BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, to determine the extent to which Voice Over Internet Protocol services should be subject to Nebraska Universal Service Fund requirements.	)))))))	Application No. NUSF-40/PI-86 ORDER OPENING DOCKET Entered: August 24, 2004

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

By this order we initiate an investigation to determine the extent to which Voice over Internet Protocol (VoIP) services should be subject to Nebraska Universal Service Fund contribution requirements. VoIP uses Internet technology to offer consumers real-time, multidirectional voice functionality, including services which mimic traditional telephony.[1] New VoIP providers are offering services in competition with traditional telephone service providers. At the same time, traditional telephone service providers deployed or announced plans to deploy VoIP service. Recently, Time Warner filed an application to provide local and intrastate VoIP service in Nebraska. In that application, Time Warner stated that it intends to contribute to the Nebraska Universal Service Fund (NUSF) and comply with Commission regulations in that regard. On the other hand, AT&T recently deployed a VoIP offering in Nebraska known as AT&T CallVantage, but has not billed or collected for, or remitted to, the NUSF. Likewise, the Commission was informed that USA Companies of Kearney, Nebraska, deployed a VoIP offering and has not billed or collected for, or remitted to, the NUSF.

At the present time, the Federal Communications Commission is considering the regulatory treatment of VoIP and other IP enabled services. The FCC opened a Notice of Proposed rulemaking, however, a decision has not been made by the FCC regarding the overall regulatory treatment and classification of VoIP services. The Commission is aware that the FCC has acted in a limited fashion on specific declaratory petitions and is further aware that a decision may soon be reached by the Eighth Circuit in relation to Minnesota's decision to require certification of Vonage's VoIP service. Several state commissions have opened investigations on the treatment of VoIP services. The Commission has been and will continue to monitor events which may have an

[1] *See In the Matter of IP-Enabled Services*, WC Docket No. 04-36, FCC 04-28, Notice of Proposed Rulemaking (rel. March 10, 2004), n.7.

impact on how VoIP service is treated on the federal level and in other states.

As the deployment of VoIP proliferates in Nebraska, questions regarding the impact of this on the state universal service fund have become increasingly important. The Commission does not wish to stifle the continued deployment of VoIP and other technologies in Nebraska, but at the same time is charged by law to ensure that all consumers, particularly low-income customers and customers living in high-cost rural areas, have access to affordable telephone service. The Commission further has a duty to ensure that all providers are contributing to this mechanism in a fair and equitable manner.

In an effort to evaluate these issues further, the Commission hereby opens this investigation and initially seeks comments on the following threshold questions:

1. Can the NUSF surcharge only be assessed on telecommunication services?

2. Can the NUSF surcharge be assessed on information services?

3. If the NUSF surcharge can only be assessed on telecommunication services, does VoIP service contain a portion or portions that is a telecommunication service subject to the NUSF surcharge?

   a. If so, what portions of which services?

   b. Who is or would be the provider of these services?

   c. Who should be required to bill, collect, and remit the NUSF surcharge?

4. Can the NUSF only be assessed on intrastate services?

5. If the answer to question 4 is yes, is a portion of the services used to provide VoIP an intrastate service? If so, what portions or services?

6. Is VoIP subject to Neb. Rev. Stat. §§ 86-316 through 86-329 either generally or in part; and if in part, which statutory section(s) applies?

7. In the event VoIP services are provided by an NETC in an area that receives support, should those services, in some manner, be eligible as supported services?

Written comments responsive to the questions above and on any germane issue which was not specifically raised, should be filed on or before 5:00 p.m. CDT on September 30, 2004. Commenting parties should file one original and five paper copies and one electronic copy in Word or WordPerfect format.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned investigation be and it is hereby open for public comment.

IT IS FURTHER ORDERED that interested parties may file written comments on or before September 30, 2004. Parties filing comments shall file one original and five paper copies along with one electronic copy in Word or WordPerfect format.

MADE AND ENTERED at Lincoln, Nebraska, this 24th day of August 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director