REGULATION IN IDAHO TODAY

Idaho's telecommunications laws are contained in Title 61 and Title 62 of Idaho Code.

Title 61 is traditional economic regulation in which the PUC regulates the authorized rate of return for companies and sets the rates the companies may charge for their services.

Title 62 provides for limited oversight by the Commission but economically deregulates the companies. This frees the companies from rate-of-return regulation and allows them to charge rates that are controlled by market conditions.

Idaho has, for the most part, become a deregulated state for telecommunications services. Idaho statutes have deregulated competitive local exchange carriers (CLECs) and have allowed most incumbent local exchange carriers (ILECs) to opt for economic deregulation under Title 62.

Specifically, the following statutes from Idaho Code cover the economic deregulation of local exchange carriers:

Section 62-622(2) – Provides for economic deregulation of competitive local exchange carriers. The statute defines CLECs as those carriers that were not providing basic local exchange services as of February 8, 1996, the date of implementation of the federal Telecommunications Act of 1996 (TA96).

Section 62-604(2) – Provides an option whereby an incumbent local exchange carrier may elect to have all or part of its services subject to regulation under Title 62. This option is not subject to Commission approval, but simply is effective 30 days after election by the incumbent.

At this time, all ILECs, save nine small companies, have opted for deregulation under Section 62-604(2). Eight of the companies that have not chosen deregulation participate in the state Universal Service Fund (USF). Deregulation would result in their forgoing participation in the state USF. One other small company has chosen to remain regulated under Title 61. In addition to these companies, there are six cooperative telecommunications companies in Idaho that are not under the Commission's jurisdiction.

Based on the number of lines reported in the state administrator's USF report, the Commission regulates fewer than 5% of the local exchange lines in the state under Title 61 authority. This percentage does not include lines that are not reported such as those provided by cable companies and cellular telephones. If those were included the percentage of Title 61 regulated lines would be far fewer than 5%.

Other services of note have been preempted by the Federal Communications Commission

(FCC) from state regulation. DSL broadband service was declared an interstate service by the FCC in 1998.[1] Wireless service has never been regulated by the Public Utilities Commission, but is regulated by the FCC as an interstate service. Intrastate interexchange service (long distance) has been deregulated by state statute since the Telecommunications Act of 1988.

WHAT IS VoIP?

The FCC defines VoIP as:

> *Voice over Internet Protocol (VoIP) is a technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line. Some VoIP services may only allow you to call other people using the same service, but others may allow you to call anyone who has a telephone number - including local, long distance, mobile and international numbers. Also, while some VoIP services work only over your computer or a special VoIP phone, other services allow you to use a traditional phone connected to a VoIP adapter.*

The National Exchange Carrier Association defines VoIP as:

> *A technology that allows users to make telephone calls using a broadband Internet connection instead of a regular (or analog) phone line.*

Within VoIP there are also two distinct services: interconnected and non-interconnected.

Interconnected VoIP has four defining characteristics: It enables real-time, two-way voice communications; requires a broadband connection from the user's location; requires Internet protocol-compatible customer premises equipment (CPE); and permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the public switched telephone network.

Non-interconnected VoIP means it does not have the last requirement to originate or terminate calls on the PSTN and is not subject to regulation.

VoIP may also be nomadic or fixed. Nomadic VoIP is intended to be used at any location where a broadband connection is available. A customer may use his service in Boise or Boston. It is regulated on an interstate basis only. Fixed VoIP is intended to be used only at the customer’s premises and may be subject to intrastate jurisdiction, depending on a state's statutes.

[1]FCC Order 98-292

Other Terms and Acronyms Used In This Report:

ITSAP (Idaho Telephone Service Assistance Plan) – Financial assistance is available in Idaho to help qualified low-income individuals pay for telephone service. The program offers a $2.50 discount on monthly telephone bills. A separate program – the federal Lifeline – offers an additional monthly discount of $9.25.

