



BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Petition of AT&T Wisconsin for Declaratory Ruling that Its “U-verse  
Voice” Service is Subject to Exclusive Federal Jurisdiction

6720-DR-101

**FINAL DECISION**

This is the Final Decision in the matter of the petition of Wisconsin Bell, Inc., d/b/a AT&T Wisconsin (AT&T), for a declaratory ruling under Wis. Stat. § 227.41 that its new U-verse Voice offering is subject to the exclusive jurisdiction of the Federal Communications Commission (FCC) because the offering is either an “information service” under federal law, or an offering subject to the preemptive effect of the *Vonage Order*,<sup>1</sup> or both.

The Commission denies the requested declaratory ruling, finding that the service qualifies, at a minimum, as a “telecommunications service” as defined in Wis. Stat. § 196.01(m). Moreover, AT&T has failed to carry its burden to persuade the Commission that the Commission’s state law jurisdiction has been preempted by FCC rule or order. However, because of the special circumstances surrounding the offering and the FCC’s pending proceedings that may affect clarification of the regulatory classification for Voice over Internet Protocol (VoIP) in the near future, the Commission is waiving, with conditions, application of state regulations that would ordinarily apply to a telecommunications service of AT&T. The waiver will remain in place until the Commission takes action in a second docket to determine

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<sup>1</sup> *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minn. Pub. Utils. Comm’n*, 19 F.C.C.R. 22,404 (2004) (*Vonage Order*), *petitions for review denied*, *Minn. Pub. Utils. Comm’n v. FCC*, 483 F.3d 570 (8th Cir. 2007).

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the regulations that should or need not apply to U-verse Voice and potentially other similar services offered in Wisconsin.

The persons participating in this docket are listed in Appendix A attached hereto.

### **Introduction**

On August 1, 2008, AT&T filed with the Commission, pursuant to Wis. Admin. Code § PSC 165.10, an informational tariff briefly describing AT&T's new "U-verse Voice" service offering and seeking treatment of the offering as a "non-utility merchandise offering" not subject to Commission jurisdiction. The tariff filing was made with a reservation of legal rights to that effect, but nominally complied with the Commission's long-standing requirement that non-utility merchandising, essentially non-utility services, be noticed to the Commission and the public under Wis. Admin. Code § PSC 165.10(2). The transmittal letter indicated that AT&T would begin offering U-verse Voice on August 4, 2008.

On August 5, 2008, AT&T filed the above-captioned petition under Wis. Stat. § 227.41 for a declaratory ruling that the U-verse Voice service offering is (a) an "information service" subject to the exclusive jurisdiction of FCC, and (b) a service offering whose "basic characteristics" involving Internet Protocol (IP)-enabled transmission make it subject to the preemptive effect of the *Vonage Order*, and therefore subject to exclusive FCC jurisdiction. By these filings, AT&T asserts that the U-verse Voice offering is not a traditional "telecommunications service" under Wis. Stat. § 196.01(9m), and is subject to the state law preemption effect of the *Vonage Order*. Either basis, AT&T's argues, deprives the Commission of its traditional public utility jurisdiction respecting the offering of intrastate telecommunications services. AT&T seeks to distinguish its IP-enabled voice service from that

offered by Time Warner Cable Information Services (WI), LLC (TWCIS), which the Commission determined<sup>2</sup> in 2008 to be a telecommunications service for which TWCIS was required to have state certification.

At its open meeting of August 21, 2008, the Commission decided to open a proceeding to consider AT&T's petition for declaratory ruling. The Commission issued a Notice of Proceeding and Prehearing Conference on September 4, 2008. At the prehearing conference, the issues were further refined and re-stated in the January 15, 2009, Notice of Hearing as follows:

1. What is the nature of the AT&T Wisconsin "U-verse Voice" offering in terms of features, functions, capabilities, and network design and operation?
2. Does "U-verse Voice" satisfy the federal definition of an "information service" as defined in federal law and any relevant FCC orders and regulations?
3. Does "U-verse Voice" satisfy the criteria for federal preemption set forth in *In re Vonage Holdings Corp.*, 19 F.C.C.R. 22,404 (2004)?
4. Based upon either or both of the determinations as to Issue Nos. 2 and 3, should the Commission declare that "U-verse Voice" is subject to federal law that preempts all Commission jurisdiction?
5. What remedy or regulation, if any, should be applied in the event the Commission finds that "U-verse Voice" is not subject to exclusive FCC jurisdiction and should be, for example, subject to tariffing under Wis. Stat. § 196.196(3)(b) or some other remedial treatment under state law?

