

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	WC Docket No. 06-122
Universal Service Contribution Methodology)	
)	
Petition for Declaratory Ruling of the Nebraska)	
Public Service Commission and the Kansas)	
Corporation Commission, or, in the)	
Alternative, Adoption of a Rule Declaring that)	
State Universal Service Funds May Assess)	
Nomadic VoIP Intrastate Revenues)	

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES**

Pursuant to the Public Notice issued by the Federal Communications Commission (“Commission” or “FCC”) in this matter,¹ the National Association of State Utility Consumer Advocates (“NASUCA”)² offers these comments regarding the Petition filed by the Nebraska Public Service Commission (“NPSC”) and the Kansas Corporation Commission (“KCC”) (“Petitioners”). Petitioners

request[] a declaratory ruling that the ... Commission ... has not preempted states from assessing universal service charges on the intrastate revenues of providers of “nomadic” interconnected voice over Internet

¹ DA 09-1774 (rel. August 10, 2009).

² NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

protocol (VoIP) services. In addition, the Petitioners request that the Commission declare that individual states have discretion to adopt any mechanisms that do not assess interstate revenues and that contain procedures designed to ensure that no provider pays assessments to more than one state on the same intrastate revenues. In the alternative, if the Commission does not issue a declaratory ruling, the Petitioners ask that the Commission propose and adopt rules to allow states to assess universal service charges on the intrastate revenues of nomadic interconnected VoIP providers.³

As stated in the Public Notice, “[t]he Petitioners define nomadic interconnected VoIP service as service that ‘allows customers to travel and place calls to persons on the [public switched telephone network (PSTN)] and receive calls from persons on the PSTN anywhere where the customers can find a broadband Internet connection.’”⁴

NASUCA’s comments here are informed by a series of ex parte filings that have preceded the official comment-filing date. These include:

- An ex parte from Vonage Holding Corp. (“Vonage”) on August 7, 2009 (“Vonage 8/7 ex parte”);
- An ex parte from Petitioners on August 17, 2009 (“Petitioners’ 8/17 ex parte”);
- An ex parte from the National Association of Regulatory Utility Commissioners (“NARUC”) on August 24, 2009 (“NARUC 8/24 ex parte”);
- An ex parte from Vonage on August 25, 2009 (“Vonage 8/25 ex parte”); and
- A NARUC ex parte on September 2, 2009 (“NARUC 9/2 ex parte”).⁵

The key item of importance in the Vonage ex partes is Vonage’s statement that it “does not object to contributing to state Universal Service Funds (“USF”).”⁶ Of course, it

³ DA 09-1774 at 1, citing Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues, WC Docket No. 06-122 (filed July 16, 2009) (“Petition”).

⁴ DA 09-1774 at 1, quoting Petition at 8.

⁵ The NARUC ex partes also discuss issues from other dockets.

⁶ Vonage 8/25 ex parte at 1; Vonage 8/7 ex parte at 1.

remains to be seen whether any other nomadic VoIP provider will object to contributing to state USFs.

Unfortunately, it is not quite true, as NARUC states, that “[t]he only real dispute is over when Vonage will have to begin to pay into existing State programs.”⁷ There still remains a dispute over whether the Commission should issue a declaratory ruling that it has not preempted state USF assessments on nomadic VoIP, as argued by Petitioners and by NARUC,⁸ or should open a rulemaking to do so, as argued by Vonage.⁹ It is possible that NARUC would not qualify this as a “real” dispute.

NASUCA agrees with the state regulators and their national association that the FCC should “issue an interpretive rule clarifying the existing interim June 27, 2006 specified federal safe harbor of 64.9 percent necessarily assumes a complementary State safe harbor of 35.1 percent without any additional proceedings.”¹⁰ That should be the end of the matter.

There is certainly no need to open a rulemaking to address the unlikely issue of conflicts between state assessment mechanisms, such as Vonage’s example of a conflict between billing addresses and service addresses.¹¹ As NARUC notes, the FCC could rule that state programs that assess based on billing addresses are proper, and then resolve

⁷ NARUC 9/2 ex parte at 3; NARUC 8/24 ex parte at 2 (emphases in originals).

⁸ Petition at 1-3; Petitioners’ 8/17 ex parte at 2; NARUC 8/24 ex parte at 3; NARUC 9/2 ex parte at 5. NARUC’s position is that the declaratory ruling would involve issuance of an “interpretive rule,” which does not require a rulemaking.

⁹ Vonage 8/7 ex parte at 1; Vonage 8/25 ex parte at 1. Indeed, Vonage urges the Commission to open the rulemaking by making it clear that only the FCC can determine when a state USF program is not preempted. Vonage 8/25 ex parte at 2. At bottom, this assumes that the Commission has already determined that state USF programs **cannot** assess interconnected VoIP carriers. That is simply incorrect, as explained in the Petitioners’ 8/17 ex parte at 1 and NARUC’s 9/2 ex parte at 2, n.4.

¹⁰ NARUC 9/2 ex parte at 3.

¹¹ Vonage 8/25 ex parte at 2-3.

problems with other mechanisms on a case-by-case basis.¹² As NARUC also states, “if the FCC clarifies that States that assess based on the billing address ... are definitely consistent with § 254, ... other states considering rules to assess nomadic VoIP providers will adjust their rules to line up with the sanctioned approach.”¹³

The Petition for Declaratory Ruling should be granted.

Respectfully submitted,

/s/

David C. Bergmann
Assistant Consumers’ Counsel
Chair, NASUCA Telecommunications Committee
bergmann@occ.state.oh.us
Office of the Ohio Consumers’ Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

NASUCA
8380 Colesville Road (Suite 101)
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

September 9, 2009

¹² NARUC 9/2 ex parte at [5]. NARUC correctly points out that the Commission currently allows assessment of wireless carriers based on the billing address, regardless of where the wireless phone is actually used. Id. at [4].

¹³ Id. at [5].