



VoIP Taxation and Regulatory Fees on the Rise: Your Guide to Compliance

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Jonathan S. Marashlian is the Managing Partner of The *CommLaw* Group and chairs the firm's Regulatory and Communications Taxes and Fees Practices. Mr. Marashlian is also the founder and CEO of the firm's regulatory compliance consulting firm, The *Compliance* Group. Mr. Marashlian boasts a vibrant and diverse telecom law practice serving clients in every sector of the industry, including:

- Cloud Communications and other Communications as a Software ("CaaS") providers
- Traditional wireline telecommunications services, such as domestic & international Long Distance and Competitive Local Exchange
- Information & enhanced communications services
- Wireless services
- Broadband & Internet Access services
- Advanced communication application (apps) services & developers
- All forms of Internet Based (IP-based) services, including Voice over Internet ("VoIP") and other hybrid & convergent communications service providers
- Communications equipment manufacturers

Mr. Marashlian specializes in communications taxes, Universal Service Fund (USF), E-911 and regulatory fee issues and also maintains an active administrative Litigation and Dispute Resolution practice representing service providers in FCC, PUC and Attorney General enforcement actions. Other specializations include: FCC and State (PUC/Secy of State) regulatory, transactional, tax, litigation and advocacy; communications taxes & VoIP taxation issues; regulatory fees & tax planning; wireline & wireless transfers/assignments of control; licensing & tariffing; customer base/asset sales; regulatory reporting & compliance, contract drafting & negotiation; dispute resolution; FCC advocacy and representation in administrative proceedings, including rulemakings, declaratory petitions, and enforcement proceedings.

About the Firm

The *CommLaw* Group is unique among its peers, offering clients a scope of capabilities rarely found in boutique law firms. With a headcount rivaling the Telecom Practice Groups of most major law firms, we boast a team of attorneys, paraprofessionals and consultants possessing the skills, focus and resources necessary to serve the communications law needs of Fortune 100 companies, all without sacrificing the range of services and affordability which makes us the "go to" firm for new entrants and service providers of all sizes.

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Introduction & Overview

- Who are we?
- What topics will we cover today?
 - ☐ Brief History of VoIP Regulation
 - ☐ Examples of VoIP Services
 - ☐ Fees & Taxes
 - Part I: Regulatory Fees
 - Part II: 911/E-911
 - Part III: Taxes
 - Part IV: Supply Chain Enforcement
- Why is this important?
- What's next?

Stevens Report to Vonage Preemption to Today: The (r)evolution of VoIP (regulation, that is)

- *1998 - Stevens Report to Congress*
 - ACTA Petition & VON Coalition
- *2004 - Vonage Preemption Order*
 - Interconnected VoIP services subject to exclusive jurisdiction of FCC?
 - IP-Enabled Rulemaking
 - Internet “tax free” zone?
- *2006 - AT&T IP-in-the-Middle*
 - FCC Defines “VoIP Toll”
 - Extension to Wholesale
- *2007 - Compass Global Notice of Apparent Liability*
- *Today*

And then there was “Interconnected VoIP”

- June 2005 - FCC “creates” new communications service
- “I-VoIP” defined as service possessing ALL of the following characteristics:
 - (1) enables real-time, two-way voice communications;
 - (2) requires a broadband connection from the user’s location;
 - (3) requires IP-compatible customer premises equipment; and
 - (4) permits users to receive calls from and terminate calls to the PSTN.
- “Off net” communications
- Substantial substitute

Vonage: The Prototypical I-VoIP Service

- Vonage is an “off-net” IP-based telephony system
 - Functionally equivalent.... *from the consumer’s perspective*
 - Technical differences:
 - 1) Must have access to broadband connection to the Internet;
 - 2) Specialized CPE;
 - 3) Integrated capabilities and features; and
 - 4) NANP numbers used with the service are *not* tied to the user’s physical location
- “Substantial replacement”

What is NOT I-VoIP?

- Purely “on-net” or “computer-to-computer” services
 - Example: Pulver.com’s Free World Dial-Up
 - Closed network, purely “on net” services are classified by FCC as “information services”
- “Definitionally exempt”
 - Example: Skype in and/or Skype out service
 - Skype fails to incorporate the fourth prong
 - Does not permit users to *both* receive calls from *and* terminate calls to the PSTN
- Curious case of MagicJack®?

