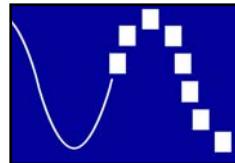


February 28, 2008

Chairman Charles Curtiss
Commerce Committee
34 Legislative Plaza
Nashville, TN 37243-0143



The VON Coalition

Dear Chairman Curtiss:

As the nation's leading companies developing and delivering voice innovations over the Internet, we are writing in **opposition to H.B. 4180 and its companion S.B. 4126** which extend Tennessee's telecommunications rules to Internet communications – in violation of federal rules.

Voice over Internet Protocol (VoIP) technologies can be a force for increased competition, a platform for innovation, a driver for broadband deployment, and a vehicle for continued economic growth. In fact, with the right policies VoIP competition can save Tennessee consumers an astounding \$2.2 billion over the next 5 years¹ – putting real money back into consumers' pockets through the power of competition at a time when families really need it.

However these bills would not only stall and stifle these vast consumer benefits, they run counter to federal policy which seeks to promote competition, investment and innovation.

- First, applying state rules to VoIP, as these bills contemplate, is strictly prohibited under federal law. In March, the 8th Circuit Court of Appeals affirmed the FCC's Vonage Jurisdictional Order, which preempted state regulation of VoIP services. The Vonage Jurisdictional Order recognized that innovative and evolving services such as VoIP cannot be subject to a patchwork of regulations 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." Thus, state legislation applying intrastate telecommunication regulation to VoIP is contrary to the FCC's and the court's decisions. The language in Section 16 does not get around the facts surrounding federal jurisdiction.
- Second, applying access charges to Internet communication, in violation of FCC rules, would also stifle consumer benefits and slow broadband adoption in Tennessee. Pursuant to the FCC's compensation rules, VoIP providers have not been subject to access charges, but instead have paid cost-based rates for termination of their customer's communications. Applying the access charges regime to innovative VoIP services is unnecessary because incumbent phone companies are already fully compensated for their costs when Internet phone calls are terminated on their networks. However, this legislation would fundamentally alter the economic relationship between information and telecommunications service providers by imposing access charges on providers that, heretofore, have purchased telecommunications services as end-users and have built successful business models doing so. Such a drastic change would result in artificially higher prices being imposed on broadband originated traffic and broadband consumers

¹ Micra report (available online at http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf) found that VoIP competition can save consumers in Tennessee \$2,275,697,326 over the next 5 years.

which would negatively impact broadband deployment overall. Applying this universally recognized broken system to new innovations would likely mean that consumers and business users could miss out on the new services, increased choices and lower prices that VoIP can deliver. There simply is no reason for such a rate-raising, growth-sapping, innovation-reducing policy change.

- Third, section 16(b) require new technologies to be retrofitted with expensive legacy network solutions in a way that would stifle innovation, impede technology investment, and slow the transition to broadband communications. Specifically, it would require technology be developed to identify the “point of origin” of Interconnected VoIP traffic. However, as the FCC has previously found, Interconnected VoIP services have “no means of directly or indirectly identifying the geographic location of a ... subscriber.” In Minnesota Public Utilities Commission v. FCC, the Eighth Circuit affirmed the FCC’s Vonage Order where the Commission found that Vonage’s service cannot be directly or indirectly tied to a specific geographic location. This is true both because “customers may use the service anywhere in the world where they can find a broadband connection,” and separately, because Interconnected VoIP provider sometimes assign telephone numbers to customers that are “not necessarily tied to” the user’s usual or “home” location. For these reasons, the FCC previously found *“the significant costs and operational complexities associated with modifying or procuring systems to track, record and process geographic location information as a necessary aspect of the service would substantially reduce the benefits of using the Internet to provide the service, and potentially inhibit its deployment and continued availability to consumers.”*
- Fourth, Section 3 of the legislation defines Interconnected VoIP service as a “Telecommunications service provider” creating additional unintended consequences. The FCC has thus far declined to classify Interconnected VoIP as either an “information service” or a “telecommunications service”, but instead has exercised broad jurisdiction over these services. We have concerns that defining Interconnected VoIP as a “Telecommunications service” in this case would open the door to the application of an array of unnecessary and duplicative telephone rules to the Internet - potentially causing broad and harmful effects that go well beyond the intent of the legislation.

In view of the federal decisions preempting state regulation and the other harmful effects of regulating Internet services, we encourage you to refrain from attempting to regulate VoIP and instead seek to harness the full power and potential that Internet based communication can deliver. More and more states are coming to recognize that VoIP can be harnessed for enormous public gain – including making phone service more affordable and as a tool for advancing universal access to broadband. For example by harnessing VoIP as a broadband driver, just a 7% increase in broadband adoption in Tennessee could create nearly 50,000 new jobs².

As a result, rather than adopting state specific rules for VoIP, government leaders in states like California, Florida, Virginia, Maryland, New Jersey, Georgia and elsewhere have all taken steps to prevent state regulation of VoIP in order to boost broadband deployment, make phone service

² Tennessee would see an additional 49,142 jobs from a 7% increase in broadband, according to Connected Nation’s State-by-State Summary of the Annual Economic Impact Associated with Accelerating Broadband for Each State http://www.connectednation.com/documents/2008_02_21_TheEconomicImpactofStimulatingBroadbandNationally_AConnectedNationReport_001.pdf

more affordable, and harness VoIP's vast potential for important public policy goals. We encourage you to follow suit and reject the harmful effects of H.B. 4180 and S.B. 4126.

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 BT Americas, CallSmart, Cisco, Covad, EarthLink, Google, iBasis, i3 Voice and Data, Intel, Microsoft, New Global Telecom, PointOne, Pulver.com, Skype, T-Mobile USA, USA Datanet, 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>