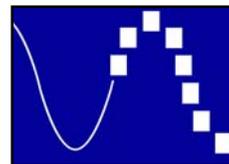


February 8, 2007



Senator Deb Fischer  
Chair, Transportation & Telecommunications Committee  
Room 1101, State Capitol  
Lincoln, Nebraska 68509

Dear Senator:

As the nation's leading companies developing and delivering voice innovations over the Internet, we are writing in **opposition to LB661 and LB 660**, which would extend state telecom relay, and state universal service regulatory mandates and fees to VoIP communications in violation of federal rules.

The VON Coalition believes that with the right public policies, Voice over Internet Protocol or VoIP can make talking more affordable, businesses more productive, the Internet more valuable, and Americans more safe and secure. In fact across the country, VoIP competition could save consumers an astonishing \$100 billion over the next 5 years.<sup>1</sup> In Nebraska, VoIP innovations will deliver new competition, lower prices, and improved ways to communicate. However, we are concerned that automatically applying yesterday's rules meant for the 100 year phone network to tomorrow's Internet services would not only slow these vast benefits from reaching consumers in Nebraska, but it could also be in violation of federal rules.

LB 661 seeks to require "that VoIP providers collect and remit the landline 911 surcharge and the Relay System surcharge."<sup>2</sup> While these are laudable goals, the legislation raises a number of serious issues:

- First, we believe extending the Nebraska Relay System surcharge to VoIP is currently prohibited under federal law. In November 2004, the FCC released the *Vonage* Order in which it preempted an order of the Minnesota Public Utilities Commission applying its ***intrastate*** E-911 "telephone company" regulations to VoIP services offered by Vonage.<sup>3</sup> The *Vonage* Order recognized that innovative and evolving services such as VoIP should not be subject to a patchwork of regulations that would directly conflict with the goals of the federal Act and the FCC's pro-competitive deregulatory rules. The FCC also made clear that preempting state regulation of VoIP services was essential to "*increase investment and innovation in [VoIP services] to the benefit of American consumers.*" The FCC has recently stated that nothing in its subsequent decisions to apply limited federal rules to VoIP services undermines its holding in the *Vonage* Order. Although the *Vonage* Order is on appeal before the Federal Court of Appeals for the Eighth Circuit, the Court may soon clarify the permissible scope of state regulatory authority for VoIP in light of this Order; thus, it is premature for the bill to be enacted at this time.

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<sup>1</sup> Micra report (available online at <http://www.micrad.com/news/news.html>) found that VoIP competition can save consumers \$102 billion over the next 5 years.

<sup>2</sup> According to the statement of intent accompanying the bill.

<sup>3</sup> *In re Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211 (November 12, 2004), *appeal pending*, *NASUCA v. FCC*, Docket. No. 05-1122 (8<sup>th</sup> Cir.).

Furthermore, the FCC has a pending IP-enabled services proceeding in which it is evaluating whether to apply any traditional common carrier regulations to IP-enabled services, including interconnected VoIP.<sup>4</sup> The FCC had previously adopted Federal E-911 and Universal Service rules for interconnected VoIP in this proceeding, thus establishing a national framework for regulation of such services. Because this proceeding remains open, and the FCC may yet adopt additional rules or determinations relating to the regulatory classification of VoIP, it would be premature for the legislature to act at this time.

In view of the uncertainty around this state's authority, any effort to directly impose Nebraska assessments on interconnected VoIP services will not stabilize the Nebraska Relay fund. Instead, it may give rise to litigation, extended uncertainty while the courts rule on pending issues and, in turn, would increase the instability of the state universal service fund should the bill be invalidated.

- Second, the TRS section of LB661 would for the first time in this country regulate non-Interconnected VoIP services. While the FCC has applied limited obligations to "interconnected VoIP" providers, there are numerous innovative VoIP services which use a telephone number but are not covered by the FCC's definition of "interconnected VoIP."<sup>5</sup> These non-interconnected VoIP services which may use a telephone number but do not allow a user to call the public switched telephone network are not required by the FCC to provide E911 or to pay universal service – but would nonetheless be required to pay the Nebraska Relay System surcharge. For example, instant messaging software can now enable users to connect to the Internet via a telephone number. Likewise, new and innovative services like Craigsnumber, Jaxtr, and Jangl use temporary telephone numbers to protect consumer privacy thru anonymity and put consumers in charge of how and when they want to talk with people.<sup>6</sup> State obligations should in no-way be extended to non-Interconnected services.
- Third, we also have concerns that the use of the term "telephone numbers or functional equivalents" would be used to extend obligations to an even broader range of VoIP services that use IP addresses as identifiers if they were determined to be functional equivalents. Such services, for example, allow children to talk while playing a video game, or families to chat using free downloadable software. Applying obligations to these forms of Internet communication would stifle innovation without any commensurate public policy gains. Again, state obligations should in no-way be extended to non-Interconnected VoIP services.

