



**Written Testimony of Mr. Jason P. Talley,
Chief Executive Officer of Nuvio Corporation**

Today we are discussing Senate Bill 49, which proposes to force VoIP Providers, as defined by *K.S.A. 2006 Supp. 12-5353*, to contribute to the Kansas Universal Service Fund. I am the Chief Executive Officer of Nuvio Corporation, a VoIP Provider based in Overland Park, Kansas. Nuvio is a large provider of business VoIP services, otherwise known as hosted PBX. I am deeply troubled about this proposed legislation.

This bill, and the legal and logical analysis behind it is flawed in multiple ways. First and foremost, the FCC has determined that VoIP traffic is *interstate* in nature. Furthermore, the Federal Courts have decided that our service is appropriately classified an “information service”, which is subject to exclusive federal jurisdiction. Your legal basis for attempting to assess this fee is not valid.

Secondly, there is much confusion over the FCC’s recent decision to impose Federal USF obligations on VoIP providers and what that means to states’ ability to then collect USF. It means absolutely nothing. By way of background, the FCC recently released its *Interim Universal Service Order*, which set a safe harbor percentage of 64.9% of the revenues of a VoIP provider as being subject to FUSF. However, the FCC made it clear in the *Vonage Order* that providers of VoIP services cannot be required to segregate their services into inter- and intrastate components for a non-service driven reason. The fact that the FCC established a “safe harbor” for VoIP providers to use when contributing to the FUSF does not mean that the balance is assignable to intrastate communications and should not be used by this committee. More importantly, the FCC also made clear in its order that it could have found that 100% of VoIP services are attributable to interstate services:

Consistent with this advocacy and based on the conclusions in the Vonage Order, we find that it would be reasonable for us to treat the interconnected VoIP traffic as 100% interstate for USF purposes. Indeed, in another context where providers were unable to separate their interstate telecommunications revenues from other revenues, the [FCC] found a safe harbor of 100 percent to be reasonable. Nevertheless, we establish a safe harbor that is lower than 100% as a convenient alternative for interconnected VoIP providers.¹

As clearly set out in the quotation above, the FCC did not find that 35.1% of the traffic handled by providers of VoIP services was intrastate; rather, the FCC adopted the 64.9% as a “convenient alternative” while expressly stating that 100% of the VoIP providers’ traffic could be considered interstate.

There are a number of outstanding legal issues surrounding the classification of VoIP as well as pending decisions at the FCC regarding the treatment of VoIP traffic. Additionally, there is the belief that a large rewrite of the 1996 telecommunications act will occur with this Congress. All of these issues should be resolved prior to Kansas enacting a bill that has been pre-empted by federal law.

¹ *Federal-State Joint Board on Universal Service, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006), appeal docketed, Vonage Holdings Corp. v. FCC, No. 06-1275 (D.C. Cir. July 18, 2006)*