



October 26, 2016

Re: Comments on Draft Report to Idaho Legislature Regarding Proposed VoIP Legislation

Dear Mr. Cusick:

The Voice on the Net Coalition (“VON”)<sup>1</sup> submits these comments in response to your draft report to the Idaho Legislature pertaining to legislation that would exempt Voice over Internet Protocol (“VoIP”) from regulation by the Idaho Public Utilities Commission (“PUC”). VON believes that the draft report does not adequately explain the status of VoIP under federal law, and minimizes the positive impact that a regulatory safe-harbor for VoIP would have on economic investment in Idaho.

The draft report’s discussion of the regulatory status of VoIP ignores that state regulation of VoIP is preempted under the *Vonage Preemption Order*.<sup>2</sup> In *Vonage*, the FCC preempted the application of Minnesota’s “traditional ‘telephone company’ regulations” to Vonage’s Digital Voice service because it was impossible to separate the intrastate and interstate components and the state regulation of the intrastate component interfered with valid federal rules and policies.<sup>3</sup>

The *Vonage Preemption Order* extended to both nomadic and non-nomadic VoIP offerings. The FCC noted that the same integrated capabilities and features were available for most, if not all, IP-based services, including those offered by facilities-based providers.<sup>4</sup> The FCC added, “Accordingly, to the extent other entities, such as cable companies, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order.”<sup>5</sup> Twelve years later, this landmark decision remains largely undisturbed and has led to substantial growth in the adoption of VoIP and other IP services. As a result of the *Vonage Preemption Order*, there is a single national policy for IP communications and state regulation of VoIP providers is preempted by federal law.

*Regulatory uncertainty would decrease as a result of enacting a VoIP safe-harbor.* The draft report states that, the “lack of [FCC] action [on the regulatory status of VoIP] has caused uncertainty in the market . . .”<sup>6</sup> However, the report fails to explain that economic uncertainty

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<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. For more information, see [www.von.org](http://www.von.org).

<sup>2</sup> Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004), *petitions for review denied*, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

<sup>3</sup> *Id.*

<sup>4</sup> 19 FCC Rcd 22404 n.93.

<sup>5</sup> *Id.* ¶ 32.

<sup>6</sup> Draft Report at 3 (Sept. 2016).

would decrease as a result of enacting a regulatory safe-harbor for VoIP, and does not adequately explain that a significant reason the 36 states mentioned in the report have deregulated VoIP is to eliminate uncertainty and potential loss of investment.

Instead, the report provides a blanket statement that “VoIP is not the service that will provide that [investment] incentive,” and focuses on the impact that a regulatory safe-harbor for VoIP would have on broadband deployment in Idaho. Indeed, the discussion simply brushes aside the argument that a regulatory safe-harbor would provide regulatory certainty and positively impact investment without sufficient analysis of VoIP itself. The discussion is limited to VoIP offerings by cable companies to residential customers, and how such offerings are “almost a giveaway.”<sup>7</sup> It ignores the fact that many VoIP providers are not cable companies that do not bundle VoIP with TV and Internet, and that many VoIP customers are businesses.

In addition, by focusing the economic discussion around the impact on broadband deployment, the draft report goes beyond the scope of the request made in the Legislature’s letter. The legislature’s letter requested that the review be limited to “the question of preemption of regulation for VoIP and IP-Enabled Services” and the effect on other Idaho statutes.<sup>8</sup> The letter did not request an analysis of the impact of a VoIP safe-harbor on broadband deployment. However, the reality is that the availability of VoIP encourages broadband deployment and adoption, since VoIP cannot be provisioned without broadband access.

Furthermore, while the draft report mentions that 36 states have deregulated VoIP, it does not discuss why these states have deregulated VoIP, and fails to note that no state has repealed such laws once enacted. These states understand there is no benefit to imposing legacy telephone regulations on VoIP, and that investment will be lost and competition restrained if regulatory ambiguities are allowed to remain in place.

Finally, the draft report does not include VON’s comments in its summary of industry views.

Respectfully submitted,

/s/ \_\_\_\_\_  
Glenn S. Richards  
Executive Director

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<sup>7</sup> *Id. at 6.*

<sup>8</sup> Letter from Senator Brent Hill and Representative Scott Bedke to Commissioner Kjellander at 1 (March 8, 2016), available at <http://www.puc.idaho.gov/telecom/VoIP/Bedke%20and%20Hill%20Letter%20re%20VoIP.pdf>.