

STATE OF TEXAS Plaintiff,  v.  VONAGE HOLDINGS CORP. Defendant	§ § § § § § § § § §	IN THE DISTRICT COURT OF  TRAVIS COUNTY, TEXAS  200 <sup>th</sup> JUDICIAL DISTRICT
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Filed in the District Court of Travis County, Texas

DEC 14 2006  
S. S. C. A.  
K. L. G. L. A.  
Ginella Rodriguez-Mendoza, Clerk

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

On this date, came on for hearing the above-entitled and numbered cause in which the STATE OF TEXAS (hereinafter "State"), acting by and through Attorney General GREG ABBOTT is Plaintiff, and VONAGE HOLDINGS CORP. is Defendant. Through their respective attorneys of record, Plaintiff and Defendant agree to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

**I. STIPULATIONS**

The parties, through their respective attorneys, make the following stipulations:

1.1 Defendant is prepared to enter into this settlement without an admission it has violated the law and for purposes of resolution of this matter only, and the Attorney General being in agreement, accepts this agreement in termination of this investigation.

1.2 The Office of the Attorney General has asserted certain claims and causes of action under the Texas Deceptive Trade Practices – Consumer Protection Act, Tex. Bus. & Com. Code, § 17.41 *et al.* (hereinafter "DTPA");

1.3 Defendant denies the allegations of the Office of the Attorney General, and the parties agree and stipulate that neither this Judgment nor the payment of money by Defendant constitutes an admission by Defendant of any violation of the DTPA, or otherwise;

1.4 The parties agree that this Agreed Final Judgment and Permanent Injunction is being entered into for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation and that it does not constitute an admission of any violation of any law by Defendant, and that, in accordance with the terms of this Agreed Final Judgment and Permanent Injunction, the parties have agreed to settle this matter;

1.5 The Office of the Attorney General and Defendant agree to and do not contest the entry of this Agreed Final Judgment and Permanent Injunction;

1.6 The corporate signatory hereto is an officer of VONAGE HOLDINGS CORP., is authorized to enter into this Agreed Final Judgment and Permanent Injunction on behalf of VONAGE HOLDINGS CORP., has read the Agreed Final Judgment and Permanent Injunction, and agrees to the entry of same;

1.7 Defendant does not contest jurisdiction or venue in this case;

1.8 This Agreed Final Judgment and Permanent Injunction in no way affects, preempts, precludes, or resolves any matters with respect to any private claimants or other governmental agencies or departments.

## **II. DEFINITIONS**

For the purposes of this Judgment, the following definitions shall apply:

2.1 For purposes of this Agreed Final Judgment and Permanent Injunction only, "Affirmative Acknowledgment" means a consumer's express and unambiguous acknowledgment and agreement with a particular term or condition that is objectively verifiable and obtained through the use of one of the following methods:

- A. A written acknowledgment signed by the customer;
- B. A voice recording that is clearly audible and easy-to-understand;
- C. An electronic acknowledgment that requires the consumer to affirmatively click on a check box or button acknowledging receipt of an explanation of the term or condition, and acceptance of the same;

- D. An electronic mail message that requires an affirmative response from the consumer acknowledging receipt of an explanation of the term or condition, and acceptance of the same (e.g. clicking on a hyperlink or sending an email response that acknowledges the consumer's acceptance); or
- E. A telephone interactive voice response system or similar mechanism that provides the consumer with a prerecorded explanation of the term or condition and requires the consumer to acknowledge and accept the term or condition by pressing a particular number on his or her telephone keypad.

2.2 "Clearly and conspicuously" means that the required disclosure is in such size, color, contrast, location, duration, and audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. Further:

- A. For print communications, the message shall be in a type size and location sufficiently noticeable for a consumer to read and comprehend it, and in print that contrasts with the background against which it appears.
- B. In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for a consumer to comprehend it.
- C. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software) in which both audio and visual means of communications are utilized for any portion of the message, the message shall be presented simultaneously in both the audio and visual portions of the communication. Notwithstanding the preceding sentence, in any communication presented solely through visual or audio means, the message may be made solely

through the same means by which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for a consumer to read and comprehend it. The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

2.3 “Effective Date” means the date on which this Agreed Final Judgment and Permanent Injunction is entered by the Court.

