**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

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| In the Matter of  Amending the Definition of Interconnected  VoIP Service in Section 9.3 of the  Commission’s Rules  Wireless E911 Location Accuracy  Requirements  E911 Requirements for IP-Enabled Service  Providers | :  :  :  : :  :  :  :  :  :  :  : | GN Docket No. 11-117  PS Docket No. 07-114  WC Docket No. 05-196 |
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**COMMENTS**

**SUBMITTED ON BEHALF OF**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

**October 3, 2011**

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# INTRODUCTION AND SUMMARY

Enhanced 911 service (E911) service is essential to the health, welfare and safety of the American public. Recognizing this, the Federal Communications Commission (FCC) has taken positive steps to expand E911 service capability to wireless and two-way interconnected voice over Internet protocol (VoIP) services.[[1]](#footnote-1) On July 12, 2011, the FCC adopted a notice of proposed rulemaking and second further notice of proposed rulemak­ing (collectively, NPRM) in which it addresses steps that may be taken to further enhance the public’s access to emergency service providers. Among other things, the FCC seeks comment on the applicability of the FCC’s VoIP 911 rules to services that do not meet one or more prongs of the FCC’s current definition of interconnected VoIP service. The FCC notes that since its VoIP rules were adopted, there has been a significant increase in the availability and use of portable VoIP services and applications.[[2]](#footnote-2) Conse­quently, the FCC has proposed expanding the scope of its definition of interconnected VoIP service to include services that carry outbound-only VoIP calls to the public switch telephone network (PSTN). It has requested comment on this proposal by October 3, 2011. The Public Utilities Commission of Ohio (Ohio Commission) supports the FCC’s proposal and is pleased to submit these comments for the FCC’s consideration.

# DISCUSSION

When the FCC adopted 911 requirements for VoIP service in 2005, it indicated that its definition of intercon­nected VoIP service may need to be revised as consumers increasingly adopt new VoIP services as substitutes for traditional landline telephone service.[[3]](#footnote-3) As noted in the NPRM, there are now well over 4.2 million subscribers to one-way interconnected VoIP services, such as those services offered by Skype and Google Voice.[[4]](#footnote-4) From the vantage point of consumers, the hardware used for these services is often no different than the traditional landline or cordless phones.[[5]](#footnote-5) Hence, the expectations of consumers for VoIP service are often the same as those for traditional telephone service, including the expectation to have access to 911 emergency dialing. If adopted, the FCC’s proposed change in its definition of interconnected VoIP service would result in outbound-only VoIP services being subject to the FCC’s 911 rules.

In the Ohio Commission’s view, the present state of the communications marketplace clearly war­rants such an expansion of the interconnected VoIP definition. The Ohio Commission believes that it reasonable for consumers to expect that a service functionally equivalent to traditional telephone service will include 911 dialing capability to contact emergency services. The average consumer is not likely to be aware of the difference between the traditional circuit-switching technology and IP-based technology underlying his or her service or to differentiate among VoIP service. Furthermore, from a competitive standpoint, it makes little sense to exempt certain providers of VoIP service from regulatory requirements while imposing the same requirements on other VoIP ser­vice providers. The Ohio Commission believes that if the requirement is reasonable and technically feasible, as the requirement to provide 911 dialing capability is, then all intercon­nected VoIP service providers should be required to meet the requirement. In its 2005 VoIP 911 Order, the FCC recog­nized this with regard to providers of two-way interconnected VoIP service.[[6]](#footnote-6) As subscribership to out-bound only VoIP services has dramatically increased, the Ohio Commission believes that providers of such services should also be included under the FCC’s umbrella of 911 requirements. Furthermore, the Ohio Commission agrees with the FCC’s proposal to extend its automatic location identification (ALI) requirements to providers of portable interconnected VoIP service, but nonetheless recognizes that technical matters regarding ALI implementation are best addressed by the VoIP service providers and the 911 community.

In the Ohio Commission’s view, extending the FCC’s 911 service obligations to encompass outbound-only interconnected VoIP service achieves parity among VoIP service providers and promotes shared regulatory goals of local, state and federal authorities to ensure the protection of life and property. As the Ohio Commission has stated in previ­ous comments, state and local governments have a responsibility to ensure the health, wel­fare and safety of their citizens through an efficient, reliable and effective 911 sys­tem.[[7]](#footnote-7) In furtherance of this objective, the Ohio General Assembly recently determined that, due to the public interest in maintaining an effective emergency communications ser­vices system, the Ohio Commission should retain jurisdiction over 911 services even as the traditional regulation of retail telecommunications services has been significantly relaxed.[[8]](#footnote-8) By vesting such authority in the Ohio Commission, the Ohio General Assembly has recognized the importance of perpetuating and maintaining a reliable and efficient emergency response system. In the Ohio Commission’s estimation, bringing all services that are the func­tional equivalent of traditional telecommunications service under the same set of requirements best ensures that such a system is maintained as America’s commu­nication infrastructure transitions from the PSTN to IP-based networks.

