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July 1, 2013

Notice of Ex Parte

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

Re: *Connect American Fund, et al.*, WC Dkt. 10-90; GN Dkt. 09-51; WC Dkt. 07-135; WC Dkt. 05-337; CC Dkt. 01-92; CC Dkt. 96-45; WC Dkt. 03-109

Dear Ms. Dortch:

Beginning in 2012, parties have asked the Commission to reaffirm that “equivalent functionality” for end office switching does not require a CLEC and its affiliated or unaffiliated VoIP partner to provide the last mile facility to the end user under the Commission’s VOIP symmetry rule, codified at 47 C.F.R. § 51.913 (“Transition for VoIP–PSTN traffic”).¹ CoreTel Virginia, LLC (“CoreTel”) supports previous commenters’ position that, in the context of VoIP–PSTN traffic, “the equivalent functionality of end office switching is the intelligence and infrastructure that manages the interaction with the end user’s telecommunications or VoIP service and that initiates call set-up and takedown;”² and that “[n]either the last mile loop nor the broadband Internet access provider’s router that merely transits traffic to/from the end user performs the functionality equivalent to end office switching because it does not manage the end user’s interaction and initiate call set-up and takedown.”³

On two occasions, Verizon has suggested that a recent opinion by the Eastern District of Virginia,⁴ which CoreTel has appealed to the Fourth Circuit, should guide the Commission in its resolution of these issues.⁵ It should not. The court there found, in relevant part, that “CoreTel

¹ See Letter from Tamar E. Finn, Bingham McCutchen LLP, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 at 2 (June 11, 2012).

² *Id.*, at 3.

³ *Id.*

⁴ *CoreTel Virginia, LLC v. Verizon Virginia LLC*, 1:12-CV-741, 2013 WL 1755199 (E.D. Va. Apr. 22, 2013) (“CoreTel”), appeal pending sub nom *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, Case No. 13-1765 (4th Cir.).

⁵ See Letter from Alan Buzacott, Executive Director, Verizon Federal Regulatory, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 10-90 at 2-3 (May 6, 2013); and see, Letter from Alan Buzacott, Executive Director, Verizon Federal Regulatory, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 10-90 at 3 (May 24, 2013) (“CoreTel further underscores that the Commission has answered the question Level 3 and others continue to raise.”).

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does not route calls to and from its customers via a physical transmission facility. Instead, it uses an IP cloud to send calls from its switches to its customers.”⁶ Because CoreTel’s tariff included the terms “termination” and “end user lines,” the court relied upon the Commission’s decision in *YMax Communications Corp. v. AT&T Corp.*, 26 FCC Rcd. 5742 (2011)(“*YMax*”) to find that CoreTel did not provide end office switching as defined in its tariffs. The court overlooked or simply declined to address: (1) the fact that *YMax* was based on “the specific configuration of *YMax*’s network architecture;”⁷ (2) obvious differences between the network architecture at issue in *YMax* and CoreTel’s, including, for example, the court’s acknowledgement that, unlike *YMax*, CoreTel “send[s] calls from its switches to its customers;”⁸ and (3) language in CoreTel’s federal and state tariffs implementing the Commission’s VOIP symmetry rule, which was adopted after *YMax*.⁹ Accordingly, the court’s opinion in *CoreTel* sheds no light on the legal issues commenters have presented to the Commission for clarification.

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 proceedings. If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey
James C. Falvey
Justin L. Faulb
Counsel for CoreTel Virginia, LLC

⁶ *CoreTel*, at WL *5.

⁷ *Connect Am. Fund A Nat'l Broadband Plan for Our Future*, 26 FCC Rcd. 17663, n.2028 (2011) (referencing with approval comments filed by Level 3).

⁸ Indeed, CoreTel operates three switches in Virginia (one in each of LATAs 246, 248 and 252).

⁹ *See, e.g.*, Core Communications, Inc. et al. FCC Tariff No. 3, at 5th Rev'd Page No. 13 (“Switched Access Service includes services and facilities provided for the origination or termination of any interstate or foreign communications regardless of the technology used in transmission, including, but not limited to, local exchange, long distance, and data communications services that may use either TDM or Internet Protocol (“IP”) or other technology... Switched Access Services includes the termination of interexchange telecommunications traffic to any retail end user, either directly or via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. § 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. § 153(36), that does not itself seek to collect reciprocal compensation charges prescribed by this subpart for that traffic, regardless of the specific functions provided or facilities used.”).