

October 26, 2016

Via E-Mail to 6774mailbox@gmail.com

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

Re: Comments on Draft Report to Idaho Legislature Regarding Proposed VoIP Legislation

Dear Mr. Cusick:

AT&T appreciates the opportunity to submit these comments in response to your draft report to the Idaho Legislature regarding legislation that would exempt Voice over Internet Protocol (“VoIP”) and IP-enabled services from regulation by the Idaho Public Utility Commission (“PUC”).

As an initial matter, AT&T agrees with a number of points already made in the comments submitted by the VON Coalition and Verizon:

- **VoIP is a service and not a technology.** As Verizon discussed in its comments, VoIP is clearly an “information service” as defined by federal law which thereby preempts state regulation of those services. Although the draft report offers up what it calls the “almost universally accepted definition of VoIP [as] a technology, not a unique service” attributed to the FCC and NECA¹, it does so without citation and ignores the codified FCC definition of “interconnected VoIP service” as discussed in Verizon’s comments. It makes much more sense for Idaho to follow the example of the FCC in defining VoIP as a service. Doing so also follows the example of more than 30 other states that have defined VoIP as a service and then exempted it from state regulation.
- **Federal Law clearly prevents state regulation of VoIP and IP-enabled services.** In addition to the well-established fact that VoIP should be considered an information service which is thereby exempted from state regulation, the *Vonage Preemption Order* explicitly preempted state telecommunications regulation of VoIP services, as discussed in depth in the VON Coalition’s September 2, 2016 comments and again in its October 26, 2016 comments. Verizon also lists in footnote 3 of its comments a number of federal cases that have found that VoIP’s integrated capabilities qualify VoIP as an information service under federal law, exempting VoIP from state regulation.

¹ Neither the FCC-attributed nor the NECA-attributed definition appear with citation in the draft report. The FCC definition appears to be a lay definition borrowed from the portion of the FCC’s website devoted to its Disability Rights Office and intended for consumers. See <https://www.fcc.gov/general/voice-over-internet-protocol-voip>. Because it is neither a legal nor technical definition, it should not be used for the purposes of the report to the legislature.

- **Regulatory certainty for VoIP and IP-enabled services will promote investment.** The draft report asserts that “VoIP is not the service that will provide that [investment] incentive” and dismisses VoIP offerings as “giveaways” when offered by cable companies to residential customers, without consideration of VoIP providers who serve businesses, who are *not* cable companies, and who do not bundle VoIP with other offerings. To the contrary, as the VON Coalition comments in its October letter, “the availability of VoIP encourages broadband deployment and adoption, since VoIP cannot be provisioned without broadband access.” Moreover, as Verizon comments, the cost of providing VoIP services will necessarily increase if those services are regulated, thereby discouraging investment where there is no regulatory safe-harbor.
- **The report to the legislature should focus on “the narrow question of whether preemption should be enacted and what form it should take.”** Senate President Pro Tempore Hill and Speaker Bedke set forth a specific task in their March 28, 2016 letter, asking for a recommendation based on a “review [limited] to the question of preemption of regulation for VoIP and IP-enabled Services and the effect that action might have on the need for revision of other Idaho statutes.” In fact, the draft report not only fails to make a recommendation on the preemption question, it addresses issues raised by commenters that exceed the scope of the inquiry. As Verizon notes in its comments, tying deregulation to USF and ITSAP reform, new fees on VoIP services, and assertion of PUC jurisdiction over interconnection will simply make the provision of VoIP services in Idaho more expensive for providers and end consumers, thereby driving broadband investments to other states with regulatory safe harbors without such constrictions.

Given these points, AT&T notes that **not a single commenter is opposed to exemption of VoIP and IP-enabled services from regulation.** Based on this lack of opposition and on the arguments in favor of preemption to promote regulatory certainty thereby encouraging broadband investment, the next inquiry is how deregulation should be achieved to address concerns raised in the draft report and by the commenters.

