



Issue Brief

Voice-Over-Internet-Protocol (“VOIP”)

Telecommunications technologies have been evolving ever since the first network provided services. Voice services have been digitized and multiplexed for decades. Undoubtedly, technologies and services will continue to evolve.

Generally, economists agree - to avoid regulatory arbitrage, and to assure that *the market* (not policymakers) selects the most efficient technology, functionally equivalent services should be treated the same. The 1998 FCC Report to Congress used a “functional” approach to analyzing new technologies – pointing out that certain phone-to-phone VOIP calls “bear the characteristics” of telecommunications services regulated under Title II of the Telecom Act as common carriers.

All new Title II carriers, regardless of the technology used to provide service, are subject to minimal State and Federal oversight. Where it appears that even the limited oversight that applies to new Title II carriers is not “in the public interest,” Congress has given the FCC tools to forbear from regulation. [47 USC §160].

The FCC has opened a rulemaking to address a range of VoIP-based service providers – including those that terminate calls to the Public Switched Network (PSTN), market themselves as a substitute for traditional phone service. Much of the voice traffic on the PSTN could migrate to IP-based networks over a relatively short time frame.

Whatever the outcome of that proceeding, at a minimum, it raises very real and complex transitional problems for both State and Federal regulators with respect to intercarrier compensation as well as federal *and State* universal service programs. It also raises issues about the applicability of existing Federal and State slamming, cramming, disabled access, customer privacy, law enforcement access, and related statutes and policies.

NARUC Position:

- In accordance with the principle of technological neutrality, regulatory jurisdiction should be based, whenever possible, on the characteristics of a service, not on the technology used to provide that service, whether the service is commingled with any other service or the speed or capacity of that service.
- Classifying VoIP as a Title I “information service” could cause (1) Uncertainty and reduced capital investment while the scope of FCC authority under Title I is tested in the courts; (2) Loss of Title II consumer protections; (3) Increases in risks to public safety; (4) Customer loss of control over content; (5) Loss of state and local authority over emergency dialing services; and (6) Reduced support base for federal and State universal service as well as State and local fees and taxes.