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September 28, 2011

Ex Parte via Electronic Filing

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

Re: *Connect America Fund*, WC Dkt. 10-90; *A National Broadband Plan for Our Future*, GN Dkt. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Dkt. 07-135; *High-Cost Universal Service Support*, WC Dkt. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Dkt. 01-92; *Federal-State Joint Board on Universal Service*, CC Dkt. 96-45; *Lifeline and Link-Up*, WC Dkt. 03-109.

Dear Ms. Dortch:

On Monday, September 26, 2011, Richard S. Whitt, Director and Managing Counsel for Telecom and Media Policy with Google Inc. and the undersigned met with Rebekah Goodheart, Associate Bureau Chief, Jenny Prime, Legal Counsel, Al Lewis, Chief, Pricing Policy Division, Marcus Maher, Deputy Division Chief, Pricing Policy Division, and Victoria Goldberg, Attorney Advisor, Pricing Policy Division, all of the Wireline Competition Bureau, to discuss the above-referenced dockets.

Specifically, we explained that to promote necessary incentives to expedite the transition to all-Internet Protocol (IP) networks, the FCC as a policy matter should not impose outdated and inflated access charges on any Voice-over-IP (VoIP) services, and should instead adopt a bill-and-keep methodology for all IP traffic.¹ We stated that if the Commission nevertheless decides to impose per-minute carrier access charges on providers of VoIP services on a transitional basis, such charges must be carefully targeted. We noted that IP services have been serving as key drivers of economic expansion and increased productivity throughout the nation, which benefits could be jeopardized by new per-minute charges designed for telecommunications carriers. We highlighted that many so-called “over-the-top” VoIP applications are offered to consumers free or at extremely low rates, so that even relatively modest transitional charges still could undermine their market viability. In many cases, providers could be compelled to pull such offerings from the marketplace or abandon their development. We also stressed that numerous VoIP services are information services under the

¹ See Letter from Richard S. Whitt to Marlene H. Dortch, WC Dkt. 10-90, *et al.* (filed September 21, 2011).

Communications Act, or online applications not even within the FCC's jurisdiction. These legal conclusions only further underscore why these types of IP-enabled services should not be subject to per-minute charges designed decades ago for common carriers using a different (and now increasingly outmoded) technology.

We further noted that to avoid inappropriate regulation that would stymie the deployment of innovative new services, including information services offered by users, the FCC's longstanding Part 69 rules were narrowly limited to apply only to "telecommunication" originated or terminated by "telephone companies."² End users expressly are not carriers,³ a designation the Commission repeatedly has affirmed applies to all enhanced services.⁴ Noting previous regulation of interconnected VoIP (IVoIP) as defined in section 9.3 of the FCC's rules, we also discussed the need for the FCC to ensure that telecommunications traffic exchange rules, even on a transitional basis, do not exceed the agency's legal authority. We further discussed previous FCC VoIP definitional distinctions and the implications of potentially extending access charges only to some or all IVoIP services, including services provided for a fee that are transported via managed or specialized IP networks, rather than over the public Internet, and do not require users to purchase separate broadband transmission.⁵ We reiterated our support for the FCC's goal of more efficient, all-IP networks, and urged that FCC action create certainty while allowing room for continued growth of IP services that have been so successful in meeting consumer needs.

Pursuant to the Commission's rules, this notice is being filed in the above-referenced dockets for inclusion in the public record. Please contact me directly should you have any questions.

Sincerely,



Donna N. Lampert
Counsel for Google Inc.

² See, e.g., 47 C.F.R. §§ 69.1, 69.2(b).

³ 47 C.F.R. § 69.2(m).

⁴ See, e.g., *In the Matter of MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 FCC 2d 682, ¶ 83 (1983); *In the Matter of Northwest Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd. 5986, ¶ 20 (1987); *In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, Order, 3 FCC Rcd. 2631, ¶ 2, n.8 (1988); *In the Matter of Access Charge Reform, et al.*, First Report and Order, 12 FCC Rcd. 15982, ¶ 344 (1997).

⁵ See, e.g., *The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, Notice of Proposed Rulemaking, 26 FCC Rcd. 7166, ¶ 25, n.66 (2011).

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cc: Rebekah Goodheart,
Jenny Prime
Al Lewis
Marcus Maher
Victoria Goldberg