

*Senate Energy and Utilities
Finance and Policy Committee
Meeting Agenda*

March 9, 2017

1:00 p.m. Room 1150 Minnesota Senate Building

I. Call to order

II. SF 1706: Renewable Energy Systems Permitting Provisions Modifications

Senator Weber

Chris Kunkle, Regional Policy Manager, Wind on the Wires

Adam Sokolski, Manager, Market Structure and Policy, Avan Grid Renewables

Shanelle Montana, Senior Project Manager, EDF Renewable Energy

III. SF 1742: Voice-over-Internet Protocol Service and Internet Protocol-Enabled Service
Regulation Prohibition

Senator Ruud

Tony Mendoza, Mendoza Law, Minnesota Cable Communications Association

John Dukich, Minnesota High Tech Association

Ron Elwood, Legal Services Advocacy Project

Mary Jo George, AARP

Bill Grant, Deputy Commissioner, Department of Commerce

IV. Adjournment

**Senate Counsel, Research
and Fiscal Analysis**

Minnesota Senate Bldg.
95 University Avenue W. Suite 3300
St. Paul, MN 55155
(651) 296-4791
Tom Bottern
Director

Senate

State of Minnesota

S.F. No. 1742 - Regulation of Voice-over Internet Protocol Service Prohibition (with A-1 Amendment)

Author: Senator Carrie Ruud

Prepared By: Carlon D. Fontaine, Senate Counsel (651/296-4395)

CDF

Date: March 9, 2017

Section 1 [Voice-over-Internet protocol service] provides a definition of “Voice-over-Internet protocol service.”

Section 2 [Internet protocol-enable service] provides a definition of “Internet protocol-enable service.”

Section 3 [Voice-over-Internet protocol service and Internet protocol-enabled service] subdivision 1 [Regulation prohibited] prohibits any regulation by a state agency of any aspect of VoIP or IP-enabled service, except as provided in this section.

Subdivision 2 [VoIP regulation] specifies that, to the extent allowed under federal law, VoIP service is subject to Minnesota’s surcharges for 911 emergency service, telecommunications access Minnesota, and the telephone assistance plan. Requires VoIP providers to comply with federal requirements to provide access to 911 service and to report annually to the Public Utilities Commission (PUC) how that is accomplished.

Subdivision 3 [Relation to other law] specifies that nothing in this section affects:

- the PUC’s jurisdiction over intrastate access rates and terms, dispute resolutions with respect to intercarrier compensation, and wholesale telecommunications services;

- the authority of local units of government with respect to the regulation of public rights-of-way; or
- the authority of the attorney general to enforce law governing consumer protections and trade practices.

Subdivision 4 [Exemption] specifies that any IP-enabled video service, including cable TV video service, is not regulated by the state.

Subdivision 5 [Preservation of existing landline telephone services] specifies that this section does not affect the obligations of a telephone company to offer landline telephone service that is not VoIP service.

CDF/syl

MINNESOTA
CHAMBER of
COMMERCE

March 7, 2017

Minnesota Senate
Energy and Utilities Finance and Policy Committee Members

RE: SF 1742

Dear Members:

The Minnesota Chamber of Commerce, comprised of more than 2,300 employers representing more than 500,000 employees across the state, supports SF 1742 (Sen. Ruud).

The bill would provide regulatory certainty for two forms of phone service over the Internet: voice-over-internet protocol ("VOIP") and Internet-protocol enabled ("IP-enabled") service.

VOIP and IP-enabled service enable Minnesota's employers and employees to communicate cost effectively and conveniently using modern digital technology. With these tools, Minnesotans can connect, innovate and compete in the global economy.

To continue attracting private investment in modern communications technology, though, our laws must provide regulatory certainty. Current uncertainty about the role of the Minnesota Public Utilities Commission in regulating VOIP and IP-enabled service threatens to chill continued investment in these critical communications tools.

We encourage you to provide the regulatory certainty necessary to make Minnesota ready for commerce in the digital age by supporting SF 1742. Thank you.

