



1717 Pennsylvania Avenue,  
N.W.  
12<sup>th</sup> Floor  
Washington, D.C. 20006

Tel 202 659 6600  
Fax 202 659-6699  
www.eckertseamans.com

James C. Falvey  
jfalvey@eckertseamans.com  
Phone: 202 659-6655

July 23, 2012

**Ex Parte**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *In the Matter of Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

Dear Ms. Dortch:

On July 19, 2012, Joseph Kahl, Sr. Director, Regulatory and External Affairs, and Trudy Longnecker, Sr. Manager, Regulatory and External Affairs, of RCN Telecom Services, LLC ("RCN") and I met with Randy Clarke, Doug Slotten, and Rhonda Lien of the Wireline Competition Bureau. The purpose of the meeting was to discuss issues stemming from the implementation of intrastate access rate changes in the first year (July 2012 through June 2013) of the *Connect America Fund Order* ("CAF Order") transition.<sup>1</sup>

RCN is a provider of bundled "triple play" video, voice and Internet access services to residential and small business customers in the Northeast corridor and Chicago. Specifically, RCN offers services in Pennsylvania, New York, Maryland, Massachusetts, Virginia, Illinois, and the District of Columbia. In light of the overlap between RCN's and Verizon's service territories, RCN exchanges significant volumes of switched access traffic with Verizon.

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<sup>1</sup> *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, (Nov. 18, 2011).

The meeting focused on the fact that, in most states, due to what RCN believes are unintended consequences of the *CAF Order*, RCN's intrastate access rates as calculated under the *CAF Order* methodology have proven to be significantly lower than Verizon's intrastate access rates under the same order. To be clear from the outset, RCN has no reason to suspect that Verizon has not calculated its intrastate rates accurately under the Commission's required methodology, as has RCN.<sup>2</sup> Accordingly, and as discussed further below, RCN is not asking the Commission to change the rates filed by Verizon. However, as demonstrated by a chart reviewed during the meeting and attached hereto as Attachment A, RCN's aggregate terminating access rate in Pennsylvania, for example, is \$0.009634, while Verizon's is \$0.018219. RCN's rate is less than 53% of Verizon's rate. In addition, Verizon's rate actually increased, from its pre-transition rate of \$0.014608 to \$0.018219. As indicated in the attached chart, a similar rate imbalance exists in Virginia, where RCN's rate is 55% of Verizon's. (In Virginia, Verizon's rate stayed almost constant, decreasing only slightly.) Because RCN and Verizon exchange large volumes of traffic, this results in an unanticipated and patently unfair cost impact on RCN.

New York was one of the few states where, by the idiosyncrasies of the Commission's chosen methodology, RCN's rates happened to calculate to a higher rate than Verizon's (\$0.022649 for RCN v. \$0.018079 for Verizon). But to add insult to injury, the New York Commission, by a May 24, 2012 order<sup>3</sup> ("*New York Order*"), interfered with the Commission's gradual transition to lower intrastate rates by inhibiting RCN from recovering the full amount of revenue it was entitled to recover under the FCC-required calculations. The New York Commission found that CLEC access rates should continue to be capped in New York at Verizon rate levels,<sup>4</sup> making it impossible for RCN to implement access rates higher than Verizon's in New York. Of course, there is no similar cap on Verizon access rates in other states that would preclude Verizon from recovering at rates that are close to twice as large as RCN's. The Commission should rectify the inequities implicit in its rate calculation mechanism, as compounded by the *New York Order*.

The *CAF Order* is currently on appeal on the issue of whether the FCC has jurisdiction to regulate intrastate access rates. But the *CAF Order* was not stayed and is currently in effect. As such, it is unclear at best that the New York Commission currently has authority to regulate intrastate rates in a manner inconsistent with the *CAF Order*. The *CAF Order* permits LECs "to tariff *the default charges* for intrastate toll traffic at the state level . . . *in accordance with the*

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<sup>2</sup> Price cap LECs calculate their rates pursuant to 47 C.F.R. § 51.907 while CLECs calculate their rates pursuant to 47 C.F.R. § 51.911.

<sup>3</sup> *In the Matter of Compliance with the Federal Communications Commission's Report and Order and Further Notice of Proposed Rulemaking, Released November 18, 2011, Order on Tariff Revisions to Reduce Terminating Intrastate Switched Carrier Access Charges and Reciprocal Compensation* (May 24, 2012).

