

TESTIMONY OF THE VOICE ON THE NET COALITION
BEFORE THE SENATE COMMITTEE ON STATE AND FEDERAL
RELATIONS AND INFORMATION TECHNOLOGY

HEARING ON SPECIAL SESSION SB13

MAY 4, 2011

Good morning Madame Chairman, members. My name is Glenn Richards and I am the Executive Director of the Voice on the Net Coalition. First I would like to thank you for the opportunity to spend a few minutes with you today discussing the VON Coalition's positions concerning SB 13, which proposes to update Wisconsin's telecommunications laws. Except as discussed below, the VON Coalition generally supports SB 13.

For those of you that do not know us, the Coalition's members include many of the leading Internet communications companies, including Google, Microsoft, Skype, Vonage and Yahoo. For the past 13 years, the VON Coalition has been working with federal and state policymakers to advance regulatory policies that enable consumers, businesses and government to enjoy the full promise and potential of Internet Protocol or IP communications. The companies in the VON Coalition are developing and delivering the next generation of voice, video and data communications services that can be used anywhere and everywhere that broadband is available -- no telephone required.

Once limited to hobbyists, IP communications today is a dominant technology for users of communications services. According to a report released this year by the FCC, as of June 2010, there were more than 29 million VoIP subscriber lines in services, including about 460,000 in Wisconsin -- served by 68 different service providers.

The growth of IP communications has created viable competition in the communications industry, to the benefit of consumers that are saving hundreds of millions each year by switching to VoIP. VoIP also provides consumers flexibility and features not possible in yesterday's telephone network. These include the ability to use a VoIP enabled phone through any broadband connection anywhere in the world; allowing voice mail to be sent to email or converted to text; allowing multiple devices to ring at the same time, and bringing video conference calling to the masses. At the same time, quality and reliability have improved to equal if not surpass that of the legacy phone network.

For businesses, particularly small and medium sized businesses that cannot always take advantage of offerings available to larger customers, VoIP is lowering costs, allowing increased control over communications, increasing productivity, increasing mobility, enabling collaboration, and giving companies a competitive advantage. VoIP promotes telework; allowing people to work seamlessly from home as if they were in the office; creating more time with family and greater employment opportunities for parents of small children, adult caregivers and the disabled.

IP communications have prospered in a largely unregulated environment, and have prospered *because* of that largely unregulated environment. The Federal Communications Commission in 2004 preempted state regulation of interconnected VoIP – which are services that are used more like a replacement for regular telephone service. And while the FCC has imposed certain public safety and consumer protection requirements on interconnected VoIP providers, such as a requirement to provide 911 services, protect customer data and assist law enforcement, there is no federal regulation of VoIP providers' entry into the market or regulation of the rates they charge.

While the VON Coalition is encouraged that Wisconsin may join the at least 17 other states that have already provided certainty to the investment markets by codifying regulatory “safe harbors” for VoIP and/or IP-enabled communications, we are concerned about the provision of SB 13 that would mandate the payment of intrastate switched access charges on VoIP traffic in Wisconsin. The 17 states that have precluded state regulation of VoIP services did so in recognition of the fact that there is no benefit to imposing legacy telephone regulations on VoIP and that future investment in VoIP will be lost if legacy regulatory obligations place unnecessary burdens and costs on companies eager to invest in and deliver innovative products and features to consumers.

Access charges are the compensation that traditional phone companies pay each other to originate and terminate phone calls to each other’s customers—a regime known as inter-carrier compensation. VoIP providers are not traditional phone companies and do not pay access charges or other inter-carrier compensation. VoIP traffic is usually originated or terminated through arrangements with competitive local exchange carriers, or CLECs, who themselves have interconnection agreements with incumbent local exchange carriers or other CLECs, that in most instances provide compensation for the origination or termination of VoIP traffic. These charges, if any, are resolved through the normal course of business between telecommunications carriers.

The language in SB 13 mandating the payment of intrastate switched access charges on VoIP traffic would – for the first time – impose a new and costly assessment on this innovative technology, even though the Federal Communications Commission has announced its intention to eliminate the access charge regime because it retards broadband innovation and investment. Forcing VoIP providers—and, in turn, their customers—to pay new fees in order to connect

VoIP calls in Wisconsin would increase uncertainty, disrupt existing interconnection arrangements and raise the costs of doing business in the state, imposing unnecessary new financial obligations on businesses and consumers at a time in our economy when they can least afford it.

Importantly, imposing intrastate access charges on VoIP traffic or VoIP providers is *not* the law today. In fact, three federal courts have 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, because only the FCC can establish rules for inter-carrier compensation for VoIP traffic. In fact, the FCC opened a proceeding on February 9, 2011 to do just that, and has stated that it intends to issue an order in that proceeding by August.

The VON Coalition urges you to adopt SB 13 without the access charge language. Doing so will stimulate investment and job creation and free this important technology from costly regulation. Amending the bill to eliminate the mandate to pay intrastate switched access charges on VoIP traffic, or at least to maintain the status quo until the FCC rules on this important issue by replacing the access charge provision with the language from the bill's prior iteration that made no determinations regarding the appropriate intercarrier compensation regime for VoIP traffic, will ensure the continued availability of these broadband communications offerings and open new high-tech economic opportunities by prohibiting regulation of innovative IP-based services, consistent with Federal law. Businesses and residential consumers in Wisconsin have much to gain from a regulatory environment that allows innovative IP enabled applications and services to remain free from regulations originally intended for plain old telephone services.

Wisconsin has a perfect opportunity to join other progressive states and help launch a new era of broadband-enabled benefits for consumers and businesses in Wisconsin by eliminating the threat of state regulation of interconnected VoIP. Adoption of SB 13 provides three critical benefits to the state of Wisconsin during these challenging economic times:

- (1) a platform for innovation delivering advanced broadband communications features to consumers and business in Wisconsin;
- (2) increased competition among network and service providers leading to cost savings for consumers and businesses across the state; and
- (3) increased infrastructure investment and accelerated broadband deployment – critical elements of job creation and economic growth in the state.

However, the important goals of this otherwise pro-business, pro-technology legislation will be undermined if you perpetuate an outdated compensation regime that the FCC has determined must come to an end, and impose it on today's technology by requiring VoIP providers to pay new, mandatory access charges.

We look forward to working with you and other policy makers in Wisconsin to forge pragmatic solutions that enable consumers, businesses, and the economy to achieve the full promise and potential that VoIP and IP-enabled services can deliver.

Thank you again for your time and I look forward to your questions.