“IP-in-the-Middle”

The Regulation of Wholesale

- “IP-In-The-Middle” or “VoIP Toll”
 - Separate category of IP-enabled service, characterized by:
 1. use of ordinary customer premises equipment with no enhanced functionality;
 2. origination and termination on the PSTN; and
 3. which undergoes no net protocol conversion and provides no enhanced functionality to end user stemming from the use of IP technology.
 - VoIP Toll is a “telecommunications service”
 - Compass Global NAL
- “IP-in-the Middle” = minefield of complex regulatory & tax consequences for companies who:
 - Transport , switch or route voice bearing IP packets

Retail I-VoIP

It's more than just Vonage

Common Indicia of a Retail VoIP Telephony Service:

- Uses computers with multimedia hardware rather than hard-wired circuits and POTs lines to enable users to place calls;
- VoIP telephones and multimedia PCs convert analog voice signals into digital data streams;
- Telephone signals are routed over IP networks instead of over circuit-switched networks;
- A call path usually consists of contacting a target PC on the Internet or to connect to a standard telephone set via a gateway between the Internet and the PSTN;
- Original VoIP signaling standard: ISH H.323; today, most networks use Session Initiation Protocol (SIP) as a signaling standard;
- IP Telephones are intelligent terminals:
 - Hard phones (hardware-based) or
 - Soft phones (software-based, residing on desktops, laptops, tablets, handhelds or other computer platforms);
- All IP phones, whether Hard Phone or Soft Phone are basically computer terminals with an Ethernet LAN address associated with a Network Interface Card (NIC) and an IP address. Plug into an Ethernet port, initialize with a password and ID, and the phone is active.

Retail I-VoIP

It's more than just Vonage

- I-VoIP Comes in a Variety of Flavors:
 - IP-Enabled PBX
 - IP PBX
 - Hybrid TDM/IP PBX
 - IP Call Centers (“Click to Talk to an Agent”)

Fixed vs. Nomadic

- The difference between “fixed VoIP” and “nomadic” VoIP
 - **“Fixed VoIP”** – Only permits a subscriber to make calls from a fixed address. Fixed VoIP is ordinarily provided over a private communications network rather than the Internet. Because the origination or termination point of a fixed VoIP call can be readily identified, many of the regulatory and taxation pitfalls discussed in this presentation are minimized (or outright inapplicable to) fixed VoIP service.
 - **“Nomadic VoIP”** – Enables a subscriber to access the Internet to make a call from any broadband internet connection. Because a call may originate from, or terminate to, any location, the FCC has held that it would be impractical, if not impossible, to separate the intrastate portion of VoIP service from the interstate portion and state regulation would conflict with federal rules and policies.

Tax or Fee

What's the difference? Does it matter?

- Regulatory fees
 - Owed by Service Provider
 - Pass-through is permissive
 - Examples:
 - Universal Service Fund
 - Telecom Relay Service Fund
- Taxes
 - Owed by consumer
 - Service Provider is “tax collector”
- 911/E-911 Fees?

Facts about Taxes & Fees

Distinctions to Keep in Mind

- No federal taxes on VoIP
 - USF is not a tax!
- State regulatory fees
 - USF/Relay Services/Other
 - 911/E-911
- State taxes
 - Sales, Use and Excise taxes on communications services
 - Service provider collects and remits taxes owed by retail consumer

Big Picture Question: Is VoIP Regulated?

- Federal Communications Commission
 - YES
- State Utility Commissions
 - YES TO SOME
 - NO TO OTHERS
- Local Governments
 - YES, 911 ONLY

Big Picture Question: Is VoIP Taxed?

- Departments of Revenue, Comptrollers, other state taxing authorities
 - MOST, BUT NOT ALL
- State and/or local E-911 Fund Administrators
 - YES
- Select Local Governments
 - YES

But what about the Internet Tax Freedom Act?

