

*The Federal Communications Commission FCC defines VoIP as a technology that allows users to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line.*

# VoIP

## VOICE OVER INTERNET PROTOCOL



IDAHO PUBLIC UTILITIES COMMISSION





## Idaho Public Utilities Commission

P.O. Box 83720, Boise, ID 83720-0074

C.L. Butch Otter, Governor

Paul Kjellander, Commissioner  
Kristine Raper, Commissioner  
Eric Anderson, Commissioner

December 5, 2016

Senator Brent Hill & Representative Scott Bedke  
Idaho State Legislature  
700 West Jefferson Street  
Boise, Idaho 83720

Dear Senator Hill and Representative Bedke,

In response to a request from legislative leadership, the Idaho Public Utilities Commission (IPUC) undertook the task of convening a group of interested parties to evaluate the status of Voice over Internet Protocol Service (VoIP) in relationship to Idaho. The report included in this package is the culmination of that effort.

As background, the IPUC chose to contract with Joe Cusick to oversee this project. Mr. Cusick has decades of experience in the telecommunications sector, which includes professional work within the industry and as a regulator. He was instructed to develop an "honest broker" report that avoided taking a position on any options that emerged.

The finished report is intended to be an easily accessible assessment of VoIP in Idaho. All effort was made to avoid the morass of acronyms and jargon that litter the telecommunications sector. Hopefully, this report will accomplish its goal of providing an easy to digest evaluation of the current status of VoIP and the possible paths forward.

As another point of interest, the landscape at the federal level has changed dramatically since the initiation of this project. Most notably, the results of the November elections could lead to potential congressional and regulatory actions that might impact the telecommunications industry. The new administration will certainly have a different relationship with Congress, and the composition of the Federal Communications Commission (FCC) will also change.

While congressional action and directions are always difficult to predict, it is clear that future changes at the FCC will have significant and more immediate impact on the telecommunications sector. Given the recent history that most major FCC decisions were resolved by 3-2 decisions along party lines, a change at the FCC will likely result in new directions as it relates to VoIP and other telecommunications matters. Future FCC decisions will undoubtedly have impacts on jurisdictional matters that are currently administered at that state level.

Hopefully this report provides useful information to assist the Legislature. If additional information on this topic is required, the IPUC is prepared to assist.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Kjellander".

Paul Kjellander  
Commissioner

November 30, 2016

*Joe Cusick  
916 N. Fifth St.  
Boise, ID, 83702*

*President Pro Tem Hill, Speaker Bedke and Idaho Legislators,*

This report is submitted in response to the Legislature's request to Commissioner Paul Kjellander dated March 28, 2016.

In its request, the Legislature asked the Commission for its aid and expertise in advising the Legislature on “the question of preemption of regulation for VoIP and IP-Enabled Services and the effect that action might have on the need for revision of other Idaho statutes.”

This report is divided into four sections: Definitions, Current Status of VoIP Regulation, Summary of Industry Views and Options for moving forward. Attached are copies of the draft 2015 and 2016 AT&T proposed legislation.

I have presented three options for the Legislature to consider. Option 1 is to accept all or part of AT&T's proposed legislation, Option 2 is to maintain the status quo, and Option 3 is to add clarifying language to the Title 62 statutes.

As to the regulatory status of VoIP, as AT&T points out, 36 states have chosen to deregulate VoIP. It is an issue that seems to be in constant litigation, as it is currently. In Idaho, the PUC's approach to VoIP is best described as a hands-off approach.

The industry's views are part varied and part consistent. The stakeholders in this proceeding are consistent in that they all agree that they would like to see deregulation. However, they are varied in the conditions that should go along with deregulation. A jaded view might be that deregulation is fine as long as I get what I want.

The definitions section attempts to define or explain some of the acronyms which appear in the report. The telecom industry is replete with acronyms and has long given the military a run for the money in this regard.

