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Mr. Joseph W. Cusick
Idaho Public Utilities Commission
472 W. Washington Street
Boise, ID 83702

Re: Legislative Preemption of VoIP/IP Service Regulation

Dear Mr. Cusick:

Pursuant to your October 6, 2016 letter, Verizon offers these comments in support of the Idaho legislature codifying the state's existing "hands-off" approach to the regulation of Voice over Internet Protocol ("VoIP") and other IP-enabled services. AT&T and the VON Coalition have already capably detailed the policy bases for doing so and Verizon agrees with their reasoning.

However, Verizon does not support the approach proposed by some commenters, which would entangle statutory memorialization of the exemption from regulation of VoIP/IP-enabled services with an array of other policy issues. This contravenes the desire for limited review expressed by Senator Hill and Representative Bedke in their March 28, 2016 letter to Commission Chair Kjellander, which noted that past legislative consideration has "extended beyond the narrow question of whether preemption should be enacted and what form it should take." Some commenters have gone beyond this scope, urging tying the codification of preemption to reform of the Idaho Universal Service Fund and Idaho Telecommunications Service Assistance Program; imposition of an array of new fees on VoIP services; and assertion of Commission jurisdiction over IP interconnection.¹ See, e.g., Comments of CenturyLink, T-Mobile and Level 3. These proposed actions would increase the costs of providing VoIP services in Idaho, resulting in higher rates for customers and potentially driving broadband investment to other states that have already codified their "hands-off" approach to VoIP, with the attendant lower costs of doing business there.

¹ The FCC has solicited comment on whether the federal Telecommunications Act requires IP interconnection (and if so, under what provisions thereof), and has made clear that it has not decided the issue yet. In an October 2015 brief to the D.C. Circuit Court of Appeals, the FCC reiterated that "[i]t is unsettled whether VoIP providers themselves have a right to interconnection under section 251 of the Communications Act."¹ See FCC's "Brief for Respondents," *AT&T v FCC*, Case No. 15-1059 (D.C. Cir., Oct. 5, 2015) at p. 4. And in a 2015 numbering resources order, the FCC "decline[d] to mandate [IP VoIP interconnection] arrangements, as the Commission currently is considering the appropriate policy framework for VoIP interconnection in pending proceedings." Report and Order, *Numbering Policies for Modern Communications*, 30 FCC Rcd 6839, ¶ 50 (2015).

For these reasons, Verizon cannot support AT&T's proposed 2016 legislation as presently drafted. However, Verizon could support it if the proposed revisions to Idaho Code 62-610 and the entirety of proposed new Idaho Code 62-618A(5) are stricken. It is inappropriate to impose a bevy of new regulatory fees on VoIP services under the guise of exempting it from regulation, and doing so would discourage the very investment that the legislation aims to incent. Moreover, by permitting VoIP providers to draw USF subsidies for providing services that are unsubsidized today, the bill would encourage waste and unnecessarily impose higher USF fees on Idaho consumers.

Verizon also offers a few comments on the draft report:

- **The Vonage Order.** The draft report does not discuss the FCC's seminal *Vonage Order*,² which preempted the application of state telecommunications regulations to VoIP services. As the VON Coalition noted (VON Comments at 1), this order precludes Commission regulation of VoIP services and should be discussed in the report.

- **VoIP Is an Information Service Under Federal Law, Preventing State Regulation.** The draft report does not discuss that three federal courts have found that VoIP's integrated capabilities and features make it an information service under 47 U.S.C. § 153(24) that is not subject to state regulation.³ Specifically, 47 U.S.C. § 153(24) provides that "[t]he term 'information service' means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications," but not the use of such capabilities "for the management, control, or operation of a telecommunications system or the management of a telecommunications service." In allowing users to generate, acquire, store, transform, process, retrieve, utilize or make information available via telecommunications, VoIP services offer precisely the sorts of capabilities that are the hallmarks of information services.

