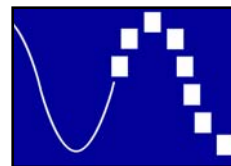


February 1, 2007



Senator Jay Scott Emler  
Chairperson, Utilities Committee  
Kansas State Capitol, Room 449N  
300 SW 10th St.  
Topeka, Kansas 66612

Dear Senator Emler:

As the nation's leading companies developing and delivering voice innovations over the Internet, we are writing in **opposition to SB 49**, which would extend Kansas Universal Service Fund (KUSF) rules to Internet communications – in violation of federal rules.

The VON Coalition believes that with the right public policies, Voice over Internet Protocol or VoIP can make talking more affordable, can be a force for increased competition, a platform for innovation, a driver for broadband deployment, and a vehicle for continued economic growth. Across the country, VoIP competition is projected to save consumers an astonishing \$100 billion over the next 5 years – three times more than federal universal service policies will do to reduce phone prices over the same period.<sup>1</sup> In fact, with the right policies VoIP competition in Kansas will deliver new competition, lower prices, and improved ways to communicate.

However, to harness the full power and potential that Internet based communication can deliver, the Kansas Legislature should refrain from attempting to regulate VoIP services pending the outcome of ongoing court proceedings addressing the federal and state regulatory role regarding VoIP. We believe, extending the KUSF to VoIP is currently prohibited under federal law. In November 2004, the FCC released the *Vonage* Order in which it preempted an order of the Minnesota Public Utilities Commission applying its traditional “telephone company” regulations to VoIP services offered by Vonage. The *Vonage* Order recognized that innovative and evolving services such as VoIP should not be subject to a patchwork of state regulations such as those proposed by the Minnesota PUC that would directly conflict with the goals of the federal Act and the FCC’s pro-competitive deregulatory rules. The FCC also made clear that preempting state regulation of VoIP services was essential to “*increase investment and innovation in [VoIP services] to the benefit of American consumers.*” The FCC has recently indicated that nothing in its subsequent decisions to apply limited federal rules to VoIP services undermines its holding in the *Vonage* Order.

In the *Vonage* Order, the FCC correctly concluded that VoIP is inherently interstate in nature and that VoIP providers have “*no means of directly or indirectly identifying the geographic location*” of the party using their service via an Internet connection. Numerous factors, such as the routing of packets, mobility of users, concurrent access to applications residing on servers in other jurisdictions, and multi-participant communications make it next to impossible, and certainly unworkable, for VoIP providers to determine whether communications are intrastate or interstate.

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<sup>1</sup> Micra report (available online at <http://www.micradc.com/news/news.html>) found that VoIP competition can save consumers \$102 billion over the next 5 years.

January 31, 2007

In view of the uncertainty around this state's authority, any effort to directly impose KUSF assessments on revenues from interconnected VoIP services will not stabilize the KUSF. Instead, it would give rise to litigation, which in turn would increase uncertainty and raise the specter of refunds and other adjustments should the action be struck down.

More and more states are coming to recognize that phone competition has lagged, kept phone prices too high for too many Americans, and VoIP can be harnessed for enormous public gain. As a result, rather than adopting state specific rules for VoIP, last year government leaders in states like California, Florida, Virginia, Georgia, Kentucky, and Colorado all took steps to prevent state regulation of VoIP in order to boost broadband deployment and harness VoIP's vast potential for lowering prices while boosting choices and features.

As VoIP technology and applications continue to evolve, additional features and services will make geographic distinctions even more irrelevant, and state regulation of "intrastate" VoIP communications that much more inappropriate.

For these reasons, SB 49 should not be adopted. However to address well meaning concerns about the future of the KUSF, the KUSF should be modernized to use a better collection mechanism that is not based on geography or intrastate revenues but which can change as technology changes such as connections or use of telephone numbers. The KCC has ample authority under existing Kansas law to adopt a fair and equitable numbers- and/or connections-based contribution approach.

VoIP can play a critical role in boosting broadband demand, putting new tools in the hands of American consumers and small businesses to enhance productivity, manage daily affairs, and enjoy leisure pursuits. We look forward to working with Kansas leaders to forge pragmatic solutions that enable consumers, businesses, and the economy to achieve the full promise and potential that VoIP can deliver.

Sincerely,

**The VON Coalition**

**About the VON Coalition:**

The Voice on the Net or VON Coalition consists of leading VoIP companies, on the cutting edge of developing and delivering voice innovations over Internet. The coalition, which includes AccessLine, AT&T, BMX, BT Americas, CallSmart, Cisco, Convedia, Covad, EarthLink, iBasis, i3 Voice and Data, Intel, Intrado, Microsoft, New Global Telecom, Openwave, Pandora Networks, PointOne, Pulver.com, Skype, Switch Business Solutions, T-Mobile USA, United Online, USA Datanet, VocalData, Veraz Networks, and Yahoo! works to advance regulatory policies that enable Americans to take advantage of the full promise and potential of VoIP. The Coalition believes that with the right public policies, Internet based voice advances can make talking more affordable, businesses more productive, jobs more plentiful, the Internet more valuable, and Americans more safe and secure. Since its inception, the VON Coalition has promoted pragmatic policy choices for unleashing VoIP's potential. <http://www.von.org>