

**STATE OF IOWA  
DEPARTMENT OF COMMERCE  
IOWA UTILITIES BOARD**

---

<b>IN RE:</b>	)	
	)	
	)	
<b>INQUIRY INTO THE APPROPRIATE SCOPE OF TELECOMMUNICATIONS REGULATION</b>	)	<b>Docket No. NOI-2013-0001</b>
	)	
	)	
	)	

---

**COMMENTS OF THE VOICE ON THE NET COALITION**

The Voice on the Net Coalition (“VON”)<sup>1</sup> hereby submits its initial comments on the Iowa Utilities Board’s (“Board”) January 11, 2013 “Order Initiating Inquiry” (“NOI”).

**Discussion**

The NOI seeks comment on the appropriate regulatory treatment of non-nomadic Voice over Internet Protocol (“VoIP”). NOI at 2-3. The Board should refrain from regulating VoIP, consistent with federal law and the laws of 28 states<sup>2</sup>. A hands off approach will promote the expansion of broadband and VoIP in Iowa.

**A. Federal Law Preempts State Regulation of Non-nomadic VoIP**

Interconnected VoIP is an information service exempt from state regulation. Both Congress and the FCC have made it clear that the FCC has the authority to determine the regulatory scheme for information services. The Telecommunications Act of 1996 (“1996 Act”) creates a distinction between “telecommunications services” and “information services.” The

---

<sup>1</sup> The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. VON Coalition members are developing and delivering voice and other communications applications that may be used over the Internet. VON Coalition members include AT&T, Broadvox, BT, Cloud Communications Alliance, Google, iBasis, Microsoft, Nextiva, Skype, T-Mobile, Vocalocity, Vonage, and Yahoo!. For more information, see [www.von.org](http://www.von.org).

<sup>2</sup> Alabama, Arkansas, California, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Wisconsin and Wyoming.

first consists of pure transmission services offered to end users without change in form or content, and subject to common-carrier regulations.<sup>3</sup> The second, in contrast, offers the ability, for example, to store, retrieve, utilize, and/or manipulate “information.”<sup>4</sup> VoIP takes full advantage of the flexibility and efficiency of IP-based transmission by enabling the user to manipulate, generate, store, transform, and make information services available to others.<sup>5</sup>

The FCC has further explained that the statutory definitions of telecommunications service and information service do not “rest[] on the particular types of facilities used.”<sup>6</sup> Each rests instead “on the function that is made available.”<sup>7</sup> IP-enabled services that originate or terminate in IP are intrinsically information services when traffic is exchanged between an IP network and the PSTN because the traffic must, of necessity, undergo a net protocol conversion from circuit-switched format to IP (or vice versa). The FCC has held that “both protocol conversion and protocol processing services are information services under the 1996 Act.”<sup>8</sup>

In addition, the FCC has held that a service will be treated as a single, integrated information service, rather than as an information service with a separate telecommunications service component, when the telecommunications features are not “separated from the data-processing capabilities of the service” but are instead “part and parcel of the [the overall information] service and... integral to its other capabilities.”<sup>9</sup> Interconnected VoIP services are integrated, IP-enabled services providing multiple capabilities that combine information

---

<sup>3</sup> 47 U.S.C. § 153(43) (2006).

<sup>4</sup> *Id.* § 153(20).

<sup>5</sup> The 1996 Act defines an “information service” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...” *Id.*

<sup>6</sup> In re *Inquiry Concerning High-Speed Access to the Internet over Cable and Other Facilities; Internet over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet over Cable Facilities*, GN Docket No. 00-185; CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, ¶ 35 (2002).

<sup>7</sup> *Id.*

<sup>8</sup> In re *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, ¶ 104 (1996).

<sup>9</sup> *Id.* ¶¶ 36, 38.

provision and processing, computer interactivity along with voice-calling capabilities, which renders such services as single “integrated offerings.” VoIP users can “utilize multiple service features that access different websites or IP addresses during the same communication session and perform different types of communications simultaneously.”<sup>10</sup> These features and functions are inseparable from the voice application that may appear to be most similar to a telephone service. Thus, interconnected VoIP falls squarely within the definition of an “information service” and is subject to exclusive federal jurisdiction unless otherwise specifically provided by Congress or the FCC.