I have tried to provide the Legislature with a concise, yet accurate, view on the subjects of VoIP and IP-enabled service as they pertain to Idaho today. I have consciously attempted to avoid protracted and esoteric discussions on the legal status of subjects such as whether VoIP is an information or telecommunications service or whether it is

under intrastate or interstate jurisdiction. If, at any point, Legislators would like to discuss issues in further details, I remain at your disposal.

Sincerely,

Joseph W. Cusick

*Curriculum Vitae Summary for Joseph W. Cusick*

BBA Finance and Management - Idaho State University  
Manager, Regulatory Affairs US West – Retired 1990  
Staff Supervisor (Telecommunications) Idaho PUC – Retired 2013  
Former Staff Chair, US West Regional Oversight Committee  
Former Staff Chair, NARUC Telecommunications Subcommittee  
Former Staff Chair, Joint Committee on Jurisdictional Separations

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## Idaho State Legislature

700 West Jefferson Street  
Boise, Idaho 83720

March 28, 2016

RECEIVED  
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IDAHO PUBLIC  
UTILITIES COMMISSION

The Honorable Paul Kjellander  
Chairman, Idaho Public Utilities Commission  
472 West Washington Street  
Boise, ID 83702

Dear Commissioner Kjellander,

An important objective for the Legislature, as we are sure is true as well for the Idaho Public Utilities Commission, is to foster an environment that encourages job creation and investment in the most advanced communication technologies to benefit the people of Idaho. One of those technologies, Voice over Internet Protocol Service (VoIP) seems to be rapidly emerging as a platform for landline voice service. This emergence is occurring in an environment that is largely regulation-free for this technology, and for the larger group of Internet Protocol-Enabled Services (IP-Enabled Services) of which VoIP is a part.

We are aware that 33 states, plus Washington, DC, have enacted laws preempting or preventing state and local governments from regulating VoIP, and 19 states, plus Washington, DC, have done the same for IP-enabled services. The Idaho Legislature has at times considered legislation to preempt regulation of VoIP and IP-Enabled Services. In our experience these efforts have extended beyond the narrow question of whether preemption should be enacted and what form it should take. We appreciate that there are, as always in a dynamic industry like communications services, numerous issues which could be reviewed at the same time. However, we would like to limit our review to the question of preemption of regulation for VoIP and IP-Enabled Services and the effect that action might have on the need for revision of other Idaho statutes, and ask your assistance in helping us do this.

We would appreciate your aid and expertise in advising the Legislature and the Governor on this question. If the Commission is willing, we ask that you consider convening a group of interested parties to evaluate VoIP and IP-Enabled Service regulation preemption, whether it should be enacted via legislation, and, if so, what form it can and should take. As a point of clarification, we are not asking you to undertake a comprehensive review that would lead to a broad sweeping rewrite of Idaho's code related to communications or telecommunications services.

To help advance this matter in a more concrete fashion, we would further ask you to provide your review and recommendations to the Legislature and the Governor prior to the convening of the 2017 Legislative Session. We appreciate the knowledge and experience you bring to a difficult question like this. We thank you in advance for any assistance you are able to provide.

Sincerely,

A handwritten signature in blue ink that reads "Brent Hill". The signature is written in a cursive style with a large loop under the letter "H".

Senator Brent Hill  
President Pro Tempore  
Idaho State Senate

A handwritten signature in blue ink that reads "Scott Bedke". The signature is written in a cursive style with a large loop under the letter "B".

Representative Scott Bedke  
Speaker  
Idaho House of Representatives

Cc: Governor C.L. "Butch" Otter

## DEFINITIONS

**VoIP (Voice over Internet Protocol)** – The Federal Communications Commission (FCC) defines VoIP as a technology that allows users to make voice calls using a broadband Internet connection instead of a regular (or analog) phone line. Some VoIP services may allow users to call only other people using the same service, but others may allow you to call anyone who has a telephone number - including local, long distance, mobile, and international numbers. Also, while some VoIP services work only over a computer or a special VoIP phone, other services allow you to use a traditional phone connected to a VoIP adapter. The National Exchange Carrier Association (NECA) defines VoIP as a technology that allows users to make telephone calls using a broadband Internet connection instead of a regular (or analog) phone line.

