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## **Request for Amicus Curiae Status**

The Voice on the Net Coalition (“VON Coalition”)<sup>1</sup> hereby reasserts the request for amicus curiae status made in its November 22, 2016 brief. The VON Coalition is a trade association of Internet communications companies that provide voice over internet protocol (“VoIP”) services. As such, it has a substantial interest in the aspects of this proceeding pertaining to VoIP, specifically the question of “whether back-up power should be required for . . . cable and fiber operators offering VoIP service.”<sup>2</sup>

### **Background**

On November 4, 2016, the Vermont Public Service Board (“Board”) issued an Order Opening Investigation and Setting Briefing Schedule, which initiated a proceeding to review a petition filed by Charles Larkin and Stephen Whitaker (“Petitioners”) concerning the enhanced 911 system in Vermont and back-up power requirements for cellular and VoIP telephone service systems. On November 22, 2016, the Board issued an order suspending briefings and scheduling a Prehearing Conference. At the Prehearing Conference, the Petitioners agreed to withdraw 6 of the 17 issues raised in their petition.

The Prehearing Conference Order was issued on January 18, 2017 (“Prehearing Order”), directing the Petitioners’ Brief to be filed on January 21, 2017, and replies to the Petitioners’ Brief to be filed on February 22, 2017. In this reply brief, the VON Coalition discusses the fifth issue raised by the Petitioners.

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<sup>1</sup> The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. VON Coalition members are developing and delivering voice and other communications applications that may be used over the Internet. For more information, see [www.von.org](http://www.von.org).

<sup>2</sup> Vermont Public Service Board, Order Opening Investigation and Setting Briefing Schedule at 2 (Nov. 4, 2016).

## Discussion

The fifth issue raised by the Petitioners states that backup power should be required for all cable and fiber operators offering VoIP services, and that such a requirement be verified and monitored by rule, or conditions within Certificates of Public Good.<sup>3</sup> As discussed in more detail below, the Board does not have jurisdiction to require cable and fiber operators offering VoIP services to provide back-up power because federal law preempts state regulation of VoIP. In addition, such a requirement is unnecessary and could conflict with existing FCC back-up power regulations. The Federal Communications Commission (“FCC”) already requires that providers of residential, facilities-based, fixed voice service, including VoIP, offer subscribers the option to purchase a minimum of eight hours of back-up power,<sup>4</sup> and states that requiring back-up power for outages over 24 hours would “impose unnecessary burdens on service providers and excessive costs on consumers for comparatively little public safety benefit.”<sup>5</sup>

### **I. The Board does not have jurisdiction to require cable and fiber operators offering VoIP services to provide back-up power**

#### ***A. Federal Law Preempts State Regulation of VoIP***

The FCC has recognized a strong federal interest in ensuring that regulation does not hinder the growth of the Internet and the services provided over it, including VoIP and other IP-communications. In the *Vonage Preemption Order*, the FCC preempted the application of Minnesota’s “traditional ‘telephone company’ regulations” to Vonage’s Digital Voice service

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<sup>3</sup> Petitioners’ Brief at 7 (Jan. 31, 2017).

<sup>4</sup> See 47 C.F.R. § 12.5.

<sup>5</sup> Report and Order, PS Docket 14-174, FCC 15-98 ¶ 36 (rel. Aug. 7, 2015) (“Back-Up Power Order”).

because it was impossible to separate the intrastate and interstate components and the state regulation of the intrastate component interfered with valid federal rules and policies.<sup>6</sup>

The *Vonage Preemption Order* extended to both nomadic and non-nomadic VoIP offerings. The FCC noted that the same integrated capabilities and features were available for most, if not all, IP-based services, including those offered by facilities-based providers.<sup>7</sup> The FCC added, “Accordingly, to the extent other entities, such as cable companies, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order.”<sup>8</sup>

Twelve years later, this landmark decision remains largely undisturbed and has led to substantial growth in the adoption of VoIP and other IP services. As a result of the Vonage Preemption Order, there is a single national policy for IP communications and Board regulation of VoIP providers is preempted by federal law.

