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November 18, 2010

VIA FCC ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Office of the Secretary, Room TW B204
Washington DC 20554

Re: Ex Parte Communication by North County Communications Corp.
CC Docket Nos. 01-92 and 07-135

Dear Ms. Dortch:

On November 17, 2010, Todd Lesser, CEO of North County Communications Corp. ("North County") and the undersigned met with James Schlichting, Paul Murray and Nese Guendelsberger of the Wireless Telecommunications Bureau to discuss North County's response to Verizon's false and unsupported allegations regarding calls to conference and chat services and intra-MATA cellular traffic. Copies of the written presentations used in that meeting are attached.

In accordance with § 1.1202 of the Commission's rules, this letter and a copy of the presentations are being filed electronically in the above-captioned dockets.

Respectfully submitted,

Jonathan E. Canis

cc: James D. Schlichting, Senior Deputy Bureau Chief, Wireless Telecommunications Bureau (james.schlichting@fcc.gov)

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NORTH COUNTY COMMUNICATIONS CORP.

Response to Verizon's False and Unsupported Allegations re Calls to Conference and Chat Services and Intra-MTA Cellular Traffic

CC Docket Nos. 01-92 and 07-135

Presented by

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November 17, 2010

Summary

- This *ex parte* presentation responds to the Verizon ex parte meetings of November 2, 2010, in which Verizon apparently asked the Commission to abandon its recent decisions, usurp state ratemaking authority, and set rates for the termination of intra-MTA wireless traffic. In its ex parte notice, Verizon cited North County's pending petition for a writ of certiorari in *North County Comms. Corp. v. CellCo Partnership, d/b/a Verizon Wireless-CA, et al.*
- North County will also address in general the large IXCs' campaign of unlawful refusal to pay charges with which they disagree, rather than seeking resolution by this Commission.
- Finally, this presentation will urge the Commission to abandon the piecemeal approach to addressing disputes over payment of access charges that it has employed to date – this approach has left virtually all relevant matters unresolved for over four years. The Commission must heed the growing calls for answers by the federal district courts, ILECs and CLECs, and most recently, NARUC, to establish common-sense rules and to stop the lawless actions of the Bell System and other large IXCs, who have adopted a nationwide campaign of self-help refusals to pay any access charges with which they disagree.

The Commission Must Stop Self-Help

- **Over the past five years, IXCs have broadly adopted self-help refusal to pay any time they don't want to pay access.**
- **While IXCs rail about "traffic pumping" they are refusing to pay lawful charges for virtually all access services:**
  - Calls to "traditional" residential and business POTS subscribers.
  - Cellular calls.
  - Calls carried by tandem switching and transport providers.
  - Over 2 dozen pending federal cases re nonpayment for calls to conference/chat services.
  - At least as many federal collection cases re cellular and transport traffic.

The IXCs Invented "Traffic Pumping"

- **Verizon, MCI, AT&T and other IXCs invented "traffic pumping"** (see North County comments and attachments filed 11/12/10 in CC 01-92 and WC 07-135).
  - Adult chat lines and pre-recorded "dial-a-porn" – the IXCs developed 976 "adult prefixes".
  - 900, 976, overseas numbers.
  - Other "dial-a" services: joke, prayer, weather, sports, etc.
- **They also invented access revenue sharing**
  - Verizon pays commissions of up to 90% to chat providers.
  - Hotel, motel, airport, etc. revenue sharing.
  - Cellphone and SMS voting for *Dancing With the Stars*, etc.

