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AT&T vs. Iowa

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Where to start? Shall we go back to ferry fares over the Tigris? Or jump forward to the telegraph? Or the invention of the telephone? Or the '34 Act? And the '38 amendments? Or Carterfone? Or Computer II, or III, or the MFJ?

Let's not. Chris is correct that for a complete understanding of what's going on with ATT v. Iowa one may need to be steeped in communications regulatory history and be able to toss around UNEs and NIDs and CLECs and ILECs and collo and axs charges and reciprocal comparisons and USF, and a few other acronyms.

However, all we need to know for present purposes is that for at least fifteen years the FCC has been considering whether to regulate the Internet. They didn't know it was the Internet then, and neither did we, but they've had it on their agenda from time to time ever since. Why? Because arguably there is a "wire communications" or (as of the '96 Act) a "telecommunications" element to the Net. And that's FCC jurisdictional, if it's interstate.

Of course, the Internet involves the PSTN (Public Switched Telephone Network) and then there is voice-over-IP, and you've all heard the scare about ISPs being liable for access charges (per minute charges to support USF, among other things). Lately there is the debate over reciprocal compensation for calls to ISPs, with whose arcane and rather stupid details I'll not bore you. Suffice to say the Net is involved because ISPs are involved.

In connection with the latter the FCC recently ruled in a little GTE tariff case that it had jurisdiction over DSL, of which you have probably heard. This is thought by many, with good reason, to presage a subsequent ruling that calls to ISPs are interstate traffic and thus subject to the FCC.

Now the Supreme court comes along and reasons that the regulatory terms and provisions of the '96 Act are subsumed within the FCC's general regulatory power in the '34 Act, a surprise to some of us, if not most of us who follow these issues. What ever happened to the specific statutory language controls the general, especially when Scalia's writing the opinion? Well, I don't know:

Anyhow it seems even more likely now that the commission will eventually conclude that your call to your ISP is subject to its jurisdiction. Where then does the ISP fit in this

telecommunications process? As Bob Cannon points out the FCC is a categorically-organized agency, and the temptation to jam the ISPs, and thus your service, into one of those categories will be, IMHO, virtually irresistible. The pressure to support the USF (Universal Service Fund, the principal source of subsidy to telephone rates) is enormous and ISP traffic as a source thereof is oh so tempting.

And this is by now means a non-political agency. Their rules on ex parte contacts make FERC look like the Supreme Court. This bunch has been thinking about regulating the Net for more years than we have known there was one, and now the Court has given them a boost to the effect that "when the statute's ambiguous, trust the FCC." There are few, few statutes on the books more ambiguous or self-contradictory than the Telcomm Act of 1996.

Now, it will be said that the agency has for two decades resisted the urge to reach out to the Net, and has even today a Commissioner assured us that they have no intention of regulating the Internet.

Read my lips, no new taxes. I never had sexual relations with that woman, Ms. Lewinsky. Tonight, the USS Maddox was attacked by torpedoes of the North Vietnamese. Peace in our time.

-MacN-