BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS
GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

IN THE MATTER OF THE REVIEW AND POSSIBLE REVISION OF ARIZONA UNIVERSAL SERVICE FUND RULES, ARTICLE 12 OF THE ARIZONA ADMINISTRATIVE CODE

DOCKET NO. RT-00000H-97-0137

IN THE MATTER OF THE INVESTIGATION OF THE COST OF TELECOMMUNICATIONS ACCESS

DOCKET NO. T-00000D-00-0672

STAFF'S NOTICE OF FILING

Staff of the Arizona Corporation Commission ("Commission") hereby files a copy of a recent Federal Communications Commission ("FCC") Order which has relevance to an issue raised in this proceeding regarding providers that should be required to make contributions to the Arizona Universal Service Fund.

RESPECTFULLY SUBMITTED this 23rd day of February, 2011.

Maureen A. Scott, Senior Staff Counsel
Legal Division
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Original and thirteen (13) copies of the foregoing filed this 23rd day of February, 2011 with:
Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
Copies of the foregoing mailed this 23rd day of February 2011 to:

Dan Pozefsky, Chief Counsel
Residential Utility Consumer Office
1110 West Washington, Suite 220
Phoenix, Arizona 85007

Norman Curtright
Reed Peterson
Qwest Corporation
20 East Thomas Road, 16th Floor
Phoenix, Arizona 85012

Craig A. Marks
Craig A. Marks, PLC
10645 North Tatum Boulevard
Suite 200-676
Phoenix, Arizona 85028

Michael W. Patten
Roshka DeWulf & Patten, PLC
One Arizona Center
400 East Van Buren, Suite 800
Phoenix, Arizona 85004

Mark A. DiNunzio
Cox Arizona Telcom, LLC
1550 West Deer Valley Road
MS DV3-16, Building C
Phoenix, Arizona 85027

Bradley S. Carroll
Snell & Wilmer, LLP
One Arizona Center
Phoenix, Arizona 85004

Charles H. Carrathers, III
General Counsel, South Central Region
Verizon, Inc.
HQE03H52
600 Hidden Ridge
Irving, Texas 75015-2092

Arizona Dialtone, Inc.
Thomas W. Bade, President
6115 South Kyrene Road, Suite 103
Tempe, Arizona 85283

OrbitCom, Inc.
Brad VanLeur, President
1701 North Louise Avenue
Sioux Falls, South Dakota 57107

Michael M. Grant
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Isabelle Salgado
AT&T Nevada
645 East Plumb Lane, B132
Post Office Box 11010
Reno, Nevada 89520

Gregory Castle
AT&T Services, Inc.
525 Market Street, Room 2022
San Francisco, California 94105

Thomas Campbell
Michael Hallam
Lewis and Roca LLP
40 North Central Avenue
Phoenix, Arizona 85004-4429

Arizona Payphone Association
c/o Gary Joseph
Sharenet Communications
4633 West Polk Street
Phoenix, Arizona 85043

Nathan Glazier
Regional Manager
Alltel Communications, Inc.
4805 East Thistle Landing Drive
Phoenix, Arizona 85044

Lyndall Nipps
Vice President, Regulatory
Time Warner Telecom
845 Camino Sur
Palm Springs, California 92262
Dennis D. Ahlers
Associate General Counsel
Integra Telecom, Inc. &
Eschelon Telecom, Inc.
730 Second Avenue South, Suite 900
Minneapolis, Minnesota 55402

Rex Knowles
Executive Director – Regulatory
XO Communications
111 East Broadway, Suite 1000
Salt Lake City, Utah 84111

Joan S. Burke, Esq.
Law Office of Joan S. Burke
1650 North First Avenue
Phoenix, Arizona 85012

William Haas
McLeodUSA dba PAETEC Business Services
1 Martha's Way
Hiawatha, Iowa 52233

Greg L. Rogers
Senior Corporate Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, Colorado 80021

Karen E. Nally
Law Office of Karen E. Nally, PLLC
3420 East Shea Boulevard, Suite 200
Phoenix, Arizona 85028

Scott S. Wakefield
Ridenour, Hienton & Lewis, PLLC
201 North Central Avenue, Suite 3300
Phoenix, Arizona 85004-1052