2.4 “Emergency Dialing Service” means the service offered by Defendant when a consumer dials the digits “9-1-1” using Defendant’s VoIP service.

2.5 “Enhanced 9-1-1 service” or “E911” means the selective routing of 9-1-1 calls to the proper PSAP or other state-designated emergency response center, based on the location of the caller and includes the delivery of the caller’s call back number and address or location information to the proper PSAP or other state-designated emergency response center. Until otherwise ordered by the Federal Communications Commission, the address or location information delivered to the proper PSAP or other state-designated emergency response center can be the address provided by the consumer.

2.6 “Public Safety Answering Point” or “PSAP” means a continuously operated communications facility or other facility established or authorized by governmental authorities that answers 9-1-1 calls originating within a given service area and dispatches emergency assistance to the 9-1-1 calls based on subgeographic areas within the service area.

2.7 “Registered Location” means the most recent physical address that a customer has provided to Defendant as the location where emergency personnel should be dispatched in response to that customer dialing 9-1-1.

### **III. INJUNCTIVE RELIEF**

3.1 **IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that Defendant, its officers, agents, servants, employees, and attorneys, and any other person in active concert or participation with Defendant shall be permanently enjoined, restrained, and prohibited from engaging in the following conduct:

- A. Making unqualified representations that Defendant offers “911 dialing,” or “911 service,” until such time that Defendant:
1. reaches the threshold of providing Enhanced 9-1-1 service to the Registered Location on file with Defendant for each of its then current customers in this State, or, if Enhanced 9-1-1 is not available to wireline customers in a particular geographic area, Defendant provides 9-1-1 service comparable to that available to wireline customers in such geographic area; and
  2. within 30 days of activating the VoIP service of any new customer that signs up for Defendants service after that date, provides Enhanced 9-1-1 service to the initial Registered Location of such customer if such Registered Location is in a geographic area where Enhanced 9-1-1 is available to wireline customers;
  3. This paragraph shall not prevent Defendant from making representations that Defendant offers “911 dialing,” or “911 service,” if such representation is made only in geographic areas in which Defendant provides Enhanced 9-1-1 service to the entire geographic area or, if Enhanced 9-1-1 is not available to wireline customers in a particular geographic area, Defendant provides 9-1-1 service comparable to that available to wireline customers in such geographic area.
- B. Comparing Defendant’s Emergency Dialing Service to Enhanced 9-1-1 service available from traditional wireline telephone service without clearly and

conspicuously disclosing all material differences between Defendant's Emergency Dialing Service and Enhanced 9-1-1 service available from traditional wireline telephone service, including but not limited to the limitations set out in paragraph 3.1(C) below;

- C. Entering into a contract or agreement with a consumer to provide Defendant's VoIP Service without, during the initial enrollment process, but prior to the consumer becoming financially obligated to Defendant:
  - 1. Clearly and conspicuously disclosing, separate and apart from any other disclosures, the circumstances under which Defendant's Emergency Dialing Service may be in some way limited by comparison to traditional wireline Enhanced 9-1-1 service, including but not limited to, the fact, if true, that:
    - a. An emergency operator at a PSAP will not receive the consumer's call back number and address or location information when the consumer dials 9-1-1 using Defendant's Emergency Dialing Service;
    - b. A call to 9-1-1 using Defendant's Emergency Dialing Service may not be routed to an actual 9-1-1 emergency operator, may be answered by an automated message system rather than a live person, and may not be answered outside of regular business hours;
    - c. Defendant's Emergency Dialing Service is not immediately available upon enrollment, and the time when such service will be available;
    - d. Some calls to 9-1-1 using Defendant's Emergency Dialing Service may not automatically deliver to the emergency operator at the PSAP or other state-designated emergency response center information regarding who the proper local emergency responder is for the caller's location;

