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November 12, 2014

Notice of Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
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 10, 2014, on behalf of Broadvox-CLEC, LLC (“Broadvox”), I conducted a conference call with Daniel Alvarez, Wireline Legal Advisor to Chairman Wheeler. Broadvox provided the attached presentation and discussed the critical importance of the VoIP Symmetry Rule to Broadvox as an over-the-top VoIP provider. Broadvox emphasized the need to ensure that any clarifications the Commission makes to the *Connect America Fund Order* (“CAF Order”)¹ are retroactive to the effective date of that order.

Broadvox applauded Chairman Wheeler for recognizing the urgent need to clarify the VoIP Symmetry Rule. Broadvox discussed the fact that AT&T is currently withholding over \$7M from Broadvox for end office and other services that Broadvox began rendering over two and a half years ago in January 2012. Although Broadvox has filed a collections action in federal district court, it could be 2016—a full four years after Broadvox rendered services to AT&T—before Broadvox obtains relief in that proceeding (without considering potential appeals). Commission clarification of the VoIP Symmetry would significantly compress that timeline.

Broadvox urged immediate action on the order currently circulating. AT&T’s self-help campaign has been ongoing for three years with serious detriment to carriers across the industry. The Commission’s rules are only effective if vigorously enforced, which here requires the Commission to clarify the application of the end office rate to over-the-top VoIP traffic. Verizon

¹ *Connect America Fund*, Report And Order And Further Notice Of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“CAF Order”).

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has also withheld close to \$1M from Broadvox. As one might imagine, it is difficult to run a company with such significant receivables. Both AT&T and Verizon are exercising self-help by withholding end office switching on over-the-top VoIP traffic. Broadvox has been joined by Level 3, Bandwidth.com, Core, 01 Communications, and XO Communications in urging the Commission to clarify the VoIP Symmetry Rule to allow for collection of end office charges on over-the-top traffic. For the carriers illegally withholding tens of millions of dollars through self-help, further delay will clearly be beneficial. But the Commission should put an immediate end to their ongoing effort to put competitive pressure on their much smaller competitors.

Broadvox discussed the fact that the Wireline Competition Bureau Order issued on February 27, 2012 (“*Second YMax Order*”)² did not decide this issue, as some have claimed, in AT&T and Verizon’s favor.³ As detailed in the attached presentation, Verizon did not rely on this *Second YMax Order* because it paid end office charges on over-the-top traffic to Broadvox and others *for two years after* the Order was issued. AT&T has also been on notice that its interpretation of the VoIP Symmetry Rule was inaccurate from Broadvox’s federal complaint, multiple ex partes filed in these and other dockets, and because the *Second YMax Order* did not in fact address the issue being clarified at this time.

The question presented in the *Second YMax Order* decision was not what activities specifically constitute end office switching in an over-the-top context, but whether “section 61.26(f) permits a competitive LEC to tariff and charge the full benchmark rate *even if it includes functions that neither it nor its VoIP retail partner are actually providing.*”⁴ YMax was trying to claim that merely having your own numbering resources was sufficient to support a claim for full switched access, to which the Commission responded: “it is not sufficient merely for the competitive LEC to be listed in the Number Portability Administration Center (NPAC) database as providing the associated telephone numbers to enable a competitive LEC to assess the full benchmark rate.”⁵ Here the issue to be clarified is whether over-the-top carriers and their VoIP provider partners that are in fact providing end office switching as defined in the Commission’s rules should gain the benefit of the VoIP Symmetry Rule. Failure to provide this clarification will allow AT&T and Verizon to continue to eviscerate the plain intent of that Rule through self-help withholding of millions of dollars of end office charges.

² *Connect America Fund*, Order, WC Docket No. 10-90 (rel. Feb. 27, 2012).

³ See Letter from John Nakahata, counsel for Level 3, to Ms. Marlene H. Dortch, Secretary, FCC, at 3 (Nov. 3, 2014).

⁴ *Second YMax Order*, ¶ 4 (emphasis added).

⁵ *Id.*, ¶ 5 & n. 15.

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Broadvox also discussed the fact that Verizon's effort to exclude originating 8YY access from the VoIP Symmetry Rule is not justified. Excluding such traffic would create the very asymmetry that the Commission intended to avoid, by permitting traditional local exchange carriers to collect full originating access on 8YY calls, but precluding competitive carriers such as Broadvox partnered with VoIP provider partners from collecting the same charges. Moreover, interexchange carriers (IXCs) that deliver calls to their 8YY customers will still collect the same rates from those customers, but would pay a discounted originating access rate on every such call that happens to originate from a VoIP provider customer. The Commission should ensure that IXCs do not receive such a windfall and that VoIP providers have an even chance to compete by guaranteeing equivalent compensation for all types of traffic.

Verizon provides neither legal nor factual support for its new proposal to exclude originating access from the VoIP Symmetry Rule. Verizon's proposal is predicated on the assumption that originating access charges remain at their pre-*CAF Order* levels,⁶ which is simply not true. The Commission in the *CAF Order* reduced originating access rates for intrastate VoIP-PSTN traffic—and only VoIP-PSTN traffic is subject to the VoIP Symmetry Rule—from their previous, significantly higher intrastate levels to much lower interstate levels.⁷

More importantly, there was never any consideration given in the *CAF Order* to excluding originating access from the VoIP Symmetry Rule. The VoIP Symmetry Rule has been in effect for more than two and a half years and yet Verizon provides no evidence whatsoever of any actual abuses of originating access traceable to the VoIP Symmetry Rule. Verizon's fearmongering—its claim, for example, that Commission action “could open the floodgates to new robocall schemes,”—is not a substitute for record evidence that the VoIP Symmetry Rule has increased arbitrage. In addition, even if there were evidence that there is a higher incidence of access stimulation among over-the-top providers than other providers (which there is not), the Commission has already addressed access stimulation in the *CAF Order*,⁸ and those rules would apply with equal, symmetrical force to all providers, over-the-top or otherwise. Verizon's proposal to exclude originating access from the VoIP Symmetry Rule is a solution in search of a problem and should not be addressed in the Commission's impending order.

⁶ Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon to Ms. Marlene H. Dortch, Secretary, FCC, at 2 (Nov. 5, 2014).

⁷ *CAF Order*, ¶ 961.

⁸ *Id.*, ¶¶ 656-701.



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Broadvox applauds Chairman Wheeler's leadership in circulating an order to clarify the VoIP Symmetry Rule on both a retrospective and prospective basis, including payment on 8YY originating access, and urges the Commission to adopt such an order in the immediate future.

As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey
James C. Falvey
Counsel for Broadvox-CLEC, LLC

Enclosure

cc: Daniel Alvarez (via e-mail)
Priscilla Delgado Argeris (via e-mail)
Amy Bender (via e-mail)
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