

FCC Asserting VoIP Rights: Report

By Ted Hearn -- Multichannel News, 1/5/2004

Washington— When courts and local governments started to take control of the cable-modem debate a few years back, the Federal Communications Commission saw chaos on the horizon and decided to intervene.

According to a recent report, the pattern appears to be repeating itself regarding regulation of voice-over-Internet protocol (VoIP) phone services.

Already, more than a dozen states — acting on their own, or in response to complaints — have started to take the reins in the effort to decide which regulations should apply to this new communications service.

In early December, Federal Communications Commission chairman Michael Powell appointed a team of FCC officials to help the agency design VoIP policies due later this year.

But Powell's oft-stated goal of using the FCC to shield VoIP from intrusive regulation might disappoint those state regulators that don't share his point of view.

"It is ... apparent that the FCC's great interest in the [VoIP] proceeding is a direct result of actions taken by state regulators to assert jurisdiction over VoIP providers, and the FCC's concern that the states may improperly impose too much regulatory control over VoIP," according to a regulatory analysis by the Washington, D.C. law firm Lampert & O'Connor.

At least 14 states have become involved in VoIP issues. [For more on what states are doing in this regard, see Policy, page 29.]

Minnesota, for example, tried to regulate VoIP services provided by Vonage Holdings Corp. as plain old telephone service, until a federal court blocked the state from doing so. Wisconsin has moved in the same direction as Minnesota.

Other states, including North Carolina and Missouri, have apparently not placed a lot of hurdles in the path of Time Warner Cable, which has gone to several states seeking official sanction to offer VoIP despite no legal obligation to do so.

An FCC clash with states could come in an early phase, the Lampert & O'Connor report suggests. The FCC has already been asked to classify VoIP as an interstate information service. Such a classification would largely remove VoIP from state jurisdiction.

"Perhaps most crucial is the issue of jurisdiction: Who regulates and who decides?" Lampert & O'Connor said.

The report did not rule out the possibility that the FCC and the states end up sharing jurisdiction — as they do today over circuit-switched telephony — but only after agreeing on a minimalist menu of regulations to apply.

"The critical issue may be one of striking the correct balance, i.e., determining what public obligations should apply to VoIP and which ones should be dropped to encourage growth of the service and also protect valid public interests," the Lampert & O'Connor report said.

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