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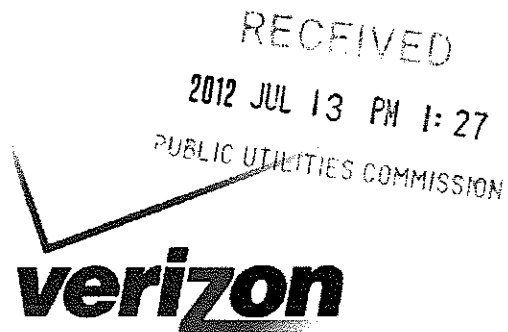

July 13, 2012

Ms. Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Re: RI Docket No. 3735 – In the Matter of the Application of YMax Communication Corp. To Revise Carrier-to-Carrier Tariff

Dear Ms. Massaro:

On June 29, 2012, The AT&T Entities ("AT&T") filed a Motion to Reopen the Proceeding of YMax Communication Corp. Regarding the Automatic Approval of the Tariff Application in the above- referenced proceeding because the tariff changes might allow YMax to charge for switched access functions it does not provide. Verizon Rhode Island shares AT&T's concerns and supports AT&T's Motion.

YMax claims that its filing complies with the FCC's VoIP-PSTN intercarrier compensation regime established in its November 18, 2011 Order.[1] In fact, YMax's proposed tariff language is directly contrary to the FCC Order and rules. As the Commission explained, its rules are "intended to prevent double billing and charging for functions not actually provided."[2] Rule 51.913(b) expressly states that is "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." 47 C.F.R. § 51.913(b). YMax's tariff, if implemented, would violate this Rule because it could be interpreted to permit YMax to charge full access rates so long as it is listed as providing the

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[1] *In re: Connect America Fund, et al.*, 26 FCC Rcd 17663 (Nov. 18, 2011) ("FCC Order")

[2] *YMax Clarification Order*, DA 12-298 (FCC Feb. 27, 2012)

calling party or dialed number and provides "any portion of the transport or termination" of traffic. In other words, YMax's tariff would arguably allow it to collect full switched access rates for switched access functions that neither it (nor any VoIP partner) provides.

As AT&T explains, this is exactly the interpretation of the FCC rule that YMax advanced and the FCC rejected. In a February 27, 2012 Order, the FCC's Wireline Competition Bureau made clear that Rule 51.913(b) expressly prohibits a carrier from charging for functions that neither it nor a VoIP partner performs. Because YMax's tariff purports to allow it to do just that, it must be rejected — or at least suspend it for investigation, as other state Commissions (including Colorado, Georgia, Maryland, West Virginia, and Kentucky) have done.

Finally, the Commission should reject YMax's attempt to dismiss AT&T's Motion on purely procedural grounds and to effectively preclude Commission review of YMax's tariff. In its objection, YMax contends that AT&T's Motion should be dismissed because AT&T failed to file a "motion to intervene" in Docket No. 3735 pursuant to Rule 1.13.[1] To the extent AT&T's failure to file a motion to intervene is a "procedural defect," it is one that can easily be cured by the filing of such a motion. In addition, while AT&T's Motion is currently styled as a motion to reopen, it could reasonably have been and still could be commenced as a petition seeking to investigate and modify YMax's tariff pursuant to Rule 110(a).[2] (A motion to intervene is not required to file such a petition). Even in the absence of AT&T's Motion, the Commission has the authority to reopen this proceeding on its own initiative to consider additional evidence under Rule 1.26(b).[3] The Commission could elect to review YMax's tariff using any of these alternatives.

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[1] *See Objection to the Motion of the AT&T Entities to Reopen the Proceeding of YMAX Communications Corp. Regarding the Automatic Approval of the Tariff Application*, R.I. Docket No. 3735 (*"YMax's Objection"*).

[2] Rule 110(a) of the Rules of Practice and Procedure provides as follows: "Petitions for relief under any statute or other authority delegatedto the Commission shall be in writing, shall state clearly and concisely the petitioner's grounds of interest in the subject matter, the facts relied upon, and the relief sought, and shall cite by appropriate reference the statutory provision or other authority relied upon for relief. *See, e.g.*, Order, *In Re: AT&T Communications of New England Petition to Investigate, Clarify and Modify Accordingly Level 3's Recent Access Tariff Revisions*, R.I. Docket No. 3890 (Jan. 23, 2008).

[3] Rule 1.26(b) provides that: "At any time prior to the issuance of a written order, after notice to the parties and an opportunity to be heard, the Commission may reopen the proceeding for the receipt of further evidence."

Regardless of the procedural vehicle the Commission ultimately choses, AT&T's Motion raises substantial issues concerning YMax's tariff that warrant further investigation. Verizon joins AT&T in asking the Commission to reopen the automatic approval of the tariff application and initiate an investigation of YMax's tariff.

Respectfully submitted,

Keefe B. Clemons

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