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VOIP: THE SECOND BATTLE OF THE INTERNET TAX WARS

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In this report, the authors examine the tax law concerning Voice-Over Internet Protocol (VOIP) services, which is only now beginning to emerge. Traditional telephony taxes may or may not be applicable to any particular VOIP service, depending on its characteristics and the peculiarities of each jurisdiction. They conclude that traditional "tax" concerns such as equity and administrability, as well as "regulatory" concerns such as universal service and fair competition, will lend structure to VOIP taxation in the future.

This article expands on the issues discussed by Nagel in a presentation made to the U.S. Communications Association meeting in Philadelphia in May 2004.

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I. Introduction

In the last decade, one of the most significant tax policy debates has concerned the taxation of Internet access. This debate prompted the passage of the Internet Tax Freedom Act in 1998, and that act's recent lapse and imminent resurrection has rekindled public discussion. A newly popular Internet-based technology, however, will likely be the key conversation piece, thanks to its distinctive position at the crossroads of traditional telephony and the evolving Internet; this technology is the type of voice telephone service called Voice-Over Internet Protocol, or VOIP.

VOIP has swiftly become popular and will doubtless be used routinely by Americans in the near future. But significant taxes and regulatory charges — often approaching 18 percent of the subscriber fees paid — have traditionally been imposed on telephone services and have raised substantial revenues at all levels of government.[1] Whether these taxes may now be imposed on VOIP — a technology that was not envisioned when the taxes were enacted — is the subject of this article.

From a tax and regulatory perspective, VOIP is unique. It provides through the use of a virtually untaxed, unregulated medium — the Internet — a service that mimics traditional telephone service, which is perhaps the most taxed, most regulated service in the United States. Although VOIP looks to the customer like a telephone service, it has been neither regulated nor taxed like a telephone service. The use of VOIP has increased exponentially in recent months, and the entry of well-known telecommunications carriers into the VOIP market has been much publicized. It is thus not surprising

[1]*See* Committee On State Taxation (now Council On State Taxation), "50-State Study and Report on Telecommunications Taxation" (1999), available at http://www.statetax.org, *State Tax Notes*, Nov. 22, 1999, p. 1377.

that consumers, providers, and tax authorities are beginning to ask whether the tax burden borne by traditional voice services will also be imposed on VOIP.

> ***Consumers, providers, and tax authorities are beginning to ask whether the tax burden borne by traditional voice services will also be imposed on VOIP.***

The term ''VOIP'' encompasses a broad collection of voice transmission services, which have in common only the use of the Internet Protocol. Whether any particular VOIP service is taxable will turn on its actual characteristics. Characteristics that are conceivably important in determining taxation include, for example, the service's functional features, how it is marketed, and the extent to which the VOIP service makes use of a valuable public asset — the preexisting Public Switched Telephone Network (PSTN). However, VOIP taxation policy is still embryonic. No clear policy leader has emerged from any administrative or judicial forum. The Federal Communications Commission had made clear that the agency has no definitive view of VOIP. The few determinations by state public utility commissions (PUCs) are disparate, as are the handful of state court decisions. A few bills have been proposed in Congress, but the form of their final enactment, and the extent of their effect on VOIP, is still largely undetermined. In short, whether any particular VOIP service is subject to taxation will be difficult to discern for the near future.

Whether a particular VOIP service should be taxable depends on a complex interaction among several competing policies, including issues that are better regarded as ''regulatory'' as opposed to ''tax'' policies. Traditional tax concerns include whether the charges are equitable, whether the tax can be efficiently collected and fairly audited, and whether the tax will raise substantial revenue without unduly distorting the economic decisions of consumers and providers. The regulatory concerns, which are specific to the telecommunications industry, include whether the tax promotes the goals of universal service and fair competition, and whether it promotes innovation.

II. VOIP Technology and Its Various Forms

VOIP looks and feels like traditional telephone service, but bypasses some or all of the PSTN and instead uses the Internet (or an Internet-like protocol on a private network) to switch and transmit the call. VOIP technology is not new: Large corporations have been using VOIP for internal communications for a decade, and long-distance carriers have long used VOIP for transmission.[2] It is the introduction of VOIP services to the residential market that has catapulted it to the forefront of telecommunications policy today.

Telephone service enabled by VOIP technology has grown markedly in the last few years and will likely become an important alternative to traditional voice service. It is estimated that in 2002, VOIP traffic increased 80 percent.[3] VOIP is now considered to constitute close to 1 percent of all telephone traffic[4] and more than 10 percent of international telephone traffic.[5] Vonage, a leading VOIP provider, has 155,000 Internet phone lines and is adding 25,000 per month.[6] Comcast Corp., the largest U.S. cable operator, has said that it plans to offer VOIP service to 40 million households by the end of 2006,[7] and Goldman Sachs estimates that in this same time frame Internet phone service could replace 7 percent of residential phone lines.[8]

VOIP services mimic traditional telephony and aim to bring to the customer the quality and ubiquity of traditional wire-line voice telephone calls. The key technological difference is that VOIP establishes no dedicated circuit between caller and receiver, whereas traditional telephone calls generally occur by creating such a dedicated circuit. Using VOIP, the digitized voice — rendered in separate bursts of data called ''packets'' — is sent into the Internet. Information is transmitted on the Internet by thousands of ''routers,'' each of which examines the packet and decides which router to send the packet to next. The standardized programming rules that enable this system of routers to operate is known as the ''Internet Protocol,'' hence the name, ''Voice Over Internet Protocol.''

VOIP is an over broad term that encompasses several types of services; these services share only the attribute that the Internet Protocol plays a role. Some current examples of VOIP technologies include: (1) peer-to-peer (or PC-to-PC) voice communication; (2) private enterprisewide voice communication within businesses; (3) calls in which the origination and termination use the PSTN, but some element of the transmission uses Internet Protocol;[9] and (4) calls in which one end of the call is with a VOIP-compatible telephone set (a Session Initiation Protocol or SIP phone), and the call is transmitted over the Internet, but the call at the other end is over the PSTN.

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[2]*See* FCC Notice of Proposed Rulemaking (hereinafter FCC 04-28), p. 11.

