

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

COMPLAINT OF FRONTIER TELEPHONE OF
ROCHESTER, INC. AGAINST VONAGE HOLDINGS
CORP. CONCERNING PROVISION OF LOCAL
EXCHANGE AND INTEREXCHANGE TELEPHONE
SERVICE IN NEW YORK STATE IN VIOLATION OF
THE PUBLIC SERVICE LAW

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) Case 03-C- 1285
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COMPLAINT OF FRONTIER TELEPHONE OF ROCHESTER, INC.
AGAINST VONAGE HOLDINGS CORP. CONCERNING PROVISION OF LOCAL
EXCHANGE AND INTEREXCHANGE TELEPHONE SERVICE IN NEW YORK
STATE IN VIOLATION OF THE PUBLIC SERVICE LAW

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DATE: September 10, 2003

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PUBLIC SERVICE COMMISSION**

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STATE IN VIOLATION OF THE PUBLIC SERVICE LAW**

Frontier Telephone of Rochester, Inc. (“Frontier”) hereby complains of the unlawful provision of local exchange and interexchange telephone services by Vonage Holdings Corp. (“Vonage”) in Rochester and other locations in New York State in violation of the Public Service Law and other statutes, regulations and orders. In support of this Complaint, Frontier respectfully shows as follows:

I. Introduction and Summary.

Frontier is the Incumbent Local Exchange Carrier (“ILEC”) in the Rochester, New York area. Frontier provides local exchange telephone services as a “telephone corporation” as defined in §2(17) of the Public Service Law, subject to Commission regulation. Frontier files

this complaint on its own behalf and on behalf of its affiliated ILECs in New York State.¹ Frontier believes that Vonage is providing local exchange telephone service not only in the Rochester area but also in the operating areas of one or more of Frontier's affiliated ILECs including but not necessarily limited to Ogden Telephone Company and Citizens Telecommunications Company of New York, Inc.

This Complaint shows that Vonage is violating Public Service Law §99 along with many other statutes, regulations and orders pertaining to the regulation of competitive local exchange carriers ("CLECs") and interexchange carriers ("IXCs") by essentially failing to comply with any regulatory requirements.

This Complaint further shows that Vonage is providing an unsafe and inadequate implementation of 911 calling in violation of Public Service Law §97.

II. Vonage Is Violating Public Service Law §99.

1. Vonage is a "telephone corporation" owning, operating or managing a "telephone line" as defined in §§2(17) and 2(18) of the Public Service Law because Vonage operates apparatus and property within the State to conduct the business of affording telephonic communication for hire. Attached as **Exhibit 1** are copies of Vonage's Internet web pages making the following representations:

Use Vonage like you use any telephone

With Vonage, you pick up the phone, hear the dial tone and dial the telephone number of your choice. There are no extra numbers to dial and no special routines to follow. It's that simple. You don't have to be an engineer to use our service.

¹ Frontier's affiliated New York ILECs are Ogden Telephone Company, Citizens Telecommunications Company of New York, Inc., Frontier Communications of New York, Inc., Frontier Communications of Sylvan Lake, Inc., Frontier Communications of AuSable Valley, Inc. and Frontier Communications of Seneca-Gorham, Inc. Frontier and its affiliated New York ILECs are under the common ownership of Citizens Communications Company.

You can be up and running within minutes of receiving your Vonage package. We send you everything you need to get Vonage DigitalVoice phone service, right down to the extra cable wire. Best of all, there's no technician, no wiring in the walls, and no technical experience needed! Setup usually takes less than 5 minutes.

These representations establish that Vonage is both (1) offering and providing telephonic communication for hire and (2) using and providing apparatus and property within New York State to facilitate its business of providing telephonic communication. This is all the statute requires to trigger regulation of a service provider as a CLEC.

2. Vonage further owns, operates or manages router equipment in Rochester and other locations in New York that acts as a gateway between Internet and other long distance transmission facilities and the associated CLEC through which Vonage connects to the Public Switched Telephone Network ("PSTN"). By way of example, a local call placed by a Vonage customer to a Frontier customer progresses as follows:

(a) The customer picks up an ordinary analog telephone set, provided by the customer and connected to a telephone jack on a Vonage-provided router. This router converts the call from a POTS (Plain Old Telephone Service) signal to Internet Protocol ("IP").

(b) The Vonage router passes the call to a second router on the customer's premises that provides the broadband Internet connection that is required in order to subscribe to Vonage service. The customer may use either cable (e.g. Roadrunner) or Digital Subscriber Line (e.g. Frontier DSL) broadband service with Vonage service. Each form of broadband service uses a broadband router frequently but inaccurately referred to as a "cable modem" or "DSL modem."

(c) The call passes from the broadband router over the customer's broadband cable or DSL connection to the customer's broadband Internet Service Provider ("ISP"), and from there over the Internet to Vonage's gateway router in Rochester.

(d) Vonage converts the call back from IP to POTS and sends the call to another carrier that is connected to Frontier's network.

(e) The other carrier delivers the call to Frontier.

(f) Frontier completes the call to the end user on Frontier's network.

3. When a Frontier customer makes a local call to a Rochester Vonage customer, the call progresses in the reverse way: from Frontier's network, to a third party carrier, to Vonage's gateway router where the call is converted from POTS to IP, over the Internet to the customer's broadband ISP, over the customer's broadband connection to the customer's broadband router (or "modem"), then to the Vonage router where it is converted back from IP to POTS, and finally to the customer's ordinary analog telephone.

4. Vonage therefore directly owns, operates and manages telephone equipment, referred to in PSL §2(18) as a "telephone line," at two locations in Rochester – first at the subscriber's location, and second at the location of the gateway router.

5. Vonage further acts as a "telephone corporation" and as the manager of a "telephone line" by reselling and integrating the switching and transmission functions provided by its associated carrier or carriers, including but not limited to the cables, machines, devices and property of the associated carrier used to establish Vonage's connectivity with the PSTN and for number portability. In Rochester, this carrier is PaeTec Communications.

6. Attached as **Exhibit 2** are Vonage's web pages dealing with number portability. Vonage accomplishes number portability from other local carriers to Vonage through its associated CLEC, which ports numbers from other local carriers. Calls to Vonage subscribers from non-Vonage subscribers are sent, as instructed through the Number Portability Administration Center, to the associated CLEC, which then delivers the calls to Vonage's router.

By porting numbers, Vonage holds itself out to be a complete replacement for a subscriber's telephone service.

7. The only distinction between Vonage's local exchange telephone service and any other provider's local exchange telephone service is the technology Vonage uses. The Public Service Law does not distinguish between local exchange telephone service technologies except for mobile radio and cellular telephone services, which are exempted from regulation pursuant to PSL §§5(3) and 5(6). Vonage does not use either mobile radio or cellular telephone technology.

8. Vonage has placed television advertisements in the Rochester market that are airing in September 2003, describing Vonage as a "broadband telephone company."

9. Vonage offers and provides intrastate long distance voice calls to its customers as part of its service packages.

10. Vonage violated and continues to violate Public Service Law §99 by installing and operating "telephone lines" and by holding itself out as a provider of telephonic communication for hire without first obtaining a certificate of public convenience and necessity from the Commission.

11. The issues raised by Frontier have recently been considered by the Minnesota Public Utilities Commission as the result of a complaint filed by the Minnesota Department of Commerce. Attached as **Exhibit 3** is the MPUC Staff's briefing paper on Vonage's service and its regulatory status as a competitive local exchange carrier. As noted by the MPUC Staff, Vonage provides the same service and the same experience to its subscriber when making or receiving a call compared to POTS, except that Vonage's 911 service in Minnesota as in Rochester is deficient. The subscriber picks up an ordinary telephone handset, dials POTS numbers, hears busy signals or ringing tones, and conducts conversations as with any other

POTS call. Incoming calls are also the same as POTS. The telephone rings, the subscriber picks up the handset and conversation ensues. The only difference is in the behind-the-scenes technology.

On August 13, 2003, the MPUC announced a decision that Vonage must seek a certificate, file a 911 plan and file tariffs as a regulated local exchange carrier. The MPUC rejected Vonage's position that it is an unregulated provider of "enhanced services." The MPUC order has not yet been released.

