

# VoIP in the United States: What Next?

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# The VoIP Market in the United States: 2004 and Beyond

- Still in infant stages?

TOP 5 U.S. PROVIDERS		
Skype	free VoIP	9,500,000 subscribers
CallWave	free VoIP	797,000 subscribers
Vonage	non-facilities VoIP	300,000 subscribers <small>[source: <i>NY Times</i>, Page C8, Nov. 10, 2004]</small>
CableVision	facilities VoIP	115,000 subscribers
Charter	facilities VoIP	31,000 subscribers

[Source: [ISP Plant](#), *U.S. VoIP Ranking by Subscriber: Q2 2004*, Alex Goldman]

- Predicted: estimated 1 million paid VoIP subscribers by end 2004
- 2008: estimated 17.5 million subscribers
- 52% of current subscribers use VoIP as primary line  
[Source: Yankee Group, News Release, *The Yankee Group Expects the Consumer Local VoIP Industry to Grow More Than 100 Times Its 2003 Size*, Aug. 30, 2004]
- 35% of subscribers are residential
- Estimated: residential VoIP market will increase at a compound annual growth rate of 116% for the next five years

[Source: *Roaming the Home* By Dan O'Shea Telephony, Nov 8, 2004]

# Regulation and Investment: Are Regulators Creating the Path to Uncertainty or Growth?

## Federal Communications Commission: IP

- IP-Enabled Services NPRM, WC Dkt. 04-36 (released Mar. 10, 2004)  
Broad-based IP Rulemaking
- Level 3 Voice-Embedded IP Petition, WC Dkt. 03-266 (filed Dec. 23, 2003)  
Seeks forbearance from access charges
- SBC “IP Platform Services” Petition, WC Dkt. 04-29 (filed Feb. 5, 2004)  
Seeks forbearance from Title II regulation to IP networks
- Inflexion ExtendIP Petition, WC Dkt. 04-52 (filed Feb. 27, 2004)  
Seeks declaratory ruling regarding access charge exemption
- SBCIP Access to IP Numbering Petition, CC Dkt. 99-200 (filed Jul. 7, 2004)  
Seeks direct access to numbering resources for VoIP

## Federal Communications Commission: Related

- CALEA Broadband Access Services NPRM, ET Dkt. 04-295 (released Aug. 4, 2004)
- USF Obligations/Methodologies FNRPM, CC Dkt. 96-45 (released Dec. 13, 2002)
- Intercarrier Compensation NPRM, CC Dkt. 01-92 (released Apr. 19, 2001)

## Congress

- “VoIP Regulatory Freedom Act I,” 2004 HR 4129 (introduced Apr. 2, 2004)  
Sponsored by Rep. Pickering (R-Mississippi)
- “VoIP Regulatory Freedom Act II,” 2004 S. 2281, (introduced Aug. 5, 2004)  
Sponsored by Sen. Sununu (R-New Hampshire)
- “Advanced Internet Communications Services Act” 2004 HR 4757 (introduced Jul. 6, 2004)  
Sponsored by Rep. Stearns (R-Florida)

## Key Regulatory Issues

- Jurisdiction
- Regulatory Classification
- Intercarrier Compensation/Access Charges
- Universal Service
- Public Safety: E-911 and Communications Assistance for Law Enforcement Act (“CALEA”)
- Numbering
- Consumer Protection

## What Was Decided in 2004?

### **pulver.com**

*Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Dkt. 03-45 (released Feb. 19, 2004).

HELD: Free World Dialup is an "information service" not subject to traditional "telecommunications service" regulation

### **AT&T**

*Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Dkt. 02-361 (released Apr. 21, 2004).

HELD: Access charges are applicable to "phone-to-phone" calls that originate and terminate on the PSTN

### **Vonage**

*Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Dkt. 03-211 (adopted Nov. 9, 2004).

