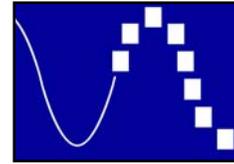


February 5, 2008



Hon. Edgar G.H. Emery
Missouri House of Representatives
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Dear Representative Emery:

As the nation's leading companies developing and delivering voice innovations over the Internet, we are writing to express serious concerns regarding House Bill No. 1779. This bill would significantly alter the regulatory landscape for Voice over Internet protocol (VoIP) services in ways harmful to both competition and consumers in Missouri. At the same time, HB1779 would prematurely declare regions to be competitive further exacerbating the potential consumer harms. We urge you to reconsider the wisdom of pursuing this proposed legislation as currently drafted and to refrain from adopting such potentially harmful legislation.

The Onerous Regulation Proposed by HB1779 Would Harm Missouri Businesses and Consumers

HB1779 would impose state universal service, telecommunications relay service, E911, annual reporting, and other regulatory requirements on interconnected VoIP providers. These proposed regulations, compounded by the proliferation of similar state and local requirements elsewhere are unnecessary and unduly burdensome on VoIP service providers and their customers. Moreover, at a time when states and the federal government are concerned about the low levels of broadband availability to U.S. consumers, such onerous regulation undermines broadband demand and deployment by stifling a primary driver of broadband. The Federal Communications Commission (FCC) currently has before it the issue of whether states have the authority to regulate VoIP in this manner.¹ Accordingly, it would be wise for Missouri to refrain from legislating on the matter until the FCC settles on the appropriate jurisdictional separations applicable to interconnected VoIP. Refraining on this legislation until the FCC acts would also be wise so that one regime is not implemented (and harmful results felt by VoIP providers and its consumers) only to be changed yet again once the FCC acts.²

¹ See, e.g., Letter from Verizon to FCC, WC Docket No. 04-36 (Jan. 16, 2008), available at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6519826127.

² As discussed in more detail below, the FCC is also currently considering issues pertaining to the applicability of access charges on VoIP services. The FCC is required to act by a statutorily-mandated 15-month timeframe, or petitions will be "deemed granted" by operation of law. See, e.g., Petition of Embarq for Forbearance from Section 69.5(a) of the Commission's Rules, Section 251(b) of the Communications Act, and Commission Orders on the ESP Exemption, WC Docket No. 08-8 (filed Jan. 11, 2008).

Further, HB1779 would impose economic regulation such as entry/exit, tariffing, pricing requirements applicable to basic voice services, and access charge regulation on interconnected VoIP services. Such proposed legislation exceeds the farthest extremes of federal regulation of VoIP and is something that the federal government has explicitly warned against as detrimental to broadband deployment in the United States. Very recently, the National Telecommunications and Information Administration (NTIA) stated:

The Administration has further encouraged aggressive broadband network deployment by supporting policies to ensure that major applications running on the Internet remain free from unnecessary economic regulation. In particular, the Administration has endorsed FCC policies to date not to impose traditional economic regulation (such as rate regulation, tariffing, and entry and exit regulation) on "voice over Internet protocol" (VoIP) services, and to ensure that states do not impose such regulations.

* * *

The Administration also strongly supported the FCC's declaration that VoIP services are interstate services that are not subject to State economic regulation.³

Finally, by acting to regulate interconnected VoIP providers, while at the same time *excluding* their services from the definition of "telecommunications service," Missouri places the burdens of regulation on VoIP providers without providing any of the corresponding benefits.⁴ Enacting HB1779, therefore, would be inequitable, run counter to federal communications policy, and would harm to competition, innovation, and consumer welfare far more than the potential benefits of this proposed regulation.

State regulation of Interconnected VoIP services runs contrary to existing law and would significantly impede the availability of innovative communications services for consumers. The FCC has found, and the courts have upheld, that Interconnected VoIP services like Vonage's are jurisdictionally interstate and do not fall within a state's authority to regulate.⁵

VoIP technologies can be a force for increased competition, a platform for innovation, a driver for broadband deployment, and a vehicle for continued economic growth. Some of the most exciting Internet developments for consumers come from services that move beyond basic voice to put consumers in charge of their own communications and open the door for an entirely new genre of communications products, services, and applications. In fact, with the right policies VoIP competition can save consumers in Missouri an astounding \$2.3 billion over the next five years⁶ – putting real money back into consumers' pockets through the power of

³ Networked Nation: Broadband in America 2007, National Telecommunications And Information Administration United States Department of Commerce at 9 (Jan. 2008) *available at* <http://www.ntia.doc.gov/reports/2008/NetworkedNationBroadbandinAmerica2007.pdf>.

⁴ See 386.020(54).

⁵ In November 2004, the FCC released its "*Vonage Jurisdictional Order*" which pre-empted state regulation of such VoIP services. In March 2007, the 8th Circuit Court of Appeals agreed with the FCC's reasoned analysis and affirmed the Vonage Jurisdictional Order asserting exclusive federal jurisdiction over VoIP. See *Minnesota PUC v. FCC*, 483 F.3rd 570 (8th Cir. 2007).

⁶ Micra report (available online at http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf) found that VoIP competition can save consumers in Missouri \$2,319,229,231 over the next 5 years.

competition at a time when families really need it. As it is, HB1779 jeopardizes this bright future.

HB1779 Uses Inappropriate Measures of Effective Competition

Finally, HB1779 would inappropriately measure competition in ways that could harm both competition and business and residential consumers in Missouri. For example, in proposed section 392.245, a false finding of competition could be triggered by the mere existence of an interconnected VoIP provider registration and provision of service in any part of a service area. Indeed, the bill could eviscerate all pro-competitive protections in Missouri based upon the fact that a VoIP provider is serving a minority of an area. Measuring effective competition on such tenuous evidence of market entry is dangerous and likely to harm significantly consumers in the long run.

The FCC itself has consistently refused similar competition standards at the federal level. For instance, as recently as December 2007, the FCC refused to “include providers of ‘over-the-top’ or nomadic voice over Internet Protocol (VoIP) services in [its] competitive analysis because there are no data in the record that justify finding that these providers offer close substitute services.”⁷ Likewise, Missouri should refuse to consider the mere registration of a single interconnected VoIP provider sufficient to declare a region competitive without undertaking a significantly more substantive and thorough investigation of whether that VoIP provider is offering substitute competitive services and that declaring a region to be competitive is in the interest of Missouri consumers and businesses.

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 as HB1779 would do. Instead, the Missouri legislature should take this opportunity to ensure that any legislative initiatives nurture the powerful potential that Internet based communication can deliver to consumers. More and more states are coming to recognize that VoIP can be the engine for enormous public gain. As a result, rather than adopting state specific rules regulating VoIP, 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, benefit people with disabilities, and harness VoIP’s vast potential for lowering prices while boosting the types of choices and features that are invaluable to consumers. We encourage you to follow suit and reject the harmful effects of HB1779 at this time.

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 BT Americas, CallSmart, Cisco, Covad, EarthLink, Google, iBasis, i3 Voice and Data, Intel, Microsoft, New Global Telecom, PointOne, Pulver.com, Skype, T-Mobile USA, USA Datanet, and Yahoo! works to advance

⁷ See Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, Memorandum Opinion and Order, WC Docket No. 06-172, FCC 07-212 (rel. Dec. 5, 2007) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-212A1.pdf.

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>

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