

LOBBY TALK

Finding a Voice on the Internet

BY MARK WALSH

Earlier this year, Netizens successfully banded together to oppose the Communications Decency Act, which threatened what many consider the heart and soul of the Internet: free speech.

More quietly, Internet forces this spring rallied against a proposal to curtail an area of emerging importance to the future of the Net: free phone calls.

Both efforts underscore the anti-regulatory spirit among Net users. But while the indecency-legislation fight sparked a grass-roots lobbying and litigation effort (the act was struck down in June by a special panel in Philadelphia and is on appeal to the U.S. Supreme Court), the latest fight over the future of the Internet is likely to be waged primarily by multibillion-dollar corporations with commercial stakes in the outcome.

The issue ignited March 4 when the America's Carriers Telecommunications Association, a group of 130 small long-distance-carrier resellers, petitioned the Federal Communications Commission to block the sale of "Internet phone" software to make long distance calls.

ACTA complained that companies selling the so-called voice-over-the-Internet software are illegally giving consumers a free ride on long distance calls by allowing them to circumvent local-exchange access charges and other fees that traditional telecommunications carriers must cough up under FCC rules.

The petition asked the FCC "to issue a declaratory ruling confirming its authority over interstate and international telecommunications services over the Internet."

Opponents of the ACTA petition include Internet access providers, software makers, and big long distance carriers, who have launched their own Internet services. They attacked it as an unnecessary intrusion into the largely unfettered environment that has allowed the Internet to flourish. To help combat ACTA's initiative, a dozen Internet software makers, including VocalTec Inc. and the VDONet Corp., responded by forming their own lobby alliance—the Voice on the Net coalition.

Backed by such heavyweights as Netscape Communications Inc., Microsoft Corp., and long distance carrier Sprint Corp., the Net

industry's efforts to thwart a government clampdown again appear to be paying off. In a recent speech, FCC Chief of Staff Blair Levin left little doubt about where the agency stands on Net telephony. "I am strongly inclined to believe that the right answer at this time is not to place restrictions on software providers, or to subject Internet telephony to the same rules that apply to conventional circuit-switched voice carriers," Blair told conferees at the INET '96 conference in Montreal on June 28. "We shouldn't be looking for ways to subject new technologies to old rules."

But ACTA's counsel, Charles Helein of McLean, Va.'s, Helein & Associates, says he isn't giving up hope of seeing some relief for long distance carriers. He suggests that the FCC is simply playing politics.

"This is an election year, and the Netscapes and Microsofts have a pretty powerful lobby," says Helein. "I think the commission will do something intelligent, but we won't see any movement until after the election."

Even if ACTA's petition fails, it heralds future battles over regulation of the increasing tide of voice and data traffic on the Net. Some of those issues are likely to be played out as the FCC devises new rules or phases out old ones to implement the reforms of the 1996 Telecommunications Act.

One key question, touched on by ACTA's petition, is whether Internet access providers, from the AT&T Corp. to America Online Inc., should be exempt from paying local access charges for data transmissions over their networks.

Pacific Bell senior counsel Jeffrey Thomas says that ACTA targeted the wrong group—voice-on-the-Internet software makers instead of Internet access providers—in determining who should ante up to do business on the Net.

He points out that whether someone is sending a voice or data transmission on the Net, regional Bell operating companies are providing the local switching service without collecting an access fee.

"Virtually free service is being provided over the Internet, and that's a legitimate concern," says Thomas.

Without such fees, he explains, the local Bell will be able to provide the network capacity to meet burgeoning demand from Net users. The crux of the problem as Pacific Bell sees it is the telecom law's exemption for "enhanced service providers," or those services involving computer transmissions.

Where once the exemption, adopted in 1983, was justified as a way to promote new technologies, it now seems quaint when heavyweights like AT&T are offering free Internet access to its 80 million customers.

"It is becoming obvious that the Internet will carry significant amounts of traffic in direct competition with traditional voice, fax and data transmission. The [enhanced service provider] policies look increasingly like loopholes in the commission's rules governing interexchange services," states a Pacific Bell brief filed with the FCC in response to the ACTA petition.

Pacific Bell and other regional Bells have been pushing the FCC to lift the exemption, but the big carriers like AT&T, MCI, and Sprint aren't on the same wavelength.

"First of all, access charges we pay for [conventional] voice calls now, we feel are exorbitant," says AT&T spokeswoman Kathi Oram. "Until such time as access charges are reduced to reflect actual cost, we don't believe we should pay access charges on data."

A large chunk of access rates paid by the long distance carriers to the regional Bells goes toward supporting universal service—providing local telephone service in high-cost areas, such as rural regions. But the long distance companies claim these rates

are far higher than necessary and the revenues are being diverted to other uses within the Baby Bells.

The FCC last week issued about 700 pages of new interconnection rules mandated by the Telecom Act, which allows long distance carriers to compete in local phone markets. But the commission refrained from altering the access charge scheme until it completes proceedings on universal service and access-charge reform.

New rules identifying which telecommunications services should be considered universal will be issued by May 1997. FCC

General Counsel William Kennard says the agency plans to hold rule-making proceedings on access-charge reform in early 1997 and "will take a comprehensive look at the access-charge regime."

The Baby Bells fear that the commission may ultimately reduce access charges as much as a total of \$10 billion annually from their revenues—about one-third of the \$30 billion that the Baby Bells now get.

If access charges are brought in line with costs, then it may be reasonable to



FCC's Blair Levin seems to side with Net forces.

forgo the exemption and kick in to help the regional Bells keep up with the unexpected demands on their networks, says Oram.

Roger Golden, a partner at the D.C. office of Palo Alto, Calif.'s, Fenwick & West and a regulatory and legislative specialist, says that access reform may come up during proceedings on universal service. If the Internet is deemed to be a universal service, then it would more likely be subject to greater regulation, including contributing to help support universal service.

But Golden asks, "How do you keep track of communications when the current technology makes it difficult to trace calls, whether voice or data?"

Netscape outside counsel Glenn Manishin, a partner at D.C.'s Blumenfeld & Cohen, agrees that the Internet "is going to be part of the information literacy of the 21st century." But he says it would be wrong to hobble the growth of the Internet with a new set of restrictions while it is still in its relative infancy.

"The government should keep hands off for now," says Manishin.

Manishin adds that the FCC first has to develop a new regulatory scheme for traditional telecommunication services under the Telecom Act before tackling the evolving world of communications in cyberspace.

Says Manishin: "Until you fix the system with POTS [plain old telephone service], you can't start dealing with the Internet."

—Mark Walsh is a San Jose, Calif., reporter for The Recorder, an affiliate of Legal Times.

Cyber Compliance

This week, as thousands of law firms and trade associations file updates to their lobbying disclosure forms, Richard Barnes and Fred Hutchison are among the few lobbyists taking pleasure in the paperwork.

Glenn Manishin of D.C.'s Blumenfeld & Cohen (below), an outside counsel for Netscape, says it would be inappropriate to subject the Internet to regulatory restrictions while it is still in its infancy.

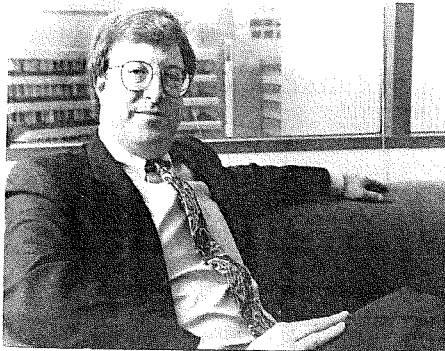


Photo by Bob D'Amico