

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

*Amending the Definition of Interconnected
VoIP Service in Section 9.3 of the
Commission's Rules*

GN Docket No. 11-117

*Wireless E911 Location Accuracy
Requirements*

PS Docket No. 07-114

*E911 Requirements for IP-Enabled Service
Providers*

WC Docket No. 05-196

COMMENTS OF VONAGE HOLDINGS CORP.

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Vonage Holdings Corp. (“Vonage”) provides safe and reliable 911 service today and embraces its responsibility to connect users to 911 in an emergency. It will continue to do so as it introduces new and innovative interconnected services. Vonage fears, however, that a proposal set forth in this *Notice*¹—to impose 911 requirements on some *non-interconnected* VoIP services as if they were *interconnected* VoIP services—would prove counterproductive. In seeking to regulate services that do not substitute for traditional telephone service, the Commission would exceed its legal authority. In encouraging users to attempt to reach 911 through non-interconnected smartphone applications and the like, rather than through the mature and highly functional wireless 911 ecosystem, the Commission would actually harm public safety. And in doing all

¹ *Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules*, Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking WL 2728532 (FCC 2011) (“*Notice*”).

this, the Commission would discourage the creation and integration of innovative services. Vonage urges the Commission not to take such a step.²

I. BACKGROUND

Today, Vonage's most popular offerings are nomadic interconnected VoIP services. Vonage offers a variety of communications services connecting individuals and social networks through broadband devices worldwide, currently serving approximately 2.4 million subscriber lines. It provides feature-rich, affordable communication solutions offering flexibility, portability and ease-of-use. Consumers can use Vonage service, combined with a Vonage analog terminal adapter ("ATA"³) or other customer premises equipment ("CPE") and broadband Internet access service, to make calls to and receive calls from the public switched telephone network ("PSTN") over any broadband connection anywhere in the world.

Since the Commission's initial adoption of 911 rules for interconnected VoIP services, Vonage has worked aggressively to fulfill the Commission's mandate and provide E911 for these services.⁴ Today, as required by the Commission's rules, Vonage collects registered location information from its subscribers and, using the native 911 network, routes emergency calls and delivers location information using this subscriber-reported location information. This approach provides public safety with the caller's

² The Commission also seeks additional comment on applying automatic location regulation to *interconnected* VoIP services. *See Notice*, ¶ 73. Vonage addresses this topic in Part III of these comments, below.

³ Vonage has historically offered its customers many choices of ATA; in this document, the term ATA is meant to encompass the wide range of such devices available to consumers generally and to Vonage subscribers in particular.

⁴ *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 10,245 (2005) ("*VoIP E911 Order*").

precise and validated street address just as with traditional wireline services. Armed with this information, public safety can send help directly to the source of the emergency call, or call back for additional information as needed.⁵

More recently, Vonage has introduced several *non-interconnected* VoIP products. For example, it offers a free Facebook application that permits users with iPhone, iPad, iPod Touch, or Android devices to make free mobile calls using Wi-Fi or 3G to Facebook friends who also have the app directly from within their Facebook friends list.

Vonage also offers its Time to Call application for iOS. This application allows users to make outbound international calls over Wi-Fi or 3G at lower rates than most wireless service provider's international calling rates. Time to Call has no ability to receive inbound calls.

The *Notice* refers to products like Time to Call as “outbound-only interconnected VoIP service[s],”⁶ but this term is a misnomer. As discussed below, the very definition of an “interconnected” service—as distinguished by the Commission and Congress from non-interconnected services—is the ability to make *and receive* telephone calls. A service that cannot receive calls from the PSTN is not “interconnected” as that term has come to be understood and codified. It is the treatment of these *non-interconnected*, outbound-only services that is, in large part, the subject of this proceeding.

⁵ As discussed in other proceedings and in Part III., below, there is to date no technologically feasible alternative that can provide emergency responders with more precise or reliable location information for Vonage subscribers. In large part because Vonage subscribers have the freedom to make calls from any location where they have broadband access, Vonage has no way of automatically determining the location of its subscribers when they initiate a Vonage call.

