

Iowa Association of Municipal Utilities

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**Legal Solutions For Successful
Communications Initiatives**

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Part 2

Federal Legal Issues



Overview

- Authority Issues – for Iowa, now mainly a matter of state and local law
- Public Involvement Models and Structures
- Federal Classifications and Implications
 - Key Definitions
 - Regulatory Effects
- Other Significant Legal Issues

Involvement Models

- **Local “hats”**: user, facilitator, aggregator, lessor, seller
- **Services**: internal and/or external voice, video, data, security, etc.
- **Role**: self-only, infrastructure-only (e.g., poles, dark fiber, towers), wholesale-only, retail, mixed ...
- **Organizational Structures**:
 - branch of local government
 - board, authority or commission (~independence?)
 - “partnerships” -- public/public or public/private
 - co-ops (§ 501(c)(12), non-profits (§ 501(c)(3)), etc.

The Federal Communications Act

“Stove Pipe” Structure

- Title II – Common Carriers
- Title III – Wireless
- Title VI – Cable Service
- “Information Services” / “Enhanced Services”
- IP-Enabled Services (e.g., VoIP, IPTV, etc.)
- Other emerging services

“Telecommunications”

“[T]he 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.”

47 U.S.C. § 153(43)

“Telecommunications Service”

“[T]he offering of telecommunications **for a fee directly to the public**, or to such classes of users as to be effectively available directly to the public, **regardless of the facilities used.**”

47 U.S.C. § 153(46)

“Cable Service”

“The **one-way** transmission to **subscribers** of (i) video **programming**, or (ii) other programming service, and subscriber interaction, if any, which is required for the selection **or use** of such video programming or other programming service.”

47 U.S.C. § 602(6)

“Information Service”

“The offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...”

47 U.S.C. § 153(20)

IP-Enabled Services?

- VoIP

- *Pulver.Com Order* – free, computer-to-computer => Info. service
- *AT&T Order* – phone-to-phone, IP-upstream => telecom. service
- *Vonage Order* – fee-based computer-to-computer **or** computer-to-phone => preempts state law; no classification

- IPTV

- *Walnut Creek* – AT&T's Project Lightspeed => ducked classification

- FCC IP-Enabled docket

- classification, regulatory treatment
- Preemption, USF, E911, CALEA, Consumer protections, Taxes

Implications – Telecom Services

- Telecom Act allocated benefits and burdens via definition of “telecommunications service”
 - **Burdens:** common carrier rules (e.g., registration, reporting, customer service, complaints, etc.), interconnection, handicapped persons, universal service contributions, pole attachments, privacy, etc.
 - **Benefits:** Interconnection, collocation, wholesale unbundled network elements, pole attachments, universal service subsidies, etc.

Implications – Cable Services

- Compliance with Title VI of Communications Act and Copyright Act
 - **Burdens:** (e.g., local cable franchise (not mandatory but advisable), federal registration, reporting, customer service standards, technical standards (e.g., signal leakage); reporting and compliance with Copyright Act
 - **Benefits:** No common carrier requirements; no universal service payments, but some subsidies available; access to pole attachments, preferred rates

Implications – Information Services

- No federal or state requirements
 - **Burdens:** None
 - **Benefits:** None
 - **Problems:** Access to pole attachments

Application of Definitions

- Intra-governmental provisioning
- Infrastructure leasing (e.g., poles, dark fiber)
- Point-to-point data (“lit” or “dim” fiber)
- Data transmission + Information services
- Telephony (“traditional” v. VoIP)
- Video (“traditional cable” v. P2P Microwave v. SMATV v. IPTV)
- Emerging services (interactive, etc.)

The Future

- National or state cable franchising a strong possibility
 - Localities likely to retain significant rights
 - Franchise fees – What is “gross revenue”?
 - Public, Educational, and Governmental access
 - Customer service standards
 - Right-of-way management
 - Buildout requirements?
- Minimal regulation, if any, of telecom and broadband