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November 16, 2006

Andy Pollock
Executive Director
Nebraska Public Service Commission
1200 N Street, Suite 300, Lincoln, NE 68508

Re: Application No. NUSF-1; Direct Testimony of Ann C. Prockish on behalf of United Telephone Company of the West d/b/a Embarq

Dear Mr. Pollock:

Please accept for filing in this matter an original and five copies of the Direct Testimony of Ann C. Prockish on behalf of United Telephone Company of the West d/b/a Embarq. If you have any questions, please do not hesitate to contact me or Jim Roberts, at (651) 222-0951.

Sincerely,

William E. Hendricks, Esq.

Enclosure

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, seeking to establish guidelines for administration of the Nebraska Universal Service Fund.	Application No. NUSF-1

DIRECT TESTIMONY OF ANN C. PROCKISH
ON BEHALF OF
UNITED TELEPHONE OF THE WEST d/b/a EMBARQ

November 16, 2006

1 **Q. Please state your name, title, and business address.**

2 A. My name is Ann C. Prockish. I am employed by Embarq Corporation as Manager –
3 State Regulatory in the Department of Law and External Affairs. My business
4 address is 5454 W. 110th Street, Overland Park, Kansas 66211.

5

6 **Q. Please describe your educational background and business experience.**

7 A. I graduated in 1987 from the University of Nebraska – Lincoln with a Bachelor of
8 Science degree in Business Administration with a major in Accounting. I received a
9 Master of Business Administration degree from Kansas State University in 1995.
10 I have nearly 20 years of business experience in a variety of positions. My career in
11 the telecommunications industry began in February 1997 when I was employed as a
12 Revenues Analyst with Sprint Corporation. In this position I reviewed and analyzed
13 monthly revenues and assisted in the forecasting and budgeting of future revenues for
14 several states. In January 1998, I accepted the position of Analyst – State Analysis
15 and Reporting. In September 1998, I was promoted to the position of Senior
16 Administrator – State Analysis and Reporting. In October 2000, I was promoted to
17 the position of Manager – State Analysis and Reporting. In these positions I was
18 responsible for monitoring and analyzing monthly operating results and conducting
19 earnings analyses. In February 2006, I accepted the position of Manager – State
20 Regulatory. In my current position, I am responsible for the development and
21 implementation of regulatory policy and strategy in the states of Minnesota,
22 Nebraska, and Wyoming.

Effective May 18, 2006, Sprint's incumbent local exchange ("ILEC") operations, including United Telephone Company of the West d/b/a Embarq, were separated into a new company called Embarq Corporation. Embarq Corporation is a standalone local exchange carrier and its stock is separately traded on the New York Stock Exchange. Embarq is no longer affiliated with Sprint-Nextel Corporation.

Q. Have you ever testified before this Commission?

A. No, this is the first time I have testified before the Nebraska Public Service Commission.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to address issues raised by the Commission in NUSF-1 Progression Order No. 18, in which the Commission proposes to require interconnected Voice over Internet Protocol ("VoIP") providers that offer service in Nebraska to contribute to the Nebraska Universal Service Fund ("NUSF"), based on the FCC's safe harbor allocation factor established in WC Docket No. 06-122.

Q. Who is required to contribute to the NUSF currently?

A. Neb. Rev. Stat. Section 86-324(2)(d) (2006 Supp.) states that the Commission "shall require every telecommunications company to contribute to any universal service

mechanism established by the commission pursuant to state law."[1] Neb. Rev. Stat Section 86-322 (2006 Supp.) defines a telecommunications company as:

> [A]ny natural person, firm, partnership, limited liability company, corporation, or association offering telecommunications service for hire in Nebraska intrastate commerce without regard to whether such company holds a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier from the commission.

Incumbent local exchange carriers (ILECs), competitive local exchange carriers (CLECs), interexchange carriers (IXCs), and wireless carriers, among others, currently appear to be required to contribute to the fund. In addition, the Commission, in NUSF-40, found that "facilities-based VoIP providers offer telecommunications service for hire in Nebraska intrastate commerce, and are therefore telecommunications companies, as defined in Section 86-322 that this Commission may require to contribute to the NUSF."[2]

Q. What about interconnected VoIP providers?

A. The Commission's findings in NUSF-40 were limited to facilities based VoIP providers.

Q. What is the difference between a facilities based VoIP provider and an interconnected VoIP provider?

A. In NUSF-40, the Commission stated:

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[1] Throughout this testimony all references to legal documents, such as statutes or Commission orders, are made only with respect to the policy issues addressed in those documents. Any reference to such a document, citation from such a document, or discussion of any portion of such a document is not to be considered a legal opinion.

[2] *See 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 the Nebraska Universal Service Fund requirements,* NUSF-40/PI-86, para 45.

> For purposes of this Order, the principal characteristic distinguishing such providers is whether the VoIP provider or an affiliate owns the physical network that transmits the user's voice information. We define the term "facilities-based VoIP providers" as those providers that either own or operate networks that utilize Internet Protocol in the delivery of voice services, but do not share addressing space with the public Internet and therefore, are not part of the Internet.[3]

The FCC has defined interconnected VoIP services as those that "(1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from *and* terminate calls to the PSTN."[4] Facilities-based VoIP providers are, by default, also interconnected VoIP providers. However, the world of interconnected VoIP providers also includes providers that offer service but do not own the underlying broadband network, such as Vonage.