[3]*Telegeography 2004*, Primetrica Inc. 12, 26 (December 2003), cited in FCC 04-28, p. 9.

[4]*VOIP Services Assessment: Communications Service Strategies and Opportunities*, Stratecast Partners 19 (February 2003), cited in FCC 04-28, p. 9.

[5]*Telegeography 2004*, note 3 *supra*. A recent report finds 12 percent of international traffic is via VOIP; ''Internet Calling Posing a Threat to Landline Phone Companies,'' *Investor's Business Daily*, May 19, 2004, p. 1.

[6]Ken Brown, ''Internet Phone Firm Vonage to Cut Price of Its Calling Plan,'' *The Wall Street Journal*, May 17, 2004, p. A16.

[7]Peter Grant, ''Comcast Pushes Into Phone Service,'' *The Wall Street Journal*, May 26, 2004, p. A3.

[8]''AT&T Will Offer Internet Phone Calls in Selected Markets,'' *The Wall Street Journal*, Mar. 30, 2004, p. B1.

[9]A call may, for example, be originated in New York by Verizon, be transmitted across state lines by AT&T using IP, and be terminated in Atlanta by BellSouth.

Because VOIP includes a broad range of services, whether VOIP per se is, or should be, subject to taxation is not a question that can be answered meaningfully. Instead, whether a particular VOIP service is taxable must turn on the actual characteristics of the VOIP service in question. These characteristics must be compared with the traditional characteristics of the service being taxed, in light of the intent of the taxation statute or regulation. Classification of VOIP as either within or without the regulatory and tax definitions is difficult, essentially because VOIP was not anticipated when these statutes and regulations were drafted. However, certain characteristics are already emerging as important in determining whether VOIP is subject to taxation, at least in some jurisdictions; later changes to taxing statutes and regulations may focus on other characteristics as determinative of taxability.

Because VOIP includes a broad range of services, whether VOIP per se is, or should be, subject to taxation is not a question that can be answered meaningfully.

Any particular VOIP service may vary in the following characteristics:

(1) *Bundling.* VOIP is currently offered both as a stand-alone product and as a part of a bundle of services purchased from a carrier. Many VOIP services are provided to customers who already have (from another carrier) preexisting broadband connectivity; VOIP appears as a BYOB or ''bring your own broadband'' service. In other manifestations, VOIP is part of a broadband offering, which may also include video, high-speed Internet, cable television, and other cutting-edge services. The addition of ''value added'' services — which may include the *processing* as well as the *transmission* of information — may change the overall characterization of the service. Historically, when information processing is offered bundled with the telecommunications needed to support it (especially if both processing and transmission are invoiced as a unit) the entire ''package'' may avoid telephony taxation.

(2) *Use of Standard Telephone Numbers.* Some VOIP services employ the North American Numbering Plan (NANP), that is, the same 10-digit telephone numbers that consumers are used to ''dialing.'' Note that when employed in VOIP (and also in wireless or mobile service), the telephone number's ''geographic identity'' — the familiar correspondence between an ''area code'' (for example, 212) and a location (for example, New York City) — becomes meaningless. Any number may reach a user who is anywhere in the world. In this way VOIP furthers a trend established by wireless, whose customers (with global roaming capabilities) can be anywhere in the world, but receive calls ''dialed'' to a specific device (and without the caller ever knowing the true location of the recipient).

(3) *Integration With PSTN vs. Private Line.* It is important to note that VOIP can function entirely separately from the PSTN or can be partially or fully integrated with it. VOIP that is integrated into PSTN provides service ubiquity in much the same manner that wireless customers can call landline customers, and vice versa, through the integration of the landline and wireless networks. When a VOIP service both uses the NANP *and* is integrated with the PSTN, the consumer can both (a) place a telephone call to anyone, anywhere, and (b) receive calls from anyone, anywhere, without having to change telephone numbers. This makes the VOIP service truly competitive with traditional voice services (but only through using, arguably, the preexisting infrastructure developed at considerable cost by the local telephone companies). In contrast, some VOIP services are ''peer-to-peer,'' so that callers are limited to calling only persons on the same computer network. Such services are not directly competitive with public telephone services and make no (or limited) use of the PSTN.

(4) *Access to Emergency 911 Services.* Emergency 911 service is an important (and expensive) part of voice communication, and most users expect to be able to access 911 from any telephone.

(5) *Media.* The Internet Protocol works on any electronic media, and most taxing authorities believe that taxability should not depend on the medium used to transmit the information. However, the vestigial effects of (relatively) older laws may exempt certain media (for example, cable) from the definition of taxable telephony.

III. Taxation and Regulation of Telephony

Traditionally, telephone services are subject to regulation as well as taxation. Regulatory concerns differ from traditional ''tax'' concerns such as a levy's ability to raise revenue, its equity, and its administrability. Regulation has as its essential aim the control of a natural monopoly and the protection of subscribers from abuse. An important second goal is to balance costs among participants in the telecommunications industry to ensure a level playing field, so that profitability is tied to ingenuity, service, and value provided to customers, rather than to a technical artifact of the telephone system. A third goal is the provision of telephone-related services for the public good, such as providing 911 emergency services and making telecommunications systems available to the deaf and to low-income individuals. A fourth goal, seldom mentioned but nevertheless important, is to enhance law enforcement by providing authorities with the technical ability to collect information in appropriate cases, through wiretaps and other lawful means.[10] All

[10]CALEA, the Communications Assistance for Law Enforcement Act of 1994, mandates network changes to PSTN to allow law enforcement officials to wiretap telephone calls.

four of these regulatory goals result in both economic and noneconomic burdens on providers and subscribers.

The current practical effect is that telecommunications services are unique in being subject, in every state, to myriad fees and assessments designed to distribute the economic burden of maintaining the public network and to achieve social policy goals. The template of these regulatory fees overlays the matrix of various taxes whose purpose is simply to raise revenue to run the government. Although constitutionally distinct from ''taxes,''[11] the regulatory charges have the effect of requiring involuntary payments and they affect provider and consumer choices in the market. Hence, from the perspectives of the service provider and the consumer, it is immaterial whether the levy is a fee or a tax. For this reason, this article considers both traditional regulatory fees and legislative taxes under the rubric of ''taxes'' without drawing any distinction.

