

November 17, 2016

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Ms. Jocelyn Boyd
Chief Clerk and Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Building
101 Executive Center Drive
Columbia SC 29210

Re: Petition of the South Carolina Telephone Coalition to Require
Interconnected Voice Over Internet Protocol (“Interconnected VoIP”)
Service Providers to Contribute to the South Carolina Universal Service
Fund
Docket No. 2016-267-C

Dear Ms. Boyd:

Attached for filing on behalf of the South Carolina Telephone Coalition (“SCTC”), please find a Motion for Expedited Review, along with a Verification of Douglas Meredith’s previously filed testimony, and a Proposed Order in the above-referenced matter.

We have consulted with all parties of record regarding both the attached Motion for Expedited Review and the Proposed Order and no party objects to the Commission granting expedited review and issuing such an order.

Please note that we are also asking the Commission to cancel the hearing in this matter, which is currently scheduled for November 29, 2016. In the event the Commission cannot address this request prior to the scheduled hearing, we respectfully ask that a Standing Hearing Officer continue the hearing until the Commission can take up the Motion.

Sincerely,

McNAIR LAW FIRM, P.A.



Margaret M. Fox

MMF:khh

Attachments

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BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2016-267-C

In Re: Petition of the South Carolina Telephone Coalition)
To Require Interconnected Voice over Internet Protocol)
("Interconnected VoIP") Service Providers to Contribute)
To the South Carolina Universal Service Fund)
_____)

MOTION FOR EXPEDITED REVIEW AND APPROVAL OF PETITION

The South Carolina Telephone Coalition ("SCTC") hereby respectfully moves for expedited review of its Petition, filed pursuant to S.C. Code Ann. § 58-9-280(E) and Commission Regulation 103-825, requesting a ruling that all carriers who offer interconnected Voice over Internet Protocol ("Interconnected VoIP") services in South Carolina are required to contribute to the South Carolina Universal Service Fund ("State USF") previously established by the Commission pursuant to S.C. Code Ann. § 58-9-280(E). SCTC requests that this matter be decided by the Commission at the Commission's earliest opportunity in a regularly-scheduled agenda session, that a formal evidentiary hearing be waived, and that the hearing currently scheduled for November 29, 2016, be canceled. In support of this Motion, SCTC would respectfully show unto this honorable Commission the following:

1. SCTC filed its Petition in this matter on July 8, 2016.

2. SCTC published a Notice of Filing of the request in newspapers of general circulation, as directed by the Commission. The deadline to intervene in this matter was August 24, 2016.

3. The South Carolina Office of Regulatory Staff (“ORS”) is a statutory party to this action. See S.C. Code Ann. § 58-4-10(B). In addition, the following parties intervened in this matter: the South Carolina Cable Television Association (“SCCTA”); United Telephone Company of the Carolinas d/b/a CenturyLink (“CenturyLink”); Windstream South Carolina, LLC and Windstream Nuvox, LLC (“Windstream”), Frontier Communications of the Carolinas, LLC (“Frontier”) and BellSouth Telecommunications, LLC d/b/a AT&T South Carolina (“AT&T South Carolina”). None of the intervening parties objected to the relief requested by SCTC in its Petition.

4. SCTC has consulted with counsel for all other parties, and no party objects to expedited review and approval of the Petition, or to waiver and cancellation of a formal evidentiary hearing. Thus, all interested persons have been afforded an opportunity for a hearing, to the extent a hearing may be required by S.C. Code Ann. § 58-9-280(E), Section 1-23-320(a) of the South Carolina Administrative Procedures Act, and constitutional due process. Proceeding without a formal hearing in this matter would serve the public interest in administrative efficiency. Therefore, we grant SCTC’s Motion for Expedited Review

5. In support of its Petition, SCTC filed the testimony of Douglas Duncan Meredith. Mr. Meredith’s sworn verification of that testimony is being filed along with this Motion. In his testimony, Mr. Meredith described Interconnected VoIP service in detail, and testified that requiring Interconnected VoIP service providers to contribute to the State USF is consistent with federal and state law and policy. He further testified that

requiring Interconnected VoIP service providers to contribute to the State USF is in the public interest because Interconnected VoIP service providers benefit from a robust South Carolina local exchange network and should contribute to maintain the network, and because such a requirement is competitively neutral and would preserve and advance the goals of universal service for all South Carolina citizens.

