



August 6, 2010

(Filed electronically)

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Ex Parte Notice**
Petition of Nebraska Public Service Commission and Kansas Corporation
Commission for Declaratory Ruling, WC Docket No. 06-122

Dear Ms. Dortch:

On August 5, 2010, Staci Pies of Skype, Amy Wolverton of T-Mobile, Paula Boyd of Microsoft and Glenn Richards, Executive Director and Counsel for the VON Coalition, met with Jennifer Flynn, Legal Advisor for Chairman Genachowski, and separately with Austin Schlick, Office of General Counsel, Diane Holland, Office of General Counsel, Richard Welch, Office of General Counsel and Vickie Robinson, Wireline Bureau.

During the meetings, the members of the VON Coalition explained how the 2004 *Vonage Preemption Order* had helped create a vibrant, highly competitive VoIP industry, exponentially increasing the service options and features available to residential and enterprise customers. VON is concerned that the Commission will release an order in the proceeding that would stifle these consumer benefits and broadband deployment, and embolden the states to assert jurisdiction over all forms of VoIP services. The VON Coalition referenced a report issued on August 3, 2010, by staff of the Maine Public Utilities Commission finding that the VoIP services provided by two cable companies are telecommunications and not information services, as those terms are defined under federal law, though the issue is still pending before this Commission in Docket 04-36. A copy of the report is attached.

The VON Coalition argued that the Commission had preempted the imposition of state universal service fund obligations on providers of nomadic VoIP services in the 2004 Vonage order. VON explained that state USF assessments could be problematic because, the changing nature of VoIP makes it very difficult for service providers to determine the physical location of customers, and that billing address and telephone numbers alone are not always determinative, leading to the likelihood over disputes as to the proper jurisdiction for state USF obligations and double billings of VoIP providers. In addition, VON explained that an order permitting state assessments could tie the FCC's hands on decisions in other pending or future proceedings, including reform of the Federal Universal Fund, and that this Kansas-Nebraska decision should be delayed until



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these broader policy issues have been addressed. The VON Coalition suggested that the numerous unresolved issues in this proceeding would best be handled in a Notice of Proposed Rulemaking, rather than a declaratory ruling.

Finally, the VON Coalition asked that any decision not be made retroactive and noted that a ruling in favor of the petition will raise rates for all classes of VoIP customers at a time when all consumers are facing difficult economic circumstances and cause hardship to VoIP providers who will be unable to collect the fees from those customers directly responsible.

Please contact me directly if you have any questions.

Sincerely,

/s/

Glenn S. Richards
Executive Director

With attachment

cc: Jennifer Flynn (by email)
Austin Schlick (by email)
Diane Holland (by email)
Vickie Robinson (by email)
Richard Welch (by email)