III. Vonage Is Violating Many Other Statutes, Regulations and Orders.

1. Vonage fails to comply with numerous other statutes, regulations and orders of the Commission, including but not limited to:

- (a) PSL §18-a – the requirement to pay its share of the Commission's costs and expenses;
- (b) PSL §92(1) – the requirement to file tariffs for local exchange and intrastate long distance services;
- (c) PSL §101 and 16 NYCRR Part 37 – the requirement to obtain Commission approval to issue securities;
- (d) 16 NYCRR Part 12 – the Commission's consumer complaint procedures. Vonage's Terms of Service, a copy of which is attached as **Exhibit 4**, require mandatory arbitration of consumer disputes under the American Arbitration Association rules for commercial arbitration. These rules potentially require the customer to bear expenses of arbitration that could exceed the amount in dispute by several orders of magnitude. The Terms of Service further require the subscriber to submit to the personal and exclusive jurisdiction of the courts of New Jersey.

(e) 16 NYCRR Part 609 – rules for the provision, suspension and termination of service to residential customers;

(f) 16 NYCRR Part 641 – the requirement to file an annual report as a CLEC; and

(g) the requirement to offer per-line or all-call Caller ID blocking established in Case 90-C-0075, Proceeding on Motion of the Commission to Review Issues Concerning Privacy in Telecommunications (order issued Nov. 16, 1990). Vonage offers per-call Caller ID blocking but not per-line or all-call blocking that allows a customer to block transmission of Caller ID information on all calls unless the customer dials a per-call unblocking code.

2. Vonage is also violating portions of 47 U.S.C. §§ 251 and 252 that are administered by the Commission by failing to request interconnection from Frontier, failing to initiate negotiations for an interconnection agreement with Frontier, and failing to file an interconnection agreement with the Commission.

3. Vonage is further in violation of the Commission's orders in Case 00-C-0789, Proceeding on Motion of the Commission Pursuant to Section 97(2) of the Public Service Law to Institute an Omnibus Proceeding to Investigate the Interconnection Arrangements Between Telephone Companies (orders issued Dec. 22, 1990, Sept. 7, 2001 and Aug. 16, 2002) by failing to enter into traffic exchange agreements with other Incumbent Local Exchange Carriers, including Verizon New York, that have exchanges within the Extended Area Service ("EAS") calling area of Rochester where Vonage is assigning numbers.

4. Vonage unfairly and unlawfully competes with Frontier and other local exchange carriers by failing to collect from customers and failing to remit to the appropriate authorities the applicable state and local sales taxes and the E-911 surcharge. This conduct is an "unreasonable practice" in violation of Public Service Law §97 as well as a violation of the sales tax and 911

surcharge statutes, NY Tax Law §1105 and NY County Law §305. On information and belief, Vonage also fails to remit gross revenue taxes to the State as required by NY Tax Law §186-e and thereby obtains an unfair and unlawful advantage over other telephone corporations with which it competes.

5. Vonage does collect and remit the 3% Federal Excise Tax on telecommunications services. By doing so Vonage admits that it is a telecommunications carrier.

IV. Vonage's 911 Service Is Unsafe and Inadequate and Thereby Violates Public Service Law §97(2).

1. Attached as **Exhibit 5** are Vonage's web pages describing how it implements 911 service. As is apparent, Vonage's 911 service is distinctly inferior compared to the 911 service provided by other local exchange carriers, in the following respects:

(a) Customers, and any other persons at a customer's location who may need emergency services, have no 911 service at all unless the customer affirmatively subscribes to Vonage's 911 service. All other LECs automatically provide 911 service.

(b) Vonage does not use the dedicated 911 network used by every other LEC. Vonage routes 911 calls to POTS numbers at a "local emergency personnel location" which may be only a local fire or police station (see discussion of 911 service in the Minnesota Staff Briefing Papers attached as Exhibit 3), not necessarily the designated Public Safety Answering Point (PSAP) set up by most New York State counties including Monroe County to handle 911 calls. Even if Vonage routes the calls to the PSAP, the calls are not transmitted over dedicated 911 trunks and are likely to receive lesser priority and a lower grade of service than emergency calls that other carriers route over the dedicated 911 network.

(c) Vonage does not participate in Enhanced 911 (“E-911”) service. It provides no Automatic Location Identification (“ALI”) for its customers in areas such as Monroe County where E-911 is established. Because its 911 calls are not transmitted over the dedicated 911 network, there is no technical means of passing the caller’s location to the PSAP. Emergency personnel therefore have no location information as they do with other 911 calls when E-911 is available. Emergency personnel may not even have a callback number depending upon whether Caller ID technology is used at the called party location and whether Caller ID information is available on a particular call.

(d) Vonage provides no backup routing in situations where the number it selects is busy, out-of-service or otherwise unavailable. PSAP operators including Monroe County typically have a secondary PSAP facility that would probably not be reached by a Vonage customer dialing 911 when the primary facility is not fully functional.

2. The shortcomings discussed above render Vonage’s service unsafe to its subscribers and to other potential users in emergency situations. This situation is exacerbated by Vonage’s promotion of its services as a complete replacement for POTS. Frontier submits that Vonage’s service and practices with respect to 911 calls are inadequate and insufficient and therefore in violation of Public Service Law §97.

V. Conclusion and Requests for Relief.

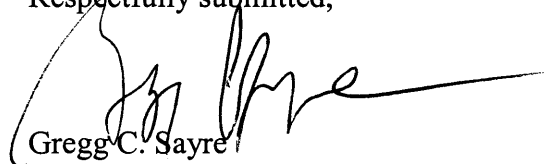
Frontier has shown that Vonage is violating the Public Service Law and other statutes, regulations and orders in many respects, including the provision of unsafe and inadequate 911 service. Frontier therefore respectfully requests that the Commission order Vonage:

(a) immediately to cease providing local exchange and intrastate long distance services within the State of New York until it complies as a CLEC and as an IXC with the appropriate statutes, regulations and orders, including but not limited to obtaining a certificate of public convenience and necessity, filing tariffs, negotiating and filing appropriate interconnection and traffic exchange agreements, and charging and remitting appropriate taxes and 911 surcharges; and

(b) to route all 911 calls over the dedicated 911 network without requiring a special 911 subscription, and to participate fully in E-911 service where available.

Finally, Frontier requests that the Commission grant such other and further relief as the Commission may find appropriate.

Respectfully submitted,



Gregg C. Sayre
Associate General Counsel
Frontier Telephone of Rochester, Inc.
180 South Clinton Avenue
Rochester, New York 14646-0700

DATE: September 10, 2003

Attachments: **Exhibit 1** – Vonage Internet web pages re: use of service
Exhibit 2 – Vonage web pages dealing with number portability
Exhibit 3 – Minnesota Public Utilities Commission Staff Briefing Paper
Exhibit 4 – Vonage Terms of Service
Exhibit 5 – Vonage web pages describing its 911 service



Username:
 Password: **GO**
[Forget Your Password?](#)

- [HOME](#)
- [RATE PLANS](#)
- [AREA CODES](#)
- [FEATURES](#)
- [LEARNING CENTER](#)
- [SIGN UP](#)
- [E-Mail This Page](#)
-
-

- [Installation](#)
- [Features](#)
- [Requirements](#)
- [Equipment](#)
- [Shipping](#)
- [Billing](#)
- [Rates](#)
- [Device Warranty](#)
- [Contact Us](#)

Use Vonage like you use any telephone

With Vonage, you pick up the phone, hear the dial tone and dial the telephone number of your choice. There are no extra numbers to dial and no special routines to follow. It's that simple. You don't have to be an engineer to use our service.

You can be up and running within minutes of receiving your Vonage package. We send you everything you need to get Vonage DigitalVoice phone service, right down to the extra cable wire. Best of all, there's no technician, no wiring in the walls, and no technical experience needed! Setup usually takes less than 5 minutes.

Product Tour

- [Introduction](#)
- [How It Works](#)
- [What's Included](#)
- [What Do I Need](#)
- [Installation](#)

Easy Installation

Plug in your phone adapter (the ATA – Cisco ATA-186, analog to digital phone converter – that we send you for FREE) into your high speed Internet connection (cable modem). With a DSL modem, a basic router is required. So first plug your DSL modem into your router. If you don't have a router, we can send you an excellent Netgear router at the deeply discounted price of only \$39.99.

Then take any standard telephone and plug it into the phone adapter.

