Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Vonage Holding Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission	))	WC Docket No. 03-211

COMMENTS OF INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

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I. Summary

Independent Telephone & Telecommunications Alliance ("ITTA"), through its attorneys, files these comments in opposition to the above-captioned petition ("Petition") of Vonage Holdings Corp. ("Vonage").[1] The FCC should decline to preempt the ruling by the Minnesota Public Utility Commission ("MPUC") that the intrastate provision of voice-over-Internet-protocol ("VoIP") service by Vonage is subject to regulation in Minnesota as "telephone service." Vonage has failed to demonstrate either that its VoIP service is an information service or that it is purely interstate, and has therefore failed to establish the legal predicate necessary for preemption of the MPUC's interpretation of its own statute.

The classification of VoIP instead should be considered as part of a fast-track comprehensive rulemaking, which the Commission should launch as soon as possible and in which the Commission may consider all the implications of any such classification for consumers, competition and VoIP providers. The Vonage VoIP service is not just a nascent service that needs to be aided through unfair parity to be an effective competitor. After launching service only last year, Vonage already boasts that it serves over 50,000 lines and

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[1] *Pleading Cycle Established for Comments on Vonage Petition for Declaratory Ruling*, WC Docket 03-211, DA 03-2952 (Wireline Competition Bur. Sept. 26, 2003).

completes over 2.5 million calls *per week*,[2] making Vonage a formidable competitor to providers of traditional circuit-switched telephony.

II. Background

The Vonage Petition arises out of a September 11, 2003 MPUC ruling that Vonage's packet-based telephony service constitutes "telephone service" under Minnesota's public utility statutes, and that Vonage must therefore comply with regulatory requirements applicable to other telephone companies under Minnesota law.[3] Vonage filed the Petition at the FCC on September 22, 2003. Vonage also sought review of the MPUC Order and a preliminary injunction of its enforcement from the United States District Court for the District of Minnesota. On October 16, 2003, the Minnesota District Court granted a permanent injunction, finding that Vonage's packet-based telephony service meets the definition of an "information service" under the Communications Act of 1934, as amended (the "Communications Act"), and that federal law preempts state public utility commission regulation of Vonage.[4]

ITTA is an organization of midsize incumbent LECs that collectively serve over eight million access lines in over 40 states and offer a diversified range of services to their

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[2] Vonage Press Release, "Keep Your Phone, Lose Your Old Phone Company" (Oct. 13, 2003) (available at: www.vonage.com/corporate/press_index.php?PR=2003_10_13_0) (visited Oct. 27, 2003).

[3] *See Complaint of the Minnesota Dep't of Commerce Against Vonage Holdings Corp. Regarding Lack of Authority to Operate in Minnesota*, Order Finding Jurisdiction and Requiring Compliance, Docket No. P-6214/C-03-108 (Minn. PUC Sept. 11, 2003), at 8 ("*MPUC Order*"), *injunction granted sub nom. Vonage Holdings Corp. v. Minnesota PUC*, Memorandum and Order, Civ. No. 03-5287 (MJD/JGL) (D. Minn. Oct. 16, 2003); Minn. Stat. § 237.01, subd. 7 (defining "telephone company"); 237.16, subd. 1(b) (requiring a telephone company to obtain a certificate of public convenience and necessity before initiating service).

[4] *Vonage Holdings Corp. v. Minnesota PUC*, Memorandum and Order, Civ. No. 03-5287 (MJD/JGL) (D. Minn. Oct. 16, 2003).

customers. Most members qualify as rural telephone companies within the meaning of Section 3(37) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 153(37).

III. The Minnesota Court's Decision Is Not Binding on the Commission

The Minnesota District Court's opinion should have no impact on the Commission's proceedings except to the extent that it renders the Petition moot. Unlike the *Brand X* case, in which an FCC order was reviewed by the Ninth Circuit, and the court was obliged to follow its own precedent from a prior adjudicatory matter in which it had interpreted the Communications Act,[5] no FCC order is at issue here and the Commission was not a party to the district court proceedings; a reviewing court of appeals would not be bound to apply the law of the federal district court, nor is the Commission bound to follow the district court's holding in subsequent proceedings interpreting the Communications Act. While the Commission may take an interest in the appeal of the Vonage court case, the trial court's decision does not bind the Commission. The Commission may choose to dismiss the Petition as moot, but it need not otherwise consider the federal district court case in connection with Vonage's petition.

