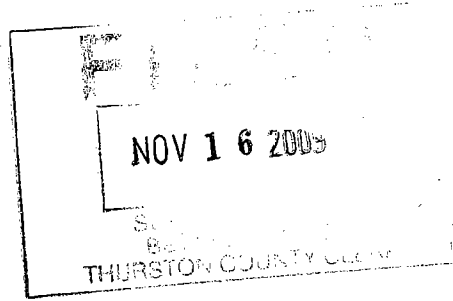


- EXPEDITE
- No Hearing Set
- Hearing is Set



**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT** **09-2-12714-2**

In Re:
VONAGE HOLDINGS CORP.,

Respondents.

NO.

PETITION ~~FOR ORDER APPROVING~~
ASSURANCE OF DISCONTINUANCE
PURSUANT RCW 19.86.100

COMES NOW, State of Washington, by and through its attorneys, Robert M. McKenna, Attorney General and Paula L. Selis, Senior Counsel and petitions this Court for an Order approving the attached Assurance of Discontinuance. This Petition is made pursuant to RCW 19.86.100, which authorizes the Attorney General to accept an Assurance of Discontinuance in the enforcement of the Consumer Protection Act.

DATED this 12th day of November, 2009.

Presented By:

ROBERT M. MCKENNA
Attorney General

Paula Selis

PAULA SELIS, WSBA #12823
Senior Counsel
Attorneys for State of Washington

COPY

ASSURANCE OF VOLUNTARY COMPLIANCE

VONAGE HOLDINGS CORP. (“VONAGE”) hereby voluntarily agrees and assures the Attorneys General of the states of Alabama, Arizona, Arkansas, Connecticut,¹ Florida, Hawaii,² Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Michigan, Missouri, Montana, New Hampshire, New Jersey³, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee,⁴ Texas, Vermont, Washington, West Virginia, and Wisconsin, and the Commonwealth of Kentucky (hereinafter “the Participating States”) that, from the Effective Date of this Assurance of Voluntary Compliance (“Assurance”)⁵ (or from the dates otherwise specified herein), VONAGE, its affiliates, subsidiaries, predecessors, successors, and assigns, as well as any other person authorized to act on behalf of VONAGE with respect to the matters herein, shall abide by the following terms and conditions:

¹ With regard to Connecticut, Connecticut is represented by the Commissioner of the Connecticut Department of Consumer Protection, and enters into this Assurance of Voluntary Compliance pursuant to the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. Sec. 42-110j, acting by and through his counsel, Richard Blumenthal, Attorney General for the State of Connecticut.

² With regard to Hawaii, Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General’s Office, but which is statutorily authorized to represent the State of Hawaii in consumer protection actions.

³ The Assurance of Voluntary Compliance executed between New Jersey and VONAGE on June 23, 2006, and subsequently amended on November 9, 2007 (“New Jersey AVC”), remains in effect except that the business practices required under Section 2 of the New Jersey AVC are hereby superceded by the Terms of Agreement set forth in Section IV herein. Additionally, New Jersey and VONAGE hereby agree to resolve Eligible Complaints identified in Section 5.2 herein by the procedure set forth in Section H herein.

⁴ Tennessee is represented by the Attorney General, but the Tennessee Attorney General’s Office enters into this Assurance of Voluntary Compliance in conjunction with the Tennessee Division of Consumer Affairs.

⁵ This Assurance of Voluntary Compliance shall also be considered, for all necessary purposes, an Assurance of Discontinuance.

I. INTRODUCTION

A. BACKGROUND

1.1 VONAGE is a Delaware corporation which is headquartered at 23 Main Street, Holmdel, New Jersey.

1.2 Since 2002, VONAGE has provided Voice over Internet Protocol, or VoIP service, which is a voice transmission over a high-speed Internet connection.

1.3 VONAGE currently has approximately 2.5 million subscriber lines.

1.4 Consumers can enroll and accept services from VONAGE by signing up online at www.vonage.com or by contacting VONAGE by telephone.

1.5 In order to use significant aspects of the VONAGE telephone service, consumers must have a high-speed Internet connection, a billing and shipping address, a softphone or a VONAGE phone adapter and a touch-tone telephone, and an email address.

1.6 In order to use significant aspects of the VONAGE telephone service, consumers must either have a softphone or must first receive a VONAGE phone adapter (“device”) either directly from VONAGE or from a third-party vendor.

