

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Proceeding to ) RULEMAKING 22-03-016  
Consider Amendments to General Order 133 )

**REPLY COMMENTS OF THE VOICE ON THE NET COALITION**

The Voice on the Net Coalition (“VON”)<sup>1</sup> hereby submits these reply comments in the above-captioned proceeding.<sup>2</sup> VON supports the comments of those parties filed in response to the service quality workshop (“Workshop”) summary<sup>3</sup> opposing the application of service quality obligations to interconnected Voice over Internet Protocol (“VoIP”) because the Commission does not have authority to impose such regulations, there is nothing in the record suggesting service quality metrics are needed, and even if they were, the proposed metrics are inapplicable to how nomadic VoIP technically operates. VON also opposes as wasteful and unnecessary the proposal of Cal Broadband suggesting the Commission collect data for two years consistent with existing service quality metrics from VoIP service providers to determine whether there are any service quality issues that need to be addressed.

**Discussion**

The Ruling asks parties to comment on the Workshop Summary describing the proposed service quality metrics not part of General Order 133-D, the existing penalty mechanism and possible enforcement changes. VON agrees with AT&T that the record illustrates all the benefits customers have received, and will continue to receive as a result of competition amongst

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<sup>1</sup> VON is a trade association founded in 1996 to advocate for a fresh approach to regulation of Internet communications. For more information, see [www.von.org](http://www.von.org).

<sup>2</sup> Administrative Law Judge’s Ruling Noticing Workshop (the “Ruling”), R.22-03-016 (issued August 21, 2023).

<sup>3</sup> The Public Advocates Office and California Broadband & Video Association’s Joint Summary of the September 7, 2023, Workshop Discussing General Order 133-D (“Workshop Summary”).

service providers.<sup>4</sup> Moreover, there is nothing in the record that demonstrates how customers define service quality or what they consider important.<sup>5</sup> In contrast, testimony from public hearings suggests that consumers are overwhelmingly satisfied with their voice services and that service quality regulation is not warranted or needed for VoIP.<sup>6</sup> Moreover, the only substantive service quality issues identified have applied to legacy wireline services and not to VoIP.

Similarly, Cal Broadband observed that the Workshop highlighted a lack of service quality problems specific to VoIP, and that adoption of service quality regulation would be costly and burdensome to implement.<sup>7</sup> Tellingly, none of the Workshop participants could identify and VoIP specific problems, and the evidence suggests that VoIP service quality is strong, outages are rare and customers are satisfied with their services (and if they are not, switching service providers is not difficult).

Problematically, the proposed VoIP service quality metrics lack factual support, are ill-defined, could not be applied uniformly and could have significant negative impacts if adopted, including the expense of developing data collection and reporting programs to comply.

Advocates for adopting the metrics – including call quality, call setup time and call drop rates, have not presented any evidence showing consumers are having any of these issues, nor do they explain how the metrics could be implemented or applied to the different VoIP technologies.<sup>8</sup>

Moreover, as VON noted in its earlier comments in this proceeding, the proposed service quality metrics simply don't work for over-the-top and nomadic VoIP providers as these metrics

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<sup>4</sup> Comments of AT&T, R. 22-03-016 (October 5, 2023) at 7.

<sup>5</sup> Id. at 9.

<sup>6</sup> Id. at 11.

<sup>7</sup> Comments of Cal Broadband, R. 22-03-016 (October 5, 2023) at 2-3.

<sup>8</sup> Id. at 5-6.

will be impacted by not only the **customer's choice** of broadband provider and technology (fixed or wireless) but also the equipment **chosen by the customer** to make and receive VoIP calls.<sup>9</sup>

This is a critical distinction from traditional wireline services or fixed VoIP services, where a single entity typically provides the circuits or broadband, as the case may be, and the underlying services. With nomadic VoIP service, the broadband provider may be different at home, at work, at the hotel where you may be on vacation, and at the coffee shop where you have stopped for breakfast. Not only is the broadband provider variable, so is the end point device from which you may be using the service – which could be a standard desk phone, an application launched on your cell phone; or running from a soft client on your laptop or desktop computer.

As a result, the concepts of installation intervals, installation commitments, customer trouble and out-of-service reports are inapposite in an environment where the ecosystem is dependent on multiple service providers. Each of these scenarios presents numerous points of failure for a) installation delays (delays installing the broadband network; delays getting the new handset; delays in porting telephone numbers from the former service provider); b) service outages (broadband is down; electricity is out; your cell phone or computer are not functioning properly). In all of these cases, the cause of the delay or failure is beyond the control of the nomadic VoIP provider and it would be incapable of accurately recording or reporting the cause of such service failure.

