By PATRICK CONDON, Associated Press Writer

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MINNEAPOLIS - A federal appeals court on Wednesday upheld a decision by the Federal Communications Commission that barred states, including Minnesota, from regulating Internet-based phone services.

A three-judge panel of the 8th Circuit Court of Appeals agreed with the FCC's determination in 2004 that companies like Vonage Holdings Corp. of Edison, N.J., provide an interstate service that puts them outside state control.

Vonage uses what's called Voice over Internet Protocol, or VoIP, which involves converting the sound of a voice into packets of data and reassembling them into sound at the other end of the call. Customers can make the calls almost anywhere a broadband Internet connection is available, for usually a flat monthly charge.

In 2003, Minnesota's Public Utilities Commission tried to register Vonage as a phone company, which would have subjected it to state tariffs and rate regulations. A federal judge barred Minnesota from doing so, and a year later at Vonage's request the FCC ruled that the company's services could not be regulated by the states.

Regulatory agencies in a number of states, including Minnesota, appealed that ruling.

In the decision authored by Fargo, N.D.-based 8th Circuit Judge Kermit Bye, the court agreed with the FCC's determination that the nature of VoIP telephone calls allows customers to place "home" phone calls from nearly anywhere, irrespective of state lines.

Such determinations are highly technical, and "in such situations we accord a high level of deference to the informed decision of the agency charged with making those fact findings," Bye wrote for the court.

When the FCC issued its ruling in 2004, officials with the agency indicated that they...
believed streamlined regulation was key to the growth of the fledgling industry.

Vonage CEO Mike Snyder said the decision was good news for the company's 2.2 million subscribers. "It allows Vonage to continue growing our business unfettered by outdated pre-Internet regulatory structures," he said in a statement.

Burl Haar, executive secretary for the Minnesota Public Utilities Commission, said officials there were still studying the full ruling. But he said commissioners believe Vonage should be viewed as a phone company.

"They project themselves to the public as providing telephone services, and all their marketing seems to indicate that's the service they're providing," Haar said.

He said commission officials would need to study the ruling further before deciding whether to appeal it to the full 8th Circuit or the U.S. Supreme Court.

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