A. The Federal Excise Tax

A 3 percent federal excise tax (FET) is imposed by section 4251 of the Internal Revenue Code and yields nearly $6 billion annually.[12] The FET is imposed on amounts paid for ''communications services,'' defined to include local telephone service, long-distance telephone service, and teletypewriter exchange service. Historically, the FET applies only to the charges for the communications service itself; it has never been construed to apply to the rental of telephone equipment or to enhanced services such as ''call waiting.''[13] The statute specifically exempts a number of services from the tax, none of which are related to VOIP per se.[14]

Telephony providers have been left to navigate the application of the FET to services that are neither clearly included nor clearly excluded from tax under the statute. The taxation of data services — an increasing part of the telecommunications industry — is one such area. A large and extensive body of IRS private letter rulings[15] has been issued to deal with this ''statutory gap.''

An IRS technical advice memorandum issued in late 2003, TAM 200343001 (*Doc 2003-23011, 2003 TNT 207-20*), may herald the federal taxation of VOIP. This TAM is the only IRS guidance on VOIP to date. It addresses the application of the FET to prepaid telephone cards that enable calls using the Internet as a communication medium; the calls, however, begin and terminate over the PSTN. In the TAM the taxpayer argued that because it uses the Internet to connect its customers' telephone calls, it should be exempt from tax. The IRS found use of the Internet to be irrelevant because the taxpayer ''is providing communications services to its customers.'' The IRS has yet to rule on the application of the FET to VOIP outside of the prepaid card context. Although IRS rules stipulate that a TAM may not be relied on or cited as precedent, the TAM suggests that other VOIP services may be subject to the federal excise tax.

B. Major Regulatory Charges

The two most significant regulatory charges imposed by the Federal Communications Commission are access charges and ''contributions'' to the Universal Service Fund (USF). Access charges are those which carriers pay to local telephone companies for access to the PSTN, that is, for the privilege of initiating and terminating calls made to NANP telephone numbers.[16] Contributions to the USF are required of interstate carriers of telecommunications services; the USF is managed by a quasi-private, nonprofit company and is used for development of rural telephone services and support of low-income subscribers, schools, libraries, and rural health care facilities.[17]

The combined effect of access charges, USF contributions, and other regulatory charges and taxes often approaches 18 percent of the subscriber fees paid.[18] From an economic perspective, the imposition of those taxes and regulatory charges on VOIP would have a serious impact on its spread and development.

C. The FCC Has Yet to Declare Its View of VOIP

1. The FCC's regulatory scheme. The current telecommunications regulatory scheme is embodied in the key distinction made by the Communications Act of 1996 (the Act) between ''telecommunications services'' and ''information services.'' Generally, the Act does not impose entitlements or requirements on the providers and customers of *information services* but does impose them on

[11]For constitutional purposes, ''taxes'' are imposed only by a legislature and a governor, and are generally paid to a government for its general use. In contrast, regulatory charges may be imposed by an agency and may be paid to nongovernmental entities (for example, telecommunications carriers other than the taxpayer); the use of nontax funds may be restricted to specific regulatory goals. *See generally* Hellerstein, *State Taxation*, section 2.01[1] (WGL 2000).

[12]Letter from Douglas Holtz-Eakin, director, Congressional Budget Office, to Sen. Lamar Alexander, R-Tenn., dated February 13, 2004, available at http://www.cbo.gov.

[13]*See Western Electric Co. Inc. v. U.S.*, 564 F.2d 53, 40 AFTR2d 77-6346 (1977).

[14]The following are exempt from the FET by IRC section 4253: (1) coin-operated services; (2) news services; (3) international organizations such as the Red Cross; (4) military personnel in combat zones; (5) common carriers and communications companies to the extent the service is used in the conduct of their business; (6) installation charges; (7) nonprofit hospitals; (8) state and local governments; and (9) nonprofit educational institutions.

[15]*See, e.g.*, LTR 200242021, *Doc 2002-23541, 2002 TNT 204-36*, revoking a prior ruling.

[16]These are generally passed on to subscribers, under regulatory supervision, as the ''federal access charge'' (FAC), ''subscriber line charge'' (SLC), ''end user common line charge,'' ''national access fee,'' and/or the ''prescribed interexchange carrier charge'' (PICC). Other charges are often imposed, at both the federal and state levels, for ''telecommunications assistance programs'' or ''lifeline'' programs, for 911 administration, and for ''local number portability'' (LNP), which is charged in areas where the LNP program has been deployed. Many state regulatory charges mirror the federal regulatory charges.

[17]The charges are passed on to subscribers, generally on a per-line basis, as a USF or ''Universal Service Fund'' line charge.

[18]*See* 50-State Study, note 1 *supra*.

the providers and customers of *telecommunications services*. Telecommunications service providers bear regulatory charges, may be subject to pricing restrictions and profitability limits, and generally may be required to file interstate tariffs. Thus, the scale of the regulatory burden imposed by the FCC largely turns on whether the service being provided is classified as a telecommunications or an information service. The classification of VOIP under the Act is therefore critical.

Under the Act, a *telecommunications service* is the ''offering of telecommunications for a fee directly to the public . . . regardless of the facilities used.''[19] In contrast, an *information service* is the ''offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.''[20] *Telecommunications* means ''the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.''[21] Whether VOIP fits within either definition is uncertain, but the FCC has indicated that the agency considers VOIP more in the nature of ''information service'' than a ''telecommunications service'' and that it favors no or minimal regulation of VOIP.[22]

Usually, if a service is not subject to regulation, it is generally *also* free from charges imposed by the regulatory body. While information services are generally unregulated and generally not subject to regulatory charges, the FCC legally retains jurisdiction over them. It is therefore possible that a nonregulated service may be subject to regulatory charges. VOIP may become the first service subject to such charges imposed upon telecommunications services, even though it technically remains unregulated as an information service. In that case, litigation almost certainly would ensue.[23]

Indeed, recent reports in the media that the FCC will not regulate VOIP seem to have been grossly exaggerated. Chair Michael Powell has said that Internet Protocol-enabled services like VOIP should enjoy a ''comprehensive, yet minimal, regulatory environment,'' to promote the development of new technology while advancing ''venerable social and security policies.''[24] Against the backdrop of such ''no regulation'' press releases, the FCC's recent Notice of Proposed Rulemaking (the Notice), discussed below, provided a dramatic contrast by affirming that charges could be imposed on VOIP for maintenance of the PSTN.