- Internet as a “tax-free” zone, not so
- Internet Tax Freedom Act
 - Places a moratorium on taxation of **Internet access** at the state and local level
 - Protects e-commerce from sales tax for out-of-state transactions
- Moratorium extended until 2014
- ITFA does not prevent FCC from using “ancillary” Title I jurisdiction to assess regulatory contributions
- States not reluctant to assess certain regulatory fees and communications-related transaction taxes on I-VoIP
 - Nexus; and
 - Definition of “telecommunications” or “telephone service” in the state’s tax statute

PART I: Regulatory Fees



Source Financial Times, Gapper Blog
<http://blogs.ft.com/gapperblog/2008/03>

Compliance Concerns on the Federal Level:

Annual FCC Form 499-A: *“Telecommunications Reporting Worksheet – Annual Filing”*

- Form 499-A due annually on or before April 1st
- Revenue reported in Form 499 used to calculate contributions to:
 - Federal Universal Service Fund
 - Federal Telecommunications Relay Services Fund
 - North American Numbering Plan
 - Shared costs of Local Number Portability
- Revenue data from Form 499-A also forms the basis for telecommunications annual federal regulatory fees

Compliance Concerns on the Federal Level:

Annual FCC Form 499-A: “Telecommunications Reporting Worksheet – Annual Filing”

- I-VolP providers NOT *telecommunications carriers*
- However, through “ancillary” Title I authority and public interest clause of Section 254(d) , FCC requires I-VolP providers to contribute to USF, TRS, NANP, LNP and pay annual FCC fees

(d) **Telecommunications Carrier Contribution:** Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier's telecommunications activities are limited to such an extent that the level of such carrier's contribution to the preservation and advancement of universal service would be de minimis. **Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.**

State Regulatory Encroachment

- Despite FCC preemption of state-specific market entry requirements and rate regulations of nomadic VoIP service, states continue to aggressively seek in-roads which would permit them to circumvent FCC pre-emption orders and collect State USF Fund assessments on I-VoIP revenues.
 - Nebraska and Kansas Joint FCC Petition

Existing State Regulatory Requirements

- State Commissions not pre-empted from applying generally-applicable E-911, Public Safety, CPNI and consumer protection statutes to I-VolP providers
- States not pre-empted from enacting CPNI rules which are not inconsistent with Federal CPNI Rules
- Likewise, there is a great deal of similarity in state public safety, consumer protection and unfair trade practices statutes; however, certain differences do exist. For example:
 - NY consumer protection rules require I-VolP providers to notify consumers before service commencement, of any material limitations associated with basic or enhanced 911 services, and whether such service is basic 911 or enhanced 911 service.
 - NY also requires I-VolP providers to secure a customer's express acknowledgement that customer is aware of 911 limitations prior to service commencement.

Existing State Regulatory Requirements

- State entry requirements (Certificate of Public Convenience and Necessity) are pre-empted with respect to *nomadic* VoIP service, not so for “fixed” or “facilities-based” VoIP.
- Other states require a “registration-like” filing from all VoIP providers (for informational purposes):
 - Montana
 - Nebraska
 - Indiana
 - As of June 30, 2009, the Indiana Utilities Regulatory Commission required all communications service providers, including providers of Internet protocol enabled service, to file an Application for a Communications Service Provider Certificate of Territorial Authority. While more substantial than a mere “registration” or notice filing, Indiana routinely grants CTAs on an automatic basis after 30 days. No party has challenged the requirement as in violation of the FCC’s pre-emption decision in the Vonage Minnesota Order.

Regulation Free Zones?

- A number of States claim that they do not regulate VoIP at all:
 - Delaware
 - Florida
 - Georgia
 - Indiana
 - Kentucky
 - Maryland
 - New Jersey
 - Ohio
 - Pennsylvania
- Yet many of these same states do impose regulatory fees -
 - E911 assessments
 - State TRS fees
 - Public safety, consumer protection and fair trade practices, etc.

