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Transcript Exhibit(s)

Docket #(s): T-200606A-09-0173

Exhibit #: A1-A9, S1

AZ CORP COMMISSION
DOCKET CONTROL

2010 SEP 27 P 2:03

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Arizona Corporation Commission

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SEP 27 2010

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ORIGINAL NEW APPLICATION

Lance J.M. Steinhart, P.C.
Attorney At Law
1720 Windward Concourse
Suite 115
Alpharetta, Georgia 30005

Also Admitted in New York
and Maryland

Telephone: (770) 232-9200
Facsimile: (770) 232-9208
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April 3, 2009

VIA OVERNIGHT DELIVERY

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007
(602) 542-2237

T-20666A-09-0173

Re: Broadvox-CLEC, LLC

Dear Sir/Madam:

Enclosed please find for filing an original and thirteen (13) copies of Broadvox-CLEC, LLC's Application and Petition for Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services.

I have also enclosed an extra copy of this letter to be date stamped and returned to me in the enclosed, self-addressed, postage prepaid envelope.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me. Thank you for your attention to this matter.

Respectfully submitted,

Lance J.M. Steinhart
Attorney for Broadvox-CLEC, LLC

Enclosures

cc: Alecia Monroe
Michael W. Patten, Esq. if Facilities Based (Via e-mail)

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2009 APR - 6 - P 12:40
AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED
APR 6 2009
DOCKETED BY [Signature]

07/07/06

EXHIBIT
tabbles
A1
ADMITTED

ARIZONA CORPORATION COMMISSION

Application and Petition for Certificate of Convenience and Necessity to Provide
Intrastate Telecommunications Services

Mail original plus 13 copies of completed application to:

For Docket Control Only:
(Please Stamp Here)

Docket Control Center
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927

Please indicate if you have current applications pending
in Arizona as an Interexchange reseller, AOS provider,
or as the provider of other telecommunication services.

Type of Service: _____

Docket No.: _____ Date: _____ Date Docketed: _____

Type of Service: _____

Docket No.: _____ Date: _____ Date Docketed: _____

A. COMPANY AND TELECOMMUNICATION SERVICE INFORMATION

(A-1) Please indicate the type of telecommunications services that you want to provide in Arizona and answer the appropriate numbered items:

- Resold Long Distance Telecommunications Services (Answer Sections A, B).
- Resold Local Exchange Telecommunications Services (Answer Sections A, B, C).
- Facilities-Based Long Distance Telecommunications Services (Answer Sections A, B, D).
- Facilities-Based Local Exchange Telecommunications Services (Answer Sections A, B, C, D, E)
- Alternative Operator Services Telecommunications Services (Answer Sections A, B)
- Other _____ (Please attach complete description)

(A-2) The name, address, telephone number (including area code), facsimile number (including area code), e-mail address, and World Wide Web address (if one is available for consumer access) of the Applicant:

Broadvox-CLEC, LLC
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115
Telephone: (216) 373-4623
Fax: (216) 373-4812
E-Mail Address: agertsburg@broadvox.net
Web Address: NONE

(A-3) The d/b/a ("Doing Business As") name if the Applicant is doing business under a name different from that listed in Item (A-2):

(A-4) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Management Contact:

Alecia Monroe, Paralegal/Manager of Regulatory Affairs of The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115
Telephone: (216) 373-4623
Fax: (216) 373-4812
E-Mail Address: amonroe@broadvox.net

(A-5) The name, address, telephone number (including area code), facsimile number (including area code), and E-mail address of the Applicant's Attorney and/or Consultant:

Lance J.M. Steinhart, Esq.
Lance J.M. Steinhart, P.C.
1720 Windward Concourse, Suite 115
Alpharetta, Georgia 30005
Telephone: (770) 232-9200
Fax: (770) 232-9208
E-Mail Address: lsteinhart@telecomcounsel.com

(A-6) The name, address, telephone number (including area code), facsimile number (including area code), E-mail address of the Applicant's Complaint Contact Person:

Eugene Blumin, Chief Operating Officer of The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115
Telephone: (216) 373-4623
Fax: (216) 373-4812
E-Mail Address: eblumin@broadvox.net

(A-7) What type of legal entity is the Applicant?

- Sole proprietorship
- Partnership: _____ Limited, _____ General, _____ Arizona, _____ Foreign
- Limited Liability Company: _____ Arizona, Foreign
- Corporation: _____ "S", _____ "C", _____ Non-profit
- Other, specify: _____

(A-8) Please include "Attachment A":

Attachment "A" must include the following information:

1. A copy of the Applicant's Certificate of Good Standing as a domestic or foreign corporation, LLC, or other entity in Arizona.
2. A list of the names of all owners, partners, limited liability company managers (or if a member managed LLC, all members), or corporation officers and directors (specify).
3. Indicate percentages of ownership of each person listed in A-8.2.