**B. State Authority Over Interconnected VoIP Providers is Strictly Limited**

While the FCC has asserted limited jurisdiction over interconnected VoIP services, it has not treated interconnected VoIP as a traditional telecommunications service. The FCC has imposed a number of specific obligations, including, requirements to provide Enhanced 911 services, make the service accessible by law enforcement, contribute to the Federal Universal Service and Telecommunications Relay Service Funds, protect customer proprietary network information, and provide customers notice before discontinuing service.<sup>9</sup> In none of these

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<sup>6</sup> Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004), *petitions for review denied*, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

<sup>7</sup> *Id.* ¶ 25 n.93.

<sup>8</sup> *Id.* ¶ 32.

<sup>9</sup> First Report and Order and Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 05-116, (rel. Jun. 3, 2005) (“*VoIP 911 Order*”); Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, FCC

actions, however, has the FCC granted the states authority to impose any other specific obligations on interconnected VoIP providers, other than state USF contributions where such contributions are not inconsistent with federal USF obligations and the payment of state and local fees to support the 911 network.<sup>10</sup> As a result, the Board does not have the authority to impose back-up power requirements on cable and fiber operators offering VoIP services.

## **II. Federal law already requires that facilities-based, fixed VoIP service providers offer subscribers the option to purchase back-up power**

In addition to the Board lacking the jurisdiction to require cable and fiber operators offering VoIP service to provide back-up power, such an action is unnecessary and could conflict with FCC regulations. Indeed, the FCC already requires that providers of residential, facilities-based, fixed voice service, including VoIP, offer subscribers the option to purchase back-up power.<sup>11</sup> Specifically, covered VoIP providers must offer new subscribers at least one option with a minimum of eight hours of standby back-up power.<sup>12</sup> In 2019, covered VoIP providers will be required to offer new subscribers at least one option with a minimum of 24 hours of standby back-up power.<sup>13</sup> Furthermore, covered VoIP providers must disclose to each new customer the service limitations with and without back-up power.<sup>14</sup> This disclosure must also be made to existing subscribers on an annual basis.<sup>15</sup> In implementing the eight and 24 hour back-up power requirements, the FCC stated that requiring back-up power for outages over 24 hours

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06-94 (rel. Jun. 27, 2006) (imposing USF requirements); Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 07-22 (rel. Apr. 2, 2007) (imposing CPNI requirements); Report and Order, WC Docket No. 04-36, FCC 09-40 (May 13, 2009) (imposing discontinuance requirements).

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. § 12.5.

<sup>12</sup> *Id.* § (b)(1).

<sup>13</sup> *Id.* § (b)(2).

<sup>14</sup> *Id.* § (d)(1).

<sup>15</sup> *Id.* § (d)-(e).

would “impose unnecessary burdens on service providers and excessive costs on consumers for comparatively little public safety benefit.”<sup>16</sup>

As a result, there is no need to impose additional and potentially conflicting obligations on VoIP providers in an effort to duplicate the copper loop infrastructure. The two services are fundamentally different, and imposing regulations designed for legacy telephone on VoIP could result in higher costs and fewer options for Vermont customers.

### **Conclusion**

For the foregoing reasons, the Board does not have jurisdiction to require cable and fiber operators offering VoIP services to provide back-up power. In addition, such a requirement is unnecessary and could conflict with existing FCC back-up power regulations.

Respectfully submitted,

VOICE ON THE NET COALITION

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<sup>16</sup> Back-Up Power Order ¶ 36 (“we believe that it is both technically feasible and consistent with current business models for covered services to require providers to offer options for 8 and 24 hours of backup power on the timelines specified in our rules. We agree, however, with commenters who suggest that a mandate to offer backup power for multi-day outages could impose unnecessary burdens on service providers and excessive costs on consumers for comparatively little public safety benefit”).

**CERTIFICATE OF SERVICE**

I, Glenn S. Richards, certify that on February 22, 2017, I filed this brief using ePSB, and mailed one hard copy to the Clerk of the Vermont Public Service Board, 112 State Street, Montpelier, VT 05620.

\_\_\_\_\_/s/\_\_\_\_\_  
Glenn S. Richards