Paul Castaneda
President, Local 7019
Communications Workers of America
2501 West Dunlap, Suite 103
Phoenix, Arizona 85021

Kaupe Christian
Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Universal Service Contribution Methodology
WC Docket No. 06-122

Petition of Nebraska Public Service Commission
and 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

DECLARATORY RULING

Adopted: October 28, 2010
Released: November 5, 2010

By the Commission:

I. INTRODUCTION

1. In this Declaratory Ruling, we advance the goals of universal service by ruling on a
prospective basis that states may extend their universal service contribution requirements to future
intrastate revenues of nomadic interconnected Voice over Internet Protocol (VoIP) service providers, so
long as a state’s particular requirements do not conflict with federal law or policies. Specifically, we
conclude that state universal service fund contribution rules for nomadic interconnected VoIP are not
preempted if they are consistent with the Commission’s contribution rules for interconnected VoIP
providers and the state does not enforce intrastate universal service assessments with respect to revenues
associated with nomadic interconnected VoIP services provided in another state. In so doing, we resolve
a petition of the Nebraska and Kansas state commissions (collectively, Petitioners) for a “declaratory
ruling with prospective only effect” that states are not preempted from imposing universal service
contribution requirements on “the future intrastate revenues” of nomadic interconnected VoIP providers.¹
Because the amended petition seeks a declaratory ruling with prospective only effect and does not present
the question of retroactivity, we need not and do not reach that question in this Declaratory Ruling.

¹ Amendment to Petition of Nebraska Public Service Commission and Kansas Corporation Commission, WC
Docket No. 06-122, at 1 (Sept. 14, 2010) (State Petition Amendment); Petition of Nebraska Public Service
Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule
Declaring State Universal Service Funds May Assess Nomadic VoIP Intrastate Revenues, WC Docket No. 06-122
(July 16, 2009) (State Petition). The Petitioners additionally requested a separate declaratory ruling that states have
discretion to establish mechanisms to avoid double assessment of nomadic interconnected VoIP revenues by
different states and urge the Commission to establish a “safe harbor” method for allocating nomadic interconnected
VoIP revenues among the states for universal service purposes. Id. at 3. Although we defer action on this request
until the Commission takes up long-term reform of the universal service contribution system, see FCC, National
visited Sept. 22, 2010), we suggest below one method states may use, see infra para. 21 & note 58.
II. BACKGROUND

A. The Act and the Commission’s Requirements

2. Statutory Framework for Universal Service. Section 1 of the Communications Act of 1934, as amended (the Act), states that the Commission is created “[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges,” and that the agency “shall execute and enforce the provisions of th[e] Act.” Universal service is a key component in communications policy for ensuring that charges are reasonable. Section 254(b) of the Act instructs the Commission to establish universal service support mechanisms with the goal of ensuring the delivery of affordable telecommunications services to all Americans. Section 254(b) also provides that Commission policy on universal service shall be based, in part, on the principles that contributions should be equitable and nondiscriminatory and that the support mechanisms should be specific, predictable, and sufficient. The Act mandates universal service contributions from “[e]very telecommunications carrier that provides interstate telecommunications services” and authorizes the Commission to assess contributions on “[a]ny other provider of interstate telecommunications . . . if the public interest so requires.”

3. Regulation of Interconnected VoIP Services. The Commission’s rules define “interconnected VoIP service” as a service that (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user’s location; (3) requires Internet protocol-compatible customer premises equipment; and (4) permits users generally to receive calls that originate on the public switched telephone network (PSTN) and to terminate calls to the PSTN. Interconnected VoIP services may be fixed or nomadic. A fixed interconnected VoIP service can be used at only one location, whereas a nomadic interconnected service may be used at multiple locations.

4. On March 10, 2004, the Commission initiated a proceeding to examine issues relating to Internet-Protocol (IP)-enabled services—services and applications delivered over broadband networks including, but not limited to, interconnected VoIP services. 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. The Commission sought comment on its authority, including mandatory and permissive authority under section 254(d), to require universal service contributions by IP-enabled service providers.

