

Ask a Lawyer

TeleStrategies 2016 Communications Tax Seminar

with

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Question 1— Service Classification

What is the difference between:

- Interconnected Voice over Internet Protocol (I-VoIP)
- Non-interconnected Voice over Internet Protocol

Service Classification (Cont'd)

In other words, we ask: What is the definition of these services?

- I-VoIP?

1. enables real-time, two-way voice communications,
2. requires a broadband connection from the user's location,
3. requires IP-compatible Customer Premises Equipment ("CPE"), and
4. permits users to receive calls that originate from and to terminate calls to the PSTN



- Non-interconnected VoIP?

1. enables real-time voice communications that originate from or terminate to the user's location using IP,
2. Requires IP-compatible Customer Premises Equipment, and
3. Does not include any service that is an interconnected VoIP service.

Important to note that "Non Interconnected" does NOT refer to connectivity to the PSTN. A "closed" network service must be analyzed in light of Non-I-VoIP definition and existing precedent, such as *Pulver.com's Free World Dial-Up*

Service Classification (Cont'd)

Examples:

- I-VoIP  Practically all fixed and over the top VoIP Local Telephony and “PBX Replacement” service offerings
 - ***“A rose by any other name is still a rose”***
 - *Cloud PBX, Hosted PBX, SIP Trunking bundled with software-enabled call processing*
 - ***“If it walks like a duck, quacks like a duck, it’s probably a duck”***
 - *If the 4-Prong definition fits the facts, then it’s I-VoIP absent FCC waiver*
- Non-I-VoIP  Many services, including “calling apps,” that enable users to Originate Voice Calls (but not receive) or Receive Voice Calls (but not originate)
 - Skype IN, Skype OUT

Service Classification (Cont'd)

Regulatory Classification is Critical First Step!

- Key classification categories
 - *Information / Enhanced Services*
 - *Non-Interconnected Voice over Internet Protocol (“VoIP”)*
 - *Interconnected VoIP*
 - *“Telecommunications” (private carriage) or*
 - *“Telecommunications service” (common carriage)*
- Classification determines compliance requirements:
 - *Market Entry, Exit and Transactional Impediments*
 - *On-Going Compliance Costs: USF, CVAA, TRS, CPNI, CALEA, E911, LNP, NANP, among others*
- Classifications are based on definitions, and FCC precedent
 - *For example, if you meet 4 prong definition of “I-VoIP Service,” then you are likely an I-VoIP provider*
 - *If you fall into a gray area, it doesn’t excuse compliance; instead, it begs for managing risks and exposures*

Service Classification (Cont'd)

Non-I-VoIP - Trending towards increased regulation:

“We seek comment on the size of the one-way VoIP marketplace in the United States, and whether this marketplace is likely to grow or shrink in the future. Skype, which separately offers a service that permits users to receive calls that originate on the PSTN and a service that permits users to terminate calls to the PSTN, reported that it had over 8.8 million paying users worldwide for its SkypeIn and SkypeOut services and domestic revenues of over \$140 million in 2010. How many providers of one-way VoIP are there, and who are other major providers of such services? What are the overall U.S. revenues for this group of providers, and how many customers do they have? Commenters are encouraged to provide specific data to support their assertions.”

Source: FCC FNPRM on USF Contribution Reform (2012)

Question 2 — Wi-Fi Calling

Are you familiar with FreedomPop or Scratch Wireless and how they are dealing with taxes and regulatory fees, such as USF, as they push Wi-Fi calling as the primary functionality?

Wi-Fi Calling (Cont'd)

- Wi-Fi Calling: Providers testing Wi-Fi first service, calls/data routed through Wi-Fi before cellular networks.
 - *Voice over Internet Protocol.*
 - *Primarily tethered to a fixed Wi-Fi location.*
 - *Roaming: Ability to use cellular voice network, cellular data network (VoLTE), or even a mobile Wi-Fi hotspot.*
- Light in terms of regulatory guidance
 - *Recent Development: Hearing aid compatibility rules now apply to VoIP calls over Wi-Fi / data networks*

Wi-Fi Calling (Cont'd)

- I do not represent either of these companies, so even if I could disclose client secrets – which I can't – I couldn't tell you exactly what either company is doing vis-à-vis Communications Fees & Taxes.
- That said, there is information publicly available that does give us a sense that both companies have given some serious thought to the issues and have taken steps to address both Communications Tax and Regulatory fee exposure.
- FreedomPop
 - Terms “Stated prices for the Services do not include applicable sales taxes, surcharges, fees or other government or regulatory charges, which may include without limitation, mandatory surcharges for federal state Universal Service Fund contributions, state and local 911 fees, and cost recovery surcharges. **We charge applicable federal, state and local sales taxes, surcharges, fees and other government charges on all purchases made through our Site.** The amount of these taxes and other surcharges is subject to change and may vary from time-to-time and by geographic area. We may also become subject to additional regulatory requirements in the future which may require us to charge other additional amounts. All applicable taxes, surcharges and other amounts billed to you will be viewable through the My Account feature (or other feature made available to you) on the Site.”

Wi-Fi Calling (Cont'd)

- Scratch Wireless

- Terms: ***“Taxes on pass purchases: Total Taxes, Fees, and Charges will appear on your billing statement under the summary and will be broken out for you. We are required to charge the following fees: Federal Universal Service Fund (USF), Public Utilities Commission (PUC), Utility Receipts Tax, E911 Charge (9-1-1 Fee), State Sales Tax: Massachusetts Residents 6.25%, Indiana Residents 7.00%, South Carolina Residents 6.00%.”***
- Company News (October 2015): Scratch Wireless [confirmed](#) “it will begin charging for those services starting Nov. 16.”
 - CEO: “As I am sure you can appreciate, it costs a lot of money to provide free service to a large audience. Even costs like E911, regulation fees, USF, etc, create large burdens on our organization. ...After careful consideration, we decided we need to reduce the amount of free service provided. We hope these changes will allow us to continue offering freemium smartphone service for many years to follow.”

Question 3: Virtual Office Services

How does the FCC categorize:

1. Call forwarding services?
2. Virtual office services?

Virtual Office Services (Cont'd)

- How do these services work?
 - Telecommunications component involves audio call bridging: Call comes in, connects to the service, and then the service connects the incoming call with a new outbound call.
 - Additional enhanced services may be available.
- Let's go back to the Precedent component to the “telecommunications” definition
 - *Audio call bridging, conferencing, IP conferencing = Telecommunications / telecommunications service*
 - InterCall Order, MeetingOne.com Order
 - Questions to ask: Common carrier or private carriage basis?
 - Also: State-specific definitions / rules

Questions?

HERE'S HOW TO REACH ME:

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