

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

In the Matter of:)	
Petition for Investigation Regarding)	Docket No. 4344
YMax Communication's Tariff Filing dated)	
May 31, 2012 to Implement Revisions Pursuant)	
to FCC's Order (issued November 18, 2011))	
Regarding the Treatment of Toll VoIP-PSTN Traffic)	

**AT&T'S STATEMENT REGARDING YMAX COMMUNICATIONS CORP.'S
WITHDRAWAL OF TARIFF LANGUAGE**

AT&T Rhode Island, AT&T Communications of Rhode Island, Inc. and TCG Rhode Island (collectively herein as "AT&T"), by and through its undersigned counsel, hereby files the following statement regarding YMax Communications Corp.'s ("YMax") Letter dated August 29, 2012, describing new tariff revisions YMax filed on August 28, 2012, which purported to "revert[] certain language" in its access tariff that it had previously revised on June 1, 2012. According to YMax, its access tariff now has been changed "back to the language reflected in this [access] tariff prior to" YMax's June 1 filing and its filing thereby "render[s] moot" any disputes before this Commission.

AT&T does not agree that YMax's August 28 filing necessarily moots the issues before the Commission. Among other things, AT&T wants to make it clear that AT&T (i) contends that the end office switching charges that YMax has consistently billed to AT&T for years (and apparently will continue to bill to AT&T) are flatly inconsistent with both YMax's switched access tariffs and with the orders and rules of the Federal Communications Commission

("FCC");¹ (ii) continues to have substantial and valid concerns regarding the legality of YMax's existing access tariffs regarding VoIP-PSTN traffic;² and (iii) intends to continue to dispute and withhold payment of any unlawful YMax switched access charges on those grounds, *i.e.*, that YMax is billing those charges in violation of its tariffs and of FCC rules and orders.

AT&T nevertheless wishes to conserve its resources and those of the Commission, and, as a consequence, it is not requesting that the Commission take additional action at this time regarding YMax's revised access tariff.

Notwithstanding any closure of this docket, AT&T will continue to object to any effort on the part of YMax to bill AT&T with end-office switching charges and will avail itself of all remedies available. In short, the disputes between AT&T and YMax will continue so long as YMax insists that it can tariff and bill AT&T for end office switching services that YMax does not actually provide. If the parties cannot resolve this dispute, AT&T is concerned that the parties may need to appear before the Commission at some point in the near future.

¹ As AT&T has explained, YMax's tariff and billed charges violate the FCC's rules and orders. The FCC has made numerous, detailed factual findings – which remain binding on YMax – that YMax does not operate any facilities that are connected to lines that deliver VoIP-PSTN traffic to any individual caller's home or business. *YMax Order*, 26 FCC Rcd. 5742, ¶¶ 3-9, 14, 19, 38-45 (2011). These findings compel the conclusion that, under the FCC's clear rules, YMax does not provide end office switching and thus cannot bill AT&T for those services. *Id.* ¶¶ 40-41; see *Connect America Order*, 26 FCC Rcd. 17663, ¶ 970 (2011). After making these findings and rules, the FCC also flatly rejected YMax's proposal to "clarify" the FCC's rules to allow YMax to impose end office switching rates even though it is other internet service providers, and not YMax, that actually do the work of delivering the traffic to callers' homes and businesses. *YMax Clarification Order*, 27 FCC Rcd. 2142, ¶¶ 4-5 (2012).


² Although Ymax's tariff claims its current tariff mirrors the tariff as it was effective prior to June 1, 2012, that does not mean that YMax's tariff is (or was) lawful. The tariff contains rates, terms and conditions for end office switching services, and for the reasons explained, YMax does not actually provide these services. While these provisions can be found in YMax's tariff prior to June 1, 2012, the fact is that the FCC has now made binding factual determinations regarding YMax's operations and its limited role in routing calls, and has also issued new rules that apply to YMax's services. Thus, even assuming, *arguendo*, that YMax's tariff was previously lawful, the effect of the FCC's factual findings regarding YMax and the FCC's new rules is that YMax is prohibited from maintaining a tariff that can be interpreted to allow it to charge for services (like end office switching) that YMax does not provide.

Date: September 13, 2012

Respectfully Submitted,

**AT&T RHODE ISLAND, AT&T
COMMUNICATIONS OF RHODE ISLAND,
INC. and TCG RHODE ISLAND,**

By their Attorneys,

A handwritten signature in black ink, appearing to read 'W M Dolan III', written over a horizontal line.

William M. Dolan III (#4524)

BROWN RUDNICK LLP

wdolan@brownrudnick.com

10 Memorial Boulevard, 10th Floor

Providence, RI 02903

(401) 276-2600

(401) 276-2601 Fax

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of September 2012, I served a true copy of the within document by first class mail, postage prepaid, upon the following:

Luly Massaro
Commission Clerk
lmassaro@puc.state.ri.us
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888
(Via E-Mail and Regular Mail)


Sharon Thomas
sthomas@tminc.com
(Via E-Mail and Certified Mail, Return Receipt Requested)

Leo Wold, Esq.
lwold@riag.ri.gov
(Via E-Mail)

Brian Kent
bkent@ripuc.state.ri.us
(Via E-Mail)

Cynthia Wilson-Frias, Esq.
Senior Legal Counsel
cwilson@puc.state.ri.us
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888
401-780-2147
401-941-1691 fax
(Via E-Mail)

Ronald W. Del Sisto, Esq.
r.delsesto@bingham.com
Bingham McCutchen LLP
2020 K Street NW
Washington, DC 20006-1806



William M. Dolan III