



January 8, 2013

(Via fax 405.522.4517 and regular mail)  
Ms. Jill Ortega  
Court Clerk  
Corporation Commission of Oklahoma  
Jim Thorpe Office Building  
2101 North Lincoln Blvd  
Oklahoma City, OK 73105

Re: Cause No. RM. 201200012 – IN THE MATTER OF A PERMANENT  
RULEMAKING OF THE OKLAHOMA CORPORATION COMMISSION AMENDING  
OAC 165:55, TELECOMMUNICATIONS SERVICES

Dear Ms. Ortega:

The Voice on the Net Coalition<sup>1</sup> files these comments in response to the Notice of Proposed Rulemaking issued December 19, 2012, in the above referenced matter. In particular VON opposes those rule changes that would impact Voice over Internet Protocol (VoIP) and VoIP service providers, including the registration requirement in proposed Section 165:55-3-22(g)(3). As discussed below, the Corporation Commission of Oklahoma does not have authority over interconnected VoIP.

VoIP communications has prospered in a largely unregulated environment. The Federal Communications Commission (FCC) 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, and, when required by state law, to pay fees to support the 911 system. There is no federal entry or price regulation of VoIP.

At least 25 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 and broadband adoption slowed if regulatory ambiguities are allowed to remain in place.

Interconnected VoIP is an information service exempt from state regulation. Both Congress and the FCC have made it clear that the FCC has the authority to determine the regulatory scheme for information services. The Telecommunications Act of 1996 (“1996 Act”) creates a distinction between “telecommunications services” and “information services.” The first consists of pure transmission services offered to end users without change in form or content, and subject to common-carrier regulations.<sup>2</sup> The second, in contrast, offers the ability, for

<sup>1</sup> The Voice on the Net or VON Coalition consists of leading VoIP companies, on the cutting edge of developing and delivering voice innovations over the Internet. The coalition, which includes AT&T, Broadvox, BT, Cloud Communications Alliance, Google, iBasis, Microsoft, Nextiva, Skype, Vonage 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. See <http://www.von.org>.

<sup>2</sup> 47 U.S.C. § 153(43) (2006).



example, to store, retrieve, utilize, and/or manipulate “information.”<sup>3</sup> VoIP service takes full advantage of the flexibility and efficiency of IP-based transmission by enabling the user to manipulate, generate, store, transform, and make information services available to others.<sup>4</sup>

The FCC has further explained that the statutory definitions of telecommunications service and information service do not “rest[] on the particular types of facilities used.”<sup>5</sup> Each rests instead “on the function that is made available.”<sup>6</sup> IP-enabled services that originate or terminate in IP are intrinsically information services when traffic is exchanged between an IP network and the PSTN because the traffic must, of necessity, undergo a net protocol conversion from circuit-switched format to IP (or vice versa). The FCC has held that “both protocol conversion and protocol processing services are information services under the 1996 Act.”<sup>7</sup>

In addition, the FCC has held that a service will be treated as a single, integrated information service, rather than as an information service with a separate telecommunications service component, when the telecommunications features are not “separated from the data-processing capabilities of the service” but are instead “part and parcel of the [the overall information] service and... integral to its other capabilities.”<sup>8</sup> Interconnected VoIP services are integrated, IP-enabled services providing multiple capabilities that combine information provision and processing, computer interactivity along with voice-calling capabilities, which renders such services as single “integrated offerings.” 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.”<sup>9</sup> These features and functions are inseparable from the voice application that may appear to be most similar to a telephone service. Thus, interconnected VoIP falls within the definition of an “information service” and is subject to exclusive federal jurisdiction unless otherwise specifically provided by Congress or the FCC.