IV. Vonage's IP-Based Telephone Service Is Subject to Regulation as a Telecommunications Service

Vonage's theory is that it provides an Internet-based service and, purely on that basis, it should be classified as an information service and, as such, a purely interstate service provider. However, because no net protocol conversion is performed, and Vonage is holding itself out to the public as a provider of telephone-based telecommunications services, Vonage

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[5] *Brand X Internet Services v. FCC*, ___ F.3d ___, 2003 WL 22283874 (9th Cir. Oct. 6, 2003), *applying AT&T v. City of Portland*, 216 F.3d 871 (9th Cir. 2000). The very narrow nature of the result in *Brand X* is illustrated by the fact that, while the Ninth Circuit was bound by *stare decisis*, another appellate court would not have been bound to follow the Ninth Circuit's holding in the *City of Portland* case.

does provide a "telecommunications service" under the Communications Act, and a "telephone service" under Minnesota law, as the MPUC ruled. In addition, Vonage has failed to establish why it does not provide *intrastate* services, or otherwise justify FCC preemption. If Vonage were correct, a host of acknowledged telecommunications carriers would have long ago been transformed into information service providers merely by deploying new technology in their networks. Carriers routinely convert calls from audible sound waves to analog electrical current to digital TDM electric pulses and optical transmission, and there is no plausible argument that they have ceased providing telecommunications services as a result.

A. "Net Protocol Conversions" Must Be Measured On an End-to-End Basis

As factual support for its position that it provides an "information service" rather than a "telecommunications service" within the meaning of the Communications Act, Vonage attempts to explain that it performs a "net protocol conversion" on its customers' traffic. However, in order to succeed in this argument, Vonage must convince the Commission to consider only part of its service, because no "net" protocol conversion is performed on the end-to-end transmission, which is the relevant target of the FCC's analysis.

Net protocol conversion must be measured on an end-to-end basis. The Commission has for two decades and more distinguished between "basic" services (or telecommunications services as they were named in the 1996 Act) and "enhanced" services (called information services in the 1996 Act), because in enhanced services "computer processing applications are used *to act on* the content, code, *protocol*, and other aspects of the subscriber's information."[6] Where an entity performs a "net protocol conversion" in the course

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[6] *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)* ("*Computer II Final Decision*"), Final Decision, 77 FCC 2d 384, para. 97

of transmitting information, it is engaged in the provision of an "enhanced" or information service; but where protocol conversion is only used to facilitate the introduction of a new basic network technology, which requires protocol conversion to maintain compatibility with existing customer premises equipment, or to facilitate the interconnection of networks that operate on different protocols, with the end result that there is "no net protocol change between the ends of the basic common carrier service involved," the service is simply a (basic) telecommunications service. [7]

(1980) (emphasis added), *aff'd on reconsideration*, 84 F.C.C. 2d 50 (1980) *and* 88 F.C.C. 2d 512 (1981), *aff'd sub nom. Computer and Communications Industry Ass'n v FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983). The Commission has determined that all enhanced services also meet the definition of an information service now a part of the Communications Act, but that the term "information service" may encompass services that were not previously classified as enhanced services. *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd 21905 (1996), para. 103 ("*Non-Accounting Safeguards Order*").

[7] *Communications Protocols under Section 64.702 of the Commission's Rules and Regulations*, Memorandum Opinion, Order, and Statement of Principles, 95 F.C.C.2d 584 (1983), para 18 ("*Protocol Conversion Order*"); *see also, id.* at paras. 13-26; *Non-Accounting Safeguards Order*, at para. 106. In 1983 the FCC explained why the introduction of a then-new technology should not in itself turn a basic service into an enhanced service:

> [T]here is currently a trend towards the use of digital loops which will interface with customer premises equipment using a digital protocol interface. A potential problem might arise if a call were placed between a user of equipment which employs such a digital interface and a user using the more traditional analog interface (with appropriate conversion equipment employed within the network): there would be a net protocol conversion within the network for such a call to proceed, i.e., from a digital to an analog protocol between the ends of that call. This could be thought of as invoking the definition of enhanced service, although the service itself would remain a switched message service otherwise unchanged except for the characteristics of the electrical interface.

