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Regarding HB 2590
Before the Senate Utilities Committee
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Chairman Emler and members of the Committee, good morning. My name is Tim Pickering and I am the General Attorney for AT&T Kansas. We appreciate the opportunity to speak to you today on House Bill 2590 and Voice over Internet Protocol Services (VoIP) and 911 services.

I. What is VoIP Service?

You have all heard about VoIP services, which are offered by an ever increasing number of providers, including cable companies, some traditional phone companies, and start-ups, like Vonage. In today's marketplace, there are numerous types of VoIP services. Some VoIP services are purely computer to computer applications, such as those used for gaming (Microsoft's Xbox Live), and to enhance instant messaging. These VoIP services do not use telephone numbers and cannot make calls to or receive calls from the public switched telephone network (PSTN). However, other VoIP services perform functions similar to traditional wireline voice calls made over the PSTN. These services allow customers to send and receive voice communications, and access other features like caller ID and voicemail, over the Internet.

A few additional points on the VoIP services that connect with the PSTN. First, VoIP customers must have access to a broadband connection to the Internet. However, unlike a telephone line, once service is established, most VoIP services are "portable" and it does not matter where the broadband connection is located or even whether it is the same broadband connection every time the subscriber accesses the service. So the provider may not know where the customer is actually located. Some providers use wireline broadband connections, such as DSL or cable modem connections. Also, as wireless broadband availability expands, more providers are also using this as a platform for VoIP calls. Recently, some vendors have introduced wireless phones that allow users to seamlessly switch between traditional wireless/cellular networks and new Wi-Fi and Wi-Max networks.

Second, special customer premises equipment (CPE) attached to a broadband connection is usually required to access VoIP services. This CPE typically consists of a dedicated IP phone or a terminal adapter that attaches to a standard telephone and converts analog signals into VoIP communications. Third, customers may access their service through an Internet web page including viewing calls placed and received and playing voicemails back through a computer in e-mails with the actual message attached as a sound file. Fourth, VoIP services use "telephone numbers" but a customer's number is not necessarily tied to the customer's physical location and does not require the customer to remain at a single location. So a customer in Kansas might have a St. Louis or New York phone number, and may make and receive calls from any location with a broadband connection.

II. HB 2590 and VoIP E911 Services.

All would agree that it is important for consumers to have reliable access to E911 services. With numerous providers and technologies competing for consumers' business, it is important for the government to be very precise in identifying exactly what types of services it will require to adhere to state and federal E911 regulations. In June 2005, the Federal Communications Commission (FCC) issued its *VoIP E911 Order*, which placed certain requirements on some VoIP providers to provide E911 functionality.¹ Specifically, the FCC required services that connect to the PSTN to provide E911 services. These types of providers were defined by the FCC in its *VoIP E911 Order* at 47 C.F.R. § 9.3:

- “Interconnected VoIP Service.” An interconnected Voice over Internet protocol (VoIP) service is a service that: (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 generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

This definition clarifies the types of services that are subject to the FCC's 911 rules – generally those in which the VoIP service is used as the primary communications service, including for making and receiving traditional telephone calls. For example, it would make no sense to require a teenager playing interactive games on Xbox Live to pay a \$.50 monthly E911 fee, when that teenager could not use Xbox Live to call 911. The same would be true for instant messaging services that cannot make calls to or receive calls from the PSTN. The House amendments appropriately assess E911 fees only on these types of “interconnected VoIP services.”

Additionally, it can be difficult to determine the location at which a VoIP service is primarily used. As such, the FCC also defined a term to require VoIP companies to obtain each customer's primary place of use, so that the information could be transmitted to the local 911 entity that might receive such a call:

- “Registered Location.” The most recent information obtained by an interconnected VoIP service provider that identifies the physical location of an end user.

The VoIP user can also change the “Registered Location” frequently. From an administration standpoint, the “nomadic” nature of VoIP could make collection efforts very difficult, if not impossible, as VoIP users with primary service addresses leave Kansas, and establish a registered location outside of the state for some period of time. As such, the House also adopted an amendment to ensure that the subscriber's primary service address (not the “registered location”) is the basis for determining which subscribers will be assessed the 911 fees. This approach is very similar to that used in assessing the 911 fees on wireless users, which may also use cell phones in other areas of the country, but pay fees in Kansas and not in other states.

¹ See In the Matters of Vonage IP Enabled Services and E911 Requirements for IP-Enabled Service Providers, WC Docket Nos. 04-36 and 05-196; FCC 05-116; First Report and Order and Notice of Proposed Rulemaking; Released June 3, 2005 (“*VoIP E911 Order*”).

III. Proposed Amendments.

One area of the House bill that this Committee should consider modifying involves the exemption of all certified local exchange carriers and telecommunications carriers from collecting, or their VoIP users paying, the VoIP 911 fee. This occurred when the definition of VoIP Provider (page 2, lines 4-7) was amended to exclude such companies. AT&T Kansas recommends that this exclusion be removed so that all VoIP service users are fairly assessed the 911 fee. It would be unfair if a VoIP customer of a company such as Vonage was required to pay the 911 fee, while the customers of certified companies, such as AT&T Kansas, Birch, Sunflower, or Cox cable do not.

Additionally, the Committee should consider including an amendment that clarifies that no customer should pay multiple 911 fees on the same communications device. Today, new wireless phones that are assessed the wireless 911 fee can also be used to make VoIP calls using a Wi-Fi connection that would also be classified as an “interconnected VoIP service.” The amendments proposed below will address that concern.

In light of the information provided above, we offer the following recommendations to the Committee to modify HB 2590.

1. Definitions.

- New Section 2(i): “VoIP Provider” means a provider of **interconnected VoIP service**, ~~but does not include any telecommunications carrier or local exchange carrier, as defined by K.S.A. 66-1,187, and amendments thereto, which holds a certificate of public convenience and necessity issued by the state corporation commission.~~

2. Multiple E911 Assessments. With the convergence of wireline, wireless and VoIP technologies, it is important that providers and subscribers not be subject to a “double dip” of government fees. As such, we recommend that the following language be added to New Section 4(a) and 5(a):

- New Section 4(a), line 10: Notwithstanding any other provisions of this act, no VoIP Service User shall be liable for, nor shall any VoIP provider be required to collect, the VoIP enhanced 911 grant fee on any Interconnected VoIP Service upon which an emergency telephone tax is paid pursuant to K.S.A. 12-5302, or upon which a wireless enhanced 911 grant fee is paid pursuant to K.S.A. 12-5324.
- New Section 5(a), line 19: Notwithstanding any other provisions of this act, no VoIP Service User shall be liable for, nor shall any VoIP provider be required to collect, the VoIP enhanced 911 local fee on any Interconnected VoIP Service upon which an emergency telephone tax is paid pursuant to K.S.A. 12-5302, or upon which a wireless enhanced 911 local fee is paid pursuant to K.S.A. 12-5330.

We have provided “balloons” showing exactly where these modifications would fit in HB 2590 and those are attached to this testimony. Thank you for your time this morning.