

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

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| 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 |

REPLY COMMENTS OF XO COMMUNICATIONS, LLC

XO Communications, LLC, (“XO”) hereby submits these reply comments in the above-captioned proceeding in response to the Second Further Notice of Proposed Rulemaking (“NPRM”) issued on July 31, 2011 by the Federal Communications Commission (“FCC” or “Commission”).¹ XO supports the Commission’s goals in ensuring that the public has the ability to contact emergency services during a crisis; however, XO opposes extension of E911 obligations to IP-based services beyond interconnected VoIP services, as currently defined in section 9.3. Furthermore, the Commission should not modify the section 9.3 definition of “interconnected VoIP” before thoroughly reviewing the impacts in other contexts.

I. THE COMMISSION SHOULD NOT EXTEND E911 REQUIREMENTS TO OUTBOUND-ONLY VOIP SERVICES.

In making its determination that interconnected VoIP providers must incorporate E911 calling into these two-way services, the Commission considered customer expectations regarding

¹ In the Matter of Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission’s Rules, *et al.*, *Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking*, 26 FCC Rcd 10074 (Jul. 31, 2011) (NPRM).

various types of VoIP services and determined 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.”² The Commission seeks comment here on whether customers of outbound-only VoIP services are likely to have similar expectations for calling 911 via that one-way VoIP service. XO submits that in most cases it would be unreasonable for these customers to expect outbound-only services to replace their traditional two-way voice services or be subject to the same E911 obligations. XO agrees with the VON Coalition that the Commission should not extend 911/E911 obligations to services that could not effectively and functionally replace traditional telephone service.³ Without a clear indication that customers expect to use an outbound-only VoIP service as their primary means of reaching 911, the Commission should not extend the requirements to these services.

XO further agrees that the mere existence or growth in outbound-only VoIP services does not indicate that consumers expect to be able to reach emergency services through those services.⁴ The fact that a customer may use the VoIP service to place a voice call also does not mean that the service can or should replace the customer’s other voice services. Moreover, the characteristics of the services itself, namely that it provides only one-way calling, puts the customer on notice of the limitations of the service. One-way VoIP services should not be treated as substitutes or replacements for a customer’s traditional voice service, but should more likely and appropriately be considered complementary services.⁵

² IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, *First Report and Order and Notice of Proposed Rulemaking*, ¶ 23 (*VoIP E911 Order*).

³ Comments of VON Coalition at 2; Comments of Vonage at 12.

⁴ Comments of VON Coalition at 4.

⁵ *See id.*

Furthermore, the typical use of one-way outbound VoIP services reduces the expectation that they will provide local 911 calling for emergency services. Both residential and business users typically purchase one-way outbound VoIP services to place long distance calls at lower rates, which should create no expectation or intent to use the service for local calling, to emergency services or otherwise. Moreover, business customers often purchase one-way services to meet specific business needs other than basic voice services and have no expectation that 911 calling will be provided with these services. As noted by AT&T, these businesses typically purchase other communications services with 911 calling capability⁶ so there is only a theoretical risk of such customers having no access to 911 emergency services. Thus, XO agrees that the Commission should not impose additional E911 obligations on providers of outbound-only VoIP services to business customers.⁷

Under a cost-benefit analysis, as reasoned above, any benefits of extending the E911 obligations would be speculative at best, while the costs would be heavy.⁸ Not only would the costs of implementing these obligations be considerable, but the costs and risks of providing inaccurate location and call back information to a PSAP are high for outbound-only VoIP services since providers typically do not track customer location or call back information. For example, XO's outbound-only VoIP service does not provide the customer with a working telephone number (TN) to populate as the Automatic Numbering Information (ANI), nor is XO able to automatically verify its customer's location in order to provide Automatic Location Information (ALI). Therefore, not only would the customer need to manually provide and verify its Registered Location for each call, but the customer would need to supply an alternate TN with

⁶ Comments of AT&T at 2.