Surfing the web

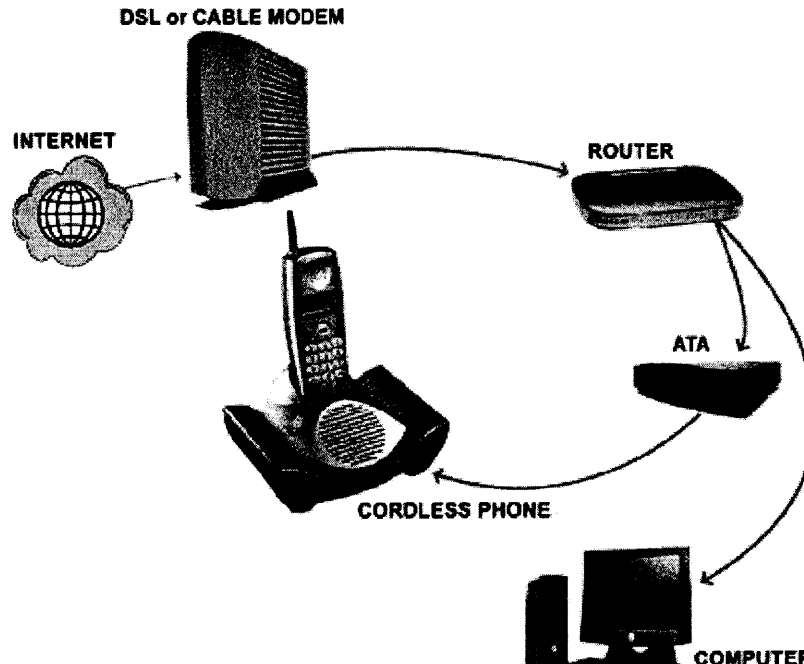


Exhibit 1

And if you'd like to surf the web and use your Vonage phone service at the same time, it's easy to setup too. You simply plug a networking router (use one you have, or buy one from us during the subscribe process at a 50% discounted rate) into your Cable modem or DSL modem. This allows you to 'share' your high speed Internet connection. Then plug your phone adapter and computer into the router. Talking on the phone and surfing the net with ease at the same time.

How this lets your call travel

Vonage works just like the telephone you have in your home today. You pick up the phone, dial the number and it connects to whom you're calling.

In more technical terms Vonage uses the phone adapter that we send to you for free to convert your voice from an analog signal to a digital signal. The digital signal then can be sent over your high speed Internet connection because it is recognized as data and then is sent over the Internet.

When someone calls you, they dial your number. Behind the scenes, your number looks very much like an e-mail address. This number instructs the call to travel over the Internet and through our network to the phone adapter we sent you free, Your phone rings, and all you have to do is pick up and answer it.

[>> Next >>](#)

[::: Corporate Information](#) [::: Site Map](#) [::: Contact Us](#) [::: Privacy Policy](#) [::: Terms Of Service](#) [::: Affiliates Program](#)

Using the Vonage® mark and other Vonage Holdings Corp.. intellectual property such as logos, slogans, trade dress, and graphic symbols on packaging, products, or services requires express written permission from Vonage Holdings Corp..

Use of confusingly similar or disparaging terms is a violation of our intellectual property rights.

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Exhibit 1



Username:

Password:

[Forget Your Password?](#)

[HOME](#)

[RATE PLANS](#)

[AREA CODES](#)

[FEATURES](#)

[LEARNING CENTER](#)

[SIGN UP](#)

E-Mail This Page

Local Number Portability

Keep Your Phone Number

Change Your Phone Company.

Transferring Your Phone Number Is Easy

When Vonage offers your area code and your rate center (the first three digits of your number after the area code), there's a good chance we can help you keep your existing phone number if you choose Vonage phone service. A handy tool, located in the Quick Reference section located to the right, can easily determine if we can help you keep your number.

How To Transfer Your Number To Vonage

1. Determine if your existing phone number can be transferred
2. Download a [Transfer Authorization Form](#)
3. Obtain the first page of your most recent phone bill with the number you wish transferred
4. Fax the completed form and phone bill toll free to 1-866-281-3308

Transferring Your Number - The Timing

Transferring your number can take at least 15 - 20 business days upon receipt of complete and correct paperwork. Vonage will keep you informed of the transfer process via email along the way. We'd like the process to go faster, but your existing phone company has to release the number first.

What Happens While Your Number Is Being Transferred

While your number is being transferred, Vonage will assign you a temporary number that you can use for both incoming and outgoing calls. Then, when your number is transferred, we'll inform you via email and your number will be transferred seamlessly. Your temporary Vonage number then will be inactive.

Quick Reference

- **It's Free**
- **Lets you move your current number to Vonage**
- **Moving your number can take several days, depending on your current telephone provider**
- **Learn if we can transfer your existing number here:**

Please enter your area code and the first three digits of your phone number.

-XXXX

- **Download [Letter of Authorization](#)**

Exhibit 2

What Happens If Your Number Cannot Be Transferred

If Vonage cannot transfer your number it still makes sense to get Vonage and start saving now. You may elect to get a new Vonage number in your area or elsewhere. Or, you may elect to keep your existing phone number with minimal service and add another Vonage number that will help you save big on outgoing calls. It's your choice, but if you are like most people you'll enjoy considerable savings.

If you are a DSL Subscriber

DSL subscribers pose a special situation as they must keep their existing phone numbers to maintain a high speed connection to Vonage. In this instance, we will assign you a new Vonage number and you can begin enjoying the benefits of Vonage without delay.

[::: Corporate Information](#) [::: Site Map](#) [::: Contact Us](#) [::: Privacy Policy](#) [::: Terms Of Service](#) [::: Affiliates Program](#)

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Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **Wednesday, August 13, 2003** Agenda Item # ****1**

Company: Vonage Holdings Corporation

Docket No. P-6214/C-03-108

In the Matter of the Complaint of the Minnesota Department of
Commerce Against Vonage Holding Corp. Regarding Lack of Authority
to Operate in Minnesota

Issue(s): How shall the Commission proceed?

Staff: Stuart Mitchell 651-296-8662

Karen Hammel 651-297-1852

Relevant Documents

Department Complaint (File #1) Received July 15, 2003
Vonage Answer and Motion to Dismiss (File #6) Received July 30, 2003
Comments of MCI (File #7) Received July 30, 2003
Letter of Level 3 Communications (File #10) Received August 4, 2003

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

Statement of the Issue

How shall the Commission proceed?

Background

On July 15, 2003 the Department of Commerce filed a complaint against Vonage Holdings Corporation with the Commission. The Department alleged three violations by the Company:

1. Vonage has offered and continues to offer telephone services in Minnesota, including local exchange service and long distance service, without first obtaining a certificate under Minn. Stats. §§ 237.16 and 237.74.
2. The local telephone service offered by Vonage violates Minnesota law in that it fails to provide adequate 911 service.
3. Vonage has not filed a tariff containing all terms and conditions of its service.

In its filing, the Department requested temporary relief, and an expedited proceeding.

On July 23, 2003 Vonage filed its response to the request for temporary relief.

On July 24, 2003 the Commission deliberated the question of temporary relief and determined it was not necessary. The Commission's Order Denying Temporary Relief was issued on August 1, 2003.

On July 30, 2003 Vonage filed its answer and motion to dismiss. Also on that date MCI and AT&T filed petitions to intervene, and MCI filed comments.

On August 4, 2003 the Commission received a letter from Level 3 Communications, Inc., requesting designation as a "Participant" in these proceedings.

Minn. Rules, part 7829.0800 provides that a petition to intervene in a Commission proceeding may be considered granted if there has been no objection within ten days of the filing of the petition. As of August 13, the date of the Commission meeting, the clock will have run out on the AT&T and MCI petitions; it will have one more day for Level 3. Staff is aware at this time of no objections to any of the petitions.

Party Positions

Department of Commerce

The Department alleged that by not obtaining a certificate of authority from the Commission for providing telephone service, Vonage has violated Minn. Stat. § 237.16, subd. 1(b) and 237.74, subd. 12, and Minn. Rules, part 7812.0200, subp. 1. The essence of the Department's argument

is that Minnesota law requires companies providing telephone service in Minnesota to be certificated by the Commission.

With respect to 911 service, the Department said Vonage's failure to have a Commission-approved 911 plan (or to submit one for review and approval) violates Minn. Rules, part 7812.0550, subp. 1. In addition, the Department said Vonage has failed to pay the 911 fees required to be collected from telephone subscribers and remitted to the Department of Administration. This violates Minn. Stat. § 237.49.