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<sup>9</sup> The Small Business Utility Advocates suggest that service quality metrics are needed to address the practices of the practices of “some major service providers” providing lower quality service or not providing equitable access to marginalized communities. Comments of the SBUA, R. 22-03-016 (October 5, 2023) at 4. Similarly, Center for Accessible Technology suggests that outages are primarily caused by underinvestment and neglect. Comments of CforAT, R. 22-03-016 (October 5, 2023) at 8. Clearly, these references are to facilities-based, legacy providers of voice services and irrelevant to providers of nomadic, over-the-top VoIP providers whose ubiquitous service offerings would likely only vary based on the customer's choice of broadband and equipment, not the location of the customer, and recent entry into the market hardly suggests a lack of investment in new technologies.

For these same reasons, the Commission should not adopt Cal Broadband's proposed data collection.<sup>10</sup> As noted, these service quality metrics have no relationship to how nomadic VoIP services are provided; make it nearly impossible to identify the cause of or responsibility for the service failure (in many cases a VoIP provider may not even know a customer has experienced a service problem unless the provider is contacted); will require a root cause analysis to determine the cause of the failure and then a determination whether it would be reportable to the Commission. Unlike fixed VoIP providers, nomadic providers do not always know the location of their users, particularly enterprise customers with a distributed workforce. Thus, while a customer billing address may be in California, the actual users of the service could be anywhere in the world. Similarly, customers with billing addresses outside of California may have users with registered addresses in California. Attempting to determine which incidents are reportable, and even determining how to appropriately calculate service metric percentages for California alone (as this information is not required by the FCC or any other state regulatory commission) would be an exercise in futility.

Moreover, the Commission must recognize that the Federal Communications Commission ("FCC") has preempted state level regulation of nomadic VoIP. As noted by AT&T, the FCC has made it clear that applying public utility type state regulations to interconnected VoIP would conflict with and undermine federal policies specifically crafted toward the service.<sup>11</sup> Specifically, as determined in the FCC's Vonage Preemption Order ("Vonage Order"), nomadic interconnected VoIP providers are subject to the FCC's exclusive jurisdiction, meaning that states cannot impose traditional common-carrier type regulation, like

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<sup>10</sup> Cal Broadband Comments at 8-9.

<sup>11</sup> AT&T Comments at 27.

service quality obligations, on nomadic VoIP.<sup>12</sup> In the Vonage Order the FCC concluded that the characteristics of nomadic interconnected VoIP make it impractical to separate the interstate and intrastate components, and as a result state regulations must “yield to important federal objectives” for VoIP services.<sup>13</sup> Subsequently, the FCC recognized the importance of universal service fund support to states and authorized states to impose universal service fund surcharges on nomadic VoIP providers.<sup>14</sup> The FCC has not authorized states to apply any other telecommunications regulatory obligations on VoIP providers. Indeed, the FCC itself has applied a light-touch regulatory approach to VoIP to promote competition and the advancement of innovative services to the benefit of consumers. Similarly, most states have determined that there is no need for regulatory commission oversight of VoIP.<sup>15</sup> Therefore, VON respectfully requests that the Commission confirm that any quality of service obligations that may be adopted in this proceeding do not apply to nomadic VoIP.<sup>16</sup>

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<sup>12</sup> *Vonage Holdings Corporation*, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004), petitions for review denied, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007) (“Vonage Order”).

<sup>13</sup> *Vonage Holdings Corporation* at 22405.

<sup>14</sup> *In re Universal Service Contribution Methodology*, Declaratory Ruling, FCC No. 10-185 (Nov. 5, 2010).

<sup>15</sup> Moreover, at least 30 states and the District of Columbia have codified regulatory “safe harbors” for VoIP or IP-enabled communications, recognizing there is no benefit to imposing legacy telephone regulations on VoIP.

<sup>16</sup> See VON comments submitted October 17, 2022, in response to the Order Instituting Rulemaking in R. 22-08-008 (issued August 30, 2022) for a discussion of the technological differences between fixed and nomadic VoIP.

## Conclusion

The record in this proceeding overwhelmingly opposes the application of service quality metrics to interconnected VoIP. Accordingly, the Commission should terminate this docket and stop searching for solutions for problems that do not exist.

Respectfully submitted,

THE VON COALITION

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