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February 28, 2013

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
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:

David Young, Curtis L. Groves, and the undersigned of Verizon met on February 26, 2013, with Deena Shetler, Randy Clarke, Lynne Engledow, Brenda Leong, Rhonda Lien, Alec MacDonell, and Don Sussman of the Wireline Competition Bureau to discuss recent *ex parte* filings in which Level 3 and others have argued that they are entitled to assess local end office switching charges when they route over-the-top VoIP traffic over the public Internet.¹ We explained in the meeting that Verizon believes the Commission has settled this issue and determined that CLECs cannot assess local end office switching charges in this situation.

In its discussion of VoIP-PSTN intercarrier compensation in the *USF-ICC Transformation Order*, the Commission reiterated its rule that carriers cannot charge for access services they do not perform.² And in the *YMax Order*, the Commission had previously made clear that an over-the-top provider does not provide end-office switching.³

¹ See, e.g., Letter from John T. Nakahata, counsel for Level 3 Communications, *et al.*, to Marlene H. Dortch, FCC, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket NO. 05-337; CC Docket Nos. 01-92 & 96-45 (Dec. 17, 2012).

² “[T]he right to charge does not extend to functions not performed by the LEC or its retail service partner.” *Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 970 n.2028 (2011) (“*USF-ICC Transformation Order*”).

³ See *AT&T Corp. v. YMax Commc’ns*, Memorandum Opinion and Order, 26 FCC Rcd 5742, ¶¶ 36-45 (rejecting the argument that YMax, by routing traffic from its switch to its customers over the Internet is providing end office switching); ¶ 44 (rejecting the

Shortly after the Commission issued the *USF-ICC Transformation Order*, YMax asked the Commission to clarify that YMax was entitled to charge the equivalent of full ILEC switched access rates – in other words, to charge the end office switching rate in addition to the tandem switching rate and other elements.⁴ YMax explained that in its situation, “the physical transmission facilities connecting the IXC and the VoIP service customer are provided in part by one or more unrelated ISPs (as is the case with YMax or “over-the-top” VoIP providers such as Skype or Vonage)...”.⁵ Responding to YMax’s request, the Commission in the *Clarification Order* disagreed with YMax’s position and reiterated that “section 51.913(b) expressly states that “[t]his rule does *not* permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service.”⁶

We noted that, as the FCC has long held, the defining characteristic of end office switching is the “actual connection of [subscriber] lines and trunks”⁷. We explained that unlike facilities-based VoIP providers who typically provide this functionality, Level 3 and other CLECs that partner with over-the-top VoIP providers do not do this. Instead, like YMax, they simply hand off voice packets to Internet Service Providers (ISPs). There may be many ISPs standing between the CLEC and the called party, depending on how the call routes through the cloud. It is those ISPs’ routers, not the CLEC or its over-the-top VoIP partner, that route voice packets to the line serving the called party. In this scenario, Level 3 is not performing end office switching, and neither is its retail VoIP partner.

We explained in the meeting that, like YMax, Level 3 does not perform end office switching, and that therefore the Commission’s rules do not permit Level 3 and other CLECs that do not perform that functionality to assess end office switching charges. We further explained that if the Commission intends a different outcome, the Commission would have to change its existing rules, which would have prospective effect only.

argument that the Internet is a local loop or its functional equivalent); ¶ 41 (noting that multiple entities other than YMax and its VoIP partner, MagicJack, “must provide physical transmission facilities to complete” a call to a MagicJack customer); and ¶ 40 (explaining that “end office switching rates are among the highest” switched access rates because of the “substantial investment required to construct the tangible connections between [LECs] and their customers”) (2011) (“*YMax Order*”).

⁴ See Letter from John B. Messenger, YMax, to Marlene H. Dortch, FCC, WC Docket Nos. 10-90, 05-337, 07-135 & 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92 & 96-45; WT Docket 10-208 (Feb. 3, 2012).

⁵ *Id.* at 2.

⁶ *Connect America Fund, et al.*, Order, 27 FCC Rcd 2142, ¶ 4 (2012) (“*Clarification Order*”), quoting 47 C.F.R. § 51.913(b) (emphasis added in the *Clarification Order*).

⁷ *In the Matter of Petitions For Reconsideration and Applications For Review of RAO 21*, 12 FCC Rcd. 10061, 1066 ¶ 11 (1977) (“*RAO Recon Order*”).

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This letter is being filed electronically pursuant to Section 1.1206 of the Commission's rules. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Byrnes". The signature is written in a cursive style with a large initial "A".

cc: Deena Shetler
Randy Clarke
Lynne Engledow
Brenda Leong
Rhonda Lien
Alec MacDonell
Don Sussman