

**Before the
Federal Communications Commission
Washington DC 20554**

In the Matter of:

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)	
Universal Service Contribution Methodology)	WC Docket No. 06-122
)	
A National Broadband Plan For Our Future)	GN Docket No. 09-51
)	
Schools and Libraries Universal Service Support Mechanism)	CC Docket No. 02-6

Request for Declaratory Ruling

Caroline County Library, Inc., Caroline County, Virginia (Caroline) asks the Federal Communications Commission for a Declaratory Ruling that Vonage Holdings is a “Common Carrier” and “Eligible Telecommunications Carrier” under Commission rules and should be compelled to participate in the Schools and Libraries Universal Service Support Mechanism and provide discounted telephone service to Caroline.

Background

Caroline is a public library in the Commonwealth of Virginia and is eligible to receive discounts on telecommunications service through the Schools and Libraries Universal Service Support Mechanism, commonly known as E-Rate.

In accordance with program rules, Caroline posted an FCC Form 470 for Fund Year 2012, requesting telephone service. After the Form 470 had been posted for a minimum of 28 days, Caroline elected to continue to receive telephone service from Vonage for four telephone lines.

Caroline attempted to locate a Service Provider Identification Number (SPIN) for Vonage in order to complete a Form 471 funding request. The Administrator’s Web site did not have a SPIN for Vonage. Caroline completed the Form 471 application using an interim SPIN provided by the Administrator and contacted Vonage requesting the company obtain a SPIN and participate in the E-Rate program. Vonage has refused to obtain a SPIN. The application cannot

be processed without a SPIN from Vonage and Caroline may lose up to \$1,076 in E-Rate discounts – not an insubstantial amount for a small library.

Discussion

The E-Rate program, was established as a result of the Telecommunications Act of 1996. The Act charged the Federal Communications Commission with regulatory responsibility to establish regulations and adjudicate the program.

The Commission issued regulations governing the E-Rate program in Title 47, Part 54 of Commission regulations. Section 54.5(3) provides definitions of service between points within the United States. Specifically, a “telecommunications carrier” is a provider of telecommunications services as defined in the Telecommunications Act. Further, a telecommunications carrier is considered a “common carrier” when it provides “telecommunications services” as defined in the Act. “Telecommunications service” is the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.¹

To receive Universal Service support for telecommunications service, telecommunications carriers must be designated as “eligible telecommunications carriers.” Generally telecommunications carriers may become eligible when a state commission designates a common carrier as such.² In some cases, however a telecommunications carrier may earn eligible status without approval from a state commission.³ By virtue of their nature of business and how they hold themselves out to the public, entities may be eligible telecommunications carriers and be compelled to participate in the E-Rate program.

According to the Vonage Holdings May 3, 2012 Form 10-Q filing with the Securities and Exchange Commission, Vonage describes its business as “...a leading provider of low-cost communications services connecting people through broadband devices worldwide. Customers in the United States represented 94% of our subscriber lines for our broadband telephone replacement services as of March 31, 2012...” Further, “Substantially all of our revenues are telephony services revenue.”⁴

Vonage advertises “telephone” service to the public via online, print, and broadcast media and has been for many years. In a class action lawsuit against Vonage filed December 19, 2008,

¹ CFR Title 47 Section 54.5.

² Section 54.201(b)

³ Virginia Department of Education Petition for Reconsideration DA 02-1123, CC Docket No 96-45, CC Docket 97-21, filed May 20, 2002.

⁴ Vonage Form 10 Q, Filed May 3, 2012

plaintiffs cite a Vonage 2006 Securities Registration Statement indicating Vonage spent a total of \$513.2 million in advertising in 2005 and the first nine months of 2006.⁵ If Vonage generates all revenue from telephony service, it would naturally follow that advertising expenses are designed to entice the public to subscribe to the Vonage phone service.

Clearly Vonage offers telecommunications service on a common carrier basis. Without question Vonage should be designated as an eligible telecommunications carrier and be compelled to provide discounted service to eligible E-Rate participants.

The Telecommunications Act specifies that eligible schools and libraries shall receive discounted service from telecommunications carriers when the eligible school or library makes a bona fide request for its services.⁶ Caroline made a bona fide request to Vonage for telephone service, Vonage provides telephone service in the geographic area where Caroline library branches are located, Caroline is an eligible library under Section 254(h)(1)(B), and Caroline has shown that the services are telephone services.

Respectfully Submitted this 25th day of May, 2012,

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⁵ United States District Court for the District of New Jersey “Vonage Marketing and Sales Practice Litigation” MDL Docket No. 07-3906 (FLW) Filed December 19, 2008 at 29.

⁶ Telecommunications Act of 1996 Section 254(h)(1)(B)