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**May 14, 2013**

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**REDACTED – FOR PUBLIC INSPECTION**

**VIA HAND DELIVERY  
VIA ECFS**

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

Attention: Wireline Competition Bureau

RE: Emery Telcom Petition for Limited Waiver of 47 C.F.R. § 51.917(c)(ii)  
*Connect America Fund*, et al., WC Dockets No. 10-90, 07-135, 05-337, 03-109;  
GN Docket No. 09-51; CC Dockets No. 01-92, 96-45; WT Docket No. 10-208.

Dear Ms. Dortch:

The law firm of Blooston, Mordkofsky, Dickens, Duffy, & Prendergast, LLP hereby submits the enclosed written ex parte on behalf of Emery Telcom (Emery) in the above-referenced proceeding.

Emery seeks confidential treatment for this ex parte under the Third Protective Order in this proceeding.<sup>1</sup> Pursuant to the Protective Order, two redacted copies of Emery's ex parte, bearing the legend, "REDACTED – FOR PUBLIC INSPECTION" are enclosed herewith, and a copy is being filed electronically via ECFS. A non-redacted copy bearing the legend, "CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NOS. 10-90, 07-135, 05-337, 03-109, GN DOCKET NO. 09-51, CC DOCKET NO. 01-92, 96-45, WT DOCKET NO. 10-208 BEFORE THE FEDERAL COMMUNICATIONS

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<sup>1</sup> *In re Connect America Fund, et al.*, Third Protective Order, WC Docket No. 10-90, et al., DA 12-1418, released August 30, 2012.

COMMISSION” is concurrently being submitted under separate cover, with copies to Mr. Gregory Haledjian.

If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Mary J. Sisak

Mary J. Sisak  
Counsel for Emery Telcom

/encl

CC: Gregory Haledjian

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GN Docket No. 09-51; CC Dockets No. 01-92, 96-45; WT Docket No. 10-208.

Dear Ms. Dortch:

Emery Telcom (Emery), by its attorney, hereby files confidential information in connection with its above-referenced request for waiver. In the Petition, Emery requests a waiver of the Commission's rules which determine the calculation of 2011 Rate-of-Return Carrier Base Period Revenue by limiting the Transitional Intrastate Access Service component of that calculation to intrastate access revenues received by March 31, 2012. Emery has sought a waiver to permit it to include within its Transitional Intrastate Access Service component of Base Period Revenues amounts received after March 31, 2012.

As shown by Emery in the Petition, due to a billing system error, a large percentage of calls associated with three direct trunks were not rated and billed until the end of FY2011. Upon discovery of the error, Emery was able to submit corrective bills to the affected interexchange carriers before the end of 2011. While one of the interexchange carriers paid the invoice in full prior to the March 31, 2012 deadline, the other interexchange carriers did not pay until after the deadline date, due to a long process of reviewing the invoices and delays caused by their internal administrative processes. Because these interexchange carriers failed to pay the invoices before

March 31, 2012, \$ [REDACTED] of FY2011 intrastate access revenue was not included in Emery's calculation of 2011 Rate-of-Return Carrier Base Period Revenue, which is more than 50% of Emery's FY2011 intrastate access revenue. Emery seeks a waiver of Section 51.917 of the Commission's rules to include these revenues in the FY2011 calculation.

Because of the one-time corrective billing described above, a significant portion of intrastate access service revenues billed for FY2011 were not received until after March 31, 2012, and the Base Period Revenue calculated for Emery pursuant to the Commission's rule is significantly and unrealistically low. Moreover, this issue represents a unique, one-time event. As shown, all charges ultimately were paid and the traffic identification issue that delayed Emery from billing a significant percentage of its access revenue has been corrected, such that Emery has successfully billed and collected this access revenue on a go-forward basis and has not faced any significant amounts of unbillable traffic since that time. Accordingly, this is not a typical uncollectible situation and it is not likely that Emery will have a significant percentage of uncollected revenues in the future. The granting of this waiver provides accurate establishment of Base Period Revenue consistent with Emery access demand going forward and at levels consistent with the FCC's stated reform objectives providing proper levels of continued investment and plant maintenance.

Accordingly, Emery asks the Commission to expeditiously grant this request.

Respectfully submitted,

/s/ Mary J. Sisak

Mary J. Sisak  
Counsel for Emery Telcom

CC: Gregory Haledjian