

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska                    ) Application No. NUSF-1  
Public Service Commission, on                    ) Progression Order No. 19  
its own motion, seeking to                    )  
establish guidelines for                        ) ORDER  
administration of the Nebraska                )  
Universal Service Fund.                         )  
  ) Entered: January 25, 2011

BY THE COMMISSION:

On April 17, 2007, the Nebraska Public Service Commission (Commission) adopted Opinions and Findings in this docket regarding the Commission's ability to require interconnected voice over the Internet Protocol (VoIP) service providers<sup>1</sup> to contribute to the NUSF based on the Federal Communication Commission's (FCC) safe harbor allocation factor adopted in its USF Contribution Order.<sup>2</sup> The Commission determined that pursuant to *Neb. Rev. Stat. § 75-118.01*, the Commission had the authority to interpret the scope and meaning of its rules and regulations and definitions found therein. In addition, the Commission held that the term "telecommunications" and "telecommunications service" as defined in Title 291 Neb. Admin. Code, Chapter 10 included "interconnected Voice over the Internet Protocol" (interconnected VoIP) service providers as the term is used by the FCC. The Commission concluded that interconnected VoIP service providers were required to contribute equitably to the state-established universal service fund.

The Commission further held using the reciprocal of the safe harbor percentage set forth in the FCC's *USF Contribution Order* along with alternative contribution options to establish Nebraska intrastate interconnected VoIP service provider revenues subject to the NUSF surcharge does not impose a burden on the federal universal service mechanism. Interconnected VoIP service providers were permitted to choose among three options for separating interstate and intrastate revenues for purposes of assessing the NUSF surcharge which are:

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<sup>1</sup> In the *VoIP 911 Order*,<sup>1</sup> the FCC determined that "interconnected VoIP service" permits users to receive calls from and terminate calls to the public switched telephone network (PSTN).<sup>1</sup> Interconnected VoIP services were defined by the FCC in the *VoIP 911 Order* as "services that (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN." See also 47 C.F.R. § 9.3.

<sup>2</sup> In the *Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, CC Docket No. 96-45, 2006 WL 1765838, Report and Order and Notice of Proposed Rulemaking (rel. June 27, 2006) (the "*USF Contribution Order*").

- 1) Use an interim safe harbor allocation of 35.1 percent of VoIP traffic as intrastate;
- 2) Use actual interstate and intrastate revenues; or
- 3) Use an FCC-approved traffic study.

In addition, based on the record, we found that the customer's billing address should be used to determine the state with which to associate intrastate revenues of an interconnected VoIP service provider.

Subsequent to that decision, the Commission's authority was challenged by Vonage Holdings, Corp. (Vonage). The U.S. District Court for Nebraska enjoined the Commission from requiring NUSF contributions from Vonage.<sup>3</sup> The Nebraska Commission appealed the U.S. District Court's decision to the Eighth Circuit Court of Appeals which affirmed the ruling of the U.S. District Court.<sup>4</sup>

This Commission along with the Kansas Corporation Commission sought a Declaratory Ruling from the FCC regarding state authority to require universal service contributions from nomadic VoIP providers on the intrastate portion of the service provided.<sup>5</sup> On November 5, 2010, the FCC ruled that states are not preempted from requiring universal service fund contributions from nomadic VoIP providers.<sup>6</sup> On January 13, 2011, the injunction placed upon the Commission by the U.S. District Court was dissolved based upon a stipulated agreement between the Nebraska Attorney General's Office and Vonage. The agreement provided that the Commission would seek not retroactive assessment of universal service fund contributions on Vonage and that Vonage be permitted to use 911 addresses as the basis for state universal service fund subscriber location determinations.

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<sup>3</sup> See *Vonage Holdings Corp. v. Nebraska Pub. Serv. Commission*, 543 F.Supp. 2d 1062 (D. Ne. 2008).

<sup>4</sup> See *Vonage Holdings Corp. v. Nebraska Pub. Serv. Commission*, 564 F.3d 900 (8<sup>th</sup> Cir. 2009).

<sup>5</sup> See *In the Matter of Universal Service Contribution Methodology, Petition for Declaratory Ruling of the Nebraska Public Service Commission and the Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues*, WC Docket No. 06-122 (July 16, 2009).

<sup>6</sup> The FCC cautioned however that state universal service fund assessment methodologies should be consistent to alleviate concerns regarding the potential for double assessment. The Kansas Corporation Commission currently requires nomadic VoIP providers to use 911 registered addresses to identify the location of nomadic VoIP subscribers.

In light of the FCC's Declaratory Ruling Order and the stipulated agreement, we find that 911 addresses should serve as the basis for universal service fund subscriber location determinations relative to nomadic VoIP provider NUSF assessments.<sup>7</sup> In addition, nomadic interconnected VoIP service providers are permitted to choose among three options for separating interstate and intrastate revenues for purposes of assessing the NUSF surcharge which are:

- 1) Use an interim safe harbor allocation of 35.1 percent of VoIP traffic as intrastate;
- 2) Use actual interstate and intrastate revenues; or
- 3) Use of a traffic study (as filed with the FCC).

We give nomadic interconnected VoIP service providers not currently remitting to the NUSF a three-month period of time to make the necessary changes to their billing systems and to adjust to the Commission's contribution requirements. Accordingly, nomadic interconnected VoIP providers shall begin collecting NUSF surcharge monies on May 1, 2011. Monthly remittance filings are therefore due on June 15, 2011. If the nomadic interconnected VoIP service provider qualifies as a quarterly remittance filer pursuant to Neb. Admin. Code Title 291, Ch. 10 § 003, then its first quarterly remittance filing must be filed on or before July 15, 2011.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the findings and conclusions made herein are adopted.

IT IS FURTHER ORDERED that interconnected Voice over the Internet Protocol service providers shall begin collecting and remitting the NUSF surcharge as provided herein commencing May 1, 2011.

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<sup>7</sup> If a nomadic VoIP provider wishes to select an alternative default for identifying subscriber location for the purpose of NUSF contributions, it may file a request and seek a waiver of this requirement for Commission consideration.

Application No. NUSF-1  
Progression Order No. 19

Page 4

MADE AND ENTERED at Lincoln, Nebraska this 25th day of  
January, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director