Sincerely,

R. Cameron Winton

Cam Winton
Director, Energy and Labor/Management Policy
Minnesota Chamber of Commerce
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March 9, 2017

Dear Chair Osmek and Members of the Senate Energy and Utilities Finance and Policy Committee:

On behalf of the Minnesota High Tech Association (MHTA), and our more than 300 science and technology member organizations, I am submitting this letter in support of SF1742. Our members include some of the world's leading corporations, mid-sized companies and startups. We are united behind a common vision to make Minnesota one of the country's top five technology states.

Broadband plays an integral role in today's society; it enables the creation of many of today's technologies, with applications in precision agriculture, remote learning, and telemedicine; and it provides businesses with the opportunity to access to the global marketplace. Access to broadband is critical for today's technology businesses and for the education, training, and development of a robust workforce.

As Minnesota works to expand access to broadband throughout the state, we must do more to encourage the development and deployment of new technologies, in addition to funding current technologies that help us meet the state's broadband speed goals. Modernizing the state's telecommunications regulatory framework, as in the manner prescribed by SF1742, will help accelerate investments in new communications technologies and expand access to broadband.

By providing a level of regulatory certainty with respect to VoIP, SF1742 helps to send a strong signal that Minnesota embraces technology-friendly policies and encourages private investment to help extend our broadband infrastructure to all corners of the state. As Minnesota's innovation landscape continues to change, so too must our laws and regulatory framework. With over 30 other states implementing legislation similar to SF1742, Minnesota must update its laws to remain competitive with other leading science and technology states.

Thank you for your consideration.

Sincerely,

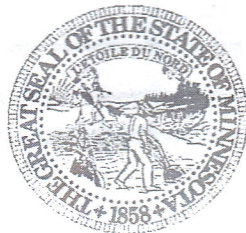
A handwritten signature in cursive script that reads "Margaret Anderson Kelliher".

Margaret Anderson Kelliher
President & CEO, Minnesota High Tech Association

Research Department

Patrick J. McCormack, Director

600 State Office Building
St. Paul, Minnesota 55155-1298
651-296-6753 [FAX 651-296-9887]
www.house.mn/hrd/hrd.htm



Minnesota House of Representatives

March 13, 2015

TO: Representative Sheldon Johnson
FROM: Bob Eleff, Legislative Analyst (651-296-8961)
RE: Inventory of state telecommunications deregulation laws

This memorandum summarizes salient features of state telecommunications deregulation laws enacted in recent years, based on analysis contained in four recent reports authored by Dr. Sherry Lichtenberg of the National Regulatory Research Institute (NRRI).¹ I have assumed that both the analysis and the brief description of these laws' provisions by NRRI are accurate. Where data was confusing or ambiguous, I reviewed the relevant state statutes. Nevertheless, omissions and inaccuracies may be present. This memorandum is best viewed as presenting the wide array of choices states have made in reducing regulatory oversight of telecommunications services.

I have included in an Appendix a short section from the 2013 NRRI report entitled "Conclusions and Recommendations" which you may find helpful in thinking about potential legislation regarding these issues.

BE/jf

¹ *The Year in Review: The Status of Telecommunications Deregulation in 2012*, June 2012; *Telecommunications Deregulation: Updating the Scorecard for 2013*, April 2013; *Characterizing Competition: A Look at State Processes*, February 2014; and *Telecommunications Legislation 2014: Completing the Process*, June 2014.

The National Regulatory Research Institute (NRRI) was founded in 1976 by the National Association of Regulatory Utility Commissioners, a nonprofit organization formed in 1889 that is dedicated to representing state public service commissions that regulate utilities that provide energy, water, and telecommunications services. NRRI's mission is: "To serve state utility regulators by producing and disseminating relevant, high-quality research that provides the analytical framework and practical tools necessary to improve their public interest decision-making." State commissions constitute a majority of NRRI's Board of Directors.

