pulver.com's Free World Dialup (FWD) service. The FCC established precedent, declaring the peer-to-peer internet application an "information service" exempt from the common carrier regulations of "telecommunications service." One of the most critical elements is that Pulver provides no transmission capabilities to its members nor charges any fee for its FWD service.

In contrast, the FCC ruled against AT&T's petition for a similar exemption from regulated charges. When a call reaches AT&T's network, it is converted into IP and transported over AT&T's Internet backbone. AT&T then converts the call back to POTS from IP and delivers it to the called party through local exchange carrier (LEC) business lines. The FCC emphasized that its ruling against AT&T is limited to this kind of IP-based interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users as a result of the provider's use of IP technology.

Bills on the Senate and House Floor

In the midst of these FCC rulings, several bills regarding VoIP have been introduced in Congress. These include bills from Senator Sununu (R-NH), Representative Pickering (R-MS), and one from Representatives Stearns (R-FL) and Boucher (D-VA). The theme behind the three bills focuses on limiting regulation of VoIP. Sununu's bill, the VOIP Regulatory Freedom Act (S. 2281) is the most extreme and seeks significant exemptions for VoIP providers from CALEA obligations and access charges. However, calls that follow AT&T's protocol translation model – merely using IP for transport - would not be exempted from regulations.

Pickering's bill (H.R.4129) differs from Sununu's in that it doesn't prohibit other carriers from collecting access fees from VoIP providers. Furthermore, Pickering's bill would require VoIP providers to allow government investigators to intercept communications. Interestingly, both of these bills would limit the FCC's authority regarding VoIP, specifically restricting application of "telecommunications service" rules to VoIP. The Stearns-Boucher bill, the Advanced Internet Communications Services Act of 2004 (H.R. 4757), also offers restrictions to the FCC's authority. In this case, the bill limits FCC authority over VoIP services to E-911 issues, disability access, universal service funding and access fees when VoIP traffic intersects with the legacy telephone network. However, the bill specifically bars both the FCC and states from regulating the rates, charges or terms for any Internet-based voice, data, video or other form of communication that is sent or received over an IP architecture, no matter the provider.



NPRM Comments Filed

July 14 was the deadline for submission of comments to the FCC's NPRM on VoIP. Pipeline spoke with Jason P. Talley, CEO of Nuvio Corporation, a wholesale VoIP provider, for an inside look at the issues being addressed in the VoIP NPRM. Nuvio's VoIP offerings share many of the features identified in the *Pulver.com* decision as attributes of information services. For example, like the FWD service, Nuvio's VoIP service relies on users to provide their own broadband access.

Because Nuvio's VoIP offerings provide information services in addition to simple voice transmission, its services are distinguished from AT&T's IP-based telecommunications service, which provides "only voice transmission with no net protocol conversion." The fact that Nuvio interconnects with the PSTN to terminate calls to or receive calls from certain individuals does not make it a telecommunications service. Rather, Nuvio's specialized CPE, its requirement that customers 'bring their own broadband', the net protocol conversion it performs to enable communications with the traditional PSTN, and the array of added features and services companies like Nuvio provide, should classify such VoIP offerings as information services.

As discussed in Nuvio's initial comments filed with the FCC, Nuvio and other VoIP providers are retail purchasers of telephone circuits and are charged USF fees by LECs. Such providers also deliver services through LECs under established interconnection compensation agreements. As a result, contrary to the arguments that VoIP services circumvent the USF system and other intercarrier charges entirely, many VoIP providers already contribute significantly to the funding of the USF program and willingly pay the interconnect charges their LEC partners pass on to them.

Nuvio's response to the NPRM mirrors, at some level, the various bills proposed in Congress and discussed above. Nuvio is seeking a light regulatory touch that is more reactive than predictive. It argues that VoIP technology is different than the old PSTN in that it may be impossible to know where users are located, making geographical definitions obsolete. Thus it is no longer appropriate to divide its regulation among state and local jurisdictions. It argues that transferring regulatory control over VoIP from the states to the FCC is one way to address this issue. Such a ruling would also simplify the playing field for VoIP providers as they roll out service because they would not have to manage the subtle differences among the 50 U.S. states and its territorial holdings.

Regulation to Stop Abuses, Not Progress

Additionally, Nuvio argues that regulatory structures that were originally put in place as a response to abuses in the market by telecom monopolies are irrelevant to a new market that is active with competitors. Talley notes that the fees that the states are due can be made up through means other than IP regulation. Another goal of Nuvio's is to insure relief from the burden of requirements that may be technologically impossible – such as e-911 auto-location based on IP addresses. VoIP companies and technologists will need some time to develop such capabilities, and VoIP should be allowed to flourish in order to drive its maturation.

Although no decisive actions are expected until after November's elections, VoIP will be high on the to-do list for Congress when it reconvenes in 2005. The input Congress receives now in the form of expert comments from companies such as Nuvio, however, will have much to do with determining VoIP's fate in the United States.