IXC Claims re Scope of "Problem" Are False

- **IXCs are fully compensated for calls to conference/chat operators.**
- **IXCs benefit from their end users' ability to access popular services.**
- **IXC rates of return have increased dramatically over last 5 years.**
  - Pearce/Barrett "Fact Report," March 2010.
- **IXCs are unjustly enriched by collecting LD charges from subscribers, while paying zero terminating access.**

False Scope of "Problem" (cont'd)

- **IXC claims that calls to conference/chat lines cost IXCs hundreds of millions of – or even a Billion – dollars are wildly exaggerated.**
  - These claims are based on spurious estimations.
  - A review of the actual claims pending in all of the existing collection actions makes clear that nowhere near these amounts are at issue.
- **Attached list of 37 pending collection actions shows actual amounts at issue.**
  - Typical claim runs from under $1MM to $3MM.
  - These claims generally filed after 2 years of non-payment.
  - Total amounts could be higher now, but this is because claims have been held up in court for 4-5 years.

False Scope of "Problem" (cont'd)

- **Verizon is attempting to shoe-horn its opposition to state rate-setting for intra-MTA CMRS traffic into a "traffic pumping" argument.**
  - Asserts that the Commission's ruling in *North County v. MetroPCS* "has created a new traffic pumping target . . . ."
    - Verizon 11/2/10 ex parte at 1.
  - Given that state regulators, with one exception, have not yet set rates for the termination of such calls, Verizon's assertions are wholly unsupported and premature, and constitute a collateral attack on the Commission's order. As such, Verizon's arguments should be discarded.

FCC Must Stop Running From This Issue

- **The Commission has taken extraordinary steps to avoid making <u>any</u> decisions to resolve these disputes.**
  - *Farmers & Merchants* case – 4+ years without resolution, case currently stayed.
  - Six pending federal court referrals (oldest pending 1-2 years) – no action, no deadlines.
    - Demands to resolve one referral within 5-month statutory deadline required by § 208(b) of Communications Act – Rejected.
  - At least 4 Petitions for Declaratory Ruling – all ignored.
  - Access Stimulation Docket WC 07-135, fully briefed – 3 years, no decisions.

Stop Running! (cont'd)

- **Schizophrenic tariff decisions:**
  - One rejection, with instructions prohibiting refiling on 15-days notice (All American).
  - Three accorded "deemed lawful" status, after rejecting oppositions by Qwest and Sprint (Tekstar, BlueGrass, Comity).
  - But – Commission recently issued public notice seeking comment on whether oppositions to Tekstar tariff should be revisited.
    - Unprecedented – FCC lacks authority to review "deemed lawful" tariff.
- **This bizarre and unprecedented conduct obviously has only one goal – Evade tariff investigation to avoid 5-month statutory deadline for resolution.**

Stop Running! (cont'd)

- **The Commission has refused to make <u>any</u> decisions, despite repeated pleas by:**
  - Federal District Courts – six referrals pending, requests for 12 more under review.
  - LECs – Petitions for Declaratory Ruling, Formal Complaints
  - And most recently, a NARUC Resolution:
    - RESOLVED, That the National Association of Regulatory Utility Commissioners . . . acknowledges the need for the FCC to act immediately to address the issue of traffic pumping and not wait for the finalization of comprehensive inter-carrier compensation reform, . . .

Stop Running! (cont'd)

- **In the void left by Commission inaction, IXCs have engaged in anticompetitive conduct.**
  - Abusing regulatory/litigation process to prevent competitors from expanding full service networks, popular services.
  - Blocking and degrading calls to competitive conference services.
    - Routing to oversubscribed trunks; creating Phantom Traffic.
- **FCC void has prevented market-based solutions.**
  - Every affected LEC would agree to reasonable settlement, but IXCs have no incentive to negotiate reasonably.
  - Earlier, Verizon and AT&T settled with numerous LECs on reasonable terms. But now, they reject terms they earlier agreed to, because FCC inaction is allowing them to continue self help indefinitely, without any consequences.

