

FCC to Consider Classification of VoIP Services for Pole Attachment Rates

January 8, 2014

The FCC has been called upon again to determine whether Voice over the Internet Protocol (VoIP) services are telecommunications services. In order to resolve key issues in litigation over pole attachment rental rates, the US District Court for the Eastern District of Missouri, Eastern Division ordered the Plaintiff, a utility company, to request a declaratory ruling from the Federal Communications Commission (FCC) regarding whether VoIP services are telecommunications services for the purpose of determining pole attachment rates.

To date, the FCC has refused to classify VoIP services under the Communications Act of 1934, as amended, as regulated "telecommunications services" or unregulated "information services," choosing instead to exercise its ancillary jurisdiction to impose specific regulatory obligations on providers of VoIP services regardless of whether the services meet the statutory definition of "telecommunications services" or "information services."

The request for declaratory ruling provides the FCC under new Chairman Tom Wheeler with yet another opportunity to address the statutory classification of VoIP services. Consequently, this request for declaratory ruling may prove to be important not only for utilities and VoIP service providers in the pole attachment context, but also generally for all providers and users of VoIP services since the statutory classification of VoIP services determines everything from the need to obtain permission from regulatory authorities before providing VoIP services to the applicability of common carrier rules to VoIP services.

By Public Notice, the FCC requested comment on the issue by January 21, 2014 and reply comments by February 5, 2014.

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