⁶ *Notice*, ¶ 2.

II. THE COMMISSION LACKS LEGAL AUTHORITY TO AMEND THE DEFINITION OF “INTERCONNECTED VOIP SERVICE” AS PROPOSED.

The Commission seeks to apply 911 rules to non-interconnected, outbound-only VoIP services.⁷ Specifically, the *Notice* proposes “two potential technical modifications to the definition of interconnected VoIP services” contained in section 9.3 of the Commission’s rules.⁸ That provision now defines an “interconnected VoIP service” as one that

- (1) enables real-time, two-way voice communications;
- (2) requires a broadband connection from the user’s location;
- (3) requires Internet protocol-compatible customer premises equipment (CPE); and
- (4) permits users generally to receive calls that originate on the public switched telephone network [(“PSTN”)] and to terminate calls to the [PSTN].⁹

The Commission proposes to eliminate the fourth prong’s reference to “receiv[ing] calls.”¹⁰ Thus, the term “interconnected VoIP service” would, for the first time, apply to non-interconnected VoIP services that place calls onto the PSTN but cannot receive them. The Commission, moreover, seemingly intends to make this change only for purposes of 911 rules.¹¹ Thus, non-interconnected, outbound-only VoIP services would

⁷ *Notice*, ¶¶ 40 *et seq.*

⁸ *Id.*, ¶ 49.

⁹ 47 C.F.R. § 9.3.

¹⁰ *Notice.*, ¶¶ 50-51. The Commission also proposes to (1) change the second prong to specify an “Internet connection” rather than a broadband connection, as the defining feature, and (2) to reference United States E.164 telephone numbers in the fourth prong, rather than the PSTN. *Id.*

¹¹ *Id.*, ¶ 51. (“Thus, we seek comment on whether *to extend 911 requirements* to any service that (1) enables real-time, two-way voice communications; (2) requires an Internet connection from the user’s location; (3) requires Internet protocol-compatible customer

be classified as “interconnected” for purposes of the 911 rules, but would remain classified as “non-interconnected” for all other purposes.

This is no “technical modification.” It is, in fact, well outside the Commission’s legal authority. The Commission cannot change the definition of non-interconnected VoIP service to include interconnected services. Even if it could, it could not do so for only 911 purposes.

A. The Commission cannot change the definition of non-interconnected VoIP service to include interconnected service.

The Commission’s authority to impose 911 rules on interconnected VoIP 911 service was, in its words, “ratified” by Congress in the NET 911 Improvement Act.¹² That Act, in turn, incorporates by reference the Commission’s definition of “interconnected VoIP providers.”¹³ The Net 911 Improvement Act authorizes the Commission to regulate only such providers.¹⁴ Therefore, changes to the Commission’s

premises equipment; and (4) permits users to terminate calls to all or substantially all United States E.164 telephone numbers.”) (emphasis supplied); *see also id.*, ¶¶ 101 (seeking comment on “whether, if we decide to amend the definition of interconnected VoIP service in section 9.3, we should amend it for 911 purposes only.”).

¹² *Notice*, ¶¶ 96-97, *citing* New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283, 122 Stat. 2620 (2008) (“NET 911 Improvement Act”) (amending Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999)), *codified at* 47 U.S.C. §§ 615-615a-1.

¹³ More specifically, the NET 911 Improvement Act applies to “IP-enabled voice service provider[s].” 47 U.S.C. § 615a(a). That term, in turn, “has the meaning given the term ‘interconnected VoIP service’ by section 9.3 of the Federal Communications Commission’s regulations (47 CFR 9.3).” 47 U.S.C. § 615b(8).

