

**Testimony of John Stephenson
American Legislative Exchange Council
Before the Kansas Senate Committee on Commerce
Regarding House Bill 2326
March 4, 2013**

I. Introduction

Chairwoman Lynn, Vice Chairwoman Wagle, Senator Holland, and Members of the Committee, my name is John Stephenson. I am the Director of the Communications and Technology Task Force at the American Legislative Exchange Council (ALEC). I present these remarks regarding the policy contained in House Bill 2326, which would prohibit state agencies and political subdivisions from regulating Voice over Internet Protocol (VoIP).

II. What is ALEC?

ALEC is a 501(c)(3) non-profit organization. We are a think-tank for state-based public policy issues, providing a constructive forum for state legislators and private sector leaders to discuss and exchange practical, state-level public policy solutions. The potential solutions discussed at ALEC focus on free markets, limited government, and constitutional division of powers between the federal and state governments. We are a non-partisan resource for our members, which include more than 2,000 Republican and Democratic state legislators. ALEC publishes research and writing on issues that are of importance to our members, and we hold meetings where people from public and private sectors share their views.

The Communications and Technology Task Force believes that constant, dynamic innovation in communications and technology presents numerous complexities that defy traditional public policy prescriptions. To help policymakers understand the changes underway in the 21st century economy, the Task Force brings together state legislators, private industry, and public policy experts to develop public policies that will promote economic growth, freedom of technology, and innovation in the states.

III. What is VoIP?

VoIP is a relatively new but very promising communications technology. In less than a decade, what was once wishful thinking by a couple of computer engineers is now a popular multimedia communications service.

As its name suggests, VoIP uses Internet Protocol technology to transmit information as data packets over the global Internet. By using Internet Protocol, VoIP service can do more than traditional telephone service such as carrying both voice and video signals. A VoIP-enabled phone can call a traditional telephone or a computer and

vice versa. The VoIP technology also allows consumers to conduct video calls with other consumers anywhere in the world.

VoIP enables consumers to enjoy many features including caller ID, text messaging, call forwarding, conference calling, and voicemail. But with VoIP consumers can access many of these features remotely using a laptop computer at school, a desktop computer at work, or a smartphone on the road. New VoIP features include voice to text conversion and group video conferencing. Cable television, Internet, and even phone companies now offer VoIP as part of their broadband services to residential customers and businesses in Kansas.

VoIP quality and reliability have improved substantially in a short time, and the number of VoIP subscribers has grown substantially as a result. Nationally, there were approximately 36 million VoIP connections in 2011, a 15% increase from the previous year. Of these, there were an estimated 263,000 VoIP connections used by individuals and businesses in Kansas.

The benefits to VoIP are substantial. VoIP enables more meaningful communications between people regardless of the distance, whether it is between business colleagues or loved ones. VoIP also contributes to innovation in products and services, which fosters progress and economic growth. Additionally, VoIP helps enable healthy competition in communication services, which keeps prices in check. The only obstacles to new, improved, and low-cost VoIP services for consumers are burdensome government regulations.

IV. How Kansas and Other States Treat VoIP

On January 30, the Kansas Corporation Commission ruled it had authority to regulate interconnected VoIP service under state utility law regulating telephone service. In contrast to VoIP, traditional telephone service uses copper wire technology and the switch-based Public Switched Telephone Network to transmit voice signals, and is also historically subject to heavy regulation, particularly at the state level.

The Corporation Commission's ruling effectively applies state utility law to the global Internet, which is in stark contrast to our nation's light touch approach to regulating the Internet. Many observers credit this approach as precisely what has allowed the Internet to grow and benefit Kansans.

If each state applied its own utility laws to VoIP, which include requirements such as carrier of last resort obligations and pre-approval for service changes, the increased costs on providers and ultimately consumers would be substantial. For example, every new feature developed by a private VoIP provider might have to be approved by a government bureaucrat.

Adding to the regulatory burden reduces the incentive for providers to invest in their networks. According to a recent report in the Kansas City Business Journal, Google

Fiber considered offering VoIP through its new Gigabit broadband network in Kansas City, but opted not to once it learned about the costs of complying with telephone regulations.

Some argue that exempting VoIP from regulation puts consumers at risk of harm. Others argue that VoIP is no different from traditional telephone service and that it is no longer in its infancy. Although VoIP has come a long way in a short time, we have not yet seen the full potential of this new technology to enable communications.

VoIP is already subject to several Federal Communications Commission (FCC) rules requiring data privacy, emergency number access, contributions to the Universal Service Fund, and more. In fact, in 2004 the FCC considered applying the same common carrier obligations governing telephone service to VoIP but instead affirmed its hands off approach towards the new technology. Moreover, VoIP providers are currently subject to many state consumer protection, business, and tax laws.

Among the states, only Vermont regulates VoIP as a utility, but that policy is being challenged in court. As of January 2013, 25 states including California, Texas, and Utah have exempted VoIP from utility laws while maintaining other requirements for communications. Moreover, after public service commissions in Missouri and Wisconsin attempted to apply utility laws to VoIP, the legislature clarified VoIP is exempt from such requirements. None of these states have reversed their decisions to exempt VoIP. Today, Arizona and Iowa are considering exempting VoIP from utility law.

In 2007, ALEC members grew concerned about the status of VoIP and sought to develop policy to protect the technology from antiquated regulation so it could thrive. At the same time, our members sought to preserve the appropriate federal and state balance of responsibilities towards consumers. Therefore, ALEC adopted as our policy towards VoIP elements from laws enacted in states like Florida and Indiana. Our model *Advanced Voice Services Availability Act* exempts interconnected VoIP service from state utility regulation, but also preserves several rights and responsibilities for states and providers. Our model Act also preserves state authority for resolving interconnection disputes as guaranteed under Sections 251 and 252 of the Telecommunications Act.

V. What HB 2326 Would Do to VoIP

HB 2326 would effectively exempt interconnected VoIP or Internet Protocol-enabled services from the jurisdiction of Kansas state agencies and local government. However, VoIP services provided to Kansans would remain subject to several state laws including the Video Competition Act, the 9-1-1 Act, and to the requirements of the Kansas Universal Service Fund, among other general laws. Further, HB 2326 does not modify the Kansas Corporation Commission's authority provided by the Telecommunications Act.

On February 25, the Kansas House Committee on Commerce, Labor, and Economic Development favorably reported HB 2326 with amendments. These

amendments specified the Corporation Commission's authority under U.S. code and clarified that the bill would not modify state or local authority over public rights of way. The House subsequently passed the bill 123-0 on March 1.

As drafted, HB 2326 would be consistent with the federal framework and the approach taken by the 25 other states to exempt VoIP from utility regulations, and with policy adopted by ALEC. Industry trade groups and analysts have testified these actions ensure "regulatory certainty [that] will help promote new technology, innovation and investment."

VI. Conclusion

Thanks to VoIP, Kansans now have access to low-cost, feature-rich communications services using advanced Internet Protocol technology. By following the hands-off approach to VoIP, Kansas maintains the regulatory environment that has delivered VoIP and continues to deliver cutting-edge communications services that bring investment and economic growth to Kansas. Moreover, this approach is the same one followed by 25 other states and the FCC, which maintains certainty in the communications market. I appreciate the opportunity to present this information and I am available to answer questions by telephone at 202-742-8524 or jstephenson@alec.org or on Skype at stephenj05. Thank you.