

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

In the Matter of)	
)	
Modernizing the FCC Form 477 Data Program)	WC Docket No. 11-10
)	
Development of Nationwide Broadband Data to)	WC Docket No. 07-38
Evaluate Reasonable and Timely Deployment of)	
Advanced Services to All Americans, Improvement)	
Of Wireless Broadband Subscribership Data, and)	
Development of Data on Interconnected Voice over)	
Internet Protocol (VoIP) Subscribership)	
)	
Service Quality, Customer Satisfaction,)	WC Docket No. 08-190
Infrastructure and Operating Data Gathering)	
)	
Review of Wireline Competition Bureau Data)	WC Docket No. 10-132
Practices)	

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON Coalition”)¹ hereby submits these comments in response to the Notice of Proposed Rulemaking issued in the above-referenced proceeding.² The VON Coalition recognizes the FCC’s need to modernize its data collection processes, but

¹ 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. VON Coalition members include AT&T, Broadvox, BT, Google, iBasis, Microsoft, Skype, T-Mobile, Vonage and Yahoo.

² *In the Matter of Modernizing the FCC Form 477 Data Program; Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership; Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering; Review of Wireline Competition Bureau Data Practices*, Notice of Proposed Rulemaking, WC Docket Nos. 11-10, 07-38, 08-190, 10-132 (rel. Feb. 8, 2011) (“*NPRM*”); *Modernizing the FCC Form 477 Data Program*, 76 Fed. Reg. 10827 (Feb. 28, 2011) (comments due on or before March 30, 2011).

opposes revising the definition of “interconnected VoIP” to include services that permit users to make only one-way use of the public switched telephone network (“PSTN”), or otherwise expanding Form 477 reporting obligations.

BACKGROUND

On February 8, 2011, the FCC issued a Notice of Proposed Rulemaking related to the Modernization of the Form 477 Data Program. Through this proceeding the FCC seeks to reform the Form 477 data-collection program so that it has the data necessary to fulfill its statutory duties of policymaking, promotion of competition, and protection of consumers while minimizing the burdens of data collection on service providers.³

In the *NPRM*, the FCC inquires “whether additional classes of entities should be required to file FCC Form 477,” asking in particular whether the FCC should “revise [its] definition of ‘interconnected VoIP’ for the purposes of this collection to include services that permit users to receive calls that originate on the public switched telephone network *or* to terminate calls to the public switched telephone network[.]”⁴ The *NPRM* also solicits comments on whether the Commission should begin collecting data on VoIP services that do not meet the definition of “interconnected VoIP.”⁵

³ See *NPRM* at ¶ 1.

⁴ *Id.* at ¶ 45. Interconnected VoIP enables real-time, two-way voice communications; requires a broadband connection from the user's location; requires Internet protocol-compatible customer premises equipment (CPE); and permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.. 47 C.F.R. § 9.3. See also 47 U.S.C. § 153(25) (“The term ‘interconnected VoIP service’ has the meaning given such term under section 9.3 of title 47, Code of Federal Regulations...”).

⁵ *Id.* at ¶ 87. In separate sections, the *NPRM* suggests that such data could include “applications that residential consumers use, such as VoIP services,” *id.* at ¶ 116, and service quality and customer satisfaction data for voice networks, *id.* at ¶ 96.

DISCUSSION

The FCC should not revise the definition of “interconnected VoIP” as proposed or require VoIP providers that do not meet the Commission’s definition of “interconnected VoIP” to file a Form 477 because: (a) there is no compelling public interest or regulatory reason for disturbing the Commission’s bright line approach to regulation of interconnected VoIP; (b) extension of the Form 477 reporting requirements will deter investment and innovation for new IP communications services and applications; (c) fail to serve the purpose of the data collection (i.e., unearthing information about local telephone competition and broadband deployment); and (d) revision of the definition of “interconnected VoIP” in this proceeding will result in inconsistent rules and regulations and cause confusion in the marketplace.

The Commission’s past decisions to impose certain regulations on interconnected VoIP providers have been based in part on consumer expectations regarding replacement telephony services and in part on whether there was a compelling public interest that could not be met without regulatory intervention. Wisely, the Commission has recognized that certain VoIP products, devices, services or applications would be an incidental part of the product while others would be adopted by consumers to enhance or supplement (and not replace) their primary voice communications. This decision to establish clear parameters based on whether a VoIP service was a replacement for voice telephony ensured that the IP communications industry would continue to invest and innovate in new products that bring tremendous value to consumers. It is unnecessary and counter to the goals of the National Broadband Plan and the Commission’s interconnected VoIP rules to impose additional regulatory costs and burdens on the VoIP market segments that fall outside the interconnected VoIP definition.