Within VoIP there are also two distinct services: interconnected and non-interconnected.

**Interconnected VoIP service** - VoIP has four defining characteristics. It 1) enables real-time, two-way voice communications; 2) requires a broadband connection from the user's location; 3) requires Internet protocol-compatible customer premises equipment (CPE); and 4) permits users to generally receive calls that originate on the *public switched telephone network (PSTN)* and to terminate calls to the public switched telephone network. **Non-interconnected VoIP** simply does not have the last requirement to originate or terminate calls on the PSTN and is not subject to state regulation.

VoIP may also be nomadic or fixed.

**Nomadic VoIP** is intended to be used at any location where a broadband connection is available. A customer may use his or her service in Boise or Boston. That service is regulated on an *interstate* basis only.

**Fixed VoIP** is intended to be used at the customer's premises only and may be subject to *intrastate* jurisdiction, depending on a state's statutes.

(For purposes of this report, fixed-interconnected VoIP is the service that will be addressed.)

**ITSAP (Idaho Telephone Service Assistance Plan)** – Financial assistance is available in Idaho to help qualified low-income individuals pay for telephone service. The program offers a \$2.50 discount on monthly telephone bills. A separate program, the federal Lifeline program, offers an additional monthly discount of \$9.25. Both ITSAP and Lifeline are funded by a surcharge on all customers' telephone bills.

**LECs (Local Exchange Carriers)** – Those carriers that provide local service to end-use customers, aka telephone companies. LECs may fall into two categories: incumbent or competitive. For our purposes, incumbents are those carriers that were providing local service as of February 8, 1996, the implementation of the federal

Telecommunications Act of 1996 (TA96). Competitive LECs are those companies that started providing local service after that date.

**TRS (Telecommunications Relay Service)** – TRS allows citizens who are hearing- or speech-impaired to engage in telephone communications “in a manner functionally equivalent to individuals without hearing or speech impairments.”

**USF (Universal Service Fund)** – Generally refers to Idaho's state Universal Service Fund. Established to assist high-cost rural companies to achieve a fair rate of return while keeping rates affordable for rural customers. This fund currently supports eight rural companies in Idaho at an annual cost of \$1,698,610.

## CURRENT STATUS OF VoIP REGULATION

As stated in the letter asking the PUC to investigate VoIP regulation, 36 states thus far have deregulated VoIP. One of the biggest motivators to get VoIP deregulated is the FCC's refusal to address the issue. The FCC has avoided the question of whether VoIP is a telecommunications service or an information service. That lack of action has caused uncertainty in the market and has prompted providers, primarily AT&T, to address the issue on a state-by-state basis.

Regardless of its regulatory status, the FCC does hold interconnected VoIP providers subject to certain regulatory requirements, similar to other voice providers. VoIP providers must provide:

**911 Services:** Providers of *interconnected* VoIP services – which allow users generally to make calls to and receive calls from the regular telephone network – do have 911 service obligations. However, 911 calls using VoIP are handled differently than 911 calls using regular telephone service.

**Portability:** The FCC requires *interconnected* VoIP providers and telephone companies to comply with Local Number Portability (LNP) rules.

**Customer Proprietary Network Information (CPNI):** The FCC limits interconnected VoIP providers' use of customer proprietary network information, such as telephone calling records, and requires interconnected VoIP providers to protect them from disclosure.

**Universal Service:** The FCC requires interconnected VoIP providers to contribute to the Universal Service Fund, which supports communications services in high-cost areas and for income-eligible telephone subscribers.

**Accessibility:** Interconnected VoIP providers must contribute to the interstate Telecommunications Relay Services Fund used to support the provision of telecommunications services to persons with speech or hearing disabilities and offer 711 abbreviated dialing for access to relay services. Providers and equipment manufacturers also must ensure their services are available to and usable by individuals with disabilities, if such access is achievable.