5. In the 2004 Vonage Preemption Order, the Commission preempted an order of the Minnesota Public Utilities Commission (the Minnesota Vonage Order) that “assert[ed] regulatory jurisdiction over” an interconnected VoIP service offered by Vonage (known as DigitalVoice) and

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6 47 C.F.R. § 9.3.
8 See id. at 4905, para. 63.
9 See id.
“order[ed] the company to comply with all state statutes and regulations relating to the offering of telephone service in Minnesota.” Even though Minnesota purported to regulate only the intrastate aspects of Vonage’s service, the Commission concluded that preemption was warranted to avoid a conflict with federal rules and policies applicable to the interstate and international components of Vonage’s service. In so doing, the Commission relied upon the “impossibility doctrine” articulated by the courts, which allows the Commission to preempt state regulation when “[1] it is not possible to separate the interstate and intrastate aspects of the service, and (2) federal regulation is necessary to further a valid federal regulatory objective, i.e., state regulation would conflict with federal regulatory policies.” Specifically, the Commission found the impossibility test satisfied with respect to Vonage’s service because there was “no practical way to sever DigitalVoice into interstate and intrastate communications” such that the state regulations at issue could “apply only to intrastate calling functionalities.” As a result, the Commission explained, the Minnesota order “unavoidably reach[ed] the interstate components of [Vonage’s service] that are subject to exclusive federal jurisdiction” and preemption was necessary to prevent a conflict “with our pro-competitive deregulatory rules and policies” governing VoIP services.

6. Since the Vonage Preemption Order, the Commission has issued several orders addressing the regulatory obligations of VoIP providers in a variety of areas. Of particular relevance to this proceeding, the Commission in 2006 adopted rules requiring interconnected VoIP providers to contribute to the federal Universal Service Fund. The Commission explained that interconnected VoIP


11 For simplicity, we will hereafter use the term “interstate” when referring to the interstate and international communications subject to the Commission’s exclusive jurisdiction.


14 Id. at 22418, para. 23.


providers, like other contributors, “benefit from universal service because much of the appeal of their services to consumers derives from the ability to place calls to and receive calls from the PSTN [Public Switched Telephone Network].” The Commission also concluded that requiring interconnected VoIP providers to contribute to universal service would promote the “principle of competitive neutrality” by “reducing the possibility that carriers with universal service obligations will compete directly with providers without such obligations.”

7. Federal universal service contributions are currently calculated on the basis of the end-user revenues that contributors earn from their provision of interstate services; contributors are not assessed based on revenues from intrastate communications. Because of the difficulty that nomadic interconnected VoIP providers have in identifying whether calls are interstate as opposed to intrastate, the Commission in the Interim Contribution Methodology Order established a “safe harbor” under which an interconnected VoIP provider may presume that 64.9 percent of its revenues arise from its interstate operations. In the alternative, an interconnected VoIP provider may conduct a traffic study (i.e., a statistical sampling) to estimate the percentage of its revenues attributable to interstate traffic and use that percentage to calculate its contribution amount. Interconnected VoIP providers that are able to determine the jurisdictional nature of their calls may calculate their federal contribution amounts using actual revenue allocations.

B. Vonage v. Nebraska Public Service Commission

8. On April 17, 2007, the Nebraska Public Service Commission (NPSC) entered an order requiring interconnected VoIP service providers to contribute to Nebraska’s universal service fund based on their intrastate revenues. Under the NPSC USF Order, the amounts that interconnected VoIP providers must contribute to the Nebraska fund are calculated solely on the basis of their intrastate revenues. To separate intrastate and interstate revenues for purposes of determining providers’ contribution amounts, the NPSC USF Order provides that interconnected VoIP service providers may choose among three options that are based on this Commission’s Interim Contribution Methodology Order: (1) a safe harbor under which 35.1 percent of the provider’s revenues is allocated to the intrastate jurisdiction (calculated by subtracting our interstate safe-harbor of 64.9 percent from 100 percent); (2) the provider’s actual Nebraska intrastate revenues; or (3) the provider’s Nebraska intrastate revenues
determined through a Commission-approved traffic study. The NPSC USF Order states that interconnected VoIP providers should use their “customer’s billing address . . . to determine [the] state with which to associate [intrastate] telecommunications revenues” in calculating the amount of state universal service payments.

