

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



**FILED**

Order Instituting Rulemaking Proceeding to Consider )  
Changes to Licensing Status and Obligations )  
of Interconnected Voice over Internet Protocol Carriers )

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**REPLY COMMENTS OF CLOUD COMMUNICATIONS ALLIANCE IN RESPONSE TO  
COMMENTS ON THE SCOPING MEMO AND RULING IN THE PROCEEDING TO  
CONSIDER CHANGES TO LICENSING STATUS AND OBLIGATIONS OF  
INTERCONNECTED VOICE OVER INTERNET PROTOCOL CARRIERS**

Cloud Communications Alliance

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June 30, 2023

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The Cloud Communications Alliance (CCA) respectfully submits these reply comments in response to comments filed in response to the Scoping Memo and Ruling in the Rulemaking Proceeding to Consider Changes to Licensing Status and Obligations of Interconnected Voice over Internet Protocol Carriers (Scoping Memo).<sup>1</sup> CCA is the leading affiliation group representing the cloud communications industry globally, including cloud service providers of unified communications systems for enterprise customers and their vendors.

CCA joins other commenters, including the VON Coalition<sup>2</sup> and the California Broadband & Video Association,<sup>3</sup> in opposing the expansion of VoIP regulation, as proposed in the Scoping Memo. The Von Coalition rightly emphasizes that the vast technological and economic differences between the technologies at issue “make the decades-old regulatory classifications and frameworks that apply to LECs and NDIECs a poor and otherwise improper

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<sup>1</sup> Assigned Commissioner’s Scoping Memo and Ruling, Order Instituting Rulemaking to Consider Changes to Licensing Status and Obligations of Interconnected Voice over Internet Protocol Carriers, R.22-08-008 (Apr. 28, 2023) (Scoping Memo).

<sup>2</sup> “[T]his Commission alone wanders down unsteady regulatory path that will likely result in litigation and provide no discernable benefits to residential, business or governmental users of internet communication services in California.” Voice of the Net Coalition Comments on Scoping Memo (June 2, 2023) at 5.

<sup>3</sup> “As a threshold matter, imposing a new regulatory framework on interconnected VoIP providers is unwarranted and would be legally impermissible.” California Broadband Association Comments on Scoping Memo (June 2, 2023) at 4.

fit for interconnected VoIP providers” and the commenters agree that the proposed regulation is not only unsuited for VoIP technology, but actually legally beyond the authority of the Commission to impose.<sup>4</sup> For these reasons, CCA supports preserving the current approach to state regulation of VoIP providers.

In these Reply Comments, CCA opposes parties expressing their support for increased regulation of the VoIP industry by the state of California. It is CCA’s position that the imposition of additional regulatory burdens on VoIP providers that exclusively service the business community is unnecessary and unsupported by the evidentiary record or actual marketplace experiences. CCA asserts that regulating VoIP on the same basis as wireline telephony (as some commenters suggest), is backwards thinking and unlikely to benefit the businesses which rely on VoIP services, regardless of size – small and medium (“SMB”) or enterprise. In fact, CCA believes quite the opposite is true: more regulatory burdens equal higher costs, greater barriers to market entry, and will inevitably lead to less competition and higher prices. Until actual consumer harm is demonstrated, CCA asserts there is no failure in the market necessitating the heavy hand of government regulation and, therefore, the Commission should disregard the comments of any party seeking greater regulatory impositions absent record evidence of actual marketplace harm.

**Commenters supporting regulatory expansion provide no evidence that burdening VoIP providers will enhance competition and protect consumers, or that the existing regulatory regime somehow harms consumers, in the first instance.**

The anachronistic argument that is repeatedly made by two commenters who support regulatory expansion is that California should impose “technological neutrality” on its regulatory

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<sup>4</sup> Voice of the Net Coalition Comments on Scoping Memo (June 2, 2023) at 12.

landscape, specifically by requiring VoIP service providers to obtain a Certificate of Public Convenience and Necessity (CPCN). This sort of backwards thinking ignores the reality of VoIP, other advanced communications technologies, and the continuous and rapid pace at which both the technologies and consumers are evolving and adapting to new and novel use cases.

Commenters that believe the imposition of CPCN requirements on companies will somehow improve competition are misinformed and misguided, as nothing could be further from the truth.

