

December 17, 2012

Ex Parte

Ms. 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; *High Cost Universal Service Support*, WC Docket NO. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal State Joint Board on Universal Service*, CC Docket No. 96-45.

Dear Ms. Dortch:

On December 13, 2012, Greg Rogers of Bandwidth.com, Inc. (“Bandwidth”), Tamar Finn of Bingham, McCutchen on behalf of Bandwidth, Andrea Pierantozzi and Michael Mooney, of Level 3 Communications, LLC (“Level 3”), and John Nakahata, on behalf of Level 3, met separately with:

- Michael Steffen, Legal Adviser to the Chairman, Julie Veach, Chief, Wireline Competition Bureau, and Deena Shetler, Victoria Goldberg, Randy Clarke, and Travis Littman of the Wireline Competition Bureau; and
- Richard Welch and James Carr of the Office of General Counsel, Victoria Goldberg, Randy Clarke, and Robin Cohn of the Wireline Competition Bureau.

The Bandwidth and Level 3 attendees presented the arguments previously set forth in their September 10, 2012 ex parte letter, which is incorporated by reference herein.¹ In particular, we discussed the fact that AT&T continues to ignore the definition of End Office Access Service in 51.903(d)(3) as “the functional equivalent of the incumbent local exchange carrier access service provided by anon-incumbent local exchange carrier”² and separately referencing 47 C.F.R. § 69.106 (“local switching”) and § 69.154 (“per minute carrier common

¹ See Letter of John T. Nakahata, Counsel, Level 3 Communications, LLC, and Tamar Finn, Counsel, Bandwidth.com, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337, GN Docket No. 09-51, CC Dockets No. 01-92, 96-45 (filed Sept. 10, 2012)(“Level 3/Bandwidth September 10, 2012 Ex Parte Letter”).

² 47 C.F.R. §51.903(d)(3).

line charge”). Moreover, the Commission previously set forth the key functions of a local switch, as distinguished from a loop or remote terminal in a loop, in its revised Responsible Accounting Officer Letter No. 21 (“Revised RAO 21”).³ Notably, as we have previously documented, a CLEC and its over-the-top VoIP partner perform each of the functions of a local switch set forth in Revised RAO 21, and the broadband ISP does not.⁴

We also noted that nothing in the language of the VoIP symmetry rule,⁵ or the accompanying text of the *USF/ICC Transformation Order*,⁶ indicates any intent to limit the scope of the VoIP symmetry rule to facilities-based VoIP. It is important to recognize that this rule does not create a “new” revenue stream for CLECs that serve VoIP providers, but provides certainty as to a revenue stream that, prior to the *USF/ICC Transformation Order*, had been often in dispute between providers, as with many other aspects of VoIP-PSTN intercarrier compensation. Significantly, in the *USF/ICC Transformation Order*, the Commission, for the first time, adopted rules explicitly addressing when access charges would be paid by, and could be charged by, carriers working with VoIP providers. The same is true for all other telecommunications carriers involved in these call flows. AT&T is attempting to pull at one thread of this framework to reestablish asymmetric compensation (AT&T can charge access charges for traffic sent to it by an interconnected VoIP provider through a CLEC, but does not have to pay the same access charges for traffic between the same end points in the reverse direction) as to traffic it exchanges with CLECs serving over-the-top VoIP providers, but to retain the benefits of certainty that it received with respect to the access charges that it levies for VoIP-originated traffic.

The RAO 21 definition of the functions of end office switching also provides a ready basis to distinguish the access charge treatment of CLECs and their interconnected VoIP provider partners from CMRS providers. In the case of over-the-top VoIP, the CLEC and VoIP provider together provide all of the RAO 21 switching functions, and thus the CLEC can assess access charges for the end office local switching function. Moreover, because the VoIP provider has no right to interconnection with telecommunications carriers, the VoIP provider cannot provide all of the RAO 21 switching functions on its own, but can only do so when partnered with a CLEC. By contrast, in the case of a CMRS carrier interconnecting with other carriers

³ See Classification of Remote Central Office Equipment of Accounting Purposes, RAO Letter 21, DA 92-1225, 7 FCC Rcd. 6075 (Common Carrier Bur. 1992), *Petitions for Reconsideration and Applications for Review of RAO 21*, FCC 97-241, 12 FCC Rcd. 10061 (1997).

⁴ See Level 3/Bandwidth September 10, 2012 Ex Parte Letter at 10-12 and Attachment A.

⁵ See 47 C.F.R. §§ 51.913(b) and 61.26(f).

⁶ See *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, 26 FCC Rcd. 17663, ¶¶761-63 (2011)(“*USF/ICC Transformation Order*”).

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through a CLEC (such as where the CLEC provides transit services), the CMRS carrier and not the CLEC provides the RAO 21 switching functions. In that case, the CLEC appropriately may not charge for end office functions because it is not providing those functions, but rather the CMRS carrier is doing so. Moreover, the CMRS carrier has statutory interconnection rights and can perform all of the RAO 21 switching functions without using the CLEC as a means to interconnect with the PSTN.

Please contact us if you have any questions.

Sincerely,



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