LECs (Local Exchange Carriers) – These are carriers that provide local service to end-use customers, aka telephone companies. LECs may fall into two categories: incumbent or competitive companies. For our purposes, incumbents are those carriers that were providing local service as of February 8, 1996, the implementation date of the federal Telecommunications Act of 1996. Competitive LECs are those companies that started providing local service after that date.

TRS (Telecommunications Relay Service) – TRS allows citizens who are hearing- or speech-impaired to engage in telephone communications "in a manner functionally equivalent to individuals without hearing or speech impairments."

USF – Generally refers to Idaho's state Universal Service Fund. The fund assists high-cost rural companies to achieve a fair rate of return while keeping rates affordable for rural customers. This fund currently supports eights rural companies at an annual cost of $1,698,610.

CURRENT STATUS OF VoIP REGULATION

As stated in the letter asking the PUC to investigate VoIP regulation, 36 states thus far have deregulated VoIP. One of the biggest motivators to get VoIP deregulated is the FCC's refusal to address the issue. The FCC has avoided the question of whether VoIP is a telecommunications service or an information service. That lack of action has caused uncertainty in the market and has driven providers, primarily AT&T, to address the issue on a state-by-state basis.

Regardless of its regulatory status, the FCC does hold interconnected VoIP providers subject to certain regulatory requirements, similar to other voice providers. VoIP providers must provide:

911 Services: Providers of interconnected VoIP services, which allow users generally to make calls to and receive calls from the regular telephone network, do have 911 service obligations. However, 911 calls using VoIP are handled differently from 911 calls using regular telephone service.

Portability: The FCC requires interconnected VoIP providers and telephone companies to comply with Local Number Portability (LNP) rules.

Customer Proprietary Network Information (CPNI): The FCC limits interconnected VoIP providers' use of customer proprietary network information – such as telephone calling records – and requires interconnected VoIP providers to protect them from disclosure.

Universal Service: The FCC requires interconnected VoIP providers to contribute to the federal Universal Service Fund, which supports communications services in high-cost areas and for income-eligible telephone subscribers.

Accessibility: Interconnected VoIP providers must contribute to the interstate Telecommunications Relay Services Fund used to support the provision of telecommunications services to persons with speech or hearing disabilities and offer 711 abbreviated dialing for access to relay services. Providers and equipment manufacturers also must ensure their services are available to and usable by individuals with disabilities, if such access is achievable.

INDUSTRY VIEWS

Although many, if not all, of the participants favor deregulation, they generally do so on a conditional basis and each participant has its own interests it wants protected. Briefly, here are the various positions of the parties.

AT&T

Comments are attached.

Rural Carriers

Rural carriers are concerned about the continuance of the state Universal Service Fund. To the extent that the deregulation legislation does not eliminate state USF, then the rural companies are not opposed to the legislation.

Mobile Carriers

T-Mobile submitted the following comments:

> *The bill proposes to remove the State of Idaho completely from all aspects of IP networks. These networks are complex and include both retail/consumer-facing elements and wholesale/carrier-facing elements. T-Mobile is not opposed to deregulation generally. Certainly, where market competition justifies it, we would support a lighter*

regulatory touch by the state and possibly deregulation entirely.

We're concerned about only part of the deregulation proposal, the part applicable to wholesale markets. Wholesale telecom markets, including such services as special access, interconnection and intercarrier compensation, remain under monopoly control.

Competitive carriers such as T-Mobile must still do wholesale business with the legacy monopoly carriers in order to provide a full, competitive retail service. Those wholesale relationships are at risk if important regulatory protections are removed.

To the extent the proposal would remove regulatory protections in these legacy monopoly wholesale markets, T-Mobile objects. Because wholesale markets remain under monopoly control, monopoly-type protections and regulation should remain in effect, under both federal and state law.

We can agree to apply deregulation to retail markets only. Any current wholesale protections, under both federal and state law, should be preserved.

