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January 13, 2015

## Ex Parte

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal State Joint Board on Universal Service, CC Docket No. 96-45**

Dear Ms. Dortch:

On January 9, 2015, Chris Miller, Curtis L. Groves, and Alan Buzacott of Verizon met with Nick Degani, Legal Advisor to Commissioner Pai, to discuss the above-referenced proceeding.

As we discussed, the Commission should not reverse its precedent and allow a LEC to assess end office switching access charges when it routes over-the-top traffic over the public Internet, because neither the LEC nor its retail VoIP partner performs end-office switching in this scenario.<sup>1</sup> And we explained that the Commission cannot reverse its precedent through a declaratory ruling that would have retroactive effect, because where existing legal rules are clear, new legal rules cannot be applied retroactively.<sup>2</sup> We discussed Verizon's positions consistent with its previous filings on this matter, in particular Verizon's November 10, 2014 ex parte letter.<sup>3</sup>

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<sup>1</sup> See *AT&T Corp. v. YMax Communications Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 5742, ¶¶ 36-45 (2011) (“*YMax Order*”); *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 970 n.2028 (2011) (“*USF-ICC Transformation Order*”); *Connect America Fund*, Order, 27 FCC Rcd 2142, ¶¶ 4-5 (2012) (“*Clarification Order*”).

<sup>2</sup> See, e.g., *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2167 (2012); *National Environmental Development Ass’n’s Clean Air Project v. EPA*, 752 F.3d 999, 1009 (D.C. Cir. 2014); *Chadmoore Commc’ns, Inc. v. FCC*, 113 F.3d 235, 240 (D.C. Cir. 1997); *Bergerco Canada v. U.S.*

If the Commission nevertheless were to issue a declaratory ruling that purports to clarify the Commission's rules but in reality reverses retroactively its decisions that neither a LEC nor its VoIP partner performs end office switching or its functional equivalent when they route over-the-top VoIP traffic over the public Internet, that ruling could not withstand appeal. Moreover, it would encourage new originating access arbitrage opportunities involving autodialers to proliferate. Although the Commission has said that originating access charges ultimately should be subject to bill-and-keep,<sup>4</sup> it has taken no action to reduce them. Toll-free traffic pumping involving autodialers that generate sham 8YY calls is already a serious arbitrage problem, and permitting arbitrageurs to collect originating end-office switched access when they use over-the-top VoIP autodialers could open the floodgates to new robocall schemes.

The Commission can avoid creating new originating access arbitrage opportunities by limiting any new rule to terminating access charges, where the Commission has reformed the access regime and is far along the process of reducing rates. The Commission should defer considering whether to allow LECs that receive VoIP customers' originating 8YY traffic over the public Internet to collect end office switched access until the Commission addresses the issue of originating access rates generally. There is a very real threat of originating access arbitrage scams using VoIP robocallers to generate sham 8YY traffic to collect originating end office switching and dip charges — charges that are not being reduced under Commission rules and, therefore, present an increasingly attractive arbitrage opportunity.

If the Commission does permit CLECs that transmit over-the-top originating 8YY traffic from the public Internet to collect end office switched access – which it should not – it should at a minimum emphasize that a CLEC may do so only if the calling party telephone number is assigned to the CLEC. Some CLECs aggregate traffic from several VoIP providers, including those with telephone numbers assigned to other CLECs, and seek to bill “end office” charges on all of those originating calls. But section 61.26(f) of the Commission's rules – which is “the tariffing provision intended to implement the VoIP symmetry rule”<sup>5</sup> – makes clear that the VoIP symmetry rule applies only if the “the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party ... number.”<sup>6</sup> As the Commission explained in the *USF-ICC Transformation Order*, and the Bureau reemphasized in the *Clarification Order*, that limitation was included to prevent double-billing and protect against arbitrage.<sup>7</sup> If the

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*Treasury Dep't, Office of Foreign Assets Control*, 129 F.3d 189, 192 n.2 (D.C. Cir. 1997); *Health Ins. Ass'n of Am., Inc. v. Shalala*, 23 F.3d 412, 423 (D.C. Cir. 1994); *see also supra* note 5 (citing prior filings). In contrast, *Qwest Services Corp. v. FCC*, 509 F.3d 531 (D.C. Cir. 2007), presented a situation where there was a “lack of clarity in the law” — not one where, as here, the “settled law” is “contrary” to the new rule that Level 3 and others urge the Commission to adopt. *Id.* at 539-40.

<sup>3</sup> *See* Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 10-90, *et al.* (Nov. 10, 2014).

<sup>4</sup> *USF-ICC Transformation Order*, ¶ 817

<sup>5</sup> *Clarification Order*, ¶ 5.

<sup>6</sup> 47 C.F.R. § 61.26(f).

<sup>7</sup> *See USF-ICC Transformation Order* ¶ 970, n.2027; *Clarification Order* ¶¶ 4-5, n.15.

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Commission were to conclude that a CLEC can assess end-office switching charges when it routes over-the-top originating 8YY VoIP traffic from the public Internet, at the very least the Commission should limit the potential for arbitrage and double-billing by emphasizing that, under Section 61.26(f), the CLEC may do so only if the originating telephone number is assigned to the CLEC.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please contact me if you have any questions.

Sincerely,

*/s/ Alan Buzacott*

cc: Nick Degani