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June 20, 2016

Via Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

**Re: WC Docket No. 10-90 *et al.*
Smart City Telecommunications LLC d/b/a Smart City Telecom
Petition for Limited Waiver of Section 51.917(b)(7)(ii), 2011 Rate-of-Return
Carrier Base Period Revenue
Notice of *Ex Parte***

Dear Ms. Dortch:

On June 16, 2016, Jim Schumacher and Debbie Huttenhower of Smart City Telecommunications LLC dba Smart City Telecom (“Smart City” or the “Company”) with Steve Meltzer, John Kuykendall, and Cassandra Heyne of JSI (collectively, “Smart City Representatives”) met via conference call separately with Nicholas Degani and Jessica Cameron of Commissioner Pai’s office; Amy Bender of Commissioner O’Rielly’s office; Rebekah Goodheart and Claude Aiken of Commissioner Clyburn’s office; and Travis Litman of Commissioner Rosenworcel’s office. The purpose of these calls was to discuss Smart City’s pending petition for limited waiver of Section 51.917(b)(7)(ii) which was filed in 2013.

In the meetings, the Smart City Representatives explained that to comply with Section 51.917(b)(7)(ii) of the Commission’s rules, the Company excluded certain FY2011 revenues, not collected by the March 31, 2012 deadline, in its Base Period Revenue (“BPR”) because of an ongoing billing dispute with Verizon Business (“Verizon”).¹ In the dispute, Verizon claimed that the traffic associated with the disputed amount was VoIP traffic and that as such, it contended that it was not subject to tariffed access rates for switched access service. In response, Smart City contended that none of the traffic was VoIP and thus all of it was subject to the company’s tariffed access rates. The negotiations for the disputed amounts ultimately resulted in a settlement in which Verizon agreed to pay a portion of the disputed amount and no longer contended that the minutes-of-use were VoIP. Because revenues associated with the dispute that were billed for terminating intrastate switched access service provided in FY 2011 were collected after March 31, 2012, Smart City did not include the revenues in its FY 2011 base period revenue and filed the waiver to allow those revenues to be included.

¹ During the meetings, a timetable of the dispute was provided to FCC staff (see Attachment 1).

In urging grant of the petition, the Smart City Representatives provided the following support that the revenues which Smart City seeks to include in its BPR are associated with switched access billing and not VoIP.

First, the participants discussed the fact that Verizon fully paid many of the invoices during the time of the dispute at the switched access rates even though it claimed that the traffic was VoIP. Specifically, as shown in Attachment 2, for the twelve months of switched access billing associated with FY2011, Verizon fully paid seven months and partially paid four others. Despite its original assertion that the disputed invoice amounts were VoIP, Verizon never produced any evidence that was the case. As cited in email correspondence attached to an *Ex Parte* filing made by Smart City in 2015,² an initial request for call detail records (“CDRs”) supporting Verizon’s claim was made on October 13, 2010 and then again on November 8, 2012, Smart City reported that Verizon had “never responded to [requests for CDRs] in any manner.” Accordingly, during the time of the dispute, Verizon failed to identify any traffic as being VoIP and instead indicated that the traffic was indeed switched access by making full or partial payments on all but one month of the invoices, all of which were billed as switched access. In the meetings, it was discussed that the invoiced amounts that were paid prior to March 31, 2012 were included in the BPR as required by Section 51.917(b)(7)(ii) and that the revenues also billed prior to March 31, 2012 but paid after that date should also be included in the BPR with grant of this waiver.³ These revenues pertained to the same type of traffic and were billed during that same time period. Accordingly, Smart City’s petition should not be arbitrarily denied based on an unsubstantiated claim that the revenues were associated with VoIP traffic.

The participants then discussed the *Ex Parte Letter* filed by Smart City on April 21, 2015.⁴ This *Letter* explains that the dispute was resolved by the parties reaching a settlement in which Verizon “no longer contended that the minutes-of-use were VoIP.” Attached to the *Letter* is a copy of the language used in the settlement which states that the amount paid was for “originating and terminating switched access charges.”⁵ The settlement agreement made no reference to Verizon’s original assertion that the traffic was VoIP. Accordingly, the parties did not consider any of the traffic associated with the settlement to be VoIP.

The Smart City Representatives also discussed how the Company meets all applicable conditions set forth in the *Halo Waiver Order*⁶ which established precedent for waivers of this subject matter, and requested that the petition be approved expeditiously.

² See Letter from John Kuykendall, Vice President, John Staurulakis, Inc. on behalf of Smart City to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et. al, filed April 21, 2015 (“*Ex Parte Letter*” or “*Letter*”).

³ As shown in Attachment 2, all revenues, whether paid before or after March 31, 2012, were on invoices dated from 11/1/2010 – 10/1/2011 which contained usage from 9/22/2010 – 9/21/2011.

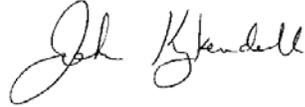
⁴ *Ex Parte Letter* at 1.

⁵ *Id.* Attachment (emphasis supplied).

⁶ See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Order, FCC 14-121 at para. 23 (rel. Aug. 7, 2014) (“*Halo Waiver Order*”).

