BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S REVIEW OF CHAPTER 4901:1-6 OF THE OHIO ADMINISTRATIVE CODE, REGARDING TELEPHONE COMPANY PROCEDURES AND STANDARDS	)	**Case No. No. 14-1554-TP-ORD**

REPLY COMMENTS OF THE VOICE ON THE NET COALITION

The Voice on the Net Coalition ("VON")[1] submits these reply comments in response to the comments filed concerning the draft amendments to Ohio Adm. Code Chapter 4901:1-6 ("Draft Rules)". The VON Coalition supports those comments that suggest revisions to the Draft Rules that eliminate the imposition of new regulatory obligations on interconnected Voice over Internet Protocol ("VoIP") providers in Ohio.

DISCUSSION

A. The Draft Rules as Applied to VoIP are preempted by Federal Law

As discussed in AT&T Ohio's initial comments, the Public Utilities Commission of Ohio ("Commission") is preempted from imposing the regulatory obligations contained in the Draft Rules on VoIP providers, including Carrier of Last Resort ("COLR") requirements and obligations for withdrawing/abandoning basic local exchange service ("BLES"), because interconnected VoIP is an information service exempt from state regulation. Both Congress and the FCC have made it clear that the FCC has the authority to determine the regulatory scheme for information services. The

[1] The VON Coalition works to advance regulatory policies that enable Americans to take advantage of the promise and potential of IP enabled communications. VON Coalition members are developing and delivering voice and other communications applications that may be used over the Internet. For more information, see www.von.org.

Telecommunications Act of 1996 ("1996 Act") creates a distinction between "telecommunications services" and "information services." The first consists of pure transmission services offered to end users without change in form or content, and subject to common-carrier regulations.[2] The second, in contrast, offers the ability, for example, to store, retrieve, utilize, and/or manipulate "information."[3] VoIP takes full advantage of the flexibility and efficiency of IP-based transmission by enabling the user to manipulate, generate, store, transform, and make information services available to others.[4]

In addition, the FCC has held that a service will be treated as a single, integrated information service, rather than as an information service with a separate telecommunications service component, when the telecommunications features are not "separated from the data-processing capabilities of the service" but are instead "part and parcel of the [the overall information] service and… integral to its other capabilities."[5] Interconnected VoIP services are integrated, IP-enabled services providing multiple capabilities that combine information provision and processing, computer interactivity along with voice-calling capabilities, which renders such services as single "integrated offerings." VoIP users can "utilize multiple service features that access different websites or IP addresses during the same communication session and perform different types of communications simultaneously."[6] These features and functions are inseparable

[2] 47 U.S.C. § 153(43) (2006).
[3] *Id.* § 153(20).
[4] The 1996 Act defines an "information service" as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications…" *Id.*
[5] *Id.* ¶¶ 36, 38.
[6] Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404, ¶ 25 (2004), *petitions for review denied, Minnesota Pub. Utils. Comm'n v. FCC*, 483 F.3d 570 (8th Cir. 2007) ("*FCC Vonage Preemption Order").*

from the voice application that may appear to be most similar to a telephone service. Thus, interconnected VoIP falls squarely within the definition of an "information service" and is subject to exclusive federal jurisdiction unless otherwise specifically provided by Congress or the FCC.

Under federal law, "information services" are exempt from telecommunications regulation, which includes state regulation. While the FCC has asserted limited jurisdiction over interconnected VoIP services, it has not treated interconnected VoIP as a traditional telecommunications service. The FCC has imposed a number of specific obligations, including, requirements to provide Enhanced 911 services, make the service accessible by law enforcement, contribute to the Federal Universal Service Fund ("USF") and Telecommunications Relay Service Fund, protect customer proprietary network information, and provide customers notice before discontinuing service.[7] In none of these actions, however, has the FCC has classified VoIP as telecommunications or granted the states authority to impose any other specific obligations on interconnected VoIP providers, other than state USF contributions where such contributions are not inconsistent with federal USF obligations and the payment of state and local fees to support the 911 network.[8]