1.7 VONAGE advertises its service through the Internet, telemarketing, direct mail, newspaper, and television.

1.8 VONAGE has offered its service through “free trial” or “risk free” offers that requires consumers to cancel the service prior to the end of the free trial period to avoid certain charges and fees.

1.9 VONAGE residential service plans have ranged in price depending on whether the plan has unlimited or limited minutes, or includes additional features.

1.10 VONAGE has offered a “Money Back Guarantee” which provides that consumers who meet certain requirements will receive a refund of specified fees and charges if they cancel the service within thirty days from their subscription date.

1.11 VONAGE has represented that when consumers sign up for their service they may be able to port or transfer their current telephone number to VONAGE.

1.12 VONAGE has required that consumers who want to cancel service must do so by telephone and must first obtain a return authorization number before returning the device.

1.13 Consumers who contact VONAGE by telephone to cancel their service are directed to a VONAGE employee who is trained to assess whether the consumer has an issue that can be resolved short of cancellation. A consumer who subsequently decides not to cancel the service after speaking with a customer service representative is considered “saved” by VONAGE. Historically, VONAGE has provided compensation incentives to employees for “saving” subscribers.

1.14 The States have received numerous complaints from consumers who have claimed difficulty in attempting to cancel their VONAGE services. For example, some consumers state that they have had to wait for a long period of time in order to talk to a customer service representative. Other consumers state that they have contacted VONAGE by phone and cancelled their service, and yet subsequently received a monthly bill from VONAGE or had funds deducted from their bank accounts. Still other consumers state that difficulty in attempting to cancel VONAGE service resulted in their cancellation not being effected within a “free trial” or “Money Back Guarantee” period.

B. PARTICIPATING STATES' POSITION

1.15 The States allege that VONAGE has engaged in business practices that violate their respective consumer protection and trade practice statutes⁶ (the “Consumer Statutes”) by, among other things, the following acts or practices:

- a. Failing to clearly and conspicuously disclose in advertisements for the offer and sale of goods and services all material terms and conditions including, without limitation:
 - (i) That consumers may be required to purchase other equipment in order to utilize “free” service;
 - (ii) That consumers may be required to agree to certain terms and conditions in order to receive “free” service;
 - (iii) That consumers who cancel the service within a free trial period must pay the cost of shipping the equipment back to VONAGE;

⁶ Alabama Deceptive Trade Practices Act, Alabama Code Section 8-19-1, *et seq.*; Arizona Revised Statutes Section 44-1521, *et seq.*; Arkansas Code Ann. 4-88-101 *et seq.*; Connecticut General Statutes § 42-110b, *et seq.*; Florida Deceptive and Unfair Trade Practices Act, Florida Statutes, § 501.201 *et seq.*, Hawaii Revised Statutes section 480-2(a), section 487-12; Idaho Code Sec. 48-601 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.*; Indiana Deceptive Consumer Sales Act, Indiana Code 24-5-0.5-1 *et seq.*; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Kentucky Consumer Protection Act, K.R.S. 367.110 *et seq.*; Louisiana R.S. 51:1401 *et seq.*; Maine Unfair Trade Practices Act, 5 M.R.S. § 205-A *et seq.*; Michigan Consumer Protection Act, MCL 445.901 *et seq.*; Missouri Merchandising Practices Act, §§ 407.010 *et seq.* (1994); Montana Mont. Code Ann. § 30-14-101 *et seq.*; New Hampshire Rev. Stat. Ann. 358-A; New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; New Mexico NMSA 1978, S 57-12-1 *et seq.* (1965); North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. 75-1.1 *et seq.*; N.D.C.C. § 51-15-01 *et seq.*; North Dakota Century Code (NDCC) §§ 51-15-01 *et seq.*; Ohio Consumer Sales Practices Act, R.C. 1345.01 *et seq.*; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*; South Carolina Unfair Trade Practices Act, 39-5-10 *et seq.* (1976, as amended); South Dakota Deceptive Trade Practices Act, SDCL Ch. 37-24-6; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*; Tex. Bus. & Com. Code Ann. § 17.41 *et seq.*; Vermont Consumer Fraud Act, 9 V.S.A. §§ 2451-2466; Revised Code of Washington RCW 19.86.020; West Virginia Consumer Credit and Protection Act, W. Va. Code 46A-1-101 *et seq.*; Wisconsin Stat. §§ 100.18 and 100.20.

