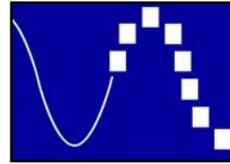


March 23, 2007



Senator Christine Kehoe
Senate Energy, Utilities & Communications Committee
Room 4038
State Capitol
Sacramento, CA 95814

Dear Senator:

As the nation's leading companies developing and delivering voice innovations over the Internet, we are writing to seek changes in SB 1024 which, as written, would both slow critical broadband enabled benefits from reaching California consumers and stifle Internet innovation. Specifically, the bill, which seeks to improve how costs are recovered for the state's 911 program, appears to define all forms of VoIP communications as intrastate telecommunications services in direct contradiction of federal rules.

The Voice on the Net ("VON ") Coalition believes that with the right public policies, Voice over Internet Protocol or VoIP can make talking more affordable, businesses more productive, and Americans more safe and secure. In fact, in California alone VoIP competition could save consumers an astonishing \$10 billion over the next five years.¹ VoIP innovations will deliver new competition, lower prices, and improved ways to communicate.

We commend California policymakers for being at the forefront of pragmatic policy approaches for unleashing the potential of broadband enabled services like VoIP. For example, in May of 2006, the California Public Utilities Commission decided not regulate VoIP at the state level and closed its proceeding on the regulation of VoIP.² Likewise, in order to accelerate the use of VoIP within the state government and better serve constituents, Governor Schwarzenegger signed an Executive Order last year to, among other things, harness the power of VoIP to help the government communicate more effectively and affordably.³

We do not take issue with the legislation's laudable goal to "preserve existing funding of the "911" emergency telephone system" and ensure that those companies that are now required to provide E911 service also contribute. However, the secondary language and effect of this legislation reaches beyond 911 funding and could have far reaching unintended consequences. Unnecessarily defining VoIP broadly as a California "intrastate telephone communications service" and cross referencing that definition with "telecommunications services" as defined by the federal Communications Act of 1934, as

¹ Micra report (available online at <http://www.micradc.com/news/news.html>) found that VoIP competition can save consumers \$102 billion over the next 5 years including \$10,760,800,433 in savings to California consumers.

² On May 4, 2006 CPUC Administrative Law Judge Grau issued a draft decision regarding investigation 04-02-007 to close its investigation into state regulation of VoIP, citing the FCC's determination in the *Vonage Order* that the FCC, and not the states, is responsible for determining the regulatory framework for VoIP.

³ See *Gov. Schwarzenegger Signs Executive Order to Help Make California the Leader in Telecommunications Revolution* (Oct. 27, 2006) available at <http://gov.ca.gov/index.php?/press-release/4575/>.

amended, is problematic. It would automatically apply state-level rules meant for the 100-year old phone network to tomorrow's Internet services. This would not only slow the vast benefits of VoIP from reaching consumers in California, but it would regulate Internet services never before regulated and contradict federal rules.

Specifically, SB 1024 (Section 41011.5(a)(2)) includes all forms of VoIP under the rubric of "telecommunications services", as defined in United States Code, and includes VoIP within California's definition of intrastate "telephone communication services." This runs contrary to federal precedent that VoIP should be regulated at the federal level.

The proposed language in SB 1024 cited above is problematic for several reasons.

- First, VoIP in all of its myriad forms cannot be pigeon-holed into the classification of "intrastate telephone communication" services. The FCC has already determined that VoIP services like Free World Dialup are not "telecommunications services" but are instead "information services." For other types of VoIP services, the FCC has thus far declined to reach a final classification, but has exercised broad jurisdiction over those services. California defining VoIP as an "intrastate telephone communication" service would apply an array of unnecessary and duplicative telephone rules to the Internet - potentially causing broad and harmful effects that go well beyond the intent of SB 1024 and have nothing to do with the bill's intent to collect 911 fees.
- Second, classifying VoIP as an "intrastate communication service," and applying intrastate rules to VoIP, is prohibited under federal law. Just last week the 8th Circuit Court of Appeals affirmed the FCC's *Vonage Jurisdictional Order*, which preempted state regulation of VoIP services.⁴ The *Vonage Jurisdictional 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 Jurisdictional Order*.⁵ Thus, state legislation classifying or regulating VoIP as intrastate communication is contrary to the FCC's and the court's decisions.
- Third, SB 1024 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 are not covered by the FCC's definition of "interconnected VoIP"⁶ but which are nonetheless captured by SB 1024. These non-

⁴ *In re Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, WC Docket No. 03-211, FCC 04-267 (rel. Nov. 12, 2004), *NASUCA v. FCC*, Docket. No. 05-1122 (8th Cir. Mar. 21, 2007) (*Vonage Jurisdictional Order*).

⁵ See Letter from Nandan M. Joshi, Federal Communications Commission counsel, to Michael E. Gans, Clerk, U.S. Court of Appeals for the Eighth Circuit, *Minnesota Pub. Util. Comm'n et al. v. FCC*, No. 05-1069, at 1 (July 11, 2006).

⁶ 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

interconnected VoIP services can include web sites, children's games, and even instant messaging software. These services do not replace traditional home telephone services, are not required by the FCC to provide E911 service, nor are they regulated in any other way. State obligations should in no-way be extended to non-Interconnected services.

- Fourth, to the extent California takes action on 911 fees for VoIP providers, the legislation should simultaneously extend equivalent liability protection for providers and 911 call-takers as other states have done as they have considered similar measures.

Overall, the California Legislature need not define VoIP as an "intrastate telephone communication" service in order to collect 911 fees from Interconnected VoIP providers.

If California is to harness the full power and potential that Internet based communication can deliver, the California Legislature should refrain from attempting to broadly extend state regulations to VoIP – especially in ways that raise so many new questions, issues, and problems -- pending the outcome of ongoing court proceedings addressing the federal and state regulatory role regarding VoIP.

More and more states are recognizing 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 amend SB 1024 accordingly.

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 California leaders to continue 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>

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.