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May 11, 2015

**Via ECFS**

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

**Re: Ex Parte Communication, WC Docket No. 14-228; WC Docket No. 10-90; WC  
Docket No. 07-135; CC Docket No. 01-92**

Dear Ms. Dortch:

On May 7, 2015, Greg Rogers, Deputy General Counsel of Bandwidth.com CLEC, LLC (“Bandwidth”), and Russell M. Blau and the undersigned as counsel to Bandwidth, met with Pam Arluk, Robin Cohn, Victoria Goldberg (by telephone), John Hunter, Michael Jacobs, Rhonda Lien, Deena Shetler and Douglas Slotten of the Wireline Competition Bureau to discuss intercarrier compensation disputes it continues to have with Verizon.

Bandwidth explained that it prefers to negotiate commercial arrangements. For example, in the *ICC Reform Order*, the Commission noted Bandwidth’s commercial arrangement with Verizon under which the parties exchanged VoIP traffic at a rate of \$0.0007.<sup>1</sup> After the Commission adopted the *ICC Reform Order*, Verizon elected to terminate that agreement. Bandwidth then revised its tariffs to implement the default end office switching rates permitted under the VoIP Symmetry Rule. Following the FCC’s clear statement regarding the VoIP Symmetry Rule in its February 11, 2015, Declaratory Ruling, Bandwidth denied Verizon’s billing disputes and requested immediate payment of unpaid switched access charges. Verizon, however, continues to dispute Bandwidth’s bills and pays *no* switched access charges, while continuing to use Bandwidth’s network. The sums at issue in the dispute are significant.

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<sup>1</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 17926, §784 n. 1443 (2011) (“*ICC Reform Order*”).

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Bandwidth is a defendant in the Verizon Business (“Verizon”) intraMTA multi-district litigation (“MDL”) pending in the North District of Texas.<sup>2</sup> (Case 3:14-md-02587-D.) Bandwidth believes that the law is clear: Under the 1996 *Local Competition Order* and the 2011 *ICC Reform Order*, intraMTA traffic exchanged between LECs and CMRS providers is treated as non-access traffic, and carriers in those two classes are entitled to negotiate the terms on which they will exchange this traffic under Sections 251 and 252. Neither of these orders, however, exempted an IXC from paying access charges when that IXC uses a LEC’s switched access service because a CMRS provider has chosen to send or receive intraMTA traffic over switched access facilities in the absence of (or without regard to) an interconnection agreement. However, Verizon has unilaterally withheld payment of amounts that it claims are “exempt” from access charges, and companies like Bandwidth have no way of collecting these withheld amounts without a court order. The District Court hearing the MDL cases is not expected to rule on motions to dismiss before late summer, and it is possible the Court could refer the issue to the Commission under principles of primary jurisdiction, meaning that a final order would not be issued until after this Commission clarifies the rules. Every month of delay in addressing the intraMTA issue costs Bandwidth time and money in disputed and unpaid access bills, diverting resources from running and growing its business. Delay effectively rewards the IXCs that engage in self-help, which encourages litigation.

Unlike the situation with an end-user customer, where a carrier ultimately can enforce service disconnection if the customer refuses to pay its bills, a carrier seeking to collect its access charges cannot threaten disconnection or refuse to provide additional service to the recalcitrant customer, due to its ongoing interconnection obligations. This allows a switched access customer to force its carrier to undertake expensive, time-consuming, and burdensome court proceedings to collect its bills, while the customer (in this case, Verizon) gets to keep the money unless and until the carrier brings suit and obtains a judgment. The Commission, recognizing the importance of seamless interconnection is in the public interest, should also acknowledge a concomitant obligation to act quickly to eliminate any uncertainty as to the applicability of switched access tariffs, to prevent IXC customers from engaging in self-help tactics.

Bandwidth believes the Commission’s intent and rules concerning the treatment of intraMTA traffic are clear but it urges the Commission to act quickly to provide critical guidance to avoid costly litigation. The intraMTA litigation perpetuates controversy and uncertainty which the Commission intended to bring to an end with the *ICC Reform Order*.

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<sup>2</sup> Sprint did not sue Bandwidth in any of its intraMTA complaints.

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Respectfully submitted,

*/s/ Tamar E. Finn*

Tamar E. Finn

cc: Pamela Arluk  
Robin Cohn  
Victoria Goldberg  
John Hunter  
Michael Jacobs  
Rhonda Lien  
Deena Shetler  
Douglas Slotten