



N A R U C  
National Association of Regulatory Utility Commissioners

October 13, 2010

Via ECFS

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

**RE: *WRITTEN EX PARTE FILED IN THE PROCEEDING CAPTIONED:  
In the Matter of Nebraska Pub. Service Commission and the Kansas Corp.  
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 No. 06-122***

Dear Ms. Dortch,

The “Statement of Sandra Reams, managing auditor at the Kansas Corporation Commission (KCC) and current Chair of the NARUC Staff Subcommittee of State Universal Service Fund Administrators (SUSFA)” is attached.

The statement points out the numerous factual errors and misstatements included in AT&T’s October 8, 2010 *ex parte* letter filed in this proceeding. I have forwarded electronically copies of Ms. Ream’s statement to the parties listed below.

Sincerely,  
/s/  
James Bradford Ramsay  
NARUC General Counsel

cc Rick Kaplan, Chief Counsel and Senior Legal Advisor, Office of the Chairman  
Zac Katz, Legal Advisor for Wireline Communications, Office of the Chairman  
John Giusti, Chief of Staff and Legal Advisor, Office of Commissioner Copps  
Christine Kurth, Policy Director & Wireline Counsel, Office of Commissioner McDowell  
Angela Kronenberg, Wireline Legal Advisor, Office of Commissioner Clyburn  
Brad Gillen, Legal Advisor Wireline Issues, Office of Commissioner Baker  
Sharon Gillett, Wireline Competition Bureau Chief  
Austin Schlick, FCC General Counsel

Statement of Sandra Reams  
Managing Auditor, Kansas Corporation Commission and  
Chair of the NARUC Staff Subcommittee of  
State Universal Service Fund Administrators

RE: Nebraska Pub. Service Commission and the Kansas Corp. 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 No. 06-122 (Petition)

As a managing auditor at the Kansas Corporation Commission (KCC) and as the current Chair of the NARUC Staff Subcommittee of State Universal Service Fund Administrators (SUSFA), I am providing this statement in response to AT&T's October 8, 2010 *ex parte* letter, as I believe it is disingenuous for AT&T to imply that wireless carriers needed to file a Joint Petition (wireless Joint Petition) to protect their consumers from being double-billed for state universal service assessments. I also believe the FCC has everything before it to grant the Petition, as amended, and the suggestion that a formal Rulemaking proceeding is needed is without merit both in terms of prior FCC precedent, and in terms of states' collaboration on universal service issues.

It is understandable that AT&T might prefer that the FCC not grant the Declaratory Ruling requested by Nebraska and Kansas in WC Docket No. 06-122 and instead, address the issue through a Rulemaking proceeding because further delay works to their advantage. Contrary to AT&T's assertions, the FCC does not need to specify a uniform revenue identification method for the states or address this issue through a Rulemaking. It is troubling that AT&T is attempting, through *ex parte* means, to leave the misimpression that it has in any manner been disadvantaged or was required to litigate the issue through its own initiative, when the facts are exactly to the contrary. The KCC addressed the state-by-state billing issue raised by the wireless carriers, to their satisfaction.

As stated in my September 2, 2010 memorandum, wireless carriers did not submit any double-billing issue complaints with state commissions. The wireless Joint Petition, referenced by AT&T, was filed with the KCC only after the KCC, through its normal regulatory procedures, discovered that AT&T and other wireless carriers had ignored KCC orders requiring that Kansas revenue be identified based on customers' billing addresses.<sup>1</sup> In fact, through the normal KCC audit process, it was discovered that some of the largest wireless carriers had implemented the Primary Place of Use (PPU) after passage of the Mobile Telecommunications Sourcing Act (MTSA), even though the MTSA specifically exempts the use of PPU for (1) any fee related to obligations under section 254 of the Communications Act of 1934 and (2) any tax, charge, or fee imposed by the FCC. Through its normal regulatory processes, the KCC worked directly with

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<sup>1</sup> Docket Nos. 05-ALKT-448-KSF, 05-VERZ-449-KSF, 05-VSPZ-461-KSF, and 05-VSPZ-461-KSF.