## SUMMARY OF INDUSTRY VIEWS

Although many, if not all, of the participants favor deregulation, they generally do so on a conditional basis. Each participant has its own interests it wants protected. Briefly, here are the various positions of the parties. For those reading an electronic version of this report, links to the parties' entire comments are provided below. A complete text of the parties' comments can also be accessed on the commission's website at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under "Hot" items, click on "VoIP Regulation."

### AT&T

In its first comments, AT&T states that it believes Idaho's current practice of not regulating IP or VoIP should be codified into state law. Doing so would create a more stable regulatory environment that will promote greater investment, AT&T believes. The company goes on to point out that 34 states and the District of Columbia have adopted such legislation.

AT&T also supports the Legislature's request to limit the scope of the review and not to undertake a broad sweeping review of Idaho's code. AT&T encourages the working group to maintain a narrow focus on exempting IP and VoIP regulation.

In its second set of comments, AT&T states that it agrees with Verizon and the VON Coalition on a number of matters, specifically: that VoIP is a service and not a technology; that federal law clearly prevents state regulation of VoIP and IP enabled services; that regulatory certainty will promote investment in VoIP and IP enabled services; and that the report should focus on the narrow question as defined by the Legislation.

A text of the parties' comments can be accessed at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under "Hot" items, click on "VoIP Regulation."

[AT&T Comments](#)

[AT&T Reply Comments](#)

### T-Mobile

T-Mobile is not opposed to VoIP deregulation and where market conditions justify, would support it. The company is concerned about deregulation because it affects the wholesale markets, which, T-Mobile believes, remain under monopoly control.

To the extent the proposal would remove regulatory protections in these legacy monopoly wholesale markets, T-Mobile objects. Because wholesale markets remain under monopoly control, monopoly-type protections and regulation should remain in effect, under both federal and state law.

T-Mobile maintains the best way to preserve these protections is to draw a distinction between retail and wholesale markets and apply the deregulatory language only to retail. One could identify the specific elements of wholesale markets – such as special access, interconnection and intercarrier compensation – but in order to ensure that the proposed bill includes all of the wholesale elements, the language should simply apply to only retail IP markets and not wholesale IP markets.

A text of the parties' comments can be accessed at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under “Hot” items, click on “VoIP Regulation.”

### [T-Mobile Comments](#)

#### **VON Coalition**

The Voice On the Net Coalition (VON) believes that state regulation is currently preempted under the FCC's Vonage Preemption Order and that the Vonage order extended to both nomadic and non-nomadic VoIP. VON also believes that the proposed legislation aligns with federal law, which classifies VoIP as an information service. Under federal law, information services are exempt from telecommunications regulations, including state regulation.

VON further states that VoIP has continued to prosper under the FCC's light-touch regulatory structure. Citing FCC reports, VON points out that subscribers have grown nationally at an annual rate of 13 percent between June 2012 and June 2015. Specifically, subscribers grew from approximately 40 million in June 2012 to 57 million in 2015.

VON believes that regulatory uncertainty would decrease as a result of enacting safe-harbor legislation. The Coalition also points out that 36 states have already deregulated VoIP and that none of the states have repealed such laws once enacted.

A text of the parties' comments can be accessed at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under “Hot” items, click on “VoIP Regulation.”

### [VON Coalition comments](#)

### [VON Coalition Reply Comments](#)

#### **Frontier Communications**

Frontier Communications agrees with other parties that say VoIP/IP services should not be regulated. However, Frontier is concerned about the lack of parity caused by applying taxes, fees and surcharges to only one small subset of providers, mostly those

that provide local exchange service or long-distance and toll-free services. The company believes this lack of parity – and the resulting higher rates their customers are required to pay – has led to a steady erosion in the number of lines that LECs are serving.

Frontier states that if the Legislature were to pursue preemption of VoIP/IP services, it would be a great opportunity for a simultaneous and comprehensive revision of other statutes that created these various funds and taxes. Such revisions could level the playing field for all telecommunications providers, including VoIP, wireless and local exchange.

A text of the parties' comments can be accessed at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under "Hot" items, click on "VoIP Regulation."