9. Vonage challenged the NPSC USF Order in the U.S. District Court for the District of Nebraska. On March 3, 2008, the district court granted Vonage’s request for a preliminary injunction against enforcement of the NPSC USF Order, concluding that Vonage was likely to succeed on the merits of its argument that the rationale of the FCC’s Vonage Preemption Order preempted the NPSC USF Order. The NPSC appealed to the U.S. Court of Appeals for the Eighth Circuit, which affirmed the district court’s preliminary injunction. The Eighth Circuit concluded that “[b]ecause Vonage’s nomadic interconnected VoIP service cannot be separated into interstate and intrastate usage, the impossibility exception is determinative” of Vonage’s likely success on the merits of its preemption claim. The Eighth Circuit noted that, in the Vonage Preemption Order, the Commission “ma[de] clear that [the FCC], not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to [Vonage’s service] and other IP-enabled services having the same capabilities.” A “reasonable interpretation of this language,” the court continued, “is that the [Commission] has determined, given the impossibility of distinguishing between interstate and intrastate nomadic interconnected VoIP usage, it must have sole regulatory control,” and “while a universal service fund surcharge could be assessed for intrastate VoIP services,” the Commission must “decide if such regulations will be applied.”

10. On July 16, 2009, in the wake of the Eighth Circuit’s decision, the Nebraska and Kansas commissions filed their instant petition for declaratory ruling, which they amended on September 14, 2010. As amended, the Petitioners request a declaratory ruling, solely with prospective effect, that states are not preempted from imposing universal service contribution requirements on future intrastate revenues of nomadic interconnected VoIP providers.

25 Id. at 13. The NPSC USF Order was issued before the D.C. Circuit invalidated the requirement that interconnected VoIP service providers obtain the Commission’s preapproval before relying on the results of a traffic study. See supra note 21.

26 NPSC USF Order at 14.


28 Vonage Holdings Corp., 543 F. Supp. 2d at 1071.

29 Vonage Holdings Corp. v. Nebraska Public Service Comm’n, 564 F.3d 900, 905 (8th Cir. 2009). The Commission was not a party to the litigation, but did file an amicus brief in the Eighth Circuit supporting the Nebraska commission’s argument against preemption. The Eighth Circuit’s opinion did not address or acknowledge the Commission’s amicus brief.

30 Id.

31 Id. (quoting Vonage Preemption Order, 19 FCC Rcd at 22404–05, para. 1).

32 Id.

33 Id. at 905–06.

34 See State Petition at 5; State Petition Amendment at 1.
III. DISCUSSION

11. The petition before us is narrowly focused and requests only a determination whether, in light of current circumstances, we should preempt states from imposing universal service contribution requirements on the future intrastate revenues of nomadic interconnected VoIP providers. We conclude, for the reasons discussed below, that we should not preempt the imposition of such requirements on nomadic interconnected VoIP providers so long as (1) the relevant state’s contribution rules are consistent with the Commission’s universal service contribution rules and (2) the state does not apply its contribution rules to intrastate interconnected VoIP revenues that are attributable to services provided in another state.

12. The parties to this proceeding disagree about the implications of the Vonage Preemption Order and how that decision should affect our analysis. On the one hand, the Nebraska and Kansas commissions emphasize that the Vonage Preemption Order did not expressly declare that states were preempted from imposing universal service contribution requirements. They note that the Commission’s only specific reference to universal service in that order was for the purpose of noting that matters related to universal service requirements for interconnected VoIP providers were not being resolved therein, but rather would be addressed in the separate IP-Enabled Services proceeding.35 The Commission in the Vonage Preemption Order concluded that “the Minnesota Commission may not require Vonage to comply with its certification, tariffing or other related requirements as conditions to offering [its VoIP service] in that state.”36 Thus, as the states note, the Vonage Preemption Order can be read to preempt only state conditions to entry. Because state universal service contribution requirements typically do not impose any burden on a provider until after the provider actually has entered the market, the Vonage Preemption Order can be read not to preempt such requirements. On the other hand, as Vonage and other interconnected VoIP providers point out, because the Vonage Preemption Order used broad language in preempting the Minnesota Commission from “applying its traditional ‘telephone company’ regulations to Vonage’s DigitalVoice service,”37 which included universal service contribution requirements, the Commission’s reference to “telephone company regulations” can be construed to encompass universal service contributions requirements.38

