



# NEWS

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action.  
See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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## **FCC FINDS THAT VONAGE NOT SUBJECT TO PATCHWORK OF STATE REGULATIONS GOVERNING TELEPHONE COMPANIES**

### *Commission Clears Way for Increased Investment In VoIP Services Like Vonage's*

Washington, D.C. – The Federal Communications Commission declared today that a type of Internet telephony service offered by Vonage Holdings Corp. called DigitalVoice is not subject to traditional state public utility regulation.

The Commission also stated that other types of IP-enabled services, such as those offered by cable companies, that have basic characteristics similar to DigitalVoice would also not be subject to traditional state public utility regulation.

The decision adds to the regulatory certainty the Commission began building with orders adopted earlier this year regarding Voice over Internet Protocol by making clear that this Commission, not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to IP-enabled services. The Commission has the power to preempt state regulations that thwart or impede federal authority over interstate communications.

Acting on a petition from Vonage seeking federal preemption of an order by the Minnesota Public Utilities Commission, the FCC found that the company's DigitalVoice service cannot practically be separated into intrastate and interstate components, precluding dual state and federal regulatory regimes. DigitalVoice customers can use their phones from a broadband connection anywhere in the world, making it difficult to determine whether a call is local, interstate or international in nature.

The Commission also found that regulations that would have been imposed by the Minnesota Commission were inconsistent with the FCC's deregulatory policies, and that preemption was consistent with federal law and policies intended to promote the continued development of the Internet, broadband and interactive services. Divergent state rules, regulations and licensing requirements could impede the rollout of such services that benefit consumers by providing them with more choice, competition and innovation.

The Minnesota Commission in August of 2003 concluded that Vonage's DigitalVoice was a telephone service for which Vonage was required to obtain a certificate of authority and meet other rules and regulations governing telephone companies in the state. One requirement

was that Vonage provide emergency 911 service comparable to that provided by the incumbent phone companies. Although the Commission found that the Minnesota requirements must yield to the extent they bar entry, the Commission does not signal that Vonage may cease its efforts to develop workable solutions. The Commission looks forward to addressing public safety issues comprehensively, with the participation of our state and local colleagues, in the broader IP-Enabled Services Proceeding.

The Commission's order does not express an opinion about the applicability to Vonage of general laws in Minnesota governing taxation, fraud, commercial dealings, marketing, advertising and other business practices. But the Commission expects states to continue playing a vital role in protecting consumers from fraud, responding to complaints, and enforcing fair business practices.

The Commission noted that the question of whether DigitalVoice should be classified as an unregulated "information service" under the Communications Act or a telecommunications service will be addressed in the Commission's IP-Enabled Services Proceeding. The Commission will also address whether VoIP providers must provide access to the disabled, pay intercarrier compensation and contribute to the universal service fund, in the Commission's IP-Enabled Services Proceeding, which commenced in February of this year.

Action by the Commission November 9, 2004, by Memorandum Opinion and Order (FCC 04-267). Chairman Powell, Commissioners Abernathy, and Martin, with Commissioners Copps and Adelstein concurring. Separate statements issued by Chairman Powell, Commissioners Abernathy, Copps, and Adelstein.

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