A. IP Communications Services Outside the Definition of “Interconnected VoIP” Should Not Be Subject to Regulation

IP voice applications that permit a customer to make calls from a computing device to the PSTN, or receive calls at a computing device that originate from the PSTN are neither telecommunications services nor interconnected VoIP services. The Commission has presented no compelling public interest rationale for blurring the bright lines it has used to date to impose regulations on interconnected VoIP providers. Non-interconnected VoIP applications,⁶ which generally require the use of a computer on one end of the communication, are technologically similar to services the Commission has previously classified as information services.⁷

One-way IP voice applications manipulate the form of the information conveyed and are therefore information services. As the FCC acknowledged in 2004 with respect to Vonage, to make a call from a VoIP service to a traditional telephone, the VoIP server must convert the IP packets containing the information in the call into digital audio signals and connect them to the PSTN using the service of a telecommunications carrier. (And vice versa for a call from a PSTN user to a VoIP user.)⁸ This process necessitates changing the form of the information conveyed.

Some IP application providers also generate new information for the user, such as voicemail and/or email messages.⁹ These features, *i.e.* creation of new information and

⁶ To date, the Commission has not classified non-interconnected VoIP services, which may include services that allow users to make *or* receive calls.

⁷ See 47 U.S.C. § 153(24) (defining “information service” as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications...”).

⁸ See *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 199 FCC Rcd 22404, 22407-08 ¶ 8 (rel. Nov. 12, 2004).

⁹ See, e.g., <http://www.skype.com/intl/en-us/features/allfeatures/call-phones-and-mobiles/> (“Skype Website”) (offering Caller ID and Voicemail services);

alteration of existing information, are classic information services.¹⁰ The Commission does not typically regulate information services.¹¹ Moreover, non-interconnected VoIP services are not considered by users to be substitutes for traditional telephony services and are not otherwise subject to state or federal regulation.¹² The Commission in this proceeding should not for the first time attempt to regulate these services because of the incidental use of telecommunications.¹³

B. Extending Form 477 Would Deter Growth and Innovation in IP Voice Applications, Slow Broadband Adoption, and is Inconsistent with the Purpose of the Data Collection

Extending Form 477 reporting obligations to non-interconnected VoIP would impose regulatory costs and burdens on technological innovators while serving no relevant public interest purpose. These regulatory costs and burdens would stifle the growth of IP voice communications to the detriment of consumers and innovators.

The data reporting obligation of Form 477, though serving an important role in policy-making for telephone and broadband services, is a burdensome regulation. Frequent and

http://www.vonage.com/lp/US/searchgoogle/features.php?CMP=KNC-GOO-Brand-Brand-Vonage_Misc (“Vonage Website”) (offering Caller ID, Voicemail, and other services).

¹⁰ Voice mail has been classified as an information service. See, *Bell Operating Companies Joint Petition for Waiver of Computer II Rules*, Order, 10 FCC Rcd 13,758, 13,770-74 (1995). That the VoIP service provider may use the service of telecommunications carriers to assist in routing information does not change this classification. See *In the Matter of Petition for Declaratory Ruling that pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service (“Pulver Order”)*, Memorandum Opinion and Order, 19 FCC Rcd 3307, 3318 (2004) at ¶ 9.

¹¹ *Id.* at note 64 (explaining Congress’s intent that information services not be regulated).

¹² It is the position of the VON Coalition that the classification of computer-to-computer VoIP as an information service, as expressed in the *Pulver Order*, ought to be extended to all IP communications services, including all forms of VoIP.

¹³ See *Pulver Order* at ¶ 9 (“Pulver may ‘use’ some telecommunications to provide its FWD directory service by that does not make FWD itself telecommunications.”)

extensive data-reporting to the FCC requires time and monetary resources that many companies could otherwise put into the development and deployment of innovative VoIP services and applications.¹⁴ Diverting these companies' time and financial resources also could stifle innovation and disincentivize business growth. IP voice application providers have the ability and technology to offer their products on a global scale and will naturally gravitate towards markets with lower regulatory burdens. Such result is contrary to the Communications Act and the Commission's policy goals. In addition, the FCC is charged with critically evaluating its rules, deregulating whenever regulation is not in the public interest.¹⁵ At the same time, U.S. policy favors the development and provision of new technologies and services to the public.¹⁶ Therefore, the FCC's deregulatory charge is especially pertinent to the development and growth of Internet-based services, such as broadband-reliant IP voice applications.¹⁷

¹⁴ The FCC has previously estimated that Form 477 requires an average of 337 hours to complete – a full 42 business days. *See* Public Information Collections Approved by Office of Management and Budget, 74 Fed. Reg. 6,407 (Feb. 9, 2009).

¹⁵ *See* 47 U.S.C. § 161. In addition, President Obama in January 2011 issued an executive order requiring a review of unnecessary rules and regulations that would require careful consideration of benefits and costs, and “getting rid of absurd and unnecessary paperwork requirements that waste time and money.” “Toward a 21st-Century Regulatory System”, President Barack Obama, published in the January 18, 2011, Wall Street Journal, and found at <http://online.wsj.com/article/SB10001424052748703396604576088272112103698.html>.

