



September 2, 2016

Re: Comments on Proposed VoIP Legislation

Dear Mr. Cusick:

The Voice on the Net Coalition (“VON”)¹ writes in support of legislation introduced in the Idaho Legislature that would exempt Voice over Internet Protocol (“VoIP”) from regulation by the Idaho Public Utilities Commission (“PUC”). Such legislation would align Idaho with federal law and promote a competitive VoIP market.

Federal Law Preempts State Regulation of VoIP

The legislation aligns with federal law because it effectively preempts regulation of VoIP by the PUC. The FCC has recognized a strong federal interest in ensuring that regulation does not hinder the growth of the Internet and the services provided over it, including VoIP and other IP-communications. In the *Vonage Preemption Order*, the FCC preempted the application of Minnesota’s “traditional ‘telephone company’ regulations” to Vonage’s Digital Voice service because it was impossible to separate the intrastate and interstate components and the state regulation of the intrastate component interfered with valid federal rules and policies.²

The *Vonage Preemption Order* extended to both nomadic and non-nomadic VoIP offerings. The FCC noted that the same integrated capabilities and features were available for most, if not all, IP-based services, including those offered by facilities-based providers.³ The FCC added, “Accordingly, to the extent other entities, such as cable companies, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order.”⁴ Twelve years later, this landmark decision remains largely undisturbed and has led to substantial growth in the adoption of VoIP and other IP services. As a result of the *Vonage Preemption Order*, there is a single national policy for IP communications and state regulation of VoIP providers is preempted by federal law.

¹ The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. VON Coalition members are developing and delivering voice and other communications applications that may be used over the Internet. For more information, see www.von.org.

² Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004), *petitions for review denied*, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

³ 19 FCC Rcd 22404 n.93.

⁴ *Id.* ¶ 32.

VoIP is Classified as an Information Service Under Federal Law

The legislation also aligns with federal law, which classifies VoIP as an information service, because it expressly excludes VoIP from the definition of “telecommunication service.” Under federal law, information services are exempt from telecommunications regulation, which includes state regulation. While the FCC has imposed specific regulations related to consumer protection and public safety on interconnected VoIP providers, it has not classified interconnected VoIP as a traditional telecommunications service. These specific obligations include requirements to provide Enhanced 911 services; make the service accessible by law enforcement; contribute to the Federal Universal Service and Telecommunications Relay Service Funds; protect customer proprietary network information, and provide customers notice before discontinuing service.⁵ In none of these actions, however, has the FCC granted the states authority to impose any other specific licensing or entry obligations on interconnected VoIP providers, other than state USF contributions and the payment of state and local fees to support the 911 network.⁶

VoIP Continues to Grow in the Absence of State Regulation

VoIP has prospered under the FCC’s light touch regulatory structure. According to an FCC report released in August 2016, VoIP subscriptions nationally grew at an annual rate of 13 percent between June 2012 and June 2015.⁷ Specifically, subscriptions grew from approximately 40 million in June 2012, to 57 million in June 2015. Such growth suggests that the absence of state regulation has helped produce a competitive VoIP market, with no adverse consequences to consumers. VoIP subscribers are also broadband subscribers; thus, increasing adoption of broadband is an additional benefit of encouraging VoIP providers to serve Idaho residents and businesses.

⁵ First Report and Order and Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 05-116, (rel. Jun. 3, 2005) (“*VoIP 911 Order*”); Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, FCC 06-94 (rel. Jun. 27, 2006) (imposing USF requirements); Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 07-22 (rel. Apr. 2, 2007) (imposing CPNI requirements); Report and Order, WC Docket No. 04-36, FCC 09-40 (May 13, 2009) (imposing discontinuance requirements).

⁶ See Footnote 5, *infra.*, and *VoIP 911 Order* ¶ 52.

⁷ *Voice Telephone Services: Status as of June 30, 2015*, FCC Wireline Competition Bureau at 2 (2016), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0805/DOC-340665A1.pdf.

31 States have Codified Regulatory Safe Harbors

At least 31 states and the District of Columbia have already codified regulatory “safe harbors” for VoIP or IP-enabled communications.⁸ These states have recognized that there is no benefit to imposing legacy telephone regulations on VoIP, and that investment will be lost and competition restrained if regulatory ambiguities are allowed to remain in place. No state has repealed such laws once enacted. The Idaho Legislature should consider the actions of these states and create a safe harbor of its own.

Thank you for the opportunity to provide these comments and to participate in this proceeding. Please contact me if you have any questions.

Respectfully submitted,

/s/

Glenn S. Richards
Executive Director

⁸ Alabama, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming.