

BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

STATE CORPORATION COMMISSION

Before Commissioners: Brian Moline, Chair
Robert E. Krehbiel, Commissioner
Michael C. Moffet, Commissioner

JAN 12 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") November 2, 2006, Order soliciting comments regarding the obligations of VoIP providers with respect to the Kansas Universal Service Fund ("KUSF").

I. INTRODUCTION

1. On June 27, 2006, the Federal Communications Commission ("FCC") released an interim order¹ ("USF Contribution Order") 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

¹ 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.²

2. Based on this FCC order, 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 has reviewed the initial comments of the parties to this docket and submits its reply comments below.

II. REPLY COMMENTS

3. The comments of most respondents follow three main themes:

- The Commission does not have the authority to require interconnected VoIP providers to contribute to the KUSF.
- Previous FCC orders prevent states from imposing universal service obligations on interconnected VoIP providers.
- Even if the Commission has the authority to order interconnected VoIP providers to pay universal charges they should not do so at this time.

CURB will examine these positions in these reply comments.

A. The Commission is authorized to require interconnected VoIP providers to contribute to the KUSF.

4. Those who argue that the Commission does not have the authority to require interconnected VoIP providers to contribute to the KUSF are typified by the comments of Level 3 Communications, LLC (Level 3) that states:

In the Vonage Preemption Order, the Federal Communications Commission (“FCC”) asserted exclusive jurisdiction over interconnected VoIP services and

² USF Contribution Order, ¶ 34.

preempted state utility commissions from asserting separate jurisdiction over VoIP services.³

However, even Level 3 acknowledges that the *Vonage Order* “concerned E-911 rather than Universal Service.”⁴

5. Similarly, addressing the Commission’s authority to extend KUSF contribution requirements to VoIP providers, the VON Coalition states, “The VON Coalition believes that the Commission lacks statutory authority to do so based both on state and federal law.”⁵

6. Embarq counters these assertions by stating, “Moreover, neither Congress nor the FCC has explicitly pre-empted states from imposing state universal service contribution obligations on VoIP providers.”⁶ Embarq also states, “Finally, the FCC’s preemption in the *Vonage Order* did not extend to the matter of state universal service contribution mechanisms.”⁷ Embarq expands these positions by detailing why the *Vonage Order* does not apply to universal service obligations and why the FCC’s USF Contribution Order does apply to state implementation of universal service obligations for interconnected VoIP providers.⁸ CURB agrees with the analysis made by Embarq and will not repeat it here.

7. CURB agrees with the Embarq positions. Even from a cursory view it would be extremely inconsistent for the FCC to order interconnected VoIP providers to contribute to the Federal Universal Service Fund (FUSF) and concurrently rule that states can not impose the same requirements.

³ Comments of Level 3 Communications, LLC, p. 2 (Because Level 3 failed to number its paragraphs as required by K.A.R. 82-1-219(c), CURB will reference only the page.).

⁴ *Id.*

⁵ Comments of the Von Coalition, p. 3 (The Von Coalition also failed to number its paragraphs as required by K.A.R. 82-1-219(c).).

⁶ Initial Comments of Embarq, p. 5 (Embarq likewise failed to number its paragraphs as required by K.A.R. 82-1-219(c).).

⁷ *Id.*, at p. 6.

⁸ *Id.* at pp. 5-7.

B. Previous FCC orders do not prevent the Commission from imposing universal service obligations on interconnected VoIP providers.

8. AT&T is among the parties recommending the KCC not act based on previous FCC rulings. AT&T states:

The Pendency of the FCC's ongoing *IP-Enabled Services* proceeding, along with the FCC's firm effort to avoid prejudging the outcome of that proceeding, strongly counsels restraint by this Commission.⁹

9. The USF Contribution Order is clear that the FCC considers and takes into account their previous rulings on interconnected VoIP services. In Paragraph 13 of the USF Contribution Order, the Commission discusses the *IP-Enabled Services Notice*:

In the IP-Enabled Services Notice, the Commission asked commenters to address, among other things, the universal service contribution obligations of both facilities-based and non-facilities-based providers of IP-enabled services.

