



# Public Service Commission of Wisconsin

Eric Callisto, Chairperson  
Mark Meyer, Commissioner  
Lauren Azar, Commissioner

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Chairman Julius Genachowski  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Written ex parte in the proceeding captioned:

*In the Matter of*

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

Public Service Commission of Wisconsin request for expeditious  
action

Dear Chairman Genachowski:

In the above-captioned proceeding (the Petition), petitioners Nebraska Public Service Commission and Kansas Corporation Commission have asked the Federal Communications Commission (Commission) to declare that state universal service funds (USF) may assess Nomadic VoIP intrastate revenues based on the intrastate complement to the current federal safe harbor for interstate assessments. The Petition requested clarification from the Commission on only this one limited issue. The Public Service Commission of Wisconsin (PSCW) supports the petitioners' call for a declaratory ruling.

The PSCW is concerned, however, regarding recent efforts to sidetrack the Commission from ruling on this simple request. With regard to this matter, the PSCW would make the following pertinent points:

- The FCC,<sup>1</sup> Vonage, and the petitioners all agree interconnected Nomadic VOIP providers should contribute to State USFs.
- Vonage now seeks to convince the Commission to resolve this issue through a rulemaking proceeding rather than a declaratory ruling.<sup>2</sup>

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<sup>1</sup> The Commission's *Amicus* Brief submitted to the 8th Circuit on August 5, 2008, effectively acknowledges Congressional intent is clear on the point of state assessment of interconnected VoIP providers. The petition notes that "the FCC stated in its *Amicus Curiae* brief—there is no conflict between federal assessments of universal service contributions on the interstate portion of a provider's revenue and state assessment of universal service contributions on the remaining intrastate portion."

<sup>2</sup> *Ex parte* letter from Vonage's legal counsel, Brita D. Strandberg, to FCC Secretary, Marlene Dortch, dated August 10, 2010, pp. 1-2.

- The issue in the Petition is not related to, or precedential regarding, the Commission's authority over broadband and ancillary issues, including net neutrality.
- A declaratory ruling on this narrow issue would not open the door for states to regulate broadband or internet services.
- The status quo promotes unequal contribution burdens on those that use assessed providers versus the non-assessed interconnected VoIP providers.
- Opening a protracted rulemaking proceeding could hamper a state's ability to fairly collect sufficient funding to participate in the federal/state cooperative promotion of broadband availability envisioned in the National Broadband Plan.

In the face of these points, the PSCW writes to encourage the Commission not to lose sight of the fact that the Vonage Preemption Order was itself a declaratory ruling.<sup>3</sup> The only real dispute is over when Vonage will have to begin to pay into existing State programs. Vonage's competitors pay now. The Commission can—and should—act now via a declaratory ruling. There is no legal or policy basis for a delay in issuing the requested declaration.

Dated at Madison, Wisconsin, September 9, 2010

By the Commission:

/s/ *Sandy J. Paske*

Secretary to the Commission

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cc: Commissioner Michael J. Copps  
Commissioner Robert M. McDowell  
Commissioner Mignon Clyburn  
Commissioner Meredith Attwell Baker  
Chief Sharon Gillett, Wireline Competition Bureau

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<sup>3</sup> Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, Memorandum Opinion and Order, 19 FCC Rcd 22404 (2004) (*Vonage Preemption Order*).