6. Along with this Motion, SCTC is also filing a Proposed Order in this matter. SCTC has circulated the Proposed Order to all parties of record, and no party objects to the substance of the Proposed Order.

WHEREFORE, for the reasons stated above, the South Carolina Telephone Coalition respectfully requests that the Commission

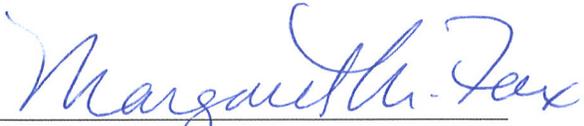
(1) grant SCTC's request for expedited review of its Petition and waiver of a hearing in this matter;

(2) issue an order granting SCTC's Petition and ruling that all carriers who offer interconnected Voice over Internet Protocol ("Interconnected VoIP") services in South Carolina are required to contribute to the South Carolina Universal Service Fund ("State USF") previously established by the Commission pursuant to S.C. Code Ann. § 58-9-280(E);

(3) cancel the hearing on this matter currently scheduled for November 29, 2016; and

(4) grant such other and further relief as is just and proper.

Respectfully submitted,

By: 

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Margaret M. Fox

Bradley S. Wright

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ATTORNEYS FOR THE SOUTH
CAROLINA TELEPHONE COALITION

Columbia, South Carolina

November 17, 2016

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

Docket No. 2016-267-C

In Re: Petition of the South Carolina Telephone Coalition)
 To Require Interconnected Voice over Internet Protocol)
 ("Interconnected VoIP") Service Providers to Contribute)
 To the South Carolina Universal Service Fund)
 _____)

VERIFICATION

I, Douglas Duncan Meredith, first being duly sworn, depose and say that I am employed by John Staurulakis, Incorporated as Director – Economics and Policy; that I prepared testimony that was pre-filed in the above-captioned docket on October 18, 2016 and know the contents thereof; and that said contents are true.

Douglas Duncan Meredith
 Douglas Duncan Meredith

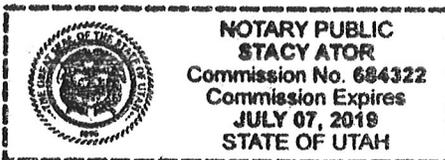
SWORN to before me this

18 day of October, 2016.

STATE OF UTAH
 COUNTY OF: Davis
 ON THE 18 DAY OF October, 2016
 PERSONALLY APPEARED BEFORE ME
Douglas D. Meredith SIGNER(S) OF THE ABOVE
 INSTRUMENT, WHO DULY ACKNOWLEDGED TO ME THAT
 HE/SHE/THEY EXECUTED THE SAME

Stacy Ator, L.S.
 Notary Public for Davis county, State of Utah
 My Commission expires: 7/7/2019

Stacy Ator
 NOTARY PUBLIC



BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
Docket No. 2016-267-C

In Re: Petition of the South Carolina Telephone Coalition)
To Require Interconnected Voice over Internet Protocol) PROPOSED ORDER
("Interconnected VoIP") Service Providers to Contribute)
To the South Carolina Universal Service Fund)
_____)

This matter comes before the Public Service Commission of South Carolina ("Commission") upon the Petition filed by the South Carolina Telephone Coalition ("SCTC") asking the Commission, pursuant to S.C. Code Ann. § 58-9-280(E) and Commission Regulation 103-825, for a ruling that all service providers who offer interconnected Voice over Internet Protocol ("Interconnected VoIP") services in South Carolina are required to contribute to the South Carolina Universal Service Fund ("State USF") previously established by the Commission pursuant to S.C. Code Ann. § 58-9-280(E).

SCTC published a Notice of Filing of the request in newspapers of general circulation, as required by the Commission. The deadline to intervene in this matter was August 24, 2016.