Dial-up Modem Rates Are Inapposite

- **Verizon calls for $0.0007 (the federal reciprocal compensation rate for dial-up modem traffic), because it's a low rate**
  - No other rationale: hang times, call setup, etc. for data traffic are completely different from voice termination.
  - If large volumes justified $0.0007 for termination of voice traffic, all urban terminations of Verizon, MCI, AT&T, Qwest, Sprint would qualify. Terminating rate in Manhattan would be zero.
- **Verizon's arguments are belied by its own commercial contracts, in which Verizon has voluntarily negotiated vastly higher rates for calls to conference/chat services**

Verizon's Proposed Rules Are Unconstitutional

- **Verizon's request for regulations specifically aimed at calls to conference, chat, and international services would result in the unprecedented step of regulation according to call content.**
  - Such a step is clearly outside the Commission's authority.
  - It would also constitute a content-based restriction and a financial disincentive to free speech, in violation of the First Amendment.

Common Sense Interim Access Stimulation Rules

- **Require IXCs to pay a minimum rate for terminating access, pending final resolution.**
  - Lowest-band NECA rate is appropriate.
- **Require IXCs to pay for termination of "traditional" call terminations to residential and business users.**
  - No IXC has even attempted to justify withholding payment for this traffic
- **Either require IXCs to file rate complaints, or declare that Commission will resolve in Rulemaking Proceeding.**

Common Sense Intra-MTA Rule

- **The California Public Utilities Commission has stated that it will not set a rate for intra-MTA traffic termination without:**
  - "[A] commitment by the Federal Communications Commission to the use of a rate determined reasonable by this Commission. . . ."
    - CPUC, *Decision Dismissing Application Without Prejudice Due to Pendancy of Federal Proceedings*, slip op., June 3, 2010 [2010 WL 2543043 (Cal.P.U.C.)].
  - The Declaratory Ruling should commit that any CPUC-set rate will be conclusively deemed just and reasonable, and will be fully enforceable in any collection action.

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November 17, 2010

NORTH COUNTY COMMUNICATIONS CORP.

RESPONSE TO VERIZON'S FALSE AND UNSUPPORTED ALLEGATIONS RE CALLS TO CONFERENCE AND CHAT SERVICES AND INTRA-MTA CELLULAR TRAFFIC

CC DOCKET NOS. 01-92 AND 07-135

LIST OF PENDING COLLECTION ACTIONS FOR CONFERENCE/CHAT TRAFFIC, AND ASSOCIATED CLAIMS FOR DAMAGES

Southern District of Iowa

(1) *AT&T Corp. v Superior Telephone Cooperative, et al.*, Docket No. 4:07-cv-00043; damages sought by Aventure -$16,330, 884.84 (other defendants indicated amounts of dispute to be determined at trial).

(2) *Qwest Communications Corporation v. Superior Telephone Cooperative, et al.*, No. 4:07-cv-00078; damages sought to be determined at trial.

(3) *Sprint Communications Company, L.P. v. Superior Telephone Cooperative, et al.*, No. 4:07-cv-00194; damages sought to be determined at trial.

(4) *Aventure Communications Technology LLC v. Sprint Communications Co.*, No. 08-cv-00005; damages sought $6,543,333.83.

(5) *Spencer Municipal Communications Utility v. Global Crossing Telecommunications Inc.*, No. 09-cv-00029; damages sought to be determined at trial.

(6) *Farmers and Merchants v. MCI Communications Services*, No. 09-cv-00055; damages sought to be determined at trial.

(7) *West Liberty Telephone Co. v. MCI Communications Services*, No. 09-cv-00056; damages sought to be determined at trial.

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(8) *MCI Communications Services v. Farmers and Merchants*, No. 09-cv-00059; damages sought to be determined at trial.

(9) *Interstate 35 Telephone Co. v. MCI Communications Services*, No. 09-cv-00213; damages sought to be determined at trial.

(10) *BTC, Inc. v. Sprint Communications Co. L.P.* No. 09-cv-00465; damages sought to be determined at trial.

(11) *Searsboro Telephone Co., Inc. and Lynneville Telephone Co., Inc. v. Qwest Communications Corp.*, No. 09-cv-00308; damages sought $750,000.

(12) *Farmers & Merchants Mutual Telephone Co. of Wayland, Iowa v. Qwest Communications Corp.*, No. 09-cv-00058; damages sought to be determined at trial.

