
VoIP Technical/Regulatory Bulletin *for the Cable/Broadband/VoIP Industry*

What You Need to Know about VoIP and Third Party Verification

- **ANY company that offers traditional, wireless or voice over internet protocol (VoIP) telephony to end users is REQUIRED BY LAW to perform third party verification.**

When cable and other broadband/VoIP service providers offer telecommunications for a fee directly to the public, they are considered "telecommunication service providers" by definition -- and therefore are required at both the federal and state level to perform third party verifications.

This definition was explicitly stated in the **Telecommunications Act of 1996**:

*The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, **regardless of the facilities used.***

In December 1998, the Federal Communications Commission (FCC) implemented aggressive new rules called the **Section 258 Order** to take the profit out of slamming (switching users to a new service provider without the users' knowledge or authorization), broaden the scope of the slamming rules to encompass every carrier, and ensure an authorization and verification take place every time a user changes carriers.

As a result of **Section 258** rules, all telecommunications service providers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the FCC's verification procedures – for example, using an independent third party to verify the subscriber's order.

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- **In recent cases, the FCC has upheld the requirement to perform third party verifications when reviewing claims against cable companies.**

Cox Communications, Comcast and other cable companies have been charged with slamming as recently as spring 2004. When these companies appeared before the FCC to defend against these claims, the FCC applied this process in every case:

- 1) The FCC explained that a customer alleged that they were slammed.
- 2) The FCC reiterated that under the Section 258 Order the companies were required to perform third party verification. They asked the companies under review to provide a third party verification recording – and the companies were able to produce them.
- 3) The FCC reviewed the recording and dismissed the slamming charge.

If these companies had *not* been able to produce a third party verification for the cases in question, the slamming charge would have been upheld, and the *companies would have been liable for potentially significant fees and fines.*

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- **VoIP, when used to provide telecommunication services, is NOT an "information service."**

Some cable companies are asserting that VoIP is an information service. This is **not** the case. The **Telecommunications Act of 1996** defines an "information service" as:

*"...the offering of a 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."*

Therefore, when VoIP is used for the provision of telecommunications services, it is specifically managed, controlled and operated as a telecommunications system. Based on these definitions, any arguments that VoIP is an "information service" **will likely fail** when reviewed by the states and/or the FCC.

- **The FCC and state regulatory agencies are specifically mentioning VoIP in their rules to clarify their positions and end the “is VoIP considered ‘telecommunications?’” debate.**

At the current time, there is significant debate about how the FCC and state Public Service Commissions (PSCs) and Public Utilities Commissions (PUCs) interpret the existing rules. In an attempt to stop rewriting the rules to accommodate each new technology as it develops, the FCC and state PSCs/PUCs are **including any and all companies that provide telephone service** under the “telephone carrier” and/or “telephone service” definitions that currently exist.

However, cable companies and other industries that are using newer technologies claim they do not fit these definitions and therefore do not have to comply with any rules associated with them. So the FCC and state PSCs/PUCs have begun to clarify the existing rules to explicitly refer to VoIP telecommunications carriers, making it easier for everyone to understand how VoIP services fit into the federal and state rulemaking.

The FCC: The FCC has proposed to treat phone-to-phone IP service as telecommunications subject to conventional regulatory treatment. The FCC tentatively determined that phone-to-phone IP telephony services bear the characteristics of “telecommunications,” not of unregulated information services. According to the FCC 1998 Report to Congress, if a company’s phone-to-phone IP service meets the following conditions, it would be **subject to conventional regulation**:

- Holds itself out as providing voice telephony or fax transmission service;
- Permits customers to use regular telephone/fax machine equipment to place and receive calls;
- Allows customers to call regular NANP telephone numbers;
- Transfers information without changing its net form or content

The States PSCs/PUCs: In recent months, state commissions in Minnesota, New York, California and Wisconsin have begun to specify that **VoIP services are subject to the same regulations as conventional telecommunications service**. More states are likely to follow this lead.

Because of the wide range of state approaches to the regulation of VoIP, rulemaking at the state level is going to remain a “patchwork quilt” regulatory scheme.



For more information about implementing third party verification (TPV) solutions for VoIP, contact [David Brinkman](#), CEO of 3PV – Third Party Verification, Inc.

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