The Department said Vonage has failed to file a tariff for charges and prices of service, nor rules or classifications used by it in the conduct of telephone business. This failure violates Minn. Stat. § 237.07.

The Department asked the Commission to take action to remedy the problem posed by Vonage in the following ways:

- Issue an Order finding that Vonage has knowingly and intentionally violated Minnesota Rules and Statutes.
- Order Vonage to fully comply with all Minnesota Statutes and Rules relating to the offering of telephone service in Minnesota within 30 days of the Commission's Order.
- Order Vonage to remit 911 fees to the Minnesota Department of Administration for the period when it served Minnesota customers but did not pay such fees.
- Assess penalties under Minn. Stat. § 237.461 or .462.
- Grant such other and further relief as the Commission may deem just and reasonable.

Vonage Holdings Corporation

Vonage asked that the complaint be dismissed. Vonage said it is an "information services" provider, not a "telecommunications services" provider, and is not subject to the jurisdiction of the Commission. Because it does not provide telephone services or telecommunications services, it hasn't violated any Minnesota statutes or rules.

Vonage admitted it has no certificate of authority from the Commission, but said as an information service provider, it is not required to obtain a certificate before offering services in Minnesota.

Similarly, Vonage admitted that it has not submitted a 911 plan, but denied that it is required to do so. It denied that it is required to collect 911 fees, but said as an information service provider that purchases telecommunications services, it has paid 911 fees to telecommunications carriers.

Vonage admitted that it has not filed any tariffs in Minnesota, but said it is not subject to tariff requirements applicable to telephone companies.

Vonage asked the Commission to dismiss the complaint in its entirety, and to open a Voice over IP workshop. At a minimum, it said, the Commission should stay this proceeding until it conducts a VoIP workshop. Other states are doing this now.

MCImetro Access Transmission Services, LLC

MCI said the issue of VoIP regulation is extremely complex and has far-reaching implications. A determination by the Commission to regulate VoIP service will likely affect Universal Service Fund issues, intercarrier compensation issues, and carrier obligations under § 251 of the Federal Telecommunications Act of 1996, and will affect parties other than those that are the subject of this complaint.

MCI said the Commission must make a threshold finding that it has jurisdiction over the complaint, if it is to move forward. In this case, it said, the finding is not simple, as no state or federal entity has made a finding as to whether the VoIP services constitute a “telecommunications service” or an “information service.” MCI said the Commission may only assert regulatory jurisdiction if it determines that the Vonage service meets the Act’s definition of a “telecommunications service.”

MCI suggested that the Commission:

1. Dismiss the Vonage complaint on the basis that the Department failed to state a claim upon which relief can be granted.
2. Open an investigation on the Commission’s own motion to determine the threshold issue of whether the VoIP service offered by Vonage constitutes either a telecommunications service or an information/enhanced service as defined by the Act.
3. Refer this question to the Office of Administrative Hearings for record development and proposed findings on the proper classification of the Vonage service.
4. Provide notice of this proceeding to all parties currently listed on the Commission’s general telecommunications list.

Staff Analysis

There are two broad types of action the Commission may take today to act upon this complaint and response. First, the Commission may determine it needs a more extensive record to resolve the case. If so, it can order a contested case hearing, or an expedited case hearing, or it could take the suggestion of Vonage and MCI and convene a VoIP workshop.

The expansion of the record afforded by these types of proceedings is especially useful when there are facts material to the disposition of the complaint which are in dispute. If, on the other hand, the facts are undisputed, then really only policy and law need resolution, and there are less expensive means of doing so.

The second type of action is to deal directly with the matter, on the basis of the record as it stands. If the facts are undisputed, and the law or policy is clear, then the Commission may proceed to put this matter to rest immediately. As will be shown, staff thinks this is the appropriate approach to take.

Imagine the following conversation between the Department and Vonage:

Department: "You don't have a certificate of authority from the Commission."

Vonage: "That's correct."

Department: "You have no approved 911 plan."

Vonage: "That's correct."

Department: "You have no Commission-approved tariff on file."

Vonage: "That's correct."

Department: "You're providing telephone service."

Vonage: "No, I'm not."

That little conversation (in deathless prose) sums up the record in this case. The dispute is not over the facts, but over whether Vonage is providing telephone service. That question, it turns out, is a matter of law.

Minn. Stat. § 237.01, subd. 7 states:

"Telephone company," means and applies to any person, firm, association or any corporation, private or municipal, owning or operating any telephone line or telephone exchange for hire, wholly or partly within this state, or furnishing any telephone service to the public.

Minn. Stat. § 237.16, subd. 1 (b) reads as follows:

No person shall provide telephone service in Minnesota without first obtaining a determination that the person possesses the technical, managerial, and financial resources to provide the proposed telephone services and a certificate of authority from the commission under terms and conditions the commission finds to be consistent with fair and reasonable competition, universal service, the provision of affordable telephone service at a quality consistent with commission rules, and the commission's rules.

The term "telephone service" is not defined in Minnesota statutes.

In Minnesota Microwave, Inc. v. Public Service Commission, 291 Minn. 241, 190 N.W.2d 661 (1971), the Minnesota Supreme Court considered whether a private company providing unidirectional, closed-circuit, microwave facilities was subject to the jurisdiction of the Commission as a "telephone company" or a supplier of "telephone service." The Court stated:

[W]hether appellant is supplying “telephone service” is a question of law to be determined on the basis of the operative facts determined by the commission.

Id. at 245, 190 N.W. 2d at 664.

The Court continued (admonishing the Commission):

While it is undoubtedly true that administrative interpretations may in certain instances be entitled to great weight, it is clear that such is not here the case. **The statutory language here under consideration is not exceedingly technical in nature, such that only specialized agencies may be thought able to understand it. Instead, the statute is phrased in common terms,** and thus affords no good reason for deferring to administrative expertise for its interpretation. Moreover, the fact that the question now before this court is one which the agency has not had occasion to consider prior to the instant case weighs against placing much weight on the commission’s interpretation. (Emphasis added.)

Id., 190 N.W. 2d at 665.

The Court noted:

It appears that for the most part the term “telephone service” refers to the supplying of facilities for two-way communications.

Id. at 247, 190 N.W.2d at 665.

What the Supreme Court was saying, in other words, is that it is up to the Commission to decide what constitutes “telephone service,” and that making such a determination is not rocket science.

What is it that Vonage offers? Let’s look first at what Vonage says it offers (taken from Vonage’s web site at http://www.vonage.com/learn_tour.php, Exhibit 1 of the Department’s complaint):

Vonage DigitalVoice is an all-inclusive home phone service that replaces your current phone company.

This is like the home phone service you have today – only better!

Vonage combines domestic US local, long distance, and Canada calls for one flat price because it runs over your high speed Internet connection. Say goodbye to confusing bills and surprising charges. With Vonage DigitalVoice you get unlimited local and long distance calling, Canadian calling, plus great features like Caller ID, Call Waiting and Voicemail. Best of all you only pay one low price.

To use Vonage, a subscriber must have either a cable modem or a DSL modem and Internet service. The subscriber's ordinary touch-tone phone plugs into a "black box" (an MTA or a router) which itself is plugged into the modem.

In order to determine whether Vonage offers "telephone service," lets compare Plain Old Telephone Service (POTS) and the service offered by Vonage:

Action	Result, POTS	Result, Vonage Service
Subscriber picks up ordinary telephone handset.	Subscriber hears dial tone.	Subscriber hears dial tone.
Subscriber dials an assigned telephone number.	Gets connected or hears busy signal.	Gets connected or hears busy signal.
Subscriber speaks.	Call recipient hears voice.	Call recipient hears voice.
Call recipient speaks.	Subscriber hears voice.	Subscriber hears voice.
Caller dials subscriber's phone.	Ordinary telephone rings.	Ordinary telephone rings.
Subscriber responds to the call, picking up the handset.	Conversation ensues.	Conversation ensues.

Are there any differences between the service offered by Vonage and POTS? Yes. For example, a Vonage subscriber can connect his or her telephone and black box to another similar high-speed Internet connection in another North American location. It will work just fine. Not so with POTS. Here are some other differences:

Action	Result, POTS	Result, Vonage Service
Subscriber dials 911	Call is routed to the nearest 911 center	a. If subscriber hasn't set up the service, there is no connection. b. If subscriber has set up the service, call is routed to an administrative number at a fire or police station near the location given by the subscriber when setting up the service.
Subscriber disputes a portion of the bill.	Subscriber may pay the disputed amount into an escrow account.	Subscriber must pay Vonage the disputed amount.