- (iv) That consumers may be unable to immediately use the service with their old phone number within a free trial period because porting of the consumer's telephone number to VONAGE may take up to ten (10) days or longer;
 - (v) That consumers may be unable to immediately use significant aspects of the service within a trial period because consumers must wait for the device to be mailed to them which can take up to eight (8) days to receive;
 - (vi) That there are limitations on the time period and minutes that consumers may use during the "Money Back Guarantee;"
 - (vii) That there are certain fees and charges that will not be refunded upon cancellation within the "Money Back Guarantee" period;
 - (viii) That consumers will be charged a rebate recovery fee or a fee representing the regular price of any discounted goods or services if they cancel prior to the expiration of their service term; and
 - (ix) That consumers must have high speed internet to utilize VONAGE service.
- b. Representing to consumers that it will take seven (7) to ten (10) business days to port their telephone number to VONAGE when, in truth and in fact, it will sometimes take well over the seven (7) to ten (10) business days as represented by VONAGE.

- c. Representing to consumers that they have the option to cancel their service with VONAGE but failing to timely accept or effect the cancellation requests, resulting in consumers having difficulty in cancelling their VONAGE service.
- d. Failing to properly ensure that all requests for consumer cancellations have been honored, which resulted in consumers who believed that they canceled service discovering that they were considered “saved” by VONAGE after they continued to receive a monthly bill or had funds deducted from their bank accounts.

C. RESPONDENT’S POSITION

1.16 VONAGE believes that it is, and at all times has been, in compliance with the Consumer Statutes. VONAGE further believes that its advertising materials always have been accurate and complete and always have disclosed all necessary material information, including all material information regarding the potential length of time to port telephone numbers, the use of VONAGE’s service before device receipt and/or porting-in of telephone numbers, the requirement for special equipment, all requirements, limitations and exclusions relating to free use, a free trial, risk free use or the Money Back Guarantee and all material rate and fee information, clearly and conspicuously. VONAGE also believes that it has promptly and properly handled valid customer cancellation requests and properly discontinued billing after receipt of valid cancellation requests. As a matter of corporate policy, VONAGE believes it always has adhered, and continues to adhere, to pro-individual consumer and pro-business consumer business practices.

1.17 VONAGE believes it has cooperated fully with the Participating Attorneys General throughout their inquiry. Although VONAGE denies it has engaged in unlawful or otherwise inappropriate business practices, VONAGE agrees to this Assurance so that this matter may be resolved amicably, without further cost or inconvenience to the Participating States, their citizens or VONAGE, and to avoid the cost and inconvenience to VONAGE that will result if the Participating States subject VONAGE to different advertising and business requirements in each Participating State.

II. STIPULATIONS

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

2.1 VONAGE enters into this settlement without an admission that it has violated the law and for purposes of resolution of this matter only, and the Attorneys General being in agreement, accept this Assurance in termination of their investigation.

2.2 The Attorneys General have alleged certain claims under their States' consumer protection statutes.

2.3 VONAGE denies the allegations of the Participating States, and the parties agree and stipulate that neither this Assurance nor the payment of money by VONAGE to any person or entity pursuant to this Assurance constitutes an admission by VONAGE of any violation of the Participating States' consumer protection statutes, or otherwise.

2.4 The parties agree that this Assurance 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 VONAGE, and that, in accordance with the terms of this Assurance, the parties

have agreed to settle this matter.

2.5 The Attorneys General and VONAGE agree to and do not contest the entry of this Assurance.

2.6 The corporate signatory hereto is an officer of VONAGE, is authorized to enter into this Assurance on behalf of VONAGE, has read the Assurance, and agrees to the entry of same.

2.7 This Assurance does not constitute an admission by VONAGE of jurisdiction over it by any of the Participating States, or of the propriety of venue, other than with respect to this Assurance.

III. DEFINITIONS

The following definitions are to be used for the purposes of this Assurance.

3.1 "Advertisement" shall mean any attempt, whether a written, oral or electronic statement or illustration, directly or indirectly, to induce the purchase of goods or services, whether the statement appears in a brochure, newspaper, magazine, free standing insert, circular, mailer, package insert, package label, product instructions, electronic mail, website, homepage, television, cable television, program length commercial or infomercial or any other medium. This definition applies to other forms of the word "Advertisement" including, but not limited to, "advertise" and "advertising."

3.2 "Point of Sale" shall refer to any location or transaction where VONAGE's service or products are sold.

3.3 "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 customer 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 and in language sufficient for a customer to comprehend; and
- 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 in either the audio or visual portions of the communication. Any audio message shall be delivered in a volume and cadence sufficient for a customer to comprehend. 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 customer 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.

