



April 13, 2011

Dear Majority Leader Fitzgerald and Speaker Fitzgerald:

The Voice on the Net Coalition, an industry group that represents the nation's leading companies developing and delivering voice innovations over the Internet, including Voice-over-Internet-Protocol ("VoIP"), writes to express its concern regarding the push to include new mandatory access charge payments in the most current draft of the telecommunications modernization bill – which was otherwise pro-business, pro-technology and pro-consumer legislation.

This new language would mandate the payment of intrastate switched access charges on VoIP traffic, creating a new and costly assessment on this innovative technology.¹ Access charges are the compensation that carriers pay each other to originate and terminate phone calls to each other's customers—a regime known as inter-carrier compensation. This language would force VoIP providers—and, in turn, their customers—to pay hefty new fees in order to connect VoIP calls in Wisconsin, stifling much-needed investment and job development by increasing the costs of doing business in the state. VON members provide IP-enabled applications and services to residential and business customers in Wisconsin, who are all eagerly adopting this new and affordable technology. Imposing intrastate access charges on VoIP would simply add a new obligation to the existing legacy of onerous taxes and fees on communications services, further burdening small business and consumers with unnecessary expenses at a time in our economy when they can least afford it.

Imposing intrastate access charges on VoIP traffic is *not* the law today. In fact, two federal courts last year confirmed that tariffed access charges do *not* apply to VoIP traffic. This is because VoIP is an information service that travels over the Internet, and therefore cannot be separated into interstate and intrastate portions. Trying to apply intrastate rules to VoIP, an interstate service, would only invite litigation to invalidate the illegal rules. Minnesota's similar attempt to apply intrastate regulations to VoIP resulted in a lawsuit and invalidation of the illegal rules by the Federal Communications Commission ("FCC").²

Only the FCC can establish rules for inter-carrier compensation for VoIP traffic, and it is doing just that—on an expedited basis—right now. The FCC opened a proceeding on February 9, 2011 to determine the appropriate inter-carrier compensation regime for VoIP traffic, and all five FCC commissioners have stated their intention to issue an order within months of the close of the comment period on April 18.³ FCC Chairman Genachowski has emphasized that the existing access charge system retards broadband innovation and investment, which is why the FCC has proposed to gradually *eliminate* all per-minute inter-carrier compensation.

¹ The language would also pare back the draft bill's current protection of *all* Internet Protocol-enabled services from legacy regulation—thereby stimulating investment in the state through regulatory certainty—to protect only one subset of such services (VoIP). There is no reason to limit such protection.

² See Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning and 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 March 15, 2011 Entry, Official Blog of the Federal Communications Commission, <http://reboot.fcc.gov/blog/?categoryId=139675>.



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The proposal to apply intrastate access charges to VoIP traffic would effectively apply the *highest* measure of inter-carrier compensation available today. This is particularly egregious when certain small Wisconsin local telephone companies charge intrastate access rates that are up to 20 times higher than the largest local carrier in Wisconsin charges for the same functions. The intrastate access charge proposal would do nothing but drive up the prices for services that rely on Internet Protocol technology and, in turn, discourage broadband investment — VoIP is an important driver of broadband adoption -- particularly in rural areas with the highest access charges, due to the additional costs associated with providing those services.

We urge you to adopt a bill that would prohibit state regulation of IP-enabled services in order to stimulate investment, job development and broadband adoption in the state; however, that legislation should not undermine these critical goals by applying intrastate access charges to VoIP traffic. We look forward to continuing to work with you on this important legislation. Feel free to contact the undersigned if you have any questions.

Sincerely,

/s/

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