An explanation of how extending CPCN requirements would increase competition is noticeably lacking in the two comments which support increased regulation. The Center for Accessible Technology, The Utility Reform Network, and the Communications Workers of America, District 9 (“Joint Commenters”), for example, assert “by requiring that providers obtain a CPCN, the Commission will counter the pressures of consolidation in the market.”<sup>5</sup> In making this baseless assertion, Joint Commenters evoked recent changes impacting the mobile service market, specifically T-Mobile’s acquisition of Sprint, and the virtual carrier, Mint Mobile. The Joint Commenters posit that certain market shifts had “likely” increased market power in California for “some providers,” but neglect to identify any specific California carriers or customer segments impacted.<sup>6</sup>

The position taken by the Joint Commenters is vague and nonsensical. The wireless market segment is highly concentrated and dominated by a small handful of facilities-based mobile network operators (“MNOs”) where competitive providers depend on the MNOs against whom they compete. The market for VoIP services is robustly competitive, as service providers—particularly those serving the business community—are able to operate independently from the network operators by providing over the top, nomadic solutions that are network provider

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<sup>5</sup> Center for Accessible Technology et al Comments on Scoping Memo (June 2, 2023) at 5.

<sup>6</sup> *Id.* At 6.

agnostic. At last count, there are 893 businesses registered with the Federal Communications Commission (“FCC”) as interconnected VoIP service providers and conducting business in the state,<sup>7</sup> as compared to 130 identified as Cellular/PCS/SMR.<sup>8</sup> The Joint Commenters use of a wholly unique technology and market segment as a reference point is simply too vague, too misinformed, and candidly, too misleading to be the basis of increased regulation of VoIP by the state of California.

Likewise, the Small Business Utility Advocates (SBUA) fails to make its case for requiring VoIP service providers to obtain CPCNs. Even as SBUA acknowledges that “[t]echnology neutrality does not necessarily demand that the exact same rules apply to different technologies[,]” it urges the application of new burdens to VoIP providers without explaining how additional licensing will produce what the comment refers to as “true choice”.<sup>9</sup> This is begging the question. Moreover, as CCA has highlighted, there are currently close to one thousand businesses actively serving the California market with VoIP services and offering California consumers an abundance of vibrantly competitive options.

Absent anything more than the sheer conjecture voiced by the Joint Commenters and SBUA, and until the Commission is confronted with actual evidence of either a lack of competition or the failure of competitive market forces to stem abuses and consumer harm, CCA urges the Commission to disregard those who are seemingly advocating for increased regulation based on misplaced principles.

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<sup>7</sup> Federal Communications Commission. "Form 499 Filer Database Search Results for ‘Active,’ ‘Interconnected VoIP’ and ‘California’ conducted on June 29, 2023." Accessed June 29, 2023. URL: <https://apps.fcc.gov/cgb/form499/499a.cfm>.

<sup>8</sup> Federal Communications Commission. "Form 499 Filer Database Search Results for ‘Active,’ ‘Cellular/PCS/SMR’ and ‘California’ conducted on June 29, 2023." Accessed June 29, 2023. URL: <https://apps.fcc.gov/cgb/form499/499a.cfm>.

<sup>9</sup> SBUA Comments on Scoping Memo (June 2, 2023) at 7.

**Without evidence, commenters claim that expanded VoIP regulation will increase service quality; such baseless assertions are misguided.**

Commenters favoring the expansion of regulatory impositions on VoIP providers suggest that doing so will lead to fewer dropped calls and higher service quality, yet they provide not a shred of evidence that: (1) Quality of Service (“QoS”) issues are real, plentiful, and not imagined or (2) that regulations would cure what is, in truth, a non-issue. In the hyper-competitive VoIP services marketplace that exists in California and throughout country – in particular, as it pertains to business consumers (of all shape and sizes) -- there is a tried-and-true solution to any QoS issue, and it’s called “choice.” The answer doesn’t lie in regulatory burdens that are likely to reduce competition in the state. Instead, it’s a proverbial phone call or “click of a button” away, as there are, literally, hundreds of competitive options available and consumers can (and do) effectively regulate the market with their feet.