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<sup>2</sup> *Application of Time Warner Cable Information Services (WI), LLC to Expand Certification as an Alternative Telecommunications Utility*, Docket 5911-NC-101, at 9, 19 (Wis. PSC May 9, 2008) (*TWCIS Decision*), *aff'd sub nom.*, *Wis. State Telecomms. Ass'n, Inc. v. Pub. Serv. Comm'n of Wis.*, No. 08-CV-3398 (Wis. Cir. Ct. Dane Cty. June 15, 2009).

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Pursuant to notice issued January 15, 2009, a public hearing was held on January 28, 2009. The witnesses were Pat Foster, Executive Director – Public Policy, James Jermain, Director - Regulatory, both of AT&T Services, Inc., and Jeffrey Richter, Public Utility Rate Analyst – Principal, of the Commission’s staff.

AT&T filed a March 4, 2009, Initial Post-Hearing Brief; a March 18, 2009, Reply Post-Hearing Brief; and an AT&T May 8, 2009, brief in reply to the supplemental amicus curiae brief of Northeast Telephone Company, LLC; Bayland Telephone, Inc., and Net Lec, LLC (Nsight). Amicus, or “friend of the Commission,” briefs were filed by Nsight, Verizon,<sup>3</sup> the Wisconsin Cable Communications Association (WCCA), and the Wisconsin State Telecommunications Association, Inc. (WSTA).

On June 3, 2009, Commission staff circulated a Briefing Memorandum to which AT&T, Nsight and Verizon submitted comments on June 17, 2009. Oral argument to the Commission was requested by AT&T. The request was granted and oral argument was held on August 13, 2009. The Commission discussed the record at its open meeting of August 20, 2009.

Subsequent to that open meeting, AT&T made an additional representation, subject to a reservation of rights, that U-verse Voice revenues would be subject to assessments for the Universal Service Fund (USF), Commission operations (remainder/advance), Telephone Relay Service (TRS), and the costs of Department of Agriculture, Trade, and Consumer Protection telecommunications trade practices (TTP) enforcement under Wis. Stat. §§ 196.218, 196.85, 196.858, and 196.859, respectively.

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<sup>3</sup> Verizon North, Inc., MCImetro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services (collectively, Verizon). The Commission officially notices that, as of July 1, 2010, Frontier Communications Corp. became the owner of Verizon North and renamed it Frontier North Inc.

The foregoing representation was officially noticed in the Commission September 17, 2009, Temporary Order Deferring Decision. In that order, the Commission held the docket in abeyance for one year, subject to certain conditions and the following direction to Commission staff:

During the deferral period, staff is requested to promptly return this matter to the Commission in the event of any dispositive or substantially material FCC action that is relevant to this issue. Near the end of the deferral period, Commission staff shall request comments from AT&T and other Wisconsin telecommunications stakeholders regarding any factual or legal changes of importance regarding interconnected, non-nomadic VoIP and AT&T's U-verse Voice offering. Potential commenters may also be requested to address how the Commission should proceed. The comments should be timely solicited so as to allow the matter to be back before to [sic] the Commission no later than September 20, 2010.

The Administrator of the Telecommunications Division solicited further comments on August 18, 2010. Comments were received from AT&T, Nsight, Verizon, WCCA, WSTA, and TWCIS.<sup>4</sup> The comments reflect a common request that the Commission continue deferral of the decision in this docket pending a decision by the FCC. TWCIS and WCCA raised their concern about disparate treatment in the interim and the need for the Commission to extend the same regulatory treatment given U-verse Voice to TWCIS' "Digital Home Phone" and other similar VoIP service offerings.

The Commission discussed the record and the comments received at its open meeting of September 16, 2010.

### **Findings of Fact**

1. AT&T is an incumbent local exchange carrier operating in Wisconsin as a certificated public utility and a telecommunications utility as those terms are defined in Wis.

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<sup>4</sup> TWCIS is hereby designated a non-party friend of the Commission pursuant to Wis. Admin. Code § PSC 2.20(3).

Stat. § 196.01(5) and (10), respectively. As such, AT&T directly, and in conjunction with affiliates, provides intrastate, interstate, and international telecommunications services, information services, and broadband services to business and residential customers in Wisconsin.