HELD: Vonage VoIP and similar services are interstate and subject to exclusive Federal jurisdiction

## States: About Half the States Involved in VoIP

### **1. Seeking information on VoIP through workshops or formal investigations**

Alabama, Colorado, Florida, Illinois, Indiana, Michigan, Missouri, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Utah, Vermont, Washington

### **2. Asserting authority over VoIP providers and requiring certification**

California, Maine, Minnesota, Nebraska, New York, North Carolina, Texas, Wisconsin

### **3. Using numbering allocations to impact VoIP deployment**

Iowa

## Jurisdiction: Who is in Charge?

### In the Matter of Vonage Holdings Company, MO&O, WC Dkt. 03-211 (released Nov. 12, 2004)

FCC preempted States from regulating IP-Enabled services, asserting exclusive Federal jurisdiction, finding:

- The essential characteristics of IP-enabled services prevent practical identification and separation of interstate and intrastate traffic (noting service is designed to overcome geography, not track it)
- The costs to separate intra/interstate traffic outweigh the benefits, and
- In any case, federal policy (§§ 230 and 706 of the Act regarding an unfettered Internet, competition, broadband and investment) trumps state interests, justifying preemption.

FCC did not address regulatory classification

Public safety remains key with FCC requiring efforts to implement a workable 911 solution during pendency of broader IP-Enabled rulemaking

Specific service characteristics justifying preemption:

- The service requires a broadband connection at user's location;
- There is a need for IP-compatible CPE; and
- The service includes "a suite of integrated capabilities and features, able to be invoked sequentially or simultaneously, that allows customers to manage personal communications dynamically, including enabling them to originate and receive voice communications and access other features and capabilities, even video."
  - Use of voice mail, call forwarding and user interaction with servers to configure service options as examples of the integrated nature of the service
  - To the extent cable companies provide VoIP services, FCC states it will preempt

Order seeks to place IP-enabled services of facilities and non-facilities providers on equal footing.

## Regulatory Classification: An Information Service or a Telecommunications Service?

**“Information service”** - the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service (47 U.S.C. § 3(20))

**“Telecommunication service”** - the offering of telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (47 U.S.C. § 3(46))

### *Implications:*

Information services - largely unregulated

FCC does have Title I “ancillary authority”

Telecommunication services - entry and economic regulation, 911, universal service, disability access, CALEA etc.

Forbearance from regulations possible for “telecommunication service”

## **Intercarrier Compensation and Universal Service: Who Pays Who and How Much?**

### **Intercarrier Compensation Proceeding (CC Dkt. 01-92)**

*Should VoIP providers compensate local exchange carriers who terminate VoIP calls?*

- Impact on existing system - interstate and intrastate access charges
- Regulatory arbitrage opportunities?
- How should compensation be calculated? Per Minute, Bill and Keep, Pooled Funds, Other?

### **Universal Service Proceeding (CC Dkt. 96-45)**

- Will VoIP help or harm Universal Service?
- USF has been applied to telephones - should it now apply to VoIP?
- How to calculate? Revenues, Capacity, Telephone Numbers, IP Addresses, Other?

# Public Safety

## E-911

- Trials performed show that VoIP E-911 technology is possible (Vonage)
- Other providers say high cost of E-911 will hamper deployment
- Vonage - FCC hints 911 still will be required
- FCC identified 4 factors for E911 (real time two-way; consumer expectation; competes with traditional services; technically feasible)

## CALEA

- FCC CALEA NPRM - ET Dkt. 04-295 (released Aug. 2004, comments filed Nov. 8, 2004)
- “Telecommunications carriers” subject to CALEA
- How are CALEA obligations applied to packet-based technologies and services?
- Costs of compliance - Who will pay? Surcharge on customers?
- Date of compliance - How long should VoIP providers have to come into compliance?
- Summary of Positions
  - Some urge Congress must decide whether/how CALEA obligations apply to new services
  - Others support some law enforcement access but have concerns regarding cost recovery, scope
  - Law enforcement continues to underscore importance, urgency of inclusive approach

## Numbering Issues

- Non-geographic area codes / Separate VoIP area code
- Numbering shortages, conservation efforts: Will VoIP increase or decrease number shortage
- Number portability
- ENUM = links telephone and Internet networks

## Consumer Protection

- Slamming
- “Spit” - Spam over Internet Telephony
- Do-Not-Call
- Fraud/False Advertising
- Outages/ service issues
- Truth-in-Billing
- Other

## 2005: What Next?

- Competition/disruptive technology leading to change in regulation?
- Is FCC approach legally sustainable and/or will Congress solve?
- Does the FCC's broader IP-enabled NPRM threaten to undermine all communications regulation (Video, data, voice, etc.)?
- Will market overtake regulators?
- Do we need new regulatory comity paradigm?