

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

PETITION FOR CLARIFICATION OR RECONSIDERATION

Pursuant to Section 1.429 of the Commission’s rules,¹ Onvoy, Inc. and its affiliate, 360networks (USA) inc. (“360networks”), through their undersigned counsel, hereby submit this petition for clarification or, in the alternative, reconsideration of one aspect of the Commission’s *Order*² in the above-captioned rulemaking proceedings. Specifically, the Commission should clarify that where a LEC has already entered into an interconnection agreement to exchange local

¹ 47 C.F.R. § 1.429.

² *In re Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 996 (rel. Nov. 18, 2011) (“*Order*”).

and toll VoIP-PSTN traffic³ on a bill-and-keep basis, the default transitional rates adopted in the *Order*⁴ do not apply even if the agreement contains a change-of-law provision. Alternatively, if the Commission intended to require an increase in the rates agreed upon by LECs for the exchange of VoIP-PSTN traffic from bill-and-keep to the default transitional rates adopted in the *Order*, the Commission should reconsider that decision and revise its rules to prohibit such an outcome.

360networks currently has interconnection agreements with LECs to, among other things, exchange local and toll VoIP-PSTN traffic on a bill-and-keep basis. These interconnection agreements also contain provisions requiring amendments to reflect changes in law. Based on the *Order*, it appears that the Commission intended the parties to continue to exchange local and toll VoIP-PSTN traffic on a bill-and-keep basis notwithstanding such change-of-law provisions.

To begin with, the FCC's intent in the *Order* is to favor negotiated agreements over tariffing of the default transitional rates established in the *Order*. For example, the Commission repeatedly held that LECs are permitted to tariff the default rates for toll VoIP-PSTN traffic "*in the absence of an agreement for different intercarrier compensation.*"⁵ This approach is also consistent with the Commission's decision in the *Order* to bring access traffic within the framework of Section 251(b)(5), which requires LECs to "establish reciprocal compensation

³ See *id.* ¶ 940 (defining "VoIP-PSTN traffic" as "traffic exchanged over PSTN facilities that originates and/or terminates in IP format").

⁴ See *id.* ¶¶ 944-45 (holding that (1) "[d]efault charges for 'toll' VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic," (2) "[d]efault charges for other VoIP-PSTN traffic will be the otherwise-applicable reciprocal compensation rates," and (3) VoIP-PSTN traffic will be "subject to the reductions in intercarrier compensation rates required as part of th[e] transition" to "the new regulatory regime adopted in this Order"); see also *id.* ¶ 801 (setting forth the default transition path to bill-and-keep for terminating traffic, including terminating local and toll VoIP-PSTN traffic).

⁵ *Id.* ¶¶ 933, 944 (emphasis added).

arrangements for the transport and termination of telecommunications.”⁶ As the Commission held, LECs are permitted to tariff the default rates for toll traffic but “carriers remain free to enter into negotiated agreements that differ from the default rates established above, *consistent with the negotiated agreement framework that Congress envisioned for the 251(b)(5) regime* to which access traffic is transitioned.”⁷ The Commission also held that “traffic that historically has been addressed through interconnection agreements will continue to be so addressed.”⁸

Moreover, a change in law requiring LECs that have already agreed to exchange local and toll VoIP-PSTN traffic on a bill-and-keep basis to adopt the default transitional rates would be inconsistent with the intent of the *Order* and the final rules. *First*, according to the Commission, adoption of bill-and-keep as the ultimate end state for intercarrier compensation reform will further a number of public policy goals.⁹ It would therefore be inconsistent for the Commission to force LECs to temporarily depart from a bill-and-keep arrangement where they have mutually agreed to such an arrangement. *Second*, the Commission already recognized that existing bill-and-keep arrangements should continue during the rate transition for non-access traffic when it adopted the final rule providing that “[a]ll Bill-and-Keep Arrangements in effect on December 29, 2011 shall remain in place unless both parties mutually agree to an alternative arrangement.”¹⁰ *Third*, the Commission’s final rules implementing the rate transition for access traffic provide that “[n]othing . . . obligates or allows” a LEC that has intrastate rates lower than

⁶ 47 U.S.C. § 251(b)(5).

⁷ *Order* ¶ 812 (emphasis added).

⁸ *Id.*

⁹ *See id.* ¶¶ 741-752.

¹⁰ 47 C.F.R. § 51.705(c)(1) (effective Dec. 29, 2011).

its functionally equivalent interstate rates to make tariff filings or revisions to increase its intrastate rates to interstate levels.¹¹ Similarly, LECs that mutually exchange local and toll VoIP-PSTN traffic on a bill-and-keep basis (i.e., at a rate of zero) should not be obligated to increase their rates to the default transitional rates only to have those rates ultimately reduced back to zero.

For the foregoing reasons, the Commission should either clarify or reconsider its *Order* to ensure that, regardless of whether the interconnection agreements contain change-of-law provisions, LECs that have entered into such agreements to exchange VoIP-PSTN traffic on a bill-and-keep basis are not required to exchange such traffic pursuant to the default transitional rates established in the *Order*.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Nirali Patel

WILLKIE FARR & GALLAGHER LLP

1875 K Street, NW

Washington, DC 20006

(202) 303-1000

Counsel for Onvoy, Inc. and 360networks (USA) inc.

December 23, 2011

¹¹ See, e.g., 47 C.F.R. §§ 51.907(b)(vi), (c)(3), (d)(iv), (e)(2), (f), (g)(3) (applicable to price cap LECs) (effective Dec. 29, 2011); 47 C.F.R. §§ 51.909(a)(3), (b)(3), (d)(4), (f) (applicable to rate-of-return LECs) (effective Dec. 29, 2011); 47 C.F.R. § 51.911(b)(6) (applicable to CLECs) (effective Dec. 29, 2011).