Protocol Conversion Order, at para 16 (emphasis supplied); *see also Non-Accounting Safeguards Order*, at para. 106 ("no net" protocol conversion services, including protocol processing "in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE)," are

Vonage does not perform a "net protocol conversion" on its customers' voice telecommunications traffic. Vonage customers place calls and receive calls using ordinary telephones; voice calls from other customers using ordinary telephones from anywhere on the public switched telephone network (PSTN) can be made to Vonage customers and received from Vonage customers. To the customer, Vonage "offers a pure transmission capability over a communication path that is virtually transparent in terms of its interaction with customer-supplied information."[8] In short, the caller's voice and message is heard by the called party just as in any other telecommunication. There is no change to either the form or content of the information being transmitted.

Vonage attempts to show that it performs a "net protocol conversion" by describing that it performs one protocol conversion in its network, and the other is performed in CPE installed at the customer's premises. Petition at 5. Vonage states customers must plug their ordinary analog telephones into a "Multimedia Terminal Adapter" which encodes the analog electrical signals generated by the telephone for packet-based transmission. Vonage then converts the transmission back to the synchronous TDM format used by the telephone network and delivers the call (via a CLEC) to the called party. Petition at 12-13. Vonage erroneously concludes that its IP-based telephony service results in a net protocol change because only one protocol conversion is performed in Vonage's network. Setting aside the fact that Vonage sells customers the Adapter as part of its IP-based telephone service, Vonage ignores the fact that

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telecommunications services, and not "information services" under the definitions in the Communications Act.

[8] *Computer II Final Decision* at para. 96.

there is *no "net conversion to the end user*" that would render the service an information service.[9]

Vonage's conversion of an end-user's spoken information from analog electrical impulses into packets (and back again) is no more significant than the analog telephone's original conversion of that information from sound waves propagating in air into those electrical impulses, or the further conversion of that information within a network into light pulses or radio waves. It is no more significant than the signal alternations that are routinely made between interconnecting carriers using different encoding formats, which do not make them information services providers. Without more, IP-based technology cannot transform a telecommunications service into an information service. The Commission has singled out protocol conversions that "take place solely within a carrier's network to facilitate the provision of a basic network service," *i.e.,* to facilitate interconnection between carriers that use different transmission protocols, as exceptions to the definition of information ("enhanced") service.[10] This exception fits Vonage's provision of service precisely. As Vonage itself explains, its "service provides an interface between otherwise incompatible network protocols of the Internet and the PSTN." Petition at 13.

B. Vonage Is Not an Information Service Provider But a Telecommunications Carrier Under Federal Law

Vonage also attempts to show that customers may only access its IP-based telephone service using a high-speed Internet connection and, therefore, Vonage provides Internet services rather than telecommunications services. However, Vonage does not offer its customers the ability to generate, store, retrieve, or otherwise process information. Rather, it holds its services out to the

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[9] *Non-Accounting Safeguards Order* at para 106.

[10] *Non-Accounting Safeguards Order* at para. 106; *Protocol Conversion Order* at para. 18.

general public and transmits (for a profit) information of the user's choosing between points designated by the user, without change in form or content. It thus fits squarely within the Communications Act's definition of telecommunications service and the D.C. Circuit's definition of a common carrier.

1. Vonage Does Not Offer an Information Service.

Vonage transmits information without change in form or content, as described above. Its service does not include any of the hallmarks of information services: it does not offer its customers the ability to generate, store, retrieve, or otherwise process information.[11] It performs no net protocol conversion, as explained above, and does not purport to act on the information its customers transmit in any other way that is meaningful under the Communications Act or Commission precedent. The only other explanations Vonage offers as to why it does not offer telecommunications, rather than information services, are that its customers must use "special equipment" not used to place an ordinary touch-tone telephone call, customers enjoy freedom of movement, and that it purchases telecommunications services. Neither of these is relevant to the information services designation Vonage seeks.

The Adapter described above performs part the protocol conversion function necessary for IP-based telephony, and the other remaining conversion is performed in Vonage's network. Vonage cannot escape the conclusion that it is a telecommunications carrier merely by installing a piece of customer premises equipment between the customer's telephone and its

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[11] 47 U.S.C. § 153(20) (defining information service to require a capability for "generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information"); *Report to Congress* at para. 89 (holding that a provider of phone-to-phone IP telephony does not provide the capability for "generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information" and therefore does not provide an information service).

network. Vonage correctly points out that, in the 1998 FCC Universal Service *Report to Congress* the Commission pointed to the need for special CPE as a relevant factor in assessing when IP telephony is a telecommunications service; but Vonage fails to complete the analysis: the Vonage service does, in fact, permit the customer to use its plain old "CPE necessary to place an ordinary touch-tone call … over the public switched telephone network"[12] and simply requires a link from that CPE to the Vonage Adapter in order to perform the protocol conversion to IP.