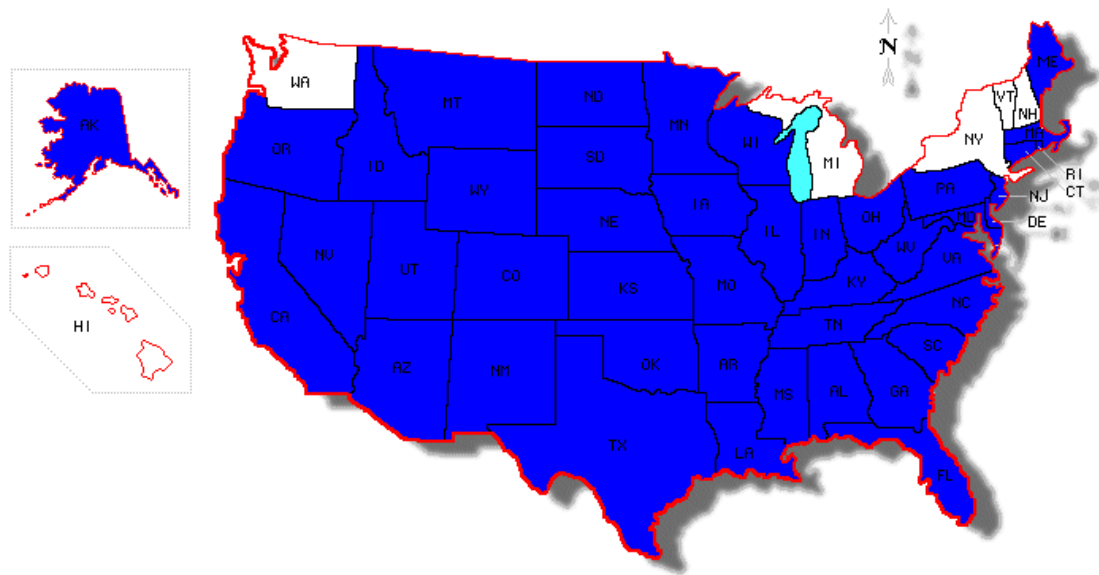
Examples of State Regulatory Status of VoIP

ALABAMA	No jurisdiction over VoIP but E911 charges do apply
ARKANSAS	E911 and USF charges
COLORADO	VoIP is “unregulated” but E911 charges and CPNI rules apply
GEORGIA	No USF, TRS or Reg Fees but CPNI rules do apply
LOUISIANA	E911 does not apply to VoIP but USF does
MISSOURI	Registration and Annual Report required among other obligations
MONTANA	E911 and TDD service fees apply
SOUTH CAROLINA	E911 charge and CPNI rules apply
WISCONSIN	CPNI rules apply

PART II: 911/E-911



States with 911 Surcharges Applicable to VoIP



Examples of State 911 Surcharges Applied to Interconnected VoIP

ALABAMA	\$0.70 statewide on each 10-digit access number assigned to a customer
ARIZONA	\$0.20 per month, per activated line
ARKANSAS	\$0.50 per month per connection
FLORIDA	\$0.50 per month per each “service identifier” (I-VoIP subscriber)
IDAHO	\$1.00 per month per “access line” (any technology that is able to provide dial tone)
MONTANA	\$1.00 per month (applies to “other 9-1-1 accessible services”)
NEW JERSEY	\$0.59 per month per VoIP telephone subscriber
NORTH CAROLINA	\$0.70 per month per service connection
OKLAHOMA	\$0.50 per month per VoIP user
SOUTH DAKOTA	Maximum \$0.75 per month per service user line
TEXAS	Wireline fee includes I-VoIP
WEST VIRGINIA	Fees vary by County.

PART III: Taxes



Source Jack Kingston Blog,
<http://kingston.house.gov/>

Tax Compliance Concerns on the State Level

- Factors to consider to determine taxability:
 - “Nexus” between the retail I-VoIP provider and the state
 - Precise definition of “telecommunications” or “telephone service” in the state’s tax statutes or regulations
 - Bundling of taxable services with non-taxable services
- Most states apply taxes on VoIP in reliance on extensions of pre-existing statutory/regulatory language
 - A few are explicit:
 - Illinois and New Jersey (general tax statutes specifically encompass VoIP);
 - Louisiana and New York (specific portions of tax statutes specifically encompass VoIP)

