



EX PARTE OR LATE FILED

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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MIKE HATCH
ATTORNEY GENERAL

January 20, 2004

ORIGINAL

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street SW
Washington, DC 20554

Re: Notice of Ex Parte Comments
In the Matter of Vonage Holdings Corporation Petition for Declaratory
Ruling Concerning an Order of the Minnesota Public Utilities Commission
WC Docket No. 03-211

Dear Ms. Dortch,

In accordance with § 1.1206 of the Commission's rules, the Minnesota Office of the
Attorney General ("MOAG") files these written ex parte comments in the above-captioned
proceeding. The ex parte comments consist of the written affidavit of Assistant Attorney
General Mary McKinley and accompanying documents. Two copies of the comments are being
provided to the Secretary pursuant to § 1.1206(b)(1) of the rules regulating ex parte presentations
in Commission Proceedings. I ask that you bring these comments to the attention of the
Commissioners and staff.

In its earlier Comments filed with the FCC on October 27, 2003, the MOAG stated that
the 911 service offered by Vonage is inferior to that required under Minnesota law and that, in
fact, the 911 service offered by Vonage poses serious public safety concerns. The MOAG
therefore requested that the FCC postpone a decision on Vonage's request to be found
completely exempt from state regulation until after the FCC completes a generic proceeding
regarding VoIP regulation or, in the alternative, that the FCC reject Vonage's contention that all
state rules and regulations touching on VoIP services be preempted.

Since filing those earlier comments, the MOAG received a complaint from a Minnesota
Vonage customer who was injured and whose family was unable to summon 911 from the family
home because their 911 service with Vonage was inoperable. The citizen's injuries in this case
were serious and life-threatening. These comments are being offered at this time to point out the
very real implications of finding a VoIP provider like Vonage exempt from all state 911
regulations.

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Marlene H. Dortch, Secretary

January 20, 2004

Page 2

Please contact me at (651) 296-7771 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Mary McKinley".

MARY R. McKINLEY
Assistant Attorney General

(651) 296-7771

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of) DA 03-2952
)
VONAGE HOLDINGS)
CORPORATION) WC Docket No. 03-211
)
Petition for Declaratory Ruling)
Concerning an Order of the)
Minnesota Public Utilities Commission)

AFFIDAVIT OF MARY MCKINLEY

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

MARY MCKINLEY, being first duly sworn on oath, deposes and says that:

1 I am employed as an Assistant Attorney General in the Residential and Small Business Utilities Division of the Minnesota Office of the Attorney General. My business address is NCL Tower, Suite 900, 445 Minnesota Street, Saint Paul, MN 55101-2127.

2. In the course of my duties as an Assistant Attorney General, I reviewed a letter sent to the Office from a citizen who stated that she was unable to dial 911 from her home on November 20, 2003, when she discovered her husband missing, and possibly injured. This citizen, Jean Bye, is a Vonage customer. Mrs. Bye had assumed her 911 service was established and operative based on an e-mail from Vonage confirming that her 911 service was activated.

3. I have attached a true and correct copy of the letter Mrs. Bye sent to the Minnesota Office of the Attorney General. Mrs. Bye attached to her letter a copy of an article from the Saint Paul Pioneer Press about the emergency incident that occurred at her home on November 20, 2003, and her husband's subsequent life-threatening injuries. Mrs. Bye also attached to her letter a copy of the e-mail Vonage sent to her indicating that her 911 service had

been activated. True and correct copies of those documents are provided along with the copy of Mrs. Bye's letter for your review.

4. I personally spoke with Mrs. Bye on December 15, 2003. Mrs. Bye confirmed the accuracy of the details contained in her letter and the news article. Her husband was seriously injured in a fire on the premises on November 20, 2003, and was unconscious when emergency officials arrived. As indicated in her letter, Mrs. Bye tried to call 911 when she discovered her husband was missing, but was unable to do so with her Vonage service. After discovering the Vonage service would not dial 911, Mrs. Bye was able to summon help only by going to a neighbors' residence and using their telephone and 911 service.

Mrs. Bye stated that she has resided at the same residence since initiating service with Vonage and activating the Vonage 911 service. Vonage, initially unable to port Mrs. Bye's telephone number, assigned her a different number. Vonage failed to advise Mrs. Bye that she was required to reactivate her 911 service because of the new telephone number. It never occurred to Mrs. Bye that her 911 service might no longer be active because of the changed telephone number since her residential address remained unchanged.

5. Assistant Attorney General Jeanne Cochran and I previously submitted comments in this docket on behalf of the Minnesota Office of the Attorney General. Those comments focused on the public safety concerns implicated if VoIP providers like Vonage are left completely unregulated from important state 911 regulations. Attached to those comments was the affidavit of Sergeant Fred Fischer, the Computer Assisted Dispatch System Administrator for all Police, Fire, and EMS agencies in Ramsey County, detailing the possible negative consequences that could befall Minnesota Vonage customers given Vonage's current system of providing 911 service to its customers. Unfortunately, Mrs. Bye's letter provides a very real example of the kind of dangers Sergeant Fischer detailed in his affidavit. I respectfully submit

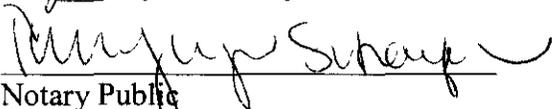
this affidavit and the corresponding documents at this time to add to the record for the FCC to consider as it considers this new technology and what precautions might be appropriate to promote public safety.

FURTHER YOUR AFFIANT SAYETH NOT.



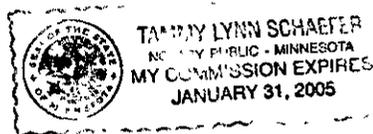
MARY MCKINLEY

Subscribed and sworn to before me
this 20th day of January, 2004.



