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ATTORNEYS AT LAW

March 11, 2010

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Nebraska Public Service Commission and Kansas Corporation Commission Petition for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues, WC Docket 06-122 (filed July 16, 2009)*

Dear Ms. Dortch:

On March 10, 2010, Kurt Rogers, Chief Legal Officer (participating by phone) and Brendan Kasper, Senior Regulatory Counsel, both of Vonage Holdings Corp. (“Vonage”), and Darah Smith and the undersigned of Wiltshire & Grannis LLP, met with Angela Kronenberg of Commissioner Clyburn’s Office and, separately, with Jennifer Schneider of Commissioner Capps’ Office. In each meeting, Vonage discussed the above-caption Petition (the “Petition”) and made the points detailed below.

Vonage detailed the innovation and consumer benefits that have been driven by the Commission’s “single national policy” for services like Vonage’s.¹ When Vonage launched in 2002, the average price of local phone services was \$36 per month. Vonage then offered a bundled package of local and long distance service, together with features like voice mail for which traditional telephone providers charged extra fees. Now Vonage offers that same plan at a lower price – \$24.99 per month – and has added international calling to more than 60 countries. Competitive offerings like Vonage’s have saved consumers *billions*.² These savings are a direct

¹ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404 ¶ 33 (2004) (“*Vonage Preemption Order*”).

² Economists estimate that VoIP services will generate approximately \$24 billion in direct consumer savings for the five year period of 2008 through 2012. See Michael D. Pelcovits & Daniel E. Haar, Microeconomic Consulting & Research Associates, Inc., *Consumer Benefits*

result of the Commission's decision, in the *Vonage Preemption Order*, to "add to [] regulatory certainty" and "clear[] the way for increased investment and innovation" for services like Vonage's.³

Mr. Rogers emphasized the importance to Vonage of maintaining the integrity of the *Vonage Preemption Order* and of continuing the Commission's single national policy for VoIP services. Mr. Rogers reiterated that Vonage would not object to contributing to state USF programs if and when the Commission finds that such contributions are consistent with its single national policy for VoIP services and affirmatively changes the scope of the *Vonage Preemption Order*.

Vonage explained that the Commission cannot grant the Petition's request for retroactive authority. As every federal court to consider the issue has affirmed, the *Vonage Preemption Order* preempted state universal service assessments.⁴ Because current law is clear,⁵ the Commission may not rewrite the law "under the guise of interpreting" the *Vonage Preemption Order*.⁶ Moreover, even if current law were not clear, the Commission could not impose retroactive liability on Vonage because, as Vonage explained in its comments in this proceeding, doing so would be "manifestly unjust."⁷

from *Cable-Telco Competition*, at iii (updated Nov. 2007), available at http://www.micradc.com/news/publications/pdfs/Updated_MiCRA_Report_FINAL.pdf. The direct consumer benefit from VoIP services, however, is dwarfed by the indirect consumer benefits generated by the competitive response of other service providers, which is estimated at approximately \$87 billion over the same five-year period. *Id.*

³ *Vonage Preemption Order*, 19 FCC Rcd 22404 ¶¶ 1-2.

⁴ See, e.g., *Vonage Holdings Corp. v. Neb. Pub. Serv. Comm'n*, 564 F.3d 900 (8th Cir. 2009), *aff'g* 543 F. Supp. 2d 1062 (D. Neb. 2008); *N.M. Pub. Regulation Comm'n v. Vonage Holdings Corp.*, Memorandum Opinion and Order, 640 F. Supp. 2d 1359 (D.N.M. July 28, 2009); *Vonage Holdings Corp. v. N.Y. State Pub. Serv. Comm'n*, No. 04 Civ. 4306 (DFE), 2005 U.S. Dist. LEXIS 33121 (S.D.N.Y. Dec. 14, 2005); *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n*, 394 F.3d 568 (8th Cir. 2004), *aff'g* 290 F. Supp. 2d 993 (D. Minn. 2003).

⁵ See *AT&T v. FCC*, 454 F.3d 329, 332 (D.C. Cir. 2006); see also *Verizon Tel. Cos. v. FCC*, 269 F.3d 1098, 1109 (D.C. Cir. 2001).

⁶ See *Christensen v. Harris County*, 529 U.S. 576, 588 (2000).

⁷ Comments of Vonage Holdings Corp., WC Docket No. 06-122 at 19-22 (filed Sept. 9, 2009).

Marlene Dortch
Federal Communications Commission
11 March 2010
Page 3

If you have any questions or require any additional information, please do not hesitate to contact me at (202) 730-1346.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BDS' with a long horizontal stroke extending to the right.

Brita D. Strandberg
Counsel for Vonage Holdings Corp.

cc: Angela Kronenberg
Jennifer Schneider