13. Indeed, the Vonage Preemption Order has been subject to differing interpretations on this point. When the Nebraska Public Service Commission appealed the district court’s ruling preliminarily enjoining the imposition of state universal service contribution requirements on Vonage, the United States and the FCC filed an amicus brief with the Eighth Circuit taking the position that the Vonage Preemption Order would best be construed not to preempt Nebraska from requiring Vonage to contribute to the state’s universal service fund.39 The Eighth Circuit neither addressed nor acknowledged the Commission’s amicus brief, but adopted a different reading of the Vonage Preemption Order. In particular, the court focused on the statement in the Vonage Preemption Order that “this Commission, not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to

35 See Vonage Preemption Order, 19 FCC Rcd at 22432, para. 44; id. at 22411 n.46.
36 Id. at 22434, para. 46.
37 Id. at 22404, para. 1.
38 In footnote 30 of the Vonage Preemption Order, 19 FCC Rcd at 22409 n.30, the Commission stated that the “telephone company regulations” subject to preemption included all of the state laws identified in note 28 of the order, 19 FCC Rcd at 22408, n.28. One of the state laws listed in note 28 contained a provision directing the Minnesota Commission to “require contributions to a universal service fund, to be supported by all providers of telephone services.” See Minn. Stat. § 237.16, subd. 9.
Although the court did not find that this language clearly mandated preemption of Nebraska’s universal service contribution regulations, it declared: “A reasonable interpretation of this language is the FCC has determined, given the impossibility of distinguishing between interstate and intrastate nomadic interconnected VoIP usage, it must have sole regulatory control.” On the basis of this interpretation of the Vonage Preemption Order, the Eighth Circuit concluded that “the FCC has made clear it, and not state commissions, has the responsibility to decide” whether intrastate VoIP services should be subject to universal service assessments.

Two years after the Vonage Preemption Order, however, the Commission determined that the interstate and intrastate operations of interconnected VoIP providers can be distinguished for the limited purpose of assessing universal service contributions. In the 2006 Interim Contribution Methodology Order, the Commission amended its rules to require providers of interconnected VoIP services to contribute to the federal Universal Service Fund on an interim basis.

To implement these revised rules, the Commission developed a mechanism that enables providers of interconnected VoIP service to separate their interstate and intrastate revenues for purposes of calculating the amount of their federal universal service contributions. Specifically, the Commission established a “safe harbor” under which an interconnected VoIP provider may presume that its interstate operations produce 64.9 percent of its revenues. Alternatively, under the new rules, an interconnected VoIP provider may conduct a traffic study to estimate the percentage of its revenues that can be attributed to interstate traffic. The Commission further recognized that some interconnected VoIP providers have the capability to track the jurisdiction of their calls. It said that those providers could base their federal universal service contributions on their actual interstate revenues.

While the Interim Contribution Methodology Order did not address the subject of preemption, its establishment of a mechanism for separating interstate and intrastate revenues in the specific context of universal service contribution requirements has important implications for our preemption analysis in this proceeding. Now that the Commission has shown that it is possible to separate the interstate and intrastate revenues of interconnected VoIP providers for purposes of calculating universal service contributions, we find no basis at this time to preempt states from imposing universal service contribution obligations on providers of nomadic interconnected VoIP service that have
entered the market, so long as state contribution requirements are not inconsistent with the federal contribution rules and policies governing interconnected VoIP service.

16. In light of the Interim Contribution Methodology Order, we conclude that the application of state universal service contribution requirements to interconnected VoIP providers does not conflict with federal policies, and could, in fact, promote them. Such providers benefit from state universal service funds, just as they benefit from the federal Universal Service Fund, because their customers value the ability to place calls to and receive calls from users of the PSTN. Similarly, extending state contribution requirements to nomadic interconnected VoIP providers promotes the principle of competitive neutrality by “reduc[ing] the possibility that carriers with universal service obligations will compete directly with providers without such obligations.”