Vonage also asks the Commission to place significance on the fact that its users may "dial in" to Vonage's service from different locations. However, the FCC never identified the ability of a subscriber to use a service regardless of location, or the necessity of "dialing in" to a service, as a hallmark for distinguishing information services from telecommunications services. Indeed the Commission (and state commissions) classify as telecommunications services many offerings that feature mobility, including commercial mobile radio services, paging services, calling card services, casual toll calling services, foreign exchange offerings, and virtual NXX offerings.

Vonage also fails to explain why its purchase of local telecommunications services from other carriers establish that Vonage is not a telecommunications carrier. Vonage does not explain, however, how the purchase of telecommunications services makes it any different from hundreds of other telecommunications carriers who purchase local exchange, exchange access, long-distance and other telecommunications services, either for resale under their own brand name or to comprise a new telecommunications service when combined with their own network offerings. Indeed, it appears clear that Vonage is not purchasing the services

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[12] *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998) ("*Report to Congress*"), at para. 88

it describes for its own use in operating its business, but rather as an input to the service it provides. Essentially Vonage appears to be acting as a reseller of these local exchange services, as well as a provider of interexchange services.

2. Vonage Holds Itself Out As a Telecommunications Carrier Within the Meaning of the Communications Act and FCC Precedent

Rather than an information service provider, Vonage is a telecommunications carrier under the Communications Act and FCC precedent. The Act provides, in pertinent part, that a telecommunications carrier is an entity that provides telecommunications services, namely telecommunications (the transmission between or among points specified by the user, of information of the user's own design and choosing, without change in the form or content of the information) offered for a fee directly to the public, or to such classes of users as to be effectively available directly to the public.[13] The service in question fits every element of this pivotal definition in the Communications Act. As described above, the service described in the Petition does not do anything other than transmit information of the user's choosing between points specified by the user, without any "net" change in form or content. Vonage does not dispute that it offers its services to the public for a fee. Vonage is holding itself out as a provider of telecommunications service and should be classified as such.

The Commission also has held that the definition of a "telecommunications carrier," added to the Communications Act in 1996, is coextensive with the previously existing

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[13] *See* 47 U.S.C. § 153(43, 44, 46).

definition of a "common carrier."[14] As expressed by the D.C. Circuit, the hallmark of a common carrier is the holding out to the public of one's services.[15]

There can be no question that Vonage holds itself out to serve the public in a nondiscriminatory fashion. The company promotes itself as "The Broadband Phone Company."[16] It advertises per-minute long-distance rates for calling distant global points, states that "you get local, regional and long distance U.S. and Canadian calling," and urges potential customers to "keep your phone number, change your phone company."[17] Vonage also assigns telephone numbers to its customers. Petition at 7. Vonage offers call waiting, voice mail, call forwarding, call transfer, caller ID, enhanced 411 dialing, telephone number portability, three-way calling, call hunt, and other services traditionally provided by telecommunications carriers.[18] Vonage's web site shows a sample bill that looks remarkably like a telephone bill.[19] Vonage even states on its website that it charges its customers a $1.50 per month "Regulatory Recovery Fee," which it explains is:

> [A] fee that Vonage charges its customers to recover required costs of Federal and State Universal Service Funds as well as other related fees and surcharges. [The customer's] total Regulatory Recovery Fee reflects a $1.50 surcharge for every phone number . . . including primary voice

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[14] *See, e.g.*, *Cable and Wireless, PLC*, 12 FCC Rcd 8516, 8522 ¶ 13 (1997).

[15] *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976) (holding that a common carrier "holds himself out to serve indifferently all potential users." There is also a second part of the *NARUC* test, namely that a common carrier must allow users to "transmit intelligence of their own design and choosing." *Id.*

[16] *See* www.vonage.com (promoting Vonage as "The Broadband Phone Company") (visited Oct. 27, 2003).

[17] *See* www.vonage.com/area_codes_lnp.php (visited Oct. 27, 2003).

[18] *See* www.vonage.com/features.php (visited Oct. 27, 2003).

[19] *See* www.vonage.com/features_billing.php (visited Oct. 27, 2003).