### [Frontier Communications Comments](#)

#### **CenturyLink**

CenturyLink supports the preemption of VoIP regulation at the state level, as long as the legislation also mandates that VoIP providers and wireless providers pay the various taxes, fees and surcharges that telecommunication providers are required to pay. Payment of the various taxes, fees and surcharges needs to be nondiscriminatory and competitively and technologically neutral; neither providing a competitive advantage for, nor imposing a competitive disadvantage upon any voice service provider.

CenturyLink believes that, currently, these fees are discriminatory – some voice providers pay and some do not. The Legislature should fix this during the 2017 legislative session, at the same time it addresses the preemption of VoIP regulation. This is not only good public policy, but it can be done without a "broad sweeping rewrite of Idaho's code related to communications or telecommunications services."

A text of the parties' comments can be accessed at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under "Hot" items, click on "VoIP Regulation."

### [CenturyLink Comments](#)

[Attachment A](#)

[Attachment B](#)

[Attachment C](#)

[Attachment D](#)

[Attachment E](#)

[CenturyLink Reply Comments](#)

## **Cable Providers**

Both the Idaho Cable Telecommunications Association (ICTA) and Charter Communications submitted comments that reflected similar views.

ICTA states that in 2015 it initially opposed AT&T's draft legislation that would have deregulated VoIP in Idaho. After revisions were made to that draft, the ICTA no longer opposed, but did not support, the legislation. The ICTA remains of the opinion that legislation to further deregulate VoIP services in Idaho is unnecessary.

The cable providers believe that Idaho was on the forefront of deregulating telecommunications services with the Telecommunications Act of 1988, Idaho Code §62.601 *et. seq.* The Act exempts CLECs and ILECs – including those that deploy VoIP technology – from the more onerous or pervasive rate regulation provisions of Title 61 and instead provides a very light, yet important, scheme of regulation for CLEC VoIP services. Several of these Title 62 provisions address important intra-industry issues that remain relevant. In particular, statutory provisions that expressly authorize the commission to implement and enforce federal interconnection obligations and other wholesale rights, (§62-615), or resolve intercarrier disputes, (§62-613), could become clouded by new and potentially conflicting deregulatory code provisions.

The cable providers believe that while AT&T has modified its proposed legislation to carve out important areas where the commission should retain Title 62 jurisdiction, the ICTA remains leery of unintended deregulatory consequences. Rather than bringing further legislation to deregulate VoIP and then “adding back” certain Title 62 (and other code) provisions that are exempt from deregulation, it seems that the better system is to maintain the *status quo* of Title 62's light regulatory scheme of all CLEC providers.

There is also the misconception that there was very little or no payment of state or federal telecom fees by VoIP providers. Whether that is true or not for some CLECs, such is not the case for cable companies offering VoIP services in Idaho. Cable One, for example, provisions its orders through Level 3 which, in turn, remits the appropriate taxes, fees and surcharges.

A text of the parties' comments can be accessed at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under “Hot” items, click on “VoIP Regulation.”

[ICTA Comments](#)

[Charter Communications Comments](#)

## **Idaho Telecom Alliance (ITA)**

The ITA, which represents rural carriers, believes that regulation should be dependent

on the function of the service, not the technology through which it is delivered. For this reason, the ITA's view is that voice telecommunications services provided through the public switched network should have equal regulatory treatment regardless of the technology used.

The ITA is sympathetic to the desires of the proponents of VoIP deregulation proposals to minimize regulatory costs and burdens. However, the ITA does not believe that such legislation is the best way to achieve these goals. ITA points out that there is already a mechanism, under Title 62 of Idaho Code, to be freed from rate regulation and other regulatory requirements.

ITA states that parity in regulation is important. Any changes that might be made should continue to support the public switched network and not have the unintended consequences of discouraging investment by ILECs and other providers of traditional telecommunications service.

The ITA finally points out there is a great deal of controversy at the federal level concerning the appropriate treatment of VoIP, broadband and universal service. Because those issues are in flux, it believes it would be premature for the Idaho Legislature to proceed with addressing only one component of a highly interrelated telecommunications system until clarity of how support and regulatory treatment of the whole system will be addressed by the FCC.

