

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

**Petition for investigation pursuant to 30
V.S.A. § 202d concerning Vermont 911
Emergency Calling System reliability and
planning**

Docket No. 8842

**BRIEF OF THE VOICE ON THE NET COALITION AND REQUEST TO
PARTICIPATE AS AMICUS CURIAE**

November 22, 2016

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Request for Amicus Curiae Status

The Voice on the Net Coalition (“VON Coalition”)¹ hereby requests amicus curiae status in this proceeding. 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.”²

Background

The VON Coalition submits this brief pursuant to the Vermont Public Service Board’s (“Board”) November 4, 2016, Order Opening Investigation and Setting Briefing Schedule (“Order”), and November 10, 2016, Procedural Order Granting Time Extension. The Order initiated a proceeding to review a petition filed by Charles Larkin and Stephen Whitaker (“Petition”) concerning the enhanced 911 system in Vermont and back-up power requirements for cellular and VoIP telephone service systems. The Order provides an opportunity for interested parties to discuss whether, and to what extent, the Board has jurisdiction over the issues raised in the Petition, including, *inter alia*, “whether back-up power should be required for . . . cable and fiber operators offering VoIP service.”³

Discussion

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

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. For more information, see www.von.org.

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

³ *Id.*

addition, such a requirement is unnecessary because the Federal Communications Commission (“FCC”) already requires that providers of residential, facilities-based, fixed voice service, including VoIP, offer subscribers the option to purchase back-up power.⁴

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 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.⁵

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.⁶ 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.”⁷

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

⁴ See 47 C.F.R. § 12.5.

⁵ 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).

⁶ *Id.* ¶ 25 n.93.

⁷ *Id.* ¶ 32.

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.⁸ In none of these 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.⁹ 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 would be unnecessary and redundant. Indeed, the FCC already requires that providers of residential, facilities-based, fixed

⁸ 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 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).

⁹ *Id.*

voice service, including VoIP, offer subscribers the option to purchase back-up power.¹⁰ Specifically, covered VoIP providers must offer new subscribers at least one option with a minimum of eight hours of standby back-up power.¹¹ 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.¹² Furthermore, covered VoIP providers must disclose to each new customer the service limitations with and without back-up power.¹³ This disclosure must also be made to existing subscribers on an annual basis.¹⁴

As a result, customers that want back-up power for covered VoIP services can get it. There is no need to impose additional 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.

¹⁰ 47 C.F.R. § 12.5.

¹¹ *Id.* § (b)(1).

¹² *Id.* § (b)(2).

¹³ *Id.* § (d)(1).

¹⁴ *Id.* § (d)-(e).

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, and such a requirement is unnecessary because of existing FCC back-up power requirements.

Respectfully submitted,

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