Dr. Sherry Lichtenberg, NRRI's Principal Telecommunications Research and Policy analyst, has 25 years of experience in the telecommunications industry, including positions at AT&T, MCI, and Verizon Business.

A. How Markets are Determined to be Competitive

1. Legislative Declaration

Eight state legislatures have declared all services, carriers, and markets to be competitive without assessing the actual availability of alternative providers in different geographical areas:

Alabama, Florida, Indiana, Michigan, Mississippi, Nevada, North Dakota, Wisconsin

In three states, the declaration applies only to markets exceeding a specific size:

Kansas: Exchanges with more than 75,000 local access lines

New Hampshire: ILECs serving more than 25,000 customers

Texas: ILECs serving markets containing a population greater than 100,000

In three states enacting such legislation, basic local exchange service (BLES) or carrier of last resort (COLR) requirements were not deemed to be competitive, and remain under commission jurisdiction:

Maine, Missouri, (COLR), New Hampshire (BLES, where ILEC has fewer than 25,000 customers)

2. Carrier Election, Without Commission Review

Arkansas, Illinois, Nevada, New Hampshire (ILECs serving fewer than 25,000 customers), North Carolina, Pennsylvania (except for basic local exchange service and switched-access service), Tennessee

3. Commission Determines Whether Carriers Meet Conditions Set by Legislature

In addition to the ILEC, one competitor unaffiliated with the ILEC in a market must provide a substitute for local exchange service:

Delaware, Idaho, South Carolina, South Dakota

South Carolina: one wireline or two wireless competitors must be present

South Dakota: an alternate service must be available to at least 50 percent of subscribers in a market

In addition to the ILEC, two competitors unaffiliated with the ILEC in a market must provide a substitute for local exchange service:

Kansas, Mississippi, Ohio, Texas

Kansas: applies only to exchanges with fewer than 75,000 access lines

Mississippi: the competing service must be available to 75 percent of the ILEC's existing customers, or 60 percent if the service is available to both residential and business customers. Alternatively, a carrier may petition to be declared competitive based on "a material reduction in access lines or minutes of use in two consecutive years."

Texas: applies only to markets with a population between 30,000 and 100,000; competitors may operate in "all or part of the market."

4. Commission Review and Decision

In 22 states, the commission evaluates the state of competitive markets for telecommunications services based upon evidence submitted by providers and determines, in an adjudicatory hearing, whether the level of competition is sufficient to allow for lessened regulation.² Oregon's statute is typical of the issues that commissions examine in such a proceeding:

- (a) The extent to which services are available from alternative providers in the relevant market.
- (b) The extent to which the services of alternative providers are functional equivalent or substitutable at comparable rates and under comparable terms and conditions.
- (c) Existing economic or regulatory barriers to entry.
- (d) Any other factors deemed relevant by the commission.³

Alaska, Arizona, California, Colorado, Connecticut, Hawaii, Georgia, Iowa, Louisiana, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania (basic local exchange and switched access service), Utah, Virginia, Vermont, Washington West Virginia, Wyoming

B. Regulation of Retail Services is Eliminated in Competitive Areas

Alaska, Delaware, Florida, Georgia, Iowa, Kansas, Louisiana, Massachusetts, Nevada, South Carolina, Texas, Virginia, Wisconsin

Arkansas, Colorado, Connecticut, Illinois, Indiana, Maine, Michigan, Nebraska: except for BLES

New Hampshire: for ILECs with more than 25,000 lines that elect deregulation

Idaho: except for residential customers in noncompetitive areas

Rhode Island: wireless service only, except for BLES

² Seven other states, including Minnesota, offer reduced regulation under Alternative Form of Regulation (AFOR) plans, which are negotiated between the commission and individual providers and allow for flexibility. These states are the District of Columbia, Maryland, Massachusetts, Minnesota, Montana, Pennsylvania, and Rhode Island.

³ Oregon Revised Statutes, section 759.052.

