



The Federal Communications Commission Must Classify Voice Over Internet Protocol As a Title II Telecommunications Service

What Is VoIP?

Voice over Internet Protocol, or VoIP, is a technology that converts speech into data packets enabling consumers to make voice calls over the internet protocol network instead of over a traditional phone line. To the average consumer, there is no discernable difference between using VoIP technology and making a call on their wired landline or mobile phone. Since its commercial introduction in 1995, VoIP has become the dominant way in which consumers make calls -- [70% are VoIP](#).

What Is the Problem?

The Federal Communications Commission has repeatedly refused to classify VoIP service.

- Originally, the Commission elected not to classify VoIP because the data transmitted for a VoIP call was still classified as a telecommunications service subject to the FCC's direct jurisdiction (under Title II of the Communications Act).
- Following the 2004 classification of broadband as an information service, this was no longer the case.
- In 2004, the FCC opened a proceeding to consider the proper classification of interconnected VoIP (VoIP that connects with traditional voice service).
- The FCC has never addressed the classification issue; instead, it has relied on a case-by-case regulatory approach using its ancillary jurisdiction.

Ancillary authority relies on there being something that the service is ancillary to. For VoIP, that is traditional telephone service. As the FCC's [2020 Communications Marketplace Report](#) makes clear, the continued reliance by consumers on traditional voice services is dwindling rapidly -- 13% annually. As traditional phone service continues phasing out, the Commission's jurisdiction over VoIP service will be at risk.

What Are the Harms of Not Classifying VoIP?

The Commission's failure to regulate VoIP service currently harms consumers and competition. For example:

- A keystone of our modern phone service is "interconnection" -- the mode by which phone networks connect so that you can call people even if they have a different service provider. The Commission mandates that traditional phone services interconnect with other networks, but doesn't require it of VoIP providers. Thus, large, incumbent VoIP providers may not connect with smaller networks, or if they do, they will charge

exorbitant fees. This makes it difficult for competitive providers to enter the market -- ultimately raising prices for consumers.

- Generally, states can regulate to fill gaps left in federal policy, however, in the case of VoIP service, federal courts and state public utility commissions have interpreted the level of preemption differently. This has caused confusion amongst states, who are not sure what authority they have to protect consumers.

Moreover, these problems are set to compound once traditional phone service is phased out. At that point, the Commission's authority over VoIP will be questionable, even in an ad hoc manner, because the agency will no longer have ancillary authority. This will *prevent* the Commission from, amongst other things:

- Ensuring that phones work during emergencies by mandating that carriers work together to cover each other's traffic, and by requiring providers to replace discontinued or destroyed networks with networks that are at least as good, or better, than the previous service.
- Protecting consumers from being charged for service even after a disaster destroys their home.
- Creating transparency by requiring providers to accurately detail their prices (including taxes and fees).
- Fully funding the Universal Service Fund. This fund assesses interconnected VoIP service, but only under its ancillary authority. If the FCC refused to classify VoIP service and chose to sunset the traditional phone network, then the contribution obligation of VoIP providers would be called into question.

What Is the Solution?

The FCC must make VoIP a Title II telecommunications service. These services are offered to consumers who by and large do not distinguish between them and traditional voice service. Under the Communications Act, the FCC voice service is clearly telecommunications service and should be treated as such, regardless of the technology used. VoIP providers should be regarded as common carriers, giving the FCC the authority it needs to ensure everyone has access to reliable, quality voice service.