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November 5, 2014

Via Electronic Filing

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

Re: **Notice of Ex Parte Communication CC Docket No. 96-45;
CC Docket No. 01-92; WC Docket No. 03-109; WC Docket
No. 05-337; WC Docket No. 07-135; WC Docket No. 10-90;
GN Docket No. 09-51**

Dear Ms. Dortch:

On November 3, 2014, Greg Rogers, Deputy General Counsel of Bandwidth.com, Inc. (“Bandwidth”) and the undersigned met with Nicholas Degani, Legal Advisor to Commissioner Ajit Pai. Our discussion was consistent with the points made in our October 22, 2014 ex parte. In addition, we discussed the difference between the local voice switching functions performed together by Bandwidth and its VoIP partner and the internet routing functions performed by third party ISPs. We explained that the third party ISP’s gateways and routers are part of the local loop because they are similar to remote terminals in traditional TDM configurations that route calls from feeder to loop plant based on instructions from the local switch. Like a remote terminal in a TDM network, a third party ISP gateway or router does not perform the essential call control functions necessary to set up, encode and decode, and take down the call. Bandwidth and Level 3 provided a detailed discussion of this distinction on pages 9-13 of their September 10, 2012 ex parte available at <http://apps.fcc.gov/ecfs/document/view?id=7022010987>. Bandwidth reiterated that whether its VoIP partner is loop-facilities based or over-the-top, together Bandwidth and its VoIP partner perform all of the functions of a local switch and therefore are entitled to end office access charges pursuant to the Commission’s VoIP symmetry rule.

In addition, the actual connection between the loop and the switch—a function performed by the line port in a TDM switch—is not part of the functions of the end office local switch compensated by the end office local switching charge under 47 C.F.R. § 69.106.¹

¹ See *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, First Report and Order, 12 FCC Rcd 15982, 16035 ¶ 125 (1997) (assigning line port recovery to Common Line rate elements)(“1997 Access Reform Order”); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, *Federal-State Joint Board on Universal Service*, Fifteenth Report and Order, *Access Charge Reform for*

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Thus, the functions to be evaluated for compensation under 47 C.F.R. § 51.913(b) and 51.903(d)(3) must be end office switching functions that are carried out upstream from the line port. The routers in the over-the-top VoIP user's ISP network do not perform functions that would be performed upstream from the line port in a TDM network.

Respectfully submitted,

/s/

Tamar E. Finn

Counsel to Bandwidth.com, Inc.

cc: Nicholas Degani

Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers, Report and Order, 16 FCC Rcd 19613, 19654 ¶¶ 90-91 (2001) (“MAG Order”) (moving recovery of line ports to common line for rate-of-return carriers).