In Paragraph 14 of the USF Contribution Order, the Commission discusses the *Vonage Order* and in paragraph 15 they discuss the *VoIP 911 Order*. After due consideration of all their previous VoIP proceedings, in Paragraph 16 the FCC decides, "we establish universal service contribution obligations for providers of interconnected VoIP service."

10. It is therefore not persuasive when parties in this proceeding cite previous FCC rulings as somehow prohibiting the initiation of universal service contribution obligations for interconnected VoIP providers. The FCC examined their previous rulings, determined nothing prohibited immediate action, and implemented universal service obligations on interconnected VoIP providers. CURB urges this Commission to follow the example of the FCC and impose universal service obligations on interconnected VoIP providers under Kansas law¹⁰ as well.

⁹ Comments of AT&T, ¶ 8.

¹⁰ See, Comments of the Citizens' Utility Ratepayer Board, ¶¶ 12-15.

C. The Commission should exercise its authority to impose universal service obligations on interconnected VoIP providers.

11. Other parties in this docket argue that even if the Commission had the authority to impose universal service obligations on interconnected VoIP providers it should not do so at this time. AT&T states:

In view of the fact that the FCC is presently considering the statutory classification of VoIP services, it would be, at least, imprudent for the Commission to put in place universal service contribution requirements based on a classification of VoIP service that **may** be nullified when the FCC acts.¹¹

12. Comcast Phone of Kansas, LLC states:

The FCC's analysis is necessary to determine whether Kansas may require VoIP providers to contribute to the KUSF.¹²

13. The premise of this argument rests on the supposition that the FCC, after already considering their previous VoIP orders and rulings, somehow decides they were wrong and reverses their USF Contribution Order. CURB views this as an unlikely event.

14. However, if the Kansas Corporation Commission were to follow the FCC's lead and impose universal service obligation on interconnected VoIP providers, only to have the FCC ultimately change their ruling, the KCC would be in no different position than the FCC. On the other hand, if the KCC does not follow the FCC lead, and the FCC ultimately confirms their own decision, the Kansas Universal Service Fund would have suffered unrecoverable revenue losses.

III. CONCLUSION

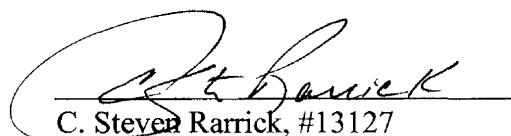
15. Given the reduced revenue base for universal service assessments, and the increasing universal service assessment fee charged to consumers, CURB recommends the

¹¹ Comments of AT&T, ¶ 8 (emphasis added).

¹² Comments of Comcast Phone of Kansas, LLC, ¶ 7.

Commission follow the FCC's lead and initiate universal service support obligations for interconnected VoIP providers under Kansas law. CURB appreciates the opportunity provided in this docket to submit comments on behalf of Kansas small business and residential ratepayers regarding the obligations of VoIP providers with respect to the Kansas Universal Service Fund ("KUSF").

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Steven Rarrick", is written over a horizontal line.

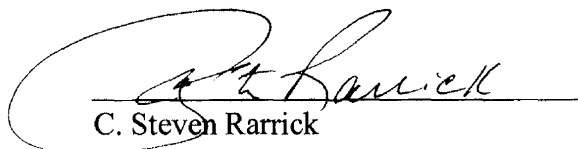
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VERIFICATION

STATE OF KANSAS)
) ss:
COUNTY OF SHAWNEE)

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

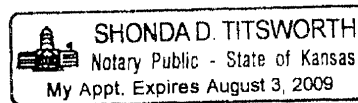
That he is an attorney for the Citizens' Utility Ratepayer Board; that he has read the above and foregoing document, and, upon information and belief, states that the matters therein appearing are true and correct.


C. Steven Rarrick

SUBSCRIBED AND SWORN to before me this 12th day of January, 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 12th day of January, 2007, to the following:

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