2. The Notice of Proposed Rulemaking Under Docket 04-36. On March 10, 2004, the FCC released the Notice of Proposed Rulemaking (FCC 04-28) Under WC Docket No. 04-36, seeking public comment on how best to differentiate between Internet services and traditional telephony services, implicitly for the purpose of determining the appropriate extent of regulation and the imposition of regulatory charges on VOIP. The most significant aspect of the notice — which is difficult to reconcile with the FCC's public relations statements — is the following pronouncement:

> As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.[25]

The FCC will have to consider five public policy issues when evaluating the monetary obligations of VOIP service providers:

> (1) *Access Charges.* To the extent that VOIP becomes a significant method for voice communication, it destabilizes the well-established, revenue-sharing matrix between the local and long-distance carriers. To what extent will VOIP be subject to access charges?
>
> (2) *Universal Service Fund Fees.* The need to subsidize low-income and rural users will not diminish as VOIP grows, while a shrinking landline base may mean these costs are spread over fewer and fewer subscribers. Will VOIP providers be required to contribute to the USF?
>
> (3) *Emergency 911 Service.* Wireless service providers fought a losing battle, largely premised on technological limitations, to be exempt from 911. As the popularity of VOIP rises and VOIP customers expect 911 service, will VOIP service become subject to 911 service charges?
>
> (4) *Disability Access.* To what extent will VOIP providers be required to provide access for persons with disabilities?
>
> (5) *Public Safety.* It will be challenging to avoid CALEA obligations[26] in a security-conscious environment, yet VOIP by its nature does not readily

[19]47 U.S.C. sec. 153 (46).
[20]47 U.S.C. sec. 153 (20).
[21]47 U.S.C. sec. 153 (43).
[22]*See In the Matter of Petition for a Declaratory Ruling That pulver.com's Free World Dialup Is Neither Telecommunications nor a Telecommunications Service*, FCC 04-27, WC Docket No. 03-45, Memo. Opinion and Order, Feb. 12, 2004. *See* section III.C.3. *infra*, ''The FCC's *Pulver* and *AT&T* Decisions.''
[23]We do not address the significant jurisdictional question whether a regulatory agency without specific legislative authorization *can* impose charges on a service that the agency has itself found to be not subject to regulation. As a practical matter, to date any regulatory authority that has determined that a particular service is an information service not subject to regulation also has been likely to determine that charges imposed on telecommunications services are inapplicable to the unregulated service.
[24]Statement of Michael K. Powell on VOIP before the Committee on Commerce, Science and Transportation, U.S. Senate, Feb. 24, 2004, available at http://www.fcc.gov/headlines.html.
[25]FCC 04-28 at p. 23.
[26]*See* note 10 *supra*.

lend itself to wiretaps. To what extent will VOIP providers be able to comply with public safety mandates?

In light of these policy considerations, it is difficult to see the FCC seriously entertaining a ''no regulation'' environment for VOIP. Rather, it is likely that the agency will impose at least some regulatory burdens on VOIP providers and subscribers.

3. The FCC's *Pulver* and *AT&T* decisions. Simultaneously with the issuance of the Notice of Proposed Rulemaking (FCC 04-28) Under WC Docket No. 04-36, the FCC issued a decisive ruling on VOIP. On a petition by Pulver.com, the FCC ruled that Pulver's VOIP service (called Free World Dialup or FWD) was not a telecommunications service and not subject to regulation as such.[27] This presumably also means FWD is not subject to regulatory charges imposed on telecommunications services.

The *Pulver* case is limited, however, because Pulver's service is wholly independent of the PSTN. FWD allows users of broadband Internet access services to make VOIP and other types of peer-to-peer communications directly to other FWD members, without charge. In 2003 Pulver filed a petition for declaratory ruling, requesting that the FCC rule FWD to be neither a ''telecommunications service'' nor ''telecommunications'' and therefore not subject to traditional telephone regulation. The FCC granted Pulver's petition. The agency also declared FWD to be an unregulated information service, pronouncing that IP-enabled services, such as Pulver's FWD and other Internet applications like it, ''promise significant consumer benefits in the form of lower prices and enhanced functionality for American consumers.''[28] The FCC also recognized that VOIP and other IP-enabled services will encourage more consumers to demand broadband service.[29] Nevertheless, in a sense *Pulver* was an easy case, as FWD did not connect with the PSTN or any facilities that are developed or maintained by the extensive regulatory fee matrix. The next case is likely to involve a VOIP service that connects to the PSTN on at least one end, and the FCC's determination will be exponentially more difficult.

The FCC recently held that access charges apply to calls that originate and terminate over the public network even though the long-distance portion of the call travels over the Internet.

The FCC also recently held that access charges apply to calls that originate and terminate over the public network even though the long-distance portion of the call travels over the Internet.[30] One significant factor cited by the FCC as a basis for its decision was that there was *no net protocol conversion*. That is, the call began in a form other than the Internet Protocol, was converted to the Internet Protocol, and then converted back into its original form. Citing its decision in *Computer II*,[31] the FCC reaffirmed that ''services that result in no net protocol conversion to the end user are basic services''[32] and therefore subject to regulatory burdens and fees. This order suggests that the extent of usage of the Internet Protocol involved in any particular VOIP service may be crucial in analyzing whether the VOIP service is subject to regulation and associated charges.

D. Federal Broadband and VOIP Cases

The position of broadband connectivity in the regulatory regime is critical to VOIP. VOIP as an application generally requires a preexisting broadband connection, and VOIP has begun to be offered bundled with broadband. It is only a matter of time before such bundling is routine and the fine line between VOIP and its carrier will blur, both technically and economically.

Arguably, if broadband cannot be regulated, it cannot be subjected to tax-like regulatory fees.