2. U-verse Voice is offered by AT&T through an affiliated interest relationship with SBC Internet Services, Inc., and is offered in 22 states in which AT&T, Inc., via operating subsidiaries, provides local exchange telecommunications services and related offerings.

3. U-verse Voice is only offered in Wisconsin by AT&T in conjunction with either U-verse Internet Protocol TV (IPTV), U-verse High Speed Internet Access (HSIA), or both. U-verse Voice is not offered on a stand-alone basis.

4. Using an Internet Protocol (IP) transmission technology, U-verse Voice is fixed, interconnected VoIP, that is, an offering of voice service. It uses a proprietary network of AT&T, not the Internet. U-verse Voice includes features and functionalities such as (a) simultaneous ringing of several phones, (b) a reminder feature that permits a customer to use a handset or the Internet to store a specific message for future delivery at a specific time, (c) unified messaging capability to access and manage voicemail through both a telephone handset and the U-verse Voice web portal; (d) “live reply” to return a call to a third party while listening to a voicemail; (e) “click-to-call” to retrieve a number and mouse click to call it via the web portal; (f) via the web portal, retrieval of a call history list and “click-to-call” for any number; (g) customer access via a web portal to the customer’s own calling information, including call histories, preferences, and the ability to manage an address book; and (h) long distance calling within U-verse Voice’s “any distance” calling.

5. AT&T argues that the IP-enabled capabilities described in Finding of Fact No. 4 constitute a fundamental break with traditional circuit-switched transmission, and integrates features and capabilities to store and manage information, including access via a web portal.

6. Despite their packaging for sale as a set of capabilities, the features noted in Finding of Fact No. 4 can be segregated into distinct offerings, functions, or independent components that can be operated independently and remotely while a U-verse Voice call is in progress. The features are similar to traditional call forwarding, voicemail service, and call waiting combined with speed dialing (“live reply”). “Live-reply” and “click-to-call” features only activate a U-verse Voice subscriber’s home telephone and each by itself does not amount to “a suite of integrated capabilities and features.” “Click-to-call” and a consumer’s call history are accessed via the Internet itself, and therefore are not information services. Long distance calling remains operationally a telecommunications service.

7. U-verse Voice is an offering of the conveyance of voice or other information over a part of the electromagnetic spectrum, with associated capabilities that collect, store, forward, and switch and deliver information incidental to a communication, and is a telecommunications service for purposes of state law.

8. AT&T argues that imposition of traditional state telecommunications regulations would be excessively burdensome, and, if the regulations were applied to U-verse Voice, AT&T states that it would likely stop offering the service in Wisconsin and would transition existing U-verse Voice customers off the service.

9. It is reasonable and consistent with the public convenience and necessity to preserve customer choices and competition by temporarily and conditionally suspending as set

forth herein the application of certain Commission regulations to AT&T's offering of U-verse Voice to end users, and to determine the appropriate regulatory treatment of VoIP offerings on an industry-wide basis.

### **Conclusions of Law**

1. The Commission has the jurisdiction under Wis. Stat. § 227.41 to deny the declaratory relief requested by AT&T with respect to its U-verse Voice offering.

2. The U-verse Voice offering of AT&T in this state is a telecommunications service as defined in Wis. Stat. § 196.01(9m).

3. The Commission has the jurisdiction under Wis. Stat. §§ 133.01, 196.01(9m), 196.02(1) and (7), 196.03(1) and (6), 196.196(3), 196.219(3) and (4)(a), 196.37(2), 196.395, 196.44, other pertinent provisions of chs. 196 and 227, and Wis. Admin. Code § PSC 165.01(3) to provide for further remedial action by temporarily waiving the telecommunications standards in Wis. Admin. Code ch. PSC 165 as to U-verse Voice and continuing its non-utility merchandising tariff treatment under Wis. Admin. Code § PSC 165.10(2) on the terms and conditions set forth herein, while initiating and completing a further docket to investigate the appropriate regulatory treatment of U-verse Voice and similar VoIP offerings of Wisconsin telecommunications utilities and providers under Wis. Admin. Code ch. PSC 165 (including Wis. Admin. Code § PSC 165.10(3) and (4)).

4. The June 8, 2001, Temporary Order in docket 6720-TI-166<sup>5</sup> does not cover U-verse Voice as the technical requisites of the offering of U-verse Voice could not have been known nor a part of the record on which the Commission acted at that time.

