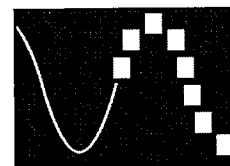


May 4, 2010



The VON Coalition

Governor Patrick J. Quinn
Office of the Governor
207 State House
Springfield, IL 62706

RE: SB 107/HB 6425

Dear Governor Quinn:

The Voice on the Net (VON) Coalition,¹ which represents the nation's leading companies developing and delivering voice innovations over the Internet, respectfully submits these comments concerning Section 13-401.1 of Senate Bill 107/House Bill 6425. Specifically, VON opposes the requirement that providers of fixed or non-nomadic interconnected VoIP file registration statements with the Illinois Commerce Commission ("ICC") and the delegation to the ICC of the authority to revoke or suspend the registration of any provider that does not comply.

VoIP 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 Illinois consumers millions of dollars annually – putting real money back into consumers' pockets when they really need it. Further, by harnessing VoIP as a broadband driver, increased broadband adoption in Illinois will create jobs as the country works its way out of these difficult economic times.

However, Section 13-401.1 as drafted would chill the development of the VoIP marketplace in Illinois, in direct contravention of the bill's conclusion that "[i]ncreased investment into broadband infrastructure is critical to the economic development of this State and a key component to the retention of existing jobs and the creation of new jobs." (Section 13-804.) It would also violate federal law by imposing market entry and registration requirements. This section would require fixed or non-nomadic providers of interconnected VoIP to file detailed registration statements with the ICC, including a description of each geographic area where the provider is offering service and the provider's dispute resolution process, and to update any changes in the registration information within five business days.² A VoIP provider may request confidentiality of the information provided to the ICC, but that would require a proceeding before the ICC, in which the burden of proof to preserve confidentiality would be on the VoIP provider, introducing substantial delay in time to market. Worse yet, the section authorizes the ICC to revoke the registration of any VoIP provider that does not comply with this section.

In 2004, the ("FCC") broadly preempted state regulation of interconnected VoIP.³ The Commission's *Vonage Preemption Order* has been upheld by the 8th Circuit, which found that the FCC has the ultimate authority to determine what, if any, regulations apply to such services.⁴ Any action by the state of Illinois departing from these well-established federal policies would be in contravention of the law and "impermissibly encroaches on [the FCC's] exclusive federal jurisdiction over interstate services..."⁵ The FCC has not granted the states any authority to require certification or registration or impose any other specific telecommunications fees or other obligations on interconnected VoIP providers.

¹ VON Coalition members include Cisco, Google, iBasis, Microsoft, New Global Telecom, Skype, T-Mobile, Vonage and Yahoo

² The section also requires VoIP providers to collect and remit 911 fees. VON does not object to this provision.

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

⁴ See *Vonage Holdings Corp. v. Nebraska Public Service Commission*, 564 F.3d 900, (8th Cir. May 1, 2009) ("*Vonage Nebraska Decision*").

⁵ FCC Vonage Preemption Order at ¶22.

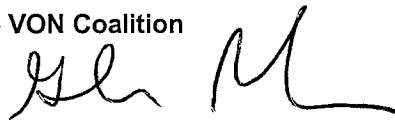
Limiting the registration requirement to fixed and non-nomadic VoIP services does not exempt Illinois from the preemption proscribed by the *FCC Vonage Preemption Order*.⁶ The FCC has found that fixed or non-nomadic VoIP services are integrated, IP-enabled services providing multiple capabilities that combine information provision, computer interactivity along with voice-calling capabilities, which renders such services as single "integrated offerings." As the noted, VoIP users can "utilize multiple service features that access different websites or IP addresses during the same communication session and perform different types of communications simultaneously."⁷ Thus, according to the FCC, these features and functions are inseparable from the voice application that may appear to be most similar to a telephone service. Accordingly, until the FCC rules otherwise, fixed or non-nomadic interconnected VoIP services are subject to the exclusive jurisdiction of the FCC.⁸

Thus, the state of Illinois cannot require VoIP providers to register with the ICC, nor can it prevent a VoIP provider from offering services in the state if it did register and that registration was later suspended or revoked for not providing current information or paying 911 fees. VoIP providers are providing service in highly competitive markets. The increase in VoIP adoption nationwide confirms that a federal regulatory structure can work, with no harm to consumers who can resolve problems with their service providers with ICC intervention. Dissatisfied customers do not need regulatory intervention because they can easily vote with their feet and change service providers if service or billing problems are not addressed. As proposed, the law would introduce, rather than remove, the "regulatory uncertainty" that the bill has identified as discouraging "greater private-sector investment in broadband infrastructure." (Section 13-804.) The residential and small business customers who have arguably benefitted the most from VoIP will lose.

As a result, rather than adopting state specific rules for VoIP, government leaders in states like Florida, Maryland, New Jersey, Pennsylvania, Rhode Island, and Washington, D.C. have all taken steps to prevent state regulation of VoIP in order to boost broadband deployment, make phone service more affordable, and harness VoIP's vast potential for important public policy goals. We encourage you to follow suit and strike the registration requirement and related provisions in Section 13-401.1 of SB 107/HB 6425.

Sincerely,

The VON Coalition



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⁶ The terms fixed and non-nomadic VoIP are not defined in the statute and in today's environment bear little resemblance to the reality of the VoIP marketplace where all services, at the discretion of the service provider, can be made fixed or nomadic, however these terms may be defined.

⁷ *Id.* at 22419, ¶ 25.

⁸ It is worth noting that one difference between the House and Senate versions Section 13-401.1, is that the Senate versions contains a severability clause (see 13-401(e)), which appears to be a recognition that the statute may in fact violate federal law.