3.4 “Porting” shall mean the transferring of a telephone number from one voice communication service provider to another.

3.5 “Save” means the process, or the result of a process, employed by VONAGE to retain a customer who contacts VONAGE to cancel his or her account, but instead expressly agrees to remain a customer.

3.6 “Customer” shall mean (i) any enduser individual residing in a Participating State who has purchased VONAGE equipment or service or (ii) any business or entity formed or primarily doing business in a Participating State who has purchased generally advertised, and publicly available VONAGE equipment or service, on publicly available terms solely as an enduser. For purposes of this AVC, retailers and resellers of VONAGE equipment and services are not “customers.”

3.7 “VONAGE” shall mean VONAGE HOLDINGS CORP., and its affiliates, subsidiaries, predecessors, successors, assigns, as well as any other person authorized to act on behalf of VONAGE.

3.8 “Participating States” or “Participating State” shall mean the states of Alabama, Arizona, Arkansas, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Michigan, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania,

South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and the Commonwealth of Kentucky, or any one of them.

3.9 “Effective Date” of this Assurance shall be the 16th day of November, 2009.

IV. TERMS OF AGREEMENT

A. GENERAL CONSUMER PROTECTION PROVISIONS

4.1 VONAGE shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, which are applicable to all future sales and marketing of VONAGE equipment and service by or on behalf of VONAGE including, but not limited to, those state statutes identified in paragraph 1.15, footnote 6.

B. ADVERTISING

4.2 In advertising material, VONAGE shall not misrepresent, expressly or by implication, any term or condition of an offer for any of its services or products.

4.3 In addition to complying with all other provisions of any state and federal law or regulation regarding the use of the word “free,”⁷ VONAGE shall, when advertising “free” service, equipment, or any other offer that utilizes the term “free,” at a minimum, Clearly and Conspicuously disclose, in close proximity to the word “free,” all material limitations of the term “free” including, but not limited to, a disclosure of the following, if applicable:

- a. The existence of any fees or charges that must be paid to receive the “free” service, equipment or other offer;

⁷ The term “free” means costing nothing or gratuitous, and includes words of similar meaning.

- b. The existence of a limitation on minutes a customer may use, to the extent said limitation is distinct from the limitation on minutes in VONAGE's monthly service plans;
- c. Any commitment to VONAGE service required to receive or utilize the "free" service, equipment or other offer that utilizes the term "free;" and
- d. Any requirement that the customer purchase VONAGE service or equipment in order to receive or utilize the "free" service, equipment or other offer that utilizes the term "free."

4.4 When advertising a discounted service plan or discounted equipment, VONAGE shall Clearly and Conspicuously disclose, in close proximity to the offer of the discounted service plan or discounted equipment, all material limitations including, but not limited to, a Clear and Conspicuous disclosure of the following, if applicable:

- a. The existence of any fees or charges solely applicable to the discounted service or equipment offer that must be paid to receive the discounted service or equipment;
- b. The existence of a limitation on minutes a customer may use, to the extent said limitation is distinct from the limitation on minutes in VONAGE's monthly service plans;
- c. Any commitment to VONAGE service required to receive or utilize the discounted service or equipment;
- d. The time period of any discounted service plan; and

- e. Any requirement that the customer purchase VONAGE service or equipment in order to receive or utilize the discounted service or equipment.

4.5 When advertising instant rebates or other rebates for VONAGE equipment, VONAGE shall Clearly and Conspicuously disclose, in close proximity to the rebate offer, all material limitations on such rebate, including any commitment to VONAGE service that is required to receive the rebate, or that is required to avoid any rebate recovery fee, for example: “Instant Rebate with 1 year of service.”

4.6 When advertising “Money Back Guarantee” (“MBG”), or words of similar meaning, VONAGE shall Clearly and Conspicuously disclose:

- a. The time period of the MBG;
- b. The existence of a limitation on minutes a customer may use, to the extent that there is a limitation and it is distinct from the limitations in VONAGE’s monthly service; and
- c. A separate and distinct webpage where the customer may view all details relating to the MBG (*e.g.*, “see VONAGE.com for guarantee details”).

For purposes of this Assurance, VONAGE’s present MBG program is not considered a “free” offer or trial period, or discounted offer or trial period.

4.7 In advertising material, VONAGE shall not make representations such as “award winning service” or words of similar meaning, unless VONAGE received a bona fide genuine award from an independent third-party within the preceding one year period, or unless VONAGE includes the year of the award in any such advertisement.