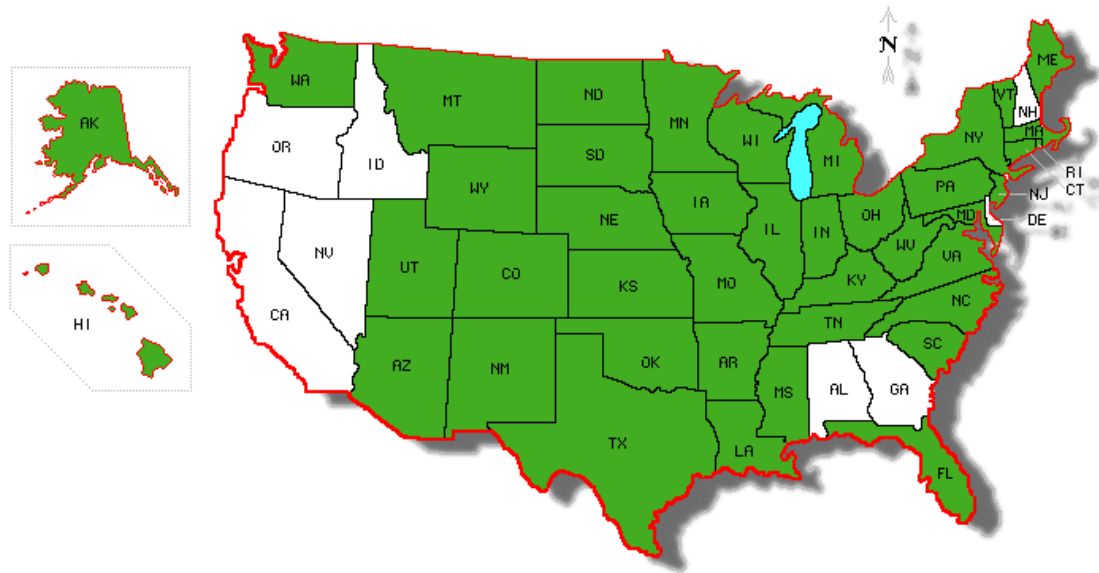
Communications Tax Implications

- General Business Taxes – Always applicable to VoIP providers (e.g., State Corporate Income Taxes, State Property Taxes)
- Communications Taxes – Since 2006, increasingly being applied and enforced
- What's the difference?
 - General business operating nationwide = appx. 7,000 tax returns
 - According to the same study, a telecommunications services provider is responsible for **filing over 47,000 different tax returns** annually

Examples of State Taxes Applied to VoIP

- ALABAMA
- Utilities Gross Receipts Tax & Utilities Service Use Tax
- ARKANSAS
- Sales Tax
- FLORIDA
- Statewide communications tax (and certain localities impose telecom taxes of their own)
- LOUISIANA
- Sales and Use Tax
- MISSOURI
- State (but not local) Sales Tax
- NORTH CAROLINA
- Sales and Use Tax
- PENNSYLVANIA
- Sales Tax
- SOUTH CAROLINA
- Sales Tax
- SOUTH DAKOTA
- Use Tax & Retail Sales Tax
- WISCONSIN
- Sales Tax

States Imposing Telecommunications Tax Obligations on VoIP



State Taxation Issues – Definition of Telecommunications

- State and local definitions of taxable telecommunications are broad and inconsistent
 - Often inconsistent with FCC definitions
 - Even inconsistent with definitions used by State's Utility Commission
- State and local tax definitions of telecommunications often include transmission of voice and data *regardless of medium, method or protocol*. Examples:
 - “Or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.” “. . . and Internet telephony.”
 - “The transport over the Internet or any proprietary network using the Internet protocol of telephone calls...”
- Retroactive application
 - Example: New York excise tax on telecommunications

State Taxation Issues – “Nexus” Requirements

- Due Process and Commerce Clause provisions of the U.S. Constitution require that there be a minimal contact or presence in the taxing jurisdiction by the business.
 - There are many activities — too many to list here — which can create the jurisdictional right to tax, referred to as "nexus".
- Different states have developed different interpretations of what types of business activities constitute sufficient “nexus” to impose their tax obligations on out-of-state businesses.
- The states’ determination of sufficient “nexus” is an extremely fact-driven analysis, and even within the same state seemingly similar business activities can result in dramatically different tax obligations.

State Taxation Issues – Bundled Services

- “Off net” VoIP Services typically bundled with non-communications
- What part of the bundle is subject to state communications tax?
 - No uniform, national policy
- Various standards used by states include:
 - “true object” tests
 - *de minimis* tests
 - “primary object” tests and
 - “essence of the transaction” tests
- The same bundled service offering can result in vastly different tax obligations depending on the taxing jurisdiction.

Tax Compliance Concerns at the Local Level

A troubling “local taxation” precedent:

Mayor and City Council of Baltimore v. Vonage (2008): A recent notable court case upheld a \$3.50 monthly city telecommunications tax assessed upon a nomadic VoIP provider.

—City Tax applicable to each person who **provided** a telecommunications line to any customer of wired service whose billing address was in the City of Baltimore.