For example, VoIP offerings provide users with a suite of such capabilities and features, including, but not limited to, any-distance calling capability, "multidirectional voice functionality" and "online account and voicemail management." *Vonage Order* at ¶ 7. Using the technological foundation of the Internet, VoIP users access their accounts on-line, enabling them to exercise real-time control over their service and allowing them to configure a variety of service features and options to interact with voicemail features and functions beyond merely using their VoIP service to place or receive voice calls. Users can, among

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

³ See, e.g., *PAETEC Communications, Inc. v. CommPartners, LLC*, Civ. A. No. 08-0397(JR), 2010 WL 1767193, *2 (D.D.C. Feb. 18, 2010) ("*PAETEC*"); *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 461 F. Supp.2d 1055, 1081-83 (E.D. Mo. 2006), *aff'd*, 530 F.3d 676 (8th Cir. 2008) ("*Southwestern Bell*"), *cert. denied*, 129 S.Ct. 971 (2009); *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n*, 290 F. Supp. 2d 993, 999-1001 (D. Minn. 2003), *aff'd*, 394 F.3d 568 (8th Cir. 2004) ("*Vonage I*").

other things, play back voicemail messages on their computers via sound files and/or forward those sound files as e-mail attachments; forward their calls to multiple other numbers simultaneously; return a phone call with the click of a mouse, and so on. For example, a VoIP subscriber can log onto her laptop and enable “simultaneous ring” capability so that calls to her home number in Idaho ring simultaneously on her cell phone so she can answer them while on summer vacation on the east coast, with the associated data packets traversing through multiple out-of-state servers. These are information services described in 47 U.S.C. § 153(24), not telecommunications services. Interconnected VoIP services are also information services for the *independent* reason that they offer customers the *capability*⁴ of a net protocol conversion from IP to Time Division Multiplexing (“TDM”) or from TDM to IP.

- **The FCC Defines Interconnected VoIP as a Service, Not a Technology.** The draft report appropriately acknowledges that non-interconnected VoIP is an unregulated service that does not enable originating or terminating calls to the Public Switched Telephone Network (“PSTN”), but asserts (citing the FCC and NECA) that “the almost universally accepted definition of VoIP is that it is a technology, not a unique service.” Draft Report at 6. Because non-interconnected VoIP not at issue, the sole focus of the Commission’s report to the Legislature is *interconnected* VoIP, which the FCC has indeed defined as a “service,” not a “technology.” See 47 C.F.R. § 9.3 (defining “interconnected VoIP service”). Similarly, the dozens of states that have already memorialized their preemption of regulation of VoIP and other IP-enabled services refer to them as “services,” not “technologies.”
- **Idaho’s Definition of “Telecommunications Service” Does Not Extend to VoIP.** The definitions of “telecommunications service” in Idaho Code §§ 61-121(2) and 62-603(13) refer to “switched” services. VoIP services are not switched, and are instead transmitted via IP. To the extent the draft report implies that VoIP is a “telecommunications service” under Idaho law (see, e.g., Draft Report at 6), it should be revised.
- **Regulation of Services Provided Over a Broadband Connection Risks Disincenting Investment in Broadband.** The draft report asserts, without citation, that VoIP does not incent investment; broadband does. Draft Report at 6. This claim does not recognize that if services provided over a broadband connection are regulated – even if the broadband connection itself is not – the cost of providing those services increases, forcing providers either to raise their end-user rates or consider deploying broadband elsewhere, where the costs of providing services over that connection are lower. Thus, regulation of VoIP risks disincenting investment in the broadband connections over which it is provided.

Verizon appreciates the opportunity to comment, and looks forward to the Commission’s final report.

⁴ Although no net protocol conversion occurs when traffic between two VoIP customers is exchanged in IP format, the relevant fact for classification purposes is whether VoIP services include that capability.

Very truly yours,

/s/ Deborah Kuhn

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