Because broadband is chiefly deployed for data communications and can be provided either via traditional telephone lines or via television cable,[33] there has been significant public debate regarding the extent to which broadband connectivity should be regulated like standard telephone services. The U.S. Court of Appeals for the Ninth Circuit set aside the FCC's prior determination that broadband was an ''information service'' and should be unregulated.[34] The Ninth Circuit instead held that because broadband's underlying transmission channel includes elements of ''telecommunications services,'' the broadband service must be considered as ''part telecommunications service and part information service.'' The court also concluded that a cable franchising authority is prohibited from regulating broadband Internet access.[35]

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[27]FCC 04-27, note 22 *supra*.

[28]*Id.* at 1.

[29]FCC News Release, Feb. 12, 2004, available at http://www.fcc.gov.

[30]FCC 04-97, WC Docket No. 02-361, *In the Matter of Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*.

[31]77 FCC 2d at 430.

[32]FCC 04-97, p. 3.

[33]Broadband is currently offered in three popular forms: via Digital Subscriber Line (DSL) over telephone lines, via cable modem over cable, and via satellite. Although directly competitive, the DSL medium has been historically regulated by the FCC, while cable broadband has not been. The latter, however, is sometimes separately (though perhaps no less rigorously) regulated by local governmental or quasi-governmental entities under cable television franchises.

[34]*Brand X Internet Service v. Federal Communications Commission*, ___ F.3d ___, No. 02-70518 (Oct. 6, 2003).

[35]Under 47 U.S.C. sec. 541(b)(3), franchising authorities may not regulate telecommunications services, even if provided by a cable operator.

Arguably, if broadband cannot be regulated, it cannot be subjected to tax-like regulatory fees. Once VOIP is routinely offered bundled with broadband, it is unclear whether the quasi-information-service status of broadband would prevent taxation of VOIP calls.

At least four states have adopted the FCC's definition of 'telecommunications services' for the purpose of defining the scope of the state telecommunications tax base.

Perhaps, however, VOIP will be considered distinct from its broadband carrier. The U.S. District Court for the District of Minnesota recently issued a permanent injunction against the Minnesota Public Utility Commission's regulation of (and imposition of regulatory charges on) Vonage's VOIP service.[36] The U.S. district court determined that Vonage's service fit within the definition of information services as defined by Congress and the FCC and held that Vonage ''only *uses* telecommunications [services], and does not *provide* them.''[37] It separated VOIP as an application distinct from its underlying transmission element, subjecting the latter to regulation but not the former. Whether such a distinction has any technical analogue when VOIP and broadband are offered as a bundled service remains an open question.

IV. State Taxation

Almost all states impose some kind of tax on telecommunications services, either in lieu of or in addition to their general sales tax.[38] These taxes are an important source of revenue for states; transaction taxes (including regulatory fees) imposed by states on telecommunications services approximate $13 billion annually.[39] As traditional telephone users migrate to VOIP, erosion of this tax base is an issue.

In response to changing technology, many states have broadened the scope of their tax over the past decade — that is, broadened the definition of taxable ''telephone services'' or ''telecommunications services.'' In some cases those definitions now include essentially all two-way communication, whether of voice, data, video, or otherwise, by electromagnetic media or some variation thereof.

At least four states, with greater or lesser formality, have adopted the FCC's definition of ''telecommunications services'' for the purpose of defining the scope of the state telecommunications tax base.[40] The vague federal status of broadband hence has a powerful influence at the state level, and further activity in the federal arena may affect state revenues directly. Whether or not states closely follow the federal lead in the area, many states have begun to examine VOIP in the context of their separate regulatory and taxation structures. To date only a handful of states have addressed the issue,[41] and in those few cases in which any conclusions have been reached, the results are disparate.

Determining whether VOIP falls within the definition of telecommunications necessarily involves parsing each state law definition. Many existing definitions are over broad, vaguely attempting to incorporate new technologies as they are developed. Texas, for example, defines ''telecommunications services'' as ''the electronic or electrical transmission, conveyance, routing, or reception of sounds, signals, data, or information utilizing wires, cable, radio waves, microwaves, satellites, fiber optics or any other method now in existence or *that may be devised*.''[42]

Although states draft their taxing statutes broadly, they often provide specific exceptions into which VOIP may blithely fall.

Well-established principles of statutory interpretation usually mitigate the ''tax creep'' that results when state revenue departments seek to expand taxation without legislative consent. The legislature has the power clearly to set forth what is being taxed, and taxes should be levied only after full public debate; subsequent expansion by a taxing authority beyond the plain language of the statute is therefore disfavored. According to the U.S. Supreme Court:

> In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as

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[36]*Vonage Holdings v. Minnesota Pub. Utils. Commission*, 290 F. Supp.2d 993 (D. Minn. 2003).

[37]*Id.* at 1003 (emphasis added).

[38]This is an exception to the general rule that sales taxes apply to the transfer of goods, but not services. *See* Hellerstein, *State Taxation*, section 15.10 (WGL (2000)).

[39]Congressional Budget Office letter to Sen. Lamar Alexander dated February 13, 2004, note 12 *supra*.

[40]*See* (1) Arizona A.R.S. sections 9-581 to 9-583 (Supp.1999); (2) Connecticut Gen. Stat. section 12-407(2)(k); (3) Hawaii Rev. Stat. sec. 269-1; and (4) Montana GL 42.31.501(4). A ruling of the Connecticut PUC explicitly follows the FCC's guidance: 'It appears that the distinction made between services that are within the definition of ''telecommunications services'' and those that were set outside of the definition was based on the FCC distinction between ''basic'' and ''enhanced'' services. Therefore, an FCC determination that a service is an ''enhanced service'' (or an information service) should be a factor in determining whether the service is excluded from Connecticut's definition of ''telecommunications services.'' Similarly, when the FCC defines a service to be a ''basic service,'' that determination is persuasive that the service comes under Connecticut's definition of ''telecommunications services.''' Ct. PUC. No. 2002-5, Dec. 17, 2002.

[41]At least five state public utility commissions (California, Missouri, Ohio, Washington, and Minnesota) have begun proceedings on VOIP.

[42]Tex. Admin Code sec. 3.344(a)(8) [emphasis added].

