

Appeals Court Rejects State Regulation of Nomadic VoIP, Again

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The U.S. Court of Appeals for the Eighth Circuit has ruled in favor of Vonage and rejected an attempt by the Nebraska PSC to claim regulatory authority over VoIP. [Vonage v. Nebraska PSC](#), 564 F. 3d 900 (8th Cir. 2009). Specifically, Nebraska argued that the FCC's original ruling that VoIP is subject to exclusive federal jurisdiction was effectively modified by the FCC's subsequent creation of a "safe harbor" for payment of federal universal service payments by VoIP providers. Nebraska argued that when the FCC created a presumption that VoIP calls are 64.5% interstate, and directed VoIP providers to make USF contributions on that basis, the inevitable corollary is that 35.5% of VoIP calls are intrastate. On that basis, the Nebraska PSC sought to levy state universal service fees on 35.5% of Vonage's Nebraska calling. The Court of Appeals rejected the Nebraska argument, finding that the FCC's preemption of all state regulation of nomadic VoIP was not modified or inconsistent with the FCC's creation of a 64.5% safe harbor for USF purposes. It is noteworthy, however, that the court focused expressly on "nomadic" VoIP, leaving open the possibility of a different outcome for fixed VoIP services because the FCC's earlier preemption order is based on the nomadic nature of the service being considered in that instance. Nebraska has now petitioned the FCC to modify its order to allow for state assessment of USF on VoIP providers.

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