- e. Some calls to 9-1-1 using Defendant's Emergency Dialing Service may not be routed to a PSAP or other state-designated emergency response center, but instead will be routed to a national emergency call center;
  - f. Routing of calls made using Defendant's Emergency Dialing Service to a PSAP or other state-designated emergency response center is based upon the customer's Registered Location rather than the address from which the call is actually made;
  - g. There is a delay between the time that a customer provides Defendant with an updated address and the time such address becomes the customer's Registered Location for purposes of routing 9-1-1 calls;
  - h. Access to Defendant's Emergency Dialing Service is not available during a power outage;
  - i. Access to Defendant's Emergency Dialing Service is not available when the user cannot access broadband service or broadband service is not operational; and
  - j. Access to Defendant's Emergency Dialing Service is not available if the user's broadband account or VoIP account is suspended ; and
2. Obtaining the consumer's Affirmative Acknowledgment that he or she understands and accepts all such limitations;
- D. Entering into a contract or agreement with a consumer to provide VoIP Service without, prior to the consumer becoming financially obligated to Defendant, obtaining from the consumer the physical address to which emergency personnel should be dispatched in response to the customer dialing 9-1-1, and initiating the activation of Defendant's Emergency Dialing Service, except that this requirement shall not apply when, and to the extent that, Defendant possesses the technological means and has implemented a process whereby it

can automatically ascertain the consumer's location at the time an emergency call is placed by the consumer using Defendant's Emergency Dialing Service;

E. Stating in any advertising or marketing more than 30 days after the Effective Date of this Judgment that Defendant's VoIP Service is a "replacement," "substitute," or "alternative" for traditional wireline telephone service:

1. until such time that Defendant:

- a. reaches the threshold of providing Enhanced 9-1-1 service to the Registered Location on file with Defendant for each of its customers in this State, provided such Registered Location is in a geographic area where Enhanced 9-1-1 is available to wireline customers, and
- b. within 30 days of activating the VoIP service of any new customer that signs up for Defendant's service after that date, provides Enhanced 9-1-1 service to the initial Registered Location of such customer if such Registered Location is in a geographic area where Enhanced 9-1-1 is available to wireline customers; or

2. unless Defendant:

- a. clearly and conspicuously discloses the fact, if true, that Defendant's Emergency Dialing Service is limited by comparison to traditional wireline Enhanced 9-1-1 service; and
- b. directs consumers to its website for clear and conspicuous disclosures of the circumstances under which Defendant's Emergency Dialing Service may be in some way limited by comparison to traditional wireline Enhanced 9-1-1 service, including but not limited to the limitations set out in paragraph 3.1(C) above;

3. With respect to advertising or marketing described in this paragraph 3.1(E) which has been purchased or submitted prior to the Effective Date of this Judgment, Defendant shall not be liable for the non-compliance with

paragraph 3.1(E) so long as it has made reasonable efforts to locate, withdraw, or amend such advertising or marketing to comply with the foregoing requirements;

4. Defendant shall not be liable for failing to prevent the republication of preexisting advertising or marketing described in this paragraph 3.1(E) by independent third parties or parties not subject to Vonage's control so long as Defendant makes reasonable efforts to prevent the republication of preexisting advertising or marketing that does not comply with paragraph 3.1(E), including but not limited to exercising any available contractual rights, and where no contractual relationship exists, requesting in writing that the third party terminate the republication of such advertising or marketing.

F. Failing to maintain a clear and conspicuous link on the homepage of Defendant's main website, currently identified as URL [www.vonage.com](http://www.vonage.com), and any other website Defendant uses for order processing, that links consumers directly to a clear and conspicuous explanation of the differences between the Emergency Dialing Service offered by Defendant and Enhanced 9-1-1 service available with a traditional wireline telephone.

3.2 **IT IS FURTHER ORDERED** that whenever Defendant makes any disclosures that are required by law or this Judgment over the Internet, such disclosures shall be available in a printer friendly format.

3.3 **IT IS FURTHER ORDERED** that Defendant shall establish a Monitoring and Compliance System designed to ensure that all advertisements, solicitations, and telemarketing practices are in compliance with the terms of this Judgment. Within thirty (30) days of the effective date of this Judgment, Defendant shall submit to Plaintiff its plan for the Monitoring and Compliance System, which shall include the following:

- A. Notice to all officers and employees of the terms of this agreement within seven (7) days of its effective date;
- B. Designation of a corporate-level in-house officer or attorney who is responsible for overseeing efforts to comply with consumer protection laws and more specifically to be responsible for assuring compliance with the terms of this Judgment;
- C. Development and implementation of policies and procedures designed to ensure that the advertising, solicitations, and telemarketing practices of Defendants are made in compliance with this Judgment; and
- D. Development, implementation, and enforcement of disciplinary policies and procedures for employees who violate the terms of this Judgment.