> to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen.[43]

This principle of statutory interpretation has been embraced by state courts as well. For example, the Michigan Supreme Court has held that ''the scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer.''[44]

Following is a review of the statutes in four populous states that impose a tax on telecommunications services, and a look at the likely arguments regarding the taxation of VOIP. Even this brief review demonstrates that although states draft their taxing statutes broadly, they often provide specific exceptions into which VOIP may blithely fall, for example, for ''Internet access'' or for ''value added'' services. Perhaps surprisingly, the *media* over which VOIP is provided seems an important, albeit inconsistent, factor; delivering VOIP over television cable, for example, might render it nontaxable in Massachusetts, but delivery over television cable to a residence in Florida would make an otherwise nontaxable service taxable. Also surprisingly, integration with the PSTN seems irrelevant in most states, even though the subscriber's access to this public asset would seem a forceful justification for the imposition of tax.

It is worth noting, but beyond the scope of this article, that U.S. constitutional protections may prevent states from imposing tax collection obligations on companies without nexus.

A. Illinois

Illinois has a history of strong telecommunication regulation; it is therefore perhaps not surprising that in applying its 7 percent tax on telecommunications, the Illinois statute seems emphatically to ignore the characteristics of particular services, and instead attempts to tax as broadly as possible.

The Illinois statute defines ''telecommunications'' as follows:

> ''Telecommunications,'' in addition to the meaning ordinarily and popularly ascribed to it, includes without limitation, messages or information transmitted through use of local, toll and wide area telephone service; private line services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber-optics, laser, microwave, radio, satellite or similar facilities. As used in this Act, ''private line'' means a dedicated non-traffic sensitive service for a single customer, that entitles the customer to exclusive or priority use of a communications channel or group of channels, from one or more specified locations to one or more other specified locations. The definition of ''telecommunications'' shall not include value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission.[45]

Certainly, the taxation statute makes clear that VOIP services will not escape taxation solely on the basis of being ''private line'' or ''peer-to-peer.'' Nevertheless, the statute defines ''telecommunications'' in a manner that arguably excludes VOIP, because it provides clearly that ''value added'' services are not taxable. In traditional telephony, value added services such as voice mail[46] are thought of as separate from basic connectivity, and indeed they can be separately provided as a technical matter. When VOIP is delivered via a broadband connection, the broadband itself represents the basic connectivity component, so that the entire VOIP application is separable and may be properly thought of as value added. Certainly, all of the VOIP software acts on the ''form, content, code and protocol of the information for purposes other than transmission.'' This suggests that, at least when VOIP is part of a bundled offering, it is a value added service and outside the taxation statute.

B. New York

The New York statute imposes a 2 percent tax on telecommunications that appears to be independent of whether the service is integrated with the PSTN. Indeed, two-way radio services (for example, dispatch services) that are not interconnected with the public telephone services are nevertheless subject to the tax.[47] This suggests that the taxability of VOIP is not dependent on its integration with the PSTN or its use of standard telephone numbers.

Again, however, VOIP may escape as a sort of value added service. The New York statute defines ''telecommunications'' as follows:

> ''Telecommunication services'' means telephony or telegraphy, or telephone or telegraph service, including, but not limited to, any transmission of 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

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[43]*Gould v. Gould*, 245 U.S. 151, 153; 38 S. Ct. 53 (1917).

[44]*In re Dodge Brothers*, 241 Mich. 665, 669; 217 NW 277 (1928).

[45]ILCS sec. 630/2.

[46]Other examples of value added components include (1) ''Find Me'' (rings to a succession of numbers), (2) voice-mail accessible on Web and converted to text, (3) do not disturb, (4) redial until not busy, (5) call transfer, (6) user-controlled inbound and outbound number restrictions and time/date restrictions, (7) conference calling, and (8) caller ID. *See* ''Cut Rate Calling by Way of the Net,'' *The New York Times,* Apr. 8, 2004, sec. G, p. 1.

[47]NYCRR 20 section 527.2(d)(2).

service, directory information, call forwarding, caller-identification, call-waiting and the like) and also include any equipment and services provided therewith. Provided, the definition of telecommunication 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.[48]

The final sentence suggests that New York appears likely not to impose tax on VOIP when VOIP is bundled with other services. The state's tax authority has previously held that a telephony service is exempt from the tax when the service is ''merely an incidental element of a different or other service.''[49] As VOIP becomes bundled with broadband Internet access, it appears likely it will be exempt from tax.

VOIP may also be exempt from tax on the alternative grounds that it is a component of ''Internet access.'' New York was one of the first states to provide specifically that charges for Internet access are not subject to its telecommunications excise. Confusingly, administrative guidance also provides that ''the charge for [a] telephone call to an ISP [Internet Service Provider] to initiate access to the Internet is still subject to the telecommunications excise.''[50] The distinction between Internet access and the ''call'' may be meaningful as long as Internet access is provided chiefly by dial-up. However, as customers increasingly elect broadband connectivity, the taxability of components of Internet access in New York apparently will depend on *media*. Internet access provided via broadband will be nontaxable, while the telecommunications component of access provided by dial-up will be taxable. Whether VOIP service is subject to taxation may depend on its media as well; because it uses the Internet Protocol, VOIP might likely be considered as nontaxable ''Internet access'' as long as it is delivered by broadband (as it almost always is).

C. Florida

Florida imposes a combined 9.17 percent tax (a 6.8 percent state tax and a 2.37 percent local tax) on communications services. The Florida statute is so broad that it could even be read to suggest that handwritten letters sent by U.S. mail could be subject to tax; it defines ''communications services'' as:

> The transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereinafter devised, regardless of the protocol used for the transmission or conveyance.[51]

The Florida statute makes clear that taxability does not depend on connectivity with the PSTN, and ''substitute communications systems'' — that is, those private line systems that provide services that substitute for public switched services — are explicitly made subject to taxation.[52]

Importantly, communications services provided to *residential* households are exempt from the state tax (although not the local tax), but the state exemption is media-dependent. Traditional telephony provided by wire is exempt, but communications services provided by ''mobile communications'' or by ''cable service'' or by ''satellite'' are all taxable.[53] This suggests that VOIP may be taxable if provided by broadband cable service but will be nontaxable if provided to a residence by DSL over telephone lines.