—Vonage argued it did not provide or furnish telecommunications lines and thus the tax did not apply

—Court disagreed, holding that Vonage was selling a service that included the **use** of a “telecommunications line” and was therefore within ordinance

Tax Compliance Concerns on the Local Level

- *Baltimore v. Vonage* fallout
- Even though California does not apply its state level sales and use tax to telecommunications, in wake of *Baltimore v. Vonage*:
 - San Francisco began imposing 7.5% tax on telecommunications
 - City of Los Angeles began imposing 9% use tax on communications.
- Challenging present, but even more ominous future for retail VoIP providers

PART IV: Supply Chain Enforcement



Source <http://www.aldarin-electronics.com/supply-chain-management.html>

FCC Supply Chain Enforcement: “Carrier’s Carrier Rule”

FEDERAL UNIVERSAL SERVICE FUND – CARRIER’S CARRIER RULE

- Revenue from resellers is wholesale, thereby excluded from wholesaler’s USF contribution base
- Carrier’s Carrier Rule requires verification and validation
- Stated purpose is to prevent duplicative contributions
- In reality, used by USAC and FCC as a supply chain enforcement mechanism
- Threat of vicarious liability
 - Tier 1 Carriers with large wholesale revenue base fear re-classification of revenue enforces on Tier 2s
 - Tier 2 Carriers faced with option to eat 10-15% in pass-throughs, enforce on Tier 3s
 - Tier 3s increasingly compliant with FCC Regulations thanks to supply chain enforcement!

FCC Supply Chain Enforcement: “Carrier’s Carrier Rule”

- In traditional “circuit-switched” telecom supply chain, identifying who is responsible for payment of Federal USF – and which entity to pursue if payment is not ultimately remitted – is relatively straightforward



- Telecommunications carrier selling to End User contributes

FCC Supply Chain Enforcement: “Carrier’s Carrier Rule”

Apply the unique, diverse, and complex dynamics of the I-VolP “supply chain”...

Add lack of definitional clarity and technological limitations and operation of the Carrier’s Carrier Rule is not as straightforwardly applied to Voice over IP Services.

But it’s not stopping the FCC from trying!

States Follow Suit

- **Carrier's Carrier Rule pertains to FCC Only**
 - FCC defines only two retail VoIP services as “telecommunications”
 - - Interconnected VoIP
 - VoIP Toll
 - Wholesaler selling IP-in-the-Middle to I-VoIP or VoIP Toll provider also providing “telecommunications”
- **As difficult as it is to comply with the FCC's Carrier's Carrier Rule, now consider extending a similar supply chain enforcement process to as many as 50 states**
 - With divergent definitions of telecommunications
 - With uneven and unpredictable application
 - With insatiable appetites for new tax revenue sources

The “Trickle Down” Effect – Financial Crisis

- As a result of the current financial crisis, states are strapped for cash.
- While California, with a projected deficit of \$15 billion, is the most publicized - it is not alone.
- In March, New York announced a projected deficit of \$16 billion for the upcoming fiscal year.
- The Center on Budget and Policy Priorities reports that at least 48 states have addressed or face budget shortfalls for FY 2010.
- 33 states already predict continued budget shortfalls into 2011, with total shortfalls potentially hitting \$160-180 billion.

