KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
JAKARTA, INDONESIA
MUMBAI, INDIA

FACSIMILE
(202) 955-9792
www.kelleydrye.com

EDWARD A. YORKGITIS, JR.
DIRECT LINE: (202) 955-9668
EMAIL: cyorkgitis@kelleydrye.com

February 27, 2006

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

Re: WC Docket Nos. 05-276 and 05-283; CC Docket No. 01-92;
RM 11299: Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel for NuVox Communications hereby provides notice of a February 24, 2006, *ex parte* meeting with Tamara Preiss, Chief of the Pricing Policy Division, Wireline Competition Bureau, and other members of the staff of the Pricing Policy Division: Deena Shetler, Margaret Daily, and Christopher Barnekov. In attendance at the meeting for NuVox Communications were: Brad Mutschelknaus, Edward A. Yorkgitis, Jr., and Todd Daubert of Kelley Drye & Warren LLP, and Riley Murphy, Senior Vice President, General Counsel, of NuVox Communications. The attached slides were used at the meeting to guide the discussion which reviewed the positions taken by NuVox in its comments and reply comments in Docket Nos. 05-276 and 05-283, and RM-11299, as well as NuVox's position on the proposals regarding so-called "phantom traffic" made by the Midsize Carrier Coalition and the United States Telecom Association in CC Docket No. 01-92.

Respectfully submitted,

Brad E. Mutschelknaus
Edward A. Yorkgitis, Jr.

Attachment

cc: Tamara Preiss
Deena Shetler
Margaret Daily
Christopher Barnekov

DC01/YORKC/245095.1

NuVox Communications

VoIP Traffic Termination and LNP Cost Recovery

February 24, 2006

FCC Action on VoIP Traffic Termination in Response to Pending Declaratory Ruling Petitions Must Adhere to Current Rules and Law

- Intermediate LECs are not subject to access charges under the Rules
- Carriers and providers are entitled to rely on existing rules and exemptions unless and until changed *on a prospective basis*
  - Currently, there is an ESP/ISP exemption on the payment of access charges
  - Net protocol conversion traffic is enhanced under current Rules
  - VoIP-originated traffic that terminates on the PSTN and undergoes net protocol conversion is enhanced and is exempt from access charges
- Changes to the exemption are properly under consideration in pending *Intercarrier Compensation* and *IP-Enabled Services* rulemakings

"Phantom Traffic" Is Best Addressed Through Carrier Agreements and Minor Regulatory Change

- Contracts and tariffs currently address and provide relief for almost all "phantom traffic" issues
- In an *FNPRM*, the Commission could consider requiring that ANI be passed on MF trunks
  - Would complement current requirement that carriers pass CPN received on SS7 trunks
- Intermediate carriers should not be penalized for inaccurate, invalid, or missing signaling information beyond their control

The Basic Principles Underlying Local Number Portability Cost Recovery Have Not Changed

- 1996 Telecommunications Act required the LNP cost recovery mechanism to be competitively neutral
- The Commission, in the *Third Report and Order* in CC Docket No. 95-116 (1998), adopted a mechanism based on market share measured by revenues
- The Commission rejected a usage-based approach as *not* being competitively neutral
- The statute is the same and the considerations the FCC identified in 1998 still apply today

The Commission's Interpretation of Section 252(e)(2) of the Act Remains Sound

- Cost recovery must be "competitively neutral" (47 USC § 252(e)(2))
- In the *Third Report & Order*, the FCC concluded that the method of cost recovery:
  - Must not give any service provider an "appreciable, incremental cost advantage" over another, and
  - Must not disparately affect the ability of competing providers to earn a normal return
- The FCC found that the current revenue-share based test met this competitively neutral test
- The Commission rejected a usage-based test on the same grounds

A Revenue-Based Approach Spreads Costs Among All Beneficiaries of LNP and Number-Pooling

- The real beneficiaries of LNP and pooling are consumers of communications services
- LNP and pooling maximize choices for all consumers and promote competition to the benefit of all consumers
- A revenue-based approach spreads the costs among the rates charged all consumers

A Usage-Based Methodology Will Have a Disparate Impact on Competitors to the ILECs

- CLECs and other carriers (*e.g.*, wireless carriers) engage in LNP and number pooling more often than ILECs
- These new entrants will thus have to spread, under a usage-based approach, more LNP and pooling costs over a smaller subscriber/revenue base
  - New entrants will have to recover more LNP/pooling costs per revenue dollar
  - This result will, by definition, adversely impact the ability of new entrants to compete for the same subscribers
  - The cost recovery per revenue dollar differential will have a disparate impact on new entrants' ability to earn a normal return

CLEC Experience with the Current Cost Recovery Mechanism Is That It Is Competitively Neutral and Remains Justified

- BellSouth fails to provide evidence that the original criteria of the competitively neutral test no longer are germane
- CLEC share of end-user switched access lines was only 18.5% at year-end 2004
  - 50% of this is UNE-P, which is no longer available
  - The two largest CLECs have recently merged into RBOCs
  - CLEC use of UNEs has leveled off
- Wireless providers are in same position today as CLECs were in the late 1990s – competitors performing a disproportionate share of number ports
- BellSouth and its supporters have merely shown that overall LNP costs have increased, not that the current methodology is no longer competitively neutral.

CLEC Costs Would Rise Dramatically If BellSouth's Plan Were Adopted

- Data shows that CLECs and ILECs pay on the same order of costs, relative to revenues and EBITDA
- The shared costs of all carriers, not just the ILECs, have increased
- BellSouth's proposal would shift the burden to its competitors and lead to steep increases in CLEC costs
  - NuVox costs would rise over 1400%
  - Xspedius costs would go up at least 1000%
  - XO costs would increase 3000%
  - BellSouth costs would fall 90%

The Uses of the Number Portability Administration Center Do Not Justify a Change

- Although some uses of NPAC – technology upgrades, network grooming and carrier record modifications fall outside of strict LNP and number pooling categories – these uses are enjoyed by all carriers
- Like LNP and number pooling, these uses serve industry as a whole and all consumers
- The cost recovery for all functions of NPAC should be implemented on a competitively neutral basis
- The current revenue-based LNP cost recovery methodology serves that purpose