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(Via email)

The Honorable C.E. Cliff Hayes, Jr. Chair  
The Honorable Irene Shin, Vice Chair  
Virginia House Communications, Technology and Innovation Committee  
The Honorable Jackie H. Glass, Chair, Communications Subcommittee  
1000 Bank Street  
Richmond, VA 23219

Re: HB743

Dear Members:

The Voice on the Net (VON) Coalition,<sup>1</sup> which represents the nation's leading technology companies, writes to express its opposition to the proposed amendments of § 59.1-518.02 through 59.1-518.06 of the Virginia Code, which would unnecessarily, unreasonably and unlawfully impose new obligations on Voice over Internet Protocol (VoIP) service providers related to caller identification authentication requirements.

VON members are committed to fighting illegal robocalls. VON is a member of the board of directors of the STI-GA, the governance authority for STIR/SHAKEN. VON members have all implemented STIR/SHAKEN, participate in the industry traceback group and other organizations committed to stopping illegal robocalls. VON also actively participates in all FCC proceedings related to robocalling, STIR/SHAKEN, and caller identification authentication.

Despite the industry's best efforts, robocalls still persist. STIR/SHAKEN is designed to reduce illegal and spoofed robocalls by verifying the caller's identity and their right to use the telephone number. But that does not prevent unlawful calls. The FCC is considering requiring voice service providers to transmit additional information verifying the identity of the caller but that proceeding has just begun. Industry will continue to evolve but so do bad actors.

Under Va. Code § 56-1.3, VoIP is not considered a telecommunication service or telephone service for state regulation purposes, effectively prohibiting the State Corporation Commission (Commission) of jurisdiction over certification and other regulatory obligations. This important law was adopted in 2006, and has dramatically transformed the communications market, including the seamless convergence of voice, video and text. Today, this light

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<sup>1</sup> For more information see [www.von.org](http://www.von.org). For more than 28 years, VON has worked with federal and state policymakers to advance regulatory policies that will encourage the development and adoption of these innovative services – including, most importantly, not applying traditional telephone regulations developed in an earlier century.

regulatory touch – with the Federal Communications Commission (FCC) providing the necessary oversight -- has led to nearly 70 million VoIP lines now in service throughout the United States, served by hundreds of VoIP providers.

The proposed amendments in § 59.1-518.02 through 59.1-518.06 would apply new caller authentication requirements to providers “voice services” which is defined to include VoIP services. As proposed, voice service providers would “owe an affirmative duty of care” to prevent the origination, transmission and completion unlawful calls – which are undefined in the legislation. The legislation also imposes an obligation for voice service providers to retain for at least three years records to demonstrate STIR/SHAKEN authentication verifications; call detail records to support traceback investigations; notices of traceback requests and actions taken to block, mitigate or terminate unlawful calling campaigns. Voice service providers would be in violation of the law (without the need to provide intent or knowledge) if it transmitted or permitted the transmission of calls using invalid, unassigned or spoofed numbers; fails to authenticate outbound calls; continues to originate, carry or terminate traffic from a customer or upstream provider after receiving traceback requests, enforcement notices or credible evidence of unlawful activity; or fails to timely block or mitigate a calling campaign that exhibits “anomalous call volume, short duration, or other indicators of unlawful robocall activity.” Violations of the law would be considered a prohibited practice and subject to enforcement of the Virginia Consumer Protection Act. Moreover, any originating, intermediate or terminating voice service provider that materially participates in the transmission of unlawful calls shall be jointly and severally liable for violations, regardless of whether the provider initiated the call. Finally, compliance with federal law would not be considered a safe harbor from liability if this legislation is adopted.

There are numerous problems with this legislation both generally, and specifically as it relates to VoIP. First, as noted earlier, Va. Code § 56-1.3 makes clear that VoIP is not a telecommunications or telephone service, and thus there is no statutory authority to regulate VoIP. Second, the statute is vague because it does not define an unlawful call. It also refers to unlawful calls; a far more expansive term than unlawful robocalls (which is the focus of the federal Telephone Consumer Protection Act and the TRACED Act). Third, it runs afoul of federal law, requiring the blocking of a class of calls (anomalous call volume, short duration) not required by the FCC. The FCC has specifically defined the types of calls that may be blocked (including calls using invalid, unassigned or spoofed numbers), and has a process to notify voice service providers to block calls from certain phone numbers or providers. Virginia cannot require blocking of other calls without potentially subjecting voice service providers to liability for violations of federal law or forcing them to breach contracts with upstream or downstream providers. Moreover, the legislation mistakenly accords a traceback request with unlawful activity when that is often not the case. Finally, creating a strict liability standard and subjecting voice providers to potential private rights of action will create enormous risks for those operating in Virginia, likely resulting in rate increases and endless litigation.<sup>2</sup>

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<sup>2</sup> The Virginia Consumer Protection Act permits any person who suffers a loss due to a violation of the act to sue for the greater of actual damages or \$500, with the potential for triple damages for willful violations. A single robocall could reach 1,000 Virginians resulting in \$500,000 damages for a service which may cost about \$50 per month.

Moreover, as applied to VoIP, the legislation is both unlawful and unnecessary for the following reasons:

First, this legislation ignores that the FCC in 2004 broadly preempted state regulation of VoIP.<sup>3</sup> The FCC found that VoIP is practically inseverable for jurisdictional purposes because of the inherent capability to enable subscribers to utilize multiple features that perform and manage different types of communications and can access different websites or IP addresses. The FCC noted that these functionalities were designed to overcome geography, not track it. All VoIP services offered in the marketplace today include the three basic features the FCC identified. They require the use of a broadband connection. They require the use of IP-compatible equipment. And they offer consumers a suite of integrated capabilities and features.

Second, consumers are protected because VoIP providers are subject to regulation by the FCC. These regulations include protection obligations to implement STIR/SHAKEN and to take actions to mitigate illegal robocalls, including the filing of robocall mitigation plans and the mandatory vetting and monitoring of customers.

Third, state regulation of VoIP is impractical. VoIP providers offer a single, integrated service that includes both local and long distance calling and a host of other features that can be supported from national or regional data centers and accessed by users across state lines. Tailoring the service to meet the regulatory requirements of 50 state regulation commissions creates unreasonable inefficiencies.

Please do not hesitate to contact me if you have any questions.

Very truly yours,



Glenn S. Richards  
Counsel for the Voice on the Net Coalition

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<sup>3</sup> See *Vonage Holdings Corp.*, 19 FCC Rcd 22404 (2004); see also *Minnesota Public Utilities Commission v. FCC*, 483 F.3d 570 (8<sup>th</sup> Cir. 2007) (upholding the FCC decision).