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December 23, 2013

Notice of Ex Parte

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

Re: IB Docket No. 13-193

Dear Ms. Dortch:

On December 19, 2013, Kyle Bertrand, VP, Network Planning and Regulatory, Broadvox-CLEC, LLC (“Broadvox”), and the undersigned, joined by Justin Faulb, Esq. of Eckert Seamans Cherin & Mellott, LLC, met with Hillary Burchuk, John Schauble, AJ Glusman, Pamela Arluk, and Brigid Calamis from the Federal Communications Commission (“Commission”) to discuss AT&T’s ongoing anticompetitive nonpayment of access charges targeted at Broadvox’s prepaid calling card (“Prepaid Card”) customers and the manner in which the AT&T/Leap Transaction will expand the reach of AT&T’s actions in the future.

Broadvox discussed its Petition to Deny,¹ and AT&T’s continued engagement in bad faith disputes regarding Prepaid Card traffic. Broadvox discussed the fact that Broadvox has invoiced AT&T over \$4,000,000 in access charges over the past 18 months and AT&T has only paid approximately 13% of the outstanding balance. See attached Presentation, *Broadvox-CLEC, LLC Opposition to Acquisition by AT&T Corp. of Leap Wireless International, Inc.* (“Presentation”). AT&T’s nonpayment, which is consistent with its longstanding history of such tactics² and ongoing disputes with several other carriers,³ is yet another example of AT&T’s general anticompetitive behavior whereby it unilaterally refuses to pay for legitimate switched access services. Rather than compete directly with Broadvox’s Prepaid Card customers, AT&T is using the bottleneck monopoly in terminating access services⁴ to put undue pressure on its Prepaid Card competitors and carriers such as Broadvox that serve them. The Commission should not permit AT&T to penetrate deeper into the market for prepaid wireless services

¹ See Broadvox Petition to Deny, IB Docket 13-193, (Sept. 27, 2013) (“Broadvox Petition to Deny”).

² Presentation at 11.

³ *Id.* at 7.

⁴ See *id.* at 8-9.

through the Leap transaction while it is putting such anticompetitive pressure on Prepaid Card providers. AT&T's actions should be of particular concern to the Commission given that 89% of the long distance traffic which AT&T sends to Broadvox for termination is wireless traffic.⁵ By merging with Leap, AT&T will control more of the traffic being sent to Broadvox and could exacerbate nonpayment issues of Broadvox and other similarly situated providers.

Broadvox discussed the fact AT&T's efforts to use its actions in one market to put competitive pressure on its competitors in other markets is precisely the type of anticompetitive activity that should be the focus of the Commission's review of the AT&T-Leap merger. As AT&T seeks to deepen its penetration into wireless prepaid services, the Commission should protect competitors and consumers alike against AT&T's unique ability to use its presence in virtually every segment of U.S. telecommunications markets to put anticompetitive pressure on competitors such as Broadvox.

Broadvox reminded the Commission of its mandate to balance potential public interest benefits of the transaction against public interest harms. The Commission has previously found that a transaction can increase the incentives and opportunities to engage in anticompetitive activity where the acquiring entity "has been less than willing to cooperate with competitors" than the acquired entity.⁶ In that case, the Commission imposed conditions on the merger to address the anticompetitive concerns. AT&T is Broadvox's only customer that routinely does not pay its properly billed switched access charges, or at least provide and reasonably reconcile industry-standard disputes in the event of any billing disagreements.

Broadvox discussed the importance of Prepaid Cards to members of the armed forces, immigrants, and low-income individuals, and noted that the FCC has also recognized the significance of Prepaid Cards for these critical constituencies.⁷ Broadvox also emphasized the anti-consumer implications of AT&T's self-help nonpayment, pointing to AT&T's recent increases in its own calling card rates in tariff filings with the Maryland Public Service Commission.⁸ AT&T has even recognized that it has targeted Prepaid Call customers in part because they "offer to callers the ability to place an international call for the same price as an ordinary long distance call"⁹ The Commission should ensure that AT&T is not permitted to expand the reach of these anti-consumer practices, which will have the effect of higher prices for consumers, by denying AT&T's application to acquire Leap.

Broadvox asserted that the Commission should ensure that this transaction does not spread the adverse influence of AT&T's anticompetitive practices. Broadvox asked the Commission to designate the assignment applications for hearing and to deny the merger. This is consistent with the message Broadvox delivered in meetings with the Department of Justice

⁵ See Broadvox Petition to Deny, Exh. A.

⁶ See *Applications Filed for the Transfer of Control of Embarq Corp. to CenturyTel, Inc.*, Memorandum Order and Opinion, 24 FCC Rcd. 8741, ¶ 33 (2008).

⁷ See Presentation at 3.

⁸ *Id.* at 14.

⁹ *Id.* at 12.

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Antitrust Division on Tuesday, December 3. In the event the Commission decides to allow the merger to go forward, Broadvox asked the Commission to condition the transaction to ensure that the reach of AT&T's anticompetitive strategies is not extended when AT&T takes control of Leap's traffic and customer base.¹⁰

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. As noted, the Presentation referred to throughout the meeting is attached. 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
Counsel for Broadvox-CLEC, LLC

cc: Hillary Burchuk
John Schauble
AJ Glusman
Pamela Arluk
Brigid Calamis

¹⁰ Broadvox continued to advocate the conditions detailed by Broadvox in its Petition to Deny. *See* Broadvox Petition to Deny, at 17-18