Northern District of Iowa

(13) *MCI Communications Services, Inc. v. Global Conference Partners*, No. 5:07-cv-04095; amounted disputed by Aventure $2,957,961.65 (other defendants indicated amounts of dispute to be determined at trial).

(14) *Great Lakes Communication Corp. v. Global Crossing Telecommunications, Inc.*, No. 09-cv-4056; damages sought $561,094.59.

(15) *Sprint Communications Co, L.P. v. Northwest Iowa Telephone Co.*, No. 10-cv-04004; damages sought $830,000.00.

District of South Dakota

(16) *Northern Valley Communications L.L.C. and Sancom, Inc. v. MCI Communications Services, Inc. d/b/a Verizon Business Services*, No. 1:07-cv-01016 (consolidated with No. 1:07-cv-04106); damages sought by Northern Valley - $1,053,9321 and damages sought by Sancom - $1,807,192.78.

(17) *Sancom, Inc. v. Sprint Communications Company*, No. 4:07-cv-04107; damages sought $417, 366.40.

(18) *Sancom, Inc. v. Qwest Communications Corp.*, No. 07-04147-KES; damages sought $526,671.60.

(19) *Northern Valley Communications L.L.C. v. Sprint Communications Co.*, No. 1:08-cv-01003; damages sought $1,214,452.97.

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(20) *Splitrock Properties Inc. v. Qwest Communications Corp.*, No. 08-cv-04172; damages sought $1,200,000.00.

(21) *Sancom, Inc. v. AT&T Corp.*, No. 4:08-cv-04211; damages sought $5,733,162.90.

(22) *Northern Valley Communications L.L.C. v. AT&T Corp.*, No. 1:09-cv-01003; damages sought $6,191,303.67.

(23) *Northern Valley Communications L.L.C. v. Qwest Communications Corp.*, No. 1:09-cv-01004; damages sought $885,051.51.

(24) *Splitrock Properties Inc. v. Sprint Communications Corp.*, No. 09-cv-04075; damages sought to be determined at trial.

District of Minnesota

(25) *Tekstar Communications, Inc. v. Sprint Communications Company L.P.*, No. 08-cv-1130; damages sought $8,644,960.86.

(26) *Qwest Communications Corp. v. Tekstar Communications, Inc.*, No. 10-cv-00490; damages sought to be determined at trial.

(27) *Mid-Communications, Inc. v. Sprint Communications Company L.P.*, No. 09-cv-03496; damages sought $250,000.

(28) *Minnesota Independent Equal Access Corporation v. Sprint Communications Company, L.P.*, No. 10-cv-02550; damages sought $2,804,488.27.

Southern District of New York

(29) *Aventure Communications Technology LLC v. AT&T Corp.*, No. 07-cv-01780; damages sought $1,319,427.90.

(30) *All American Telephone Co. v. AT&T Corp.*, No. 07-cv-00861; damages sought $3,928,340.31.

District of the District of Columbia

(31) *Great Lakes Communications Corp. v. Level 3 Communications*, No. 09-cv-00888; damages sought $827,901.51 (transferred to Northern District of Iowa, No. 09-cv-4090).

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Western District of Kentucky
(32) *Bluegrass Tel. Co. v. Qwest Communications Corp.*, No. 09-cv-0070; damages sought $683,299.92.

(33) *Bluegrass Tel. Co. v. Sprint Communications Corp.*, No. 10-cv-00104; damages sought $815,944.08.

(34) *Bluegrass Tel. Co. v. Level 3*, No. 10-cv-00075; damages sought $591,168.67.

District of Utah
(35) *Beehive Telephone Co. v. Sprint Communications Corp.*, No. 08-cv-00380; damages sought $929,626.31.

Southern District of California
(36) *North County Communications Corp. v. Sprint Communications Company, L.P.*, No. 09-02685; damages sought $2,000,000.00.

(37) *North County Communications Corp. v. Verizon Select Services, Inc.,* No. 08-01518; damages sought $1,300,000.00.