Under federal law, “information services” are exempt from telecommunications regulation, which includes state regulation. While the FCC has asserted limited jurisdiction over interconnected VoIP services, it has not treated interconnected VoIP as a traditional telecommunications service. The FCC has imposed a number of specific obligations, including, requirements to provide Enhanced 911 services, make the service accessible by law enforcement, contribute to the Federal Universal Service and Telecommunications Relay Service Funds, protect customer proprietary network information, and provide customers notice before discontinuing service.<sup>11</sup> In none of these actions, however, has the FCC granted the states authority to impose any other specific obligations on interconnected VoIP providers, other than state USF contributions where such contributions are not inconsistent with federal USF obligations and the payment of state and local fees to support the 911 network.<sup>12</sup>

---

<sup>10</sup> *Vonage Preemption Order* ¶25.

<sup>11</sup> 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); Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 07-22 (rel. Apr. 2, 2007) (imposing CPNI requirements); Report and Order, WC Docket No. 04-36, FCC 09-40 (May 13, 2009) (imposing discontinuance requirements).

<sup>12</sup> See Footnote 5, *infra.*, and *VoIP 911 Order* ¶52.

The FCC has also decided that certain VoIP services that do not touch the public switched telephone network are exempt from state public utility regulation.<sup>13</sup> Further, multiple federal courts have enjoined state commissions from regulating interconnected VoIP services on the grounds that they were information services, exempt from state utility regulation.<sup>14</sup> The Minnesota federal district court has even held that “[state] regulations that have the *effect* of regulating information services are in conflict with federal law and must be pre-empted.”<sup>15</sup> Additionally, a federal district court in Missouri held that existing laws mandate that states classify VoIP services that perform IP to TDM conversions as an information service. The Missouri District Court recognized that IP-PSTN traffic is an information service because it offers the “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.”<sup>16</sup> The court further noted that IP-PSTN traffic “alters the form and content of the information sent and received because it involves a net protocol conversion from the digitized packets of the IP-protocol to the TDM technology used on the PSTN.”<sup>17</sup> While the court recognized that the Commission may be willing to revisit the classification and regulatory status of interconnected VoIP at some point, “existing rules and orders establish how VoIP and other IP services should be treated in the interim.”<sup>18</sup>

---

<sup>13</sup> 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) (“*Pulver Declaratory Ruling*”); See also *FCC Vonage Preemption Order*.

<sup>14</sup> 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).

<sup>15</sup> See *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm’n*, 290 F. Supp. 2d 993, 1002 (D. Minn. 2003).

<sup>16</sup> See *Southwestern Bell Telephone L.P. v. Missouri Public Service Board*, 461 F. Supp. 2d 1055, 1082-83 (E.D. Mo. 2006) (citing § 153(20)).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* More recently, the Vermont Supreme Court remanded to the Vermont Public Service Board its Order finding that non-nomadic VoIP is subject to state telecommunications laws. The Court found that the Board had not

Interconnected VoIP is subject to the FCC’s exclusive jurisdiction under the *FCC Vonage Preemption Order*. In the *FCC Vonage Preemption Order*, the FCC held that Vonage’s “Digital Voice” service is subject to FCC exclusive jurisdiction and preempted the Minnesota PUC from imposing traditional telecommunications regulations on that service. The same principles that applied in the *FCC Vonage Preemption Order* apply here. The FCC concluded that Vonage’s service is “jurisdictionally mixed” meaning that it includes both interstate and intrastate services.<sup>19</sup> The FCC held that there were no “practical means” to separate the interstate and intrastate components of Vonage’s service to “enable[e] dual federal and state regulations to exist.”<sup>20</sup> In other words, the state regulations at issue were not compatible with the FCC’s generally deregulatory framework for information services.

**B. There are no Policy Reasons to Regulate Non-nomadic VoIP**

Once limited to hobbyists, VoIP is growing though it represents only a small percentage of communications users in Iowa. According to a report released in January 2013 by the FCC, at the end of 2011, there were more than 186,000 interconnected VoIP subscriber lines in Iowa, receiving service from 70 VoIP providers. Of these, 137,000 are residential subscriber lines and 49,000 are business lines. Nationally, there were more than 36 million VoIP subscriber lines in services, an increase of more than 15 percent from the prior year. In contrast, during the same period, wireline retail lines decreased by almost 10 percent from 117 million to 106 million lines.<sup>21</sup>

---

adequately considered the issue of whether VoIP is an information service. Entry Order, Vermont Supreme Court Docket No. 2012-109, 2013 VT 23 (March 29, 2013).