This list could go on. It demonstrates that in the areas identified by the Department, Vonage is not complying with Minnesota regulation of telephone companies that provide telephone service.

So what should the Commission do about the Department's complaint? Here is what is known: Under Minnesota law, any company providing "telephone service" is regulated by the Commission. The Commission is to interpret the term "telephone service," and the Minnesota

Supreme Court said that “for the most part” telephone service is not a technical term, but has a common meaning which, among other things, refers to two-way communication. Vonage tells anyone visiting its web site that it offers “home phone service that replaces your current phone company.” In the ordinary course of phone usage there is no difference in functionality to the subscriber whether he or she uses POTS or Vonage. And in unusual circumstances, i.e., 911 calls or disputes with the provider, subscribers will find that Vonage departs from expectations because the Company does not comply with Minnesota protections found in statutes, rules, and Commission-authorized tariffs.

Staff maintains that the Commission can decide whether Vonage is supplying “telephone service” within the meaning of Minnesota statutes on the basis of the record before it right now.

But what about the Telecommunications Act of 1996? What about the distinction, under the Act, between “telecommunications service” and “information service?” What about the apparent “special status” of the VoIP technology?

As the parties have pointed out, these questions are being addressed in many proceedings, both at the FCC and in various states. None of these proceedings has yet reached a conclusion, let alone one that has been tested through the courts.

Staff maintains the Commission need not reach these questions now. Staff notes that it agrees absolutely with MCI in framing the Commission’s jurisdiction as a “threshold issue.” However, MCI was mistaken when it said that issue must be resolved by determining whether the VoIP product Vonage offers is a “telecommunications service” or an “information/enhanced service.” No, instead jurisdiction is reached through application of the facts of the case to Minnesota law. The Commission is not here regulating a VoIP technology, but, if it fits the Commission’s definition, a telephone service. This is squarely what it has been charged to do by the legislature.

It may come to pass, some time in the future, that a court or other competent body finds that Minnesota regulation in this area is pre-empted by federal action. We know that, if and when it happens, interstate regulation trumps intrastate regulation. That can be addressed then. It need not be now.

If the Commission finds that Vonage is providing “telephone service” under Minnesota law, it then would need to determine whether the violation is knowing and intentional. Because the dispute centers around which law is applicable, staff’s view is that any violation is unintentional. Should the Commission reach the opposite conclusion, staff recommends the Commission establish a sequence of briefs or comments and replies, and then meet in further hearing to determine penalties under Minn. Stat. § 237.461 or .462.

Staff has listed six mutually exclusive alternatives below. Numbers one through three imply that the current record is sufficient for the Commission’s decision. Numbers four through six imply that the Commission needs more information to determine this matter.

Alternatives

The threshold question whether the Commission has jurisdiction to address the complaint is determined by answering the question whether Vonage provides “telephone service” pursuant to Minnesota law. If the answer to the latter is yes, then the Commission has jurisdiction to address the complaint under Minnesota statutes unless state law is preempted by federal law. In this case there appears to be no clear preemption of state law.

1. Find that Vonage is offering “telephone service” within the meaning of Minn. Stat. §§ 237.01, subd. 7, and 237.16, subd. 1 (b). Conclude that the complaint is justified and
 - a. Order Vonage to fully comply with all Minnesota Statutes and Rules relating to the offering of telephone service in Minnesota within 30 days of the Commission’s Order.
 - b. Order Vonage to remit 911 fees to the Minnesota Department of Administration for the period when it served Minnesota customers but did not pay such fees.
 - c. Grant such other and further relief as the Commission may deem just and reasonable.
2. Find that Vonage is offering “telephone service” within the meaning of Minn. Stat. §§ 237.01, subd. 7, and 237.16, subd. 1 (b). Conclude that the complaint is justified and
 - a. Issue an Order finding that Vonage has knowingly and intentionally violated Minnesota Rules and Statutes.
 - b. Order Vonage to fully comply with all Minnesota Statutes and Rules relating to the offering of telephone service in Minnesota within 30 days of the Commission’s Order.
 - c. Order Vonage to remit 911 fees to the Minnesota Department of Administration for the period when it served Minnesota customers but did not pay such fees.
 - d. Establish a sequence of briefs or comments and replies, followed by a further hearing to assess penalties under Minn. Stat. § 237.461 or .462.
 - e. Grant such other and further relief as the Commission may deem just and reasonable.
3. Find that Vonage is not offering “telephone service” within the meaning of Minn. Stat. §§ 237.01, subd. 7, and 237.16, subd. 1 (b). Dismiss the complaint.
4. Order a contested case hearing to examine the issues raised by the Department’s complaint.
5. Schedule an expedited hearing to examine the issues raised by the Department’s complaint.
6. Table the complaint until after holding a workshop on the VoIP technology.

Recommendation

Staff recommends Alternative 1.

This agreement ("Agreement") is between Vonage Holdings Corp. ("we," "us" or "Vonage") and the user ("you," "user" or "Customer") of Vonage's enhanced Small Business communications services and any related products or services ("Service"). This Agreement governs both the Service and any devices, such as an IP phone, Multimedia Terminal Adapter, Analog Telephone Adapter, Cisco ATA - 186 or any other IP connection device ("Device"), used in conjunction with the Service. By activating the Service, you acknowledge that you have read and understood, and you agree, to the terms and conditions of this Agreement, and you represent that you are of legal age to enter this Agreement and become bound by its terms.

1. SERVICE

1.1 Term

Service is offered on a monthly basis for a term which begins on the date that Vonage activates your Service and ends on the day before the same date in the following month. Subsequent terms of this Agreement automatically renew on a monthly basis without further action by you unless you give Vonage written notice of non-renewal at least ten [10] days before the end of the monthly term in which the notice is given. You are purchasing the Service for full monthly terms, meaning that if you attempt to terminate Service prior to the end of a monthly term, you will be responsible for the full month's charges to the end of the then-current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable. Expiration of the term or termination of Service does not excuse the Customer from paying all unpaid, accrued charges due in relation to the Agreement.

1.2 Residential Use of Service and Device

The Service and Device are provided to you as a residential user, for your personal, residential, non-business and non-professional use. This means that you are not using them for any commercial or governmental activities, profit-making or non-profit, including but not limited to home office, business, sales, tele-commuting, tele-marketing, continuous autodialing, fax broadcast, fax blasting or any other activity that would be inconsistent with normal residential usage patterns. This also means that you are not to resell or transfer the Service or the Device to any other person for any purpose, or make any charge for the use of the Service, without express written permission from Vonage in advance. You agree that your use of the Service and/or Device, or the use of the Service and/or Device provided to you by any other person for any commercial or governmental purpose will obligate you to pay Vonage's higher rates for commercial service on account of all periods, including past periods, in which you use, or used, the Service for commercial or governmental purposes. Vonage reserves the right to immediately terminate or modify the Service, if Vonage determines, in its sole discretion, that Customer's Service is being used for non-residential or commercial use.

1.3 Lawful Use of Service and Device

1.3.1 Prohibited Uses:

You agree to use the Service and Device only for lawful purposes. This means that you agree not to use them for transmitting or receiving any illegal, harmful, threatening, abusive, harassing, defamatory, obscene, sexually explicit, profane, racially or ethnically disparaging remarks or otherwise objectionable material of any kind, including but not limited to any material that encourages conduct that would constitute a criminal offense, give rise to a civil liability, or otherwise violate any applicable local, state, national or international law. Vonage reserves the right to terminate your service immediately and without advance notice if Vonage, in its sole discretion, believes that you have violated the above restrictions, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable. You are liable for any and all use of the Service and/or Device by any person making use of the Service or Device provided to you. If Vonage, in its sole discretion believes that you have violated the above restrictions, Vonage may forward the objectionable material, as well as your communications with Vonage and your personally identifiable information to the appropriate authorities for investigation and prosecution.

1.3.2 Use of Service and Device by Customers Outside the United States:

While we encourage use of the Service for calls from the United States to other countries, Vonage does not presently offer the Service to customers located in other countries. If you remove the Device to a country other than the United States and use the Service from there, you do so at your own risk, including the risk that such activity violates local laws in the country where you do so. Vonage reserves the right to terminate your service immediately and without advance notice if Vonage, in its sole discretion, believes that you have violated the above restrictions or if you use or attempt to use the Service from any country other than the United States, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable. You are liable for any and all use of the Service and/or Device by any person making use of the Service or Device provided to you.

