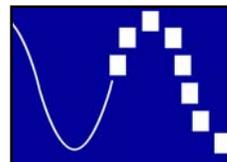


April 7, 2008



Assemblyman Dave Jones
Chair, Assembly Judiciary Committee
State Capitol
Room 3146
Sacramento, Ca 94249-0009

Dear Chairman Jones:

As the nation's leading companies developing and delivering voice innovations over the Internet, we are writing to seek changes in AB 1977 which, as written, would both slow critical broadband enabled benefits from reaching California consumers and stifle Internet innovation. The bill, which laudably seeks to improve law enforcement's ability to access customer information in the event of an emergency or 911 call, has several critical flaws. The bill 1) nonsensically captures all forms of voice communications traveling over the Internet (including those integrated into video games and web sites), 2) directly contradicts federal law preempting state regulation of Voice over Internet Protocol (VoIP) services, and 3) is unnecessary to achieve the goals of the legislation of ensuring access to customer information for VoIP providers who are required to provide E911 service.

Internet based voice communication like VoIP can be a force for increased competition, a platform for innovation, a driver for broadband deployment, and a vehicle for continued economic growth. In fact, with the right policies VoIP competition can save California consumers an astounding \$11.8 billion over the next 5 years¹ – putting real money back into consumers' pockets through the power of competition at a time when families really need it. However AB 1977 would not only stall and stifle these and other vast consumer benefits, it runs counter to federal policy which seeks to promote competition, investment and innovation.

We do not take issue with the legislation's laudable goals of ensuring that law enforcement has access to customer information about 911 callers in an emergency – an issue that Congress is simultaneously working to address for Interconnected VoIP providers. However, including VoIP services under the requirements contained in AB 1977 is problematic for several key reasons.

- First, applying 911 related rules to all forms of VoIP services, even those that are not replacements for home phone services, would violate federal rules and stifle investment and innovation. VoIP is not just one technology, but a whole universe of different types of innovative Internet enabled voice communication technologies. While the FCC has applied limited obligations like E911 obligations to "interconnected VoIP" providers, there are numerous innovative VoIP services which are not covered by the FCC's definition of "interconnected VoIP"²

¹ 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 California an astounding \$11,812,550,501 over the next 5 years.

² Interconnected VoIP service means only those VoIP services that are substitutes for traditional telephone services – i.e., only intrastate VoIP services offered to the public for a fee that permit users to receive calls from and terminate calls to the public switched telephone network. In-bound one-way VoIP services, for example, may utilize a telephone number but don't allow the user to make calls to the public switched telephone network. For examples of a few of the innovative VoIP based services that are not substitutes for home phone services see: http://www.von.org/usr_files/Gee%20Whiz%20--%20one-way%20services.pdf

but which are nonetheless captured by AB 1977. Many of these innovative and often free non-interconnected VoIP services, like instant messenger chat services, click-to-dial web sites, voice enabled blogs, voice enabled children's video games, and productivity improving collaboration software provide immeasurable new opportunities for businesses and consumers alike but would be hampered by passage of the bill as written. These non Interconnected VoIP services do not replace traditional home telephone services, are not required by the FCC to provide E911 service, nor are they regulated in any other way. However, Section 2(f)(2) includes all forms of VoIP under the rubric of "telecommunications subscriber." Applying new rules to this overly broad range of VoIP services reaches far beyond the goals of enabling public safety access to 911-related customer information and could have far reaching unintended consequences. State obligations should in no-way be extended to these non-Interconnected services.

- Second, applying state rules to VoIP, as AB 1977 contemplates, is strictly prohibited under federal law. Last year, 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 cannot 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. Thus, state legislation classifying or regulating VoIP as telecommunication is contrary to the FCC's and the court's decisions. We commend California policymakers for being at the forefront of pragmatic policy approaches for unleashing the potential of broadband enabled services like VoIP. For example, in May of 2006, the California Public Utilities Commission decided not regulate VoIP at the state level and closed its proceeding on the regulation of VoIP.³ Likewise, in order to accelerate the use of VoIP within the state government and better serve constituents, Governor Schwarzenegger signed an Executive Order to, among other things, harness the power of VoIP to help the government communicate more effectively and affordably.⁴ California should not reverse its reasoned policy approach.
- Third, the California Legislature need not regulate VoIP or violate federal preemption rules in order to ensure public safety has the customer information they need in an emergency. The issues that AB 1977 attempts to resolve are national in nature. In fact, Congress is already working to address this issue directly. The U.S. House of Representatives has already passed HR 3403 -- the 911 Modernization and Public Safety Act -- by an overwhelming vote of 406 to 1. Title III of the House passed bill entitled "Authority to Provide Customer Information For 911 Purposes" specifically provides Interconnected VoIP providers the authority under Section 222 of the Telecommunications Act to provide law enforcement with necessary customer proprietary information in an emergency. The U.S. Senate has also passed companion legislation, a version of which is expected to be signed into law this year.

Thus extending state rules to Interconnected VoIP is unnecessary, contradictory, and counterproductive. At a minimum, **references to VoIP should be stricken entirely from AB 1977.** Alternatively, AB 3011 -- an alternative version of the bill which does not specifically include VoIP or customers using the Internet to communicate, could alternatively be advanced.

³ On May 4, 2006 CPUC Administrative Law Judge Grau issued a draft decision regarding investigation 04-02-007 to close its investigation into state regulation of VoIP, citing the FCC's determination in the *Vonage Order* that the FCC, and not the states, is responsible for determining the regulatory framework for VoIP.

⁴ See *Gov. Schwarzenegger Signs Executive Order to Help Make California the Leader in Telecommunications Revolution* (Oct. 27, 2006) available at <http://gov.ca.gov/index.php?/press-release/4575/>.

If California is to harness the full power and potential that Internet based communication can deliver, the California Legislature should continue to refrain from extending state regulations to VoIP services—especially in ways that raise so many new questions, contradict federal rules, and are already being addressed in a consistent national framework.

We look forward to working with California leaders to continue to forge pragmatic solutions that enable consumers, businesses, public safety, 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 BT Americas, CallSmart, Cisco, CommPartners, 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 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. <http://www.von.org>