4.8 VONAGE shall not represent that customers are entitled to “unlimited” calling, or words of similar meaning, if, in fact, there are limits on the number of minutes that a customer is permitted to use, provided however, that in investigating whether use that is inconsistent with a customer’s monthly plan or that is not permitted under VONAGE’s Terms of Service is occurring, VONAGE shall be able to consider the customer’s number of minutes as one factor in determining whether an inconsistent or impermissible use has occurred.

4.9 If any advertising of “free” or discounted service or equipment, of rebates or of VONAGE’s “Money Back Guarantee,” (the “advertised offer”) does not disclose all terms and conditions associated with the advertised offer, then VONAGE shall Clearly and Conspicuously disclose on such advertising a website address that the consumer may visit to view all terms and conditions associated with the advertised offer. For purposes of this Assurance, all abbreviated non-point of sale advertising including, but not limited to, online banner, sky-scraper, interstitial, floating, unicast, pop-up, pop-down, rich media, widget and search advertising, need not display the website address where material terms may be obtained, but rather may contain click-throughs or links to another page - *e.g.*, a landing page - that either provides the website address or that is the website.

4.10 With respect to advertising or marketing described in Paragraphs 4.3 through 4.9 which has been purchased, submitted or used prior to the Effective Date of this Assurance, VONAGE shall not be liable for its non-compliance with Paragraphs 4.3 through 4.9 so long as it has made reasonable efforts to locate, withdraw, or amend such advertising or marketing to comply with the foregoing requirements. VONAGE shall not be liable for failing to prevent the republication of pre-existing advertising or marketing

that does not comply with Paragraphs 4.3 through 4.9 by independent third-parties or parties who are not subject to VONAGE's control so long as VONAGE makes reasonable efforts to prevent such republication, 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.

C. POINT OF SALE DISCLOSURES OF MATERIAL TERMS

4.11 During the sale of VONAGE services and/or equipment, VONAGE shall Clearly and Conspicuously disclose all material terms and conditions of the services and equipment being purchased or to be purchased. As part of this process, VONAGE shall confirm with the customer and/or prospective customer the VONAGE service selected, its price, the need to purchase equipment in order to utilize the service, if true, and other material terms and conditions, including:

- a. Features of VONAGE's service available to the customer prior to receiving the necessary VONAGE equipment unless the start of a customer's initial billing cycle coincides with the projected receipt date of the equipment or the customer's actual first use of the service;
- b. Features of VONAGE's service available to the customer prior to porting to VONAGE the customer's current telephone number;
- c. The conditions under which any cancellation fee will be charged and the amount of said fee;

- d. If applicable, all material terms associated with the following terms and offers: “free,” “Money Back Guarantee,” “unlimited,” “rebate,” and “discounted service plan” or “discounted equipment” or words of similar meaning;
- e. The requirement of high speed internet to utilize VONAGE service;
- f. That VONAGE service may not be compatible with TTY; and
- g. The initial date and all of the purposes that credit and debit account information that is provided at the time of initial customer contract sign-up will be utilized by VONAGE for payment.

4.12 During the sale of VONAGE services and/or equipment, VONAGE shall also inform the consumer that within two (2) calendar days following completion of the sales transaction, he/she will receive an email. Such email shall be clearly titled *IMPORTANT INFORMATION REGARDING YOUR VONAGE ACCOUNT,* and shall include no other information in the email apart from the terms in Paragraph 4.11, but may include basic instructions for setting up and activating the VONAGE equipment and service so long as such instructions do not diminish or otherwise affect the clear and conspicuous disclosure of the terms in Paragraph 4.11.

4.13 Within seventy-five (75) days of the Effective Date, VONAGE shall implement the following procedure: Within a reasonable time, not to exceed two (2) calendar days following completion of any sales transaction with a customer, VONAGE shall send to the customer an email Clearly and Conspicuously confirming the material terms of the purchase as outlined above in Paragraph 4.11, including all material terms

and conditions and any applicable equipment return policies or cancellation policies. Such email shall be clearly titled “IMPORTANT INFORMATION REGARDING YOUR VONAGE ACCOUNT,” and shall include no other information in the email apart from the terms in Paragraph 4.11, but may include basic instructions for setting up and activating the VONAGE equipment and service so long as such instructions do not diminish or otherwise affect the clear and conspicuous disclosure of the terms in Paragraph 4.11. This email shall also include the time period within which a customer’s MBG period will expire if applicable. If within seven (7) calendar days of the receipt of this email, a customer complains to VONAGE that the terms in the communication are different from those given at the time of sale, VONAGE shall Clearly and Conspicuously disclose and provide the customer with the right to immediately cancel his or her agreement with VONAGE without incurring any charges, including, but not limited to, any cancellation/termination fees, or monthly service fees, and without any other future obligation to VONAGE, except as provided in this Paragraph. As a part of this cancellation right, VONAGE also shall Clearly and Conspicuously disclose:

