

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

Order Instituting Rulemaking Proceeding to Consider        )        RULEMAKING 22-08-008  
Changes to Licensing Status and Obligations                )  
of Interconnected Voice over Internet Protocol Carriers    )

**VOICE ON THE NET COALITION COMMENTS  
IN RESPONSE TO ORDER INSTITUTING RULEMAKING**

The Voice on the Net Coalition (“VON”)<sup>1</sup> hereby respectfully submits these comments in response to the Order Instituting Rulemaking (“OIR”), in the above-captioned proceeding.<sup>2</sup> In 2004, the Federal Communications Commission (“FCC”) broadly preempted state regulation of nomadic VoIP services. This pre-emption has been consistently upheld by federal courts over the past 18 years. Accordingly, this Commission does not have authority to adopt licensing or other regulations that may prevent nomadic VoIP providers from offering services in California.

**Background**

In the OIR, the Commission seeks comment on its authority to regulate both fixed and nomadic VoIP. Fixed, or facilities-based, VoIP services provide the “last mile” connection to the end user. Nomadic, or over-the-top, VoIP services do not provide last mile infrastructure but instead allow a user to make phone calls with the same NANP number anywhere with an internet connection. This means that the nomadic VoIP service is not tied to a specific state. The

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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> Order Instituting Rulemaking Proceeding to Consider Changes to Licensing Status and Obligations of Interconnected Voice over Internet Protocol Carriers, 22-08-008 (issued August 30, 2022). Parties were required to file responses within 46 days after issuance. OIR at 10.

nomadic VoIP device, much like a wireless device, can be moved across state lines without the knowledge of the VoIP service provider.<sup>3</sup>

### **The FCC Has Preempted State Regulation of Nomadic Interconnected VoIP**

The FCC's regulatory scheme for nomadic interconnected VoIP preempts state regulation and requires the PUC to refrain from impose regulatory obligations on nomadic VoIP services (this is the case even where state commissions have been granted authority to regulate such services). Importantly, under the FCC's Vonage Preemption Order ("*Vonage Order*"), nomadic interconnected VoIP providers are subject to the FCC's exclusive jurisdiction.<sup>4</sup> In that 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>5</sup> These characteristics included the ability to use the service anywhere in the world where the customer can find a broadband connection to the Internet; the use of specialized customer premises equipment; the availability of integrated capabilities and features allowing the customer to manage personal communications, including voice mail, three-way calling, online account and voice mail management; and, the availability of geographically independent telephone numbers not tethered to the user's physical location.<sup>6</sup> In making its decision, the FCC was specifically critical of state entry and certification requirements, which could be time-consuming; require the disclosure of sensitive company

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<sup>3</sup> See Vonage Pre-emption Order at Para (noting that " it is the total lack of dependence on any geographically defined location that most distinguishes [nomadic VoIP service] from other services whose federal or state jurisdiction is determined based on the geographic end points of the communications")

<sup>4</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>5</sup> Id. at 22405.

<sup>6</sup> *Vonage Order* ¶¶ 5-8.

information; and ultimately result in denial, preventing entry altogether (and potentially sanctions for those providers that may continue to operate).

The *Vonage Order* has been repeatedly upheld by federal courts;<sup>7</sup> and courts have gone further finding that VoIP services are best classified as information services, which are not subject to traditional telecommunication regulation (i.e., common carrier regulation) by the FCC or the states.<sup>8</sup> However, this does not suggest that VoIP services are not subject to regulation at all.

Indeed, the FCC has generally applied a light-touch regulatory approach to VoIP providers broadly to promote competition and the advancement of innovative services to the benefit of consumers. Where necessary, the FCC has subjected all VoIP providers to certain targeted regulations, such as requiring the provision of 911 services and contributions to universal service funds, and the protection of consumer information. To date, this approach centered on FCC oversight, has led to the proliferation of VoIP services and numerous pro-competitive benefits to the voice marketplace.

