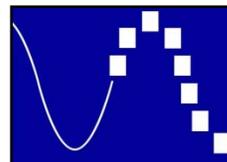


June 28, 2007



Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Reporting Requirements for U.S. Providers of International Telecommunications Services, IB Docket No. 04-112

Dear Chairman Martin:

The Voice on the Net Coalition ("VON Coalition") files this *ex parte* in reference to the applicability of the Commission's international traffic reporting requirements for Interconnected VoIP providers, which we understand currently may be under consideration.

The VON Coalition supports the Commission's objective of simplifying and clarifying the international reporting requirements and supports the prompt release of an order that extends this relief to international common carriers. However, any extension of the reporting requirements to Interconnected VoIP providers likely would impose costly administrative burdens, run counter to previous Commission findings, and create immaterial and potentially redundant data, without providing any corresponding benefit to consumers, the Commission or industry.

In April 2004, the Commission released a Notice of Proposed Rulemaking (NPRM) initiating a comprehensive review of the reporting requirements to which U.S. carriers providing international telecommunications services are subject (IB Docket No. 04-112).¹ In the NPRM, the Commission sought comment on a number of proposed changes to simplify the reporting requirements, and improve the usefulness of the data collected to the issues presented by today's international telecommunications market.

However, the Commission did not seek stakeholder comment on the applicability of its rules to Interconnected VoIP providers. Nine parties filed comments or reply comments in response to the NPRM:² none of the comments were filed by interconnected VoIP providers, nor did any discuss the rules applicability to interconnected VoIP, any other form of VoIP, or any kind of IP enabled service. In fact in August 2004, when the comment period closed in the docket, the Commission had not yet even defined Interconnected VoIP, nor had it issued its landmark Vonage decision regarding the geographic aspects of VoIP. Neither was this issue specifically teed up in the IP-Enabled Services docket.³ Thus, the Commission has not provided adequate notice and opportunity for comment on this issue as required by Section 553 of the Administrative Procedures Act ("APA"), 5 U.S.C. Sect. 553. Moreover, because the Commission's international reporting requirements apply only to common carriers, the Commission would necessarily need to change its

¹ *In the matter of Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, Notice of Proposed Rulemaking, FCC 04-70 (released April 12, 2004) ("NPRM").

² See letter from FCC Chairman Kevin Martin to Congressman Furgeson at http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6517623795. Commenters included AT&T, MCI, SES Americom, Panamsat, Sprint, Cingular, Verizon, Verizon wireless, and Tyco Telecommunications US.

³ *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28, (released March 10, 2004).

rules in order to subject Interconnected VoIP providers (which the Commission has not yet classified as common carriers or information service providers) to these reporting requirements.⁴ Any such rule change must be conducted in accordance with the APA's notice and comment requirements

There are additional reasons why these rules, originally meant for telegraph operators⁵, should not be extended beyond common carriers to Internet based services like Interconnected VoIP.

First, unlike common carriers,⁶ Interconnected VoIP providers are unlikely to be able to accurately and consistently identify international traffic. As the Commission has previously found, Interconnected VoIP services have "no means of directly or indirectly identifying the geographic location of a ... subscriber."⁷ In Minnesota Public Utilities Commission v. FCC, the Eight Circuit affirmed the FCC's Vonage Order where the Commission found that Vonage's service cannot be directly or indirectly tied to a specific geographic location. This is true both because "customers may use the service anywhere in the world where they can find a broadband connection,"⁸ and separately, because Vonage assigns telephone numbers to customers that are "not necessarily tied to" the user's usual or "home" location.⁹

While it may be possible to attempt to capture international traffic data based upon the use of the 011 prefix from a user using a North American Numbering Plan ("NANP") assigned number, such data may not accurately reflect international traffic. Interconnected VoIP services can utilize "geographically independent telephone numbers"¹⁰ where the "number is not necessarily tied to the user's physical location for either assignment or use, in contrast to most wireline, circuit-switched calls."¹¹ For example, several Interconnected VoIP providers enable U.S. consumers to subscribe to services with an international telephone number, and in some cases even multiple phone numbers in different countries or in different cities in a country, thus facilitating competition and enabling lower-cost international services.¹²

While Interconnected VoIP services can bestow consumers "each with the ability to communicate with anyone in the world from anywhere in the world,"¹³ a call to an 011 prefixed telephone number could in fact go to a person located just down the street, and not outside the U.S. Likewise, because interconnected VoIP services can be utilized from any broadband connection in the world, a call to a Washington D.C. 202 area code number, could in fact be an international call

⁴ *Id.*, para. 43 ("Which classes of IP-enabled services, if any, are "telecommunications services" under the Act? Which, if any, are "information services?") *See also*, Manual for Filing Section 43.61 Data, June 1995, at 6 ("Enhanced services as defined by Section 64.702 of the Commission's rules are exempt from Section 43.61 filing requirements.")

⁵ The annual traffic and revenue reports come from the Commission's 1941 order No 85 which required international telegraph operators to file reports on their international traffic.