The FCC has also decided that certain VoIP services that do not touch the public switched telephone network are exempt from state public utility regulation.[9] Further, multiple federal courts

[7] First Report and Order and Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 05-116, (rel. Jun. 3, 2005) (*"VoIP 911 Order"*); Report and Order and Notice of Proposed Rulemaking, WC Docket No. 06-122, FCC 06-94 (rel. Jun. 27, 2006) (imposing USF requirements); Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 04-36, FCC 07-22 (rel. Apr. 2, 2007) (imposing CPNI requirements); Report and Order, WC Docket No. 04-36, FCC 09-40 (May 13, 2009) (imposing discontinuance requirements).
[8] *See VoIP 911 Order* ¶ 52.
[9] *See Petition for Declaratory Ruling that Pulver.Com's Free World Dialup is Neither Telecommunications nor a Telecommunications Service,* Memorandum Opinion and Order, 19 FCC Rcd 3307 (2004);

have enjoined state commissions from regulating interconnected VoIP services on the grounds that they were information services, exempt from state utility regulation.[10] The Minnesota federal district court has even held that "[state] regulations that have the *effect* of regulating information services are in conflict with federal law and must be pre-empted."[11] Additionally, a federal district court in Missouri held that existing laws mandate that states classify VoIP services that perform IP to TDM conversions as an information service. The Missouri District Court recognized that IP-PSTN traffic is an information service because it offers the "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications."[12] The court further noted that IP-PSTN traffic "alters the form and content of the information sent and received because it involves a net protocol conversion from the digitized packets of the IP-protocol to the TDM technology used on the PSTN."[13] While the court recognized that the Commission may be willing to revisit the classification and regulatory status of interconnected VoIP at some point, "existing rules and orders establish how VoIP and other IP services should be treated in the interim."[14]

Interconnected VoIP is subject to the FCC's exclusive jurisdiction under the *FCC Vonage Preemption Order*. In the *FCC Vonage Preemption Order*, the FCC held that Vonage's "Digital

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See also FCC Vonage Preemption Order.
[10] *See e.g., Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n,* 290 F. Supp. 2d 993, 1002 (D. Minn. 2003) (summarizing federal policy of preempting state attempts to regulate information services); *Southwestern Bell Telephone L.P. v. Missouri Public Service Board,* 461 F. Supp. 2d 1055, 1082-1083 (E.D. Mo. 2006) (classifying services as information services when it transforms or processes "information," even if the content is the same).
[11] *See Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n,* 290 F. Supp. 2d 993, 1002 (D. Minn. 2003).
[12] *See Southwestern Bell Telephone L.P. v. Missouri Public Service Board,* 461 F. Supp. 2d 1055, 1082-83 (E.D. Mo. 2006) (citing § 153(20)).
[13] *Id.*
[14] *Id.*

Voice" service is subject to FCC exclusive jurisdiction and preempted the Minnesota PUC from imposing traditional telecommunications regulations on that service. The same principles that applied in the *FCC Vonage Preemption Order* apply here. The FCC concluded that Vonage's service is "jurisdictionally mixed" meaning that it includes both interstate and intrastate services.[15] The FCC held that there were no "practical means" to separate the interstate and intrastate components of Vonage's service to "enable[e] dual federal and state regulations to exist."[16] In other words, the state regulations at issue were not compatible with the FCC's generally deregulatory framework for Internet-based services.

B. <u>There is no Legislative Basis or Policy Justification to Regulate VoIP</u>

As discussed in the initial comments of AT&T Ohio, Verizon, the Ohio Telecommunications Association ("OTA"), and the Cincinnati Bell Telephone Company, imposing COLR requirements and BLES withdrawal/abandonment obligations on VoIP providers is inconsistent with Amended Substitute House Bill 64 of the 131st Ohio General Assembly ("H.B. 64"). Specifically, extending the COLR requirements to VoIP providers in Draft Rule 4901:1-6-02(C) and (D), and subjecting BLES withdrawal/abandonment obligations to VoIP providers in Draft Rule 4901:1-6-21(F) exceed the statutory authority of H.B. 64. The Draft Rules should be revised to eliminate such regulatory overreach – not only because such provisions exceed H.B. 64's statutory authority, but because the provisions would harm competition and investment in Ohio.

