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Via ECFS

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

Re: Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rule to LEC-IXC Traffic, WC Docket No. 14-228; Numbering Policies for Modern Communications, WC Docket No. 13-97; IP-Enabled Services, WC Docket No. 04-36; Telephone Number Requirements for IP-Enabled Services Providers, WC Docket No. 07-243; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Connect America Fund, WC Docket No. 10-90; Numbering Resource Optimization, CC Docket No. 99-200

Dear Ms. Dortch:

On Thursday, June 11, Chris Miller and I, both of Verizon, met with Daniel Alvarez, legal advisor to Chairman Wheeler. We discussed the petition for declaratory ruling regarding intercarrier compensation for intraMTA traffic.¹ Consistent with our comments, we said intraMTA traffic exchanged between LECs and commercial mobile radio service (CMRS) providers is local traffic, is not subject to access charges, and that it does not matter whether an intermediate interexchange carrier handles the traffic.²

¹ See Bright House Networks, et al., *Petition for Declaratory Ruling To Clarify the Applicability of the IntraMTA Rule to LEC-IXC Traffic and Confirm That Related IXC Conduct Is Inconsistent with the Communications Act of 1934, as Amended, and the Commission's Implementing Rules and Policies*, WC Docket No. 14-228 (Nov. 10, 2014) (“Petition”).

² Verizon Comments, *Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rule to LEC-IXC Traffic*, WC Docket No. 14-228 (Feb. 9, 2015) (“Verizon Comments”).

The Commission in the 2011 *USF-ICC Transformation Order* reaffirmed “the intraMTA rule means that all traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same MTA, as determined at the time the call is initiated, is subject to reciprocal compensation regardless of whether or not the call is, prior to termination, routed to a point located outside that MTA or outside the local calling area of the LEC.”³ It also affirmed it does not matter if an intermediate carrier is involved in the call routing: “intraMTA traffic is subject to reciprocal compensation regardless of whether the two end carriers are directly connected or exchange traffic indirectly via a transit carrier.”⁴ This language cannot be interpreted to mean anything other than what it plainly says: All wireless-originated traffic terminated to a LEC in the same MTA is subject to reciprocal compensation (not access), and it does not matter how the traffic is routed to the LEC.

While the *USF-ICC Transformation Order* left no doubt that the intraMTA rule applies even when an intermediate carrier is involved, LECs have been prohibited from charging switched access on this traffic since 1996. In the *First Report and Order* the Commission defined intraMTA wireless traffic as non-local traffic that was not subject to access charges.⁵ And the federal courts since 2005 have confirmed reciprocal compensation and not access charges apply to intraMTA wireless traffic regardless whether an intermediary IXC is involved.⁶ The *USF-ICC Transformation Order* did not change the law but instead reinforced and reaffirmed it. A contrary conclusion would be inconsistent both with the law and the policies underlying the 2011 order, which reduced and harmonized intercarrier compensation rates to remove arbitrage opportunities. But even if there remains a question about retroactivity, we said the Commission should leave that issue to the courts. The Commission typically does not involve itself in weighing the equities of private disputes.⁷

Separately, we addressed last-minute filings by Level 3 in several dockets including the Numbering Policy proceeding (WC Docket No. 13-97). Those filings advocate for a far-reaching

³ *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 1007 (2011) (“*USF-ICC Transformation Order*”) (subsequent history omitted).

⁴ *Id.*

⁵ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶ 1043 (1996) (“*First Report and Order*”). *See also* Verizon Comments at 3-4.

⁶ *See Alma Commc’ns Co. v. Missouri Pub. Serv. Comm’n*, 490 F.3d 619 (8th Cir. 2007); *Iowa Network Servs., Inc. v. Qwest Corp.*, 466 F.3d 1091 (8th Cir. 2006); *Atlas Tel. Co. v. Oklahoma Corp. Comm’n*, 400 F.3d 1256 (10th Cir. 2005)). *See also* Verizon Comments at 5-7.

⁷ *Cf. Applications of Verestar, Inc. (Debtor-In-Possession) for Consent to Assignment of Licenses to SES Americom, Inc.*, Memorandum Opinion, Order and Authorization, 19 FCC Rcd 22,750, ¶ 16 (2004) (“It is long-standing Commission policy not to involve itself with private contract disputes.”); *Loral Corp. Request For a Declaratory Ruling Concerning Section 310(b)(4) of the Communications Act of 1934, et al.*, Memorandum Opinion and Order, 12 FCC Rcd 24,325, ¶ 13 (1997) (“We have consistently declined to involve ourselves with commercial disputes.”).

Marlene H. Dortch
June 12, 2015
Page 3 of 3

expansion of the scope of the “VoIP symmetry” intercarrier compensation rule adopted in the *USF-ICC Transformation Order*.⁸ In place of the existing language that limits application of the VoIP symmetry rule to when “the CLEC is listed in the database of the Number Portability Administration Center (NPAC) as providing the calling party or dialed number,”⁹ Level 3 proposes to apply the rule if either the CLEC or a VoIP provider is listed in the NPAC database as owning the calling party or dialed number.

We urged the Commission to take no action on Level 3’s proposal. The Commission cannot adopt Level 3’s last-minute proposal because it has not been the subject of a notice-and-comment rulemaking. For Level 3 to seek changes to the VoIP symmetry rule, it must file a petition for rulemaking with the Commission. And Level 3’s proposal would dramatically expand the scope of the VoIP symmetry rule and would increase the potential for arbitrage. Contrary to Level 3’s claim that its proposal would encourage IP-to-IP interconnection, Level 3’s proposal would actually encourage unnecessarily retaining TDM-based CLECs like Level 3 in the call flow in order to continue generating end-office-switching access charges.

Very truly yours,



cc (via e-mail): Daniel Alvarez

⁸ See, e.g., Letter from Joseph C. Cavender, Level 3, to Marlene H. Dortch, FCC, *Numbering Policies for Modern Communications*, WC Docket No. 13-97, *et al.* (June 9, 2015).

⁹ See *Connect America Fund; Developing a Unified Intercarrier Compensation Regime*, Declaratory Ruling, 30 FCC Rcd. 1587, ¶ 3 n.7 (2015).