The best way to preserve these protections is to draw a distinction between retail markets and wholesale markets and apply the deregulatory language only to retail. One could identify the specific elements of wholesale markets–such as special access, interconnection and intercarrier compensation, just to name a few–but in order to ensure that the proposed bill all of the wholesale elements, the language should simply apply to retail IP markets and not to wholesale IP markets.

Cable TV – The Idaho Cable Telecommunications Association (ICTA) submitted the attached comments as did Charter Communications, which echoes the ICTA comments.

CenturyLink – The company does not oppose deregulation, but wants all carriers to pay the same fees for programs such as state USF, ITSAP, TRS, and 911 as well as regulatory fees.

OPTIONS

1. Accept some or all of AT&T's proposal

AT&T has provided sample legislation similar to what it proposed during the previous legislative session. This proposal redefines VoIP as a service rather than a technology and removes it from regulation under either Title 61 or Title 62 placing it entirely out of the PUC's jurisdiction.

Complete deregulation leaves questions to be answered. AT&T has addressed some concerns by introducing a new section, 62-618A, carving out provisions for payment into the Idaho Universal Service Fund, 911 fees, the state Telecommunications Service Assistance Plan or the state Telecommunications Relay Service. One of the questions still to be addressed: How does this legislation affect a company's requirement to interconnect with other carriers? This has historically been under the jurisdiction of the PUC and the Commission has heard numerous

cases to decide disputes between companies. Without this provision, companies may be left with no choice but to take disputes to the FCC where such cases can take years to resolve.

2. Maintain the status quo

One of the keystone questions in this discussion may be: Is VoIP a service or a technology? AT&T, in its proposed legislation, defines VoIP as a service. However, the almost universally accepted definition of VoIP is that it is a technology, not a unique service. In fact, that is exactly how the FCC and the National Exchange Carriers Association (NECA) define VoIP. The distinction is important.

If it is a technology, then what is the underlying service it delivers? In the case of VoIP, that service is basic telephone service. In fact, for the average customer, there is simply no way to tell if the service he or she is receiving is being provided using VoIP technology or conventional circuit-switched technology. To the extent that VoIP is basic telephone service, then the PUC's regulation of this service is already codified and regulation is either under Title 61 or Title 62 depending on the choice of the company providing the service.

The decision to regulate a company is not done by regulatory fiat, but is the choice of the company. The rules under which a company is regulated are determined by Idaho Code 62-604(2) and 62-622(2). Under 62-622(2), competitive local exchange carriers are, by definition, regulated under Title 62. Under 62-604(2), incumbent local exchange carriers are given the choice to be regulated under Title 61 or 62.

One stated reason for deregulation is the need for certainty to incent investment. VoIP is not the service that will provide that incentive. In today's market, the broadband connection is what provides the incentive for companies to invest. For many cable companies, especially medium and small cable providers, VoIP is almost a give-away service used to entice customers to sign up for package deals that include both broadband and programming. In fact, for these small and medium companies, their programming costs make programming services not much more than a break-even proposition, meaning their profitability lies almost entirely in providing customers with a broadband connection.

Competition in the broadband market continues to be strong. Cable One in Idaho now offers one gigabit service in selected areas. Cellular 4G LTE service has become the norm for all carriers. All this is happening within the context of Idaho’s current regulatory structure. Changing the status of VoIP will do little or nothing to affect the future deployment of

broadband.

3. **Add language clarifying that interconnected VoIP is included for all LECs regulated under Title 62.**

   Add new sections:

   62-603(6) – Interconnected Voice over Internet Protocol (VoIP) – A technology that allows you to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line. Interconnected VoIP allows users to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

   62-604(2)(c) – When a company choses to have its local exchange service regulated under Title 62, interconnected VoIP is included in that election.

Joseph W. Cusick
BBA Finance and Management - Idaho State University
Manager Regulatory Affairs US West – Retired 1990
Staff Supervisor (Telecommunications) Idaho PUC – Retired 2013
Former Staff Chair US West Regional Oversight Committee
Former Staff Chair NARUC Telecommunications Subcommittee
Former Staff Chair Joint Committee on Jurisdictional Separations