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<sup>4</sup> *In re IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36 (rel. March 10, 2004).

<sup>5</sup> Interconnected VoIP service means only those VoIP services that are substitutes for traditional telephone services – i.e. only intrastate VoIP services offered to the public for a fee that permit users to receive calls from and terminate calls to the public switched telephone network. In-bound one-way VoIP services, for example, may utilize a telephone number but don't allow the user to make calls to the public switched telephone network.

<sup>6</sup> Jaxtr was designed to bring voice to social networks and blogs thru a free service that lets users link their phones with their online network to hear from callers worldwide while keeping their existing phone numbers private. Craigsnumber provides consumers with a way to sell services online using a temporary, auto-expiring phone number that can forward to the number of your choice in order to protect privacy and user anonymity. Likewise Jangl puts consumers in control by allowing them to share a number which gets routed to an existing phone number allowing the user to choose how and when they want to talk.

- Fourth, no consumer should be required to contribute more than once for the same service. Some Interconnected VoIP services, for example, allow a family to use up to 5 telephone numbers for the same home phone service – helping families stay in touch in new and convenient ways. However, such family plans would be extraordinarily burdened by LB661 by having to pay up to 5 times more than other similarly situated services.
- Fifth, to the extent the state takes action on 911 fees for VoIP providers, the legislation should simultaneously extending equivalent liability protection for providers and 911 call-takers as other states have done.

LB 660 revises the definition of “telephone company” under the Nebraska telecommunications Universal Service Fund Act for the purpose of requiring VoIP providers to contribute to the federal Universal Service Fund. VON opposes LB 660 for the same reasons as described above. LB 660, however, raises the following additional concerns:

- First, the bill is overbroad in scope: the clause in existing law limiting the definition of “telephone company” to “intrastate commerce” has been removed. Thus, the bill would improperly expand the state’s jurisdiction to cover interstate services, including the application of the state universal service fee on those services that are *interstate* in nature. However, regulation of interstate communications falls under Congressional and FCC jurisdiction.
- Second, the bill would apply to “telecommunications” rather than “telecommunications services.” The elimination of the word “services” means that this would apply to free services.<sup>7</sup> This is a major change to the intent of the Universal Service Fund Act, and it would require companies who make available free services to consumers to pay into the fund. Such an outcome would likely cause new, innovative free VoIP services to disappear from the marketplace because payment of the universal service free would make any widespread offering of such services cost-prohibitive.
- Third, the FCC’s Universal Service Order – which applied a Federal Universal Service Fund fee to interconnected VoIP – is under appeal in the Federal Court of Appeals for the D.C. Circuit, and it would be premature for this bill to move forward in light of the Court’s reconsideration of this Order.<sup>8</sup>

If Nebraska is to harness the full power and potential that Internet based communication can deliver, the Nebraska Legislature should refrain from attempting to regulate VoIP services – especially in a way that raises so many new questions -- pending the outcome of ongoing court proceedings addressing the federal and state regulatory role regarding VoIP.

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<sup>7</sup> “Telecommunications service” means “the offering of telecommunications for a fee.” Neb. Rev. Stat. § 86-121 (2006).

<sup>8</sup> *Universal Service Contribution Methodology*, 21 FCC Rcd 7518 (2006), *petitions for review pending, Vonage Holdings Corp. v. FCC*, No. 06-1317 (D.C. Cir. oral argument scheduled Feb. 09, 2007)

More and more states are coming to recognize that VoIP can be harnessed for enormous public gain. As a result, rather than adopting state specific rules for VoIP, last year government leaders in states like California, Florida, Virginia, Georgia, Kentucky, and Colorado all took steps to prevent state regulation of VoIP in order to boost broadband deployment and harness VoIP's vast potential for lowering prices while boosting choices and features. We encourage you to follow suit and delay action on LB661 at this time.

VoIP can play a critical role in boosting broadband demand, putting new tools in the hands of American consumers and small businesses to enhance productivity, manage daily affairs, and enjoy leisure pursuits. We look forward to working with Nebraska leaders to forge pragmatic solutions that enable consumers, businesses, and the economy to achieve the full promise and potential that VoIP can deliver.

Sincerely,

**The VON Coalition**

**About the VON Coalition:**

The Voice on the Net or VON Coalition consists of leading VoIP companies, on the cutting edge of developing and delivering voice innovations over Internet. The coalition, which includes AccessLine, BMX, BT Americas, CallSmart, Cisco, Convedia, Covad, EarthLink, Google, iBasis, i3 Voice and Data, Intel, Intrado, Microsoft, New Global Telecom, Openwave, Pandora Networks, PointOne, Pulver.com, Skype, Switch Business Solutions, T-Mobile USA, United Online, USA Datanet, VocalData, Veraz Networks, 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. <http://www.von.org>