- a. Any fee for reimbursement of equipment costs or recovery of equipment rebates that will be charged on disconnection and that will be refunded upon equipment return;
- b. At VONAGE’s election, either (if equipment return is applicable):
 - (i) That it will provide an appropriate shipping credit to the customer immediately on cancellation for the return of the equipment to VONAGE by parcel post. For purposes of this Assurance, “appropriate

shipping credit” shall mean a reasonable estimate based on the following factors: average distance of shipping; postal charges; and equipment weight.

VONAGE shall adjust this amount in the event of a change in any of the aforementioned factors; or

- (ii) That it will provide to the customer a prepaid method by which to return the equipment to VONAGE.

- c. That VONAGE retains the right to investigate the customer’s complaint after cancellation, and, within ten (10) days of cancellation, to charge back to the customer all credits provided to the customer as a result of his or her complaint, including, if no Money Back Guarantee offer was made or applies, the monthly service charge, if any, and the appropriate shipping credit or the prepaid shipping cost, if such credit or prepaid shipping was provided, and to apply future charges in accordance with the customer’s agreement at the time the customer signed up for service, provided that such customer’s account shall remain canceled, in the event that the complaint is determined to be unfounded by evidence showing that the terms agreed to during sale and contained in the sale confirmation email were the same. Such evidence shall include a recording of the sales call if the customer subscribed during a telemarketing call, and VONAGE

must maintain a copy of this recording for a minimum of three (3) years, or a copy of the terms of service and relevant website disclosures if the customer subscribed via the Internet and VONAGE must maintain a copy of the terms of service and website disclosures for a minimum of three (3) years;

- d. If the customer has used VONAGE services that were not covered by, or were in excess of, permitted usage under the monthly service plan selected, then the customer will remain responsible for paying the charges and taxes associated with such use, unless the customer's complaint relates to an alleged non-disclosure that said usage was not covered or permitted under the monthly service plan selected and the complaint is not determined unfounded in accordance with the provisions of paragraph 4.13(c) above; and
- e. If applicable, that if VONAGE does not receive the returned equipment within fourteen (14) days after cancellation with UPC or bar code intact, with all accessories or components and all manuals and registration cards, in original packaging and condition, reasonable wear and tear excluded, then VONAGE shall be entitled to charge back to the customer the appropriate shipping credit or prepaid shipping cost, if provided, and will not refund any reimbursement charge pursuant to Paragraph 4.13(a) above.

4.14 In the future, VONAGE may change its practices so that it does not charge customers who cancel pursuant to the provisions in Paragraph 4.13 a rebate or equipment

recovery fee at the time of cancellation, but rather an equipment or rebate recovery fee if, after the expiration of fourteen (14) days from cancellation, either the equipment is not received by VONAGE, or the equipment that is returned is not in the proper condition with UPC or bar code intact, with all accessories, components, manuals and registration cards and in the original packaging as required by Paragraph 4.13(e). In that event, VONAGE will disclose that fact in lieu of the disclosure at Paragraph 4.13(a). Further, in that event, in lieu of the disclosures at Paragraph 4.13(b) and (e), VONAGE shall disclose to the customer that after the equipment is timely returned in the proper condition with UPC or bar code intact, with all accessories, components, manuals and registration cards and in the original packaging, it will refund the customer the appropriate shipping credit to cover the customer's cost of shipping the equipment back to VONAGE via parcel post unless, or subject to its right to charge back the appropriate shipping credit if, an investigation has revealed that the customer's complaint is unfounded as disclosed in Paragraph 4.13(c).