The South Carolina Office of Regulatory Staff ("ORS") is a statutory party to this action. See S.C. Code Ann. § 58-4-10(B). In addition, the following parties intervened in this matter: the South Carolina Cable Television Association ("SCCTA"); United Telephone Company of the Carolinas d/b/a CenturyLink ("CenturyLink"); Windstream South Carolina, LLC and Windstream Nuvox, LLC ("Windstream"), Frontier Communications of the Carolinas, LLC ("Frontier"); and BellSouth Telecommunications, LLC d/b/a AT&T South Carolina ("AT&T South Carolina"). None of the intervening parties objected to the relief requested by SCTC in its Petition.

SCTC moved for expedited review of its Petition and waiver of the formal evidentiary hearing. No party objected to proceeding without a formal hearing in this matter. Thus, all interested persons have been afforded an opportunity for a hearing, as required by S.C. Code Ann. § 58-9-280(E), Section 1-23-320(a) of the South Carolina Administrative Procedures Act, and constitutional due process. Proceeding without a formal hearing in this matter would serve the public interest in administrative efficiency. Therefore, we grant SCTC's Motion for Expedited Review.

In support of its Petition, SCTC filed the verified testimony of Douglas Duncan Meredith. Mr. Meredith described Interconnected VoIP service in detail, and testified that requiring Interconnected VoIP service providers to contribute to the State USF is consistent with federal and state law and policy. He further testified that requiring Interconnected VoIP service providers to contribute to the State USF is in the public interest, because Interconnected VoIP service providers benefit from a robust South Carolina local exchange network and should contribute to maintain the network, and because such a requirement is competitively neutral and would preserve and advance the goals of universal service for all South Carolina citizens.

For the reasons stated herein, we grant SCTC's Petition to require all Interconnected VoIP service providers to contribute to the State USF on a prospective basis.

FINDINGS AND CONCLUSIONS

1. S.C. Code Ann. § 58-9-280(E) provides in part: "In continuing South Carolina's commitment to universally available basic local exchange telephone service at affordable rates ..., *and consistent with applicable federal policies*, the commission shall establish a universal service fund (USF) for distribution to a carrier(s) of last resort." (Emphasis added.) The statute directs the Commission to adopt "such guidelines as may be necessary for the funding and management

of the State USF,” and provides that the “guidelines *must not be inconsistent with applicable federal law*” *Id.* (emphasis added).

2. Federal Communications Commission (“FCC”) regulations 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 (CPE); and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network. *See* 47 C.F.R. § 9.3.

3. State statutes authorize the Commission to require contributions to the State USF, including contributions from entities that are not certificated by the Commission and contributions based on revenue from services that are not regulated by the Commission. *See, e.g.,* S.C. Code Ann. §§58-9-280(E)(2), (E)(9); 58-11-100(C).

4. Although the Commission is prohibited from regulating broadband services by S.C. Code Ann. §58-9-280(G), for example, that provision does not preclude the Commission from requiring providers of Interconnected VoIP services from contributing to the State USF. *See* S.C. Code Ann. § 58-9-280(E)(9). Similarly, nothing in the statutes limiting the Commission’s jurisdiction over wireless services affects the Commission’s jurisdiction to require wireless providers to contribute to the State USF. S.C. Code Ann. § 58-11-100(C).

5. The FCC has declined to classify Interconnected VoIP as either a telecommunications service or an information service under federal law.¹

¹ *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

6. It is consistent with federal law and policy for the Commission to require Interconnected VoIP service providers to contribute to State USF without specifying the regulatory classification of those services, as the FCC has done with federal USF.² It is also consistent with the Commission's treatment of similarly-situated service providers in the past. *See* Commission Order No. 2009-356(A).

7. In addition to the FCC requiring Interconnected VoIP providers to contribute to federal USF, other states have required Interconnected VoIP providers to contribute to their respective state funds.³ The FCC has also acknowledged that states may assess Interconnected VoIP revenues for state universal service funds.⁴

8. SCTC did not seek any expansion of the Commission's jurisdiction over Interconnected VoIP service or over any provider of such service. This Commission has the authority to require Interconnected VoIP service providers to contribute to State USF, and we find it is in the public interest to do so. However, this order does not expand the Commission's jurisdiction and should not be construed as such an expansion.

