



September 22, 2010

(Filed electronically)

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Ex Parte Notice**
Petition of Nebraska Public Service Commission and Kansas Corporation
Commission for Declaratory Ruling, WC Docket No. 06-122

Dear Ms. Dortch:

On September 22, 2010, Glenn Richards, Executive Director and Counsel for the VON Coalition, spoke by phone with Vicki Robinson of the Wireline Competition Bureau. During that conversation, VON reiterated its opposition to the above-referenced petition despite the recent filing by the petitioners of an amendment clarifying that the declaratory ruling should be prospective only.¹ VON believes that granting the petition will undermine the FCC's 2004 decision preempting state regulation of Voice over Internet Protocol,² hinder the development of VoIP, and open the door for states to expand regulation of VoIP, including the ability to shut down VoIP providers that don't pay into state universal service funds.

VON also questioned the motivation of petitioners in filing the amendment, noting the following quotation from petitioners' counsel, Elizabeth H. Ross, which was published in a recent news article. "We haven't actually dropped retroactivity," Ross said. "We're just handling it internally." The article went on to state that Ross declined to elaborate if that meant that Kansas and Nebraska would try to impose their own retroactive assessments.³

VON stated that if the FCC is going to issue an order in this docket, it must be very clear that the order is a substitution of new law for old law that was reasonably clear rather than a decision applying existing law to new situations or clarifying the law. Otherwise, VON is concerned that the states will use the order to litigate the retroactive impact of the decision in court. The statement from petitioners' counsel quoted above appears to support that concern; furthermore, while Kansas and Nebraska may choose not to seek retroactive payments, because no other states are parties to the petition, there would be no limitation on them seeking retroactive payments from VoIP providers. The Order should also be clear that it is limited to nomadic, interconnected VoIP, does not otherwise disturb the *FCC Vonage Preemption Order* and foreclose any possibility that states will attempt to expand jurisdiction over other forms of IP-enabled services.

Finally, VON stated that the Commission should give VoIP providers at least 90 days after the effective date of the order to make changes to their billing systems. Many VoIP

¹ Amendment to Petition, WC Docket 06-122, filed September 14, 2010. Though not discussed during the call, VON believes that the amendment should be placed on public notice and subject to public comment.

² *In re Vonage Holdings Corp.*, 19 FCC Rcd 22404, at 22419, ¶ 25 (2004) [hereinafter *FCC Vonage Preemption Order*].

³ "Kansas, Nebraska Drop Retroactivity Request in USF Battle," *Communications Daily*, September 21, 2010, at pp. 6-7.



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providers do not have any contact with state utility commissions, may not be aware of state USF requirements, and will need time to determine how to assess state universal service obligations, who to assess (whether any customers are exempt from these assessments), how much to assess (how to assess customers who receive service in one state but are billed in a second state), and to whom to remit USF collections. VoIP providers may also need to pass through to customers the increased administrative costs associated with collecting and remitting state USF, resulting in higher rates for all VoIP customers in those states.

Please contact me directly if you have any questions.

Sincerely,

/s/

Glenn S. Richards
Executive Director

cc: Vicki Robinson (by email)