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October 1, 2010

**Ex Parte**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 September 30, 2010, Brendan Kasper, Senior Regulatory Counsel of Vonage Holdings Corp. (“Vonage”), and Joseph Cavender and the undersigned of Wiltshire & Grannis LLP, met with Brad Gillen, advisor to Commissioner Baker; James Carr, Diane Griffin Holland, Julie Veach, and Richard Welch of the Office of General Counsel; and Rebekah Goodheart and Vickie Robinson of the Wireline Competition Bureau to discuss the above-captioned petition.

Vonage reiterated that it does not object to paying state universal service fees and noted that it is encouraged by the Petitioners’ withdrawal of their request for authority to impose state universal service obligations retroactively.

If the Commission does intend to provide states with the authority to impose state universal service obligations on interconnected VoIP providers like Vonage, however, the Commission should be clear that it is changing the law prospectively, not “clarifying” something that was not already clear. That is, the Commission should be explicit that it is affirmatively modifying the scope of the *Vonage Preemption Order*<sup>1</sup> to provide states authority that they do not currently possess. The record before the Commission, including its experience with the *VoIP*

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<sup>1</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*”).

*USF Order*,<sup>2</sup> the pleadings in this docket (including, particularly, Vonage’s repeated statements that it does not object to paying state universal service fees), and the policy views expressed in the Commission’s 2008 Eighth Circuit amicus brief would all support such an order.

The Commission should also make sure to address the conflict between the different states’ methods for determining which revenues could be assessed by that state. Vonage suggested that the Commission could do so by affirmatively declaring that states adopting a particular method—for example, allocating a consumer’s revenues based on the place of primary use or the user’s 911 location—would be consistent with federal policy. Such a determination would not be a declaration that other methods were necessarily unlawful. But it would make clear that states choosing the FCC-endorsed methodology would *not* be preempted.

Vonage urged the Commission to respond to the petition with a narrowly focused order that addresses Petitioners’ concerns without calling into question the scope or validity of the *Vonage Preemption Order*. The purpose of the *Vonage Preemption Order* was to establish a single national policy to provide regulatory certainty and to promote innovation and investment, and it has been a resounding success. The Commission’s order should reaffirm those principles, and, if the Commission changes the law regarding state universal service authority, it should do so forthrightly and declare that it is doing so now—the Commission should not declare that some past order modified the scope of the *Vonage Preemption Order* without expressly saying so, and the Commission should be careful not to issue a ruling that creates uncertainty about other areas of potential state regulation that were preempted by the *Vonage Preemption Order* or that invites litigation to test those boundaries.

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

Respectfully submitted,



Brita D. Strandberg  
*Counsel for Vonage Holdings Corp.*

cc: James Carr  
Brad Gillen  
Rebekah Goodheart  
Diane Griffin Holland  
Vickie Robinson  
Julie Veach  
Richard Welch

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<sup>2</sup> See *IP-Enabled Services*, Report and Order and Notice of Proposed Rulemaking, WC Docket No. 04-36, 21 FCC Rcd 7518 (2006) (“*VoIP USF Order*”).