⁶ Only common carriers are required to file. See 47 C.F.R. § 43.82(a) ("Each facilities-based common carrier engaged in providing international telecommunications service" must file annual circuit status report); § 43.61(a) ("Each common carrier engaged in providing international telecommunications service" must file annual traffic and revenue report).

⁷ *In re Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267 (released November 12, 2004) ("Vonage Order") at 23.

⁸ *Id.* at 5.

⁹ *Id.* at 9.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 9.

¹² See for example <http://broadband-telephones.com/search/availability.aspx>

¹³ Vonage Order at 18

received by a member of the armed forces serving in Iraq. Even a VoIP call from a person in Washington D.C. with a 202 number, to a person in Washington D.C. with a 202 number, may use data packets that travel internationally to complete the call. That is because across the Internet, packets take multiple routes to reach their designated IP address end-point. A VoIP provider has no way of determining which, if any of those packets may have been routed internationally.

In its IP-Enabled Services proceeding¹⁴, the Commission recognized even in one conversation, packets are likely to take multiple paths:

“When packets are transmitted via IP between two points, the network does not establish a permanent or exclusive path between the points. Instead, routers read packet addresses individually, and decide – sometimes on a packet-by-packet basis – which route to use for each packet. Thus, the routes that packets will take to the same destination may vary, depending on the best routing information available to the routers.”

Second, unlike common carriers, interconnected VoIP providers are also unlikely to be able to always be able to identify revenue attributable to international traffic. The Commission, in its Vonage Order, recognized the integrated nature of VoIP service, which offers consumers any-distance calling without distinguishing between “local” and “long distance” minute of use. “these functionalities in all of their combination,” the Commission stressed, “form an integrated communications service designed to overcome geography, not track it.” Unlike traditional common carrier services that break out international revenues on the customer’s bill, Interconnected VoIP services do not always distinguish between domestic and international calling. Indeed, many providers offer free international calling to individuals using the same service.¹⁵

A further distinction between common carriers and interconnected VoIP providers is the lack of business need to compile and maintain such granular international calling data. Common carriers have long had a business motivation and regulatory requirement to segregate their local, long distance, and international traffic, while VoIP has sought to eliminate many of these distance sensitive distinctions in response to consumer demand for simple, straightforward products. A regulatory obligation to compile and maintain call detail records based on international destinations would require interconnected VoIP providers to change business practices and, most likely, incur significant billing and data storage expenses. A Commission order that increases expenses and causes such changes would run the risk of being vacated or remanded by the courts, unless based on a current record involving impacted parties.

For these reasons, the Commission previously found “the significant costs and operational complexities associated with modifying or procuring systems to track, record and process geographic location information as a necessary aspect of the service would substantially reduce the benefits of using the Internet to provide the service, and potentially inhibit its deployment and continued availability to consumers.”¹⁶ For these same reasons, application of the Commission’s International traffic reporting requirements also is likely to add significant costs and burdens and reduce the benefits of using the Internet to provide the service.

Many of the goals espoused in the NPRM can be achieved in other ways for VoIP. For example, the Commission recognized that collecting international data is intended to ensure “that consumers enjoy more choice in telecommunications services and decreasing prices for international calls,

¹⁴ IP enabled services NPRM, at 8.

¹⁵ See for example comparison of Interconnected VoIP service plans <http://hagansmith.tripod.com/Providers%20and%20Their%20Plans.htm>

¹⁶ Vonage Order at 23

without imposing unnecessary burdens on carriers.”¹⁷ The Commission should not take action here that would be contrary to this goal.

Moreover, one of the purposes for reporting that the Commission sites in its NPRM is “to encourage foreign governments to open their communications markets.”¹⁸ There are effective ways that governments have sought to open markets to competition, that don’t involve reporting. For example, earlier this year US Trade Representative (USTR) Susan C. Schwab, in an effort to help open markets around the world to VoIP competition, issued a report calling on our trading partners to open their markets to VoIP. Specifically, USTR said it “is concerned about policies among trading partners stifling technologies that help promote innovative services, such as voice services provided through Voice over Internet Protocol (VoIP).”

Likewise, when the International Telecommunications Union released its “Future of Voice” report¹⁹, it said “[a]ttempts to block or suppress a truly disruptive technology like VoIP are both myopic and futile. Productivity gains and socio-economic progress from adopting technologies like VoIP can be large and countries that attempt to suppress VoIP risk losing their economic competitiveness.”

For the above reasons, the Commission should promptly adopt the modified reporting requirements for international common carriers and refrain from imposing an additional reporting requirement on Interconnected VoIP providers. If such obligations were nonetheless imposed, any data that could be provided by Interconnected VoIP providers likely would be inaccurate, immaterial to the primary concerns underlying the reporting requirements, and even redundant of information that is already reported to the Commission. Therefore, the VON Coalition urges the Commission to retain the existing language of Section 43.61 which requires only international common carriers to file traffic and revenue reports.

Respectfully submitted,

/s/

Staci L. Pies
President
The VON Coalition

cc: Commissioner Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert McDowell

¹⁷ NPRM at ¶11.

¹⁸ NPRM at 17.

¹⁹ Future of Voice, ITU, Regulatory Trends: New Enabling Environment, January 12, 2007.