D. CANCELLATION

4.15 VONAGE shall allow all customers to cancel their VONAGE service via telephone and shall be available for cancellation calls from Monday through Friday between 9 a.m. and 12 a.m. Eastern Standard Time, and Saturday and Sunday between 9 a.m. and 8 p.m. Eastern Standard Time, and shall ensure that telephone numbers for cancellation are sufficiently staffed so that consumers' calls are answered without unreasonable delay. VONAGE shall allow Saved customers to cancel online under the circumstances and in the manner set forth in Paragraph 4.25 below. For purposes of that Paragraph, any online method must be Clear and Conspicuous and completely electronic,

and shall include a concise form for the user to complete and submit using only a computer and Internet connection. In the sale confirmation e-mail, VONAGE shall Clearly and Conspicuously disclose to customers and/or prospective customers a valid and accessible telephone number for cancellations. Such disclosure shall also be made Clearly and Conspicuously on VONAGE's website, including in a VONAGE.com website FAQ titled "How can I cancel?" or words to that effect. It shall also appear for keyword searches of "cancel" or "terminate" on VONAGE.com, and on any VONAGE web pages which identify telephone numbers and/or addresses for VONAGE customer service.

4.16 VONAGE shall cancel service and not continue to bill any customer, or deduct any additional amounts from the customer's bank account, if that customer contacts VONAGE by telephone and expresses a desire to cancel, unless VONAGE complies with the procedures in Paragraphs 4.22 through 4.25 as of the implementation deadlines set forth therein. Provided however, VONAGE shall not be out of compliance with this Paragraph in the limited situations where:

- a. A customer contacts VONAGE via telephone and expresses a desire to cancel in response to an interactive voice recognition menu, but the call is not properly transferred to retention personnel due to technical problems or to disconnection by the customer resulting in the termination of the call; or
- b. If a call is prematurely disconnected due to technical reasons or by a customer who contacted VONAGE via telephone initially to cancel but who subsequently expressed to a retention agent during

the call a desire to maintain his or her VONAGE service, and that expression was not rescinded before the premature disconnection, so long as VONAGE thereafter follows the procedures set forth in Paragraph 4.25 with respect to that customer.

4.17 If a customer contacts VONAGE by telephone and expresses an intent to cancel his or her account, VONAGE shall not make any attempt to retain the customer or offer additional services until VONAGE has verified the identity of the specific customer subject to the cancellation request. Such verification shall consist of VONAGE requesting from the customer the minimal uniquely identifying information (*e.g.*, VONAGE phone number, email account, account security question, etc.) sufficient to identify and confirm proper control of the account. Such verification shall not be overly burdensome on a customer and to the extent consistent with the requirements set forth in The Communications Act, 47 U.S.C. § 222 - Privacy of Customer Information, and applicable FCC Customer Proprietary Network Information rules set forth at 47 C.F.R. §§ 64.2001 - 64.2011, shall permit a customer to provide alternative identifying information in the event that he or she has forgotten the account information.

4.18 After cancellation, VONAGE will retain a customer's telephone number for a reasonable period of time, but not longer than thirty (30) days, to enable the customer to effectively port his or her telephone number to another voice communication provider.

4.19 Within seventy-five (75) days of the Effective Date, VONAGE shall implement the following procedure: Before a cancellation call is transferred to a live retention agent, a recording will play that advises the customer that:

- a. An email confirming the outcome of the customer's call will be sent within the two (2) calendar days following the call's completion; and
- b. Within seven (7) days of receipt of the email, the customer must notify VONAGE via the method set forth in the email if he or she believes that the confirmation does not accurately reflect the outcome of the call.

4.20 During the cancellation process, VONAGE must Clearly and Conspicuously disclose, as part of the cancellation process and confirmation, the following:

- a. Any fees or penalties and amounts that will be charged solely because of the fact of cancellation;
- b. A confirmation number for the cancellation;
- c. The effective date of the cancellation;
- d. The fact, if true, that after cancellation the customer is entitled to continue to use his or her account under the existing terms at no additional charge, until the end of the current billing cycle, and the date of the end of the billing cycle;
- e. Any requirement to return equipment to VONAGE, either as part of a contractual obligation, or in order to avoid, or receive a refund of, any fees or penalties, or to take advantage of any promotional offer or MBG;

- f. If the customer is within any MBG period, the specific obligations and deadlines for the customer to receive a refund;
- g. The fact that, unless the customer has obtained another form of telephone service, he or she will not have access to any telephone service and as such would not have access to 9-1-1 in the event of an emergency;
- h. The specific period of time that VONAGE will retain the customer's phone number to allow that customer to port it to another voice communication provider and that, if porting does not occur during that period of time, the customer will lose the phone number; and
- i. Any other fees outstanding on that account at the time of cancellation, including monthly service fees, rebate recovery fees, long distance fees, etc., except that fees and taxes for usage incurred since the customer's last bill that are not covered by the customer's monthly service plan ("excess usage fees and taxes") need not be disclosed during the cancellation call or in the Cancellation Confirmation email described in Paragraph 4.21. Rather, VONAGE will disclose to the customer during the cancellation call and in the Cancellation Confirmation email that a separate email identifying the amount of excess usage fees and taxes, if any, will be sent to the customer within seven (7) days after transmission of the Cancellation Confirmation email.

