



September 28, 2012

Doug Dean, Director
Colorado Public Utilities Commission
1560 Broadway, Suite 250
Denver, Colorado 80202

Re: Docket No. 12R-862T

Dear Mr. Dean:

The Voice on the Net (“VON”) Coalition¹ submits these comments opposing regulation of interconnected Voice over Internet Protocol (“VoIP”) by the Colorado Public Utilities Commission (the “Commission”), as proposed in the Commission’s Notice of Proposed Rulemaking in Decision No. C12-0898-I (the “Notice”). In the Notice, the Commission proposes amendments and seeks comments on the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* 723-2 because of “significant technological and marketplace changes that have occurred in the telecommunications industry.”² The Commission proposes rules that treat interconnected VoIP services as “deregulated” services with two exceptions.³

Specifically, interconnected VoIP should not be subject to regulation under Proposed Rule 2213(a) or to the payment of surcharges or fees under Proposed Rule 2213(b). Regulation of interconnected VoIP would run afoul of federal law and impose costs on the services that would result in increased prices for consumers and would deter further innovation and investment.

Under current law, interconnected VoIP is subject to the exclusive federal jurisdiction of the FCC. At times, the FCC has asserted limited jurisdiction over interconnected VoIP services, but it has not treated interconnected VoIP as a traditional telecommunications service. The FCC’s regulation of interconnected VoIP has been limited to public safety and consumer protection, including requirements to provide Enhanced 911 and to contribute to the Federal Universal Service Fund.⁴ The FCC has specifically limited the states to allowing the collection of fees to support 911 and the assessment of state

¹ 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. <http://www.von.org>

² In re *Proposed Rules Regulating Telecommunications Providers, Services, and Products, 4 Code of Colorado Regulations* 723-2, Docket No. 12R-862T, Decision No. C12-0898-I, Notice of Proposed Rulemaking (mailed Aug. 6, 2012) ¶ 2.

³ *Id.* at ¶ 12, ¶ 19.

⁴ 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).



September 28, 2012
Page 2

universal service fund contributions, to the extent consistent with federal law.⁵ The FCC has also decided that certain VoIP services that do not touch the public switched telephone network are information services not subject to telecommunications regulation at either the federal and state level.⁶ Certain federal courts have enjoined state commissions from regulating interconnected VoIP services because they were information services exempt from state utility regulation.⁷

There are numerous benefits if interconnected VoIP is not subject to state regulation. Interconnected VoIP can be a force for increased competition, a platform for innovation, a driver for broadband deployment, and a vehicle for continued economic growth. As a result, Colorado residents and businesses can benefit directly from interconnected VoIP in having more choices for communications service and the potential to boost broadband deployment. The Commission should, therefore, ensure that Coloradans will be able to benefit from these transformational new services by not subjecting them to new regulations, fees, and surcharges, except as specifically permitted under federal law.

Several states have taken steps to prevent the regulation of IP communications rather than adopting state-specific rules for VoIP. These states include Florida, Georgia, Maryland, New Jersey, Texas, Utah, Virginia, and Wisconsin. Colorado should similarly refrain from regulating interconnected VoIP so that its residents and consumers can reap these benefits.

Please contact the undersigned if you have any questions.

Sincerely,

The VON Coalition

Glenn S. Richards
Executive Director

⁵ See *VoIP 911 Order* ¶ 52 and *In re Universal Service Contribution Methodology: Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122, Declaratory Ruling, 25 FCC Rcd 15651 (2010) ¶ 23 (“We note, however, that nothing in this Declaratory Ruling affects our conclusion in the *Vonage Preemption Order* concerning preemption of rate regulation, tariffing, or other requirements that operate as ‘conditions to entry.’ Nor should this order be construed as interpreting or determining the scope of the *Vonage Preemption Order*.”)

⁶ See *Petition for Declaratory Ruling that Pulver.Com’s Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, Memorandum Opinion and Order, 19 FCC Rcd 3307 (2004); See also *In re Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004).

⁷ 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).