3.4 **IT IS FURTHER ORDERED** that for a period of five (5) years after entry of this Judgment, Defendant shall create and retain copies of all sales scripts, training materials, advertisements or other marketing materials, and shall provide a copy of them to Plaintiff upon written request to review such documents.

#### **IV. NOTICE TO CURRENT CUSTOMERS**

4.1 **IT IS FURTHER ORDERED** that Defendant shall, no later than 10 days after the Effective Date of this Judgment, send a notice via electronic mail to all of Defendant's current customers directing the customers to written disclosures regarding Defendant's Emergency Dialing Service. The notice must clearly and conspicuously disclose the circumstances under which Defendant's Emergency Dialing Service may be in some way limited by comparison to traditional wireline Enhanced 9-1-1 service, and require the customer to provide an Affirmative Acknowledgment that he or she understands and accepts all such limitations.

4.2. If any customer who is sent a notice pursuant to the previous paragraph fails to provide an Affirmative Acknowledgment as required by the preceding paragraph, Defendant shall make commercially reasonable efforts to obtain the customer's Affirmative Acknowledgment that

he or she understands and accepts all of the limitations in Defendant's Emergency Dialing Service by comparison to traditional wireline Enhanced 9-1-1 service.

4.3. A notice in the form of Exhibit A that has been provided to a customer prior to the Effective Date of this Judgment shall constitute compliance with paragraph 4.1.

#### **V. INVESTIGATIVE COSTS AND ATTORNEYS' FEES**

5.1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the STATE OF TEXAS have and recover from Defendant, the sum of Two Hundred Twenty Thousand and no/100 Dollars (\$220,000.00) to reimburse its investigative costs and attorneys' fees, which shall be due and payable on or before the Effective Date of this Judgment.

#### **VI. MISCELLANEOUS PROVISIONS**

6.1 This Judgment, and the terms and conditions herein, apply only to consumers who are located in the state of Texas, and to transactions, subscriptions, advertising, notices, disclosures, or calls which occur, in whole or in part, in the state of Texas.

6.2 Defendant shall not effect any change in its form of doing business or its organizational identity as a method of avoiding the terms and conditions set forth in this Judgment.

6.3 This Judgment constitutes the entire agreement between the parties with regard to terminating the investigation, resolving the matters investigated, and all prior negotiations and understandings relating thereto between the parties shall be deemed merged into this Judgment.

6.4 No representations, warranties, or inducements have been made by the Attorneys General to Defendant, and no representations, warranties, or inducements have been made by Defendant to the Attorneys General concerning this Judgment, other than those representations, warranties, and covenants contained in this Judgment.

6.5 To seek a modification or termination of this Judgment, Defendant shall send a written request to the Attorney General of the State of Texas. The Attorney General shall make a good faith evaluation of the then existing circumstances, and after collecting information the Attorney General deems necessary, make a prompt decision, but in no event more than ninety

(90) days from Defendant's request for same (or 30 days after receiving all material information requested from Defendant, whichever is later), as to whether to agree to the modification or termination of this Judgment. In the event the Attorney General agrees to the modification or termination of this Judgment, the Attorney General will sign a joint motion for approval of the modification or termination. In the event the Attorney General timely denies the modification or termination, Defendant reserves all rights to pursue any legal or equitable remedies that may be available to it. No waiver, termination, modification, or amendment of the terms of this Judgment shall be valid or binding unless made by order of a Court.

6.6 If any clause, provision, or section of this Judgment shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Judgment, and this Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

6.7 Any failure by any party to the Judgment to insist on strict performance by any other party of any provision of this Judgment shall not be deemed a future waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right to insist upon the specific performance of any and all of the provisions of this Judgment.

6.8 Plaintiff is authorized to monitor compliance with this Judgment by all lawful means, including but not limited to, posing as a consumer in any communication with Defendant, Defendant's employees or agents, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or prior notice to Defendant.