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<sup>5</sup> The referenced order is officially noticed pursuant to Wis. Stat. § 227.45(3).



5. The Commission has the jurisdiction and discretion to determine telecommunications service classifications, interpret federal law as necessary to comply with Wis. Stat. § 196.012, and to act or refrain from acting as set forth below.

### Opinion

The issues in this declaratory ruling proceeding reduce to two key questions: (1) what is the fundamental nature of the fixed, interconnected U-verse Voice VoIP<sup>6</sup> offering under state law; and (2) has the FCC taken exclusive jurisdiction over fixed, interconnected VoIP offerings such as AT&T's U-verse Voice?

AT&T filed the petition for declaratory ruling as to its U-verse Voice offering and is the sole party in this docket, though other providers have argued the issues as friends of the Commission. As the party seeking the determination of preemption, AT&T has the burden of establishing the existence of federal preemption as a matter of law.<sup>7</sup> *Miller Brewing Co. v. Dep't of Industry Labor & Human Relations*. 210 Wis. 2d 26, 35. 536 N.W.2d 460 (1997) (citing *Derby v. Brenner Tank, Inc.*, 187 Wis. 2d 244, 248, 522 N.W.2d 274 (Ct. App. 1994) (party asserting preemption bears burden of demonstrating it).

The Commission concludes, after a thorough review of all of the testimony, that, AT&T has failed to meet its burden of persuasion. The first consideration is whether U-verse Voice

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<sup>6</sup> Voice over Internet Protocol, or VoIP, is the use of the IP for transmission of voice service. Where a VoIP service connects with the Public Switched Telecommunications Network (PSTN) to complete calls, referred to as IP-PSTN traffic in this docket, it is "interconnected VoIP," of which there are two types, fixed and nomadic. The distinctions between those two types of interconnected VoIP service are an issue in this proceeding. IP-PSTN can also refer to any IP-enabled data traffic, including but not limited to, Internet data traffic that must also traverse a PSTN network.

<sup>7</sup> The customary common-law rule that the moving party has the burden of proof, including not only the burden of going forward but also the burden of persuasion, is generally observed in administrative hearings. *Sterlingworth Condominium Ass'n. Inc. v. Wis. Dept. of Natural Res.*, 205 Wis. 2d 710, 726, 556 N.W.2d 791 (Ct. App. 1995). "[B]urden of proof encompasses two separate burdens—the burden of going forward with the evidence of the alleged fact; and the burden of persuading the trier of fact that the alleged fact is true." *Hocgurtel v. San Felippo*, 78 Wis. 2d 70, 86, 253 N.W.2d 526 (1977). While AT&T met its burden to go forward with the evidence, it has failed to satisfy the burden of persuasion.

qualifies as a “telecommunications service” under state law. Whatever characteristics U-verse Voice has that might arguably justify classifying it as some type of non-telecommunications service under federal law, U-verse Voice nonetheless satisfies the definition of a “telecommunications service” in Wis. Stat. § 196.01(9m).<sup>8</sup>

The various elements of U-verse Voice are similar to or simply re-package existing telecommunications services. U-verse Voice’s voice service is a communication capability like Plain Old Telephone Service (POTS), and includes long distance as a telecommunications service. The related features, such as voicemail, “live-reply,” and “click-to-call” are virtually identical to their counterparts in traditional telecommunications voice service and custom calling offerings. The ability to access call information and manage account information occurs through an associated web portal, and does not indicate integration within the voice service transmission itself, as in the case of the nomadic, interconnected, Internet-based VoIP service at issue in the *Vonage Order*. The various features comprise a bundled offering for contract purposes more than a tight, technically integrated array of IP-enabled features. Moreover, Internet Protocol is a digital packetized electronic transmission technology widely used in the existing

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<sup>8</sup> Wis. Stat. § 196.01(9m) states: “‘Telecommunications service’ means the offering for sale of the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum, including the sale of service for collection, storage, forwarding, switching and delivery incidental to such communication and including the regulated sale of customer premises equipment. ‘Telecommunications service’ does not include cable service or broadcast service.” In addition, “service” in Wis. Stat. ch. 196 is to be construed in its “broadest and most inclusive sense.” Wis. Stat. § 196.01(7). U-verse Voice may also qualify as a “new telecommunications service” under Wis. Stat. § 196.19(1m)(a)., but it is not necessary to decide that question for purposes of this Final Decision.

telecommunications network services.<sup>9</sup> Indeed, the FCC also has stated, “From the perspective of a customer making an ordinary telephone call, we believe that interconnected VoIP service is functionally indistinguishable from traditional telephone service. It therefore is reasonable for American consumers to have similar expectations for these services.”<sup>10</sup> On the present record, U-verse Voice presents no feature exceeding the broad definition of “telecommunications service” long present in Wisconsin law.

