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## Playing by the FCC's Rules? Google Voice Comes Under Fire

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The Federal Communications Commission (FCC) recently opened an inquiry into Google Voice, the popular messaging and call service offered by Google, and Google's practice of blocking certain calls. The inquiry was prompted by complaints from AT&T to the FCC accusing Google of unfairly blocking calls to certain numbers in rural areas where local phone companies charge high connections fees. A bipartisan group of 20 Congressional members also submitted a letter asking the FCC to open an investigation into Google's voice application. Google Voice allows users to sign up for a new, single phone number that routes incoming calls to cellular, work or home phones on services the user already has. It also provides users with free domestic long distance calls, low rates for international calls and free add-on services such as conference calling and voicemail transcription. As of October 28, Google estimated that 1.419 million people used Google Voice, of which 570,000 use the service seven days a weeks. (These figures were unintentionally revealed by Google in its response letter to the FCC by way of an improperly formatted PDF that has since been reformatted with redactions). The FCC's inquiry involves Google's call-blocking policy. In June, Google began noticing extremely high-cost calls to a concentrated number of rural destinations which generated vastly disproportionate costs. Its internal investigations, using data filters to sort out call patterns, revealed that the top 10 telephone prefixes (the area code plus the first three digits of a seven digit number) to US destinations generated more than 160 times the expected amount and accounted for 26.2 percent of its monthly U.S. costs. By August, Google began restricting calls to certain high-cost destinations. [Google's response letter to the FCC](#) describes the Google Voice service and explains Google's investigation into and rationale behind its call blocking policy. It claims that its engineers developed a "tailored solution" so that Google Voice currently restricts calls to fewer than 100 specific phone numbers, a practice which Google's counsel believes is necessary to "[prevent these schemes from exploiting the free nature of Google Voice.](#)" While Google has only recently begun blocking costly calls, the practice whereby [rural telecoms charge long distance carriers exorbitant rates](#) to connect and terminate calls from their networks is not new. In many cases these telecoms partner and share revenue with adult chat service, conference calling centers and others to attract traffic to their networks. AT&T, and other long-distance carriers, have long complained and sued over these so-called traffic pumping schemes. However, as common carriers subject to FCC regulations, they were banned in 2007 from blocking calls and are required to deliver phone calls without discrimination to all numbers dialed. AT&T's complaint to the FCC is rooted in its contention that Google's call blocking policy is enabling it to

dance around this ban that applies to other carriers. However, this recent skirmish over Google Voice is really part of a larger debate currently playing out in the regulatory stage over "network neutrality" rules being reexamined by the FCC and AT&T has framed Google's actions as part of the debate. In its Statement on Google Voice and Net Neutrality, AT&T stated that "By openly flaunting the call blocking celebex without prescription prohibition that applies to its competitors, Google is acting in a manner inconsistent with the spirit, if not the letter, of the FCC's fourth principle contained in its Internet Policy Statement." The FCC's fourth principle on net neutrality states that "consumers are entitled to competition among network providers, applications, and service providers, and content providers." Some members of Congress are also concerned about the adverse impact on the market and support for universal service if Google is allowed to operate its telephone services outside of the rules that govern carriers. As they stated in their letter to the FCC "[I]t is our opinion that a company should not be able to evade compliance with important principles of access and competition set forth by the FCC by simply self-declaring it is not subject to them without further investigation." Google responded to these charges by stating that "The FCC's open Internet principles apply only to the behavior of broadband carriers – not the creators of Web-based software applications." Google claims that AT&T is attempting to blur the distinction between Google Voice and traditional phone service but maintains that web applications like Google Voice and Skype shouldn't be treated like traditional phone service. Google distinguishes Google Voice from traditional phone carriers by explaining that unlike traditional carriers which charge users for their services, Google Voice is a free, web-based software application similar to e-mail rather than a telecom service designed to "supplement and enhance existing phone lines, not replace them" and should therefore be exempt from common carrier rules. The service is currently available to a limited number of users on an invitation-only basis. Users are still required to have an existing land or wireless line in order to use Google Voice and are still able to make outbound calls on any other phone device. Therefore, because Google Voice is a software application, not a telephone company, Google believes that its service is not and should not be subject to common carrier laws or the FCC's jurisdiction. Distinctions aside, with nearly 1.5 million users, the increasingly popular service is viewed by some as running a rival service to traditional phone companies. The heart of the FCC's inquiry is whether Google Voice is a telecom service or an online software application and whether this distinction really matters. How different is a call traveling directly over carrier lines from one that goes through software applications? As of now, the difference appears to be the ability to block less than 100 calls, an option not available to AT&T and other carriers. Whether the FCC agrees with Google's characterization of its service and its interpretation of the current open Internet principles may have a dramatic impact on both the telecom and internet marketplaces. And the FCC's newly proposed rules on network neutrality may also play a prominent role in this debate. We will continue to monitor the proceedings and keep you posted.

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