California Enacts New Statute Requiring Interconnected VoIP Providers to Contribute to the State's Universal Service Fund

10.14.11

By K.C. Halm and Jane J. Whang

A recently enacted California statute authorizes the California PUC to require interconnected voice over Internet protocol (VoIP) service providers to begin collecting and remitting fees to support the state's universal service fund. The measure is intended to capture lost revenue arising from the continued migration from traditional wireline telephony to VoIP services, and the estimated two and a half million VoIP consumers in California. The state's enactment of this law follows the FCC's 2010 decision not to preempt states from imposing state fund contribution obligations on nomadic interconnected VoIP providers, and may prompt similar action in other states.

On Oct. 9, 2011 California Governor Brown signed AB 841, which adds a new section (285) to the California Public Utilities Code. This provision of the Code authorizes the California Public Utilities Commission (CPUC) to require interconnected VoIP service providers to collect and remit surcharges to fund six programs under the State's universal service fund. The new measure requires interconnected VoIP providers to collect and remit surcharges upon their "California intrastate revenues." The law defines "interconnected VoIP service" as having the same meaning as federal law (per FCC regulations).

The CPUC currently has a pending rulemaking (R.11-01-008) in which it is considering whether to impose surcharges on interconnected VoIP providers' revenues, and this legislation leaves little doubt that the CPUC *will require* interconnected VoIP providers to collect and remit surcharges on intrastate revenue. The recent enactment of AB 841 provides the CPUC explicit authority to require interconnected VoIP service providers to remit surcharges without finding that interconnected VoIP service providers are "telephone corporations." Pre-existing law gave the CPUC authority to collect surcharges only from "telephone corporations."

Notably, the new statute is expressly limited in scope to authorizing the CPUC to require surcharges from interconnected VoIP providers, but does not confer the CPUC with authority over other aspects of the service. Therefore, this measure will not provide a means for the CPUC to attempt to regulate other aspects of interconnected VoIP service.

The new law also establishes how VoIP providers can allocate revenue and determine the locale of users of nomadic VoIP services.

- The measure clarifies that surcharges will apply to the end-user's "place of primary usage." The place of primary use means the street address where the VoIP service primarily occurs, or a reasonable proxy for that location such as the customer's registered location for 911 purposes.

- As for the revenue allocation question, the measure states that interconnected VoIP service providers may identify intrastate revenues by using (i) the inverse of the FCC safe harbor percentage (i.e., 35.1% allocated as intrastate revenue); (ii) a traffic study allocating revenues between federal and state jurisdictions; or (iii) other means of accurately apportioning interconnected VoIP services between the state and federal jurisdictions. The methodology used for allocating intrastate revenues must "be consistent" with the allocation methodology used to determine federal universal service obligations.

Davis Wright attorneys advise VoIP providers and other communications services providers on matters arising from state and federal universal service fund obligations. Please contact us for further details on this and other recent developments.