

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Protecting the Privacy of Customers of)	WC Docket No. 16-106
Broadband and Other Telecommunications)	
Services)	

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON”),¹ pursuant to section 1.45(d) of the Commission’s rules,² hereby asks the Commission, if it is inclined to grant the Joint Petition for Stay filed by several trade associations (collectively “Petitioners”)³, to exclude from the stay the *Broadband Privacy Order’s*⁴ adoption of section 64.2010 of the Commission’s rules, and its elimination of section 64.2009 of the Commission’s rules which are directed to providers of regulated voice services. VON supports the Joint Petition as it relates to all other provisions concerning regulated voice services but takes

¹ VON is the leading advocacy organization for the internet communications industry, working with legislators, regulators, and other policymakers to develop policies that support the availability and adoption of Internet communications products and services. For more information, see www.von.org.

² 47 C.F.R. §1.45(d).

³ American Cable Association *et al.* Joint Petition for Stay, WC Docket No. 16-106, (filed Jan. 27, 2017) (“Joint Petition”).

⁴ *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, Report and Order, FCC 16-148 (rel. Nov. 2, 2016) (“*Broadband Privacy Order*” or “*Order*”).

no position on the Joint Petition's request for a stay of the rules applicable to broadband internet access adopted by the *Broadband Privacy Order*.

Petitioners' objections to the *Broadband Privacy Order* are focused on those components applicable to broadband internet access service ("BIAS") data and other data outside the existing definition of CPNI. In fact, and consistent with our request, Petitioners explain that "they do not object to the rules to the extent they replace and update the existing CPNI rules applicable to voice telephony service."⁵ They also encourage the Commission to preserve its decision to streamline the voice CPNI rules by eliminating the outdated recordkeeping and annual certification requirements formerly contained in section 64.2009 of the Commission's rules.⁶

There are two voice-focused elements of the *Broadband Privacy Order* that should not be suspended or stayed: the business customer exemption and the elimination of recordkeeping and annual certification requirements. The business customer exemption⁷ maintains the general statutory obligations in section 222, but provides greater flexibility to voice service providers in implementing privacy and data

⁵ Petition, n.2.

⁶ *Id.* at n.8 ("Telecommunications carriers and interconnected VoIP providers are operating in reliance on the FCC's recent Public Notice confirming that these requirements are no longer in effect.").

⁷ 47 C.F.R. §64.2010 ("Telecommunications carriers may bind themselves contractually to privacy and data security regimes other than those described in this subpart for the provision of telecommunications services other than BIAS to enterprise customers if the carrier's contract with that customer specifically addresses the issues of transparency, choice, data security, and data breach and provides a mechanisms for the customer to communicate with the carriers about privacy and data security concerns.").

security protections to business customers. The Commission recognized that business customers have different privacy and security needs than individual consumers and that they typically can negotiate appropriate CPNI protections in their service agreements.⁸ For those reasons, the Commission broadened the enterprise exemption – previously limited to authentication – to encompass all privacy and data security rules applicable to non-BIAS telecommunications services.⁹ VON supports continuation of the business customer exemption for voice services. The Commission should exclude section 64.2010 from any stay of the *Broadband Privacy Order*, to encourage the pro-consumer, deregulatory benefits that the exemption affords. It would not serve the public interest, and would be inconsistent with the Chairman’s recently expressed deregulatory objectives, to reinstate a set of requirements that have been determined to be unnecessary and, in some instances, inconsistent with the privacy and data security needs of business customers.¹⁰ Furthermore, VON members providing interconnected VoIP are operating in reliance on the business customer exemption.

⁸ See *Broadband Privacy Order* at ¶1307.

⁹ See *id.* (“Although the Commission previously limited the enterprise exemption to authentication, for the reasons above we are convinced to broaden the exemption to encompass all privacy and data security rules under Section 222 for the provision of telecommunications services other than BIAS to enterprise customers.”).

¹⁰ See *id.* (“Business customers have the ‘knowledge and bargaining power necessary to contract for privacy and data security protections that are tailored to meet their needs’” and “may have different privacy and security needs and therefore different expectations [than individual consumers].”).

The *Broadband Privacy Order* also eliminated the compliance recordkeeping and annual certification requirements applicable to voice providers that were contained in section 64.2009 of the Commission's rules. The Commission recognized that eliminating these obligations would "reduce[] burdens for all carriers" and were not necessary because carriers likely already maintained records without the need for specific requirements to do so.¹¹ It also determined that the operation of other rules applicable to voice providers would serve the compliance and transparency purposes of the annual certification requirement.¹² The Joint Petition does not advocate elimination of the recordkeeping and certification requirements. The Commission should avoid reinstating rules, by granting a stay, that it has found to be unnecessary and burdensome. In addition, VON members are operating in reliance on the elimination of these requirements.¹³

VON supports the Joint Petition as it relates to all other provisions concerning regulated voice services, as the new rules impose additional, unnecessary burdens on interconnected VoIP providers. VON does, however, request that the Commission retain the deregulatory elements of the *Broadband Privacy Order* applicable to voice services and exempt from its decision section 64.2010 of the Commission's rules and the

¹¹ See *id.* at ¶234.

¹² *Id.*

¹³ Petition at n.8.

elimination of the compliance recordkeeping and certification requirements in former section 64.2009.

Respectfully submitted,

VOICE ON THE NET COALITION

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