

Voice over IP and Implementing the 1996 Act

WC Docket Nos. 02-361, 03-45

What was the 1996 Act Intended to Accomplish?

- Goal was to foster competition in communications markets
- But devil was in the details – how to get there?
- Other than broad legislative parameters in Sections 251, 252, 271, 272, and a handful of other sections, details were left to the FCC and the state commissions to identify and implement
- The FCC got it right in its first try (August 1996) in identifying the 3 basic principles (the “Trilogy”) needed to foster competition:
 1. Establish rules that promote competitive entry
 2. Reform access charges
 3. Reform universal service

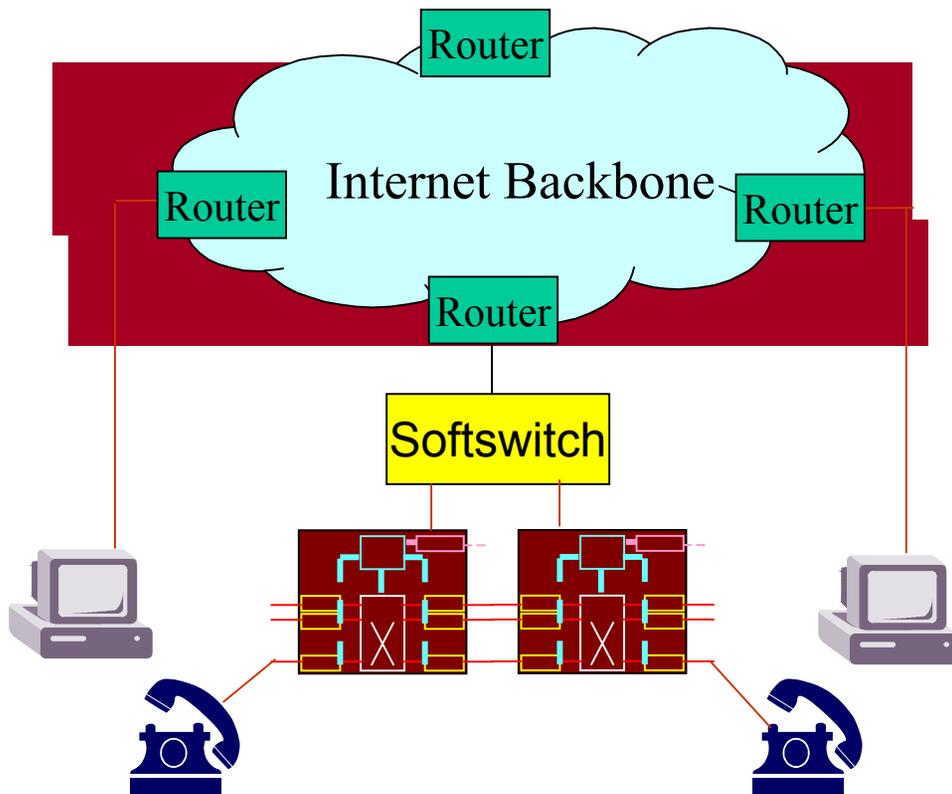
How are Policy Makers Doing in Implementing the 1996 Act by Reference to these Principles?

- **First principle – *establishing rules that promote competitive entry*:** Maybe not a raging success, but not an absolute failure either.
 - Certainly, CLEC market share has improved – nowhere to go but up . . .
 - Plethora of new service offerings and new technologies in recent years.
- **Second principle – *reforming access charges*:** Incremental progress at best.
 - ILECs use access charges as revenue streams; not clear how much access charges meet or exceed revenues actually needed to support reasonable-cost local service.
 - Distort competition by rewarding stagnant technology.
- **Third principle – *reforming universal service*:** Incremental progress at best.
 - While programs have been established, fact is that implicit subsidies in access charges remain in place and still dominate many intercarrier discussions and disputes.

How does VoIP fit into the Trilogy?

- VoIP should be seen as a catalyst for promoting:
 - competitive entry (the first principle),
 - and for getting the last two principles (reforming access charges and universal service) right
- VoIP exposes the extreme irrationality of the existing regulatory framework and should be welcomed as the catalyst for progress

VoIP applications are an innovative step forward -- not just another way to provide phone service



■ Innovative Applications Include:

- Find Me-Follow Me with Presence Across Media (Unified Messaging)
- Voice-Based Electronic Commerce Portal
- IP Centrex
- Web-Enabled Virtual Call Centers
- Real-Time Fax Transmissions
- Multi-Party Conferencing
- Collaborative White Boarding
- High-Fidelity Audio
- High-Definition Video
- Real Time Chat
- Store and Forward Voice Service

Benefits of VoIP Applications

- **True Convergence**
 - Does not require wholesale elimination or replacement of PSTN
 - IP networks and PSTN will co-exist
 - Allows customers to seamlessly shift between communications devices
- **Advanced Applications**
 - Enables creation of new types of services that combine real-time voice communications and information processing
 - Providers can tailor VoIP services to meet specific customer needs, including various levels of service quality
 - Enables provision of multi-media, multi-service applications
- **Cost Reduction Over Circuit Switched Technology**
 - VoIP providers can use a single network to provide voice and data
 - Does not require a dedicated channel
 - Cost of incremental features in VoIP is typically much less than with traditional technologies

What is the current regulatory status of VoIP?