17. We further conclude that state universal service contribution requirements do not conflict with federal rules to the extent that states calculate the amount of their universal service assessments in a manner that is consistent with the rules adopted in the Interim Contribution Methodology Order. Under the Commission’s rules, an interconnected VoIP provider contributes to the federal fund on the basis of its revenues from interstate and international traffic; revenues from intrastate traffic are excluded. As described above, the Commission’s rules give providers three options by which they can establish their federal universal service revenue base: (1) use a safe harbor under which 64.9 percent of their revenues are deemed to be jurisdictionally interstate (and therefore not intrastate); (2) conduct a traffic study to allocate revenues by jurisdiction; or (3) develop a means of accurately classifying interconnected VoIP communications between federal and state jurisdictions. Therefore, to avoid a conflict with the Commission’s rules, a state imposing universal service contribution obligations on interconnected VoIP providers must allow those providers to treat as intrastate for state universal service purposes the same revenues that they treat as intrastate under the Commission’s universal service contribution rules. This will ensure that state contribution requirements will not be imposed on the same revenue on which an interconnected VoIP provider is basing its calculation of federal contributions. To the extent a state fails to comply with this limitation in the future, it may be subject to preemption consistent with the prospective Declaratory Ruling we issue today.

49 Id. at 7541, para. 44.
50 Id. at 7544–45, paras. 52–54.

18. The Commission in the *Interim Contribution Methodology Order* established a framework for allocating interconnected VoIP revenues between federal and state jurisdictions for purposes of calculating the federal universal service assessment. It did not, however, establish a mechanism for allocating intrastate revenues from interconnected VoIP providers among the states. As a result, the interim regulations adopted in the *Interim Contribution Methodology Order* do not protect against the possibility that an interconnected VoIP provider may be subject to double assessment on the same revenues if two states adopt inconsistent methods for determining the intrastate revenue base used to calculate state universal service payments. For example, if State A requires an interconnected VoIP provider to use its customers' billing addresses to allocate revenue while State B relies on the address interconnected VoIP users register for 911 purposes, then the same intrastate revenue associated with an interconnected VoIP user with a billing address in State A and a registered 911 location in State B could be subject to assessment in both State A and State B. This possibility arises because, as the Commission explained in the *Vonage Preemption Order*, an interconnected VoIP user's billing address is not necessarily tied to the physical locations where interconnected VoIP services are used.

19. We conclude that duplicative state assessments conflict with the federal rules and policies governing interconnected VoIP services because their practical effect is to increase the portion of interconnected VoIP revenue assigned to the intrastate jurisdiction beyond that contemplated under the rules adopted in the *Interim Contribution Methodology Order*. The following calculation demonstrates this effect. Assume (for simplicity) that all of an interconnected VoIP provider's customers have a billing address in State A and service address in State B, and those customers have no connection with any other state. Assume further that State A and State B use billing addresses and service addresses, respectively, to determine the state universal service revenue base. In this scenario, the interconnected VoIP provider, if it relies on the federal safe harbor, would be subject to combined federal and state universal service assessments on 135.1 percent of its revenues (64.9 percent for the federal fund, 35.1 percent for State A's fund, and 35.1 percent for State B's fund). This is mathematically equivalent to a rule that allocates 52 percent of interconnected VoIP revenues to the intrastate jurisdiction and 48 percent to the federal jurisdiction—a result that conflicts with the federal safe harbor adopted in the *Interim Contribution Methodology Order*.

20. Double assessments also conflict with the federal policy of competitive neutrality. In the *Interim Contribution Methodology Order*, the Commission emphasized the important federal policy of competitive neutrality in concluding that interconnected VoIP providers should pay into the federal Universal Service Fund to ensure that they would not have an artificial competitive advantage over contributing carriers. For similar reasons, we conclude that duplicative state assessments on interconnected VoIP providers would violate the principle of competitive neutrality by placing

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52 See 47 C.F.R. § 9.5(d).
54 In reality, the effect of double assessments would likely not be as pronounced as in this example because, among other things, some states do not have universal service contribution requirements, state assessment methodologies may not conflict, and the billing and service addresses of most interconnected VoIP customers are likely located in the same state. Theoretically, because not every state imposes contribution requirements on interconnected VoIP providers, any double assessments by states that do impose such requirements might not have the effect, in the aggregate, of causing an interconnected VoIP provider to pay on more than 35.1 percent of the cumulative intrastate revenue it earns from all the states. Even in that situation, however, allowing double assessment would conflict with the federal policy of competitive neutrality. See infra para. 20.
56 *Interim Contribution Methodology Order*, 21 FCC Rcd at 7541, para. 44.
interconnected VoIP providers at an artificial competitive disadvantage with respect to their traditional
telephony competitors, which are generally not subject to double assessments.

