

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Sprint Petition for Declaratory)	WC Docket No. 12-105
Ruling on VoIP Originated Traffic)	

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. (“Cox”), by its attorneys, hereby files its reply comments in the above-referenced proceeding.

The purpose of these reply comments is to correct significant misstatements in the Comments of Verizon.¹ In particular, Verizon erroneously claims that the Commission’s holding in the *Vonage Order* dictates the conclusion that IP traffic provided by cable operators is inherently interstate and inseparable and cannot be subject to any state regulation or intrastate access charges.² As described below, the *Vonage Order* never supported the overreaching interpretation Verizon advocates, and the correct, far more limited reading of the *Vonage Order* has been confirmed in several subsequent Commission decisions. Verizon’s argument provides no support for grant of the Sprint Petition and should be disregarded.³

The Commission has expressly rejected Verizon’s interpretation of the *Vonage Order* on multiple occasions. In the *Interim USF Contribution Order*, the Commission recognized that interconnected VoIP providers can, in many cases, distinguish between interstate and intrastate calls on their networks.⁴ For that reason, the Commission permitted interconnected VoIP

¹ Comments of Verizon, WC Docket No. 12-105, filed June 14, 2012 (the “Verizon Comments”).

² *Id.* at 3-5.

³ Sprint Petition for Declaratory Ruling, WC Docket No. 12-105, filed Apr. 15, 2012 (the “Sprint Petition”).

⁴ Universal Service Contribution Methodology, *Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd 7518, 7546 (2006) (the “*Interim USF Contribution Order*”).

providers to base their USF contributions on actual interstate service revenues and exclude intrastate revenues from their calculations.⁵ The Commission then declared that interconnected VoIP providers that can distinguish between interstate and intrastate calls “would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation.”⁶ The Commission could hardly have been more explicit in rejecting Verizon’s claim that VoIP traffic must be considered inseparable and inherently interstate.

The Commission further confirmed that VoIP traffic is separable and jurisdictionally mixed in the *USF Declaratory Ruling*, upholding state requirements that carriers contribute to state USF funds based on intrastate revenues.⁷ Following up on its determination in the *Interim USF Contribution Order* that VoIP is jurisdictionally separable, the Commission stated that “[n]ow that the Commission has shown that it is possible to separate the interstate and intrastate revenues of interconnected VoIP providers for purposes of calculating universal service contributions, we find no basis at this time to preempt states from imposing universal service contribution obligations on providers of nomadic interconnected VoIP service that have entered the market.”⁸ The Commission also recognized that requiring VoIP providers to pay state universal service (like requiring them to pay federal universal service) was important to maintaining fair competition because otherwise ““carriers with universal service obligations will compete directly with providers without such obligations.””⁹

Thus, Commission precedent does not support Verizon’s claim that interconnected VoIP service is inseparable and the Commission has expressly disavowed any intention to permit

⁵ *See id.*

⁶ *Id.*

⁷ *See* Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenue, *Declaratory Ruling*, 25 FCC Rcd 15651 (2010) (the “*USF Declaratory Ruling*”).

⁸ *Id.* at 15657.

⁹ *Id.*

interconnected VoIP providers to obtain regulatory advantages over competitors based on a blanket jurisdictional classification of VoIP traffic as interstate in nature. The Commission's commitment to ensuring that VoIP traffic is subject to a technically rational and competitively neutral regulatory regime makes Verizon's broad preemption theory based on the *Vonage Order* a dead letter. The courts have followed the FCC's lead on this matter, holding repeatedly for example, that state commissions are not preempted from enforcing the provisions of interconnection agreements when those provisions involve IP traffic.¹⁰

Instead of the blanket preemption Verizon claims, the Commission has adopted a flexible approach to federal and state regulation of VoIP that (1) recognizes that many VoIP providers can distinguish between interstate and intrastate traffic; and (2) preserves competitive neutrality by restricting the preemptive effect of the *Vonage Order* to situations where state regulation might impede market entry by VoIP carriers offering services that are legitimately inseparable or inherently interstate.¹¹

