

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

In the Matter of

Petition of Nebraska Public Service  
Commission and Kansas Corporation  
Commission for Declaratory Ruling or,  
in the Alternative, Adoption of Rules  
Allowing State Universal Service  
Funds to Assess Charges on Nomadic  
Voice Over Internet Protocol Intrastate  
Revenues

WC Docket No. 06-122

**REPLY COMMENTS OF THE MASSACHUSETTS DEPARTMENT OF  
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts  
Department of Telecommunications and Cable

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Dated: September 24, 2009

## I. INTRODUCTION

The Massachusetts Department of Telecommunications and Cable (“MDTC”)<sup>1</sup> respectfully submits these brief reply comments in response to certain comments filed on September 9, 2009, with the Federal Communications Commission (“FCC” or “Commission”) in the above captioned proceeding. This proceeding addresses a Petition filed with the Commission on July 16, 2009, by the Nebraska Public Service Commission and the Kansas Corporation Commission (“Petitioners”) seeking a declaratory ruling from the Commission that it “has not preempted states from assessing universal service charges on the intrastate revenues of providers of ‘nomadic’ interconnected voice over Internet protocol (VoIP) services . . . [and] 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.”<sup>2</sup> The Petitioners, in the alternative, request that the Commission “adopt rules to allow states to assess universal service charges on the intrastate revenues of nomadic interconnected VoIP providers.”<sup>3</sup>

The MDTC strongly supports the positions of the National Association of Regulatory Utility Commissioners (“NARUC”) as well as state utility commissions in support of the Petitioners that states are not preempted from requiring nomadic VoIP providers to contribute to

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<sup>1</sup> The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth. *See* M.G.L. c. 25C, §1.

<sup>2</sup> *See In the Matter of Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rules Allowing State Universal Service Funds to Assess Charges on Nomadic Voice Over Internet Protocol Intrastate*, WC Docket No. 06-122, Public Notice, DA 09-1774, at page 1 (rel. Aug. 10, 2009) (“Public Notice”).

<sup>3</sup> *Id.*

state universal service funds, for reasons similar to those articulated in their comments.<sup>4</sup> However, Massachusetts does not at present have a state universal service fund,<sup>5</sup> so the MDTC focuses its reply comments primarily on those comments that address an unrelated issue – the jurisdiction and regulatory classification of fixed VoIP services.<sup>6</sup> In particular, Verizon’s comments concerning fixed VoIP are beyond the scope of this proceeding, which is limited to a Petition for authority of state universal service funds (“USFs”) to assess the intrastate revenues of nomadic VoIP services, and does not concern the regulatory classification of fixed VoIP services. Nevertheless, because Verizon raised the issue, the MDTC is compelled to respond.

Verizon argues that the Commission should not address the Petition in isolation of “finally resolv[ing] the overarching and outstanding questions regarding classification of VoIP and [Internet Protocol] IP-based services.”<sup>7</sup> Verizon further contends that the Commission should confirm that “all such services (whether nomadic or facilities-based [i.e., “fixed”]) [and regardless of the provider or technology] are interstate and subject to the Commission’s exclusive jurisdiction for regulatory purposes ... [and] should also finally resolve the regulatory classification of these services going forward.”<sup>8</sup> Specifically, Verizon claims that the state USF issues raised by the Petitioners are “intertwined” with the jurisdictional issue of VoIP and IP-enabled services, making it necessary for the Commission to declare that these services are

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<sup>4</sup> See e.g., National Association of Regulatory Utility Commissioners Comments, Tennessee Regulatory Authority Comments, New York State Public Service Commission Comments, and District of Columbia Public Service Commission Comments, WC Docket No. 06-122 (filed Sept. 9, 2009).

<sup>5</sup> It is possible that in the future such a fund could be established and, therefore, the outcome of this proceeding could affect telecommunications consumers and carriers within Massachusetts.

<sup>6</sup> See Verizon and Verizon Wireless (“Verizon”) Comments, WC Docket No. 06-122, at 1-5, 9-10 (filed Sept. 9, 2009).

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.*

interstate and subject to the exclusive jurisdiction of the Commission.<sup>9</sup> According to Verizon, the Commission has already made this finding, but state and local regulators, including the Petitioners, continue to act as if otherwise, and to avoid future confusion, the Commission should clarify the law on this issue.<sup>10</sup>

Verizon also asserts that from a policy standpoint, the Commission should “reaffirm” federal preemption of all VoIP services so as not to hinder the development of the Commission’s National Broadband Plan.<sup>11</sup> Verizon states that because broadband networks and the IP services that run over them cross state boundaries, a nationalized approach to broadband deployment and uniform federal regulation is needed, and would allow providers to deploy their networks efficiently across the country with common systems, platforms, and processes, and derive “enormous” cost savings.<sup>12</sup> Verizon argues that differing state and local requirements “would require these platforms and services to be redesigned and re-engineered,” making it much more inefficient and costly, and hindering widespread broadband deployment and other advanced services.<sup>13</sup> Verizon further claims that, in order to avoid continued costly litigation between providers and state and local regulators, the Commission also must finally address the question of whether VoIP and other IP services are telecommunications or information services.<sup>14</sup> Unless

