

FCC LAUNCHES RULEMAKING PROCEEDING FOR IP-ENABLED SERVICES

On 10 March 2004, the United States Federal Communication Commission (FCC) released a comprehensive Notice of Proposed Rulemaking (NPRM) seeking to address the issue of the proper regulatory regime for services and applications that rely on Internet-based platforms.

The Commission highlights the revolutionary changes that IP-enabled services and applications are having on the U.S. communications landscape and stresses the need to craft a regulatory framework that provides regulatory certainty, fosters the growth of the sector, and does not hinder the deployment of broadband infrastructure.

The Rulemaking proceeding underlines the difference between IP-based services and traditional telecommunications services and networks, and calls for comments to “arrive at sound legal and policy conclusions regarding whether and how to differentiate between IP-enabled services and voice legacy services, and how to differentiate among IP-enabled services themselves.”

The proposed rules reaffirm the FCC’s long-established policy of light-touch regulation of the Internet and draws attention to the importance of embracing a minimal regulatory approach to IP-enabled services. However, according to the Commission, “fencing off IP platforms from economic regulation, would not put them beyond the reach of regulations”. The Notice emphasizes the importance of relying “on discrete regulatory requirements, only when these requirements are necessary to fulfill important policy objectives”. In this context, the Notice highlights that public safety needs, basic and enhanced 911 services, access by the disabled, lawfully authorized electronic surveillance and consumer privacy concerns would have to be addressed in the proposed framework, as communications migrate to an IP-enabled environment.

In addition, the Notice raises numerous questions about the economic regulation that traditionally applied to legacy telecommunications services and seeks comments on whether there is “a compelling rationale for extending aspects of this regulation to providers of IP-based services”. In this connection, the Commission seeks comments on whether providers of IP-enabled services sending traffic to the PSTN should be subject to termination access charges for using the switching facilities of the local exchange carriers.

The Commission also seeks comments on the impact of the new regulatory classification on the current U.S. Universal Service policy and support mechanisms in general, and on rural access in particular. It also raises the question whether IP-enabled service providers (both facilities-based and non facilities-based) should make contributions to the Universal Service Fund. Finally, the Commission seeks comments on the impact of any decisions reached as a result of the inquiry on other areas like international settlements, numbering, foreign policy and trade.

The Notice also seeks comments on IP-enabled services provided over wireless systems and cable platforms, without laying down specific proposed rules in those areas.

The NPRM constitutes the launching step of a Rulemaking proceeding that promises to be extensive, complicated and controversial. According to FCC Chairman Powell, it is “perhaps the most important item in communications history.”

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FCC, Notice of Proposed Rulemaking in the Matter of IP-Enabled Services. WC Docket No 04-36, Adopted on February 12, 2004, Released on March 10, 2004. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-28A1.pdf