

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

**VOICE ON THE NET COALITION COMMENTS
IN RESPONSE TO STAFF REPORT – PART 2**

The Voice on the Net Coalition (“VON”)¹ hereby respectfully submits these comments in response to the Staff Report – Part 2, released October 29, 2021 (“Staff Report”), in the above-captioned proceeding.² As discussed in more detail below, VON continues to be concerned that Staff’s recommendation for a flat rate, per access line surcharge mechanism to support the state’s Public Purpose Programs (“PPP”) is not technologically neutral and would continue to unfairly burden VoIP business customers, which, as the Staff recognizes, are already contributing to the PPP funds on an inequitable basis. VON recommends the Commission maintain the revenue-based funding mechanism to ensure that the Commission’s rules are consistent the federal Universal Service Fund contribution method.³

¹ VON is a trade association founded in 1996 to advocate for a fresh approach to regulation of Internet communications. For more information, see www.von.org.

² These reply comments are timely filed. See ALJ Hazlyn Fortune E-Mail Ruling Granting AT&T’s Motion and TURN Request for Extension of Time, issued November 10, 2021, R.21-03-002 (establishing current schedule).

³ 47 U.S.C. § 254(f). See VON Reply Comments in Response to OIR in Rulemaking 21-03-002 (April 23, 2021); see also VON’s Comments in Response to the Assigned Commissioner’s Scoping Memo and Ruling (July 28, 2021).

I. The PUC should not continue to force VoIP providers to bear an inequitable share of PPP surcharges.

The Staff Report makes clear that wireline and VoIP providers have been paying a growing and disproportionate share of the PPP surcharges.⁴ For example, in 2017, wireline and VoIP providers were responsible for 47.8 percent of PPP surcharges. That percentage swelled to 68.9 percent in 2021.⁵ In the same period, revenue from wireless providers dropped from 52.2 percent to 31.1 percent. From a dollar perspective, wireline/VoIP revenues have remained essentially flat from 2017-2021, while wireless revenue have dropped by more than \$220 million. In other words, based on the Staff's findings, forcing VoIP customers to pay even more PPP contributions would exacerbate inequities that already exist. Yet that appears to be exactly what Staff is proposing.

Staff has proposed a per access line surcharge. In its definition of access line, Staff ignores how VoIP technology currently works and declines to cap the number of lines on which the surcharge is placed for each individual customer. This proposal is not technology neutral. Today, business VoIP customers purchase a service that is the next generation of the traditional PBX. Unlike a traditional PBX, which may provision numerous extensions from a single PSTN line, VoIP multi-line telephone system providers provision a separate telephone number for each user. If the PUC adopts Staff's proposed per access line surcharge with no cap on the number of lines, business VoIP customers with 100 users may be paying 100 times the surcharge imposed

⁴ Staff Report at 6-7.

⁵ According to FCC data, as of June 30, 2019, there were more than 8.2 million VoIP access lines and 4.75 million wireline access lines in California, suggesting that VoIP providers are shouldering a greater portion of the existing burden. See Voice Telephone Services Report, State Level Subscriptions, found at [Voice Telephone Services Report | Federal Communications Commission \(fcc.gov\)](#) (last visited November 18, 2021).

on a business PBX customer also with 100 users. Such an outcome would be inherently unfair, anticompetitive, and require VoIP customers to continue to pay an inequitable share of PPP contributions.

A technology-neutral method is a minimum requirement for any new surcharge mechanism. If it cannot create a new mechanism that is technology-neutral, then the Commission should continue to assess contributions based on revenue until the Federal Communications Commission determines whether and how to reform the Universal Service Fund contribution methodology.

II. If the PUC adopts a per-access line surcharge, the definition of access line must be limited to those lines “provided to an end-use customer’s place of primary use that is located within California.”

Staff’s proposed definition does not comply with California law and would allow the PUC to access PPP surcharges on lines that are outside of their jurisdiction. While the California legislature recently amended the PUC statute granting the Commission authority to subject VoIP service to the surcharge, it did not modify the definition of VoIP service or the requirement that surcharges be based on “place of primary use.” Specifically, California Public Utilities Code section 285(d) states:

The authority to impose a surcharge pursuant to this section applies only to a surcharge imposed on end-use customers for interconnected VoIP service provided to an end-use customer’s place of primary use that is located within California. As used in this subdivision, **“place of primary use” means the street address where the end-use customer’s use of interconnected VoIP service primarily occurs**, or a reasonable proxy as determined by the interconnected VoIP service provider, such as the customer’s registered location for 911 purposes.

(Emphasis added).

In its proposed definition, Staff ignores the law and instead proposes to define an “access line” as a “telephone line” that “is associated with one assigned California phone number.”⁶ While staff specifically provided that a wireless communications service line is limited to “service provided to a user with a place of primary use in this state,”⁷ and a wireline communications service line must be “provided at a physical location in this state,”⁸ it proposes to define a VoIP service line as “voice communications service” as defined in Section 239. And not Section 285. This proposal is problematic for two primary reasons. First, only Section 285 authorizes the Commission to place a surcharge on VoIP service and this the reference to Section 239 is neither reasonable, nor otherwise lawful. Second, Section 285 expressly defines the VoIP service that the Commission may subject to surcharge – and that is interconnected VoIP service as defined by the FCC.⁹ Importantly, as noted above, Section 285(d) expressly refers to “interconnected VoIP service provided to an end-use customer’s place of primary use that is located within California,” whereas the Staff Proposal does not limit its definition of VoIP service line to only those lines primarily used in California. Staff’s omission is problematic in that it ignores California law and the nomadic nature of many VoIP services.

By their very nature, nomadic, non-fixed VoIP service, such as that provided by VON members, are not akin to traditional wireline or fixed VoIP services.¹⁰ A nomadic VoIP user can be assigned a number from a state other than the user’s place of primary use. For example, an employee of a California company who works from Kansas may be provisioned a California

⁶ Staff Report at 25.

⁷ Id. at 26.

⁸ Id.

⁹ Section 285(a).

¹⁰ Wireless customers rarely (if ever) change telephone numbers when moving between physical addresses.

number but primarily use that number in Kansas. Under Staff's proposed definition this customer could be forced to pay California and Kansas universal service surcharges.

Likewise, nomadic VoIP users can port in numbers from other states. For example, a Massachusetts nomadic VoIP customer may port its California number to its VoIP service. At this point, the primary place of use for this California number would be Massachusetts. Yet, despite the fact that the VoIP provider contracted with a customer in Massachusetts, did not provision the California number, and is not providing service in California, the provider would need to remit PPP surcharges both to the state of California and the state of Massachusetts for use of a single line. Such outcome cannot be what staff intended.

Without the critical reference to primary use within the state, the Commission will expand well beyond what the legislature anticipated when it gave the Commission authority to assess VoIP providers (and well beyond what it proposes for wireline and wireless services).

CONCLUSION

The Commission should not make any change to the existing PPP funding, unless it is technology-neutral, does not unfairly burden any class of service provider or customers, and is consistent with the contribution mechanism employed for funding the federal universal service fund. Staff's proposal does not meet these requirements. Therefore, VON advocates for maintaining the current revenue based assessment methodology until Congress and/or the Federal Communications Commission complete federal Universal Service Fund reform.

Respectfully submitted,

THE VON COALITION

/s/ Glenn S. Richards

Glenn S. Richards

Pillsbury Winthrop Shaw Pittman LLP

1200 Seventeenth Street, NW

Washington, DC 20036

glenn.richards@pillsburylaw.com

(202) 663-8215

Its Attorney

November 30, 2021