C. The Commission Can Revisit and Overturn a Decision to Deregulate

Eleven states allow the commission, on its own motion or in response to a petition, to review a decision to deregulate a market, based on new evidence that the market is not competitive.

Colorado, Delaware, Georgia, Kansas, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, Virginia, Washington

D. Carrier of Last Resort (COLR) Obligations are Eliminated

1. Statewide

Colorado (after July 1, 2016), **Delaware, Florida, Georgia** (if carrier receives no USF funds), **Indiana, Mississippi, North Carolina, South Carolina**

2. In Certain Areas

Kansas, Missouri: specific urban areas identified by the legislature

Texas: in deregulated markets

Michigan, Virginia, Nevada: where one or more alternative providers are present in the market, regardless of their size, type, or quality of service

Alabama, Maine, Wisconsin, Wyoming: where carriers petition the commission to withdraw COLR obligations

Louisiana: in exchanges where CLEC market share reaches 25 percent

E. Providers Are Not Required to Offer Basic Local Exchange Service

1. Statewide

Florida, Louisiana, Mississippi, Nevada, Pennsylvania (after 2017), **Virginia**

2. In Certain Areas

Delaware, Nebraska, Texas, Wisconsin: in areas where the commission finds that effective competition exists

Oklahoma: in areas with more than 75,000 access lines

Massachusetts, Michigan (after 2016): in areas where two carriers provide BLES

3. To New Customers

South Carolina: but service to existing customers must continue

4. If Commission Determines Public Interest Would Not be Harmed

New Hampshire

F. Basic Local Exchange Service Continues to be Price-regulated

Arkansas (for a single provider), California, Connecticut, Louisiana, Maine (COLR only), New Jersey, Ohio, Oklahoma

Colorado, Delaware, Nebraska, Pennsylvania: in areas where there is no competition

South Carolina: rates may rise with inflation

G. Regulation of service quality

1. Eliminated

Alabama, Florida, Idaho, Illinois, Indiana, Kansas, Michigan,⁴ Tennessee, Texas

Arkansas, Louisiana, Missouri, Wisconsin: in competitive areas only

Virginia: commission may monitor individual customer complaints and require appropriate responses

2. Retained

California, Colorado (until July 1, 2016), Nebraska

Georgia, Illinois: for rate-regulated carriers only

Maine, Mississippi, New Hampshire, North Carolina, Ohio: for basic local exchange service only

H. Commission Monitoring of Service Complaints

1. Eliminated

Florida, Missouri (if carriers self-exempt), Massachusetts, New Hampshire, Rhode Island, Tennessee, Wisconsin⁵

Alabama: carriers petition commission to be removed from complaint process

⁴ Existing service quality rules eliminated, but commission may enact new rules.

⁵ In Florida and Wisconsin, complaints are now monitored by the Department of Agriculture and Consumer Affairs. In Massachusetts and Rhode Island, the Attorney General has this responsibility.

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2. Retained

California, Georgia, Idaho, Indiana, Michigan, Maine (COLR only), Mississippi (residential only), Nebraska, North Carolina, Virginia

Colorado, Delaware, Iowa, Ohio: basic local exchange service only

Connecticut, Illinois, Louisiana, Missouri: in areas without effective competition only

Kansas: commission may “administer” complaints but may not “regulate carriers”

I. VOIP Regulation Prohibited⁶

Alabama, Arkansas (except carriers receiving state USF funds), California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, Nebraska, New Hampshire, Nevada, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Wisconsin, Wyoming

⁶ The 2013 NRRI report stated (pp. 3, 8) that state bills deregulating VOIP “appear to function as a ‘preemptive strike’ against any potential designation of VOIP or IP-enabled services as . . . [federally-regulated] services. . . [S]ome legislators have viewed the elimination of commission oversight for these IP-enabled services as a way to ‘protect the Internet’ from government intervention.”

Appendix

Excerpt from National Regulatory Research Institute, *Telecommunications Deregulation: Updating the Scorecard for 2013*, April 2013, pp. 40-42.

