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Ex Parte

October 8, 2010

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

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

AT&T hereby responds to the National Association of Regulatory Utility Commissioners' (NARUC) September 2, 2010 *ex parte* letter in which it urges the Commission to reject requests that the Commission commence a rulemaking to establish a methodology that states would be required to adopt if they assess state universal service fees on all interconnected VoIP providers. Instead, NARUC urges the Commission to issue an order that only "clarifies" that states have the authority to assess all interconnected VoIP providers and remains silent on the methodology that states must use to ensure that carriers (and their customers) are not double-billed by multiple states. In support of its assertion that a rulemaking is unnecessary because it is "unlikely" that carriers (and, ultimately, their customers) will ever be double-billed by multiple states, NARUC contends that

States have not reported complaints[] from the wireless industry regarding the double billing of assessments to the [State Universal Service Fund Administrators] Subcommittee. States have successfully worked together on this issue for wireless providers. The successful experience with the wireless industry is strong evidence for both the FCC and industry that to the extent that any double billing issue arises, it will be readily resolved by the States' collaboration.¹

While it may be true that mobile wireless carriers did not complain about the double billing of state universal service assessments to NARUC's Staff Subcommittee of State Universal Service Fund Administrators, NARUC is mistaken when it contends that wireless providers had a "successful experience" with the states in ensuring that double billing did not occur. For example, in 2006, five wireless providers had to petition the Kansas Corporation

¹ Letter from James Bradford Ramsay, NARUC, to Marlene Dortch, FCC, WC Docket No. 06-122 (filed Sept. 2, 2010).

Commission (KCC) to modify its Kansas universal service fund (KUSF) methodology applicable to wireless carriers.² Unlike other states, including the neighboring state of Nebraska, the KCC had required wireless carriers to contribute to the KUSF based on customer billing addresses, not primary place of use (PPU). In their petition, the wireless carriers explained how the KCC's methodology had created not only a potential double billing problem (e.g., if a business with multiple wireless lines on its account has a Kansas billing address but uses Lincoln, Nebraska as its PPU, the business customer would be assessed by both the KUSF and the Nebraska USF),³ it required nationwide wireless carriers, that have billing systems designed to function nationally, to engage in expensive and time-consuming analysis and state-specific adjustments to modify revenue on a billing address basis.⁴ The KCC agreed with the petitioners and concluded that "the use of the PPU, rather than the billing address, in the KUSF methodology is more efficient in that wireless carriers design their billing systems on national basis. Because most carriers' billing systems are based on the PPU, *required use of different methodologies is inefficient and unnecessarily expensive.*"⁵ While the KCC ultimately agreed with the petitioners that it should modify its wireless carrier assessment methodology to make it uniform with that used by other states, wireless carriers were forced to litigate this issue before the state commission, after the fact.

It would be a tremendous waste of every party's resources (industry and state commission alike) for interconnected VoIP providers to litigate over the methodology that a particular state selects to determine which interconnected VoIP customers are within that state for state universal service contribution purposes. Instead, we reiterate our request that the Commission commence a targeted rulemaking on which methodology states should be *required* to use if they seek to impose state universal service contribution obligations on interconnected VoIP providers.⁶

² *In the Matter of the Petition of the Joint Petitioning Wireless Carriers Requesting a Generic Investigation into the Commission's KUSF Assessment Methodology Regarding Billing Address versus Primary Place of Use*, Joint Petition Requesting Investigation and Modification of KUSF Assessment Methodology, Kansas Corporation Commission Docket No. 06-GIMT-943-GIT (filed March 2, 2006) (Kansas Petition).

³ Kansas Petition at 7.

⁴ *Id.* at 8.

⁵ *In the Matter of the Petition of the Joint Petitioning Wireless Carriers Requesting a Generic Investigation into the Commission's KUSF Assessment Methodology Regarding Billing Address versus Primary Place of Use*, Order Granting Requests of Joint Petitioners, Kansas Corporation Commission Docket No. 06-GIMT-943-GIT, at 5 (rel. Sept. 7, 2006) (emphasis added); *see also id.* at 4 (noting that staff "surmised that it [i.e., adopting the PPU methodology] may prevent wireless customers from being assessed for two or more state universal service programs").

⁶ *See* AT&T Comments, *Universal Service Contribution Methodology, Petition for Declaratory Ruling of the Nebraska Public Service Commission and the Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122 (filed Sept. 9, 2009) (also urging the Commission to address state Telecommunications Relay Service funds in this rulemaking).

Please do not hesitate to contact me with any questions.

Respectfully submitted,

/s/ Cathy Carpino

cc: Vickie Robinson (via e-mail)