

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Proceeding to) Rulemaking 22-03-016
Amendments to General Order 133.)

COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON”)¹ hereby submits these comments in response to the Administrative Law Judge’s Ruling Issuing Staff Proposal the above-captioned proceeding.² VON opposes the Staff recommendation to impose a newly created Customer Service Standard and related reporting requirements on providers of nomadic interconnected Voice over Internet Protocol (“VoIP”). The Commission does not have authority to impose a customer service standard; the standard is unnecessary; and, implementation solely for California customers is impractical. Should the Commission adopt the standard, it should apply only to residential customers.

Background

The Communications Division in June issued its proposed modification of minimum standards for public utility telephone corporations.³ The proposal includes a new Customer Service Standard that would, for the first time, apply to nomadic interconnected VoIP providers. The standard requires live agents to answer 80% of customer service calls within 60 seconds and 100% of calls within five minutes. Nomadic VoIP service providers would also have to maintain a chat

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 Issuing Staff Proposal (the “Ruling”), R.22-03-016 (issued June 27, 2024). The Ruling established a comment date of September 2, 2024, which was Labor Day, a federal and state holiday; thus, these comments are timely filed today. PUC Rules of Practice and Procedure, Rule 1.15.

³ Service Quality Proceeding Phase One Staff Proposal (the “Proposal”), R. 22-03-016 (filed June 27, 2024).

component on its web page for customers that cannot access voice services and a mail component for those that cannot access voice or data services.⁴ In addition, nomadic VoIP service providers would have to compile monthly performance reports and file those reports quarterly.⁵ Failure to meet the minimum standard could result in the assessment of a fine that would be payable to the general fund.⁶

Discussion

No authority. As an initial matter, the Commission does not have the authority to impose service quality obligations on nomadic VoIP providers. Both the Federal Communications Commission (FCC)⁷ and federal courts⁸ have been consistent and clear: states, including California, cannot impose regulations that govern traditional telephony companies on nomadic VoIP providers. Critically, 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 telephone number anywhere with an internet connection. This means that the nomadic VoIP service is not tied to a specific address, let alone a specific state. The nomadic VoIP device, much like a wireless device, may be moved across state lines without the knowledge of the VoIP service provider. The physical infrastructure required to transport those voice calls is provided by a combination of the customer's chosen broadband provider and regulated competitive local exchange carriers that are responsible for on-ramping and off-ramping the traffic to and from the public switched

⁴ Proposal at 41-42.

⁵ General Order 133-D Redline (Clean), R.22-03-016 (filed June 27, 2024) at 9-11.

⁶ Proposal at 46-47.

⁷ Vonage Holdings Corporation, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (“Vonage Order”).

⁸ 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).

telephone network.

Significantly, the FCC's regulatory scheme for nomadic interconnected VoIP preempts state regulation and requires the PUC to refrain from imposing regulatory obligations on nomadic VoIP services (this is the case even where state commissions may have been granted authority to regulate such services). Under the Vonage Order, nomadic interconnected VoIP providers are subject to the FCC's exclusive jurisdiction. 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. 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.⁹

However, this does not suggest that VoIP services are not subject to regulation at all. 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, compliance with anti-robocall requirements, and the protection of consumer information. Notably, the FCC has not imposed minimum customer service requirements, allowing the market and consumer choice to best guide those decisions.

If adopted by the Commission, the imposition of customer service standards on nomadic

⁹ Proposal at 37. *See also* Vonage Order ¶¶ 5-8.

interconnected VoIP providers will violate federal law and undermine the careful light-touch framework that has governed VoIP regulation for more than 18 years. By ignoring the large body of federal law upholding federal preemption of nomadic interconnected VoIP,¹⁰ and without any relevant state authority,¹¹ 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 standard is impractical. Nomadic VoIP is provided on a nationwide basis, without any consideration of state boundaries or state specific-standards. Customers may initiate the service in one state and use the service anywhere in the world. Calls may go through Wi-Fi networks and Virtual Private Networks, and nomadic VoIP providers will have no idea whether a customer is in California or Canada. Thus, it is technically infeasible for nomadic VoIP providers to measure compliance with a California specific customer service standard. As a result, the standard, if adopted at all, should be limited to fixed VoIP providers, whose customers may access the service from a single point, constrained to a fixed location.¹² This would align the proposal to limit the VoIP Outage Repair Standard to fixed VoIP.

¹⁰ The Vonage Order has repeatedly been upheld by federal courts; and courts have gone further finding that VoIP services are best classified as information services, which are not subject to regulation by the states. 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).

¹¹ In the past, the PUC as relied on the sunset of PUC Code Section 710 as the basis for its statutory authority. However, the sunset of a code section is not the same as positive authority to act, especially an action forbidden under federal law. PUC Code Section 285 also is not a basis for imposing traditional state telecommunications regulations on nomadic VoIP. Section 285 authorizes the PUC to collect state level USF charges on nomadic and fixed VoIP providers, as permitted by the FCC.

¹² *Id.* at 37.

The standard is unnecessary. The Staff rightfully does not propose that nomadic interconnected VoIP providers comply with the VoIP Outage Repair Standard.¹³ More broadly, Staff does not propose an installation standard on any VoIP providers.¹⁴ It is only the Customer Service Standard, and the resultant reporting obligations and potential for enforcement, which Staff would apply to nomadic VoIP providers. What is lacking in the Staff proposal is any discussion why the Customer Service Standard is needed; any evidence of how customers define service quality or what customers consider important; any data to suggest there is dissatisfaction with the customer service provided today; any analysis of the cost to comply with the proposed requirement and the potential impact on rates to cover the cost of compliance.

The Staff and the Commission should also confirm that the Customer Service Standard, if adopted, applies only to residential and not business customers. The market for nomadic, interconnected VoIP services is highly competitive. According to the most recent FCC statistics, there were 459 over-the-top interconnected VoIP providers serving California as of June 2022.¹⁵ Business customers have a multitude of choices and make those choices based on price, features, reviews, or whatever other metrics may be relevant for their needs. In a highly competitive market, non-interconnected VoIP providers will not survive that do not meet the customer service demands of the marketplace. There are multiple websites and customer forums offering online reviews of VoIP service providers. Most critically, unhappy customers can easily transition to other service providers at little or no cost.

¹³ Proposal at 38 (“At this time, staff does not recommend extending this service standard to nomadic-only VoIP service that does not have any fixed VoIP component or functionality.”)

¹⁴ Id. at 49.

¹⁵ See, Voice Telephone Services Report, State Level Provider Counts, Table S.2, found at <https://www.fcc.gov/voice-telephone-services-report> (last viewed August 28, 2024).

Conclusion

Nomadic VoIP has fundamentally changed the communications landscape, offering consumers lower prices, better features and increased functionality. The service has thrived in a light touch federal regulatory environment, particularly as it is unconstrained by a panoply of 50 state regulatory regimes. The Staff is proposing a bad solution for a problem that does not exist and that will provide no discernible benefits for nomadic VoIP customers in California. It is a bad idea that should be rejected.

Respectfully submitted,

Voice on the Net Coalition

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