21. As long as states have a policy against collecting universal service assessments with
respect to interconnected VoIP revenue that an interconnected VoIP provider has properly allocated to
another state under that state’s rules, we do not preempt states from imposing universal service
contribution requirements on future intrastate revenues of nomadic interconnected VoIP providers. This
issue of duplicative assessments is not one of first impression for the states. Concern about potential
double billing of intrastate revenues exists in the wireless context as well, because a wireless customer’s
principal place of use may be different from his or her billing address. Evidence in the record indicates
that states have successfully resolved allocation of wireless intrastate revenues for purposes of state
universal service contributions without the need for Commission intervention.\(^{57}\) In fact, an allocation of
revenues among the states modeled on the Mobile Telecommunications Sourcing Act, but adapted to
provide interconnected VoIP service providers a means of determining a customer’s primary place of use
of service, could be a method of ensuring against double assessments in the context of interconnected
VoIP.\(^{58}\) Although there may be an administrative burden on interconnected VoIP providers to allocate
their revenues among the states under various state rules, it is similar to what other providers, including
wireless providers, have been doing for years. We also believe that any administrative burden is
outweighed by the harm to competitive neutrality and to universal service that would occur if we were to
preempt all state assessments in this prospective Declaratory Ruling. We will continue to monitor state
implementation and enforcement of universal service assessments on interconnected VoIP providers, and
we have the authority to reconsider our decision if presented with evidence that states are imposing undue
burdens on interconnected VoIP providers’ ability to avoid double assessment.

22. We disagree with commenters who argue that state universal service contribution
requirements must be preempted to prevent frustration of the federal policies of encouraging the
development of IP-based services and promoting the deployment of broadband infrastructure.\(^{59}\) We do
not believe that those policies are best advanced by giving one class of providers an unjustified regulatory
advantage over its competitors; indeed, that is one reason that the Commission extended federal universal
service requirements to interconnected VoIP providers in the \textit{Interim Contribution Methodology Order}.
More generally, our efforts to promote those policies have not precluded us from requiring interconnected
VoIP providers to comply with important federal regulatory obligations that advance disability access,
public safety, and other important policy goals.\(^{60}\) We believe similar considerations justify our
conclusion not to preempt states from imposing universal service contribution requirements that are
competitively neutral and consistent with the Commission’s rules, especially where, as here, we see no
record evidence (aside from bare allegations) that applying competitively neutral state universal service

\(^{57}\) Letter from Elizabeth H. Ross, Counsel, Nebraska Public Service Commission and Kansas Corporation
Commission, to Marlene H. Dortch, Secretary, FCC, at 1–2 (filed Nov. 3, 2009) (Petitioners Nov. 3 Ex Parte Letter)
discussing how state commissions have worked through the allocation of intrastate revenues in the wireless context
with the aid of the NARUC Staff Subcommittee on State Universal Service Fund Administrator.

use a customer’s primary place of use for state universal service contribution assessments, consistent with the
Mobile Telecommunications Sourcing Act). We note that to the extent an interconnected VoIP provider cannot
determine a customer’s primary place of use, it would be reasonable if a state allowed the provider to use a proxy for
the primary place of use, such as the customer’s registered location for 911 purposes. See 47 C.F.R. § 9.5(d).

\(^{59}\) See Google Comments at 4–9; 8x8 Comments at 4–7; VON Coalition Comments at 7; \textit{see also} Letter from Glenn
S. Richards, Executive Director, VON Coalition, to Marlene H. Dortch, Secretary, Federal Communications

\(^{60}\) \textit{See supra} note 15.
contribution requirements to interconnected VoIP providers would have a deleterious effect on the development of IP-based services or broadband deployment.

