



VOIP CALLING: THE BLAST FROM SCHUMPETER'S TRUMPET

In his classic work, *Capitalism, Socialism and Democracy*, economist Joseph Schumpeter described capitalism as an ongoing “process of industrial mutation...that incessantly revolutionizes the economic structure from within, incessantly destroying the old one, incessantly creating a new one.” He famously called this incessant dynamism “Creative Destruction”—and, it is an essential feature of free markets and the innovation that free markets yield.

Internet telephony, or services and applications using Voice over Internet Protocol (“VoIP”) capabilities, are quickly gaining a foothold in the marketplace, with predictions of rapid growth over the next few years as cable operators, wireline telephone companies, and wireless providers implement IP capabilities throughout their facilities-based broadband networks.

VoIP’s proliferation in its various manifestations will put increasing strain on existing regulatory paradigms, pushing them to the breaking point, sooner rather than later. In other words, VoIP’s advent constitutes a warning blast from Schumpeter’s trumpet that old regimes are about to be destroyed. Far better that policymakers act without delay to put in place new paradigms attuned to digital age realities.

Here are four existing paradigms that should be replaced—creatively—with new ones:

- **Existing regulatory classifications based on metaphysical distinctions should be replaced with a technology neutral deregulatory regime based on the realities of today’s competitive environment.** In the early 1980’s, the FCC adopted a regulatory regime that distinguished between the then nascent “information services” that employed computer processing applications to act on the “form, content, or protocol” of the subscriber’s transmitted information and “telecommunications” services that offered transmission capacity without a “net change in form or content.” This distinction, carried forward in the 1996 Telecom Act, was serviceable enough back then. But in a digital environment in which a bit is a bit, in which the essence of IP technology is the shared transmission of voice, data, and video information, the existing regulatory distinctions no longer make sense.
- **State authority to regulate communications should give way to federal primacy.** In an IP environment, the traditional shared regulatory authority between the FCC and the state public utility commissions no longer makes sense. This jurisdictional breakdown was based on the ability to determine the originating and terminating points of subscriber calls. With VoIP, it is generally impossible to determine the origin and termination of a subscriber’s call.
- **The existing universal service support regime should be replaced with a more limited, rationalized system.** The current universal service system is supported primarily by providers of regulated services classified as telecommunications, with contributions also tied to whether the calls are classified as interstate or intrastate. Neither the existing classification regime nor division of federal/state authority should survive VoIP’s advent. This will necessitate a restructuring of the universal service system. Regulators should use the opportunity to create a new program that is much more narrowly focused on supporting low income users truly in need. At the same time, the access charge regime should be reformed to make it cost-based.
- **The FCC’s typical mode of developing regulations in open-ended rulemaking proceedings should be replaced with use of more adjudicative common law-like approaches.** In a fast-changing technological environment, with new services evolving in ways that even the most well-intentioned regulators cannot anticipate, the FCC should move away from its practice in recent years of initiating very broad, open-ended rulemaking proceedings that are difficult to bring to a conclusion, and which encourage excessive rent-seeking, and employ procedural adjudicative techniques that address more narrowly-presented issues in a common law step-by-step fashion.

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