

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	
v.	)	<u>File No. TC-2012-0284</u>
)	
Southwestern Bell Telephone)	
Telephone, L.P., d/b/a AT&T Missouri,)	
)	
Respondent.)	

STAFF'S EXHIBIT LIST

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), and in accordance with the Commission's August 20, 2012, Order Setting Procedural Schedule and Establishing Additional Procedural Requirements ("Order"), respectfully submits the following list of hearing exhibits:

<u>Exhibit No.</u>	<u>Description</u>	<u>Offered</u>	<u>Received</u>
Staff – 001	Rebuttal Testimony of William L. Voight		
Staff – 002	Portion of FCC Order 06-94		
Staff – 003	Portion of FCC Order 04-267		

In accordance with the Commission's Order, Staff Exhibit Nos. 2 and 3, which have not been previously filed in this case, are attached hereto as Appendix A and Appendix B, respectively, and incorporated herein by reference.

WHEREFORE, Staff submits its Exhibit List for the Commission's consideration.

Respectfully Submitted,

**STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION**

/s/ John D. Borgmeyer

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 4th day of January, 2012.

/s/ John D. Borgmeyer

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-171
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	)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization	)	CC Docket No. 99-200
)	
Telephone Number Portability	)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
)	
IP-Enabled Services	)	WC Docket No. 04-36

REPORT AND ORDER AND NOTICE OF PROPOSED RULEMAKING

Adopted: June 21, 2006**Released: June 27, 2006****Comment Date: 30 days from publication in the Federal Register****Reply Comment Date: 60 days from publication in the Federal Register**

By the Commission: Chairman Martin and Commissioner Tate and Commissioner McDowell issuing separate statements; Commissioner Copps and Commissioner Adelstein concurring in part and issuing separate statements.

55. We do not believe that the percentage used as the wireless safe harbor would serve as a reasonable safe harbor for interconnected VoIP.¹⁸⁶ Indeed, the record reflects that interconnected VoIP service is often marketed as an economical way to make interstate and international calls, as a lower-cost substitute for wireline toll service.¹⁸⁷ For purposes of a safe harbor, it is reasonable to account for the many customers who purchase these services to place a high volume of interstate and international calls, and benefit from the pricing plans the providers offer for such services. We believe that these characteristics differentiate it from wireless service. Accordingly, we find that the interconnection VoIP safe harbor should be substantially higher than the wireless safe harbor in order to properly capture interstate revenues.

56. While, as stated above, interconnected VoIP providers may report their actual interstate telecommunications revenues, we recognize that some interconnected VoIP providers do not currently have the ability to identify whether customer calls are interstate and therefore subject to the section 254(d) contribution requirement. Indeed, a fundamental premise of our decision to preempt Minnesota's regulations in the *Vonage Order* was that it was impossible to determine whether calls by Vonage's customers stay within or cross state boundaries.¹⁸⁸ Therefore, an interconnected VoIP provider may rely on traffic studies or the safe harbor described above in calculating its federal universal service contributions. Alternatively, to the extent that an interconnected VoIP provider develops the capability to track the jurisdictional confines of customer calls, it may calculate its universal service contributions based on its actual percentage of interstate calls.¹⁸⁹ Under this alternative, however, we note that an interconnected VoIP provider with the capability to track the jurisdictional confines of customer calls would no longer qualify for the preemptive effects of our *Vonage Order* and would be subject to state regulation. This is because the central rationale justifying preemption set forth in the *Vonage Order* would no longer be applicable to such an interconnected VoIP provider.

¹⁸⁶ But see Letter from Tina M. Pidgeon, Vice President, Federal Regulatory Affairs, General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 (filed June 9, 2006) (*GCI June 9, 2006 Ex Parte Letter*); Letter from Neal M. Goldberg, General Counsel, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed June 13, 2006); Vonage June 14, 2006 *Ex Parte* Comments at 2-5 (all arguing that a safe harbor for VoIP providers should be applied in a manner consistent with the safe harbor for wireless carriers).

¹⁸⁷ See, e.g., Global Crossing Announces New VoIP LDS Service Offering Enterprises Extended Local Presence, <http://www.globalcrossing.com/xml/news/2005/march/07.xml> (last visited June 20, 2006); Broadvoice Rate Plans, <http://www.broadvoice.com/rateplans.html> (last visited June 15, 2006); NetZeroVoice Long Distance, <http://www.netzero.net/voip/rates.html?sep=voip> (last visited June 15, 2006); Sunrocket, *All-Inclusive Service*, <http://www.sunrocket.com/advantages/all-inclusive/> (last visited June 15, 2006); Vonage, <http://www.vonage.com/index.php?ic=1> (last visited June 15, 2006) (all promoting VoIP rate plans that save customers money on interstate and/or international calls); see also Robert Poe, "Telegeography Projects 38 Percent Jump in International VoIP Traffic," *VoIP Magazine*, Nov. 14, 2005, http://www.voip-magazine.com/index.php?option=com_content&task=view&id=586 (reporting that international telephone traffic is increasing generally, and that the VoIP portion of that international traffic is increasing faster than conventional TDM-based international traffic).