1.4 Loss of Service Due to Power Failure

You acknowledge and understand that the Service does not function in the event of power failure. Should there be an interruption in the power supply, the Service will not function until power is restored. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to utilizing the Service. Power disruptions or failures will also prevent dialing to emergency service numbers including 911.

1.5 Copyright / Trademark / Unauthorized Usage of Device, Firmware or Software

The Service and Device and any firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents and materials on Vonage's website(s) are protected by trademark, copyright or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos and domain names (collectively "marks") of Vonage are and shall remain the exclusive property of Vonage and nothing in this Agreement shall grant you the right to right or license to use such marks. You acknowledge that you are not given any license to use the firmware or software used to provide the Service or provided to Customer in conjunction with providing the Service, or embedded in the Device, other than a nontransferable, revocable license to use such firmware or software (without making any modification thereto) strictly in accordance with the terms and conditions of this Agreement, and that the Device is exclusively for use in connection with the Service. If you decide to use the Service through an interface device not provided by Vonage, which Vonage reserves the right to prohibit in particular cases or generally, you warrant and represent that you possess all required rights, including software and/or firmware licenses, to use that interface device with the Service and you will indemnify and hold harmless Vonage against any and all liability arising out of your use of such interface device with the Service.

1.6 Tampering with the Device

You agree not to change the electronic serial number or equipment identifier of the Device, or to perform a factory reset of the Device, without express permission from Vonage in each instance. Vonage reserves the right to terminate your Service should you tamper with the Device, leaving you responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

1.7 Theft of Service

You agree to notify Vonage immediately, in writing or by calling the Vonage customer support line, if the Device is stolen or if you become aware at any time that your Service is being stolen or fraudulently used. When you call or write, you must provide your account number and a detailed description of the circumstances of the Device theft or fraudulent use of Service. Failure to do so in a timely manner may result in the termination of your Service and additional charges to you. You will be liable for all use of the Service using a Device stolen from you and any and all stolen Service or fraudulent use of the Service.

1.8 Return of Device

The Device may be returned to Vonage within fourteen (14) days of the line termination to receive a credit for the \$39.99 disconnect fee (refer to section 4.6 of this document regarding termination fees), provided:(i) Customer retained proof of purchase and original packaging and (ii) contents are undamaged

and in original condition and (iii) and all documentation and packaging materials are returned. If Customer receives cartons and/or Devices that are visibly damaged, please note the damage on the carrier's freight bill or receipt and keep a copy. Keep the original carton, all packing materials and parts intact and contact Vonage's customer care department immediately. Warranty coverage varies depending on the type of Device that Customer chooses. Please refer to the Vonage warranty materials included in the packaging of your Device(s).

1.9 Number Transfer on Service Termination

Vonage may, at the Company's discretion, release the telephone number used in connection with your Service provisioned by Vonage to your new service provider, if they are able to accept it, upon your termination of the Service. Vonage will do so provided (i) your account has been terminated and (ii) your Vonage account is completely current including payment for all charges and disconnect fees and (iii) you request the transfer upon terminating your account.

2. EMERGENCY SERVICES- 911 DIALING

2.1 Non-Availability of Traditional 911 or E911 Dialing Service:

You acknowledge and understand that the Service does NOT support traditional 911 or E911 access to emergency services. The Company does offer a limited 911-type service as described herein, but you acknowledge and understand that 911-type dialing is NOT automatic -- you must separately activate such 911-type dialing capabilities and that such 911-type dialing is different in a number of important ways from traditional 911 service, as described herein. You agree to inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service as to the non-availability of traditional 911 or E911 dialing from your Vonage Service and Device(s). If you activate Vonage 911-type dialing service, you agree to inform any household residents, guests and other third persons who may be present at the physical location where you utilize the Service as to the important differences and limitations of Vonage 911 dialing service as compared with traditional 911 or E911 dialing, as set forth in this Agreement.

2.2 Description of 911-Type Dialing Capabilities - Activation Required

The Company does offer a 911-type dialing service that is different in a number of important ways from traditional 911 service. You acknowledge and understand that 911-type dialing is NOT automatic. You must successfully activate the 911 dialing feature by following the instructions from the "Dial 911" link on your dashboard. You acknowledge and understand that you cannot dial 911 from this line unless and until you have received a confirming email. Once you have received a confirming email that 911 dialing has been successfully activated, you may dial 911 as needed. When you dial 911, your call is routed from the Vonage network to the Public Safety Answering Point (PSAP) or local emergency service personnel designated for the address that you listed at the time of activation. You acknowledge and understand that when you dial 911 from your Vonage equipment you will be routed to the general telephone number for the PSAP or local emergency service provider, and may not be routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls using traditional 911 dialing. As described herein, this 911-type dialing currently is NOT the same as traditional 911 or E911 dialing, and at this time, does not necessarily include all of the capabilities of traditional 911 dialing.

2.3 Service Outage:

2.3.1 Power Outage

You acknowledge and understand that 911 dialing does not function in the event of a power failure. Should there be an interruption in the power supply, the Service and 911 dialing will not function until power is restored. A power failure or disruption may require the Customer to reset or reconfigure equipment prior to utilizing the Service or 911 dialing.

2.3.2 Broadband Service Outage

You acknowledge and understand that service outages by your broadband provider will prevent ALL calls, including 911 dialing.

2.3.3 Service Outage Due to Suspension of Your Account

You acknowledge and understand that service outages due to suspension of your account as a result of billing issues will prevent ALL calls, including 911 dialing.

2.3.4 Other Service Outages

You acknowledge and understand that if there is a service outage for ANY reason, such outage will prevent ALL calls, including 911 dialing. Such outages may occur for a variety of reasons, including, but not limited to those reasons described elsewhere in this Agreement.

2.3.5 Limitation of Liability and Indemnification

You acknowledge and understand that the Company's liability is limited for any Service outage and/or inability to dial 911 from your line or to access emergency service personnel, as set forth in this document. You agree to defend, indemnify, and hold harmless Vonage, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees) by, or on behalf of, Customer or any third party or user of Customer's Service relating to the absence, failure or outage of the Service, including 911 dialing and/or inability of Customer or any third person or party or user of Customer's Service to be able to dial 911 or to access emergency service personnel.

2.4 Requires Activation:

You acknowledge and understand that 911 dialing does not function unless you have successfully activated the 911 dialing feature by following the instructions from the "Dial 911" link on your dashboard, and until such later date that such activation has been confirmed to you through a confirming email. You acknowledge and understand that you cannot dial 911 from this line unless and until you have received a confirming email.

2.5 Failure to Designate the Correct Physical Address When Activating 911 Dialing:

Failure to provide the current and correct physical address and location of your Vonage equipment will result in any 911 call you may make being routed to the incorrect local emergency service provider.

2.6 Requires Re-Activation if You Change Your Number:

You acknowledge and understand that 911 dialing does not function if you change your phone number unless and until you have successfully activated the 911 dialing feature following the instructions from the "Dial 911" link on your dashboard, and until such later date that such activation has been confirmed to you through a confirming email. 911 dialing must be re-activated. Although you may have activated 911 dialing with your former Vonage phone number, you must separately activate 911 dialing for any new number.

2.7 Change of Physical Location of Vonage Equipment:

You acknowledge and understand that 911 dialing does not function properly or may not function at all if you take your equipment with you away from the address or physical location that you have designated.

2.8 Requires Re-Activation if You Move:

You acknowledge and understand that 911 dialing does not function properly or at all if you move or change the physical location of your Vonage equipment to a different street address, unless and until you have successfully activated the 911 dialing feature following the instructions from the "Dial 911" link on your dashboard, and until such later date that such activation has been confirmed to you through a confirming email. 911 dialing must be re-activated although you may have activated 911 dialing using your former address, and you must separately activate 911 dialing for any new physical address. Failure to provide the current and correct physical address and location of your Vonage equipment will result in any 911 dialing you may make being routed to the incorrect local emergency service provider

2.9 Possibility of Network Congestion and/or Reduced Speed for Routing 911 Calls:

Due to the manner in which it is technically possible to provide the 911 dialing feature for Vonage DigitalVoice calls at this time, you acknowledge and understand that there is a greater possibility of network congestion and/or reduced speed in the routing of a 911 call made utilizing your Vonage equipment as compared to traditional 911 dialing over traditional public telephone networks. You acknowledge and understand that 911 dialing calls from your Vonage equipment will be routed to the general telephone number for the local emergency service provider, and will not be routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls at such local provider's facilities when such calls are routed using traditional 911 dialing. You acknowledge and understand that there may be a greater possibility that the general telephone number for the local emergency service provider will produce a busy signal or will take longer to answer, as compared to those 911 calls routed to the 911 dispatcher(s) who are specifically designated to receive incoming 911 calls using traditional 911 dialing.

