



May 19, 2011

Re: HB 4314

Dear Chairman Nofs and Vice Chairman Proos:

The Voice on the Net Coalition (www.von.org), 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 support for the provision in HB 4314 that would confirm that the Michigan Public Service Commission does not have authority over interconnected VoIP. However, we are concerned about new amendments proposed yesterday that raise the specter of new intrastate access charge payments on VoIP traffic. Such provisions would undermine what was otherwise pro-business, pro-technology and pro-consumer legislation modernizing the state's outdated telecommunications laws.

VoIP communications have prospered in a 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. The FCC has, however, 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 entry or price regulation of VoIP.

At least 19 other states have already provided certainty to the investment markets by codifying regulatory "safe harbors" for VoIP or IP-enabled communications. These states have recognized that there is no benefit to imposing legacy telephone regulations on VoIP and that investment will be lost if regulatory ambiguities are allowed to remain in place. By adopting HB 4314, Michigan now has the perfect opportunity to join these progressive states and help launch a new era of broadband-enabled benefits for consumers and businesses in Michigan by eliminating the threat of state regulation of interconnected VoIP.

However, those benefits will be sorely undermined if the legislation inadvertently opens the door to the implication that paying intrastate switched access charges on VoIP traffic is in any sense necessary under state law, which would only result in a new and costly assessment on this innovative technology. 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. Requiring VoIP providers—and, in turn, their customers—to pay hefty new fees in order to connect VoIP calls in Michigan, would stifle 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 Michigan, who are all eagerly adopting this new and affordable technology. Even introducing the possibility of imposing intrastate access charges on VoIP would simply add unnecessary regulatory uncertainty in Michigan and a potential 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



May 19, 2011
Page 2

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").¹

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 the FCC commissioners have stated their intention to issue an order within months of the close of the comment period on April 18.² 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.

Intrastate access charges are effectively the *highest* measure of inter-carrier compensation available today. Applying intrastate access charges to VoIP 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.³

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 risk inadvertently undermining these critical goals by opening the door to 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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¹ 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).

² See March 15, 2011 Entry, Official Blog of the Federal Communications Commission, <http://beta.fcc.gov/blog/making-universal-service-and-intercarrier-compensation-reform-happen>.

³ The VON Coalition also opposes amendments to Section 305a that would require the Public Service Commission to investigate violations of the phantom traffic law or that would presumptively conclude that all traffic that violates the obligation to pass CPN is subject to intrastate access charges unless there is a traffic termination agreement in place. The FCC has an open proceeding on phantom traffic and is expected to issue rules at the same time it rules whether intercarrier compensation applies to IP-originated or IP-terminated traffic.