



# Regulatory, Tax and Business Implications of Recent FCC Decisions Related to Enhanced Communications

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# Speaker Bios

- **Jonathan S. Marashlian**, Managing Partner of Marashlian & Donahue, LLC, [The CommLaw Group](#) and principal of [The Compliance Group](#), the law firm's affiliated regulatory compliance administration and consulting division. Mr. Marashlian is responsible for leading the firm's telecommunications, VoIP, broadband and advanced communications services clientele through the maze of state and federal regulatory and communications tax requirements. Mr. Marashlian has comprehensively advised several Fortune 500 companies on regulatory and tax matters associated with entering the VoIP services marketplace, thereafter managing compliance through The *Compliance Group* and its partners.
- **Robert Dumas**, Principal and Founder of TaxConnex, LLC. Mr. Dumas began his public accounting career on the tax staff at Arthur Young & Co., followed by a brief stint at Grant Thornton. In the late 1980s, Robert joined BellSouth's tax department. In 1996, he left BellSouth to pursue a career as an independent consultant. Three years later, Robert founded Tax Partners, which became the largest sales tax compliance service bureau in the country. Robert served as president of Tax Partners and helped grow the business to \$16 million in seven years. The company was sold to Thomson Corporation in March 2005, and Robert served as vice president of operations in Thomson's transaction tax business unit until founding TaxConnex in 2006. Robert is a nationally recognized expert on telecommunications taxation and a frequent speaker on the subjects of transaction tax, business process outsourcing and sales tax compliance.
- **Dominic (Don) Schiavone**, Chief Operating Officer, Grasshopper Group, LLC. Mr. Schiavone oversees Grasshopper's enterprise-wide operational processes. Don boasts a 17-year track record of helping businesses of all sizes scale their operational processes. Before joining Grasshopper Group, Don was the Co-Founder and Managing Partner of Sagebridge Consulting, LLC, which develops web solutions for entrepreneurs and small businesses. Don also served as Vice President of Professional Services for Granitar Inc., a top-tier Internet consulting firm, where he provided technology solutions to Fortune 1000 clients including State Street Bank, Fidelity, Amtrak, New York Times Digital, and Standard & Poors. In addition, he has held leadership positions at firms such as Mitchell Madison Group, Siemens, Westinghouse, and IBM. Don combines his technical and operational expertise with a passionate, business-driven perspective.

# Agenda

- Macro: Change stems from technology and transition to IP
- Micro: Ad hoc FCC “rule making” through adjudications, enforcement actions and delegation (abdication) to Bureaus and USAC
- Fall Out:
  - Continuation of decade-long regulatory uncertainty
  - Taxation of VoIP, SIP and other voice/data transmission services
  - Uncertainty is not good for business, neither is burying head
  - The argument for managed compliance

# I-VoIP Services: Future Clarified

- FCC's [Nebraska/Kansas Declaratory Ruling](#) confirms State PUCs not preempted from imposing state USF contributions on intrastate revenue of nomadic Interconnected VoIP (I-VoIP) providers
  - Prospective relief only
  - Retroactivity not addressed
- Requires contribution rules to be consistent with the federal rules
  - Must permit nomadic I-VoIP providers to use one of three authorized methods to identify revenue subject to state USF assessment
- Requires states to develop uniform revenue sourcing rules to avoid conflict with FCC Order
  - Avoid “double-dipping”
  - No specific guidance provided, i.e., 911 address? Billing address?

# Nebraska/Kansas Order: State Reaction

- Several states have taken steps to extend USF contribution obligations to nomadic I-VoIP
  - NE and KS both require nomadic VoIP providers to contribute
  - CA has opened a rulemaking proceeding
  - ½ dozen other states jumped on board
- Administrators of state USF programs (e.g., Solix) have already taken steps to require state USF contributions without guidance or clear legal authority from PUC
  - Arizona and Arkansas
  - Revenue reporting and remittance form seeks I-VoIP revenue information
- USF is only the beginning; *Nebraska/Kansas Order* also opens door to TRS
  - Montana
- Maine ConnectMe Fund: One-off? Or sign of things to come?

# Nebraska/Kansas Order: Aftermath

- Immediate aftermath
  - Lack of clarity and uniformity regarding revenue sourcing
    - Nebraska and Kansas require nomadic VoIP providers to use E911 address to source revenue
    - Other states use the customer billing address or are silent on the issue
  - Retroactivity
    - Kansas pressing for retroactive reporting up to two years
  - Situation requires constant monitoring and diligence
- Long-term projection
  - Sourcing likely to be resolved along lines of MTSA
  - More states likely to jump on bandwagon

# *InterCall Order*: Blurring the Telecom/Info Service Dichotomy

- [InterCall Order](#) declares call bridging / conferencing services “telecommunications services”
  - Subject to Title II regulations and USF contributions
- Before *InterCall Order*, conferencing industry operated subject to rules governing “information services”
  - “End user” of telecommunications
  - Fees / Taxes on telecommunications paid to supplier of telecom
  - Significantly lower administrative burdens and exposure
- FCC extended findings to all similarly-situated providers
  - “Virtual office” providers impacted
- State PUC and Tax implications

# 21<sup>st</sup> Century Communications and Video Accessibility Act

- Signs... signs... everywhere a sign...
  - Ensure access to IP-based communications services and video programming for disabled Americans
  - Authorizes FCC to establish rules relating to “advanced communications services”
  - Act identifies and defines “non-interconnected VoIP services”
  - FCC specifically directed to implement rules extending TRS Fund contribution requirements to non-interconnected VoIP providers
- FCC rulemaking now in progress



# National Broadband Plan: The Petri Dish of Reform

- Dozens of Rulemakings emerging from Congressional directive establishing National Broadband Plan has FCC poised to enact transformational regulations
  - Regulate Broadband? If so, how?
  - Declare I-VoIP a “telecommunications service” or continue ad hoc application of Title II regulations?
  - Extend same treatment to non-Interconnected VoIP and other “advanced communications services”? Or start down same ad hoc path which has befallen I-VoIP?
- Continued federal uncertainty likely for next 12-18 months

# SIP and SMS: The Next Frontiers

- Regulation and taxation of I-VoIP matured
- Next up? SMS/Text Messaging and SIP-based services?
  - USAC Request for Guidance on USF Applicability to SMS
  - SIP? It's only a matter of time
- Taxation ripple effect due to broadened definitions
  - State and local tax definitions include transmission of voice and data *regardless of medium, method or protocol*. Examples:
    - “Or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.” “. . . and Internet telephony.”
    - “The transport over the Internet or any proprietary network using the Internet protocol of telephone calls...”

# Fed Signals and State Responses

- Since 2005, FCC signaling increased tolerance of state “regulation” and taxation of VoIP, ancillary services and other advanced communications services
  - Before 2005, uncertainty, confusion and ambivalence led most states to shy away from subjecting VoIP to communications taxes
  - FCC’s Nov. 2004 [Vonage Preemption Order](#) explicitly refrained from preempting state and local taxing authority, thus clearing path
  - Today, vast majority of states apply relatively equal taxation
    - Particularly true of Interconnected VoIP and “ancillary” services
    - Increasingly true of non-Interconnected VoIP and other “advanced” communications due to widespread use of “regardless of protocol” verbiage

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Administration of tax reporting and remittance\*

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# Contact Us for More Information

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