A text of the parties' comments can be accessed at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under "Hot" items, click on "VoIP Regulation."

### [Idaho Telecom Alliance Comments](#)

#### **Verizon**

Verizon does not support the approach proposed by some commenters, which would entangle statutory memorialization of the exemption from regulation of VoIP/IP-enabled services with an array of other policy issues. This contravenes the desire for limited review expressed by the Legislature, which noted that past legislative consideration has "extended beyond the narrow question of whether preemption should be enacted and what form it should take."

Some commenters have gone beyond this scope, Verizon said, by tying the codification of preemption to 1) reform of the Idaho Universal Service Fund and Idaho Telecommunications Service Assistance Program; 2) imposition of an array of new fees on VoIP services; and 3) assertion of Commission jurisdiction over IP interconnection. These proposed actions would increase the costs of providing VoIP services in Idaho, resulting in higher rates for customers and potentially driving broadband investment to other states that have already codified a "hands-off" approach to VoIP, with the attendant lower costs of doing business.

For these reasons, Verizon cannot support AT&T's proposed 2016 legislation as presently drafted. However, the company could support it if the proposed revisions to Idaho Code 62-610 and the entirety of proposed new Idaho Code 62-618A(5) were stricken. It is inappropriate to impose a bevy of new regulatory fees on VoIP services under the guise of exempting it from regulation. Doing so would discourage the very investment that the legislation aims to incent.

Moreover, by permitting VoIP providers to draw USF subsidies for providing services that are unsubsidized today, the legislation would encourage waste and unnecessarily impose higher USF fees on Idaho consumers.

A text of the parties' comments can be accessed at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under "Hot" items, click on "VoIP Regulation."

### [Verizon Comments](#)

#### **Level 3**

Level 3 does not oppose the relaxation of retail regulation for VoIP services. Its concerns center on maintaining regulatory jurisdiction over the wholesale market and carrier-to-carrier interconnection agreements, intercarrier compensation tariffs, etc. While some states have passed legislation addressing regulatory frameworks for VoIP retail services, those regulatory frameworks continue to ensure that the role of state commissions to address their respective state and federal obligations over interconnection and wholesale issues, regardless of technology, remains intact.

Level 3 believes that failure to limit VoIP deregulation to just the treatment of retail services threatens interconnection rights. These rights are essential for connecting networks of various providers and ensuring fair dealing among competitors who must work together to complete voice calls between customers. Limiting any proposed deregulation of retail services provided by VoIP will 1) ensure fair and equitable interconnection and traffic exchange regardless of service, capability, functionality, application or technology used by carriers in the network, 2) preserve state authority to consider issues/disputes among competitors and their impact on consumers and the marketplace; 3) continue to foster and ensure a competitive marketplace for innovative providers and future providers of advanced communications services.

A text of the parties' comments can be accessed at [www.puc.idaho.gov](http://www.puc.idaho.gov). Under "Hot" items, click on "VoIP Regulation."

### [Level 3 Communications, Inc. Comments](#)

## OPTIONS

### **Option 1 – Accept some or all of AT&T's proposal.**

AT&T has provided sample legislation similar to what it proposed in the previous legislative session. This proposal redefines VoIP as a service and removes it from regulation under either Title 61 or Title 62 placing it entirely out of the PUC's jurisdiction. AT&T believes that such legislation removes VoIP from regulatory uncertainty and will help spur broadband investment.

Complete deregulation leaves questions to be answered. AT&T has addressed many concerns by introducing a new section, 62-618A that would carve out provisions for payment into the Idaho Universal Service fund, 911 fees, the Idaho Telecommunications Service Assistance Plan and the state Telecommunications Relay Service. One of the questions still to be addressed, however, is how does this legislation affect a company's requirement to interconnect with other carriers. This has historically been under the jurisdiction of the PUC and the Commission has heard numerous cases to decide disputes between companies. Without this provision, companies may be left with no choice but to take disputes to the FCC where such cases can take years to resolve.