<sup>4</sup> *New York Order* at 6.

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*timetable and rate reductions set forth above.*<sup>5</sup> The *CAF Order* also requires states to “review how carriers reduce rates *to ensure consistency with the uniform framework . . .*”<sup>6</sup>

RCN, however, is not interested in getting in the middle of a jurisdictional dispute between the Commission and the states, and is much more interested in exploring with the Commission a means to correct this *CAF Order* anomaly. Traditionally, RCN, like most CLECs, has benchmarked its intrastate access rates to Verizon’s and RCN would like to continue to be able to do so during the first year of the transition. This could include, as part of a compromise of sorts, benchmarking in New York state, which would be consistent with the *New York Order*.

Based on the fact that Verizon’s intrastate Dedicated Transport Access Service (“DTAS”) rates have decreased, RCN believes that the anomaly may have resulted from the fact that Verizon took a significant portion of its required rate reductions on DTAS rates that RCN neither purchases nor sells.<sup>7</sup> This makes it impossible for RCN to gain any benefit from these reduced rates or to take a similar approach itself. RCN should not be penalized based upon its product mix. In fact, RCN is a facilities-based provider of a broad array of competitive consumer services to both residential and small business customers, exactly the type of CLEC business model and service mix that the Commission has strongly supported in recent years.

Thank you for your attention to this matter and we look forward to further discussions. As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceeding. Please do not hesitate to contact me with any questions or concerns regarding this matter.

Sincerely,

/s/ James C. Falvey

James C. Falvey  
Counsel for RCN Telecom Services, LLC

cc: Randy Clarke  
Douglas Slotten  
Rhonda Lien  
Joseph Kahl  
Trudy Longnecker

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<sup>5</sup> *CAF Order*, ¶ 812 (emphasis added).

<sup>6</sup> *Id.*, ¶ 813 (emphasis added).

<sup>7</sup> The Commission required reductions to be taken to “transitional intrastate access service” which includes “originating and terminating Dedicated Transport Access Service that was subject to intrastate access rates as of December 31, 2011.” 47 C.F.R. 51.903(j).

# Attachment A

## Switched Access Rate Analysis 7/23/2012

|                       | State  | State  | State  | State   |
|-----------------------|--|--|--|---|
| Rate Elements         | Toll & IXC                                       | Toll & IXC                                     | Toll & IXC   | Toll & IXC                                    |
|                       | RCN<br>Benchmarked<br>Rates Prior to<br>7-3-2012 | RCN<br>Revised Rates<br>Effective 7-3-<br>2012 | Verizon<br>Revised Rates<br>Effective 7-3-<br>2012 | RCN Rates<br>Without NY<br>Benchmark<br>Order |
| <b>TOTAL VZ PA</b>    |  |  |  |   |
| Terminating           | 0.014608   | 0.004989                                       | 0.004989   |   |
| Transitional Charge   |  | 0.0046445                                      | 0.013230   |   |
| Grand Total           |  | 0.009634                                       | 0.018219   |   |
| <b>TOTAL NY</b>       |  |  |  |   |
| <b>IntraLATA</b>      |  |  |  |   |
| Day - Terminating     | 0.031622   | 0.018079                                       | 0.018079   | 0.022649                                      |
| Evening - Terminating | 0.018972   | 0.018079                                       | 0.018079   | 0.022649                                      |
| Night - Terminating   | 0.011093   | 0.018079                                       | 0.018079   | 0.022649                                      |
| <b>InterLATA</b>      |  |  |  |   |
| Day - Terminating     | 0.030203   | 0.018079                                       | 0.018079   | 0.022649                                      |
| Evening - Terminating | 0.018121   | 0.018079                                       | 0.018079   | 0.022649                                      |
| Night - Terminating   | 0.010596   | 0.018079                                       | 0.018079   | 0.022649                                      |
| <b>TOTAL VA</b>       |  |  |  |   |
| Terminating           | 0.012698   | 0.006909                                       | 0.012548   |   |
| Transitional Charge   | Option not<br>permitted in VA                    | Option not<br>permitted in VA                  | Option not<br>permitted in VA                      |   |