It is unclear whether bundling will affect taxability of VOIP in Florida, as ancillary information services are explicitly subject to tax. For example, voice-mail messaging and custom-calling features (which are clearly categorized federally as ''information services'')[54] are taxable in Florida, as are facsimile transmission services.[55] However, ''Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services'' are exempt, suggesting that VOIP might escape taxation as a form of ''on-line computer service.''[56]

Recent Florida legislation specifically excludes VOIP from regulation by the Florida Public Services Commission, although the legislation separates the issue of regulatory *charges* and makes clear that VOIP may be subject to charges, notwithstanding that it is a nonregulated service. In particular, the legislation does not ''affect the rights and obligations of any entity related to the payment of switched network access rates or other intercarrier compensation, if any, related to voice-over-Internet protocol service.''[57]

D. Massachusetts

In Massachusetts, taxability of VOIP may well depend on bundling. Massachusetts's general 5 percent sales tax is imposed on ''telecommunications services,'' which are defined to include:

> Any transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities but *not including cable television*.[58]

The exception for ''cable television'' was enacted at a time when voice transmission over cable was not yet a reality. In Massachusetts, cable television historically has

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[48]N.Y. Tax Law, section 186-e(1)(g).

[49]NYCRR 20 section 527.2(d)(4).

[50]New York State Department of Taxation and Finance, Technical Services Bulletin TSB-M-97 (Nov. 15, 1999).

[51]Fla. Stat. section 202.11(3).

[52]Fla. Stat. section 202.12(1)(b); 202.11(16).

[53]Fla. Stat. section 202.125(1); Fla. Admin. Code. sec. 12A-19.041.

[54]*See Western Electric Co. Inc. v. U.S.*, note 13 *supra*.

[55]Fla. Stat. section 202.11(14).

[56]Fla. Stat. section 202.11(3)(h).

[57]Fla. Stat. section 364.02 (12), as amended by Fla. S.B. 654 (2003).

[58]M.G.L. Chapter 64H, section 1 (emphasis added). Recent amendments make clear that this tax is also imposed on prepaid telephone calling cards and prepaid calling arrangements. TIR No. 03-5 (Apr. 3, 2003).

been sharply distinguished from telephony and earmarked as immune from taxation. This implies that VOIP services may not be subject to tax when bundled with their underlying broadband vehicle over cable media — most clearly so if also bundled with cable television service.

V. Practical Barriers to VOIP Taxation

As a policy matter, all taxes should be easily collectible. If they are not, substantial public resources are wasted in the collection process; the fairness of the tax is also skewed, because only the uninformed or unsophisticated will actually pay the tax.

> ***There is no physical telecommunication platform or termination point that can be monitored by a tax authority.***

Property taxes (and later, sales taxes) evolved because land and commercial activities were visible and auditable. (For the opposite reason, intangibles have historically been excluded from both taxes.) Public utilities services have often been subject to sales taxes, perhaps because the providers were — though no longer are — quasi-public companies. Taxation of telephone services has been facilitated because records of sales (telephone lines and calls) are both necessitated by the operation of the network itself, and maintained by computer with reasonable accuracy.

The efficiency of telephony taxes, however, has depended on the premise that both the point of taxation and the tax base were easily identified and audited. Technology and deregulation have eroded this premise, and VOIP exacerbates that erosion. Because VOIP is, from a technical standpoint, deliverable anytime and anywhere, it is difficult to track and may prove to be impossible to audit. As the FCC itself recognized in the *Pulver* case, no one but the subscribers themselves know where the ''end points'' of the communication are: Once voice telephony has been digitized, it looks like any other data on the Internet, and the only points at which it can be identified as a telephone call are at the points of sending and receiving: that is, at the personal telephone of the user. As a practical matter, privacy concerns notwithstanding, neither the provider nor the tax authority has access to these points. There is, in short, no physical telecommunication platform or termination point that can be monitored by a tax authority.

The wireless industry successfully persuaded Congress that the sourcing of wireless communications required ''hard and fast'' rules to avoid technological limitations associated with the mobile services. The Mobile Telecommunications Sourcing Act of 2000[59] addressed the technological limitations then in place by defining the circumstances under which states and localities may impose a transaction tax (or tax-like charge) on mobile services. Specifically, it defines tax *situs* as the customer's place of primary use, regardless of service origination, transit, termination, or billing address. A similar solution would likely address the technological limitations inherent in taxing VOIP, provided Congress was willing to allow it to be taxed. But even then the extent of auditability and enforceability is still open to question. In fact, it was a similar debate that allowed the Internet Tax Freedom Act to lapse.

VI. VOIP as the 'Third Rail' of Extending IFTA

The Internet Tax Freedom Act (ITFA) was enacted in 1998 and subsequently extended until November 1, 2003, when it expired.[60] ITFA prohibited the imposition by states and localities of taxes on *access* to the Internet, ''access'' being defined so as to explicitly exclude telecommunications services offered by a common carrier.

Somewhat contrary to popular understanding (and political rhetoric), ITFA did not restrict the ability of states to impose utility and sales taxes on telecommunications services generally, nor did it repeal the federal excise tax under section 4251. In fact, states and localities relied on their ability to tax at all levels the network infrastructure underlying the Internet, in return for their political support of ITFA. Also, ITFA did not affect the collection of sales taxes on transactions carried out over the Internet; although it did prohibit ''multiple or discriminatory'' taxes on electronic commerce, by its terms ITFA reserved to the states the power to impose otherwise permissible sales and transfer taxes.

What ITFA clearly did prohibit was a separate surcharge for Internet access, for example, a per-subscriber fee for Internet access services provided by Internet Services Providers.[61] Specifically, ITFA prevented a state or political subdivision from imposing any nongrandfathered tax on Internet access, and defined ''Internet access'' as:

> A service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may include access to proprietary content, information and other services as part of a package of services offered to users. Such term does not include telecommunications.[62]

The specific exclusion of ''telecommunications'' reflected ITFA's fundamental premise that Internet access services are separate from the underlying telecommunications infrastructure on which they currently depend. Therefore, ITFA did not affect any taxes that might be imposed on an Internet user or provider based on the use

[59]P.L. 106-252; 4 U.S.C. section 116, *et seq.*

[60]P.L. 105-277; included as titles XI and XII of the Omnibus Appropriations Act of 1998 (Oct. 21, 1998). Congress voted to amend the ITFA by extending the tax moratorium through Nov. 1, 2003, under the Internet Tax Nondiscrimation Act (H.R. 1552); the extension was enacted on Nov. 28, 2001 (P.L. 107-075).