Please direct any questions regarding the filing to the undersigned.

Sincerely,

A handwritten signature in black ink that reads "John Kuykendall". The signature is written in a cursive style with a large initial "J" and "K".

John Kuykendall

JSI Vice President

301-459-7590 jkuykendall@jsitel.com

ATTACHMENT 1

MCI/VZB VOIP SWITCHED ACCESS DISPUTES HISTORICAL

- 10/12/2010 First VzB dispute (\$56,978 – i.e. 40%) received from Donna Donahue for 7/2010 usage and 8/1/2010 billing (\$143,565) which was previously paid. DD identifies Earl Hurter as contact.
- 10/13/2010 Peggy sends email to Earl Hurter requesting CDR's associated with dispute.
- 10/14/2010 SCT reaches out to Russ Blau, LBH sends summary email and copy of dispute. Russ advises MCI/VzB is doing same across the country, usually disputing entire billed amount (unlike they did with us). Court cases in process on the issue but no decisions, could go either way.
- 10/15/2010 Russ sends email legal position to SCT on this issue.
- 10/20/2010 Russ drafts letter to VzB in response to dispute.
- 10/22/2010 Russ sends letter to DD, copies Earl Hurter, Ted Padilla, and Bill Carnell (VzB GC).
- 11/01/2010 VzB short pays \$94,513 on 10/01/2010 and 11/01/2010 bills
11/29/2010
- 12/13/2010 LBH reaches out to Russ – still no response from VzB to our Oct letter.
- 12/14/2010 Now also have dispute (\$37,535 – 26%) from VzB for 9/1/2010 billing (\$141,999) previously paid for Aug 2010 usage.
Russ advises he got call from Bill Carnell – VzB GC advising he lost our letter on his desk, working on a response. Ask Russ about sending Disconnect Letter to VzB, thinks it's a good idea.
- 12/30/2011 LBH emails Russ to see if he received anything from VzB – has not and Bill Carnell is out of office.
- 01/04/2011 11/1/2010 (for 10/2010) and 12/1/2010 (for 11/2010) Switched Access invoices paid by VzB and no disputes received.
- 01/07/2011 Disconnect Letter drafted for VzB non-payment (\$94,513) on 11/1/2010 and 11/29/2010 of portions of 10/2010 and 11/2010 bills. Russ reviews and advises VzB not backing down on their position.
- 01/11/2011 Disconnect Letter sent to Ted Padilla, copies to Earl Hurter, Donna Donahue for above.
Russ finally receives letter from Bill Carnell – VzB GC, says VzB does not have to pay access charges under tariffs for traffic that they originate in IP format.
- 01/17/2011 Bill Carnell – VzB GC calls Russ re our Disconnect Letter, wants to know our intentions. If really plan on disconnect, will file something at the FCC against us.

01/27/2011 In addition to August and September 2010 billing (July – August usage) disputes, have received disputes for October 2010 (\$30,364 – 28%) and November 2010 (\$32,594 – 26%) billing (September – October 2010 usage).
Switched Access billing to VzB for August – November 2010: \$521,803
VzB Disputes for August to November 2010 billing: \$157,471 (30%)

01/28/2011 Jim S. reaches out to CenturyLink (Dean K.) and Windstream (Bettye W.). Bettye advises is aware of the issue but not sure how company is dealing with or how big a problem it is for them.

02/01/2011 Jim prepares Issue Summary for JTC and MR.
Tom Thum works with Engineering and Peggy to get current VzB Customer PIC list (in prep for possible VzB service disconnection).
Peggy obtains position paper from NECA re this issue and gets more information from her Windstream contacts as to their position.
LBH reaches out to Steve Kraskin re this issue.

02/02/2011 Steve K. responds with email.
LBH makes inquiry to Jeff Wahlen about pursuing FPSC Complaint.
Marty talks with David Cohen – VP Regulatory – US Telecom.

02/03/2011 Revised Disconnection Letter sent to VzB - Peter Reynolds – Director National Carrier Contracts & Initiatives, and Robert Peterson – Chief Counsel.

02/07/2011 Windstream advises Peggy they have done nothing and are waiting to see what FCC rules.

02/22/2011 BHN files Complaint against VzB at the FPSC.

03/04/2011 VzB dispute (\$54,958) received for 12/1/2010 billing (for 11/2010 usage).
VzB dispute (\$56,769) received for 1/2/2011 billing (for 12/2010 usage).

Switched Access billing to VzB for August 2010 – January 2011: \$830,759
VzB Disputes for August 2010 – January 2011: \$269,198

03/07/2011 Jeff Wahlen speaks with Beth Keating/BHN counsel. BHN expects VzB to file Motion to Dismiss based on FPSC not having jurisdiction on this issue. Since is nationwide issue, believes VzB will fight hard.

03/14/2011 FPSC Hearing on VzB Motion to Dismiss BHN Complaint.

04/01/2011 Revised Disconnection Letter sent to VzB.

04/06/2011 VzB files dispute (\$75,706) of 2/1/2011 invoice (for January usage) previously paid.

05/06/2011 Revised Disconnection Letter sent to VzB.