In light of the Commission's decisions since the *Vonage Order*, Verizon's citation to 7-year old *ex parte* letters filed by Cox and other carriers in that proceeding lends no weight to its claim that VoIP should be considered inseparable and inherently interstate for purposes of resolving the Sprint Petition.¹² The relevant question is not whether cable companies like Cox should be treated the same as Vonage (on which point the *Vonage Order* reached no conclusion); rather the Commission must determine whether an established carrier like Sprint that has integrated IP technology into its existing network to carry some traffic originated in IP should be permitted to avoid paying for tariffed transport services it has already used simply because that traffic is VoIP. Because it focuses solely on its mistaken construction of the ongoing relevance of the *Vonage Order*, Verizon does not even begin to address this question. But when the

¹⁰ See, e.g., *Global NAPs of California, Inc. v. California Public Utilities Commission*, 2010 U.S. Dist. LEXIS 116096 (C.D. Cal. Apr. 27, 2010); *Global NAPs of California, Inc. v. California Public Utilities Commission*, 2008 U.S. Dist. LEXIS 118584 (C.D. Cal. Dec. 23, 2008).

¹¹ See *id.* at 15661.

¹² Verizon Comments at 5.

question is analyzed using post-*Vonage Order* precedent as a guide, the answer clearly is no, and therefore the Sprint Petition should be denied.

First, neither Verizon nor Sprint claims that carriers are (or were prior to the *ICC-USF Order*) unable to distinguish between interstate and intrastate VoIP traffic. Like Verizon, Sprint simply bases its claim that VoIP-PSTN traffic is jurisdictionally interstate on a purely – though incorrect – legal argument.¹³ Under the logic of the *USF Contribution Order* and the *USF Declaratory Ruling*, however, merely claiming that traffic is VoIP-PSTN traffic provides no basis for concluding that the traffic is inseverable as a matter of fact and even less basis for concluding it is inherently interstate as a matter of law. To the contrary, the more reasonable conclusion is that established carriers like Sprint and Verizon that employ IP technology to carry wireline and wireless voice telephone calls for delivery to the PSTN in time division multiplexing format can distinguish between their intrastate and interstate traffic for purposes of routing that traffic over other carriers' facilities.

Second, Verizon fails to explain how Sprint's requested ruling would be consistent with the competitive neutrality principle that drove the Commission's decision in the *Vonage Order*. Neither Sprint nor Verizon is a new carrier offering innovative, start-up services designed to compete with more established providers. Sprint is a well-established carrier in both the wireless and interexchange markets and it will not be competitively harmed if it is required to pay tariffed access charges for the access services it already has used. The parties that will suffer competitive harm are the carriers that Sprint does not want to pay. Thus, Sprint and Verizon – two of the largest voice providers in the country – are opportunistically seeking to convert the *Vonage Order*, which was conceived as a way to ease competitive entry for new service providers, into just another way to game the system and shift costs to their competitors. Read in the context of the Commission's subsequent orders, however, the *Vonage Order* provides no such opportunity and Verizon's contrary claims should be rejected.

¹³ Sprint Petition at 13-14.

As Cox explained in its comments, when Sprint and other carriers chose to route their traffic over Cox's intrastate and interstate access trunks, they committed to paying the tariffed rate for the services Cox provided.¹⁴ Whether some of that traffic was VoIP-PSTN traffic should have no bearing on their responsibility to pay for the services they purchased and received. Contrary to Verizon's claims, the *Vonage Order* does not require (or permit) a finding that VoIP-PSTN traffic was carried outside the confines of Cox's tariffs, and, following the Commission's pronouncements in the *Interim USF Contribution Order* and *USF Declaratory Ruling*, neither Sprint, Verizon, nor any other carrier has any reasonable expectation of that result.

For the foregoing reasons, Cox requests that the Commission reject Verizon's interpretation of the *Vonage Order* and, for these and the other reasons set forth in the Cox Comments, Cox renews its request that the Commission deny the Sprint Petition.

Respectfully submitted,

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¹⁴ Comments of Cox Communications, Inc., WC Docket No. 12-105, filed June 14, 2012, at 6-7, 8 (the "Cox Comments").