¹⁴ *Id.* § 615a-1(a) (referring to “the duty of each IP-enabled voice service provider to provide 9-1-1 service to its subscribers in accordance with the requirements of the Federal Communications Commission”).

regulatory definition must in turn “flow through” to the statutory definition in order to be within Congress’s grant of authority.¹⁵

The Act, however, is silent on this subject. It refers only to “the term ‘interconnected VoIP service’ [as defined in] section 9.3 of the Federal Communications Commission’s regulations (47 CFR § 9.3).”¹⁶ When Congress incorporates a regulatory definition into a statute, it routinely states that subsequent changes in the regulatory definition will, in turn, change the statute.¹⁷ Indeed, it did just this elsewhere in the NET 911 Improvement Act itself¹⁸ and subsequently did so twice more in incorporating the very regulatory definition at issue here.¹⁹ Congress’s failure to use similar language in

¹⁵ The Commission also argues that its proposal is within its ancillary authority. *Notice*, ¶ 98. Ancillary authority, however, does not permit the Commission to act in contravention of a Congressional directive. *E.g.*, *Motion Picture Ass’n of America Inc. v. FCC*, 309 F.3d 796, 806-07 (D.C. Cir. 2002) (holding that where Congress made deliberate decision not to adopt particular rules, its “silence surely cannot be read as ambiguity resulting in [ancillary] delegated authority to the FCC to promulgate the disputed regulations”). In the NET 911 Improvement Act, Congress plainly intended to distinguish between interconnected and non-interconnected services by incorporating a Commission definition doing so. The Commission cannot use its ancillary authority to abandon this distinction.

¹⁶ 47 U.S.C. § 615b(8).

¹⁷ The Commission also sometimes indicates where it intends to freeze incorporated regulatory definitions in time. *Compare* 17 U.S.C. § 119(d)(10)(A)(i) (making subscribers eligible for analog distant signals if they cannot receive analog signals of “Grade B intensity as defined by the Federal Communications Commission in section 73.683(a) of title 47, Code of Federal Regulations, *as in effect on January 1, 1999*”); *with id.*, § 119(d)(10)(A)(ii) (making subscribers eligible for digital distant signals if they cannot receive signals of an intensity “defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission . . . *as such regulations may be amended from time to time.*”) (emphases added).

¹⁸ 47 U.S.C. § 615a-1(a). *Id.* (requiring interconnected VoIP providers to comply with 911 regulations “as in effect on [the date of enactment of the NET 911 Act] *and as such requirements may be modified by the Commission from time to time*”) (emphasis supplied).

¹⁹ *See* Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, 124 Stat. 2751 (amending the Communications Act to define ‘interconnected VoIP service’ as “the meaning given such term under section 9.3 of title 47, Code of Federal Regulations, *as such section may be amended from time to time*”) (emphasis supplied); Truth

the NET 911 Act indicates that it intended a different result.²⁰ The Commission points to language in a Committee report suggesting that at least some of the bill’s drafters actually did intend for the statutory definition to evolve along with the FCC’s definition of “interconnected VoIP service.”²¹ One need not determine exactly how much weight this legislative history can bear,²² however, to be quite sure that it cannot support the weight the Commission seeks to place on it.

in Caller ID Act of 2009, Pub. L. No. 111-331, 124 Stat. 3572 (2010) (defining “IP-enabled Voice Service” as having “the meaning given that term by section 9.3 of the Commission’s regulations (47 C.F.R. 9.3), *as those regulations may be amended by the Commission from time to time*).

²⁰ See, e.g., *Hassett v. Welch*, 303 U.S. 303, 314 (1938) (invoking the “well settled canon” that “[w]here one statute adopts the particular provisions of another by a specific and descriptive reference to the statute or provisions adopted . . . [s]uch adoption takes the statute as it exists at the time of adoption and does not include subsequent additions or modifications by the statute so taken unless it does so by express intent”); *United States v. An Article of Cosmetic Consisting of 1,227 Packages*, 372 F. Supp. 302, 304 (D. Or. 1974) (holding that “[w]hen a statute adopts by specific reference the provisions of another statute, regulation, or ordinance, such provisions are incorporated in the form in which they exist at the time of reference, and not as subsequently modified.”); but see *Lukhard v. Reed*, 481 U.S. 368, 379 (1987) (holding that “[i]t is of course not true that whenever Congress enacts legislation using a word that has a given administrative interpretation it means to freeze that administrative interpretation in place.”); *Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act*, 14 FCC Rcd. 2654, ¶ 30 (1999) (“*SHVA Report and Order*”) (citing *Lukhard* for proposition that the Commission’s definition of “Grade B household,” as incorporated into the Copyright Act, was not frozen in time).