¹⁸⁸ See *Vonage Order*, 19 FCC Rcd at 22418-23, paras. 23-31.

¹⁸⁹ Because we permit interconnected VoIP providers to report on actual interstate revenues, this Order does not require interconnected VoIP providers that are currently contributing based on actual revenues to revise their current practices. Cf. *GCI June 9, 2006 Ex Parte Letter* at 1. Interconnected VoIP providers must maintain – and must provide to the Commission or to USAC upon request – documentation to support the percentage of interstate telecommunications revenues that they report. Cf. *Second Wireless Safe Harbor Order*, 17 FCC Rcd at 24966, para. 24. We remind providers that the Commission has the authority to investigate compliance with these requirements and to take appropriate enforcement action upon discovery of noncompliance.

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

In the Matter of)	
)	
Vonage Holdings Corporation	)	WC Docket No. 03-211
Petition for Declaratory Ruling Concerning an)	
Order of the Minnesota Public Utilities)	
Commission)	

MEMORANDUM OPINION AND ORDER

Adopted: November 9, 2004

Released: November 12, 2004

By the Commission: Chairman Powell and Commissioner Abernathy issuing separate statements;
Commissioners Capps and Adelstein concurring and issuing separate statements.

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I. INTRODUCTION

1. In this Memorandum Opinion and Order (Order), we preempt an order of the Minnesota Public Utilities Commission (Minnesota Commission) applying its traditional "telephone company" regulations to Vonage's DigitalVoice service, which provides voice over Internet protocol (VoIP) service and other communications capabilities. We conclude that DigitalVoice cannot be separated into interstate and intrastate communications for compliance with Minnesota's requirements without negating valid federal policies and rules. In so doing, we add to the regulatory certainty we began building with other orders

in completely eliminating interstate market entry requirements, the Commission reasoned that retaining entry requirements could stifle new and innovative services whereas blanket entry authority, *i.e.*, unconditional entry, would promote competition.⁷¹ State entry and certification requirements, such as the Minnesota Commission's, require the filing of an application which must contain detailed information regarding all aspects of the qualifications of the would-be service provider, including public disclosure of detailed financial information, operational and business plans, and proposed service offerings.⁷² The application process can take months and result in denial of a certificate, thus preventing entry altogether.⁷³ Similarly, when the Commission ordered the mandatory detariffing of most interstate, domestic, interexchange services (including services like DigitalVoice), the Commission found that prohibiting such tariffs would promote competition and the public interest, and that tariffs for these services *may actually harm consumers* by impeding the development of vigorous competition.⁷⁴ Tariffs and "price lists," such as those required by Minnesota's statutes and rules, are lengthy documents subject to specific filing and notice requirements that must contain every rate, term, and condition of service offered by the provider, including terms and conditions to which the provider may be subject in its certificate of authority.⁷⁵ The Minnesota Commission may also require the filing of cost-justification information or order a change in a rate, term or condition set forth in the tariff.⁷⁶ The administrative process involved in entry certification and tariff filing requirements, alone, introduces substantial delay in time-to-market and ability to respond to changing consumer demands, not to mention the impact these processes have on how an entity subject to such requirements provides its service.

21. On the other hand, if DigitalVoice were to be classified as an information service, it would be subject to the Commission's long-standing national policy of nonregulation of information services,⁷⁷

omitted) (*Competitive Carrier Proceeding*) (adopting regulatory framework based on dominant or nondominant status of carriers).

⁷¹See *Section 214 Order*, 14 FCC Rcd at 11373, para. 14 ("By its very terms, blanket authority removes regulatory hurdles to market entry, thereby promoting competition."); *id.* at 11373, para. 13 ("Rather than maintaining [entry requirements] that may stifle new and innovative services[,] ... we believe it is more consistent with the goals of the 1996 Act to remove this hurdle.").

⁷²See Minn. Rule § 7812.0200.

⁷³See Minn. Stat. § 237.16(c).

⁷⁴See *Interexchange Detariffing Order*, 11 FCC Rcd at 20760, para. 52 (emphasis added) ("[W]e find that not permitting nondominant interexchange carriers to file tariffs with respect to interstate, domestic, interexchange services will enhance competition among providers of such services, promote competitive market conditions, and achieve other objectives that are in the public interest, including eliminating the possible invocation of the filed rate doctrine by nondominant interexchange carriers, and establishing market conditions that more closely resemble an unregulated environment."); *id.* at 20750, para. 37 ("We also adopt the tentative conclusion that in the interstate, domestic, interexchange market, requiring nondominant interexchange carriers to file tariffs for interstate, domestic, interexchange services may harm consumers by impeding the development of vigorous competition, which could lead to higher rates."). We note that certain exceptions to the Commission's mandatory detariffing rules exist; however, these exceptions would not apply to services like DigitalVoice were it to be classified a telecommunications service.

