



New FCC Ruling is IP-Friendly

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On November 2, the FCC ruled on its third major decision this year relating to IP services. This latest ruling favors Vonage and preempts an order of the Minnesota Public Utilities Commission. Specifically, the FCC declared that Vonage is an interstate service subject to federal regulation. The FCC's order was followed by strong opinions from the Chairman and Commissioners who acknowledged this was only a first step.

In July 2003, the Minnesota Department of Commerce filed complaints against Vonage, asserting that Vonage was providing telephone exchange service in Minnesota and was subject to state laws and regulations governing a "telephone company." In response, Vonage argued that the state laws did not apply or were preempted by the federal telecommunications regulations.

In September 2003, the Minnesota Commission issued an order asserting regulatory jurisdiction over Vonage. The order required the company to comply with all state statutes and regulations relating to the offering of telephone service in Minnesota. In response, Vonage filed suit against the Minnesota Commission in the U.S. District Court for the District of Minnesota. At the same time, Vonage filed a petition with the FCC.

Vonage's FCC petition requested that "the Commission preempt the Minnesota Commission's order and find that (1) Vonage is a provider of 'information services,' and is not a 'telecommunications carrier,' as those terms are defined in the Act, and (2) state regulation of this service would unavoidably conflict 'with the national policy of promoting unregulated competition in the Internet and information service market.'"

Though FCC's order here is important, it is also limited. The FCC is specifically stating that due to the inability to split the Vonage service into distinct intrastate and interstate components, it is an interstate service. On this basis, the FCC is preempting the Minnesota PUC's decision. The FCC does not address issues regarding definitions for "telecommunications" or "information service," nor do they wish to impose on Minnesota state regulations. The ruling was strictly to declare Vonage an "interstate service" subject to federal regulation.

The FCC cited its decisions regarding pulver.com and AT&T to support the specific decision made in this case. Recall that pulver.com, which requires users to provide broadband access was ruled to be an "information service" subject to interstate regulation. The use of specialized CPE was also significant. In the AT&T ruling, the use of IP backbone to deliver otherwise traditional voice service was declared to be a



telecommunications service as determined by the Act. The lack of specialized CPE was critical to that FCC order.

In the concurring opinions, the commission members all share one sentiment: that this is only a small piece of what is to come. Although they expressed it with varying tones, all acknowledged the need for continuing and consistent regulation of IP on a national scale. Some were bold, declaring their fear that piecemeal regulating will actually prohibit entry due to uncertainty. Others focused specifically on the need for ongoing development of e911 and other security issues.

Many IP issues are being brought before the Federal government and much is yet to be determined in terms of taxes and other regulatory treatment. It is encouraging, however, to see the FCC acknowledge that IP is not POTS by refusing to treat it as such. With such an approach, future regulation is more likely to consider the unique aspects of IP technology and ideally will not restrain it with regulation designed for traditional telephony.