¹⁶ *See* 47 U.S.C. § 157(a).

¹⁷ *See* 47 U.S.C. § 230(b)(2) (it is United States policy “to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”); *see also* *Pulver Order* at ¶¶ 17-19 (ensuring that FWD, Pulver's VoIP service, “remains unregulated by the Commission or the states is thus consistent with the requirements of the Act. To rule otherwise...would risk eliminating an innovative service offering that...promotes consumer choice, technological development and the growth of the Internet...”).

In addition, the extension of Form 477 reporting requirements is not appropriate because these innovative voice applications are not otherwise replacements for ordinary telephone or broadband service. The Commission's rationale for the regulation of interconnected VoIP has consistently been that, "unlike certain other IP-enabled services," interconnected VoIP services are increasingly replacing traditional telephone service and that consumers' expectations of interconnected VoIP services are the same as their expectations for traditional telephone services.¹⁸ No such consumer expectation exists for other forms of IP communications. Form 477 was created so that Congress and the Commission had sufficient information about "the development of local telephone service competition and the deployment of broadband services" to "implement the pro-competitive deregulatory provisions of the Telecommunications Act of 1996."¹⁹ While the Commission has extended some regulatory requirements (including Form 477 reports) to interconnected VoIP,²⁰ none to date have been extended to other forms of IP applications.²¹

¹⁸ See *In the Matter of IP-Enabled Services*, Report and Order, 24 FCC Rcd 6039, 6043-44 ¶ 8 (rel. May 13, 2009) ("2009 IP-Enabled Services Order"); *2005 IP-Enabled Service Order* at ¶ 23 ("If a VoIP service subscriber is able to receive calls from other VoIP service users *and* from telephones connected to the PSTN, and is able to place calls to other VoIP service users *and* to telephones connected to the PSTN, a customer reasonably could expect to be able to dial 911 using that service to access appropriate emergency services.") (Emphasis in original).

¹⁹ See *In the Matter of Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd 7717, 7718 (200) at ¶ 1.

²⁰ See, e.g., *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007) ("CPNI Order") (extending the rules governing disclosure of customer proprietary network information to interconnected VoIP service providers); *In the Matters of IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (rel. Jun. 3, 2005) ("2005 IP-Enabled Service Order") (requiring interconnected VoIP service providers to supply E-911 capabilities to their customers).

²¹ Neither the preceding rules, *supra* note 18, nor any others apply to IP applications that permit a customer to make calls to or receive calls from the PSTN.

Where a consumer is only capable of making a call to or receiving a call from the PSTN, but not both, his or her expectations are not likely to be the same as his expectations of traditional telephone service, which allows users to make calls to and receive calls from the PSTN. When a consumer subscribes to a one-way IP application service, he or she does not do so to replace the functions of his traditional phone service.²² Therefore extending Form 477 requirements to these VoIP services would not elucidate local telephone service competition and would not serve the stated purpose of the data collection effort, will slow innovation and ultimately broadband adoption, which relies on applications like VoIP to spur demand.²³

C. Changing the Definition of “Interconnected VoIP” Will Create an Inconsistent Legal Framework and Cause Confusion

Revising the definition of interconnected VoIP for the purposes of this data collection will create discrepancies in the law and lead to confusion. The definition of interconnected VoIP has been used by the Commission and by states in numerous proceedings and state laws and regulations, is understood within the VoIP industry, and has been codified in the Communications Act of 1934 (“Act”).²⁴ For example, the state of Illinois last year adopted legislation that incorporated the existing FCC definition of interconnected VoIP into its statutes as part of broader telecommunications legislation.²⁵ Adopting a different definition in this

²² Skype, a provider of VoIP services, even plainly states on its website, “Skype is not a replacement for your telephone and can’t be used for emergency calling.” *See* <http://www.skype.com/intl/en-us/home>.

²³ Requiring VoIP providers offering services other than “interconnected VoIP” to complete Form 477 also does not shed light on the deployment of broadband service. Although broadband service is required to access applications, information about subscribership to broadband service will already be captured in the data required to be reported by the broadband service providers.

²⁴ *See* 47 C.F.R. § 9.3; *see also* 47 U.S.C. § 153(25).

²⁵ *See*, 220 Illinois Compiled Statutes 5/13-401.1; 220 ILCS 5/13-804, .Section 13-234; *see also*, Kentucky Revised Statutes, Chapter 278, section 278.010 (13) and (32) (“VoIP has the same

proceeding would be inconsistent with the definition under the Act, and will cause confusion among VoIP providers, state regulators, and state courts, seeking to comply with, enforce or interpret their regulatory obligations. The FCC should avoid this incongruity.

CONCLUSION

The FCC should act in accordance with the recommendations herein.

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meaning as in federal law.”); see also Massachusetts Gen. Laws, Ch. 25C, Section 6A (adopting the FCC definition of interconnected VoIP to prescribe what cannot be regulated by any state agency.)