23. The VON Coalition suggests that allowing states to impose universal service payment obligations on interconnected VoIP providers could imply that state commissions may enforce those obligations by denying nonpaying providers the authority to operate in those states. Because we do not have before us any dispute concerning state enforcement against an interconnected VoIP provider, we decline at this time to consider the limits of state enforcement authority in this area. We note, however, that nothing in this Declaratory Ruling affects our conclusion in the Vonage Preemption Order concerning preemption of rate regulation, tariffing, or other requirements that operate as “conditions to entry.” Nor should this order be construed as interpreting or determining the scope of the Vonage Preemption Order.

24. Nothing in this Declaratory Ruling in any way prejudices our authority to adopt a different approach in the context of a broader contribution reform proceeding and, if necessary, to preempt state laws and regulations that frustrate the achievement of federal universal service policies.

IV. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 3, 4(i), 4(j), 201(b), 253(a), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 153, 154(i), (j), 201(b), 253(a), 254, and 303(r), and Section 1.2 of the Commission’s rules, 47 C.F.R. § 1.2, the Petition for Declaratory Ruling, as amended, filed by Nebraska Public Service Commission and the Kansas Corporation Commission IS GRANTED IN PART to the extent specified in this Declaratory Ruling.

26. IT IS FURTHER ORDERED, pursuant to section 1.103(a) of the Commission’s rules, 47 C.F.R. § 1.103(a), that this Declaratory Ruling SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

61 See VON Coalition Ex Parte Letter at 2.


63 8x8 suggests that because section 254(f) of the Act requires that “[e]very telecommunications carrier that provides intrastate telecommunications services shall contribute” to state funds and does not expressly provide states with authority to impose contribution requirements on non-carrier providers of telecommunications, states may not impose contribution requirements on interconnected VoIP providers to the extent interconnected VoIP services are information services. 8x8 Comments at 2. We have not determined whether interconnected VoIP services should be classified as telecommunications services or information services under the Communications Act. Nor do we see any need to do so here. The express obligation of telecommunications carriers under section 254(f) to support state universal service programs does not limit state authority to extend contribution requirements on interconnected VoIP providers, regardless of their classification, so long as such requirements do not conflict with federal rules and policies. See 47 U.S.C. § 254(f) (authorizing states to fund universal service not only through assessing intrastate telecommunications carriers but also through “additional specific, predictable, and sufficient mechanisms”).
APPENDIX

List of Commenters

<table>
<thead>
<tr>
<th>Commenter</th>
<th>Abbreviation</th>
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<tbody>
<tr>
<td>8x8, Inc.</td>
<td>8x8</td>
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<tr>
<td>AT&amp;T Inc.</td>
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<td>California Small ILECs</td>
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<td>CenturyLink</td>
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<td>D.C. Commission</td>
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<td>National Association of State Utility Consumer Advocates</td>
<td>NASUCA</td>
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<td>National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization For The Promotion And Advancement Of Small Telecommunications Companies; Independent Telephone And Telecommunications Alliance; Eastern Rural Telecom Association; Western Telecommunications Alliance; Arizona Local Exchange Carriers Association; Georgia Telephone Association; New Hampshire Telephone Association; Rural Arkansas Telephone Systems; Tennessee Telecommunications Association; Wisconsin State Telecommunications Association Nebraska Rural Independent Companies &amp; Nebraska Telecommunications Assoc.</td>
<td>NECA et al.</td>
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<tr>
<td>New Mexico Public Regulation Commission</td>
<td>New Mexico Commission</td>
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<td>New York Public Service Commission</td>
<td>New York Commission</td>
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<td>Oregon Telecom Association and Washington Independent Telecom Association</td>
<td>Pacific Independents</td>
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<td>Rural Iowa Independent Telephone Association</td>
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<td>VON Coalition</td>
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<td>Vonage</td>
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<tr>
<td>Massachusetts Department of Telecommunications and Cable</td>
<td>Massachusetts Commission</td>
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<td>NECA et al.</td>
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<td>Nebraska/Kansas Commissions</td>
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<td>Vonage Holdings Corp.</td>
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