

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”)¹ hereby respectfully submits these reply comments in the above-captioned proceeding.² VON joins the vast majority of commenters that question the authority of the Commission to adopt, and the need for, VoIP service quality objectives. Comments in support of the adoption of new regulations fail to acknowledge the differences between VoIP and traditional phone services that make the existing metrics inapplicable to an application that travels over the Internet, via a customer-procured broadband connection and customer-provided equipment.

Discussion

The threshold question in this proceeding is whether the Commission should amend General Order 133-D to apply minimum service quality standards to VoIP services; whereas today they apply only to traditional providers of wireline telephone services. The overwhelming evidence in the record provides the response as a resounding no. Commenters have uniformly touted the competitiveness of the VoIP marketplace, the lack of Commission jurisdiction to regulate VoIP providers, and the differences in wireline and VoIP technology and the failure of the proposed service standards to recognize those differences.³

¹ 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.

² Administrative Law Judge’s Ruling Adopting Protective Order and Restarting Comment Period 133, R.22-03-016 (issued No. 15, 2022). The reply comment date was subsequently extended to January 20, 2023, pursuant to an email ruling from ALJ Glegola issued December 13, 2022.

³ See, Comments of AT&T; Comments of the California Cable and Telecommunications Association (CCTA) ; Comments of Consolidated Communication; Comments of Frontier;

Many of the comments echo those filed by VON in the initial phase of this proceeding. In particular, VON explained why the Commission cannot regulate nomadic interconnected VoIP services, because, as the Commission is aware, under the FCC’s Vonage Preemption Order (“Vonage Order”), nomadic interconnected VoIP providers are subject to the FCC’s exclusive jurisdiction.⁴ 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.⁵ The FCC has generally applied a light-touch regulatory approach to VoIP providers to promote competition and the advancement of innovative services to the benefit of consumers. 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 more broadly.⁶

As noted by CCTA, imposing unnecessary and burdensome service quality regulations on VoIP providers would ignore the record of high quality voice services offered by providers today.⁷ Competitive markets drive competitors toward the socially optimal level of service quality and other characteristics, including price. As posited by AT&T, far from benefiting consumers, regulator imposed service quality levels inevitably will economically harm consumers by imposing costs more than consumers would choose to pay.⁸ More problematic,

Comments of the Small Local Exchange Carriers; Comments of Sonic Telecom; Comments of Verizon Wireless/MCI, all filed on December 21, 2022 in RM 22-03-016.

⁴ *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”).

⁵ *Vonage Holdings Corporation* at 22405.

⁶ 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.

⁷ CCTA Comments at 1.

⁸ ATT Comments at 11.

there is no evidence of VoIP service quality problems today. As noted by Verizon, the proposal is a “misplaced solution in search of a non-existent problem.”⁹

The parties supporting VoIP service quality reporting requirements provide no evidence a) that a problem exists today (indeed they recognize that Californians are receiving high quality and reliable communications services¹⁰); b) that penalty or enforcement mechanisms will actually incent better service or c) how ILEC metrics can be applied equitably to the various forms of VoIP providers, including over-the-top providers that require the end user customer to procure his or her own broadband service. For example, the Public Advocates Office recommends new metrics for VoIP, including latency, jitter, packet loss, call failure, call drop rates, call setup time; delivered network speeds and repeat trouble reports.¹¹ However, for over-the-top and nomadic VoIP providers all of these metrics 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** used to make and receive VoIP calls.¹²

This is a critical distinction from traditional wireline services, where a single entity typically provides the circuits 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

⁹ Verizon Comments at 5; see also, CCTA Comments at 17.

¹⁰ Opening Comments of the Public Advocates Office at 7.

¹¹ Id. at Attachment A at 22-24.

¹² That VoIP is typically an over-the-top service belies the notion that there is any need to require VoIP providers to demonstrate that they are not providing lower quality service to lower income communities or communities of color. TURN Comments at 23; Reply Comments of Small Business Utility Advocates at 3. To the contrary, VoIP services are available to any customer with a broadband connection.

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 multiple 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 none of these examples would the nomadic VoIP provider be responsible for the delay but would be subject to potential penalties for missing established service quality metrics.

Finally, the idea that the Commission may seek to impose fines on interconnected VoIP providers that fail to meet service quality commitments is counter-intuitive at best. As it stands today, fines are applied to “**facilities-based** telephone corporations that offer TDM-based voice service” The structure recognizes the reality that service quality metrics only work for facilities-based providers that control the service from end-to-end. Nomadic VoIP service is dependent on the successful operation of not only the VoIP provider, but the broadband provider, the electric company; and the operation of the desk phone, cell phone, laptop or desktop computer providing the endpoint for the VoIP call.

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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