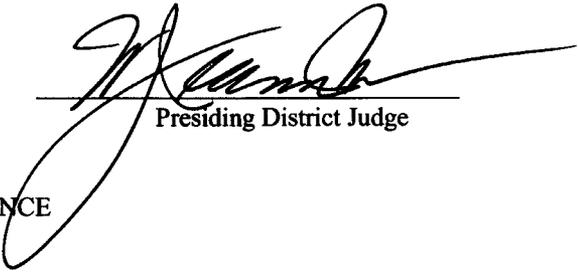
6.9 To the extent that any provision of this Judgment conflicts with any local or federal law which now exists, or is later enacted or amended, such law and not this Judgment shall apply where such conflict exists. For the purposes of this Judgment, a conflict exists if conduct prohibited by this Judgment is required or expressly permitted by such law, or if conduct required by this Judgment is prohibited by such law.

6.10 The parties agree that the disclosures required by Paragraphs 3.1(C)(1)(a)-(b) shall no longer be applicable following Defendant's implementation of the E911 requirements established by the Final Rules adopted by the Federal Communications Commission in *In the Matters of IP-Related Services, and E911 Requirements for IP-Enabled Service Providers* (WC Docket Nos. 04-36 and 05196), First Report and Order and Notice of Proposed Rulemaking (Released June 3, 2005), to be codified at 47 C.F.R. Part 9, § 9.5(e) ("FCC Order"). Defendant shall notify the State when it has implemented the E911 requirements established by the FCC Order.

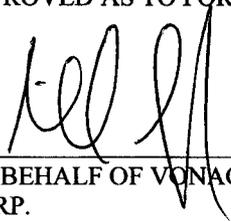
6.11 Each of the parties participated in the drafting of this Judgment, and therefore the terms of this Judgment are not intended to be construed against any of the parties by virtue of draftsmanship.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant be assessed all costs herein and that all relief not granted herein is hereby denied.

SIGNED AND ENTERED this 14 day of December, 2006.

  
\_\_\_\_\_  
Presiding District Judge

APPROVED AS TO FORM AND SUBSTANCE

By:   
\_\_\_\_\_  
ON BEHALF OF VONAGE HOLDINGS  
CORP.

Dated: November 15, 2006

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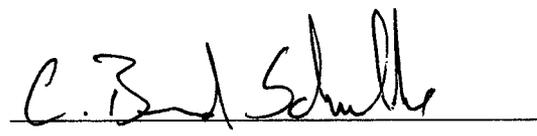
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A handwritten signature in cursive script, appearing to read "C. Brad Schuelke", is written over a horizontal line.

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## 911 Dialing Notice and Terms of Service

We would like to make sure that all Vonage customers have a clear understanding about our 911 Dialing. Due to a recent FCC ruling, you must acknowledge that you understand our 911 Dialing notice as explained below. Setting up your 911 Dialing is still the same, simply fill out a short form in the Features section of your web account with your street address, and we'll get you up and running. You can easily update your address at any time through your web account.

Vonage is in the process of a nationwide rollout of Enhanced 911 (E911) service. While we have already rolled out E911 in certain areas of the country, it will take some time to fully rollout across the entire country, and we will notify you when we are able to offer E911 in your area.

In the meantime, Vonage currently offers a form of 911 that is similar to E911, but has some important differences. With Vonage's 911 Dialing service, Vonage uses the address you provide to determine the nearest emergency response center and then sends your call to a general number at that center. When the center receives your call, the call taker will not have your address and may not have your phone number on hand, thus you must provide that information in order to get help. Some local emergency response centers may decide not to have their general numbers manned by live operators 24 hours a day. If Vonage learns that this is the case, Vonage will send your call instead to a national emergency calling center and a trained agent will contact an emergency center near you to dispatch help.

Remember that Vonage's 911 Dialing service will not function in the event of a broadband or power outage or if your broadband, ISP or Vonage service is suspended or terminated. Also note that if you move your device you must reactivate 911 Dialing with your new address and if you add a line to your account you will need to activate 911 Dialing for that line as well. You will not be able to reach the emergency dispatch center until we confirm that your location has been registered or updated. This process can take several hours, and you will receive a confirmation email once 911 Dialing has been activated for your initial location or for a newly registered location.

Please click the boxes below to continue.

- I acknowledge that I read and understand the above 911 Dialing policy
- I accept the new Terms of Service Agreement.