⁷⁵See Minn. Stat. § 237.07; see also, *e.g.*, Minn. Rules §§ 7812.0300(6), 7812.0350(6), 7812.2210(2).

⁷⁶See, *e.g.*, Minn. Rule §§ 7812.2210(4),(8).

⁷⁷See *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No. 16979, Notice of Inquiry, 7 FCC 2d 11 (1966) (*Computer I NOI*); *Regulatory and Policy Problems Presented by the Interdependence of Computer and Communication Services and Facilities*, Docket No.

particularly regarding economic regulation such as the type imposed on Vonage in the *Minnesota Vonage Order*.⁷⁸ In a series of proceedings beginning in the 1960's, the Commission issued orders finding that economic regulation of information services would disserve the public interest because these services lacked the monopoly characteristics that led to such regulation of common carrier services historically. The Commission found the market for these services to be competitive and best able to "burgeon and flourish" in an environment of "free give-and-take of the market place without the need for and possible burden of rules, regulations and licensing requirements."⁷⁹

22. Thus, under existing Commission precedent, regardless of its definitional classification, and unless it is possible to separate a Minnesota-only component of DigitalVoice from the interstate component, Minnesota's order produces a direct conflict with our federal law and policies, and impermissibly encroaches on our exclusive jurisdiction over interstate services such as DigitalVoice. This notwithstanding, some commenters argue that the traditional dual regulatory scheme must nevertheless apply to DigitalVoice *because it is functionally similar* to traditional local exchange and long distance

16979, Final Decision and Order, 28 FCC 2d 267 (1971) (*Computer I Final Decision*); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, Docket No. 20828, Tentative Decision and Further Notice of Inquiry and Rulemaking, 72 FCC 2d 358 (1979) (*Computer II Tentative Decision*); *Computer II Final Decision*, 77 FCC 2d 384 (1980); *Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, CC Docket No. 85-229, Report and Order, 104 FCC 2d 958 (1986) (*Computer III*) (subsequent history omitted) (collectively the *Computer Inquiry Proceeding*). In its *Second Computer Inquiry* proceeding, the Commission "adopted a regulatory scheme that distinguished between the common carriage offering of basic transmission services and the offering of enhanced services." *Computer II Final Decision*, 77 FCC 2d at 387; see also *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements*, 13 FCC Rcd 6040, 6064, para. 38 (1998). The former services are regulated under Title II and the latter services are not. See *Computer II Final Decision*, 77 FCC 2d at 428-30, 432-43, paras. 113-18, 124-49 (indicating it would not serve the public interest to subject enhanced service providers to traditional common carrier regulation under Title II because, among other things, the enhanced services market was "truly competitive"). The 1996 Act uses different terminology (i.e., "telecommunications services" and "information services") than used by the Commission in its *Computer Inquiry* proceeding, but the Commission has determined that "enhanced services" and "information services" should be interpreted to extend to the same functions, although the definition in the 1996 Act is even broader. See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21955-56, para. 102 (1996) (*Non-Accounting Safeguards Order*) (subsequent history omitted) (explaining that all enhanced services are information services, but information services are broader and may not be enhanced services).

⁷⁸See, e.g., *Pulver*, 19 FCC Rcd at 3317-20, paras. 17-20 (explaining the Commission's policy of nonregulation for information services and how the 1996 Act reinforces this policy). This policy of nonregulation refers primarily to economic, public-utility type regulation, as opposed to generally applicable commercial consumer protection statutes, or similar generally applicable state laws. Indeed, the preeminence of federal authority over information services has prevailed unless a carrier-provided information service could be characterized as "purely intrastate," see *California v. FCC*, 905 F.2d 1217, 1239-42 (9th Cir. 1990), or it is possible to separate out the interstate and intrastate components and state regulation of the intrastate component would not negate valid Commission regulatory goals. See *California v. FCC*, 39 F.3d 919 (9th Cir. 1994) (*California III*), cert. denied, 514 U.S. 1050 (1995) (affirming Commission preemption of certain state requirements for separation of facilities and personnel in the BOC provision of jurisdictionally mixed enhanced services as state regulations would negate national policy).

⁷⁹See *Computer II Final Decision*, 77 FCC 2d at 425-33, paras. 109-27 (citing *Computer I, Tentative Decision*, 27 FCC 2d at 297-298).