- **VoIP services that meet the definition of an enhanced or information service are not required to pay access charges**
 - VoIP providers should not have to apologize for that fact – it is not an “avoidance” of the access charges system; it is part and parcel of the current uneconomic intercarrier compensation regime
 - Same dynamic promotes widespread access to the public Internet – allowing ISPs to reach into local communities and promote dial-up access that first drove demand for Internet services.
- **Many ILECs, however, have become addicted to access revenue streams and argue that VoIP providers should contribute to them too, without taking into account the “information” or “enhanced” nature of the service.**
- **Sustaining or even expanding the reach of access regulation is the wrong focus – it moves the 1996 Act’s competitive “Trilogy” backward, and sustains artificial cost barriers by regulatory fiat in a supposedly deregulated multi-carrier market**

Primary Goal of Policy Makers Should be Elimination of Irrational Regulations

- **Rather than sustaining a monopoly-era relic, regulators and legislators should be looking to foster competitive markets**
- **Current regime is an unsustainable patchwork of arbitrary classifications**
 - Classification determines what types of obligations apply to the VoIP provider
 - interconnection, universal service, intercarrier compensation, customer service, N11 capabilities, etc.
- **Reality: “a bit is a bit”**
 - If functionality is the same – originating, transporting, and terminating bits of traffic – the cost (and the price) should be the same
 - Distance is largely meaningless

ILECs Are Adequately Compensated for the Use of Their Networks

- **VoIP traffic is handled on the PSTN through the VoIP provider's use of local service (e.g. primary rate interface (PRIs) or direct inward dials (DIDs)) or local interconnection**
- **VoIP applications impose no greater costs on LECs than the exchange of any other telephone call on the PSTN**
 - At least 5 different intercarrier compensation mechanisms may exist for the *exact same* network function!
- **ILECs have not shown that introduction of VoIP services will significantly reduce their access charge revenues**
 - VoIP applications are still very much an emerging technology
 - Analysts estimate that VoIP comprises merely 1-5% of domestic interexchange market*

[Probe Research, Inc., *Voice over Packet Markets*, 2 CISS Bulletin 11-16, at 4 (2001)]

VoIP Is Not the Problem; It Is the Catalyst for Much Needed Change

- **Current legal structures fail to recognize efficiencies of IP network architecture**
 - “Arbitrage” serves important purpose of exposing irrational pricing anomalies
 - Distributed network architecture means geographic end-points are no longer relevant
 - VoIP provider bears the cost of the extension of the network beyond the PSTN POI
- **Current legal distinctions are difficult to enforce in IP environment**
 - Is it possible to segregate TDM traffic from IP traffic offered over same platform?
 - What constitutes a “phone” in Report to Congress determination?
- **Current legal uncertainty enables ILECs to engage in self help measures**
 - ILECs are unilaterally assessing access, refusing to terminate VoIP traffic, and refusing to provision facilities

Policy Makers Must Adopt Uniform, Pro-Competitive Regime for Intercarrier Compensation and Interconnection

- **Must eliminate artificial economic inefficiencies associated with legacy networks**
 - Despite recent reforms, access charges remain economically inefficient and do not reflect cost
 - Intercarrier compensation must be no higher than the cost of the functionality provided
- **Current usage/time sensitive compensation rates are not cost-based**
 - VoIP services are provided based on bandwidth rather than time
 - Recent bundled local/LD offerings suggest time doesn't make much sense on the PSTN as a measurement either – except to perpetuate ILEC access revenue streams

States Must Not Use the Goal of Affordable Local Service to Discourage the Deployment of New Services

- **States should reform the current regulatory regime to encourage high cost carriers to deploy lower cost, more efficient infrastructure**
 - States should not permit recovery of cost for outmoded technology
- **Policy makers must foster development and deployment of emerging technologies**
 - Competitive pressure will encourage carriers to deploy more efficient technology and networks (e.g., ISDN, DSL)
 - Customers should be able to choose quality of service levels to meet their needs

Policy Makers Must Reform Universal Service Mechanisms

- **Must eliminate reliance on out-dated regulatory distinctions that fail to recognize realities of IP networks and convergence**
 - Methodology based on interstate telecommunications revenue is unsustainable
 - 1996 Act should already provide flexibility needed to reform
- **Must adopt a methodology consistent with the concept that “a bit is a bit”**
- **To the extent subsidies are needed to meet universal service goals, states must work with the federal government to ensure that USF subsidies are explicit and consistent with findings regarding local cost recovery**

Action Plan for Federal and State Regulators

- **Comprehensive intercarrier compensation reform**
 - Approach must be cost-based, technologically-neutral, and without regard for irrelevant geographic end-points
- **Universal Service reform**
 - Contributions must be based on simple, equitable, non-discriminatory, and easy to define standards
- **In the end, just keep goal of Act in mind:**
 - Does it foster competition to maintain or even extend monopoly-era regulatory-imposed compensation schemes to new services?
 - Or is it better to adjust the compensation and universal service mechanisms to eliminate historical artificial cost barriers?
- **Finally:**
 - Do not let “cries of wolf” or the “sky is falling” stall reform
 - *It should not take another 7 years to finish the framework needed to promote competitive markets*