

Morgan Lewis

Russell M. Blau

Partner

+1.202.373.6035

russell.blau@morganlewis.com

August 15, 2019

VIA ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Communication:
WC Docket No. 10-90 (Connect America Fund);
WC Docket No. 18-155 (Updating the Intercarrier Compensation Regime to Eliminate
Access Arbitrage);
WC Docket No. 18-156 (8YY Access Charge Reform)

Dear Ms. Dortch:

On August 13, 2019, the undersigned along with Nick Sgroi and Greg Rogers of Bandwidth Inc. ("Bandwidth") met with Lisa Hone, Rhonda Lien, David Zesiger, Erik Raven-Hansen, Al Lewis, Gil Strobel, Aaron Garza, and Susan Bahr of the Wireline Competition Bureau, and Shane Taylor and Eric Ralph of the Office of Economics and Analytics, to discuss matters relating to intercarrier compensation reform.

Bandwidth expressed its continuing support for reform of originating access charges for 8YY traffic. Bandwidth observed that the current intercarrier compensation regime continues to include incentives for problematic behaviors such as access avoidance, asymmetries, and perverse incentives for incumbent LECs to delay the transition to IP technology so that they can continue collecting legacy access charges.

As a major provider of enterprise 8YY calling services, with an extensive nationwide facilities-based interexchange network, Bandwidth is trying to manage several problems that are fundamentally created by the current intercarrier compensation rules. Among these issues are the lack of clear structure within the industry regarding the use 0110 CIC that enables local call routing for all 8YY traffic; fraudulent traffic pumping by misuse of the industry's 8YY routing data and revenue sharing behaviors; demands by major wireless carriers affiliated with ILECs to route terminating traffic through ILEC tandems so that the ILEC can receive access charges for "transiting" that traffic, instead of using more efficient direct IP interconnection; and insistence on asymmetric traffic exchange payments based on certain carriers' interpretation of the so-called VoIP symmetry rules.

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, NW
Washington, DC 20004
United States

+1.202.739.3000
+1.202.739.3001

Marlene Dortch
August 15, 2019
Page 2

Bandwidth reported that the originating access regime and revenue sharing arrangements continue to fuel a high volume of toll-free traffic pumping (the origination of fraudulent toll free calls for the purpose of generating access minutes, rather than engaging in any *bona fide* communication), despite industry efforts to trace these calls back to their sources. Both traffic pumping and newer schemes to increase access revenues by disregarding the RespOrg's routing instructions in the SMS/800 database appear to be tied closely to revenue sharing arrangements. To reduce the incentive for carriers to accept questionable traffic, Bandwidth recommends that the Commission declare that (a) it is an unjust and unreasonable practice for common carriers to bill or collect interstate access charges on any call not placed by an end user customer, and (b) for this purpose, a party to an access revenue sharing agreement described in 47 CFR § 61.3(bbb)(1)(i) (that is, a party that does not actually make a net payment to its carrier) is not a "customer" of the carrier.

With respect to the 0110 CIC, which is currently being discussed in industry technical standards bodies, Bandwidth seeks clarification whether the current use of this pseudo-CIC for originating 8YY traffic complies with Commission rules and policies. While Bandwidth takes no position on whether any particular use of this code is proper or not, the absence of clear guidance on this issue creates a skewed competitive marketplace for 8YY services. Use of the 0110 CIC creates risks of future billing disputes and self-help actions by LECs that may claim to have been the victims of access charge avoidance, while those providers that do not utilize 0110 are put at an artificial cost disadvantage in the marketplace. Further, in order to avoid uneven or discriminatory outcomes, any change in the availability of 0110 CIC routing for 8YY traffic should be made on a competitively-neutral basis so that carriers who have refrained from using this option are not further disadvantaged.

Finally, Bandwidth expressed its continued support for CenturyLink's pending petition for declaratory ruling seeking clarification of the VoIP symmetry rules, but noted that the only long-term solution to all of these problems is to eliminate incentives to manipulate the access charge system by reforming originating 8YY access charges. Then, carriers will be able to exchange traffic in the most efficient manner and reduce costs to end users, without having to worry about how such arrangements will affect their access charge revenues. In addition, Bandwidth explained that some major carriers appear to misinterpret the Commission's rules as somehow broadly denying wholesale carriers reciprocal interconnection rights if they carry any "over-the-top" VoIP traffic. Bandwidth urged that any declaratory ruling concerning the VoIP symmetry rule should specify that the scope of the rule is limited specifically to the context of end-office switching charges for interstate access service, and expressly reject any broader interpretation or application.

Sincerely yours,

s/Russell M. Blau

Russell M. Blau