05/10/2011 LBH receives call from VzB changing Robert Peterson contact for Disco Letter to Chris Antoniou.

05/17/2011 Hearing on Motion to Dismiss moved from 03/14/2011 to end of June.

06/07/2011 Revised Disconnection Letter sent to VzB.
VzB pays February and May 2011 bills in full.

06/16/2011 VzB disputes (\$8,717) March 2011 billing.
FPSC updates BHN – VzB Complaint Docket Calendar – 7/14 Staff Recommendation, Agenda Conference
7/26

06/28/2011 VzB pays April 2011 bill in full.

07/05/2011 Revised Disconnection Letter sent to VzB.

07/18/2011 FPSC updated BHN – VzB Complaint Docket Calendar – 7/28 Staff Recommendation, Agenda Conference
8/9

08/04/2011 Revised Disconnection letter sent to VzB.

Switched Access billing to VzB for August 2010 – May 2011: \$1,301,473
VzB Disputes for August 2010 – May 2011: \$355,834

08/09/2011 FPSC votes in agreement with Staff Recommendation that FPSC has jurisdiction on BHN – VzB Complaint
issue.
VzB pays May, June and July 2011 invoices – only disputes \$8,717, \$2,213, and \$3,366 respectively.

Switched Access billing to VzB for August 2010 – June 2011: \$1,401,678
VzB Disputes for August 2010 – June 2011: \$359,199

09/01/2011 Revised Disconnection Letter sent to VzB.

10/01/2011 Revised Disconnection Letter sent to VzB.

11/01/2011 Revised Disconnection Letter sent to VzB.

11/07/2011 10/1/2011 invoice paid in full by VzB.

11/22/2011 VzB disputes 7/1/2011 billing (\$32,976.25) previously paid in full (\$106,496).

Switched Access billing to VzB for August 2010 – July 2011: \$1,508,174
VzB Disputes for August 2010 – July 2011: \$392,175

12/01/2011 Revised Disconnection Letter sent to VzB.

12/07/2011 VzB disputes \$76,093 of 8/1/2011 billing (\$124,442).

Switched Access billing to VzB for August 2010 – August 2011: \$1,632,617
VzB Disputes for August 2010 – August 2011: \$468,268

12/13/2011 Asked Jeff Wahlen to get BHN opinion of now released FCC Reform Order and effects on their Complaint

12/27/2011 VzB disputes \$1,245 of 9/1/2011 and 10/2/2011 SC Solutions Switched Access billing.

VzB disputes \$76,277 of 9/1/2011 billing (\$132,997).
VzB disputes \$28,374 of 10/1/2011 billing (\$104,957).
VzB disputes \$12,806 of 11/1/2011 billing (\$106,883).

12/29/2011 BHN advises Jeff Wahlen they are moving ahead with their Complaint against VzB. Lots of room for argument in FCC Reform Order on this issue. **In particular, FCC Reform Order says it does not change the nature of any pre-existing disputes.** Expect to spend lots of \$ if we file our own Complaint or join in with BHN.

01/01/2012 Revised Disconnection Letter sent to VzB.

VzB disputes \$2,724 of 12/01/2011 billing (for November 2011 usage).
VzB disputes \$1,592 of 01/01/2012 billing (for December 2011 usage).

Switched Access billing to VzB for August 2010 – January 2012: \$1,977,455
VzB Disputes for August 2010 – January 2012: \$590,042

02/01/2012 Revised Disconnection Letter sent to VzB.

03/01/2012 Revised Disconnection Letter sent to VzB.

03/05/2012 BHN files Motion to Temporarily Suspend Schedule in Complaint Docket.

03/06/2012 VzB provides PVU of 27% to SCT.

03/16/2012 VzB provides revised PVU of 18% to SCT.

04/01/2012 Revised Disconnection Letter sent to VzB.

05/01/2012 Revised Disconnection Letter sent to VzB.

05/24/2012 FPSC acknowledgement of BHN Notice of Voluntary Dismissal of Complaint with Prejudice while working on settlement.

06/01/2012 Revised Disconnection Letter sent to VzB.

07/01/2012 Revised Disconnection Letter sent to VzB.

08/01/2012 Revised Disconnection Letter sent to VzB.

ATTACHMENT 2

Invoices for Switched Access Sent to and Payments Made by Verizon Business

<u>Bill Date</u>	<u>Usage Period</u>	<u>Payment Made</u>
2010-11-01	09/22-10/21/2010	partial payment
2010-12-01	10/22-11/21/2010	full payment
2011-01-01	11/22-12/21/2010	partial payment
2011-02-01	12/22-01/21/2011	full payment
2011-03-01 ⁷	01/22-02/21/2011	no payment
2011-04-01	02/22-03/21/2011	partial payment
2011-05-01	03/22-04/21/2011	full payment
2011-06-01	04/22-05/21/2011	full payment
2011-07-01	05/22-06/21/2011	full payment
2011-08-01	06/22-07/21/2011	partial payment
2011-09-01	07/22-08/21/2011	full payment
2011-10-01	08/22-09/21/2011	full payment

⁷ Three separate invoices were submitted for this month.