

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

<u>In the Matter of:</u>	}	
	}	
<b>Vonage Holdings Corporation</b>	}	<b>WC Docket: 03-211</b>
<b>Petition for Declaratory Ruling</b>	}	
<b>Concerning an Order of the Minnesota</b>	}	
<b>Public Utilities Commission</b>	}	

**TO: THE COMMISSION**

**REPLY COMMENTS OF  
TELECOMMUNICATIONS FOR THE DEAF, INC.**

Telecommunications for the Deaf, Inc. ("TDI"), by and through its attorney, respectfully submit the following reply comments in response to the Petition for Declaratory Ruling filed on September 22, 2003 (the "Petition"), by Vonage Holdings Corporation ("Vonage"). The Commission sought comment on the Petition,<sup>1</sup> and over sixty sets of initial comments were filed.

The Public Notice sought comment on Vonage's request for the Commission to preempt an order of the Minnesota Public Utilities Commission ("PUC")<sup>2</sup> which required Vonage to comply with its laws for the providers of telephone service with respect to Vonage's Voice over Internet Protocol ("VoIP") services. Vonage sought to be treated as a provider of an information service, which would exempt it from complying with the state laws.

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<sup>1</sup> *Pleading Cycle Established For Comments on Vonage Petition for Declaratory Ruling*, Public Notice, 18 FCC Rcd 19325 (2003).

<sup>2</sup> *In re the Complaint of the Minnesota Department of Commerce Against Vonage Holding Corp. Regarding Lack of Authority to Operate in Minnesota*, Docket No. P-6214/C-03-108 (Minn. Pub. Utils. Comm'n, Sept. 11, 2003) ("PUC Order").

While its Petition was pending before the Commission, Vonage also appealed the PUC Order to the U.S. District Court in Minnesota. On October 16, 2003, the Court issued a permanent injunction against the implementation of the PUC Order, and concluded that the VoIP services offered by Vonage were information services exempt from regulation by the PUC.<sup>3</sup>

Subsequent to this issuance of the Injunction, the Commission issued a Public Notice announcing the initiation of a full-scale proceeding to determine the “proper regulatory environment” of internet telephony.<sup>4</sup> Therefore, despite the pending nature of this instant proceeding, the Commission has committed to release a Notice of Proposed Rulemaking to address the Petition, and the entire regulatory environment for Internet Telephony. Presumably, the Commission will not act on the Petition until such time that the this new proceeding has been completed.

As a leading national consumer public interest organization addressing the interests of the more than twenty-eight million Americans who are deaf, hard-of-hearing, late-deafened, and deaf-blind, TDI urges the Commission to consider the needs of their constituents in this proceeding, and when drafting the Notice of Proposed Rulemaking. Specifically, TDI urges the Commission to review the many thoughtful efforts of the entities that filed comments in response to the Notice of Inquiry released in WT Docket 96-198 addressing Internet Telephony, and the implementation of Section 255.<sup>5</sup> In that proceeding, many parties, including TDI,

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<sup>3</sup> *Vonage Holdings Corporation v. Minnesota Public Utilities Commission*, No. 03-5287, 2003 U.S. Dist. LEXIS 18451 (D.Minn., Oct. 16, 2003) (the “Injunction”).

<sup>4</sup> *FCC to Begin Internet Telephony Proceedings*, Public Notice, (rel. Nov. 6, 2003).

<sup>5</sup> *Implementation Of Sections 255 And 251(A)(2) Of The Communications Act Of 1934, As Enacted By The Telecommunications Act Of 1996: Access To Telecommunications*

urged the Commission to resolve the regulatory treatment of Internet Telephony *before* the service became a household tool.<sup>6</sup> More than three years later, the Commission has yet to act on that Notice of Inquiry, and, as showing by the Vonage Petition, the use of Internet Telephony is becoming a pervasive household utility.

With respect to Internet Telephony in general, and the Petition in particular, TDI urges the Commission to find that such services are “telecommunications services” under Section 3(46) of the Communications Act.<sup>7</sup> The definition of “telecommunications services” specifically exempts the consideration of the type of facilities used in delivering the telecommunications service. Of special interest to TDI is the applicability of the Commission’s accessibility rules contained in Section 255 of the Communications Act to the use of Internet Telephony. Thus, the central point of the Petition, that the services merely attach to the public-switched network, should not exempt the service from complying with the requirements that all other telecommunications service providers must follow. In light of Vonage’s charge for the service on an on-going basis (rather than just charging for the one-time purchase of equipment), TDI strongly believes that the VoIP service provided by Vonage is a telecommunications service.

Therefore, Telecommunications for the Deaf, Inc. urges the Commission to integrate the comments in this proceeding, and those submitted in response to the

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*Service, Telecommunications Equipment & Customer Premises Equipment By Persons With Disabilities*, Report and Order and Further Notice of Inquiry, 16 FCC Rcd 6417 (1999) (“*Further NOI*”)

<sup>6</sup> See *Comments of Telecommunications for the Deaf, Inc., and The Consumer Action Network*, WT Docket No. 96-198 (filed Jan. 13, 2000).

<sup>7</sup> 47 U.S.C. §153(46) (2000).

Further NOI, when commencing the new rulemaking in December. TDI will submit a full analysis of the needs of people with disabilities with respect to Internet Telephony in the upcoming rulemaking proceeding. The National Association for the Deaf has reviewed the instant Reply Comments and concurs with the arguments presented herein.

In the meantime, should the Commission render a decision in the instant matter, TDI strongly urges the Commission to find that Internet Telephony is a telecommunications service, and require Vonage to comply with Section 255 of the Communications Act.

Respectfully submitted,

**TELECOMMUNICATIONS FOR THE DEAF, INC.**

By:



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Lee G. Petro

Fletcher, Heald & Hildreth PLC  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, Virginia 22209  
703-812-0453 – Telephone  
703-812-0486 – Telecopier

Its Counsel

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