

Federal Court, in Paetec v. Commpartners, Rules VoIP- Originated Transmissions Are Information Service

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On February 18, 2010, a federal district court stepped in to fill the gap left by the FCC's silence on the issue of whether transmission of Voice over Internet Protocol ("VoIP")-originated calls is an information service exempt from access charges or a telecommunications service subject to access charges. The United States District Court for the District of Columbia in *PAETEC Communications, Inc. v. CommPartners, LLC* held that the transmission and net protocol conversion of VoIP-originated calls is an information service not subject to access charges and that a tariff imposing such charges is *ultra vires* and lacks legal force.

In this case, PAETEC Communications, Inc. ("PAETEC") argued in a motion for partial summary judgment that, under the terms of its tariff, PAETEC was entitled to payment of access charges billed to CommPartners, LLC ("CommPartners") for VoIP-originated calls that CommPartners delivered to PAETEC for termination on its network. CommPartners claimed, among other things, that PAETEC's termination of VoIP-originated calls is an information service and, thus, termination of such calls is subject to reciprocal compensation and not access charges. CommPartners contended that if PAETEC's tariff covered VoIP-originated calls, the tariff would be in violation of general intercarrier compensation law as set forth in the Communications Act of 1934 and the Federal Communications Commission's rules, namely the enhanced service provider ("ESP") exemption from switched access charges.

The Court concluded that net protocol conversion is, in and of itself, sufficient for a claim that a service is an information service and subject to the ESP exemption. Specifically, the court found that transmissions which include net protocol conversion from VoIP to Time-Division Multiplexing ("TDM") are information services exempt from access charges under the Communications Act. The Court does not appear to have made any inquiry into the details of any such conversion, such as at what point or for what purpose the conversion occurred, and apparently holds that the VoIP-originated "transmissions" are information services for intercarrier compensation purposes along the entire call path, if not all purposes. The Court rejected PAETEC's reliance on the filed rate doctrine as trumping the ESP exemption, even though acknowledging that PAETEC's tariff included language which stated that access charges applied to origination and termination services using PAETEC's network "regardless of the technology used in transmission." According to this Court, even though a tariff is the equivalent of a federal regulation, it "cannot be inconsistent with the statutory framework pursuant to which it is promulgated."

The Court went on to summarily reject PAETEC claims that were pled in the alternative to its tariff

claims based on the quasi-contractual theories of unjust enrichment and *quantum meruit*. The Court found such claims as incompatible with the regulatory regime – namely the ESP exemption – and, therefore, statutorily barred.

The case remains pending to address the amount of damages that PAETEC was entitled to from CommPartners for calls that originated and terminated in TDM format, did not undergo a net protocol conversion, and therefore are properly treated as telecommunications services subject to access charges.

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