⁷ *Id.*

⁸ Comments of NCTA at 10.

inbound service in order for XO to pass that information to the PSAP for call back purposes. Manual customer input heightens the risk of invalid information passed in both data fields; however, no technically feasible method currently exists for automatic population of these fields for these services. Any call back from an emergency service provider would be routed to the customer's traditional voice service, which already provides emergency calling capability and should be the service encouraged for making an outbound 911 call.⁹

XO agrees that the Commission should ensure that policies developed for IP communications will promote, rather than inhibit, investment, innovation and development.¹⁰ If the Commission adopts requirements that are impossible or technically impractical to satisfy, then it will risk the chance of providers eliminating these innovative services for all customers, even those who have no expectation of using them for 911 purposes. The Commission must recognize that just because an outbound VoIP service could be used to place a 911 call does not mean that such a service is the optimal means of doing so. Rather than creating an additional layer of regulatory requirements on these outbound-only services, the Commission should develop policies that set the proper expectations for consumers about the capabilities of various IP-enabled services.¹¹ As Vonage notes, “[p]ublic safety will not benefit if consumers are induced to use less reliable 911 calling solutions instead of established wireless or wireline 911 services.”¹²

Finally, due to current technological constraints, XO agrees that it is premature to adopt any ALI standards for outbound-only VoIP services and that the Commission should encourage

⁹ Comments of VON Coalition at 7.

¹⁰ *Id.* at 6.

¹¹ *See* Comments of Vonage at 12-13.

¹² *Id.* at 14.

industry innovation without adopting any particular guidelines at this time.¹³ It is critical that the Commission “ensure that an actual technological solution – not merely the promise of one – exists” before adopting any particular rules or guidelines.¹⁴ Therefore, XO agrees that the Commission should defer consideration of whether to apply 911/E911 requirements to other non-interconnected VoIP services until its decision in the NG-911 rulemaking proceeding.¹⁵

II. THE COMMISSION SHOULD NOT MODIFY THE DEFINITION OF “INTERCONNECTED VOIP” IN SECTION 9.3.

The Commission seeks comment on whether it should modify the definition of “interconnected VoIP” in section 9.3 for purposes other than 911 obligations. As discussed above, the Commission should not extend 911/E911 obligations beyond the current definition of interconnected VoIP. However, regardless of the Commission’s decision regarding extension of its 911 obligations, it should not broadly modify the definition in section 9.3 without a thorough analysis of the impacts in other contexts.¹⁶

Without a review of each of the Commission’s rules that reference section 9.3 and how a change would impact other VoIP services not currently covered by the definition, there is a strong likelihood of unintended consequences. For example, the Commission proposes to modify the second prong of the definition to include VoIP services that can be provided over a dial-up connection within the definition of “interconnected VoIP.”¹⁷ However, as AT&T points out, 911 obligations need not be extended to such services because the customer in that case must have a traditional voice service over that dial-up connection that would already offer 911

¹³ Comments of VON Coalition at 10-11.

¹⁴ Comments of NCTA at 5.

¹⁵ Comments of Verizon and Verizon Wireless at 6.

¹⁶ Comments of VON Coalition at 2.

¹⁷ NPRM at ¶ 49.

calling capability. Modification of the definition to include these VoIP services would create unnecessary and redundant 911 obligations for multiple services provided over that dial-up connection.¹⁸ Moreover, modification of the definition without explicit consideration of various effects “could result in the imposition of a broad range of *other* regulatory requirements on outbound only VoIP providers without sufficient notice and comment.”¹⁹ Therefore, the Commission should carefully review in a separate proceeding the logical consequences of any change to the definition in section 9.3, rather than indiscriminately broadening the definition simply because additional types of VoIP services continue to be made available.

CONCLUSION

For the foregoing reasons, XO encourages the Commission not to extend E911 obligations to one-way outbound VoIP services or to modify the definition of “interconnected VoIP” in section 9.3.

/s/ Teresa K. Gaugler _____

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¹⁸ Comments of AT&T at 3.

¹⁹ Comments of NCTA at 12.