4.21 Within seventy-five (75) days of the Effective Date, VONAGE shall implement the following procedure: Within two (2) calendar days following a cancellation, VONAGE shall send to the former customer, via electronic mail, a cancellation confirmation notice which shall be Clearly and Conspicuously identified and titled "Cancellation Confirmation," and which shall contain only Clear and Conspicuous disclosures of the information in Paragraph 4.20 above, and the final amount due on the account except for amounts due for excess usage fees and taxes. If a customer cancels by porting his or her number to another voice communication provider and does not otherwise contact VONAGE regarding such cancellation, or if VONAGE accepts a cancellation via a methodology other than by telephone (e.g., mail, email, fax or equipment return), VONAGE shall send the notice required by this Paragraph within two (2) calendar days following the processing of such cancellation. VONAGE has no obligation to also provide the interactive voice response ("IVR") statement and verbal disclosures set forth in Paragraphs 4.19 and 4.20 to said customers. If VONAGE affirmatively contacts a customer from whom it receives a non-telephonic cancellation request or an equipment return to confirm or ascertain the customer's intent to cancel, then the agent making the contact shall verbally provide the disclosures in Paragraphs 4.19 and 4.20 if the customer confirms a final decision to cancel.

E. RETENTION

4.22 VONAGE may attempt to retain the canceling customer prior to processing such cancellation if the retention agent expressly requests permission of the customer to try to address the customer's concerns before the customer cancels, and the customer provides his or her express consent. If consent is not provided, then VONAGE

will immediately make all of the cancellation disclosures required by Paragraph 4.20. At the conclusion of those disclosures, VONAGE may again ask the customer for permission to attempt to address his or her concerns before cancellation (*e.g.*, to Save the customer). If the customer does not give permission, then VONAGE shall immediately complete the cancellation. If at any time during retention efforts a customer expressly requests that VONAGE attempt to address his or her concerns before the cancellation is completed, then VONAGE may attempt to retain the customer. If at any time during retention efforts a customer expressly requests to have his or her account cancelled, and either expressly, or from the totality of circumstances, expresses a desire not to be retained any further, then VONAGE shall immediately process the call as a cancellation and shall make all of the cancellation disclosures required by Paragraph 4.20. VONAGE may affirmatively contact a customer from whom it has received a mail, email or fax cancellation request, an equipment return, or any other form of non-telephonic communication that requests or suggests a desire to cancel, in order to ascertain or confirm a customer's intent to cancel. In the event that the customer confirms an intent to cancel during that contact and VONAGE attempts to retain the customer, VONAGE will follow the procedures set forth in this Paragraph and Paragraphs 4.23 through 4.25 below, but the disclosure in Paragraph 4.19 shall be made orally by the agent rather than by IVR.

4.23 Prior to processing a customer's express consent to a Save, VONAGE must Clearly and Conspicuously disclose:

- a. The customer's current pricing plan, including any free or discounted promotional price adjustments, if any;

- b. Any effect the Save will have on the customer's ability to qualify for the MBG, free or discounted trial period, or any other promotional price adjustment;
- c. A Save confirmation number;
- d. The date that the customer's current billing cycle, including any free or discounted promotional price adjustments, ends; and
- e. Any previously-billed outstanding balance on the customer's account at the time of the Save.

4.24 Prior to processing a Save, VONAGE shall obtain a customer's express consent to all of the following:

- a. The monthly recurring plan charges the customer will incur during each billing cycle, and any cancellation fees, equipment recovery or rebate recovery fees that might apply in the future;
- b. Any minimum amount of time that a customer must commit to VONAGE's services if such a minimum is imposed as a result of the customer's acceptance of a Save offer;
- c. If the Save offer is for free VONAGE services, the exact date the customer will begin to incur charges, and the amount of monthly recurring plan charges the customer will incur, after the lapse of the free period; and
- d. The terms and conditions of any other incentives offered to and accepted by the customer as part of the Save process.

