

**CONCURRING STATEMENT OF
JONATHAN S. ADELSTEIN**

Re: Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211, FCC 04-267 (2004).

While this Order rightly acknowledges the importance and unique qualities of Internet-based services, including Voice over Internet Protocol (VoIP) services, I am concerned that the Commission overlooks important public policy issues that will impact consumers across our country, and particularly in Rural America.

I concur to this item because it appropriately recognizes the unique nature of many IP-enabled services and the importance of reducing barriers to entry for Internet-based services. Indeed, I share my colleagues' enthusiasm for the promise of Internet Protocol (IP)-enabled services. All indications are that IP is becoming the building block for the future of telecommunications and its use is integral to the explosion of choices for consumers. It is becoming increasingly apparent that IP-based services will play an important role in our global economic competitiveness, by enabling economic productivity, providing a platform for innovation, and driving demand for broadband facilities. Whether through PDA phones, voice through Instant Messaging, or countless other innovative services, this technology is giving customers far greater control over, and flexibility in the use of, their communications services. With that control, consumers can convert messages with ease from voice-to-text and back, and can take their IP-services wherever they go. Though I am not comfortable with all of the analysis in this item, the Order reasonably reflects the unique qualities of Vonage's service and recognizes the challenges that this service poses for the Commission's traditional jurisdictional analysis.

Where this Order falls short is its failure to account in a meaningful way for essential policy issues, including universal service, public safety, law enforcement, consumer privacy, disabilities access, and intercarrier compensation, and the effect of our preemption here. In February of this year, we opened a VoIP-specific rulemaking proceeding to address not only the issue raised here, the jurisdiction of IP-based services, but to address the broader implications of VoIP services in a comprehensive and coordinated fashion. At that time, we acknowledged the social importance of these Congressionally-mandated policy objectives and the need to assess the potentially disparate impact of our decisions on particular communities. I am concerned that this Order may have dramatic implications for these Congressional objectives, yet we afford them no meaningful or comprehensive consideration here. I am also concerned that our inability to specify the exact parameters of the services at issue and the breadth of our preemption will have unintended effects, including effects on incentives for investment in these technologies, that could have been avoided with a more comprehensive approach. I highlight, below, two of the most pressing concerns – universal service and public safety.

The Act charges this Commission with maintaining universal service, which is crucial in delivering communications services to our nation's schools, libraries, low income consumers, and rural communities. Universal service has been the cornerstone of telecommunications policy for over 70 years and has enabled this country to enjoy unparalleled levels of access to essential communications services. That access has improved our economic productivity and our public safety in immeasurable ways and has been vital in fostering economic development in rural and underserved areas. The Act also expressly permits States to adopt consistent approaches to preserve and advance universal service. At least 24 States have answered that call, disbursing over \$1.9 billion annually from their own universal service programs. Many of those States and other commenters express legitimate concern that our decision here could increase pressure on the federal universal service mechanisms and could potentially lead to rate increases for rural and low income consumers. With those reasons in mind, I've called for the Commission to quickly convene a universal service solutions summit modeled after the ones we've held

for other public policy issues. Regrettably, this item does not acknowledge its potential impact on those programs, nor does it propose any solutions, or even make firm commitments to resolving these issues. We are left to hope that these unaddressed issues do not gridlock or curtail the full reach of the promised IP superhighway.

I also have reservations about our preemption of a State's efforts to ensure the public safety of its citizens, based here on the linkage of the 911 requirement with a State certification. Our approach of overriding States' public safety efforts without clear federal direction takes us into a dangerous territory in which consumers may come to rely on services without the benefit of the critical safety net that they have come to expect.

Ultimately, I cannot fully endorse an approach that leaves unanswered so many important questions about the future of communications services for so many Americans. Rural and low-income Americans, the countless governmental and public interest groups who have expressed concern about our piecemeal approach, and the communications industry, itself, all deserve more from this Commission. If this Commission is to ensure that innovative services are widely available and also achieve the important public policy goals that Congress has articulated, the Commission must begin to wrestle in earnest with difficult issues that are largely ignored this Order. We simply cannot afford to slow roll these issues.