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December 5, 2014

Via ECFS

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

**Re: Ex Parte Communication, CC Docket No. 01-92; WC Docket No. 07-135; WC
Docket No. 10-90**

Dear Ms. Dortch:

On December 3, 2014, Greg Rogers, Deputy General Counsel of Bandwidth.com, Inc. (“Bandwidth”) (by phone) and the undersigned met with Rebekah Goodheart, Legal Advisor to Commissioner Mignon Clyburn. Our discussion was consistent with the points made in our October 22, 2014, and November 5, 2014, *ex partes*. We urged the Commission to expedite its approval of the proposed order on circulation that would resolve the so-called “VoIP symmetry” issue. Before the Tenth Circuit, the FCC explained that although “AT&T asserts that the challenged rule does not apply to certain types of VoIP service arrangements... [t]he FCC has not yet ruled on this issue.”¹ Every month of delay in addressing this issue costs Bandwidth time and money in disputed and unpaid access bills, diverting resources from running and growing its business, unlocking IP innovation for well-established and emerging partners on the creative edge of IP user experiences. This delay effectively rewards the IXCs that engage in self-help, forcing CLECs to turn to courts to preserve their right to collect their charges.² This in turn creates a risk that district courts around the country will decide on their own (with potentially inconsistent results) what the *Transformation Order* means, instead of the FCC issuing a single, definitive interpretation of its rules.

As explained in our previous *ex parte* submissions, the Commission in the *Transformation Order* clearly intended that the intercarrier compensation rules should not depend on the technology

¹ See Federal Respondents Final Response to the AT&T Principal Brief at n. 6, *In re FCC 11-161*, No. 11-9900 (10th Cir. July 29, 2013). Verizon mistakenly attributes a footnote in the federal intervenors’ brief to the FCC.

² For example, XO recently sued AT&T in the Eastern District of Virginia. Complaint, *XO Communications Services, LLC et al v AT&T Corp.* No. 14-CV-1521 (E.D.Va Nov. 14, 2014).

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used to originate or terminate traffic, including Voice Over IP technology. Calls originated or terminated over VoIP are subject to the same intercarrier compensation obligations as any other wireline traffic.

Notwithstanding this clearly stated intent, Verizon has resorted to arguing that VoIP providers may be engaged in some new form of arbitrage with respect to 8YY traffic. In fact, the *Transformation Order* brought all originating and terminating access services under the section 251(b)(5) regime, while deferring any changes to that regime for 8YY traffic to a future stage of the rulemaking. If these alleged arbitrage activities are within the scope of the access stimulation rules, the proper way to address them is by enforcing those rules. If they are not covered by the access stimulation rules, then measures to address alleged 8YY arbitrage would require substantive changes to the rules adopted in 2011, and could not be achieved by a clarification or interpretation of them. Either way, it would not be appropriate for the Commission to fail to enforce the VoIP symmetry principle, which applies to all traffic, based on these allegations relating to a narrower subset of originating 8YY calls.

Respectfully submitted,

/s/ Tamar E. Finn

Tamar E. Finn

cc: Rebekah Goodheart