To achieve the objective of bringing outbound-only interconnected VoIP service under existing 911 requirements, the FCC has proposed modifications to its existing intercon­nected VoIP definition. Specifically, the FCC suggests two technical modifica­tions to the definition of interconnected VoIP service.[[9]](#footnote-9) First, the FCC proposes replacing a broadband connection, as is presently required, with an internet connection as the defin­ing feature of interconnected VoIP service.[[10]](#footnote-10) The Ohio Commission agrees with this pro­posed revision as the FCC noted that some interconnected VoIP services function using a dial-up connection rather than a broadband connection.[[11]](#footnote-11) Again, consumers may not appreciate this distinc­tion and making an internet connection the defining feature ensures that all users of VoIP service will have access to 911 emergency dialing. Second, the FCC proposes to amend the definition of interconnected VoIP to reference calls that terminate to all or substantially all United States E.164 telephone numbers rather than to the PSTN.[[12]](#footnote-12) As the FCC points out, networks are evolving from circuit switched technol­ogy to IP-based technology.[[13]](#footnote-13) As such, calls will be carried over networks that are entirely IP-based without touching the PSTN. The proposed revision will ensure that all VoIP service providers offering outbound calling, both two-way and one-way, provide access to emergency dialing regardless of the underlying technol­ogy used for transmission. Additionally, the Ohio Commission believes that the modifica­tion under consideration will assist in avoiding future obsolescence and, accord­ingly, recommends that the FCC modify its definition of VoIP service as proposed.

As noted by the FCC, the Twenty-First Century Communications and Video Accessi­bility Act (CVAA) became law in October 2010.[[14]](#footnote-14) The FCC points out that the CVAA defines advanced communication services to include interconnected VoIP as defined in section 9.3 of the its rules “as such section may be amended from time to time.”[[15]](#footnote-15) The FCC further points to the recent Truth in Caller ID Act as an additional area where Congress defined IP-enabled voice service to have the meaning given that term by section 9.3 as those regulations may be amended by the FCC.[[16]](#footnote-16) Thus, the FCC seeks com­ment on whether it would be necessary to amend any other definition in its rules that make use of the FCC’s current definition of VoIP service if it chooses to amend the definition of VoIP service for 911 purposes.[[17]](#footnote-17)

While the Ohio Commission supports the FCC’s proposal to amend the definition of VoIP service set forth in section 9.3 of the FCC’s rules and agrees with the legal analy­sis provided by the FCC as justification for doing so, it also believes that the FCC could more easily accomplish the objectives articulated in the NPRM by classifying intercon­nected VoIP service, both two-way and one-way, as a telecommunications service. In doing so, the FCC would avoid the incrementalism that has heretofore defined its approach to addressing VoIP-related matters. By classifying VoIP service as a telecommuni­cations service, VoIP service providers would be subject to the FCC’s 911 rules, which require “all telecommunications carriers” to “transmit all 911 calls to a [public service answering point or] PSAP, to a designated statewide default answering point, or to an appropriate emergency authority set forth in §64.3002.”[[18]](#footnote-18)

Should the FCC elect not to classify VoIP service as a telecommunications service, the Ohio Commission does not believe that the FCC should amend its VoIP definition for “911 purposes only.” In the view of the Ohio Commission, two-way interconnected VoIP service and outbound-only interconnected VoIP service should generally be given the same regulatory treatment. If a rule has been applied to two-way interconnected VoIP through a reference to section 9.3, then the presumption should be that the rule also applies to outbound-only VoIP service. To the extent that it is determined that a particular rule may apply to two-way interconnected VoIP service, but may not apply to outbound-only interconnected VoIP service, an exemption of out-bound only VoIP service from that rule should be considered. Such exemptions should be handled on a case-by-case basis.

# CONCLUSION

E911 service is essential for the protection of life and property. As such the Ohio Commission supports the FCC’s efforts to ensure that all VoIP providers make 911 emer­gency dialing available to their customers. While the Ohio Commission would prefer that the FCC adopt a holistic rather than a piecemeal approach to addressing VoIP-related matters, it nonetheless believes that modification to the definition of intercon­nected VoIP proposed by the FCC is necessary to guarantee an efficient and reliable 911 system. Accordingly, the Ohio encourages the FCC to adopt the proposed modification and appreciates the opportunity to share its thoughts and recommendations in this regard.

Respectfully submitted,

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1. *See* Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 18676 (rel. July 26, 1996); First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (rel. June 3, 2005) (VoIP 911 Order); 47 C.F.R. §20.18 (2011). [↑](#footnote-ref-1)
2. *In the Matter of Amending the Definition of interconnected VoIP Service in Section 9.3 of the Commission’s Rules, Wireless E911 Location Accuracy, E911 Requirements for IP-Enabled Services*, GN Docket No. 11-117, PS Docket No. 07-114, WC Docket No. 05-196 (Notice of Proposed Rulemaking, Third Report and order, and Second Further notice of Proposed Rulemaking at 17, ¶ 41) (rel. July 13, 2011) (NPRM). [↑](#footnote-ref-2)
3. VoIP 911 Order at 10277, ¶ 58. [↑](#footnote-ref-3)
4. NPRM at 18, ¶ 46. [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. *See* VoIP 911 Order at 10266 – 10273, ¶¶ 36 – 51. [↑](#footnote-ref-6)
7. *See In the Matter of Framework for Next Generation 911 Deployment*, PS Docket No. 10-255 (Comments Submitted on Behalf of the Public Utilities Commission of Ohio at 7 – 8) (filed Feb. 25, 2011). [↑](#footnote-ref-7)
8. Ohio Rev. Code Ann. § 4927.15(A) (West 2011). [↑](#footnote-ref-8)
9. NPRM at 19, ¶ 49. [↑](#footnote-ref-9)
10. *Id*. [↑](#footnote-ref-10)
11. *Id*. at n. 135. [↑](#footnote-ref-11)
12. *Id*. at 19 – 20, ¶ 50. [↑](#footnote-ref-12)
13. *Id*. [↑](#footnote-ref-13)
14. *Id.* at 34 – 35, ¶¶ 100,101. [↑](#footnote-ref-14)
15. *Id*. at ¶ 100. [↑](#footnote-ref-15)
16. *Id*. [↑](#footnote-ref-16)
17. *See id*. at ¶ 101. [↑](#footnote-ref-17)
18. 47 C.F.R. §64.3001 (2011). [↑](#footnote-ref-18)