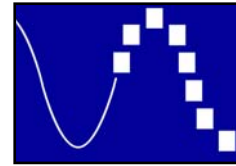


April 30, 2007



House Majority Leader
Representative Carolyn Partridge
1612 Old Cheney Road
Windham, VT 05359

Dear Majority Leader Partridge:

As the nation's leading companies developing and delivering voice innovations over the Internet, we are writing in opposition to HB-268. HB 268 would extend Vermont's intrastate telecommunication rules to Internet 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 in Vermont alone, VoIP competition could save consumers an astonishing \$262 million over the next 5 years.¹ For Vermont consumers, VoIP innovations will deliver new competition, lower prices, and improved ways to communicate.

However HB 268 would not only stall and stifle these vast consumer benefits, it runs counter to federal policy which seeks to promote competition, investment and innovation. While we appreciate the laudable goals enshrined in the state's Universal Service program of ensuring affordable telephone services throughout Vermont, the legislation raises a number of serious issues:

First, applying Vermont's intrastate Universal Service rules to VoIP, as HB 268 contemplates, is strictly prohibited under federal law. In March, the 8th Circuit Court of Appeals affirmed the FCC's Vonage Jurisdictional Order, which preempted state regulation of VoIP services. The Vonage Jurisdictional Order recognized that innovative and evolving services such as VoIP can 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. Thus, state legislation applying intrastate telecommunication regulation to VoIP is contrary to the FCC's and the court's decisions.

The language in Section 1(a), does not get around the facts surrounding federal jurisdiction. Attempting to define this universal service fee as a tax, in order to get around the landmark Vonage Jurisdictional order, can be construed as a backdoor attempt to tax broadband users in direct contradiction with federal policy.

Second, we are especially concerned that Section 11 of HB 268 defines all forms of VoIP as a "Telecommunications service." VoIP in all of its myriad forms cannot be pigeon-holed

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 \$262,622,057 in Vermont..

into the classification of "Telecommunication service." 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. If Vermont defines VoIP as a "Telecommunications Service," it would potentially be applying an array of unnecessary and duplicative telephone rules to the Internet - potentially causing broad and harmful effects that go well beyond the intent of HB 268 and have nothing to do with the bill's intent to collect Universal Service fees.

Third, the bill is overly broad in scope and does not conform to the FCC's definition of "Interconnected VoIP" for which the FCC has applied limited regulations. The FCC has asserted federal jurisdiction, and limited its regulation to only those services that are substitutes for home phone services, and defined these services as "interconnected VoIP" services. However, HB 268 defines "telecommunication service" so broadly as to capture any oral communication using a computer – whether a home intercom, instant messenger software, or even a child's video game console. Such a mandate could effectively shut out Vermont consumers from taking advantage of the exciting and new communications technologies that are now emerging in the marketplace and transforming the way we communicate.

Fourth, the Federal Internet tax moratorium specifically prevents states from applying taxes to certain forms of VoIP including voice-capable instant messaging – which the bill appears to tax.

In view of the federal decisions preempting state regulation and the other harmful effects of regulating Internet services, we encourage you to refrain from attempting to regulate VoIP and instead seek to harness the full power and potential that Internet based communication can deliver. We understand the very laudable goals of ensuring that Vermont consumers have access to affordable communications. However, 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 HB 268 at this time.

VoIP can play a critical role in boosting broadband demand, putting new tools in the hands of consumers and small businesses to enhance productivity, manage daily affairs, and enjoy leisure pursuits. We look forward to continuing to working with Vermont 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, AT&T, 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. Since its inception, the VON Coalition has promoted pragmatic policy choices for unleashing VoIP's potential. <http://www.von.org>