<sup>19</sup> See *FCC Vonage Preemption Order* at 22414, ¶ 18 & n. 63.

<sup>20</sup> *Id.* ¶ 23.

<sup>21</sup> Local Telephone Competition: Status as of December 31, 2011, FCC Industry Analysis and Technology Division, Wireline Competition Bureau, January 2013. Link found at <http://transition.fcc.gov/wcb/iatd/comp.html>.

The growth of VoIP has created viable competition in the communications industry, to the benefit of consumers that are saving hundreds of millions of dollars each year by switching to VoIP and other IP-enabled services. VoIP also provides consumers flexibility and features not possible in yesterday's telephone network. These include the ability to use an IP-enabled phone through any broadband connection anywhere in the world; allowing voice mail to be sent to email or converted to text; allowing multiple devices to ring at the same time, and bringing video conference calling to the masses. At the same time, quality and reliability have improved to equal if not surpass that of the legacy phone network.

For businesses, particularly small and medium sized businesses that are at times ignored by larger carriers, VoIP is lowering costs, allowing increased control over communications, increasing productivity, increasing mobility, enabling collaboration, and giving companies a competitive advantage. VoIP promotes telework; allowing people to work seamlessly from home as if they were in the office; creating more time with family and greater employment opportunities for parents of small children, adult caregivers and the disabled.

VoIP's ability to converge voice, video, and data into one application makes available new accessibility options for the tens of millions of disabled Americans. VoIP gives disabled users a choice as to which mode they want to communicate in. For example, a deaf-blind person could sign his conversation then read the response on text with a Braille display. A hearing-impaired person might use text for the main communication, then video to show their emotional reaction to the conversation.

VoIP is also bridging the gap between rural and urban Americans. VoIP brings good information age jobs to rural communities, and encourages the rapid deployment of broadband to rural areas.

At least 27 states and the District of Columbia have already provided certainty to the investment markets by codifying regulatory “safe harbors” for VoIP or IP-enabled communications. These states have recognized that there is no benefit to imposing legacy telephone regulations on VoIP and that investment will be lost if regulatory ambiguities are allowed to remain in place. In an otherwise competitive market with low barriers to entry and low switching costs for consumers, entry and rate regulation has the potential to materially and adversely impact technological innovation, hinder the growth of open, competitive markets and place unnecessary burdens and costs on companies eager to invest in and deliver innovative products and features.

In this proceeding, the IUB now has the perfect opportunity to join these progressive states and help launch a new era of broadband-enabled benefits for consumers and businesses in Iowa by eliminating the threat of conflicting state regulation of non-nomadic VoIP. VoIP provides the innovative products and applications that are driving Iowa’s information technology economy. To ensure that consumers continue to have access to these transformative broadband applications, it is critical that state and local regulation not burden such innovation. Iowa should not be left behind in this technological revolution.

The appropriate policy framework will facilitate transformative improvements in the way all people in Iowa communicate, providing three critical benefits during these challenging economic times:

- (1) a platform for innovation delivering advanced broadband communications features to consumers and business in Iowa;
- (2) increased competition among network and service providers leading to cost savings for consumers and businesses across the state; and
- (3) increased infrastructure investment and accelerated broadband deployment – critical elements of job creation and economic growth, particularly in rural areas.

A decision not to regulate non-nomadic VoIP will ensure the continued availability of these broadband communications offerings and open new high-tech economic opportunities by providing certainty to the marketplace and service providers. All Iowans have much to gain from a regulatory environment that allows innovative IP enabled applications and services to remain free from regulations originally intended for plain old telephone services. A consistent and predictable policy framework fosters innovation in VoIP and IP-enabled applications and services. Regulatory certainty provides a platform for innovation, facilitates competition and cost savings for consumers, and will drive job growth, broadband deployment, and greater economic prosperity for the state.

