State of California

Public Utilities Commission--San Francisco

Memorandum

Date: July 7, 2008

To: Rich Clark
Director, Consumer Protection and Safety Division

From: Jack Leutza, Jack Leutza
Director, Communications Division

Subject: Identifying Telephone Services Requiring a CPCN

Following up on our discussion between divisions regarding enforcement efforts, the following identifies services for which a provider must obtain a Certificate of Public Convenience and Necessity (CPCN). In order to determine whether a service provider needs to obtain a CPCN, staff must determine whether that service provider is a "telephone corporation". If the service is indeed a telephone corporation, it must obtain a CPCN from the Commission.

Telephone Corporation – CPCN Required

A "telephone corporation" is any corporation or person owning, controlling, operating, or managing any telephone line for compensation within California.[1] A telephone corporation must first be certificated by the Commission to place a telephone line into service.[2]

If a service provider meets all of the following in the course of providing service, it is reasonable for staff to presume that the provider is "owning, controlling, operating, or managing" a telephone line and therefore in need of a CPCN:

- Offers its retail and/or wholesale services for compensation to customers located in California;
- Provides the capability to receive calls from and terminate calls to any customer of other interconnected service providers;
- Enables real-time, two-way voice communications.

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[1] Public Utilities (P.U.) Code §234. "Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires. (P.U. Code § 233).

[2] P.U. Code §1001

Even if a provider meets all these criteria, however, it may still be able to show that it is not a telephone corporation pursuant to P.U. Code §234, and therefore not in need of a CPCN. Before taking any action on our presumption that it must have a CPCN, such a provider should be given the opportunity to demonstrate that it is *exclusively* providing one or more "enhanced services" or "information services," or that it is providing VoIP service, for which exemptions or exceptions to the requirement for a CPCN exist.

Exemptions/Exceptions

Enhanced Services/ Information Services
"Enhanced services" are offered over common carrier transmission facilities and employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; i.e. provide the subscriber additional, different, or restructured information; or involve subscriber interaction with stored information.[3] "Information services" offer the capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.[4] No CPCN is necessary to provide enhanced services or information services to the public; however, provision of these services does not eliminate the obligation for the provider to obtain a CPCN when it is also providing a telephone service.

Examples of enhanced services/ information services are:

- Internet access (Broadband, dial-up, etcetera)
- Protocol conversion
- Voicemail
- Electronic messaging
- Video conferencing
- Voice "store and forward"

VoIP
The CPUC to date has declined to exercise jurisdiction over VoIP providers.[5] In the absence of further guidance from the CPUC, staff should not require a VoIP provider to obtain a CPCN.

Conclusion

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[3] 47 C.F.R. §64.702; See also *In the Matter of Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 FCC 2d 384 (1980).

[4] Telecommunications Act of 1996, 47 U.S.C. §153 (20) (2008).

[5] *Order Instituting Investigation on the Commission's Own Motion to Determine the Extent to Which the Public Utility Telephone Service Known as Voice over Internet Protocol Should be Exempted from Regulatory Requirements*, Decision No. 06-06-010, *Order Closing Proceeding* (Cal.P.U.C. June 15, 2006); The Commission determined in that it was premature to assess what the Commission's regulatory role is over VoIP providers.

If a service provider is unable to demonstrate that it does not meet the requirements of §234 by showing either that it exclusively provides enhanced or information services to the public, or is a VoIP provider, it should be deemed a "telephone corporation," and required to obtain a CPCN in order to continue providing service within California.

Cc:
Michael Peevey, Dian Grueneich, John Bohn, Rachelle Chong, Timothy Alan Simon
Paul Clanon, Karen Miller, Advisors