2.10 Automated Number Identification:

At this time in the technical development of Vonage 911 dialing, it may or may not be possible for the Public Safety Answering Point (PSAP) and the local emergency personnel to identify your phone number when you dial 911. Vonage's system is configured in most instances to send the automated number identification information along with the call; however, the phone system that transmits the call to the PSAP and the PSAP itself must be able to receive the information and pass it along properly, and they are not yet always technically capable of doing so. You acknowledge and understand that PSAP and emergency personnel may or may not be able to identify your phone number in order to call you back if the call is unable to be completed, is dropped or disconnected, or if you are unable to speak to tell them your phone number and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

2.11 Automated Location Identification:

At this time in the technical development of Vonage 911 Dialing, it is not possible to transmit identification of the address that you have listed to the Public Safety Answering Point (PSAP) and local emergency personnel for your area when you dial 911. You acknowledge and understand that you will need to state the nature of your emergency promptly and clearly, including your location, as PSAP personnel will NOT have this information. You acknowledge and understand that PSAP and emergency personnel will not be able to find your location if the call is unable to be completed, is dropped or disconnected, if you are unable to speak to tell them your location and/or if the Service is not operational for any reason, including without limitation those listed elsewhere in this Agreement.

3. CHANGES TO THIS AGREEMENT

Vonage may change the terms and conditions of this Agreement from time to time. Notices will be considered given and effective on the date posted. Agreement posted supercedes all previously agreed to electronic and written Terms of Service.

4. CHARGES / PAYMENTS / DEFAULT / TAXES / TERMINATION

4.1 Billing

You must give us a valid credit card number when the Service is activated. If the card expires, you close your account or your billing address changes, or the card is cancelled and replaced owing to loss or theft, you must advise Vonage at once. We will bill all charges monthly to your credit card, including but not limited to: activation fees, monthly Service fees, international usage charges, advanced feature charges, equipment purchases and shipping and handling charges. Vonage reserves the right to bill at more frequent intervals if the amount due at any time exceeds \$50.

4.2 Billing Disputes

You must notify Vonage in writing within 7 days after receiving your credit card statement if you dispute any Vonage charges on that statement or such dispute will be deemed waived. Billing disputes should be notified to the following address:

Customer Care Billing Department
Vonage Holdings
2147 Route 27
Edison, NJ 08817
or
billing@customercare.com
or
1-VONAGE-HELP

4.3 Payment

Vonage only accepts payments by credit card. Your initial use of the Service authorizes Vonage to charge the credit card account number on file with Vonage, including any changed information given Vonage if the card expires or is replaced, for Vonage charges that accrue during the billing cycle. This authorization will remain valid until 30 days after Vonage receives your written notice terminating Vonage's authority to charge your credit card. Vonage may terminate your Service at any time in its sole discretion, if any charge to your credit card on file with Vonage is declined or reversed or in case of any other non-payment of account charges. Termination of Service for declined card, reversed charges or non-payment leaves you FULLY LIABLE to Vonage for ALL CHARGES ACCRUED BEFORE TERMINATION and for charges incurred by Vonage owing to your non-payment, such as (but not limited to) collection costs and attorney's fees.

4.4 Termination/Discontinuance of Service

Vonage reserves the right to suspend or discontinue providing the Service generally, or to terminate your Service, at any time in its sole discretion. If Vonage discontinues providing the Service generally, or terminates your Service in its discretion without a stated reason, you will only be responsible for charges accrued through the date of termination, including a pro-rated portion of the final month's charges. If your Service is terminated for any stated reason, including without limitation violation of this Agreement, or because of any improper use of the Service or Device (such as, but not limited to, your attempts to hack, disrupt, or misuse the Service), you will be responsible for the full month's charges to the end of the current term, including without limitation unbilled charges, plus a disconnect fee, all of which immediately become due and payable.

4.5 Taxes

Customer is responsible for, and shall pay any applicable federal, state, municipal, local or other governmental sales, use, excise, value-added, personal property, public utility or other taxes, fees or charges now in force or enacted in the future, that arise from or as a result of Customer's subscription or use or payment for the Service or a Device. Such amounts are in addition to payment for the Service or Devices and will be billed to your account. If Customer is exempt from payment of such taxes, it will provide Vonage with an original government-issued certificate attesting to tax-exempt status. Tax exemption will only apply from and after the date Vonage receives the Tax Exempt Document.

4.6 Disconnect Fee

You will be charged a disconnect fee of \$39.99 per voice line upon any termination of your Service. The disconnect fee becomes due and payable immediately upon termination and will be billed directly to your credit card. If you have multiple lines, you will be charged a disconnect fee of \$39.99 per line for each line you disconnect. To receive a credit for the disconnect fee, you may return your Device within fourteen (14) days of termination, provided: (i) Customer retained proof of purchase and original packaging, (ii) contents are undamaged and in original condition and (iii) all documentation and packaging materials are returned. In the event you disconnect multiple lines, Vonage will issue you a credit for all disconnect fees upon receipt of all Devices (Multimedia Terminal Adapters, etc.) within 14 days of termination.

4.7 Money Back Guarantee

Vonage offers a 14-day money back guarantee, applicable to one primary line per account, not additional or secondary lines. Under terms of the money back guarantee, Vonage refunds the activation fee, first month of service, shipping charges and waives the disconnect fee. Vonage reserves the right to terminate or revoke the Money-Back Guarantee at any time, without prior notice.

User must cancel service within 14 days of the account activation. Equipment must be returned within 14 days. Usage must not exceed 250 minutes within the first 14 days of service. User is responsible for any charges for overage, international or directory assistance calls. Accounts exceeding 250 minutes of usage are not eligible for refund.

All returned equipment must be in the original packaging with the UPC or bar code intact. All components, manuals and registration card(s) must be included. Equipment must be returned with a valid return authorization number obtained from Vonage Customer Care. User is responsible for return shipping of equipment. The money back guarantee will not be honored if user fails to meet all above requirements.

To obtain a return authorization number, user must contact billing@vonage.com or 1-VONAGE-HELP.

5. WARRANTY and LIABILITY LIMITATIONS / INDEMNIFICATION

5.1 Limitation of Liability

Vonage shall not be liable for any delay or failure to provide the Service, including 911 dialing, at any time or from time to time, or any interruption or degradation of voice quality that is caused by any of the following:

- 1.) act or omission of an underlying carrier, service provider, vendor or other third party;
- 2.) equipment, network or facility failure;
- 3.) equipment, network or facility upgrade or modification;
- 4.) force majeure events such as (but not limited to) acts of god; strikes; fire; war; riot; government actions;
- 5.) equipment, network or facility shortage;
- 6.) equipment or facility relocation;
- 7.) service, equipment, network or facility failure caused by the loss of power to Customer; or
- 8.) any other cause that is beyond Vonage's control, including without limitation the failure of an incoming or outgoing call to be connected or completed, including 911 dialing, or degradation of voice quality.

Vonage's liability for any failure or mistake shall in no event exceed Service charges with respect to the affected time period.

5.2 No Consequential Damages

In no event shall Vonage, its officers, directors, employees, affiliates or agents or any other service provider who furnishes services to Customer in connection with this Agreement or the Service be liable for any incidental, indirect, special, punitive, exemplary or consequential damages, or for any damages, including but not limited to loss of data, loss of revenue or profits, or arising out of or in connection with the use or inability to use the Service, including inability to be able to dial 911 or to access emergency service personnel through the Service. The limitations set forth herein apply to claims founded in breach of contract, breach of warranty, products liability, tort and any and all other theories of liability and apply whether or not Vonage was informed of the likelihood of any particular type of damages.

5.3 Indemnification

Customer agrees to defend, indemnify, and hold harmless Vonage, its officers, directors, employees, affiliates and agents and any other service provider who furnishes services to Customer in connection with this Agreement or the Service, from any and all claims, losses, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys fees) by, or on behalf of, Customer or any third party or user of Customer's Service, relating to this Agreement, the Services, including 911 dialing, or the Device. This paragraph shall survive termination of this Agreement.