[61]ITFA also prevented a ''bit tax,'' that is, a tax on Internet access that is based on the number of bytes, or size of files, transferred by the subscriber.

[62]''Internet'' was defined so that the key element is the use of the TCP/IP, or any predecessor or successor protocols, independent of media.

of the underlying telephone service. ITFA, it is generally agreed, was intended merely to prevent new and creative types of state and local taxes from being applied to Internet access charges collected by Internet access providers.

VOIP, however, turned out to be the energizing third rail of the efforts to extend the Internet tax moratorium. Earlier in the year, the Senate tabled action on legislation to extend ITFA when it was publicly alleged that the bill would have exempted VOIP from state and local taxes. Some opponents pointed to a Congressional Budget Office letter[63] to support their position that the earlier Senate ITFA extension proposal, S. 150, threatened state telecom tax receipts by exempting VOIP. The better reading of the CBO letter is that it is inconclusive. The CBO itself concludes that the extent to which transactions taxes could be affected by the enactment of S. 150 ''is unclear and depends on a variety of technological changes, legal interpretations, and regulatory decisions.''[64] It goes on to say that ''a major issue in determining how much is at risk will be how quickly telecommunications services migrate to the Internet. . . . Most industry experts expect that less than one-third of current voice telecommunications services will move to the Internet over the next five years. This suggests that over that period, less than $3 billion annually in state and local telecommunications taxes could be affected by the enactment of [S. 150].''[65] However, what is clear is that the mere assertion that VOIP would be exempt from state and local tax under an extension of ITFA was enough to delay its consideration until VOIP was specifically addressed.

After a six-month impasse, on April 29, 2004, the Senate approved S. 150 as the Internet Tax Nondiscrimination Act, by a vote of 93 to 3. This version heads to conference with the House, which passed its own version of the bill, H.R. 49, in September 2003. The two bills differ on a number of points, the most significant difference being that the Senate version extends the Internet tax moratorium by four years, while the House version makes the moratorium permanent. President Bush has voiced support for the House version, but based on the difficulty in reaching a compromise, it is unlikely that a House-Senate conference committee report containing the permanent language could pass the Senate.

Former governors and mayors from both parties have led the opposition to the permanent moratorium language in an earlier version of the Senate bill. (The notable exception is the Senate bill's author, Sen. George Allen, R-Va., who is also a former governor of Virginia, a state that hosts more than half of the world's Internet traffic.) Sens. Lamar Alexander, R-Tenn., and Thomas R. Carper, D-Del., led the opposition to the permanent ban and sponsored a scaled-back, two-year extension of the moratorium. They were joined by Sen. George Voinovich, Republican former governor of Ohio; Sen. Dianne Feinstein, Democratic former mayor of San Francisco; Sen. Bob Graham, Democratic former governor of Florida; and Sen. Kay Bailey Hutchison, a Republican who was Texas state treasurer. These senators, having once faced the task of balancing state and municipal budgets in their former careers, oppose the federal government limiting state and local tax policy options.

For the near term, we can expect the evolution of VOIP taxation to be chaotic and inconsistent among jurisdictions.

Meanwhile, S. 150 contains the following compromise language on VOIP, which would allow states to continue to collect taxes as traditional telephone services migrate to the Internet:

> SEC. 1108. Exception for Voice and other Services over the Internet.
>
> Nothing in this Act shall be construed to affect the imposition of tax on a charge for voice or any other service utilizing Internet Protocol or any successor protocol. This section shall not apply to Internet access or to any services that are incidental to Internet access, such as e-mail, text instant messaging, and instant messaging with voice capability.

The future of this provision remains uncertain now, as the House companion bill, H.R. 49, does not include a similar provision. Undoubtedly, lawmakers will continue to express interest in addressing the federal and state jurisdictional boundaries for VOIP. In April Sen. John Sununu, R.-N.H., introduced S. 2281, the VOIP Regulatory Freedom Act of 2004, and Rep. Chip Pickering, R.-Miss., introduced H.R. 4129. Both bills would make VOIP applications subject only to federal jurisdiction. Also, both bills would authorize the FCC to impose intercarrier compensation requirements, universal service fees, and rules for allowing access by law enforcement to certain call information on VOIP services. The bills also would provide for the establishment of an industry organization to create voluntary measures to provide VOIP 911 and E911 services, and for access by the disabled.

VII. Conclusion

If the Internet war's first battle concerned direct taxation of Internet access, the second battle will concern the taxation of VOIP and its myriad variations. Tax authorities perceive VOIP as the vanguard of voice traffic's migration to the Internet and are concerned about potential erosion of the telephony tax base.

The law of VOIP is embryonic and conflicted. The FCC has yet to declare its position; the courts have made few definitive determinations; the state statutes vary markedly and are in flux. Although Congress is beginning to address VOIP taxation, the ultimate impact of such bills as the Internet Tax Nondiscrimination Act is difficult to forecast.

For the foreseeable future, taxation of VOIP likely will continue to be influenced by its regulatory classification,

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[63]Congressional Budget Office letter to Sen. Lamar Alexander dated Feb. 13, 2004, note 12 *supra*.

[64]*Id.*

[65]*Id.*

both federally and in the states, and the regulators' interest in universal service and public welfare will likely overshadow traditional tax policy issues. In each case the characteristics of the particular VOIP service, and the idiosyncrasies of each taxing statute or regulation, will coalesce to determine taxability. In short, for the near term, we can expect the evolution of VOIP taxation to be chaotic and inconsistent among jurisdictions.

In the longer term the evolution of VOIP technology and product pricing may force a metamorphosis in VOIP taxation. Practical barriers to collection already burden the industry, and VOIP innovation continues at full speed. It does not take too much imagination to envision VOIP bundled free of charge with broadband, just as today free e-mail is bundled with Internet access products, and free long-distance is bundled with wireless plans. Just as Internet access has been for some time, VOIP ultimately may become the darling of antitax activists. They may eventually succeed in making VOIP tax-free.