VoIP is growing, but burdensome regulatory requirements will harm continued development and innovation. According to a report released in October 2014 by the FCC, at the

[15] *See FCC Vonage Preemption Order* at 22414, ¶ 18 & n. 63.
[16] *Id.* ¶ 23.

end of 2013, there were more than 1,198,000 interconnected VoIP subscriber lines in Ohio, receiving service from 134 VoIP providers. Nationally, there were about 48 million VoIP subscriber lines in services, an increase of about 13 percent from the prior year. In contrast, during the same period, wireline retail lines decreased by 11 percent from 96 million to 85 million lines.[17]

The growth of VoIP has created viable competition in the communications industry, to the benefit of consumers that are saving hundreds of millions of dollars each year by switching to VoIP and other IP-enabled services. VoIP also provides consumers flexibility and features not possible in yesterday's telephone network. These include the ability to use an IP-enabled phone through any broadband connection anywhere in the world; allowing voice mail to be sent to email or converted to text; allowing multiple devices to ring at the same time, and bringing video conference calling to the masses. At the same time, quality and reliability have improved to equal if not surpass that of the legacy phone network.

For businesses, particularly small and medium sized businesses that are at times ignored by larger carriers, VoIP is lowering costs, allowing increased control over communications, increasing productivity, increasing mobility, enabling collaboration, and giving companies a competitive advantage. VoIP promotes telework; allowing people to work seamlessly from home as if they were in the office; creating more time with family and greater employment opportunities for parents of small children, adult caregivers and the disabled.

[17] Local Telephone Competition: Status as of December 31, 2014, FCC Industry Analysis and Technology Division, Wireline Competition Bureau, October 2014. Link found at http://transition.fcc.gov/wcb/iatd/comp.html.

VoIP's ability to converge voice, video, and data into one application makes available new accessibility options for the tens of millions of disabled Americans. VoIP gives disabled users a choice as to which mode they want to communicate in. For example, a deaf-blind person could sign his conversation then read the response on text with a Braille display. A hearing-impaired person might use text for the main communication, then video to show their emotional reaction to the conversation.

VoIP is also bridging the gap between rural and urban Americans. VoIP brings good information age jobs to rural communities, and encourages the rapid deployment of broadband to rural areas.

At least 31 states and the District of Columbia have already provided certainty to the investment markets by codifying regulatory "safe harbors" for VoIP or IP-enabled communications.[18] These states have recognized that there is no benefit to imposing legacy telephone regulations on VoIP and that investment will be lost if regulatory ambiguities are allowed to remain in place. The COLR requirements and BLES withdrawal/abandonment obligations contained in the Draft Rules have the potential to materially and adversely impact technological innovation, hinder the growth of open, competitive markets and place unnecessary burdens and costs on companies eager to invest in and deliver innovative products and features.

By promulgating rules that implement H.B. 64 without placing unnecessary regulatory burdens on VoIP providers, the Commission has an opportunity to join these states and help launch

[18] Alabama, Arkansas, California, 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.

a new era of broadband-enabled benefits for consumers and businesses in Ohio by eliminating the threat of conflicting state regulation of non-nomadic VoIP. To ensure that consumers continue to have access to these transformative broadband applications, it is critical that state and local regulation not burden such innovation. A consistent and predictable policy framework nationwide fosters innovation in VoIP and IP-enabled applications and services.

CONCLUSION

For the foregoing reasons, the VON Coalition supports the comments of AT&T Ohio, Verizon, OTA, and Cincinnati Bell that suggest revisions to the Draft Rules that would eliminate the imposition of COLR and BLES withdrawal/abandonment obligations on VoIP providers.

Respectfully submitted,

VOICE ON THE NET COALITION

/s/

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Summary: Comments Reply Comments electronically filed by Mr. Joseph A Cohen on behalf of VON Coalition