

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

**PROCEEDING NO. 15R-0318T**

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**IN THE MATTER OF THE PROPOSED RULES REGARDING BASIC EMERGENCY  
SERVICE, 4 CODE OF COLORADO REGULATIONS 723-2.**

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**REPLY COMMENTS OF THE VOICE ON THE NET COALITION**

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The Voice on the Net Coalition (“VON”)<sup>1</sup> submits these reply comments in response to the Notice of Proposed Rulemaking issued May 13, 2015 regarding basic emergency services. The VON Coalition supports those initial comments concerning the Commission’s lack of jurisdiction over VoIP providers.

**1. The Proposed Rule as Applied to VoIP Providers is Preempted by Federal Law**

The Federal Communications Commission (“FCC”) has recognized a strong federal interest in ensuring that regulation does not hinder the growth of the Internet and the services provided over it, including VoIP and other IP-communications. In the *Vonage Preemption Order*, the FCC preempted the application of Minnesota’s “traditional ‘telephone company’ regulations” to Vonage’s Digital Voice service because it was impossible to separate the intrastate and interstate components and the state regulation of the intrastate component interfered with valid federal rules and policies.<sup>2</sup> Eleven years later, this landmark decision remains largely undisturbed and

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<sup>1</sup> The Voice on the Net Coalition consists of companies developing and delivering innovative communications services over the Internet. VON works to advance regulatory policies that enable Americans to take advantage of the full promise and potential of IP communications. VON believes that with the right public policies, Internet based communications applications and services can make talking more affordable, businesses more productive, jobs more plentiful, the Internet more valuable, and Americans more safe and secure. Since its inception, VON has promoted pragmatic policy choices for unleashing the potential of IP communications. See [www.von.org](http://www.von.org).

<sup>2</sup> Memorandum Opinion and Order, *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404 (2004), *petitions for review denied*, *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8<sup>th</sup> Cir. 2007).

has led to substantial growth in the adoption of VoIP and other IP services. As a result of the *Vonage Preemption Order*, the VON Coalition believes the Commission's broad proposal to regulate basic emergency services offered by VoIP providers will be preempted by federal law.<sup>3</sup>

Moreover, the FCC in 2005 imposed 911 obligations on VoIP providers.<sup>4</sup> The Commission in the proposed rules makes no attempt to explain why the FCC rules are inadequate to protect the public safety in Colorado. Many VoIP providers rely on third parties, such as Intrado, TCS and Bandwidth to deliver 911 calls. These companies will be covered by any rules that are adopted by the Commission in this proceeding; providing further support that applying the rules to VoIP providers generally is unnecessary.<sup>5</sup> VON is not aware of any other state attempting to impose similar emergency calling requirements on VoIP providers.

In addition to the broad preemption of state regulation of VoIP providers, several specific provisions are problematic. In particular, any certification requirements would impose barriers to entry for VoIP providers, which is inconsistent with federal law (and similar to the entry requirements imposed by the Minnesota PUC that could not withstand federal scrutiny). Today, no state requires VoIP providers to be certified before providing services.<sup>6</sup>

The Commission is also attempting to impose outage reporting requirements that are duplicative and inconsistent with federal outage reporting requirements. The FCC's rules require notification of an outage within 30 minutes of discovery, an initial report within 72 hours, and a final report within 30 days, whereas the Commission's rules require notification within 30

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<sup>3</sup> Moreover, 47 U.S.C. § 615a-1(d) specifically provides that states may not exercise authority over VoIP 9-1-1 inconsistent with federal law or FCC requirements.

<sup>4</sup> 47 U.S.C. §§ 9.1-9.5.

<sup>5</sup> The fact that third parties who will be covered by the rules carry most VoIP provider 911 calls also undermines the conclusion in the Staff Regulatory Analysis, filed August 12, 2015, that 9-1-1 calls made through new technologies other than traditional landline voice would not be as reliable, resulting in loss or injury to persons and property .

<sup>6</sup> In fact, more than 30 states have passed laws restricting utility type regulation of VoIP and IP enabled services. VON notes that the Minnesota PUC recently found that Charter Fiberlink's fixed, interconnected VoIP service is subject to PUC authority though it is unclear how this Order may apply to providers of other VoIP services. See Order Finding Jurisdiction and Requiring Compliance Filing, Docket No. C-14-383 (issued July 28, 2015).

minutes of the time an outage exceeds 15 minutes, and a full report within 10 days. This conflict places a burden on VoIP providers to file two reports on the same outage, potentially at different times and notwithstanding the fact that it may not be possible to resolve outages and produce a full report within 10 days.

The VON Coalition is also concerned with the Commission proposal that originating service providers and intermediate aggregation service providers file with the Commission the same reports they file in the FCC's Network Outage Reporting System ("NORS") and Disaster Information Reporting System ("DIRS"). Both NORS and DIRS reports contain sensitive commercial, public safety, and national security related information that are "presumed to be confidential" under federal law, and filing with the Commission raises confidentiality concerns.

## **2. Conclusion**

Based on the reasons above, the VON Coalition does not believe that the Commission has the authority to regulate the provision of basic emergency services by VoIP providers and the rule should not be adopted as proposed.

Please contact the undersigned if you have any questions.

Respectfully submitted,

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