5.4 No Warranties on Service

Vonage makes no warranties, express or implied, including but not limited to, any implied warranties of merchantability or fitness of the Service or the Device for a particular purpose. Vonage does not warrant

5.4 No Warranties on Service

Vonage makes no warranties, express or implied, including but not limited to, any implied warranties of merchantability or fitness of the Service or the Device for a particular purpose. Vonage does not warrant that the Service will be without Service failure, delay, interruption, error, degradation of voice quality or loss of content, data or information. Neither Vonage nor its officers, directors, employees, affiliates or agents or any other service provider or vendor who furnishes services or products to Customer in connection with this Agreement or the Service will be liable for unauthorized access to Vonage's or Customer's transmission facilities or premises equipment or for unauthorized access to, or alteration, theft or destruction of, Customer's data files, programs, procedures or information through accident, fraudulent means or devices or any other method, regardless of whether such damage occurs as a result of Vonage's or its service provider's or vendors' negligence. Statements and descriptions concerning the Service or Device, if any, by Vonage or Vonage's agents or installers are informational and are not given as a warranty of any kind.

5.5 No Warranties, or Limited Warranties, for Devices

If Customer purchased the Device new from Vonage and the Device included a limited warranty at the time of purchase, Customer must refer to the separate limited warranty document for information on the limitation and disclaimer of certain warranties. If Customer's Device did not include a limited warranty from Vonage at the time of purchase, Customer agrees that it accepts its Device "as is" and that Customer is not entitled to replacement or refund in the event of any defect.

5.6 No Third Party Beneficiaries

No provision of this Agreement provides any person or entity not a party to this Agreement with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

5.7 Content

You are liable for any and all liability that may arise out of the content transmitted by or to you or Users using the Services. You shall assure that your or User's use of the Services and content will at all times comply with all applicable laws, regulations and written and electronic instructions for use. Vonage reserves the right to terminate or suspend affected Services, and/or remove Your or Users' content from the Services, if Vonage determines that such use or content doer not conform with the requirements set forth in this Agreement or interferes with Vonage's ability to provide Services to you or others or receives notice from anyone that Your or Users' use or Content may violate any laws or regulations. Vonage's actions or inaction under this Section shall not constitute review or approval of Your or Users' use or Content. You will indemnify and hold Vonage against any and all liability arising from the content transmitted by or to you or to Users using the Services. A "User" means any person, whether authorized or unauthorized, using the Service and/or Device provided to you.

6. GOVERNING LAW / RESOLUTION OF DISPUTES

6.1 Mandatory Arbitration

Any dispute or claim between Customer and Vonage arising out of or relating to the Service or Device provided in connection with this Agreement shall be resolved by arbitration before a single arbitrator administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator's decision shall follow the plain meaning of the relevant documents, and shall be final and binding. Without limiting the foregoing, the parties agree that no arbitrator has the authority to: (i) award relief in excess of what this Agreement provides; or (ii) award punitive or exemplary damages. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. All claims shall be arbitrated individually and Customer will not bring, or join a punitive or certified class action to arbitration or seek to consolidate or bring previously consolidated claims in arbitration. Customer acknowledges that this arbitration provision constitutes a waiver of any right to a jury trial.

6.2 Governing Law

The Agreement and the relationship between you and Vonage shall be governed by the laws of the State of New Jersey without regard to its conflict of law provisions. You and Vonage agree to submit to the personal and exclusive jurisdiction of the courts located within the state of New Jersey. The failure of Vonage to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

6.3 Entire Agreement

This Agreement and the rates for Services found on Vonage's website constitute the entire agreement between you and Vonage and govern your use of the Service, superseding any prior agreements between you and Vonage and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. No amendment to this Agreement shall be binding upon Vonage unless and until posted in accordance with Section 3 hereof.

6.4 Severability

If any part of this Agreement is legally declared invalid or unenforceable, all other parts of this Agreement are still valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement.

7. PRIVACY

Vonage Service utilizes, in whole or in part, the public Internet and third party networks to transmit voice and other communications. Vonage is not liable for any lack of privacy which may be experienced with regard to the Service. Please refer to our Privacy Policy at www.vonage.com for additional information.

8. NOTICES

Notices to Customer shall either (i) be made by posting to the "Service Announcements" section of our Web Site, and/or (ii) be sent to the email address on file for Customer at Vonage. You are responsible for notifying us of any changes in your email address by e-mailing us at customer@vonage.com, and we may continue to use your previous e-mail address unless and until we have received your notice of address change. Notices will be considered given on the date posted or sent by Vonage.

Last Updated: August 13, 2003



Username:

Password:

[Forget Your Password?](#)

E-Mail This Page

Vonage 911

Vonage Lets You Dial 911

Prior Activation Required.

Your Safety Is Important

Vonage is proud to offer 911 emergency dialing. When you dial 911, your call is routed from the Vonage network to the Public Safety Answering Point (PSAP) for your area. There are several important differences between our Emergency Services dialing and traditional 911 dialing that you need to know:

You Must Pre-designate the Physical Location of Your Vonage Line for 911 Dialing to Function.

- Remember that unlike traditional phone lines, Vonage service is portable to any location with broadband Internet access. For example, you can have a New York number and receive calls in Texas. You can also take your equipment with you on a trip but, when you travel, 911 Dialing will automatically route your call to the local emergency personnel location for the address on file, not your temporary location.
- When you sign up for Vonage Dialing 911 service, you fill out a short form that tells us your actual physical address. When you dial 911, the call is routed to the local emergency personnel location designated for the address you register on file here.
- When you move, you **MUST** provide your new location. You can conveniently update your new location online. It may take several days to update your record.
- Since your 911 call could be from anywhere, we need you to verify the physical location of your phone in order to activate this 911 dialing feature from your phone.

Quick Reference

- **Dialing 911 is an optional feature**
- **Dialing 911 is free**
- **Dialing 911 is available anywhere in the United States**
- **Dialing 911 requires prior activation on your part**
- **911 Dialing and Vonage Service DO NOT function During a Power Outage.**

Exhibit 5

911 Dialing Isn't Automatic. You Must Pre-Activate 911 Dialing. You May Decline 911 Dialing.

- We STRONGLY urge you to activate 911 Dialing. Even if you don't plan to make 911 calls from your Vonage line, there may be others who do. You can't plan in advance for all situations. For example, a residential line could be used by babysitters, young children, inlaws, and others who may not know that you didn't want to make 911 calls. If you decline 911 from Vonage, you or others will not be able to call 911 from this Vonage line. Don't play games with your safety. Register today.

Your Call Will Go To A General Access Line at the Public Safety Answering Point (PSAP). This is different from the 911 Emergency Response Center where traditional 911 calls go.

- This means your call goes to a different phone number than traditional 911 calls. Also, you will need to state the nature of your emergency promptly and clearly, including your location and telephone number, as PSAP personnel will NOT have this information at hand.

Service Outages Can Prevent 911 Dialing.

- 911 Dialing and Vonage Service DO NOT function during an electrical power or broadband provider outage.

Important Note

Please refer to the Dialing 911 section in our Terms of Service for important information on potential limitations of this 911 feature, including the differences between our 911 Dialing feature and traditional 911 dialing.

[::: Corporate Information](#) [::: Site Map](#) [::: Contact Us](#) [::: Privacy Policy](#) [::: Terms Of Service](#) [::: Affiliates Program](#)

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Use of confusingly similar or disparaging terms is a violation of our intellectual property rights.

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CERTIFICATE OF SERVICE

Frontier Telephone of Rochester, Inc.

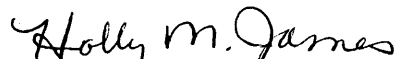
Case No. 03-C-

I hereby certify that, on this 10th day of September 2003, copies of the foregoing Complaint of Frontier Telephone of Rochester, Inc. in the above-referenced proceeding were placed in the U.S. Mail to the following:

Corporation Service Corp.
2711 Centerville Road
Wilmington, DE 19808

J.T. Ambrosi
PaeTec Communications, Inc.
290 Woodcliff Drive
Fairport, NY 14450

Jeffrey Citron
President and CEO
Vonage Holdings Corp.
2147 Route 27
Edison, NJ 08817



Holly M. James