The PointOne Test

A True VoIP Provider's Communications Network

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Overview

- PointOne is an information service provider and its VoIP services are subject to the ISP Exemption from Access Charges

- Failure to Re-Affirm the ISP Exemption in the context of any ruling on the AT&T Petition Could Have Severe Unintended Consequences

VOIP As an Information Service

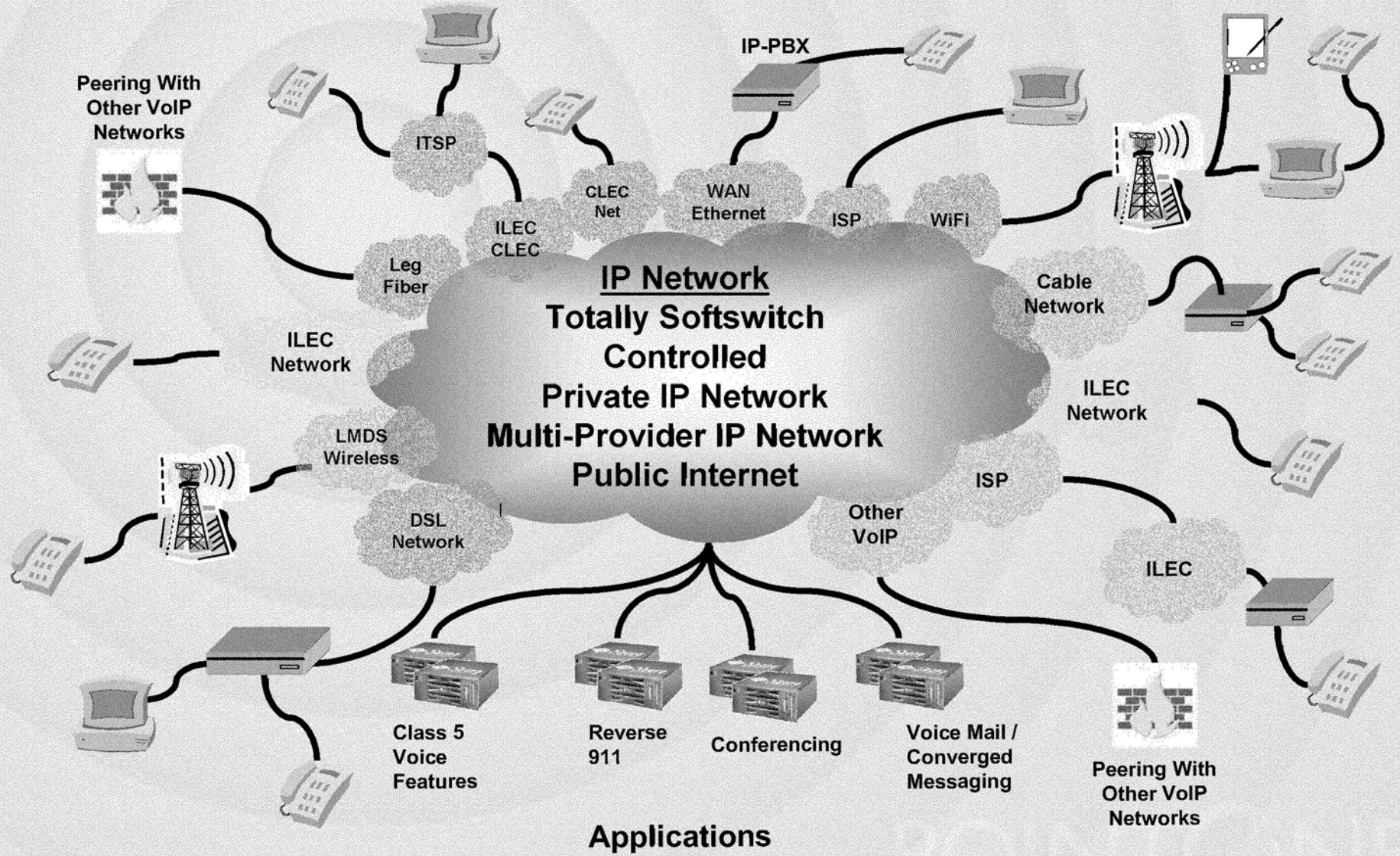
- The sole relevant inquiry into whether a service involving VoIP is a regulated common carrier service is whether it is an information service or a telecommunications service
- Whether the service is phone-to-phone or computer-to-computer is irrelevant
  - It is also not feasible to categorize a service by reference to the device used to deliver it, and any attempt to do so could easily be circumvented
- We recognize the dilemma of the so-called "8-Foot IP network"
  - This is where carriers inject some IP into their networks and then claim that their entire network and the services offered over it are enhanced
- The PointOne Test offers the Commission a rational way to distinguish between VoIP service providers that offer information services from those that offer telecommunications services
  - Specifically, it distinguishes between VoIP information service providers that have invested in and built true and ubiquitous next generation IP networks, from those who deploy minimal IP within their networks which facilitate traditional "telecommunications services" subject to access charges
- The Commission can properly determine that services offered over 8-Foot IP Networks are "telecommunications" services even though they have enhancements
  - Precedent exists for such a determination in the Centrex and calling card contexts
- Providers that satisfy the PointOne Test, however, are information service providers

The PointOne Test

Under the PointOne Test, a VOIP provider should be considered an information service provider if

- It offers services that involve computer processing, interaction with customer-supplied information, or interaction with stored information
  - That is to say, it technically satisfies the Telecom Act's definition of information services
- It utilizes 100% IP and VoIP network elements
  - This promotes the deployment of advanced IP communications networks, and severely limits the ability of providers to engage in access charge arbitrage
- It purchases services and facilities as an end user, like ISPs do
  - By purchasing services as end-users, ISPs/ESPs pay taxes and fees that carriers do not
- It pays taxes and surcharges on the facilities it purchases as an end user
  - As opposed to resellers that claim to be tax exempt and do not contribute to "social programs" via end-user surcharges and fees and federal and state sales taxes
- It converts 100% of its voice traffic into IP regardless of the equipment used
  - This eliminates a provider's ability to inject a small amount of IP into their networks merely for access charge avoidance purposes, i.e., to engage in "8-Foot IP Network" or "IP in the Middle" schemes
- It has the ability to bridge IP networks to the PSTN and other networks
  - Not only is this a characteristic of true next generation capabilities, but it also helps promote the smooth inter-working between the PSTN and advanced IP communications networks, which will enable all Americans to have access to services that might otherwise only be available on IP networks

Reaffirm The ISP Exemption

- The ISP Exemption from access charges exists and governs in the VoIP context under prevailing law
  - As recently as 1996, the Commission re-affirmed that "although enhanced service providers (ESPs) may use incumbent LEC facilities to originate and terminate interstate calls, ESPs should not be required to pay interstate access charges."
    - *See Access Charge Reform*, NPRM, Third Report and Order and NOI, CC Docket 96-262, ¶ 284 (dec. 24, 1996),
  - Any changes to the ISP Exemption must be undertaken through the VOIP NPRM process
- If the Commission ruled on the AT&T Petition without re-affirming the ISP Exemption, there would be severe unintended consequences
  - It risks imposing a $500 million per month "tax" on all internet traffic (including dial-up) that touches the PSTN
    - 68.9% of Americans access the internet via the PSTN
    - Those Americans will be immediately taxed, and the cost of their Internet service will increase dramatically
  - VoIP deployment would be stopped in its tracks, as the new technology would be saddled with non-cost-based charges
  - Congress' goal of promoting the deployment of advanced services would be frustrated

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