The next step is to determine whether, nonetheless, the federal law requires preemption of state jurisdiction as framed under the expansive state definition of telecommunications service. In other words, has the FCC preempted state jurisdiction with respect to fixed, interconnected VoIP? Preemption is essentially the comparison of the state and federal statutes. *Swift & Co. v. Wickham*, 382 U.S. 111, 120 (1965) (“the basic question involved in [preemption claims] is never one of interpretation of the Federal Constitution but inevitably one comparing two statutes.”). The Wisconsin Supreme Court has stated the analytical considerations in determining preemption of state law:

When considering the federal preemption doctrine an important benchmark is a definition of both federal and state law. Obviously, federal law includes the United States Constitution and all of the federal statutes and treaties promulgated by Congress. Federal law also includes federal regulations promulgated by the various federal agencies. In *Fidelity Federal Savings and Loan Assoc. v. de la Cuesta*, 458 U.S. 141, 153, 102 S.Ct. 3014, 3022, 73 L.Ed.2d 664 (1982), the Supreme Court stated that “federal regulations have no less pre-emptive [sic]

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<sup>9</sup> Embedded within a “service” are the components of “transmission” and “facilities.” Within “transmission,” “Internet protocol” or “IP-enabled” refer to services whose functional transmission mode is digital packetized transmission, as opposed to traditional circuit-based time division multiplexed (TDM) transmission. The digital IP-enabled mode typically will involve diverse routing of packets over networks, whether proprietary or the public Internet, before re-assembly for delivery to the ultimate destination. “IP-enabled” is contrasted to current PSTN electronic switched circuit transmission in which a specific electronic circuit pathway, through Signaling System 7 (SS7), is established and disassembled for each communication. Within “facilities,” “broadband” and “narrowband” denote types of physical transmission facilities with varying capacities. Transmission capacity of over 200 kbps in at least one direction is considered the minimum for a broadband facility.

<sup>10</sup> Report and Order, *In the Matter of IP-Enabled Services*, 24 F.C.C.R. 6039, 6043 ¶ 12 (2009) (§ 214 VoIP Order).

effect than federal statutes.” Thus, federal law is broadly defined and includes regulations made by federal agencies under their congressionally granted authority.

*Gorton v. American Cyanamid Co.*, 194 Wis. 2d 203, 214-15, 533 N.W.2d 746 (1995).

In 2000, the Wisconsin Supreme Court also stated, “Federal law may pre-empt state law in one of three ways: (1) expressly, (2) by implication, or (3) by a direct conflict between federal and state law,” and that “the starting point for determining whether a state law is pre-empted is a presumption against pre-emption.” *Aurora Medical Group v. Dept. of Workforce Dev.*, 236 Wis. 2d 1, 10, 612 N.W.2d 646 (2000), *citing Miller Brewing Co.*, 210 Wis. 2d, at 34-35, (other citations omitted).

The Commission concludes that the FCC has declined to classify fixed, interconnected VoIP, such as U-verse, as an “information service” under federal law. 47 U.S.C. § 153(20). In five different decisions, the FCC has indicated that it was refraining from taking up the classification of VoIP as either a telecommunications or an information service, an issue it originally identified for consideration in 2004.<sup>11</sup> The FCC has identified the issue as not being decided in cases involving nomadic VoIP,<sup>12</sup> universal service fund contributions by VoIP providers,<sup>13</sup> customer proprietary network information by VoIP providers,<sup>14</sup> E911 service in VoIP offerings,<sup>15</sup> and discontinuation of service notices by VoIP-based eligible telecommunications carriers (ETCs) under 47 U.S.C. § 214.<sup>16</sup> Finally, in the appendices of the

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<sup>11</sup> Notice of Proposed Rulemaking, *In the Matter of IP-Enabled Services*, 19 F.C.C.R. 4863 (2004).

