

TESTIMONY OF THE VOICE ON THE NET COALITION
BEFORE THE HOUSE COMMITTEE ON COMMERCE, LABOR AND
ECONOMIC DEVELOPMENT

HEARING ON HB 2326

FEBRUARY 18, 2013

Good afternoon Chairman Kleeb, members. My name is Glenn Richards and I am the Executive Director of the Voice on the Net Coalition. First I would like to thank you for the opportunity today to express the VON Coalition's support for HB 2326.

For those of you that do not know us, the Coalition's members include many of the leading Internet communications companies, including Google, Microsoft, Skype, Vonage and Yahoo. For the past 15 years, the VON Coalition has been working with federal and state policymakers to advance regulatory policies that enable consumers, businesses and government to enjoy the full promise and potential of Internet Protocol or IP communications. The companies in the VON Coalition are developing and delivering the next generation of voice, video and data communications services that can be used anywhere and everywhere that broadband is available -- no telephone required.

Once limited to hobbyists, IP communications today is the dominant technology for users of communications services. According to a report released last month by the FCC, at the end of 2011, there were more than 263,000 interconnected VoIP subscriber lines in Kansas, receiving service from 80 VoIP providers. Of these, 194,000 are residential subscriber lines and 69,000 are business lines. ILECs served 31,000 of these VoIP lines; while competitors served 232,000 VoIP 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.

The dramatic growth of IP communications 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, IP communications is lowering costs, allowing increased control over communications, increasing productivity, increasing mobility, enabling collaboration, and giving companies a competitive advantage. IP communications 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.

IP's ability to converge voice, video, and data into one application makes available new accessibility options for the tens of millions of disabled Americans. IP communications 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.

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

IP communications has prospered in a largely unregulated environment. The Federal Communications Commission in 2004 found that IP communications between computers should not be regulated at all; and it also that same year preempted state regulation of interconnected VoIP – which are services that are used more like a replacement for regular telephone service. The FCC has, however, imposed certain public safety and consumer protection requirements on interconnected VoIP providers, such as a requirement to provide 911 services, protect customer data, report outages and assist law enforcement. There is no federal entry or price regulation of VoIP.

At least 24 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 IP communications 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.

By adopting House Bill 2326, Kansas 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 Kansas by eliminating the threat of conflicting state regulation of two types of Internet Protocol-enabled services. The first, referred to in this bill as Internet Protocol enabled service, includes those broadband delivered applications and services used by consumers, businesses, and government every day, such as instant messaging, e-mail, web surfing, search, streaming video, and voice communications applications such as Skype video calling. Historically, the FCC has preempted regulation of these offerings. These are the innovative products and applications that are driving Kansas' 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. HB 2326 recognizes and retains federal preemption of state and local regulation.

The bill also refers to another form of IP communications service, identified as Voice over Internet Protocol, or VoIP services, which provide consumers a replacement for their traditional phone service. VoIP services as defined in HB 2326 and by the FCC are distinguished by the ability of consumers to both make calls to and receive calls from the public phone network. The FCC has created a uniform framework for the regulation of these two-way VoIP services that applies in all 50 states. This legislation reinforces the existing federal framework by precluding state or local governments or agencies in Kansas from attempting to regulate VoIP in conflict with the FCC.

The appropriate policy framework, as embodied in this legislation will facilitate transformative improvements in the way all people in Kansas communicate that harness the power of the Internet. Adoption of HB 2326 will provide four critical benefits to the state of Kansas during these challenging economic times:

- (1) a platform for innovation delivering advanced broadband communications features to consumers and business in Kansas;
- (2) increased competition among network and service providers leading to cost savings for consumers and businesses across the state;
- (3) increased infrastructure investment and accelerated broadband deployment – critical elements of job creation and economic growth in the state, particularly in rural areas; and,
- (4) most importantly, this legislation will moot a problematic order issued by the Kansas Corporation Commission on January 30, 2013, asserting jurisdiction over what it calls “fixed” VOIP and requiring Time Warner Cable to obtain a Certificate of Convenience and Authority to offer its Digital Phone Service in Kansas. As noted earlier, the FCC in 2004 preempted state regulation of VoIP and, in my opinion, this Commission order will not survive judicial scrutiny, if appealed. The order also creates a terrible precedent, and will likely have a chilling effect on the 80 companies providing VoIP services in Kansas, possibly leading to their exodus from the market and reducing competition, rather than subject themselves to state telephone regulations, including the filing of tariffs. I am aware of only one other state, Vermont, that has a similar regulatory decision in place, and that has been appealed to the state supreme court.

This critical legislation – which must be passed this session -- will ensure the continued availability of these broadband communications offerings and open new high-tech economic opportunities by prohibiting regulation of innovative IP-based services, consistent with Federal law. Everyone in Kansas has 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.

In summary, enabling a consistent and predictable policy framework, thereby fostering innovation in VoIP and IP-enabled applications and services can help lead to breakthrough new benefits for Kansas consumers. The bill 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.

We look forward to working with you and other policy makers in Kansas to forge pragmatic solutions that enable consumers, businesses, and the economy to achieve the full promise and potential that VoIP and IP-enabled services can deliver.

Thank you again for your time and I look forward to your questions.