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Ex parte

VIA ECFS

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

Re: *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*

Dear Ms. Dortch:

On Tuesday, April 24, Lisa Youngers and I, of XO Communications, LLC (“XO”) spoke via telephone separately with Angela Kronenberg, Wireline Legal Advisor to Commissioner Clyburn, and Christine Kurth, Policy Director & Wireline Counsel to Commissioner McDowell, to discuss issues related to assessment of intrastate originating access charges to VoIP-PSTN traffic, in particular requests for the Commission to clarify or reconsider its decision in the *ICC Transition Order*.¹

XO explained that regardless of the Commission’s ultimate decision on prospective application of intrastate originating access charges, the Commission must clarify its intent in the *ICC Transition Order* in order to ensure there is no disparity among carriers during the period beginning with the effective date of the *ICC Transition Order* (December 29, 2011) through the effective date of any prospective decision. The Commission is aware that parties have taken contrary interpretations of the Commission’s intent in the *ICC Transition Order*, as indicated by these statements:

The Commission explicitly stated that LECs that file tariffs to govern situations in which there is no interconnection agreement, must provide that

¹ *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 an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund, WC Docket No. 10-90 et al, Report and Order and Further Notice of Proposed Rulemaking (rel. November 18, 2011) (ICC Transition Order).*

“toll VoIP-PSTN traffic will be subject to charges not more than *originating and terminating* interstate access rates.”²

[T]he Federal Communications Commission (the “Commission”) could not have been more clear that there was no intent to reduce originating intrastate access charges in any manner for rural rate-of-return regulated incumbent local exchange carriers (“RLECs”).³

Various parties have, in turn, implemented disparate provisions in their respective tariffs; therefore, the Commission must ensure a level playing field by clarifying the state of the law and ensuring compliance during this period. Otherwise, carriers that implemented tariff provisions capping VoIP-PSTN rates for both terminating and originating access at interstate rates may be financially disadvantaged vis-à-vis their competitors simply by proactively implementing rate reductions as they believed were necessary to comply with the Commission’s rules. By doing so, carriers such as XO may experience the same “significant revenue impacts” and “unanticipated, disruptive reduction in carriers’ revenues” that troubled those carriers that did not implement the same rate reductions.⁴ Accordingly, the Commission should rectify any disparity by clearly declaring the state of the law after December 29, 2011 and requiring all parties to adjust their billing to comply with the law.

Pursuant to Section 1.1206 of the Commission’s Rules, a copy of this letter is being filed electronically in the above-referenced dockets. If you have any questions, please feel free to contact me at (703) 547-2356.

Respectfully Submitted,

/s/

Tiki Gaugler
Senior Attorney, Regulatory

cc: Angela Kronenberg
Christine Kurth
Sharon Gillett
Randy Clarke
Victoria Goldberg
Dan Ball
Doug Slotten
Pamela Arluk
Richard Kwiatkowski
Rebekah Goodheart
Travis Litman
Deena Shetler

² Letter from Norina T. Moy, Sprint, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al* (filed April 13, 2012)(emphasis in original).

³ Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al* (filed April 13, 2012).

⁴ Letter from Michael D. Saperstein, Jr., Frontier, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al* (filed April 2, 2012); Letter from Jennie B. Chandra, Windstream, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 *et al* (filed March 29, 2012).