

Client
Advisory

FCC AND CALIFORNIA PUC

February 12, 2004 TAKE ACTIONS RE IP-BASED SERVICES

The FCC and the California PUC each took actions this week that are relevant to the regulatory issues presented by IP-based services, in particular voice over Internet Protocol (“VOIP”).

Actions of the FCC

The FCC took two actions today with respect to what the Commission is calling “IP-enabled” services. First, the FCC granted the petition for declaratory ruling filed by Pulver.com regarding the appropriate regulatory classification of its “Free World Dialup” service. Free World Dialup is a Session Initiation Protocol (“SIP”)-based peer-to-peer service whereby the SIP telephones purchased and owned by registered users establish voice communications directly with each other via the Internet. The Commission determined that Free World Dialup service is an “information service” and not “telecommunications” or a “telecommunications service” as these terms are defined in the Telecommunications Act of 1996. As such, Free World Dialup service is not subject to regulation. The Commission also determined that Free World Dialup service is an interstate service offering. The decision on the Pulver.com petition is subject to any future action of the Commission in its forthcoming rulemaking proceeding on IP-enabled services (discussed below).

Chairman Powell stressed that the Pulver.com decision only addresses which of the existing regulatory classifications applies to Free World Dialup service, and that the decision is limited to Free World Dialup. Thus, Chairman Powell believes that the FCC’s decision on Free World Dialup does not prejudice any FCC determination on the appropriate regulatory treatment of VOIP services going forward. Commissioner Copps dissented from the order, arguing that the Commission should address the consequences of declaring Free World Dialup service to be an information service on public policy objectives such as universal service before reaching its decision.

At the same meeting, the FCC also adopted a notice of proposed rulemaking (“NPRM”) concerning issues related to “IP-enabled services.” “IP-enabled services” are those services and applications (including software applications) that make use of the Internet Protocol. Thus, IP-enabled services include but are not limited to VOIP. FCC staff stated in introducing the item that the NPRM is broadly phrased, will cover a wide range of issues, and is intended to develop the record necessary to lay out a regulatory framework for IP-enabled services. The NPRM will seek comment on issues including 1) whether the appropriate regulatory treatment of an IP-enabled service should depend on the public’s perception of the service or on whether the service interconnects to the PSTN; 2) how each category of IP-enabled service should be classified and what regulations should apply to address critical public policy objectives such as law enforcement, universal service, and service to people with disabilities; and 3) whether other regulatory requirements such as consumer protection laws and traditional common carrier regulations should apply to IP-enabled services. The NPRM does not adopt tentative conclusions on any issue raised but per FCC staff does provide “a proposed approach.” At the press

conference following the meeting, FCC staff stated that the NPRM would most likely be released in the next few weeks.

At the press conference, FCC staff also announced that the FCC's Internet Policy Working Group will hold the first in a series of "Solutions Summits" designed to address policy issues resulting from the migration of services to IP-based platforms. This summit, to be held on March 18, will address 911 and E911 issues. In addition, FCC staff stated that an NPRM will most likely be adopted and released in the spring to specifically address the law enforcement and national security issues associated with IP-enabled services. The adoption and issuance of this NPRM will follow the filing of a petition for rulemaking by DOJ, FBI, and DHS that will lay out the specific issues these agencies believe should be addressed in the Commission's proceeding. FCC staff expects that the Executive Branch agencies will file this petition for rulemaking in the next few weeks. Finally, in response to a question about likely action on AT&T's request for a declaratory ruling on its IP-based services, FCC staff stated that the petition was "under active consideration" and that the Commission "was working through the relevant issues" presented by the petition.

Actions of the California PUC

On February 11, 2004, the California PUC launched an investigation into the appropriate regulatory framework that would govern the provision of VOIP telephony. A draft order approved by all five commissioners reached the tentative conclusion that providers of a VOIP service that interconnects with the public switched telephone network are public utilities offering a telephone service subject to the PUC's regulatory authority. In its press release, the Commission stated that it "seeks to apply the least amount of regulation needed to fulfill its responsibilities under state law to realize state-mandated policies and objectives on behalf of all California consumers, while simultaneously not impeding the rapid, continued development of VOIP."

The draft order seeks information on a number of issues, including (1) whether VOIP service providers should contribute to state universal service programs, (2) whether VOIP service providers should pay access charges to interconnect with the public switched telephone network, (3) whether VOIP service should be subject to basic consumer protection rules, and (4) whether exempting VOIP service providers from requirements applicable to traditional voice providers would create unfair competitive advantages. Interested parties must advise the Commission of their intention to participate in the proceeding by March 2, 2004. Written comments are due no later than March 26, 2004.

Please do not hesitate to contact us to discuss what these proceedings may mean for your business, be added to the Service List, or to obtain any additional information

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