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December 21, 2012

VIA ECFS

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

Re: *In the Matter of Connect America Fund; Establishing Just and Reasonable Rates for Local Exchange Carriers; A National Broadband Plan for Our Future; Technological Transition of the Nations Communications Infrastructure*; *Developing a Unified Intercarrier Compensation Regime*; WC Dkt Nos. 10-90, 07-135; GN Dkt. Nos. 09-51, 12-353; CC Dkt No. 01-92

Dear Ms. Dortch:

On December 19, 2012, Alex Gertsburg, Executive Vice President, General Counsel, and Kyle Bertrand, Vice President, Network Planning and Regulatory, of Broadvox, Inc. ("Broadvox"); and Donna N. Lampert and the undersigned of Lampert, O'Connor & Johnston, P.C., met with Sean Lev, General Counsel, and Julie Veach, Rebekah Goodheart, Deena Shetler, Victoria Goldberg, Robin Cohn, and Travis Litman of the Wireline Competition Bureau to discuss the above-referenced dockets.

Specifically, we expressed support for the access reciprocal compensation transition framework established by the FCC for VoIP traffic in the *USF/ICC Transformation Order*[1] and the need for a stable and functional transition path for VoIP services compensation going forward. Broadvox explained that as a provider of competitive, IP-based services, it recognized early on that "converged IP networks are more dynamic, versatile, resilient, and cost-efficient than legacy TDM networks."[2] Broadvox outlined the VoIP services it and its operating and affiliated companies, including Infotelecom, LLC, provide and described the on-the-ground experience and challenges it faces as a VoIP provider implementing the FCC's VoIP compensation framework set forth in the *USF/ICC Transformation Order*.

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[1] *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663 (2011) ("*USF/ICC Transformation Order*"); Second Order on Reconsideration, 27 FCC Rcd. 4648 (2012).

[2] AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition at 4, GN Dkt. 12-353 (filed Nov. 7, 2012) ("AT&T Petition") citing *USF/ICC Transformation Order* at ¶ 892.

Broadvox stressed that it has devoted significant competitive resources to implement the VoIP access reciprocal compensation framework. Broadvox explained that its tariffs conform fully to the FCC's access reciprocal compensation regulations, and the majority of telecom carriers abide by these rates and terms. At the same time, however, one outlier – AT&T – has refused to pay for VoIP traffic. Broadvox described a pattern and practice of refusing to pay (and "disputing") VoIP charges on multiple and shifting grounds, despite the clear mandates of the FCC's *USF/ICC Transformation Order*. For example, as one of the various grounds it apparently relies upon as a basis for its refusal to pay, AT&T has alluded to its position on payment for "over-the-top" VoIP traffic, as documented to date in the record before the FCC.

Broadvox reiterated its support – consistent with FCC goals – for establishing contractual arrangements for the exchange of VoIP traffic and noted that as a practical matter, mutually agreeable private arrangements to govern VoIP (and other) traffic compensation require good faith negotiations by all parties.[3] Broadvox also described the significant roadblocks it has encountered, including the lack of good faith negotiations despite Broadvox's strong willingness to enter into contractual relationships. Broadvox expressed its overarching concern that self-help refusals to pay lawful rates for VoIP traffic constitute an attempt to extract unreasonable rates and terms rather than reach a true marketplace-based arrangement.[4]

Broadvox explained that despite the FCC's laudable work to create a more stable environment for the exchange of VoIP traffic, Broadvox now finds itself again facing the need to divert its resources from its core VoIP competition mission in order to address baseless disputes. Indeed, while Broadvox immediately was subject to payment obligations for its VoIP traffic as required by the framework, it faced non-payment issues as soon as the new VoIP framework established in the *USF/ICC Transformation Order* went into effect. Put simply, despite the intended goal of the FCC's *USF/ICC Transformation Order* to reduce litigation over VoIP traffic compensation, this failure by some to abide by the VoIP framework is undermining the transition envisioned by the FCC.

Broadvox underscored the need for the FCC to develop a full record of the practical challenges VoIP providers and telecommunications competitors currently face in exchanging traffic as the FCC considers the deregulation requests of AT&T and others regarding the transition to a new IP-centric regime.[5] Broadvox urged the FCC to obtain evidence that the marketplace is functioning and carriers are indeed engaging in good faith negotiation practices as

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[3] *USF/ICC Transformation Order* at ¶ 964 ("[G]ood-faith negotiations generally are preferable to tariffing as a means of implementing carriers' compensation obligation. . . . [M]aintaining a continuing role for tariffs during the transition to a new intercarrier compensation framework is a reasonable approach.").

[4] *See id.* at ¶¶ 961, n.1980 and 700 (cautioning parties from engaging in self-help measures).

[5] *See* AT&T Petition; Petition of the National Telecommunications Cooperative Association For a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Dkt. 12-353 (filed Nov. 19, 2012); Petition of USTelecom for Declaratory Ruling that Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Service (filed Dec. 19, 2012).

it consider next steps. Broadvox expressed its willingness to provide additional information that would assist the FCC in this regard.

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 should you have any questions.

Sincerely,

Jennifer P. Bagg
Counsel for Broadvox

cc: Sean Lev
Julie Veach
Rebekah Goodheart
Deena Shetler
Victoria Goldberg
Robin Cohn
Travis Litman