Joint Commenters claim that “[a]n appropriate framework can support the ability of Commission staff to investigate service complaints” from consumers but fail to explain why this process can’t occur under existing rules – even whilst acknowledging that VoIP providers are already required to use the FCC’s Network Outage Reporting System (NORS) to keep regulators and subscribers informed of network-related issues.<sup>10</sup> To the extent that VoIP service quality does suffer in areas, these shortcomings are attributable to factors outside of the control of the VoIP service providers themselves.

Burdening VoIP providers with additional obligations would not reach the root causes of packet loss and disconnection – the poor quality of customer broadband and local area networks. The FCC has not yet regulated interconnection between VoIP and the PTSN, making it difficult

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<sup>10</sup> Center for Accessible Technology et al Comments on Scoping Memo (June 2, 2023) at 19.

for VoIP providers to guarantee service quality which is reliant on the conduct of their competitors. The commenters in favor of increased regulation have not mentioned this issue with VoIP-PTSN interconnection, placing the blame solely and unreasonably on VoIP technology itself. The state of national, and particularly rural, broadband is a problem into which the government has spent and continues to spend billions through initiatives like the Broadband Equity, Access, and Deployment Program (BEAD). It is unreasonable to try and engineer improvements in third party internet infrastructure by weighing down VoIP service providers with irrelevant obligations.

The solution to VoIP-PSTN interconnection and service quality will lie, like the solutions to most other problems, in more competition, not less. As the number of VoIP service providers increases, the market will have the tools to solve any quality issues, to the extent that they exist, and many others which may arise. Raising the barrier to entry into the telecommunications market on arbitrary and unsupported grounds will not accomplish any of the goals which the Joint Commenters and SBUA claim to support. It will only infringe on the competition of a thriving and diverse market to the detriment of businesses and their customers.

All of which begs the question, who do the Joint Commenters and SBUA really think should be regulated by the Commission?

- Neither has pointed to any evidence that the marketplace for VoIP services is lacking for competitive choice;
- Neither has identified any facts to support their assertions that consumers are being harmed by providers of VoIP services;
- And the only QoS issues raised – “dropped calls” and “network outages” -- are issues that are outside the control of the overwhelming majority of businesses providing VoIP services.

It doesn't take a degree in rocket science to understand that those commenters pushing for regulation of VoIP services are using this rulemaking proceeding as a strawman to accomplish their true goal, which is to establish regulatory jurisdiction and oversight over the broadband network operators and providers of Internet Access. CCA takes no position regarding whether or not, or the extent to which, the market for broadband Internet services warrants regulation by the state. Perhaps it does, but this is the wrong proceeding and the wrong opportunity for the commenters to accomplish this objective.

### **Conclusion**

Imposing licensing, QoS and other regulatory burdens on the highly competitive market for nomadic and over-the-top VoIP services is more likely to create consumer harms, which, today, are largely non-existent thanks to robust competition fostered by the light touch regulatory framework established by the FCC nearly 20 years ago.<sup>11</sup> What may have been deemed sheer free market theory, at the time, has proven to be prescient.<sup>12</sup> As the Joint Commenters and SBUA acutely demonstrate through their empty comments, devoid of any real evidence of consumer harm or market abuses within the VoIP sector (particularly the business consumer segment), nothing of note has arisen in the years since the FCC established a light touch, federally administered regulatory regime applicable to nomadic VoIP that should persuade the Commission to take a markedly different course. Indeed, as CCA and other commenters have

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<sup>11</sup> See also: *In re Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order*, 19 FCC Red 22404 (2004) ("Vonage Preemption Order")

<sup>12</sup> "As is often the case, uncertainty could do almost as much harm as the adoption of rules that directly restrict IP telephony's deployment and permitted scope of use. In that setting, it is particularly important that policymakers and regulators around the world act promptly to remove barriers and resist the temptation to impose burdensome requirements that could stunt the growth of this dynamic new medium of communications." Burt A. Braverman, *VoIP: The Future of Telephony is Now... if Regulation Doesn't Get in the Way*, 1 Indian J. Law Technol. 47 (2005).



demonstrated through their comments and contributions to this proceeding, the Commission may cause more harm than good through regulatory impositions. Unnecessary regulation and the creation of market entry barriers will result in less competition, fewer choices, and higher prices, all of which would hurt the very consumers the Commission seeks to protect.

Cloud Communications Alliance

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Marashlian', with a long horizontal flourish extending to the right.

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