<sup>12</sup> *Vonage Order*, 19 F.C.C.R. at 22,411, n. 46.

<sup>13</sup> *In the Matter of Universal Service Contribution Methodology*, 21 F.C.C.R. 7518, 7537, ¶ 35 (2006).

<sup>14</sup> *In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, 22 F.C.C.R. 6927, 6955 ¶54 (2007).

<sup>15</sup> *In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers*, 20 F.C.C.R. 10,245, 10,256 ¶22 (2005).

<sup>16</sup> § 214 *VoIP Order*, 24 F.C.C.R. at 6043 n. 21.

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*Mandamus Remand Order*,<sup>17</sup> the FCC set forth proposed draft orders that would declare interconnected VoIP to be subject to federal regulation, thereby reasonably implying that it had not yet taken such action.

The Commission also concludes that fixed, interconnected VoIP is not subject to the *Vonage Order*, because “state regulation of fixed VoIP remains an open issue.” *Minn. Pub. Utils. Comm’n v. FCC*, 483 F.3d 570, 581-82 (8<sup>th</sup> Cir. 2007) (Hobbs Act review of the FCC’s *Vonage Order*).

Consequently, the Commission concludes that AT&T has not shown that the FCC has preempted state regulation of fixed, interconnected VoIP offerings as telecommunications services. The petition for declaratory ruling is therefore denied.

However, in reaching this conclusion on the law, the Commission finds that proceeding to regulate U-verse Voice at the same level as a traditional telecommunications service *at this time* may not be the appropriate regulatory approach. The Commission has waited a year and the FCC did not act, but only recently the FCC has taken up the issue of broadband and has raised the question of the impact upon state-regulated telecommunications services. *See*, Notice of Inquiry, *In the Matter of Framework for Broadband Internet Service*, GN Docket No. 101-27, FCC 10-114, ¶ 87 (June 17, 2010). A decision needs to come from the FCC in the near term because of the continuing increase in the use of VoIP and the need to harmonize not only broadband issues, but also major related issues of intercarrier compensation for termination of services that appear to straddle two compensation regimes of access charges and reciprocal

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<sup>17</sup> Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; . . . IP-Enabled Services*, 24 F.C.C.R. 6475 (2008) (*Mandamus Remand Order*), *aff’d sub nom. Core Communications, Inc. v. FCC*, 592 F.3d 139 (D.C. Cir. 2010).

compensation. These critical circumstances, well-known in the industry, justify the Commission exercising its special circumstances power in Wis. Admin. Code § PSC 165.01(3) to effect a temporary waiver of telecommunications regulations with respect to U-verse Voice as offered to end-users.

Consistent with its enforcement duty in Wis. Stat. § 196.44, its authority in Wis. Stat. § 196.02(1) to do all that is necessary and convenient to its jurisdiction, and the objectives of Section 1, 1986 Wis. Act 297, and Wis. Stat. § 133.01, the Commission will, subject to certain conditions, grant a waiver that has the effect of suspending treatment of U-verse Voice as a telecommunications service under state law<sup>18</sup> to await the outcome of a new docket to establish the proper level of regulation of interconnected VoIP services in Wisconsin on an industry-wide basis. The Commission desires an expeditious proceeding and to establish for U-verse Voice a single change from non-utility merchandising to the determined level of regulation as a telecommunications service under state law. During the deferral and the pendency of the second proceeding, the current non-utility merchandise status under Wis. Admin. Code § PSC 165.10(2) is to be maintained as part of the differing treatment permitted under Wis. Admin. Code § PSC 165.01(3).

The Commission will proceed to open a second, industry-wide docket to permit all VoIP providers, such as AT&T, TWCIS, and others to demonstrate factually the nature of their VoIP offerings, and to argue what level of regulation for VoIP they deem appropriate and/or necessary,

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<sup>18</sup> As a telecommunications service under state law, U-verse Voice would normally come within the obligations of Wis. Stat. § 196.219 (consumer service quality protections), Wis. Stat. § 196.196(3)(a) (tariff filing of any service offering), Wis. Admin. Code ch. PSC 165 (minimum tariffing, billing, and technical standards and consumer dispute procedures) and other provisions of Wis. Stat. ch. 196 applicable to a telecommunications offering by AT&T as a price-regulated telecommunications utility. That AT&T is a price-regulated telecommunications utility under Wis. Stat. § 196.196 is officially noticed pursuant to Wis. Stat. § 227.45(3).

considering the technology, their competitive situations, and appropriate consumer protections, if any. A decision shall be made by the Commission in the second proceeding within nine months of the date of the notice of proceeding, subject to any extraordinary situations necessitating an extension of time. Any relevant FCC action in the interim should be incorporated into the docket's issues and considerations as feasible and appropriate.