Q. You indicated earlier that Nebraska statute defines a telecommunications company as a company that offers telecommunications service. Has the FCC classified interconnected VoIP service as telecommunications service?

A. Whether interconnected VoIP service should be defined as either telecommunications service or information service is currently before the FCC. However, on June 27, 2006, the FCC issued an order in WC Docket No. 06-122 ("Contribution Order") where the FCC determined that "interconnected VoIP providers are 'providers of interstate telecommunications' under section 254(d)..."[5] for purposes of contributions to the federal USF. As interconnected VoIP providers serve both the interstate and

[3] *NUSF-40*, para 44.
[4] *See Universal Service Contribution Methodology,* WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, issued June 27, 2006, para. 36.
[5] *Contribution Order*, para. 35.

intrastate markets, it is not a great leap to classify them as providers of intrastate telecommunications as well for the purpose of contributing to the NUSF.

Q. Should all interconnected VoIP providers contribute to the NUSF?

A. Yes. Because the FCC, in its Contribution Order, decided that interconnected VoIP providers should contribute to the federal USF, it is appropriate that they should contribute to the NUSF for that portion of their revenues that are considered intrastate. As I mentioned earlier, the FCC included as part of its definition of interconnected VoIP services those services that provide users the capability to receive calls from and terminate calls to the PSTN. Neb. Rev. Stat. Section 86-323(5) states in part that "the distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure." As interconnected VoIP providers benefit from the use of the PSTN and have a vested interest in the continued development and maintenance of the PSTN, they should contribute to the NUSF as do other providers that benefit from the use of the PSTN.

Q. Why have interconnected VoIP providers not contributed to the federal USF or NUSF before now?

A. Many VoIP providers offer a package of services that may include telecommunications, CPE (customer premise equipment), and features for a single price. In addition, because VoIP subscribers often can use any broadband connection, in or out of their homes, it is often difficult to determine the location of the end-points of VoIP calls. As a result it is challenging for these providers to determine the actual

revenues derived from interstate or intrastate sources. Several VoIP providers argued to the FCC that their services are "inherently interstate."[6] However, the FCC noted that VoIP providers often position the service as a substitute for wireline toll service.[7] Therefore, in the Contribution Order, the FCC established a safe harbor of 64.9 percent interstate for federal USF contribution purposes, which is the approximate percentage of interstate revenues of wireline toll providers. Interconnected VoIP providers also have the opportunity to provide a traffic study with more precise calculations of interstate usage.

Q. On what basis does the Commission calculate NUSF contributions for facilities based VoIP providers?

A. In NUSF-40, the Commission adopted a safe harbor allocation for facilities based VoIP providers of 28.5 percent interstate and 71.5 percent intrastate. VoIP providers can also provide a reasonable sample of actual call data upon which it could determine the portion of intrastate revenue or they could provide an actual measurement of call data.

Q. There is a big difference between the FCC's safe harbor interstate of 64.9 percent and the Commission's safe harbor interstate of 28.5 percent. What is causing this difference?

A. The difference between the FCC's and the Commission's safe harbor rates are primarily due to timing. The Commission issued its findings and conclusions in

[6] *Contribution Order*, para. 53.
[7] Ibid.

NUSF-40 on March 22, 2005. At that time, the FCC had a safe harbor provision established for CMRS carriers of 28.5 percent interstate and 71.5 percent intrastate for contributions to the federal USF. At that time, the Commission determined that the difficulty in determining the end-points of a VoIP call is comparable to that of CMRS providers and therefore the CMRS safe harbor was applicable.

The FCC did not establish the safe harbor provisions for interconnected VoIP providers until it issued its Contribution Order in June 2006. In that order, the FCC determined that the majority of VoIP traffic was long distance or international in nature and VoIP is often marketed as a substitute for wireline toll service. Based on this information, the FCC adopted its safe harbor based on the percentage of interstate revenues reported by wireline toll providers, 64.9 percent.

Q. Should the Commission adjust its safe harbor to reflect the FCC's latest findings?

A. Yes. Interconnected VoIP providers will end up contributing to both the federal and state USF funds on the same revenues if the Commission does not adjust its safe harbor to the FCC's percentages. For instance, assume an interconnected VoIP provider has $100 in revenue. For federal USF purposes, $64.90 of that revenue is interstate and the VoIP provider would remit the appropriate surcharge to the federal fund based on that interstate revenue. For the NUSF, that same VoIP provider would show that $71.50 of the revenue is intrastate. Unless the Commission were to change its safe harbor for the NUSF, $36.40 in revenue would be assessed both the federal

1 and NUSF surcharges. As other contributors to the NUSF are not faced with such a
2 situation, it would be not be competitively neutral for the Commission to retain its
3 current safe harbor for interconnected VoIP providers.
4
5 **Q. Does this conclude your testimony?**
6 A. Yes.