Indeed, AT&T’s proposed 2015 legislation (“AT&T 2015 Proposal”) addresses the primary concerns of commenters regarding deregulation of VoIP and IP-enabled services:

- **VON Coalition**, whose comments were not addressed in the draft report, supports the AT&T 2015 Proposal.
- **CenturyLink** is concerned with fee parity, and the AT&T 2015 Proposal specifically provides that nothing in the bill should affect any assessment on VoIP services. See AT&T 2015 Proposal, p. 4, lines 19-45. AT&T and CenturyLink really differ on only one point, whether VoIP providers should pay commission support fees given that VoIP is not subject to PUC regulation. AT&T would be amenable to paying support fees as articulated in its proposed 2016 legislation,

where AT&T advocated for legislative provisions that would impose 911, IUSF, ITSAP/lifeline, and TRS fees on interconnected VoIP services.

- **Idaho Cable and Telecom Association** and **Charter Communications** say that although they do not necessarily support legislation that deregulates VoIP and IP-enabled services, they do not oppose the AT&T 2015 Proposal. Both ICTA and Charter think legislation that *further* deregulates VOIP services is unnecessary. In fact, the AT&T 2015 Proposal would merely codify existing deregulation and explicitly states that providers' rights and obligations under the federal law would not be modified. AT&T 2015 Proposal, p. 4, lines 36-40.
- **Level 3** and **T-Mobile** are “not concerned with deregulation generally” but are concerned with interconnection obligations under federal law. The AT&T 2015 Proposal addresses this concern by providing as follows: “Nothing in this title, or title 61, Idaho Code, shall be construed to... (3) Modify or affect the rights or obligations of any entity, including the Idaho public utilities commission, arising from 47 U.S.C. Section 214(e), 47 U.S.C. section 251 or 47 U.S.C. section 252, including a wholesale communications provider certification granted by the Idaho public utilities commission...” AT&T 2015 Proposal, p. 4, lines 27-28, 36-40. AT&T would not oppose the inclusion of the language from the North Dakota statute, as proposed by Level 3 in their comments. Under either provision, the legislation would make very clear that nothing about its terms shall change the status quo in terms of PUC or FCC jurisdiction over interconnection under the Federal Telecommunications Act.

In the discussion of “Option 1,” the draft report also asserts that the AT&T 2015 Proposal does not address a company’s obligation to interconnect with other carriers. See Draft Report, p. 5. As discussed above, the AT&T 2015 Proposal specifically states that nothing in the VoIP exemption shall modify or affect the rights or obligations of any entity, including the PUC, under Sections 251 and 252 of the Federal Telecommunications Act. AT&T 2015 Proposal, p. 4, lines 36-40. This provision completely addresses interconnection obligations by maintaining the status quo for the FCC’s and the PUC’s authority.

- **Idaho Telecom Association**, which represents the rural carriers, does not oppose legislation that would deregulate VoIP so long as state USF is not eliminated. The AT&T 2015 Proposal would not eliminate state USF.
- **Verizon** supports codification of Idaho’s “existing ‘hands-off’ approach to the regulation of [VoIP] and IP-enabled services.” Although Verizon’s comments indicated it was not in support of AT&T’s proposed 2016 legislation, Verizon advocated for the 2015 legislation at the time it was introduced.

In conclusion, AT&T’s position on the deregulation of VoIP and IP-services has been consistent – **exempting VoIP and IP-services from state regulation should be a narrow codification of the Idaho’s current practice.** Given the absence of opposition to deregulation

which would more clearly align Idaho with federal law and the policy arguments in favor of a regulatory safe harbor that would promote investment in broadband, exempting these services from state regulation is uncontroversial. It is our position that the 2015 Legislative Proposal addresses the primary concerns raised in the draft report and comments, and the remaining details can likely be settled on with further discussion. AT&T believes that the draft report should be amended to reflect these positions and to succinctly respond to the task set forth in the March 28 letter.

Please do not hesitate to contact me if you have any questions. We look forward to the final report to the legislature.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tara Thue". The signature is fluid and cursive, with the first name "Tara" and last name "Thue" clearly distinguishable.

Tara Thue
Director, External & Legislative Affairs—Idaho
AT&T