KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400
3050 K STREET, NW
WASHINGTON, D.C. 20007-5108

(202) 342-8400

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

BRUSSELS, BELGIUM

AFFILIATE OFFICES
JAKARTA, INDONESIA
MUMBAI, INDIA

FACSIMILE
(202) 342-8451
www.kelleydrye.com

DIRECT LINE: (202) 342-8573
EMAIL: jgriffin@kelleydrye.com

March 11, 2009

VIA ECFS

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

Re: *Notice of Ex Parte Presentation* – IB Docket No. 09-10

Dear Ms. Dortch:

On Tuesday, March 10, 2009, Robert J. Aamoth and Joan M. Griffin of Kelley Drye & Warren LLP, counsel to Tonga Communications Corporation ("TCC"), met with James Ball, David Krech, Kimberly Cook, and Cara Grayer of the International Bureau, Policy Division, to discuss the above-captioned proceeding. The attached written *ex parte* presentation was distributed at the meeting. The discussion focused on the attached materials and was consistent with comments and/or reply comments previously filed by TCC in this docket.

In accordance with the Commission's rules, this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding.

Respectfully submitted,

Joan M. Griffin

cc: James Ball
David Krech
Cara Grayer
Kimberly Cook

DC01/GRIFJ/371670.1

<u>Opposition of Tonga Communications Corporation ("TCC")</u>
<u>to AT&T Petition For Settlements Stop Payment Order</u>
March 10, 2009 Meeting with FCC staff

- TCC is a corporation that is wholly separate from the Government of Tonga and the Communications Minister, which regulates the communications sector.
    - TCC's license to provide telecommunications service in Tonga obligates TCC to comply with the rules and regulations issued by the Communications Minister.
    - TCC can lose its license or suffer other penalties if it fails to comply.
- The Communications Minister, not TCC, raised the minimum termination rate for <u>all</u> international traffic terminating in Tonga to US$0.30/minute.
    - TCC raised its termination rate with AT&T and Verizon because it was required to do so by the laws of Tonga.
    - TCC has no power or ability to change the termination rate mandated by the Communications Minister.
    - Hence, TCC has not engaged in any anti-competitive conduct, nor has it engaged in whipsawing.
- TCC blocked AT&T's and Verizon's circuits for valid business and legal reasons.
    - TCC had no reasonable assurance of payment, since AT&T and Verizon expressly refused to pay the mandated termination rate.
    - Continuing to terminate AT&T and Verizon traffic at an unlawful rate below US$.30/minute would create a mechanism for refile.
    - Tonga's agreement with AT&T had expired.
- The rate that the Communications Minister has mandated for inbound termination is not significantly higher than the discriminatory termination rate AT&T is charging TCC for termination in so-called "high cost NPAs" in the U.S.
    - This termination rate is higher than the FCC's benchmark rate ($0.19/minute) for terminating international traffic in Tonga.
- If the U.S. Government has concerns about the termination rate mandated by the Communications Minister, the U.S. Government should raise them directly with the Government of Tonga and, if believed necessary, invoke multilateral dispute resolution mechanisms.