9. Like traditional voice service, interconnected VoIP also enables real time, two way voice communications.

² *See Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service; 1998 Biennial Regulatory Review Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms; Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990; Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size; Number Resource Optimization; Telephone Number Portability; Truth-in-Billing and Billing Format; IP-Enabled Services*, WC Docket Nos. 04-36, 06-122, CC Docket Nos. 90-571, 92-237, 95-116, 96-45, 98-170, 98-171, 99-200, NSD File No. L-OO-72, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7536, para. 34 (2006) (*Interim Contribution Methodology Order*, FCC 06-94), *aff'd in part and rev'd in part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007).

³ *See* Exhibit DDM-5 to Testimony of Douglas Duncan Meredith.

⁴ *See Universal Service Contribution Methodology, Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling*, WC Docket No. 06-122, 25 FCC Rcd 15651 (2010) (FCC 10-185).

10. It is in the public interest to require all Interconnected VoIP providers, whether providing VoIP services pursuant to a Certificate of Public Convenience and Necessity issued by the Commission or otherwise, to contribute to the State USF. The FCC found it was in the public interest to require Interconnected VoIP providers to contribute to federal USF because they, 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 [Public Switched Telephone Network], which is supported by universal service mechanisms.”⁵ The FCC went on to note that Interconnected VoIP providers are “dependent on the widespread telecommunications network for the maintenance and expansion of their business,” and they “directly benefit[] from a larger and larger network.”⁶ The same is true at the state level.

11. Universal service policy favors competitive neutrality, *i.e.*, the principle that service providers who provide voice service, regardless of the technology employed or their particular business model, should contribute to universal service mechanisms on an equitable and nondiscriminatory basis.⁷ It is fair and equitable to treat providers of two-way voice services in a similar manner from a USF support standpoint.

12. Requiring all Interconnected VoIP providers to contribute to State USF will level the playing field not only for Interconnected VoIP providers vis-à-vis other voice providers, but also among Interconnected VoIP providers themselves. Today, some Interconnected VoIP providers contribute to State USF while some do not. Clarification of these obligations on a

⁵ See *Interim Methodology Contribution Order*, *infra*, at para. 43.

⁶ *Id.*, quoting *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 428 (5th Cir. 1999) (which found the same was true of paging carriers).

⁷ See 47 U.S.C. §§ 254(b)(4), 254(d); *Interim Methodology Contribution Order*, *infra*, at para. 44 (stating that Interconnected VoIP service is increasingly used to replace traditional voice service, and that contribution obligations should not shape decisions regarding technology used to offer voice services or to create opportunities for regulatory arbitrage.)

prospective basis will ensure that providers of the same service are not subject to different regulatory treatment.

13. The State USF provides support for basic local exchange telephone service provided by carriers of last resort in high-cost areas, thereby helping maintain access to basic service for South Carolina citizens at affordable rates, and at rates that are comparable for urban and rural areas. *See* Commission Order No. 2010-337 in Docket No. 2009-326-C, at p. 22.

IT IS THEREFORE ORDERED THAT:

(1) Interconnected VoIP service providers, regardless of whether they hold a Certificate of Public Convenience and Necessity issued by the Commission, must contribute to the State USF based on their retail voice communications services;

(2) Interconnected VoIP service providers who are not currently contributing to State USF are directed to do so on a prospective basis, and shall submit appropriate information to the State USF Administrator in the next reporting cycle;

(3) The requested relief is granted on an expedited basis; and

(4) This Order shall remain in effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Swain E. Whitfield, Chairman

ATTEST:

Comer H. "Randy" Randall, Vice Chairman

(SEAL)

BEFORE

THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2016-267-C

IN RE:)
Petition of the South Carolina Telephone)
Coalition to Require Interconnected Voice) **CERTIFICATE OF SERVICE**
Over Internet Protocol (“Interconnected)
VoIP”) Service Providers to Contribute to)
the South Carolina Universal Service Fund)
_____)

This is to certify that I, Kathy H. Handrock, a Paralegal with the McNair Law Firm, P.A., have this date served one (1) copy of the Motion for Expedited Review, Verification of Testimony of Douglas Meredith, and Proposed Order on behalf of the South Carolina Telephone Coalition in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

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November 17, 2016

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