In addition, many issues remain unresolved at the federal level. The FCC has yet to decide if VoIP is a telecommunications service or an information service (FCC 15-70 Numbering Policies Order). The jurisdictional aspect also remains a contested issue as to whether or not VoIP is an intrastate or interstate service. Depending on decisions at the FCC, states may well want to maintain some jurisdiction of VoIP service. If AT&T's legislation were to be enacted, regaining state jurisdiction becomes an issue.

Finally, there is the law of unintended consequences. Although AT&T has attempted to address many concerns, invariably issues come up that were not anticipated. This could occur if future changes at the federal level require actions in Idaho that are no longer available because of state statutory changes such as this.

### **Option 2 – Maintain the status quo.**

One of the questions that continues to drive much of the current national litigation is the question of whether VoIP is a telecommunications service or an information service. AT&T, in its comments, claims that VoIP is an information service. However, the fact remains that this still undecided at the federal level. In its most recent order on numbering released June 22, 2015, (FCC 15-70) the FCC states that "the Commission has not classified interconnected VoIP services as telecommunications services or information services."

Also, the question of whether VoIP is an interstate or intrastate service remains

undecided. States believe that fixed-interconnected VoIP is an intrastate service. Most VoIP providers take the point of view that the Vonage Order (*FCC Order 04-267*) classified it as an interstate service. States reason that the Vonage Order pertained only to nomadic VoIP and not to fixed-interconnected VoIP. The criteria that the FCC used to classify it as an interstate service – namely that with nomadic VoIP the originating and terminating location could not be determined – is not true for fixed-interconnected VoIP.

These issues are waiting on the FCC to finally make a decision.

Under the current statutes, the decision of how to regulate a company is not done by regulatory fiat but is the choice of the company. The rules under which a company is regulated are determined by Idaho Code 62-604(2) and 62-622(2). Under 62-622(2), competitive local exchange carriers are, by definition, regulated under Title 62. Under 62-604(2), incumbent local exchange carriers are given the choice to be regulated under Title 61 or 62.

One stated reason for deregulation is the need for certainty to incent investment. That said, nothing has been put forward to demonstrate that broadband deployment is being suppressed by the current regulatory regime. Inarguably, in rural areas broadband deployment lags but not because of regulatory treatment, but by simple economics. Broadband deployment is increasingly done using fiber optic cable. This is a costly proposition, and it is difficult to cost justify in very rural areas. Toward that end, the FCC has established a Competitive Access Fund (CAF) to aid in rural deployment. This program has been successful and has led to increased fiber deployment in Idaho's rural areas.

In most urban areas, unlike rural areas, customers have multiple choices for broadband service. Competition in the broadband market continues to be strong. Cable One in Idaho now offers one-gigabit service in selected areas. Cellular 4G LTE service has become the norm for all carriers. All this is happening within the context of Idaho's current regulatory structure. Changing the status of VoIP is not likely to significantly impact the future deployment of broadband.

The regulatory uncertainty on the federal level and, consequently, the potential need to make broad changes to the Idaho statutes when these issues are finally decided is the primary reason to maintain the status quo.

### **Option 3 – Add Clarifying Language**

A third option is to add language clarifying that interconnected VoIP is included for all LECs regulated under Title 62. This language merely codifies what is current Commission practice. Some companies oppose this language because it also codifies VoIP as an intrastate telecommunications service, which has yet to be decided by the FCC.

Add to 62-603(15): Interconnected Voice over Internet Protocol (VoIP) – A technology that allows users to make voice calls using a broadband Internet connection instead of a regular (analog) phone line. Interconnected VoIP allows users to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Add to 62-604(2)(c): When a company chooses to have its local exchange service regulated under Title 62, interconnected VoIP is included in that election.

## **DRAFT LEGISLATION**

Attached on the following pages are the 2015 and 2016 copies of the AT&T draft legislation. For those reading the electronic version of this report, their links follow:

[2015 AT&T Draft Legislation](#)

[2016 AT&T Draft Legislation](#)