

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

REPLY COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition (“VON”)¹ hereby submits these reply comments in the above-captioned proceeding.² In its initial comments, VON opposed 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”).³ There is widespread support by commenters who agree with VON that a) the Commission does not have authority to impose service quality standards on VoIP providers; b) service quality standards are unnecessary in a highly competitive voice market; and, c) implementation of the proposed standards solely for California customers is impractical.

Discussion

The majority of comments oppose Staff’s proposed changes to the existing service quality standards. They recognize that expanding the service quality metrics to capture interconnected VoIP providers would violate federal law and conflict with the Commission’s jurisdiction.⁴ As noted by AT&T, the proposed regulations would conflict with and undermine federal law and policy by (i) regulating interstate services, which fall outside of the PUC’s jurisdiction; (ii) imposing public

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).

³ VON also recommended that service metrics adopted for nomadic interconnected VoIP providers be limited to residential customers, and not applied to business customers.

⁴ Opening Comments of AT&T, R2203016, at 11 (September 3, 2024); Response of USTELECOM, R2203016, at 11 (September 3, 2024); Opening Comments of Frontier California, Inc., R2203016, at 2 (September 3, 2024).

utility-type obligations on interconnected VoIP services, contrary to the FCC’s longstanding “light-touch” or “hands-off” policy toward that service; (iii) imposing public utility-type obligations on interconnected VoIP even though it is an “information service” and thus, under established FCC policy, immune from such regulation; and (iv) treating providers of VoIP as common carriers, contrary to 47 U.S.C. § 153(51).⁵ Verizon warns that should the Commission insist on regulating services subject to federal preemption, “protracted litigation” is certain to ensure.⁶

In a Proposed Decision issued September 13, 2024, Commissioner John Reynolds recognized the limitations of the Commission’s jurisdiction over VoIP, stating that “While these nomadic interconnected VoIP service providers are telephone corporations under state law, based on market conditions and FCC policy twenty years ago, the FCC preempted states from imposing rate regulation, tariffing, or other requirements that operate as “conditions to entry” for nomadic interconnected VoIP service providers.⁷ Commissioner Reynolds posited that Commission jurisdiction over nomadic VoIP providers was limited to public safety and consumer protection;⁸ neither of which is implicated by the imposition of a new Customer Response Standard.

Commenters agree that the Staff proposal also ignores the reality of a highly competitive voice marketplace that will better serve California consumers than burdensome regulations.⁹ According to Frontier, the proposed revisions ignore the record evidence showing the benefits to consumers of the increasingly competitive voice marketplace and the negative impacts of prescriptive and costly regulations in today’s highly competitive marketplace.¹⁰ Rather than

⁵ ATT Comments at 13-14.

⁶ Opening Comments of Cellco Partnership, R2203016, at 2 (September 3, 2024).

⁷ Proposed Decision of Commissioner John Reynolds, R2208008, at 16 (noting that a nomadic interconnected service may be used at multiple locations) at 16 (mailed September 13, 2024).

⁸ *Id.* at 19.

⁹ Comments of the California Broadband & Video Association, R2203016, at 1-3 (September 3, 2024); AT&T Comments at 10-11.

¹⁰ Frontier Comments at 1.

penalties, a better approach would be to incentivize ongoing investment in competition and choice for consumers, and next-generation technologies that are proving reliable every day.¹¹

Moreover, the proposed service quality regulations are unworkable and ignore the reality of how nomadic interconnected VoIP providers operate. For example, the Staff unreasonably expects 100 percent compliance¹² with certain service quality metrics but proposes eliminating all exemptions for events beyond the service provider's control, other than during a state of emergency. This significant change fails the reality check, as delays in repairs or restoring service will be impacted by customer actions, vandalism and cable theft, and wildfires (not declared a state of emergency).¹³ As noted by AT&T, the Commission has expressly authorized these exemptions for over a decade, and their elimination without sufficient basis is a drastic and an unmerited departure from the Commission's longstanding policy.¹⁴

The parties supporting the Staff proposal or recommending changes that could expand obligations for nomadic interconnected VoIP providers offer no support, facts or rationale for doing so. These recommendations ignore the unique service delivery model that makes compliance or reporting of metrics related to call quality, outages and installation impossible. Nomadic interconnected VoIP is an over-the-top service. Regulated competitive local exchange carriers facilitate connections to the public telephone network, allowing customers to make and receive telephone calls. Customers procure their own broadband, wireless routers and premises equipment (e.g., handsets, laptops, and tablets) from third parties; and all of it runs on power provided from a regulated electric utility. Each of these could be a failure point, and in most cases the VoIP service

¹¹ USTELECOM Comments at 3.

¹² On its face, a standard mandating 100 percent compliance is fundamentally unreasonable and inherently flawed. AT&T Comments at 35; Comments of Cal Broadband at 19.

¹³ Frontier Comments at 3.

¹⁴ ATT Comments at 18; also see Cal Broadband Comments at 6; Frontier Comments at 3; Opening Comments of Small LECs, R2203016, at 4-5 (September 3, 2024).

provider would not be aware unless contacted directly by the customer.

For this reason, VON strongly opposes the recommendation of Cal Broadband to modify references to utilities, public utilities or public utility telephone corporations to a newly defined term, Voice Service Provider.¹⁵ As an initial matter, the definition is unclear whether the phrase “facilities-based” is intended to qualify both “public utility telephone corporation” and “interconnected VoIP provider” or just the former. Second, the term “resellers of voice services” may have made sense in a pre-VoIP world but no longer does. If adopted, the second sentence should read: “Resellers of voice services **and nomadic interconnected VoIP providers** are not voice service providers for purposes of this General Order.”

Others raise definitional concerns. For example, the Public Advocates Office recommends that the Staff proposal adopt a single definition to clarify which entities the new metrics and standards apply to, to ensure that all relevant providers report service quality information. PAO recommends that the standards apply to all “facilities-based carriers”, relying on the current definition.¹⁶ Again, nomadic interconnected VoIP does fit neatly. Clearly, nomadic interconnected VoIP providers do not own or control the line to the end user’s location – that would be the internet access service provider. Nomadic interconnected VoIP providers may own or control certain of the facilities used to provide voice services, but they are reselling the PSTN connectivity of regulated CLECs required for making and receiving telephone calls.

¹⁵ Cal Broadband Comments at Attachment B, Proposed Changes to Staff Proposal. The proposed definition is “A facilities-based public utility telephone corporation or interconnected VoIP provider that provides voice service to residential and small business customers. Resellers of voice service are not voice service providers for purposes of this General Order.” Id. at B-5.

¹⁶ Comments of the Public Advocates Office, R2203016, at 12 (September 3, 2024). Facilities-based carriers are defined as “A telephone corporation or interconnected VoIP provider that owns or controls facilities used to provide communications services for compensation, including the line to the end-user’s location. A telephone corporation that does not own or control facilities or infrastructure to provide voice service, and solely resells services from another telephone corporation that does own or control communications facilities, is not a facilities-based carrier.”

Conclusion

It is for all of these reasons, and those stated in its initial comments, VON respectfully asks the Commission to refrain from applying service quality metrics to nomadic, interconnected VoIP providers. If it does choose to adopt the Staff proposal, it should be limited to providers who service residential customers and make the necessary changes to the definitions to account for the recommendations herein.

Respectfully submitted,

Voice on the Net Coalition

/s/ Glenn S. Richards

Glenn S. Richards

Dickinson Wright PLLC

1825 Eye Street, NW, Suite 900

Washington, DC 20006

grichards@dickinsonwright.com

(202) 466-5954

Its Attorney

September 17, 2024