

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

Before Commissioners: Thomas E. Wright, Chair  
Robert E. Krehbiel, Commissioner  
Michael C. Moffet, Commissioner

JUL 16 2007

 Docket  
Room

In the Matter of the Investigation to Address )  
Obligations of VoIP Providers with Respect ) Docket No. 07-GIMT-432-GIT  
to the KUSF )

**REPLY COMMENTS OF THE  
CITIZENS' UTILITY RATEPAYER BOARD**

COMES NOW the Citizens' Utility Ratepayer Board ("CURB") and files the following reply comments in this docket related to the Kansas Corporation Commission's ("KCC" or "Commission") April 30, 2007, Order soliciting additional comments regarding the obligations of VoIP providers with respect to the Kansas Universal Service Fund ("KUSF").

**I. INTRODUCTION**

1. This docket was opened as a result of the *USF Contribution Order*<sup>1</sup> issued by the Federal Communications Commission ("FCC") on June 27, 2006, that *inter alia* required interconnected Voice over Internet Protocol ("VoIP") providers to contribute to the Federal Universal Service Fund ("FUSF"). The USF Contribution Order stated:

We require providers of "interconnected VoIP services," as defined by the Commission, to contribute to the federal USF under the existing contribution methodology on an interim basis. As described above, the number of VoIP subscribers in the United States has grown significantly in recent years, and we expect that trend to continue. At the same time, the USF contribution base has

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<sup>1</sup> Report and Order and Notice of Proposed Rulemaking, *In the Matter of Universal Service Contribution Methodology* (other dockets omitted), 21 FCC Rcd 7518 (2006) ("*USF Contribution Order*").

been shrinking, and the contribution factor has risen considerably as a result. We therefore find that extending USF contribution obligations to providers of interconnected VoIP services is necessary at this time in order to respond to these growing pressures on the stability and sustainability of the Fund.<sup>2</sup>

2. The KCC issued an order on November 2, 2006, soliciting comments and reply comments regarding the obligations of VoIP providers with respect to the Kansas Universal Service Fund (“KUSF”). CURB filed comments and reply comments in response to that order. On April 30, 2007, the KCC issued an order requesting parties to provide additional comments regarding new developments since the filing of reply comments. CURB has reviewed the additional comments filed in response to this order and submits its reply comments below.

## **II. COMMENTS**

3. CURB’s initial and reply comments contain extensive support for the following basic positions:

- A. The Commission is authorized by the Federal and Kansas Telecommunications Acts to require interconnected VoIP providers to contribute to the KUSF.
- B. Previous FCC orders and federal decisions do not prevent the Commission from imposing universal service obligations on interconnected VoIP providers.
- C. The Commission should exercise its authority to impose universal service obligations on interconnected VoIP providers.

4. CURB continues to support each of these positions, and urges the Commission to require interconnected VoIP providers to contribute to the KUSF as set out in CURB’s initial and reply comments.

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<sup>2</sup> *USF Contribution Order*, ¶ 34.

5. In the “Additional Comments of Commission Staff”, filed June 15, 2007, Staff succinctly details the most current proceedings and pleadings germane to this issue. Staff addresses the following:

A. The March 22, 2007 *ex parte* correspondence from the House Energy and Utilities Committee.

B. The Eighth Circuit Court decision in *Minnesota Pub. Utils. Comm’n v. FCC*, 483 F. 3d 570 (8<sup>th</sup> Cir., March 21, 2007).

C. The D.C. Circuit Court decision in *Vonage Holdings Corp. v. FCC*, \_\_\_ F. 3<sup>rd</sup> \_\_\_, 2007 WL 1574611 (D.C. Circuit, June 1, 2007).

D. The US District Court Decision in *Comcast IP Phone of Missouri, LLC v. Missouri Public Service Commission*, 2007 WL 172359, 40 Communications Reg. (P&F) 508 (W.D. Mo, Jan. 18, 2007).

E. The April 17, 2007, decision of the Nebraska Public Service Commission.

6. CURB agrees with and supports the analysis presented by Staff with respect to the above, and incorporates them herein. CURB also agrees with and supports the analysis made by Embarq with respect to the 8<sup>th</sup> Circuit *Minnesota Pub. Utils. Comm’n v. FCC* decision and the D.C. Circuit *Vonage* decision. CURB concurs with Staff’s conclusion that, “the information that has become available since the parties filed reply comments on January, 12, 2007, further supports the Commission’s authority to require interconnected VoIP providers to contribute to the KUSF.”<sup>3</sup>

7. As noted by both Staff and Embarq, the June 1, 2007, D.C. Circuit’s *Vonage* decision is of critical importance to the Commission’s decision in this docket, because the D.C. Circuit upheld the provisions of the *USF Contributions Order* that were raised as concerns or

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<sup>3</sup> Additional Comments of Commission Staff, ¶ 18.