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<sup>9</sup> *Id.* at 3-4.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.*

the Commission addresses this longstanding dispute, according to Verizon, competition, market entry, and broadband investment will continue to suffer.<sup>15</sup>

Concerning the Petitioners' state USF contribution proposal, Verizon argues that it is not workable to address the Petition in isolation of broad USF reform.<sup>16</sup> Verizon contends that the current interstate USF system must first be reformed by adoption of a numbers-based contribution mechanism.<sup>17</sup>

## II. DISCUSSION

### A. The Commission Can Address the Petition without Ruling on the Jurisdiction or Regulatory Classification of all VoIP and IP-enabled Services, or Broadly Reforming the USF System

Contrary to Verizon's arguments, the Commission can address the state USF contribution Petition without ruling on the jurisdictional issue or making a finding on the regulatory classification (telecommunications or information services) of all VoIP and IP-enabled services. As stated above, the Petition only implicates nomadic VoIP, which is a very small portion of the overall VoIP market. In addition, the Commission should reject Verizon's invitation to transform this docket into a larger, global proceeding about VoIP and IP-enabled services and USF reform.

The vast majority of VoIP services provided today and in the future will be fixed VoIP services offered by cable companies and telephone companies like Verizon. If any jurisdictional clarification is needed to rule on the Petition,<sup>18</sup> it can be done in a narrow fashion, focusing expressly on nomadic VoIP and not implicating fixed VoIP. Moreover, the Commission has

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 6.

<sup>18</sup> The MDTC does not take a position on whether such clarification is necessary.

adeptly addressed regulatory obligations of VoIP providers in the past without having to first resolve jurisdictional or regulatory classification issues (e.g., local number portability, CALEA requirements, and discontinuance rules).<sup>19</sup>

Not only do the VoIP jurisdictional and classification issues not need be addressed in this docket, they should not be dealt with here. Such important questions should be resolved in a separate proceeding based on a much more fully developed record and with much broader participation from affected parties. For the same reasons, broad USF reform decisions should be dealt with in a separate, large-scale investigation. However, the narrow state USF issue raised in the instant Petition can and should be addressed by the Commission in this proceeding.

B. Verizon Misstated the Law Concerning Jurisdiction over Fixed VoIP

In arguing that the Commission should preempt all state regulation of VoIP and IP-enabled services, Verizon badly misstates the current law regarding jurisdiction over fixed VoIP services. Fixed VoIP service has never been determined by the Commission to be a federally-regulated service. In *Comcast IP Phone of Missouri, LLC v. Mo. Pub. Utils. Comm'n*, the Missouri federal court held that “the FCC has not preempted the entire field of VoIP services” and, accordingly, a state regulatory authority was legally permitted to determine whether a fixed VoIP service was subject to state regulation.<sup>20</sup> Furthermore, in *Minn. Pub. Utils. Comm'n v. FCC*, the Eighth Circuit stated, “when VoIP is offered as a fixed service rather than a nomadic service, the interstate and intrastate portions of the service can be more easily distinguished,”<sup>21</sup> so, consequently, states would have jurisdiction on the intrastate portion of that traffic. In

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<sup>19</sup> See e.g., *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, Report and Order, FCC 09-40, at ¶¶ 2 and 5 and n.13 at 3.

<sup>20</sup> *Comcast IP Phone of Missouri, LLC v. Mo. Pub. Utils. Comm'n*, 2007 WL 172359 (W.D. Mo. 2007).

<sup>21</sup> *Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 575 (8<sup>th</sup> Cir. 2007).

addition, as the Commission itself has pointed out, “*VoIP providers[s] with a capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our Vonage Order and would be subject to state regulation.* This is because the central rationale justifying preemption set forth in the *Vonage Order* [the inseverability of inter- and intrastate calls] would no longer be applicable...”<sup>22</sup>

C. Verizon Provides No Support for Its Policy Arguments that State Regulation of VoIP, including Fixed VoIP, Will Impede Broadband Deployment

Verizon makes sweeping policy statements that state regulation of any VoIP service, including fixed VoIP services, would derail deployment of broadband and other advanced services and impede the Commission’s mandate to bring broadband to all Americans. These statements lack any evidentiary support. In fact, the evidence that does exist is to the contrary. For instance, in Massachusetts, Comcast deployed its broadband network and fixed VoIP platform throughout the state while being regulated to the same extent as other telecommunications companies by the MDTC. Comcast never raised an issue about state regulation impeding the deployment of its broadband network and fixed VoIP platform or adoption of services provided over those facilities. It is only now, once the facilities are deployed and the adoption has occurred, that Comcast has recently argued that state regulation will prevent the company from providing advanced services that consumers are seeking. The scenario is very similar for Verizon as well. The Commission should demand that parties making such sweeping policy claims support them with real empirical evidence.

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<sup>22</sup> *In the Matter of Universal Service Contribution Methodology, Federal-State Joint Board on Universal Service, etc.*, WC Docket No. 06-122 and CC Docket No. 96-45, Report and Order and Notice of Proposed Rulemaking, FCC 06-94, at ¶ 56 (rel. Jun. 27, 2006) (emphasis added).