Conclusions and Recommendations

It has only been three years since the majority of the bills limiting commission oversight of retail telecommunications were passed, and the early results seem, if not positive, then at least “palatable.” Carriers have not withdrawn service from their traditional markets, including their rural markets. ILECs have not raised prices significantly or eliminated traditional TDM wireline service offerings (despite AT&T’s plan to “test” such a change in the near future). Customer complaint levels appear to be holding steady, either because customers have adjusted to changes in service quality (for example, wireless dropped calls) or, more likely, because carriers simply continue to “do the right thing” in response to market needs. And commissions are adjusting to their new role in managing a (mostly) deregulated telecommunications ecosystem. In states where deregulation has eliminated many of their traditional tools for responding to customer issues, state commissions are working collaboratively with carriers and their retail and wholesale customers to develop new ways to ensure that carriers’ private behavior remains aligned with the public interest.

Reductions in the oversight of telecommunications will continue and ultimately expand as customers continue to migrate to newer technologies and more companies seek to eliminate their traditional product offerings in favor of non-regulated services such as VoIP and wireless. In states that have not yet passed legislation limiting telecommunications oversight, state commissions can help legislators understand the critical components that such bills should include. For example, state commissions may work with legislators to ensure that they understand the need for continued support for the universal availability of voice and broadband service, even in remote areas. These services are critical to ensure that all end users will be able to reach emergency services when they need them and that carriers continue to provide access for all calls. Because state regulators are “on the ground” with the users of these services, they can provide legislators with a unique perspective on the problems and successes of the technology and regulatory transition.

Even where deregulation has removed direct oversight, regulators should continue to focus on customer requirements and service availability in order to proactively identify problems and propose solutions, including amending legislation as necessary. These areas include universal service, service quality, and network reliability. As the Iowa NOI points out, call completion problems and other issues that limit the ability of customers to communicate with each other remain key areas for state commission focus going forward. Commissions should, therefore, continue to work with state legislatures to ensure that further legislation does not remove or significantly vitiate this critical oversight responsibility.

Quality of service and network reliability will also continue to be key questions for state regulators. In those states where quality requirements remain for basic service or for ETCs, state commissions can use those requirements to drive overall network improvements. One of the key areas for state commission focus is the intersection between the reliability of the electric grid and the availability of the new telecommunications networks. As the network transitions from TDM

service provided by battery-backed central-office switches to VoIP service dependent on commercial power, state regulators will play an important role in coordinating the sharing of responsibility between telecommunications providers and electricity suppliers.

In the long term, collaboration between regulators and carriers of all types will become the key to ensuring that the results of telecommunications deregulation remain more positive than negative. Regulators in states that have already deregulated and those that are still considering deregulation may want to consider the following suggestions for ensuring that this endeavor is successful.

1. States can learn from each other as deregulation continues.

Regulators across the country may want to work together to identify best practices for implementing deregulation, explore the potential pitfalls of reduced regulation, and discuss how best to address emergency access and consumer safety issues.

2. Collaboration and advance planning are key requirements for crafting legislation that responds to the needs of both business and residential customers and providers.

By working together, commissions, legislators, consumer advocates, and companies can identify key areas where oversight will continue to be important, including systemic issues such as universal service, billing, slamming and cramming, E911 connectivity, and network reliability.

3. In areas where regulation has been reduced or eliminated, state regulators may work with other state agencies to fill the gaps left by the reduction in oversight.

State outreach programs can ensure that customers understand the pluses and minuses of the products they may select in an unregulated environment. Consumer-protection groups and the Attorney General may be able to "fill in the blanks" to resolve problems caused by a commission's inability to resolve consumer complaints.

Deregulation will continue and potentially expand over the next few years, particularly as the network transitions from TDM to new technologies. Regulators will retain an important role in this transition, both to ensure that no user is left behind and to explain this change in terms that all users can understand. By focusing on the end result of limitations on regulation, state commissions can proactively ensure that this transition is successful.