> lines, second lines, fax lines, Toll Free Plus(SM) numbers and Virtual Phone Numbers(SM).[20]

Vonage charges its customers this fee despite (1) its claims that it is not and cannot be regulated; (2) its claims that, if regulated, it would be "unable accurately to ascertain its liability for fees, taxes and other charges applicable to intrastate telephone services, or (if it were considered a telecommunications carrier) for regulatory fees administered by this Commission and assessed on interstate revenues," Petition at 30; and (3) the fact that the Commission's *Telecommunications Provider Locator* report, which lists all carriers that file the FCC's Form 499-A and contribute to universal service, contains no mention of Vonage.[21]

In short, this is not a close or difficult call. Vonage is offering telecommunications to the public for a fee. It is a carrier under federal law.[22]

C. The Minnesota PUC Properly Found that Vonage Meets the State Law Definition of Telephone Service

Vonage's final argument in favor of preemption is the conclusory one that, once the FCC finds that Vonage is providing an information service it must preempt, because the FCC has found Internet services to be jurisdictionally interstate, for some purposes. The Commission must decline to grant the relief Vonage requests. Vonage's premise is incorrect – as explained

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[20] *See* www.vonage.com/learn_center.php (explanation listed under Question 12, "What are Regulatory Recovery Fee surcharges?") (visited Oct. 27, 2003).

[21] *See Telecommunications Provider Locator,* Industry Analysis & Technology Division, Wireline Competition Bureau, Federal Communications Commission (rel. Feb. 2003) (available at www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Locator/locat02.pdf) (visited Oct. 27, 2003).

[22] Although Vonage clearly is operating as a telecommunications carrier and providing a telecommunications service, ITTA is not recommending that the Commission impose the full panoply of regulations applicable to dominant local exchange carriers at this time. Rather, ITTA simply underscores the regulatory treatment of Vonage and analogous carriers is properly the subject of a comprehensive rulemaking, and not of a declaratory ruling.

previously, Vonage does not meet the definition of information service – and Vonage also overstates the scope of the FCC's jurisdictional ruling. In addition, Vonage fails to give the Commission adequate justification for interfering with the state regulatory scheme; preemption requires actual conflict between federal and state law, which Vonage has not identified.

1. The FCC Did Not Find That All Information Services Are Inherently Interstate

Even if Vonage is providing an information service (and ITTA believes it clearly is not), Vonage has not established that its service is entitled to preemption as an inherently interstate service. Vonage attempts to build on certain isolated FCC statements about the Internet to reach a conclusion that its so-called information service is entitled to jurisdictionally interstate treatment, because it "uses" the Internet. *E.g.*, Petition at 30-31. Vonage relies in large measure on an early *Report to Congress* discussing the possible status of certain Internet services for the purposes of universal service contributions. Petition at 19-20. Vonage also cites to the FCC's statement that it may preempt state regulation of intrastate information services on a case-by-case basis. Pettion at 20-21. However, Vonage fails to weave these threads into a coherent argument that its "broadband telephone service" should be viewed as inherently interstate.

In the *Report to Congress*, the FCC was attempting to determine whether universal service contributions were required of providers of Internet "backbone" or underlying transmission capability, providers of Internet access and content-based services, and providers of emerging technologies that use the Internet, such as IP-based telephony. The Commission did not reach any definitive conclusion as to the latter.[23]

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[23] *Report to Congress* at para. 90.

While the FCC has ruled that Internet *access* services are jurisdictionally interstate (at least for some purposes),[24] this decision is the subject of further proceedings, and it does not on its face extend to the VoIP service offered by Vonage. By Vonage's admission, it is offering customers local, national and international "phone service," including "unlimited local" calling under either of its rate plans.[25] It does so by providing "an interface between otherwise incompatible network protocols of the Internet and the PSTN." Petition at 13. Vonage is not offering access to or the ability to interact with the content-based services that make up the World-Wide Web.[26] The FCC simply did not address IP-based telephony when it was considering the jurisdictional nature of *Internet access* services.

2. Under Minnesota Law, Vonage Is a Telephone Company

In its Order, the MPUC properly discerned that, like the services provided by virtually every telecommunications carrier and ISP, Vonage's service can be used in both the intrastate and interstate jurisdictions.[27] The MPUC has jurisdiction over each "telephone company" providing service in Minnesota. Minnesota law prohibits any person from providing "telephone service in Minnesota without first obtaining a determination that the person possesses the technical, managerial, and financial resources to provide the proposed telephone services and a certificate of authority from the commission under terms and conditions the commission finds to be consistent with fair and reasonable competition, universal service, the provision of

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[24] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation For ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151 (2001), *remanded sub nom. WorldCom, Inc. v. F.C.C.*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied sub nom. Core Communications, Inc. v. FCC*, 123 S.Ct. 1927 (2003).

