

UTILITIES AND TELECOMMUNICATIONS ALERT

FCC PERMITS DIRECT ASSIGNMENT OF NUMBERS TO NON-CARRIER INTERCONNECTED VOIP PROVIDERS

On June 22, 2014, the Federal Communications Commission issued a Report and Order (“Order”), FCC 15-70 (available [here](#)), permitting non-carrier interconnected Voice-over-Internet Protocol (“IVoIP”) providers to obtain phone numbers directly from the Numbering Administrators. The Commission did so without classifying IVoIP providers as “telecommunications carriers,” setting up a scenario where IVoIP providers obtain the rights of telecommunications carriers but without important obligations such as interconnection, intercarrier compensation, or compliance with state regulatory requirements. The Order will benefit IVoIP providers, but could over time have significant adverse impacts on consumers and the competitive telecommunications landscape.

Traditionally, telephone companies are vetted by the state public service commissions to ensure that they have the financial, managerial and technical capability to provide service. In the Order, the Commission will now conduct its own, and likely less thorough analysis of when IVoIP providers can be qualified to provide services. While the Commission will require compliance with its number administration rules and guidelines, IVoIP providers will not be subject to state commission complaint procedures, interconnection, or intercarrier compensation rules that ensure that carriers play fair with one another and protect smaller carriers from unfair tactics by larger carriers.

Although state commissions, trade associations and companies encouraged the Commission to apply carrier rules to IVoIP providers either by reclassifying them as “telecommunications carriers” or by establishing that existing carrier rules apply equally to IVoIP providers and carriers alike, the Commission largely gave IVoIP providers a free pass. The statutory interconnection and intercarrier compensation rules of the Communications Act will therefore not apply to IVoIP providers. Despite requests to address IP interconnection and establish intercarrier compensation obligations on IVoIP providers, the Commission opted for an approach advocated by AT&T, Verizon and other large carriers that attempts to create a new regime outside the statutory framework of the Communications Act. Although taking further jurisdiction from the states, the Commission only asserted limited enforcement authority over IVoIP providers, creating an enforcement gap that is likely to prove harmful to consumers and competitors alike.

Commissioner Clyburn, although voting in favor of the Order, recognized that there is an “elephant in the room – the classification of VoIP.” She also noted that: “For over a decade, this agency has punted on this issue and, unfortunately, we continue this trend by failing to make a decision. This must end. We should make a decision, and stand by it.”

Many carriers have questioned the FCC’s authority to provide numbers to IVoIP providers and allow them to port numbers directly with carriers, absent a reclassification of IVoIP providers as “telecommunications carriers.” Given that “number portability” is defined in the Communications Act as the right of “users of telecommunications services” to port numbers between “telecommunications carriers,” there is likely to be interest in appealing the Commission’s Order in order to enforce the pro-consumer and pro-competitive guarantees of the Communications Act. Anyone interested in such an appeal, or with questions about the



Order, should contact **Jim Falvey** at 202.659.6655 or **Earl Comstock** at 202.659.6627. The Order will not go into effect immediately due in part to the need to develop a new federal application process pursuant to the requirements of the Paperwork Reduction Act.

This Utilities and Telecommunications Alert is intended to keep readers current on matters affecting businesses and is not intended to be legal advice.

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