



IP Services

EABC Policy Paper

October 22 2007

POLICY SUMMARY

Both the European Union (EU) and the U.S. have shared interest in security, innovation and integration in the trans-Atlantic telecommunications marketplace. However, when unforeseen or contradictory national regulations are applied to new communications services or existing service innovations, they can easily deter cross-border service deployment and curtail future innovation and investment. For example, voice over Internet protocol (VoIP) permits the integration of voice, data, and other applications in a manner not previously possible, creating opportunities for businesses and consumers to communicate in new ways. Requirements to separately engineer service deployments for national rules, and/or comply with sui generis national licensing requirements, will greatly impede if not mitigate against deployment of VoIP and certain services like it to a market.

1. The focus of EU-U.S. cooperation

When new or innovative applications – like VoIP – are introduced, and particularly when these bear some resemblance to an existing regulated service, the tendency often is to over-extend the concept of ‘tech neutrality’ in support of regulating the new service. However, regulation may not be necessary where industry can cooperate and develop guidelines and best practices for particular concerns. Where truly necessary, regulations should not be applied without a thorough justification that it is necessary as a matter of public policy. But also, measures that are narrowly tailored to address a specific underlying issue may in fact be more appropriate than legacy rules, particularly if this would facilitate the cross-border deployment of a nascent service. The EU and U.S. should cooperate to the extent possible to ensure regulatory harmonization (both within the U.S. and among EU Member States) and that any such regulations – if they have been justified as necessary – are applied with a minimalist approach.

2. EU Policy Environment (applying the VoIP experience as an example):

- Current regulatory & technical state of play –¹

VoIP is not explicitly regulated under the European framework, and European countries have tended to develop their own regulatory approaches to VoIP. This has been called by some a “laissez-faire” approach to VoIP regulation.

¹ Taken from: International Telecommunications Union (ITU), “The Status of Voice over the Internet Protocol (VoIP) – Worldwide,” Doc. FoV/04 (12 Jan. 2007), at 17-19.

- In the Scandinavian countries, regulators have tended to adopt policies based upon a principle that “voice is voice,” so Finland, Iceland, Norway and Sweden have referred back to the PSTN regulations.
- France and Ireland adopted an early and relatively liberalized approach to VoIP and actively advocated VoIP for open competition, greater choice and lower prices. Ireland has focused on consumer protection issues, as illustrated by its publication of “Guidelines for VoIP service providers on the treatment of consumers” in 2005.
- Access to emergency services was a specific topic of concern for the UK. OfCom developed an interim forbearance policy allowing VoIP providers to offer emergency services, without other regulatory requirements for PATS. This was to “diminish disincentives” to provide access to emergency services. After consultation with the European Commission and European Regulators Group (ERG), OfCom ended this policy and introduced a mandatory VoIP provider code of practice for consumer information.
- Italy has adopted an approach to VoIP legislation that emphasizes nomadic and non-nomadic service distinctions.
- Germany and Poland are still under consultation in relation to VoIP services.

These different approaches have been broadly observed by the European Commission. At the European level, there have been some moves by the ERG to formulate a common approach to regulation of number portability, access to geographic numbers and emergency services, with pro-competitive policies a particular concern of the European Commission, although a harmonized minimalist approach still remains elusive.

3. U.S. Policy Environment (applying the VoIP experience as an example):

- Current regulatory and technical state of play -

The FCC in the U.S. has not determined whether VoIP services are “telecommunications services” or “information services” that are regulated only to protect the public interest, including for public safety and national security reasons. Nevertheless, the FCC has stated that, in either case, it seeks to adopt a liberalized “light regulatory touch” approach to VoIP.

However, even though there are still no licensing requirements, the FCC has imposed certain social policy regulations in specific areas, including a requirement that “interconnected VoIP providers” contribute to the Universal Service Fund, comply with requirements for lawful interception of VoIP communications (CALEA), provide access for persons with disabilities, and to facilitate E911 emergency communications using certain limited VoIP applications. In addition to the above, the FCC has issued a series of case-by-case decisions that seemingly treat VoIP more like a telephone service.

The FCC has preempted U.S. states from imposing entry and economic regulation on VoIP services.

4. Nature of policy opportunity & related timeline:

The technical nature of VoIP, for instance, makes it difficult to delineate between intra-national and international services. Further, given the inherent differences between IP networks and traditional switched networks, regulations should only be applied for specific, legitimate public policy reasons. Therefore, a single EU policy that preempts inconsistent national actions and applies a minimalist regulatory approach is preferred.

For instance, OfCom, the telecommunications regulatory authority of the U.K., is presently engaged in a consultation to facilitate emergency calling using certain limited types of VoIP applications. These applications generally include:

- ‘Peer-to-peer’ VoIP services that make and receive calls to other PCs and connected devices (Type 1);
- ‘VoIP Out’ services which allow users to make calls to ordinary phone numbers but not receive them (Type 2);
- ‘VoIP In’ services which allow users to receive calls from ordinary phone numbers but not make them (Type 3); and
- ‘Full-service’ VoIP which allows users to make and receive calls to and from ordinary phone numbers (Type 4).

Under current OfCom proposals, providers of types 2 and 4 services would be required to offer access to emergency services, despite the fact that type 2 services are not considered substitutes for the basic voice product available in the market. In the U.S., E911 requirements only apply to type 4 services. OfCom is working closely with other EU national regulators to ensure that VoIP providers enjoy the maximum degree of regulatory consistency possible, although it is unclear at present whether current proposals would represent a minimalist approach.

5. Proposal for EU-U.S. Cooperation:

- Detail the nature and focus of EU-U.S. government cooperation –

The focus of EU-US cooperation should be to assimilate best-in-class guidance on criteria for determining when regulations should be applied to a new service or existing service innovation in a national market. Such analysis should take into account gains to be achieved in fostering innovative service deployment.

Of primary concern will be to foster the lowest level of regulatory burden to facilitate national and cross-border deployment of service innovations. Thus, the goal should be to harmonize to minimums any regulatory requirements deemed necessary. For instance, with regard to deployment of VoIP services:

- Although a VoIP provider may be required to nationally register in order to do business, as any other business may be required to do, VoIP services should not be generally limited by legacy regulations that act as barriers to entry through requirements to obtain national certificates or licenses prior to offering service.
- A practical regulatory approach to social welfare obligations – such as and mandating E911 emergency calling and facilitating access to national non-emergency ‘hotline’ numbers – should focus on whether the application is a substitute for the basic voice

product in the market, and further, recognize that technical limits may prevent location-based identification of a VoIP caller.

- A transition to a uniform inter-carrier compensation mechanism should occur, rather than simply imposing a current structure of inter-jurisdictional and intra-jurisdictional access charges on VoIP, which does not necessarily have easily identifiable geographic end-points for a communication.
- There is no basis for imposing additional franchise or related rights-of-way fees on VoIP applications that merely transit on already existing rights-of-way.