Moreover, most states have recognized the FCC's pre-emption over nomadic VoIP. At least 30 states and the District of Columbia have codified regulatory "safe harbors" for VoIP or IP-

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<sup>7</sup> See, *Vonage Holdings Corp. v. Minnesota Pub. Utils. Comm'n*, 290 F. Supp. 2d 993 (D. Minn. 2003), aff'd, 394 F.3d 568 (8th Cir. 2004) affirmed 394 F.3d 568 (8th Cir. 2004); *Southwestern Bell Tel., L.P. v. Missouri Pub. Serv. Comm'n*, 461 F. Supp. 2d 1055 (E.D. Mo. 2006), aff'd, 530 F.3d 676 (8th Cir. 2008); *Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007); *PAETEC Commc'ns, Inc. v. CommPartners, LLC*, No. 08-Civ-0397 (JR), 2010 WL 1767193 (D.D.C. Feb. 18, 2010).

<sup>8</sup> See, *FTC ex rel. Yost v. Educare Ctr. Servs.*, 433 F. Supp. 3d 1008 (W.D. Tex. 2020) (finding that defendants VoIP services are best classified as information services and not telecommunications services; see also, *Charter Advanced Servs. (MN), LLC v. Lange*, 259 F. Supp. 3d 980 (D. Minn. 2017) (telecommunication services are subject to state regulation while information's services are not; and any regulation of an information service conflicts with the federal policy of nonregulation).

enabled communications, generally,<sup>9</sup> and no state has attempted to impose common carrier obligations on nomadic VoIP providers, except in two narrow circumstances permitted by the FCC, contributions to support state universal service funds and 911 networks.<sup>10</sup> These states have recognized that there is no benefit to imposing legacy telephone regulations on VoIP, and that investment will be lost, and competition restrained if regulatory ambiguities are allowed to remain in place. No state – other than California -- has repealed or permitted the sunset of such laws once enacted.

If adopted by the Commission, the imposition of licensing requirement on nomadic interconnected VoIP providers will violate federal law and undermine the careful light-touch framework that has governed VoIP regulation for more than 18 years.<sup>11</sup> By ignoring the large body of federal law upholding federal preemption of nomadic interconnected VoIP, and without any relevant state authority (other than potentially the sunset of PUC Code Section 710 in 2020), this Commission alone wanders down unsteady regulatory path that will likely result in litigation and provide no discernable benefits to residential, business or governmental users of internet communication services in California. The OIR is curiously devoid of any discussion of the public benefit from imposing licensing requirements on nomadic VoIP providers; or in the alternative, the harm from the absence of licensing requirements. To do otherwise, would subject nomadic VoIP providers to a patchwork of different and potentially conflicting state rules, which

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<sup>9</sup> Alabama, Arkansas, Colorado, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Massachusetts, Maryland, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming.

<sup>10</sup> *Implementation of the NET 911 Improvement Act of 2008*, 23 FCC Rcd 15884 (2008)  
*Declaratory Ruling, Universal Service Contribution Methodology*, 25 FCC Rcd 15651 (2010).

<sup>11</sup> As the FCC recognized in 2004, the “imposition of 50 or more additional sets of different economic regulations” on VoIP services “could severely inhibit [their] development.” *Vonage Order* ¶ 37.

would be difficult to implement given the inherently nomadic nature of the service, and “risk eliminating or hampering this innovative advanced service that facilitates additional consumer choice, spurs technological development and growth of broadband infrastructure, and promotes continued development and use of the Internet.”<sup>12</sup>

### **Conclusion**

VON opposes any Commission regulation that may impede the provision of nomadic VoIP services in California. The FCC has broadly preempted state regulation of these services; and the Commission may only regulate in those limited instances when permitted by the FCC. To do otherwise would violate federal law and disserve the public interest in a robust competitive communications marketplace.

Respectfully submitted,

THE VON COALITION

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<sup>12</sup> *Vonage Order* ¶ 37.