The PUC Stops Here

by Terrence L. Barnich

The state public utility commissions of California, Minnesota and Wisconsin—with any number ready in the wings to follow suit—are deciding that voice-over-IP services should be regulated as other primary dial tone services.

If left unchallenged, these decisions will ruin upstart carriers, retard the deployment of VoIP, erode consumer benefits and derail the development of meaningful inter-modal telecom competition.

VoIP currently can't meet E-911 and reliability requirements of dial tone providers. Carriers can't afford the hefty transaction costs of regulation and shouldn't have to pay intercarrier compensation and universal service fees. Nonetheless, these burdens likely will be imposed upon them by avaricious state PUCs.

Defenders of PUC jurisdiction over VoIP services will say, "If it looks like a duck and quacks like a duck, then it's a telecom service." Well, there are at least four compelling reasons for state regulators to forbear from yielding to this knee-jerk inclination:

- Once in a while, it's instructive to apply first principles. The very raison d'etre of utility regulation is to police monopoly excesses. Monopolized VoIP carriers are anything but.

- Regulators say they must protect the consumer. The flaw here is that by imposing a uniformity of service—making competitors look pretty much like the incumbents—the regulator ends up merely "protecting" the consumer from his own choice.

- Since 1996 it has been national policy to encourage competitive telecom offerings, which means more than giving consumers the choice of RBOC-type service and something that looks like RBOC-type service. Let a million flowers bloom.

- This leaves the last refuge for regulation advocates: universal service. If VoIP reduces universal service contributions, good. Universal service is in need of radical reform, which will never happen as long as it can tap every telecom service for tribute.

I can't foresee regulators taking my arguments to heart. It would involve a lot of heavy lifting, which would cause a whole bunch of PUC constituents—legislators, regulated companies, so-called consumer advocates—to yell at them. And regulators hate that.

This is a national issue requiring a national resolution. The FCC Wireline Competition Bureau recently announced its intention to take up the issue of how to categorize VoIP services. The outcome likely will be a finding that VoIP services are not to be regulated as telecom services. But the FCC should go one further and take this issue off the PUCs' plates by preempting state action.

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