

**Federal Court Upholds FCC Vonage Order Classifying VoIP As An Interstate Service**  
*Ruling has no impact on state/local authority to collect 9-1-1 surcharges from VoIP providers*

Some NENA members have expressed concerns about the recent decision of the United States 8<sup>th</sup> Circuit of Appeals believing that the decision prevents state and local governments from imposing 9-1-1 fees on VoIP providers. NENA believes such interpretation of the order is incorrect and that the order did not speak about, much less prohibit, the collection of 9-1-1 surcharges from VoIP providers.

**First**, the court was responding to the State of Minnesota's challenge to an FCC finding three years ago that Vonage's IP-based voice service was interstate because messages sent and received in-state could not be distinguished from messages crossing state lines. The FCC finding was quite limited. It said only that because the Vonage service is interstate, that service and analogous IP-based services could not be regulated by the states as to entry into business. The FCC deliberately withheld any further conclusions, for example, as to whether the Vonage service could be classified as a telecom service or an information service. The FCC's Vonage order was careful not to speak about fees, taxes or surcharges that might be imposed on Vonage or like carriers. Instead, the federal agency promised to look into VoIP 9-1-1 obligations in another proceeding.

**Second**, when the FCC a year later issued a decision, "E911 Requirements for IP-Enabled Service Providers," FCC 05-116, released June 3, 2005, it affirmed the conclusion that the Vonage order was not meant to speak to state prerogatives not affecting entry into business, such as taxes and fees. At paragraph 52, the FCC said:

52. We believe that the requirements we establish today will significantly expand and improve interconnected VoIP 911 service while substantially reducing the threat to 911 funding that some VoIP services currently pose. First, we recognize that while some state laws today may already require 911 funding contributions from providers of interconnected VoIP, interconnected VoIP providers may not be covered by existing state 911 funding mechanisms in other states. But even in the latter circumstance, the record does not indicate that states are receiving no 911 funding contributions from interconnected VoIP providers. On the contrary, the record indicates that many interconnected VoIP providers currently are contributing to state 911 funding mechanisms. In addition, states have the option of collecting 911 charges from wholesale providers with whom interconnected VoIP providers contract to provide E911 service, rather than assessing those charges on the interconnected VoIP providers directly. For example, we have explained that interconnected VoIP providers often enlist a competitive LEC partner in order to obtain interconnection to the Wireline E911 Network, and we believe that as a result of this Order, many more will do so. In that situation, states may impose 911 funding obligations on the competitive LEC partners of interconnected VoIP providers, regardless of whether the VoIP providers themselves are under any obligation to contribute. Similarly, states may be able to impose funding obligations on systems service providers, such as incumbent LECs, that provide direct interconnection to interconnected VoIP providers. We believe that the ability to assess 911 funds on interconnected VoIP providers indirectly should narrow any gap in 911 funding attributable to consumers switching to interconnected VoIP service.

**Third**, the U.S. Appeals Court did nothing more than affirm the FCC's finding that Minnesota's 9-1-1 requirements on Vonage were unlawful because they blocked Vonage's entry into business. Because the FCC's Vonage order did not touch surcharges and fees, the U.S. Court

could not touch the subject either. The U.S. Court noted, at page 19 of its order that the VoIP 9-1-1 order of 2005 did not exist when the FCC made its Vonage ruling of 2004. The U.S. Court was limited to the facts of 2004. Its ruling did not affect or diminish the FCC's acknowledgment of local and state surcharges on VOIP 9-1-1 in the world of 2005 and today.

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