Notary Public

AG #962631-v1



-----Original Message-----

From: General. Attorney
Sent: Monday, November 24, 2003 9:07 AM
To: Abel, Kim
Subject: FW: 911 Dialing Activated

-----Original Message-----

From: Jean Bye [mailto:djcsb@aol.com]
Sent: Saturday, November 22, 2003 10:07 AM
To: Vonage DigitalVoice Customer Care, Attorney.General@state.mn.us
Cc: JeffreyCitron@vonage.com, sales@vonage.com, jcitron@vonage.com, jeffrey.citron@vonage.com, ceo@vonage.com; legal@vonage.com; info@vonage.com, investorrelations@vonage.com; publicrelations@vonage.com, careers@vonage.com; sales@vonage.com
Subject: Fwd: 911 Dialing Activated

To Whom It May Concern (Legal Department).

You can see from the replied to email that Vonage confirmed that my 911 service is active (see copy of email below dated 7/29/2003).

However, this is not the case and it almost cost my husband his life. I am attaching the article from the Pioneer Press related to an emergency incident that occurred on 11/20/03. He is still in the hospital.

From your records, you can see that I did in fact call 911 on the morning that this happened and the call did not go through. I had to get to a neighbor's house in order to place the call.

This is a very serious error on your part. My lawyer or I will be contacting you in the future.

Jean Bye

<http://www.twincities.com/mld/pioneerpress/news/local/7314520.htm>

NEW BRIGHTON: Nighttime pattering almost costs man his life

**BY ALLEN POWELL II
Pioneer Press**

When Sgt. Terry Nelson arrived at Rodger and Jean Bye's home on Long Lake Road Thursday morning, he thought he was answering a routine

carbon-monoxide alarm. But as he pulled into the driveway, he could tell something was wrong

There stood Jean Bye under the flickering lights of her open garage, looking confused. She explained to Nelson and fellow New Brighton police officer Heather Kuchinka that her 75-year-old husband, Rodger, was missing from their bedroom

Since Rodger Bye often pattered around the house during the night, working on projects, Nelson did a quick sweep of the premises, but found nothing

Uncertain where Bye could have disappeared to with the couple's car still in the garage, Kuchinka and Nelson went around the sides of the house, but still no luck

"Where is this guy?" Nelson said he asked Kuchinka.

"I don't know," she replied

As the officers pondered their next move, Kuchinka noticed a ladder propped up against a wall, and smoke coming from a crawlspace above the garage. Nelson quickly put in a call to the New Brighton Fire Department, since a fire in the crawlspace would explain Bye's disappearance and the carbon-monoxide alarm

Then, Kuchinka and Nelson started up the ladder.

"I knew I could probably see with my flashlight, navigate, and I could probably pull this off," said Nelson, though neither he nor Kuchinka have been trained as firefighters, as many officers in New Brighton have.

They were greeted in the pitch-black crawlspace by smoke and a low ceiling that forced them to their knees, Nelson said, as they felt their way around boxes calling Bye's name.

Suddenly Kuchinka yelled back to Nelson that she thought she found something with her flashlight near what looked like a smoldering fire.

"I was convinced that he had died already," said Nelson, describing his first look at Bye. He was facedown in the attic's insulation, barely moving. His breathing was extremely shallow.

"He just lay there," Nelson said.

The officers flipped Bye over, removed insulation from his nose and mouth while they searched for a pulse beneath his soaking-wet flannel shirt. Then, grasping his arms, they dragged him like a 170-pound sack of potatoes across the 12 feet to the crawlspace entrance.

They then let Bye's head dangle into the garage as they each took turns snatching smoke-free breaths as they waited for the fire department.

When three firefighters arrived, the officers lowered Bye down and quickly escaped the acrid crawlspace, letting firefighters deal with the hot spot under the insulation.

Paramedics rushed Bye to the Hennepin County Medical Center, where he was in serious condition Thursday

Outside, under the quickly lightening sky, Nelson and Kuchinka finally noticed a garden hose snaking around the garage up into the crawlspace --- which explained Bye's soaked shirt. Combined with firefighters' reports of an electrical short in the attic, it gave Nelson a little scare when he thought about how he and Kuchinka could have received a shock the way officials believe Bye did.

New Brighton Public Safety Director Bob Jacobson said Kuchinka and Nelson made the kind of snap judgment all officers have to make. "It took a great deal of courage on their part (last night)," he said. "At any time, things could have gone from bad to worse."

----- Original Message -----

Subject: 911 Dialing Activated

Date: 7/29/2003, 12.57 AM

From: Vonage DigitalVoice Customer Care <customerservice@vonage.com>

To djcsb@aol.com

Status Update for: Roger Bye

Account Number 1002095607

Vonage Telephone Number: 1-(952)-960-3636

We have completed your activation request for 911 Dialing. You may now dial 911 from your Vonage line. PLEASE DO NOT TEST THE 911 DIALING SERVICE.

When you dial 911, Vonage will route your call to the nearest Public Service Answering Point (PSAP) responsible for effecting emergency response services in your area, based on the following address:

1240 Long Lake Rd

New Brighton, MN 55112

If the address is incorrect, please go to <http://www.vonage.com/>, and update your address on the Dashboard Features page after you login. No action on your part is necessary if the address above is correct.

IMPORTANT: IF YOU MAKE A CHANGE NOW OR IN THE FUTURE, 911 DIALING WILL BE INACTIVE FOR SEVERAL DAYS UNTIL THE NEW ADDRESS HAS BEEN MAPPED TO YOUR LOCAL EMERGENCY RESPONSE CENTER.

We are happy to provide you with the enhanced safety of 911 Dialing. Thank you for your business.

Sincerely,

Vonage Customer Care