The conditions of this Final Decision imposed under Wis. Stat. § 196.395 are as follows:

1. In relation to its offering of U-verse Voice to end-user customers, and as an included condition of the waiver of Wis. Admin. Code ch. PSC 165 as it applies directly and implements telecommunications regulatory provisions of Wis. Stat. ch. 196,<sup>19</sup> AT&T shall (a) continue to pay access charges and assessments under Wis. Stat. §§ 196.218, 196.85, 196.858, and 196.859; and (b) maintain the current non-utility merchandising tariff provision for U-verse Voice, without prejudice or precedential effect, until the ultimate treatment under state law is determined by the second docket.

2. The effective date as to any general or partial application of the telecommunications statutes in Wis. Stat. ch. 196 and implementing regulations in Wis. Admin. Code ch. PSC 165 (except § PSC 165.10(2)) to AT&T's U-verse Voice as provided to end-user customers, shall, under the waiver granted under Wis. Admin. Code § PSC 165.01(3), be suspended. This waiver shall last until there is an administratively final order closing the further generic docket insofar as

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<sup>19</sup> The intent of this provision is to temporarily suspend application of the substantive provisions of Wis. Admin. Code ch. PSC 165, with noted exceptions, to AT&T's offering of U-verse Voice to end users. The temporary suspension of the foregoing rules extends to their enforcement effect with respect to, for example and without limitation, Wis. Stat. §§ 196.03(1) and (6); 196.19; 196.196(3)(b); 196.219(3)(c), (e), (L) and (o); 196.22; 196.37(2); 196.60; and 196.604. This suspension does not otherwise appear to materially affect AT&T's existing obligations or rights under Wis. Stat. §§ 196.194(1), 196.219(3m), 196.20(1m), 196.625, 196.63, 196.635, 196.70, 196.77, or 196.81(1). For purposes of this Final Decision, U-verse Voice is not subject to the June 1, 2001, Temporary Order in docket 6720-T1-166 that addresses telecommunications service outages and missed appointments because the offering of U-verse Voice in 2008 precluded U-verse Voice's special equipment and offering terms being part of the factual record on which the Commission based its 2001 order.

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it may address U-verse Voice specifically or generally, and, if applicable, AT&T has with respect to U-verse Voice effected proper compliance with any applicable terms and conditions ordered in that docket.

3. AT&T shall be named a party in the second docket with respect to its U-verse Voice offering and shall participate in the proceeding.

### **Order**

1. This Final Decision shall be effective as described above one day after the date of mailing.

2. AT&T's petition for a declaratory ruling that U-verse Voice is subject to the exclusive jurisdiction of the FCC is denied.

3. In respect to its U-verse Voice offering to end-user customers only, AT&T's obligation to comply with Wisconsin telecommunications service statutes and regulations enforced by this Commission is temporarily suspended due to special circumstances, on the terms and conditions described in this Final Decision.

### **Dissent**

Chairperson Eric Callisto dissents.

Dated at Madison, Wisconsin, September 24, 2010

By the Commission:



Sandra J. Paske  
Secretary to the Commission

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See attached Notice of Rights



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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE  
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE  
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

*PETITION FOR REHEARING*

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

*PETITION FOR JUDICIAL REVIEW*

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.<sup>20</sup> The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

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<sup>20</sup> See *State v. Carrier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A

This proceeding is a contested case under Wis. Stat. ch. 227. Therefore, in order to comply with Wis. Stat. § 227.47, the following persons who appeared before the agency are considered parties as defined by both Wis. Stat. § 227.01(8) and Wis. Admin. Code § PSC 2.02(6), (10), and (12), for purposes of any review under Wis. Stat. § 227.53.

PUBLIC SERVICE COMMISSION OF WISCONSIN

*(Not a party, but documents must be filed with the Commission)*

610 North Whitney Way

P.O. Box 7854

Madison, WI 53707-7854

Please file documents using the Electronic Regulatory Filing (ERF) system which may be accessed through the PSC website: <http://psc.wi.gov>.

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