BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Update Surcharge Mechanisms to ensure Equity and Transparency of Fees, Taxes and Surcharges Assessed on Customers of Telecommunications Services in California	))))	RULEMAKING 21-03-002

VOICE ON THE NET COALITION COMMENTS IN RESPONSE TO THE ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

The Voice on the Net Coalition ("VON") hereby respectfully submits these comments in response to the Assigned Commissioner's Scoping Memo and Ruling in the above-captioned proceeding.[1] As expressed in its initial reply comments to the OIR in this proceeding, VON is sympathetic to the Commission's concern about the decreasing intrastate revenue base on which for California Public Purpose Programs ("PPPs") are assessed.[2] However, VON takes exception to the unsubstantiated implication in the Scoping Memo and Commission Staff report attached to the Scoping Memo that providers of Voice over Internet Protocol ("VoIP) services "remit disproportionately little surcharge revenue compared to other communications providers" and are taking advantage of the "flexible methods" they are given to determine what percentage of their overall revenues is subject to the surcharge and remittance and contributing less to PPP funds.[3]

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[1] VON is a trade association founded in 1996 to advocate for a fresh approach to regulation of Internet communications. VON members are on the cutting edge of delivering innovative IP communications that converge voice, video, and text in entirely new ways. For more information, see www.von.org.

[2] *See* Von Reply Comments in Response to OIR in Rulemaking 21-03-002 ("VON Reply Comments"). In that filing VON noted its participation in efforts to reform the contribution methodology for the Federal Universal Service Fund and recommended that the Commission maintain the revenue-based funding mechanism for PPPs, rather than transitioning to a per-line fee.

[3] *See* Scoping Memo and Ruling in Rulemaking 21-03-002 (June 28, 2021) ("Scoping Memo") at page 4 and at pages 19, 24 of the Commission Staff Report ("The surcharges that VoIP end users pay is significantly lower, with some paying as little as $0.23 per month. The variation in surcharge revenues paid by different providers and different types of the same service could be

I. The Implication that VoIP Providers Are Remitting Little Surcharge Revenue Is Unsubstantiated and Unsupported by Evidence

The Scoping Memo seeks comment on the question "Why do Voice over Internet Protocol services remit disproportionately little surcharge revenue compared to other communications providers."[4] This question is likely an outgrowth of the statement in the Commission Staff Report that VoIP end users are paying as little as $0.23 per month to support PPPs. The problem is that statement has no support; and does not identify the origin of the data or any specific VoIP providers allegedly "remit[ting disproportionately little surcharge revenue." Indeed, there are no reference to VoIP in either Table 3 or Table 4 of the Staff report (at pages 23 and 25); making it more difficult to ascertain the accuracy of the statement. There is also no evidence that VoIP providers in California are not imposing the correct surcharges or contributing less than required to fund PPPs.[5]

In fact, as the Commission recognizes, decisions by the Federal Communications Commission ("FCC") (not VoIP providers' compliance with the rules and regulations) regarding the regulatory status of certain services, including VoIP service, directly impacts how providers collect and remit surcharges with respect to both federal and state universal service funds. The Commission notes in its Scoping Memo, "the FCC's reclassification of voicemail, texting, and

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the result of the flexible methods providers are given to determine what percentage of their overall revenues is 'intrastate' versus 'interstate,' or otherwise not subject to surcharge at all.").

[4] Scoping Memo, at 4.

[5] The FCC has explicit rules on how service and revenues should be classified for purposes of submitting the FCC Form 499, which is the basis for federal USF contributions. See: [2021-FCC-Form-499A-Form-Instructions.pdf (usac.org)] (last visited July 18, 2021). Moreover, the FCC has provided specific guidance to the states as to how they can assess VoIP providers for state USF purposes in a way that does not run afoul of the federal scheme. See *In the Matter of Universal Service Contribution Methodology,* 25 F.C.C. Rec. 15651 (2010) at paras. 17-20.

Internet/data services from telecommunications services (Title II) to information services (Title I) removed these services from inclusion in interstate and intrastate revenue calculations."[6] In other words, the decreasing availability of PPP funds has been caused by the FCC and changes in how people communicate, not as the Commission implies, by VoIP providers' failure to comply with their contribution obligations. This will be an issue that may need to be addressed as consumers continue to migrate to those services.

II. The Commission Should Maintain Its Revenue Based Reporting Structure.

VON recommends that the Commission maintain the existing revenue-based funding and not transition to a per-line fee. The intention of the revenue-based model is, in part, to encourage innovation and competition. The proliferation of new technologies is evidence that the model is a success in this regard.

In addition, though imperfect, the revenue-based model is consistent with the current federal structure, complies with existing California law and, unlike the per-line model, will not cause disruptions to any group of ratepayers or changes to the accounting and billing systems of contributing service providers.[7]

As RingCentral noted in its opening comments, California Public Utilities Code Section 285 ("Section 285") "expressly requires the Commission to require interconnected VoIP providers registered under Section 285 to 'collect and remit surcharges on their California

[6] Scoping Memo, at 21.
[7] Moreover, only a small number of states have experimented with per connection charges and the data is not yet clear whether such changes have actually stabilized those state funds. See Staff Report at 19.

intrastate revenues.'"[8] Pursuant to Section 285, VoIP providers may use one of three options for calculating such revenues and allocating which revenues should be remitted to on a federal basis and which should be remitted on a state basis. This "end-user surcharge method provides voice providers with necessary flexibility in assessing applicable surcharges, while also ensuring that vital PPP budgeted funds are collected."[9]

In addition, as noted by AT&T, a switch to per-line contribution mechanism for PPPs require significant modifications to service provider billing systems and would not align with the federal system, which will continue (for now) to require contributions based on revenues.[10]

Finally, only a small number of states have experimented with per connection charges and the data is not yet clear whether such changes have actually stabilized those state funds. *See* Staff Report at 19. Therefore, VON recommends that the Commission maintain the existing revenue-based contribution methodology unless the California legislature amends Section 285 and the FCC modifies the federal universal service fund contribution methodology.

[8] RingCentral, Inc.'s Comments in Response to Order Instituting Rulemaking, R, 21-03-002 (April 5, 20210) at 2.
[9] *Id*.
[10] AT&T Opening Comments on Order Instituting Rulemaking to Update the Surcharge Mechanism for Public Purpose Programs, R, 21-03-002 (April 5, 20210) at 2, 4; see also Comments of CTIA on the Order Instituting Rulemaking, R, 21-03-002 (April 5, 20210) (suggesting the Commission's proposal may be unlawful because it may result in the collection of interstate revenue by the Commission) at 8.

III. Conclusion

VON looks forward to its continuing participating in this proceeding and working with the Commission and other stakeholders to a sustainable funding mechanism for crucial PPPs.

Respectfully submitted,

THE VON COALITION

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