²¹ *Notice*, ¶ 96 n.213, citing H.R. Rep. 110-442, 110th Cong., 1st Sess. 16 (2007) (“New section 7, as redesignated by H.R. 3403, would add a definition of ‘IP-enabled voice service’ that is tied to the Commission’s definition of ‘interconnected VoIP service’ at 47 C.F.R. 9.3. The Committee recognizes that new technologies or successor protocols may enter the marketplace. As these new technologies or successor protocols become widely accepted and fungible substitutes for telephony, the Committee recognizes that the Commission may need to modify its definition from time to time.”).

²² See, e.g., *Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 649 (1990) (“The language of a statute—particularly language expressly granting an agency broad authority—is not to be regarded as modified by examples set forth in the legislative history.”); *Puerto Rico Dep’t of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 501 (1988) (“We have never [looked for] congressional intent in a vacuum, unrelated to the giving of meaning to an enacted statutory text. . . . [U]nenacted approvals, beliefs, and desires are not laws.”).

Even if Congress anticipated “that the Commission may need to modify its definition from time to time,” this does not mean that Act permits the Commission to make whatever modifications it pleases. At most, the Commission can modify the definition only if its new definition is “consistent with the language, purpose, and legislative history of the statute.”²³ An attempt to change the definition to apply to non-VoIP providers, for example, would plainly be unauthorized.

So too is the Commission’s proposal to define *non-interconnected* VoIP service to include *interconnected* VoIP services. The distinction between interconnected VoIP service—service that is the functional equivalent to the traditional telephone—and non-interconnected VoIP service is fundamental to the entire regulatory scheme ratified by Congress. Were there any doubt on this score, Congress recently clarified that the two are separate services by defining a “non-interconnected VoIP service” as one that “does not include any service that is an interconnected VoIP service.”²⁴ Even if, as the Commission claims, Congress authorized it to change the definition of “interconnected VoIP service” to account for new technologies or the increasing adoption of older ones, such authority would extend only to changes such as replacing the term “broadband” connection with “Internet connection” and the term “PSTN” with the term “E.164 telephone numbers.”²⁵ Such authority could not extend to the attempted regulation of

²³ *Wilcox v. Ives*, 864 F.2d 915, 925 (1st Cir. 1988) (interpreting *Lukhard, supra*); *see also, e.g., Society of Plastics Industry, Inc., v. FCC*, 955 F. 2d 722, 729 (D.C Cir. 1992) (finding changes to an incorporated regulation “clearly reasonable in light of Congress’s expressed intent in [the statute]”); *AFL-CIO v. Brock*, 835 F. 2d 912, 918-19 (D.C. Cir. 1987) (remanding back to the agency for an explanation of how the new interpretation was consistent with the purposes of the Act”).

²⁴ *See* 47 U.S.C. § 153(36)(B).

²⁵ *Notice*, ¶¶ 49-51.

non-interconnected VoIP providers any more than it could extend to the attempted regulation of non-VoIP providers.²⁶

The Commission cannot avoid this problem by arguing that it proposes merely to reclassify “outbound” services from the category of “non-interconnected” to the category of “interconnected.” The dichotomy between “connection” and “interconnection” ratified by Congress is defined *precisely* by whether the service can place and receive calls to and from the PSTN. This distinction—and, indeed, outbound services themselves—existed when the Commission first sought to regulate interconnected VoIP services, and were expressly considered by the Commission in doing so.²⁷ While technology may have changed since 2005, the concept of interconnection has not.

B. The Commission Cannot Amend its Definition for Certain Purposes Only.

The definition of “interconnected VoIP service” in section 9.3 applies to far more than the 911 rules. Congress has incorporated this definition in two other places—the CVAA²⁸ and the Truth in Caller ID Act.²⁹ The Commission uses this definition in a

²⁶ Moreover, as the Net 911 Act plainly limits the Commission’s authority to regulation of interconnected VoIP services, the Commission cannot invoke its ancillary authority to regulate non-interconnected services.