AT&T and other wireless carriers and opened the dialog to address an issue that, as a result of unilateral actions by these wireless carriers without prior or appropriate notification to the KCC, could have resulted in double-billing issues for customers, exactly the opposite of AT&T's ex parte implication.

AT&T first tried to defend its actions by claiming that the KCC did not specify or require a revenue identification methodology,<sup>2</sup> when in fact it was a party to the proceeding out of which the order arose. AT&T later acknowledged that, in 1999,<sup>3</sup> the KCC reaffirmed that wireless carriers were required to identify Kansas revenue based on the billing address methodology. AT&T then suggested that inasmuch as the KCC's decision predated the Mobile Telecommunications Sourcing Act (MTSA), it was only logical for the company to "assume" it could change its revenue identification method for state universal service purposes.

After becoming aware of the issue, the KCC determined that a separate proceeding should be opened to address the billing address and PPU methodologies. The KCC engaged in informal discussions with wireless carriers to determine the number of carriers impacted, and recommended to the wireless carriers that they file a joint petition to open a separate proceeding in which to develop a record.<sup>4</sup> That record supports the fact that some of the largest wireless carriers, including AT&T, made no request that the KCC review or revise its ordered revenue identification policy, but rather had unilaterally implemented the PPU (a taxation methodology) without authorization to do so. Moreover, even though the wireless Joint Petitioners acknowledged that the billing address and PPU methodologies result in similar financial results, they claimed the PPU was preferred because they design their billing systems around the fact that they operate on a national basis. The docket on the wireless Joint Petition reflects that it was to the wireless carriers' benefit to implement the PPU methodology for state universal service purposes by allowing the carriers to have a uniform billing system for all taxation and fee purposes, including universal service assessments. The KCC accommodated the request, and granted the wireless Joint Petition on September 7, 2006.

The FCC has not mandated a revenue identification method for the wireless industry. It has been left to each state to identify how revenue for its universal service fund will be identified. Admittedly, Nebraska adopted the billing address and Kansas the primary service address for interconnected VoIP providers for state universal service purposes. Both Nebraska and Kansas are committed to addressing the revenue identification issue, including any double-billing impacts to consumers. Both states are agreed that, overall, the revenue difference between the billing address and service address, or PPU, is minimal - similar to the FCC's stated belief that there is little difference between the billing address and PPU methodologies.<sup>5</sup>

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<sup>2</sup> Docket No. 04-AT&T-726-KSF, August 6, 2004 AT&T Petition for Reconsideration.

<sup>3</sup> Docket No. 94-GIMT-478-GIT, August 13, 1999 Order.

<sup>4</sup> *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 (PPU)*, Docket No. 06-GIMT-943-GIT (Docket 943), March 2, 2006 Joint Petition Requesting Investigation and Modification of KUSF Assessment Methodology (Joint Petition).

<sup>5</sup> CC Docket No. 96-45, FCC 05-46, *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, (ETC Order).

Additionally, the SUSFA subcommittee was created to recognize issues that may impact state universal service funds, and whenever possible, address those issues in a uniform manner to the benefit of the carriers, states, and consumers. The Nebraska and Kansas commission staffs actively participate in the SUSFA subcommittee, and as Chair of the SUSFA subcommittee, I have already initiated steps to address this issue with all states. AT&T states that absent a Rulemaking, industry and state commissions alike will waste resources. As the record in the proceeding shows, AT&T's statement is without support. Instead AT&T's ex parte actions in this docket has caused the Commission and its staff to expend resources defending claims that run counter to FCC procedural precedent, and the factual history explained above.



Sandy Reams  
KCC Managing Auditor  
Chair NARUC Staff Subcommittee of  
State Universal Service Fund Administrators