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LATHAM & WATKINS LLP

August 20, 2015

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Notice of Ex Parte Presentation,
CC Docket No. 01-92, WC Docket Nos. 10-90 and 14-228**

Dear Ms. Dortch:

On August 18, 2015, representatives of a broad coalition of local exchange carriers (collectively, the “LEC Coalition”)¹ met separately with: (i) Rebekah Goodheart, Legal Advisor to Commissioner Clyburn; (ii) Travis Litman, Legal Advisor to Commissioner Rosenworcel; and (iii) the Wireline Competition Bureau staff copied below. The LEC Coalition representatives included: Tim Boucher of the CenturyLink LECs (participating via telephone), Jennifer Prime of Cox Communications, Michael Quinn of Time Warner Cable, Edward Krachmer of Windstream (participating via telephone), Yaron Dori of Covington & Burling LLP and Michael Pryor of Cooley LLP (as outside counsel to the CenturyLink LECs), Christopher W. Savage of Davis Wright Tremaine LLP (as outside counsel to Bright House Networks), and the undersigned (as outside counsel to Cox Communications, Frontier Communications, LICT Corp., Time Warner Cable, and Windstream).²

The meeting focused on the Petition for Declaratory Ruling and reply comments filed by the LEC Coalition in this proceeding, which demonstrate that the Commission’s “intraMTA rule” entitles *wireless carriers* to enter into reciprocal compensation arrangements for the exchange of LEC-CMRS traffic but has no application to traffic exchanged between LECs and *interexchange carriers* over switched access trunks. We emphasized that the “intraMTA” nature of traffic is not—and never has been—the sole factor in determining the type of compensation owed when it is exchanged by carriers. Rather, the identities of the carriers exchanging traffic

¹ A complete list of the entities included in and represented by the LEC Coalition can be found in the Petition for Declaratory Ruling filed on November 10, 2014 in the above-referenced proceeding.

² Mr. Quinn was present only at the meetings with Ms. Goodheart and Mr. Litman, and Mr. Savage was present only at the meeting with Wireline Competition Bureau staff.

and the manner in which such traffic is exchanged are critical. Therefore, and as explained in our Petition, “intraMTA” traffic that is exchanged between a CMRS provider and a LEC is subject to reciprocal compensation, but to the extent that same traffic type is routed through an IXC that avails itself of a LEC’s Feature Group D services it is subject to access charges as between the LEC and the IXC. The Commission has never held otherwise, and to do so now would upend nearly two decades of industry practice.³

We also noted that the relief sought in the Petition would be consistent with longstanding industry practice, Commission and judicial precedent, and the public interest. We observed that the only IXCs that have opposed the Petition (Sprint, Verizon, and Level 3) are those whose conduct and lawsuits necessitated the filing of the Petition in the first place, and that even those IXCs: (i) do not dispute the core facts alleged in the Petition; (ii) cannot explain why they voluntarily paid access charges for years for purported intraMTA traffic in spite of their (newfound) contention that such charges are unlawful; (iii) cannot explain why they or their affiliates continue to assess such access charges in spite of their contention that such charges are unlawful; (iv) ignore the fact that they or their affiliates have received and continue to receive payments from their customers sufficient to recoup access costs—and therefore would receive an unjust windfall from the relief they seek; (v) fail to address the plain language and intent of the intraMTA rule; and (vi) mischaracterize the relevant Commission precedent and case law.

We explained that, for these reasons, the Commission should promptly grant the requested declaratory ruling. Indeed, we emphasized that the Commission has *never* held that intraMTA traffic that is carried by an IXC using a LEC’s Feature Group D services is subject to reciprocal compensation as between the LEC and the IXC. To the contrary, the weight of Commission and judicial precedent supports a finding that such traffic is subject to access charges. But even if the Commission were to conclude otherwise, and even if the Commission somehow were to conclude that this has been the rule all along, the Commission could not appropriately apply that decision retroactively because doing so would be manifestly unjust. Under the “manifest injustice” standard, even a mere clarification to an existing rule that was not reasonably clear cannot be applied retroactively when the entire industry reasonably relied on a contrary interpretation. This certainly was the case here, where the entire telecommunications industry, including Verizon and Sprint, has been charging and paying access charges on intraMTA traffic routed through a LEC’s Feature Group D services without dispute for nearly 20 years.

We also noted that if the Commission were to find that all intraMTA traffic, regardless of how it is routed, is subject to reciprocal compensation, and if that finding were to apply

³ That access charges may be assessed by LECs on IXCs while LECs and CMRS providers exchange traffic pursuant to reciprocal compensation is the natural result of cases like *Atlas* and *Alma*, cited in the *USF/ICC Transformation Order*. Those cases interpret the intraMTA rule to require LECs to pay reciprocal compensation to CMRS carriers terminating LEC-originated traffic while also acknowledging that the LECs impose access charges on IXCs. That the two compensation mechanisms are not mutually exclusive was strongly advocated by the CMRS carriers in those cases, including Sprint’s wireless affiliate.

retroactively, then the financial ramifications of that finding on a wide swath of the telecommunications industry would be staggering. Sprint alone has stated that its claims amount to \$160 million. If this figure is accurate and not untimely, and given Verizon's much larger size, it is conceivable that the combined claims of these two companies would reach well into the hundreds of millions of dollars over the past number of years.

In all events, the LEC Coalition stressed the need for expedited resolution of the matters addressed in its Petition, which lie at the center of scores of lawsuits that have been consolidated in a multidistrict litigation proceeding in the U.S. District Court for the Northern District of Texas.

Please contact the undersigned should you have any questions regarding this submission.

Respectfully submitted,

/s/ Matthew A. Brill
Matthew A. Brill
Jarrett S. Taubman

cc: Pamela Arluk
Robin Cohn
Victoria Goldberg
Rebekah Goodheart
Travis Litman
Deena Shetler
Peter Trachtenberg