
**Technology, Energy & Communications
Committee**

HB 1585

Brief Description: Concerning the regulation of certain internet protocol services.

Sponsors: Representatives Finn, McCoy, Crouse, Eddy, Hinkle, Van De Wege, Takko, Carlyle, Dunshee, Ericks, Haler, Liias, Clibborn, Kenney, Ericksen, Bailey, Sells, Springer, Morris, Kessler, Williams, Upthegrove, Kelley, Simpson and Morrell.

Brief Summary of Bill

- Prohibits the regulation of voice-over Internet Protocol and other Internet Protocol-enabled services by state or local governments.

Hearing Date: 2/18/09

Staff: Kara Durbin (786-7133)

Background:

Voice-over Internet Protocol

Voice-over Internet Protocol (VoIP) is a service that uses Internet Protocol (IP) packets to transmit a voice communication over an IP network, such as the Internet.

VoIP service can be "nomadic" or "fixed" in nature. Nomadic service is where a VoIP customer can use the service "nomadically" through a broadband internet connection at any location in order to place a call. Fixed VoIP service uses an IP network in the same way that nomadic service does, but the service is used from a fixed location. For example, some cable television companies offer VoIP service to their customers, but their service uses the cable running to and from the customer's residence. As a result, the geographic originating point of the communication can be determined. In the case of fixed VoIP service, the interstate and intrastate portion of the service can be more readily distinguished than with nomadic service.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

FCC Regulation of VoIP

The Federal Communications Commission (FCC) has held that voice-over Internet Protocol services connected to the public telephone network are subject to certain regulatory obligations under Title II of the federal Telecommunications Act. These regulatory obligations include compliance with the Communications Assistance for Law Enforcement Act (CALEA), contribution to certain telecommunications-related funds, including the Universal Service Fund (USF) and the Telecommunications Relay Service (TRS), and provision of 911 emergency calling capabilities.

Vonage Order

In 2003 the Minnesota Public Utilities Commission (PUC) ruled that VoIP service provided by Vonage (a nomadic-based VoIP service) constituted a "telephone service" under Minnesota law and ordered Vonage to comply with state telecommunications law, which included entry, rate, and 911 requirements as a condition of Vonage offering service in the state. In 2004, the FCC preempted the Minnesota PUC's decision in its *Vonage Order* on the grounds that Vonage's service could not be separated into interstate and intrastate communications for compliance with Minnesota's requirements without negating federal policies and rules.

The FCC also found that preemption of the Minnesota PUC's requirements was consistent with Section 230 and 706 of the Telecommunications Act of 1996, which called for a single national policy for information and Internet-based services.

The *Vonage Order* also extended its application to IP-enabled services that had the same characteristics as Vonage's service. The *Vonage Order* did not address whether Vonage's service was a telecommunications service or an information service, nor did it address the applicability of Minnesota's general law governing entities conducting business in the state (such as taxation, fraud, marketing, advertising, and other business practices).

Eight Circuit Appeal of the *Vonage Order*

Several state commissions and the National Association of State Utility Consumer Advocates (NASUCA) appealed the FCC's *Vonage Order*. The cases were consolidated and transferred to the Eight Circuit. The Eight Circuit held in 2007 that it was unnecessary to decide whether VoIP was an information service or a telecommunications services before taking action to preempt state regulation. The court also found that the FCC had not acted arbitrarily in determining the impossibility of separating out the intrastate components of VoIP service, or in determining that the state regulation of VoIP service conflicts with federal regulatory policies.

The court refused to decide whether FCC preemption should be applied to "fixed" or "facilities-based" VoIP services, such as those typically offered by cable operators. The court held the question was not ripe for adjudication because the FCC had merely speculated in the *Vonage order* that it would similarly preempt state regulation of VoIP services offered by cable companies, but had not taken action to actually effect such state preemption.

FCC: IP- Enabled Services

In 2004 the FCC initiated a Notice of Proposed Rulemaking (NPRM) governing the legal and regulatory framework for Internet Protocol (IP)-enabled services, including VoIP services. The NPRM asked commenters to categorize and classify different types of IP-enabled services, and address what should be the proper legal and regulatory framework for each category of IP-

enabled services, including the jurisdictional nature of each type of service. The FCC also asked whether 911/E-911, disability access, intercarrier compensation, and universal service obligations should be applied to IP-enabled services, or whether forbearance might be appropriate for some types of services.

While the NRPM asked many questions regarding the appropriate regulatory and legal framework for IP-enabled services, the FCC did not offer any conclusions. This rulemaking is still pending before the FCC.

FCC: Other IP-Enabled Proceedings

There are several other proceedings that are currently pending before the FCC that relate to IP-enabled service, including topics such as E-911, CALEA, mobile VoIP E-911 accuracy requirements, Form 477 information collection requirements, and truth-in-billing rules.

Summary of Bill:

A department, agency, commission or political subdivision of the state may not enact or enforce any law or regulation that regulates the rates, term and conditions, or the entry into the market of Voice-over Internet Protocol or Internet Protocol-Enabled service, except as may be provided in another provision of law.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.