²⁷ *VoIP E911 Order*, ¶ 23 (“If a VoIP service subscriber is able to receive calls from other VoIP service users *and* from telephones connected to the PSTN, and is able to place calls to other VoIP service users *and* to telephones connected to the PSTN, a customer reasonably could expect to be able to dial 911 using that service to access appropriate emergency services. Thus, we believe that a service that enables a customer to do everything (or nearly everything) the customer could do using an analog telephone, and more, can at least reasonably be expected and required to route 911 calls to the appropriate destination.”) (emphasis in original); *id.*, ¶ 24 n. 78 (“The instant Order does not apply to providers of other IP-based services such as instant messaging or Internet gaming because although such services may contain a voice component, customers of these services cannot place calls to and receive calls from the PSTN.”)

²⁸ See 47 U.S.C. § 153(25) (containing definition of “Interconnected VoIP Service” incorporating Commission definition).

multitude of other contexts, including USF, CALEA, disability access, telephone relay service, CPNI, number portability, regulatory fees, and service discontinuance. In such circumstances, the Commission cannot create a special, “sub-definition” applicable only for 911 while leaving the definition intact for all other purposes. And it cannot change the definition more generally without additional opportunity for affected parties to comment.

The Commission has examined this very issue before in the context of television service. The term “Grade B intensity” refers to a measure of analog television signal strength, and the Commission defines the term in section 73.683(a) of its rules.³⁰ The term was first used to identify a geographic contour that defines an analog television station’s service area.³¹ It was later incorporated into the Copyright Act to determine eligibility as an “unserved household” for distant network signals.³² Twelve years ago, a group of satellite carriers asked the Commission to amend the definition of “Grade B intensity” for purposes of the Copyright Act only—which would make it easier for subscribers to receive distant network signals—while leaving the definition intact for other purposes. While the Commission found that it had the authority to amend the

²⁹ See 47 U.S.C. § 227(e)(8)(C) (containing definition of “IP-enabled voice service” incorporating Commission definition).

³⁰ 47 C.F.R. § 73.683(a).

³¹ See *Television Broadcast Service*, Third Notice of Further Proposed Rule Making, Appendix B, 16 Fed. Reg. 3072, 3080 (April 7, 1951), adopted in *Amendment of Section 3.606 of the Commission’s Rules and Regulations and Amendment of the Commission’s Rules, Regulations, and Engineering Standards Concerning the Television Broadcast Service in the Band 470 to 890 MHz for Television Broadcasting*, Sixth Report and Order, 41 F.C.C. 148 (1952).

³² This provision is now codified at 17 U.S.C. § 119(d)(10)(A).

definition generally, it concluded that it did not “have the authority to create a special Grade B definition solely for the purpose of the SHVA.”³³

[W]e believe that it is significant that Congress tied the [Copyright provision] to the Commission's Grade B standard, which was and is used for a multiplicity of purposes. We think Congress' use of the widely used Grade B standard in SHVA indicates that we should not adopt a separate Grade B intensity standard for purposes of SHVA.³⁴

It also concluded that, even if it had the authority to do so, creating such a special rule would “be inadvisable” because of the confusion and dislocation it would cause.³⁵

The Commission also concluded that it was in no position to change the Grade B definition more generally. It found: “The significant and widespread ramifications of changing these definitions demand that we have a more complete and conclusive record, and more time to evaluate the record, than we have in this rulemaking.”³⁶ The same is true in this proceeding. The Commission cannot, consistent with its obligations under the Administrative Procedure Act, change the definition of “interconnected VoIP service” for all purposes without the opportunity to give all parties affected by such a change—parties that would have no reason to participate in this proceeding—the opportunity to comment.³⁷

³³ *SHVA Report and Order* ¶ 43; Order on Reconsideration, 14 FCC Rcd 17,373, ¶ 10 (1999).

³⁴ *SHVA Report and Order*, ¶ 31; see also *Establishment of a Model for Predicting Digital Broadcast Television Field Strength Received at Individual Locations*, Report and Order, 25 FCC Rcd. 16426, ¶ 32 (2010) (refusing to alter predictive model used to determine signal strength in part because of model’s relationship to digital television service areas).