“legal clouds” by parties to this proceeding with respect to the *USF Contributions Order*.<sup>4</sup> Specifically, the D.C. Circuit upheld the FCC’s decisions to (1) require interconnected VoIP providers to contribute to the Federal USF and (2) to use a safe harbor of 64.9 percent for interstate revenues.<sup>5</sup>

8. The comments of AT&T, Cox Kansas Telcom, L.L.C., and Verizon fail to present definitive evidence that would prevent the Commission from requiring interconnected VoIP providers from being required to contribute to the KUSF. The inconsistencies in their positions can be seen in the following:

“The Eighth Circuit’s Decision in Minnesota Public Utilities Commission **Confirms that VoIP is an Interstate Service over which the FCC Has Exclusive Jurisdiction.**”<sup>6</sup>

“The 8<sup>th</sup> Cir. Vonage Decision **has only limited relevance to this docket.**”<sup>7</sup>

“In conclusion, the FCC’s *USF Contribution Order* and *Vonage Order*, and the Eighth Circuit’s decision in *Minnesota Public Utils. Comm’n*, support the principle that VoIP services are **inherently interstate in nature** and that states cannot regulate entry, rates, or other terms of VoIP service.”<sup>8</sup>

9. Clearly these opposing views of the Eighth Circuit’s Decision can not be reconciled, and indeed need not be reconciled, by this Commission. As concluded by Staff, the Eighth Circuit decision “supports a finding by the Commission to require fixed VoIP providers to pay KUSF support. Providers will no longer be able to credibly argue that any such decision is preempted by the FCC’s Vonage order given the Eighth Circuit decision.”<sup>9</sup>

10. The Commission Staff, Embarq and CURB all urge the Commission to act now to require interconnected VoIP providers to contribute to the KUSF. As Staff succinctly concluded,

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<sup>4</sup> Additional Comments of Commission Staff, ¶ 13; Additional Comments of Embarq, ¶ 8.

<sup>5</sup> *Vonage Holdings Corp. v. FCC*, \_\_\_ F. 3<sup>rd</sup> \_\_\_, 2007 WL 1574611 (D.C. Circuit, June 1, 2007).

<sup>6</sup> AT&T Comments, Section I, p. 3 (emphasis added).

<sup>7</sup> Cox comments, Section b., p. 6 (emphasis added).

<sup>8</sup> Verizon’s Additional Comments, p. 9 (emphasis added).

<sup>9</sup> Additional Comments of Commission Staff, ¶ 11.

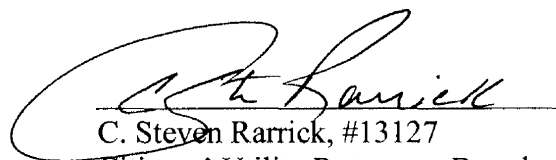
“The Commission can move forward with guidance from the Courts and in conformity with other Commissions to require interconnected VoIP providers to contribute to the USF mechanisms.”<sup>10</sup> Embarq also correctly concluded,

The affirmation of the FCC’s decision to require interconnected VoIP providers to contribute to the FUSF has been upheld, along with the FCC’s interstate safe harbor, strengthens the legal and policy bases for the Commission to require interconnected VoIP providers to contribute to the KUSF using an inverse intrastate safe harbor.<sup>11</sup>

### III. CONCLUSION

11. The 8<sup>th</sup> and D.C. Circuit decisions, as well as the Missouri and Nebraska Commission decisions decided earlier this year, all support the positions taken by Staff, Embarq and CURB. Based on this new information, the Commission should act now to require interconnected VoIP providers to contribute to the KUSF. Such a decision would be in the public interest and would help insure the continued availability of high quality telecommunications services in Kansas.

Respectfully submitted,



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<sup>10</sup> Additional Comments of Commission Staff, ¶ 18.

<sup>11</sup> Additional Comments of Embarq, ¶ 8.

**VERIFICATION**

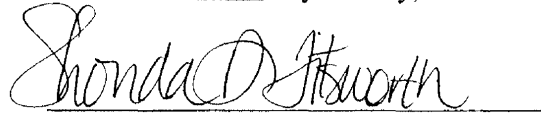
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 ) ss:  
COUNTY OF SHAWNEE )

C. Steven Rarrick, of lawful age, being first duly sworn upon his oath states:

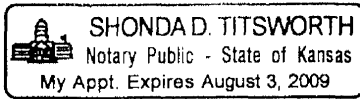
That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.

  
C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of July, 2007.

  
Notary of Public

My Commission expires: 8-03-09.



**CERTIFICATE OF SERVICE**

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I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document was placed in the United States mail, postage prepaid, or hand-delivered this 16th day of July, 2007, to the following:

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