The “Trickle Down” Effect – Financial Crisis

48 States Face Budget Shortfalls

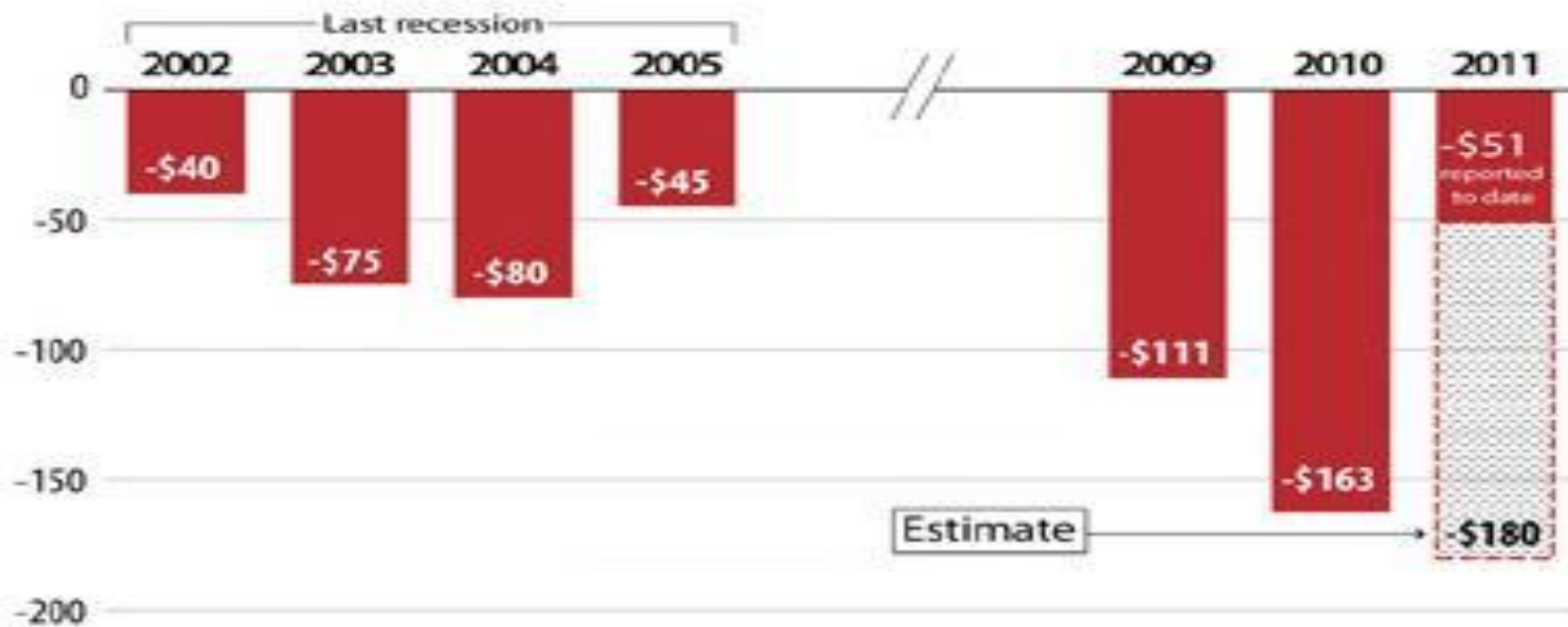


Source Iris J. Lav and Elizabeth McNichol, New Fiscal Year Brings No Relief From Unprecedented State Budget Problems, <http://www.cbpp.org/cms/?fa=view&id=711> (last visited August 4, 2009).

The “Trickle Down” Effect – Financial Crisis

How Bad Will It Get?

Total state budget shortfall in each fiscal year, in billions



Source Iris J. Lav and Elizabeth McNichol, New Fiscal Year Brings No Relief From Unprecedented State Budget Problems, <http://www.cbpp.org/cms/?fa=view&id=711> (last visited August 4, 2009).

The “Trickle Down” Effect – States Seeking Revenues

- With large budget deficits looming, states are looking for new sources of revenue and ways to expand existing sources of revenue.
- One area ripe for expansion of states’ taxation authority has been developing communications services, such as VoIP and IP enabled services that have traditionally been given a light regulatory touch on the federal level.
- Compounding the problem is ambiguity regarding federal preemption of a state’s ability to tax such services and the lack of uniformity in applicable definitions among states’ tax codes and with traditional federal definitions.

The “Trickle Down” Effect – Lack of Federal Preemption

- Vonage Preemption Order is limited in scope.
- Explicit FCC preemption only applies to:
 - States’ attempts to impose licensing requirements on VoIP providers
 - States’ attempts to regulate the rates of VoIP providers.
- According to FCC and state PUCs, there is NO federal preemption over states’ attempt to impose state USF requirements on intrastate revenues of nomadic VoIP providers.
- While recent court decisions have cast doubt on a state’s ability to impose state USF contribution requirements on VoIP providers, there is less doubt with regard to a state’s ability to impose taxes and E-911 fees on VoIP providers.

The “Trickle Down” Effect – Expansive Tax Code Definitions

The New York excise tax example:

New York Tax Law Section 186-e1(g) defines “telecommunications services” as “telephony or telegraphy, or telephone or telegraph service, including, but not limited to, any transmission or voice, image, data, information, and paging, through the use of wire, cable, fiber-optic, laser, microwave, radio wave, satellite or similar media or any combination thereof *and shall include services that are ancillary to the provision of telephone service (such as, but not limited to, dial tone, basic service, directory information, call forwarding, caller-identification, call-waiting, and the like) and also include any equipment and service provided therewith. Provided, the definition of telecommunications services shall not apply to separately stated charges for any service which alters the substantive content of the message received by the recipient from that sent.*”

The “Trickle Down” Effect – Expansive Tax Code Definitions

- In 2007, New York Department of Taxation and Finance declared that the definition of taxable “telecommunications service” includes VoIP.
- While services that alter the content of information may fall outside the definition of taxable services for state excise tax purposes, such services may nevertheless face taxation if bundled with other taxable services.