³⁵ *SHVA Report and Order*, ¶ 31.

³⁶ *Id.*, ¶ 43.

³⁷ *American Water Works Ass’n. v. EPA*, 40 F.3d 1266, 1274 (D.C. Cir. 1994) (standard for when additional comment is required under the APA is “whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule”).

III. APPLYING 911 REQUIREMENTS TO NON-INTERCONNECTED VOIP SERVICES WOULD BE COUNTERPRODUCTIVE

A. Non-Interconnected, Outbound-Only Services Are Not Substitutes for Traditional Telephone Service

All parties agree on the essential basis of Commission regulation in this area: services that substitute for traditional telephone service should be regulated as such.³⁸ Such services are likely to generate consumer expectations that they will support 911 calling, and they are required to do so. Vonage's interconnected VoIP services are regulated on this basis. Vonage disagrees, however, with the Commission's tentative conclusion that *non-interconnected*, outbound-only VoIP services either substitute for traditional telephone service or generate consumer expectations that they will have 911 functionality.

Of course, to the extent that the Commission is concerned about providers that offer services that offer the same capabilities as interconnected VoIP but claim that they are not subject to 911 or other regulatory obligations, the FCC should address that concern by enforcing its existing rules.³⁹ Entities that are truly interconnected should be treated as such.⁴⁰

These concerns, however, are inapplicable to true outbound-only services. The Commission asserts that certain hardware-based offerings are "indistinguishable from

³⁸ *VoIP E911 Order*, ¶ 23 ("The record clearly indicates, however, that consumers expect that VoIP services that are interconnected with the PSTN will function in some ways like a "regular telephone" service.").

³⁹ *Notice*, ¶¶ 45 *et seq.*

⁴⁰ *VoIP E911 Order*, ¶ 58 ("We tentatively conclude that a provider of a VoIP service offering that permits users generally to receive calls that originate on the PSTN and separately makes available a different offering that permits users generally to terminate calls to the PSTN should be subject to the rules we adopt in today's Order if a user can combine those separate offerings or can use them simultaneously or in immediate succession.")

traditional landline or cordless phones in their ability to place outbound calls.”⁴¹ While this may be true, these offerings are certainly distinct from traditional phones if they cannot receive inbound calls. And that is a critical difference. Think, for example, of network effect—a fundamental driver of the value of the telephone. There can be no network effect for outbound only services, however, because in a community of outbound only users, no one could make or receive a phone call. Each user would be able to call out, but no user could receive the outbound call.

There is therefore no basis on which to conclude that consumers will abandon services that provide inbound calling capability in favor of services that do not. Because outbound-only services cannot replace two-way services, there is no reason to impose duplicative 911 requirements on these services. There are, however, very good reasons not to.

B. Extending 911 Rules to Non-Interconnected Services Carries Safety Risks and Will Discourage Voice Innovation and Integration.

Extending 911 obligations to services that do not substitute for traditional telephone service would risk causing user confusion. It would also divert resources from building a single reliable and accurate 911 network, and it would certainly discourage the creation of new, innovative services. Vonage fears a worst-of-all-worlds result of such regulation: a reduction in both public safety and innovation.

In theory, a consumer using a social network or other application permitting outbound calling on her smartphone could reach the 911 system in one of two ways. She could attempt to do so through the non-interconnected, outbound-only application. Or she could do so through her smartphone’s telephone functionality. The Commission’s

⁴¹ Notice, ¶ 46.

proposal seems to assume that both options are—or can be made to be—equally effective. But they are not. Rather than spending years trying to make them equally effective, the Commission should instead educate and encourage smartphone users to make a CMRS 911 call in the event of an emergency.