Under federal law, “information services” are exempt from telecommunications regulation, which includes state regulation. While the FCC has asserted limited jurisdiction over interconnected VoIP services, it has not treated interconnected VoIP as a traditional telecommunications service. The FCC has imposed a number of specific obligations, including, requirements to provide Enhanced 911 and contribute to the federal Universal Service Fund.<sup>10</sup> In none of these actions, however, has the FCC granted the states authority to impose any other specific obligations on interconnected VoIP providers, other than state USF contributions where not inconsistent with federal USF obligations and the payment of state and local fees to support the 911 network.<sup>11</sup>

<sup>3</sup> *Id.* § 153(20).

<sup>4</sup> The 1996 Act defines an “information service” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...” *Id.*

<sup>5</sup> *In re Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities; Internet over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, GN Docket No. 00-185; CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 35 (2002).

<sup>6</sup> *Id.*

<sup>7</sup> *In re Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 104 (1996).

<sup>8</sup> *Id.* ¶¶ 36, 38.

<sup>9</sup> *Vonage Preemption Order* ¶25.

<sup>10</sup> First Report and Order and Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 05-116, (rel. Jun. 3, 2005) (“VoIP 911 Order”); Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, FCC 06-94 (rel. Jun. 27, 2006) (imposing USF requirements).

<sup>11</sup> See Footnote 5, *infra.*, and *VoIP 911 Order* ¶52.



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Further, multiple federal courts have enjoined state commissions from regulating interconnected VoIP services on the grounds that they were information services, exempt from state utility regulation.<sup>12</sup> The Minnesota federal district court has even held that “[state] regulations that have the *effect* of regulating information services are in conflict with federal law and must be pre-empted.”<sup>13</sup> Additionally, a federal district court in Missouri held that existing laws mandate that states classify VoIP services that perform IP to TDM conversions as an information service.<sup>14</sup>

Interconnected VoIP is subject to the FCC’s exclusive jurisdiction under the *FCC Vonage Preemption Order*. In the *FCC Vonage Preemption Order*, the FCC held that Vonage’s “Digital Voice” service is subject to FCC exclusive jurisdiction and preempted the Minnesota PUC from imposing traditional telecommunications regulations on that service. The same principles that applied in the *FCC Vonage Preemption Order* apply here. The FCC concluded that Vonage’s service is “jurisdictionally mixed” meaning that it includes both interstate and intrastate services.<sup>15</sup> The FCC stated that Vonage’s service could, in theory, be subject to state regulation, *provided that* the state regulation could coexist with the FCC’s pro-competitive deregulatory framework for information services. However, the FCC held that there were no “practical means” to separate the interstate and intrastate components of Vonage’s service to “enable[e] dual federal and state regulations to exist.”<sup>16</sup> In other words, the state regulations at issue were not compatible with the FCC’s generally deregulatory framework for information services.<sup>17</sup> VON suggests that the proposed Commission registration requirement for VoIP service provider would also run afoul of the *FCC Vonage Preemption Order*.

Feel free to contact the undersigned if you have any questions.

Sincerely,

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<sup>12</sup> See e.g., *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm’n*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003) (summarizing federal policy of preempting state attempts to regulate information services); *Southwestern Bell Telephone L.P. v. Missouri Public Service Board*, 461 F. Supp. 2d 1055, 1082-1083 (E.D. Mo. 2006) (classifying services as information services when it transforms or processes “information,” even if the content is the same).

<sup>13</sup> See *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm’n*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003).

<sup>14</sup> See *Southwestern Bell Telephone L.P. v. Missouri Public Service Board*, 461 F. Supp. 2d 1055, 1082-83 (E.D. Mo. 2006) (citing § 153(20)).

<sup>15</sup> See *FCC Vonage Preemption Order* at 22414, ¶ 18 & n. 63.

<sup>16</sup> *Id.* ¶ 23.

<sup>17</sup> Recently, the Public Service Commission of Utah found that it did not have jurisdiction over 8X8, Inc., a provider of interconnected VoIP, in a connection with a complaint filed with the Utah PSC to require 8X\* to obtain a certificate of public convenience and necessity to provide VoIP service in Utah. Synopsis, Order of Dismissal for Lack of Jurisdiction, Public Service Commission of Utah Docket No. 12-2302-01 (issued November 27, 2012).