The “Trickle Down” Effect – Supply Chain Enforcement

- Tier One Providers are feeling the pressure from cash-strapped states.
- This pressure is, in turn, trickling down to the IP-in-the-Middle/Platform Providers and Retail Providers.
- The initial consequences are just now being felt.
 - Downstream customers potentially face consequences if Tier One providers’ classification of services overruled
 - Weighing payment of pass throughs vs. high cost of compliance
 - Potential double taxation.

WHAT'S ON THE HORIZON? – The Federal Level

- FCC will continue to impact VoIP providers as it addresses pending proceedings:
 - **“IP-Enabled Services” Proceeding**
- Other pending FCC rulemakings:
 - **“Developing a Unified Intercarrier Compensation Regime”** (CC Docket 01-92);
 - **“Universal Service Contribution Methodology”** (WC Docket 06-122).
- Efforts are being made to reign in the actions of the Universal Service Administrative Company (USAC), hopefully resulting in USAC's adherence to the APA and its own Rules and Regulations.

WHAT'S ON THE HORIZON? – The Congressional Level

- The House of Representatives Subcommittee on Commercial and Administrative Law Hearing on VoIP taxation jurisdictional issues:
 - ☐ Amending Mobile Telecommunications Sourcing Act to include nomadic VoIP services
 - ☐ Congress may be distracted; issue not a priority
 - ☐ Until then, confusion reigns

WHAT'S ON THE HORIZON? – The State Regulatory Level

- The Nebraska Public Service Commission and the Kansas Corporation Commission Joint Petition is unlikely to be the “final volley” of the states.
- We can – and do – expect continuing efforts from State Commissions looking to beef up local revenues by imposing more and more taxes and regulatory payment obligations on I-VolP providers.
- The continued expansion of state sales, use, “transaction”-type taxes to encompass I-VolP providers is likely.

WHAT'S ON THE HORIZON? – The Local Tax Level

- Possible expansion of I-VolP responsibility for E-911 surcharges in jurisdictions which have not yet enacting procedures.
- Possible proliferation of “Mayor and City Council of Baltimore” type local tax assessments (which was upheld by the appeal court and has not been further challenged).

CONCLUSION:

So Where Does That Leave Us?

- In the already murky area of telecom law, the regulation and taxation of VoIP on the federal and state/local levels is certainly no less murky – and is probably even harder to get your arms around – than any other area.
- VoIP is a highly fertile area, with new and exciting technical applications developing every day;
 - Legacy networks are more and more frequently turning to VoIP solutions. (There is really no choice as the more efficient VoIP functionalities make legacy solutions less and less maintainable, supportable or profitable)
 - VoIP revenues continue to skyrocket
- In short, there is every reason to expect that VoIP service offerings and VoIP service providers will continue to proliferate.

CONCLUSION:

So Where Does That Leave Us?

- VoIP is clearly the technology of the future, and it will continue to encounter closer and closer scrutiny from both federal and state regulators, leading to more – rather than less – regulation (including regulatory assessments).
- State and Local taxing authority will also continue to look more and more frequently to VoIP service providers to replace lost tax revenues in the present economy.

CONCLUSION:

Where Do We Go From Here?

- Whether one is already a VoIP provider or thinking about being one, the future holds great promise for conducting a successful business as a VoIP provider. But greater success will be achieved by those who understand the regulatory and tax environment and develop and maintain strategies to minimize the cost and complexity of those environments.
- The best approach in our opinion is to first obtain an understanding of the *current* regulatory and tax obligations and to establish an effective program to stay abreast of changes that will undoubtedly occur. Having experts available that not only deal with the regulations and the taxes involved, follow them and proactively provide timely updates as developments occur is an option that should be given serious consideration. Being forewarned is being forearmed and will help minimize unnecessary costs, regulatory/tax entanglements and permit management to focus on its core competency and its company's bottom line.



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