There can be no doubt that the existing 911 network is, and will remain for the foreseeable future, more reliable than anything achievable by non-interconnected, outbound applications. The CMRS 911 network has the benefit of more than fifteen years of investment and development,⁴² and the wireline network has been in place for even longer. A consumer dialing 911 on her wired or wireless phone has every expectation both that she will reach the 911 system and that the system will receive accurate location identification information. By contrast, non-interconnected services do not have the same history of development and investment as traditional telephone services, and likely would not deliver the same degree of reliability and accuracy as existing wireline and wireless 911 systems. Indeed, this very proceeding makes clear that automatic location identification technology even for *interconnected* VoIP service services is only at the beginning of its development.⁴³ Public safety will not benefit if consumers are induced to use less reliable 911 calling solutions instead of established wireless or wireline 911 services.

⁴² See, e.g., Notice, ¶¶ 5-12 (describing development of CMRS 911 capability).

⁴³ Notice, ¶ 71 (describing challenges in automatic location technologies for “over the top” VoIP products); ¶¶ 78-80 (noting that “[t]he location-based capabilities inherent in the design of these devices and applications *could perhaps be leveraged* when consumers contact 911 using non-CMRS-based voice services,” and seeking comment “on the costs and benefits of the approaches described above”) (emphasis added).

Moreover, applying 911 rules to non-interconnected, outbound-only services would imperil the Commission's attempts to implement a single 911 accuracy standard. In this proceeding, the Commission begins the process of phasing out the network-based accuracy standard.⁴⁴ In doing so, it recognizes the significant benefits of a unitary standard to public safety.⁴⁵ This process takes place in the context of other ongoing efforts to harmonize 911 technologies and rules.⁴⁶ These efforts would be frustrated were the Commission to drive consumers away from established 911 solutions and onto different and far less developed ones. Again, a better approach would be to ensure that consumers are educated on the importance of using their wireline or wireless phone to make emergency calls.

Lastly, imposing 911 requirements on non-interconnected, outbound-only services would create undeniable disincentives for providers to develop such services in the first place or to incorporate them into existing services such as Facebook. In Vonage's view, such disincentives would be especially unfortunate in this case, as they would be caused by a policy that hindered, rather than helped, public safety.

III. INTERCONNECTED VOIP PROVIDERS SHOULD NOT BE SUBJECT TO AUTOMATIC LOCATION REQUIREMENTS

Along with seeking to impose 911 requirements on non-interconnected VoIP services, the Commission once again seeks comment on imposing automatic location

⁴⁴ *Id.*, ¶ 1.

⁴⁵ *Id.*, ¶ 19 (“With the more precise handset-based standard as the unitary standard, we expect it to be easier for first responders to locate wireless customers in emergency situations.”).

⁴⁶ *See, e.g., Wireless E911 Location Accuracy Requirements*, Second Report and Order, 25 FCC Rcd. 18,909, ¶¶ 12 *et seq.* (2010) (requiring all carriers to comply with section 20.18(h) at the county or PSAP level).

requirements on *interconnected* VoIP services, such as those Vonage provides to the vast majority of its customers.⁴⁷ Vonage provided extensive comment on this subject earlier this year in response to the Commission's *Location Accuracy* NPRM,⁴⁸

Vonage continues to be in favor of the Commission's effort to support the development of automatic location technology.⁴⁹ In particular, it appreciates the Commission's rules in fostering industry working groups and the aiding development of industry standards. Vonage reiterate here its views that Interconnected VoIP providers should not be subject to automatic location requirements now, and obligations should be put in place only when automatic technology is technically mature, economically feasible, and can improve on the existing registered location approach. As Vonage has explained, however, (and as the Commission appears to concede⁵⁰) there is no reliable autolocation service for nomadic VoIP available today. The Commission should adopt new requirements only when new requirements can deliver demonstrable improvements over the existing regime.

⁴⁷ *Notice*, ¶ 72.

⁴⁸ *See* Comments of Vonage Holdings Corp., PS Docket No. 07-114, WC Docket No. 05-196 (filed Jan. 19, 2011).

⁴⁹ *See id.*

⁵⁰ *See Notice*, ¶ 71 (“We agree with commenters that the provision of ALI in the interconnected VoIP context is particularly challenging because of the increasing prevalence of “over-the-top” VoIP service, where the over-the-top VoIP service provider that offers interconnected VoIP service to consumers is a different entity from the broadband provider that provides the underlying Internet connectivity.”).

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