[25] *See* http://www.vonage.com/rate.php (visited October 27, 2003).

[26] *E.g., Report to Congress* at para. 89.

[27] *MPUC Order* at 8.

affordable telephone service at a quality consistent with commission rules, and the commission's rules," Minn. Stat. § 237.16, subd. 1(b). Thus, to the extent that Vonage is providing "telephone service" in Minnesota, it is incumbent upon the MPUC to evaluate the carrier's qualifications.

Minnesota does not, however, define the term "telephone service" by statute. Rather, the Minnesota Supreme Court has determined that whether a company "is supplying a telephone service is a question of law to be determined on the basis of the operative facts determined by the [MPUC]," *Minnesota Microwave, Inc. v. Public Service Comm'n*, 190 N.W.2d 661 (Minn. 1971). The MPUC fulfilled its duty to resolve the legal question as to whether Vonage's service constitutes a telephone service under Minnesota law, determining that Vonage "holds itself out as providing all-inclusive home phone service and advertises that it replaces a customer's current phone company."[28]

Vonage customers communicate between two points, namely the location of the calling and called parties. To the extent that those points are both in Minnesota, it is appropriate for the MPUC to exercise its jurisdiction as required by Minnesota Statute § 237.16, subd. 1(b).[29]

Moreover, the FCC may not preempt state rulings unless they conflict with federal law, or interfere with the achievement of its purpose.[30] Vonage's entire preemption argument rests on its assertion that it is an unregulated provider of information services. Thus,

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[28] *MPUC Order* at 8.

[29] While the process of identifying the location of IP-based callers may be different and less straightforward that the process for locating a user of a wireline circuit-switched network, the FCC has successfully directed carriers, including CMRS carriers that serve large and mobile customer bases, to overcome difficulties this mobility creates for a host of purposes, including implementing E-911 capability, identifying the interstate portion of the carrier's revenues for purposes of contributing to federal universal service mechanisms, and implementing local number portability, among others.

[30] *Louisiana Publ. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986).

the Petition fails to offer any rational basis for Commission preemption of the MPUC's decision to the extent it applies to intrastate telecommunications services offered by Vonage

V. The Jurisdictional or Service Classification of Vonage's Offering Does Not Depend on its Alleged Inability to Comply with Certain Legal Obligations Minnesota Places on Providers of Intrastate Telecommunications Services

The Commission no doubt will find that Vonage's Petition raises a host of public policy questions that merit serious consideration, even if Vonage's arguments about being an information service provider do not. For example, many providers of telecommunications services that feature mobility have, like Vonage, complained that mobility dramatically complicates their efforts to comply with certain regulatory requirements, such as E911, CALEA, number portability, and others. Petition at 8-9. Vonage concludes that this difficulty transforms the carrier's service into an information service. This is a classic *non sequitur*. The Commission has never considered such operational issues relevant to the jurisdictional nature or service classification of any particular service or provider, and it should not begin to do so now. The Commission should, however, closely examine these and similar issues in a comprehensive rulemaking to decide the extent to which to regulate VoIP carriers.

Similarly, the Commission may want to examine the competitive implications of services like Vonage's supplanting traditional circuit-switched telephone service. If the Commission were to create a large regulatory disparity between VoIP providers and incumbent LECs, then the pricing and cost advantages that would accrue to VoIP providers could cause seismic shifts within the telecommunications industry. First, such a regulatory gulf would increase the opportunities for regulatory arbitrage that already exist today between ILEC services and those provided by CLECs, CMRS carriers, interexchange carriers, and others, threatening universal service and other vital public policy goals. Second, ITTA expects that such a ruling would cause its members, in addition to substantially larger incumbent LECs, to closely examine

opportunities to migrate large portions of their customer base to such unregulated offerings of their own. Such a migration could create substantial challenges for Commission oversight of the industry.

VI. Conclusion

For the foregoing reasons, ITTA urges the Commission to deny Vonage's Petition for a Declaratory Ruling forthwith. Instead, the Commission should open a comprehensive rulemaking to clarify the jurisdictional and service classification of VoIP offerings, as well as the regulatory obligations of VoIP carriers.

Respectfully submitted,

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