

Regulatory framework for VoIP in Switzerland

The following describes the current and future regulatory framework conditions in Switzerland with respect to Internet telephony by means of Voice over Internet-Protocol (VoIP).

1. Current regulatory framework

1.1 VoIP as a telecommunications service

The Swiss Telecommunications Act (STA) takes a technology-neutral approach and applies it to all telecommunications services, irrespective of the technical means used for their provision.

A telecommunications service within the meaning of the STA is defined as a “transmission of information for third parties using telecommunications technology”. VoIP falls within this definition and is, therefore, regulated by the STA as well as the Swiss Ordinance on Telecommunications Services (SOTS).

However, the STA and the SOTS contain no specific provisions with regard to VoIP. This means that the general principles applying to other telecommunications services also apply to VoIP. The following rights and duties therefore apply to any provider of VoIP services:

- a) Duty to possess a license or duty of notification, and duty to pay charges in relation to statutory administration and licence fees,
- b) Interconnection entitlement with respect to market-dominant telecommunications service providers offering universal services,
- c) Duty of interconnection if the provider has a market-dominant position for the service in question,
- d) Duty to grant all providers of services falling within the ambit of universal services access to its directories and to guarantee location identification in respect of the callers,
- e) As a basic principle, entitlement to allocation of addressing elements,
- f) Duty to grant number portability between telecommunications service providers,
- g) Duty to preserve telecommunications confidentiality and to guarantee telecommunications traffic monitoring within the framework of the applicable regulations,
- h) Duty to assist in dealing with extraordinary situations,
- i) Entitlement to assert rights of expropriation and joint use,
- j) Duty to provide information.

1.2 VoIP as a public telephony service

According to the Swiss telecommunications regulator OFCOM (Federal Office of Communications), VoIP qualifies as a public telephony service if it fulfils two main criteria, namely:

- a) freedom of connection, i.e. the guarantee of transmission of speech to any connection point defined by the subscriber's number as issued according to numbering plan E.164 of the ITU, and
- b) speech transmission in real time.

The detailed technical requirements for defining real time speech transmission, in particular the definition of values for timing delay and quality in transmission, are not yet fixed. Until such values are fixed, OFCOM will proceed on the basis of case-by-case examination.

Providers of a VoIP service considered to constitute a public telephony service enjoy certain rights. In particular,

- they may obtain a Carrier Selection Code (CSC) and be able to be selected as an alternative carrier,
- they benefit from number portability as carriers of recipient telecommunications services.

Furthermore, VoIP service providers who qualify as public telephony service providers also have, in contrast to ordinary telecommunications service providers, a number of additional obligations under the telecommunications regulatory regime, in particular the obligations:

- to route emergency calls and caller identification to the alarm centres of the competent services,
- to grant access to the directory data on its subscribers, and
- to assure interoperability between users of the public telephony service.

2. Recent regulatory activities and open issues

Since 2002, OFCOM has been investigating the impact of VoIP technology and the regulatory questions associated therewith.

In 2003, OFCOM set up a VoIP working group, incorporating parties who were interested, in order to define quality criteria for real-time voice transmission as a condition for public telephony service and also the rights and duties connected with the provision of a public telephony service.

For the first phase of regulation, in which, according to OFCOM, a swift adjustment of the statutory basis is to be sought, the VoIP working group authored a document entitled "VoIP Functional Standards". In this document it is concluded, amongst other things, that the quality criteria for real-time voice transmission should in the first instance be gauged against the expectations of the users and their satisfaction with the service, and a legal definition of transmission quality is therefore not essential, at least in this initial phase.

According to OFCOM, the second phase of VoIP regulation should commence in 2008 in tandem with the award of the concession for universal services and should usher in comprehensive adjustment of the legislation to take account of the new technology.

According to OFCOM and the VoIP working group, the following regulatory issues are currently of most concern:

- a) routing and identification of caller's location of emergency calls
- b) free choice of service provider (carrier selection)
- c) legal interception
- d) interconnection
- e) access to number resources
- f) number portability
- g) access to services for disabled users
- h) blocking devices (090x numbers)
- i) directory services.

The greatest challenge on this list is access to the emergency numbers (112, 117, 118, 144, 1414), which a public telephone service provider using VoIP technology must guarantee under the terms of Art. 28 SOTS, and in particular identification of caller's location.

Location identification of calls at any time using VoIP technology is currently not technically possible, since a VoIP user can plug his or her machine into any broadband connection (so-called nomadic usage) but emergency calls using VoIP are always routed to the emergency control centre designated as responsible for such calls in the contract between the user and his or her VoIP provider, even if the caller is at a location that is not covered by this control centre (for instance, when abroad).

A provisional solution therefore came into effect on 1 August 2005 (amendment to the SOTS) whereby a provider must inform users of this risk inherent in the nomadic use of VoIP and the users must explicitly confirm their cognisance thereof. In one to two years it is expected that there will be a technical solution allowing emergency calls always to be routed to the correct emergency control centre even when VoIP technology is being used.

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