(A-9) Include your Tariff as "Attachment B".

Your Tariff must include the following information:

1. Proposed Rates and Charges for each service offered (reference by Tariff page number).
See Sheets 103 - 119 of the Company's Tariff.
2. Tariff Maximum Rate and Prices to be charged (reference by Tariff page number).
See Sheets 57 - 99 of the Company's Tariff.
3. Terms and Conditions Applicable to provision of Service (reference by Tariff page number).
See Sheets 11 - 56 of the Company's Tariff.
4. Deposits, Advances, and/or Prepayments Applicable to provision of Service (reference by Tariff page number).
See Sheets 32 and 33 of the Company's Tariff.
5. The proposed fee that will be charged for returned checks (reference by Tariff page number).
See Sheet 31 of the Company's Tariff.

(A-10) Indicate the geographic market to be served:

- Statewide. (Applicant adopts statewide map of Arizona provided with this application).
 Other. Describe and provide a detailed map depicting the area.

(A-11) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

Describe in detail any such involvement. Please make sure you provide the following information:

1. States in which the Applicant has been or is involved in proceedings.
2. Detailed explanations of the Substance of the Complaints.
3. Commission Orders that resolved any and all Complaints.
4. Actions taken by the Applicant to remedy and/or prevent the Complaints from re-occurring.

Neither Applicant nor any of its officers, directors, partners, or managers has been or are currently involved in any formal or informal complaint proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency.

(A-12) Indicate if the Applicant or any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

Describe in detail any such judgments or convictions. Please make sure you provide the following information:

1. States involved in the judgments and/or convictions.
2. Reasons for the investigation and/or judgment.
3. Copy of the Court order, if applicable.

Neither Applicant nor any of its officers, directors, partners, or managers has been or are currently involved in any civil or criminal investigation, or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

(A-13) Indicate if the Applicant's customers will be able to access alternative toll service providers or resellers via 1+101XXXX access.

Yes

No

(A-14) Is applicant willing to post a Performance Bond? Please check appropriate box(s).

For Long Distance Resellers, a \$10,000 bond will be recommended for those resellers who collect advances, prepayments or deposits.

Yes

No

If "No", continue to question (A-15).

For Local Exchange Resellers, a \$25,000 bond will be recommended.

Yes

No

If "No", continue to question (A-15).

For Facilities-Based Providers of Long Distance, a \$100,000 bond will be recommended.

Yes

No

If "No", continue to question (A-15).

For Facilities-Based Providers of Local Exchange, a \$100,000 bond will be recommended.

Yes

No

If any box in (A-14) is marked "No", continue to question (A-15).

Note: Amounts are cumulative if the Applicant is applying for more than one type of service.

(A-15) If any box in (A-14) is marked "No", provide the following information. Clarify and explain the Applicant's deposit policy (reference by tariff page number). Provide a detailed explanation of why the Applicant's superior financial position limits any risk to Arizona consumers.

The Company will not collect advances, prepayments or deposits.

(A-16) Submit copies of affidavits of publication that the Applicant has, as required, published legal notice of the Application in all counties where the Applicant is requesting authority to provide service.

Note: For Resellers, the Applicant must complete and submit an Affidavit of Publication Form as Attachment "C" before Staff prepares and issues its report. Refer to the Commission's website for Legal Notice Material (Newspaper Information, Sample Legal Notice and Affidavit of Publication). For Facilities-Based Service Providers, the Hearing Division will advise the Applicant of the date of the hearing and the publication of legal notice. Do not publish legal notice or file affidavits of publication until your are advised to do so by the Hearing Division.

(A-17) Indicate if the Applicant is a switchless reseller of the type of telecommunications services that the Applicant will or intends to resell in Arizona:

Yes

No

If "Yes", provide the name of the company or companies whose telecommunications services the Applicant resells.

The company intends to resell services provided by Qwest or other similar carriers

(A-18) List the States in which the Applicant has had an application approved or denied to offer telecommunications services similar to those that the Applicant will or intends to offer in Arizona:

Note: If the Applicant is currently approved to provide telecommunications services that the Applicant intends to provide in Arizona in less than six states, excluding Arizona, list the Public Utility Commission ("PUC") of each state that granted the authorization. For each PUC listed provide the name of the contact person, their phone number, mailing address including zip code, and e-mail address.

Approved: **Colorado, Idaho, Indiana, Iowa, New Jersey, Kentucky, Rhode Island, Vermont and Washington**

(A-19) List the States in which the Applicant currently offers telecommunications services similar to those that the Applicant will or intends to offer in Arizona.

Note: If the Applicant currently provides telecommunication services that the Applicant intends to provide in Arizona in six or more states, excluding Arizona, list the states. If the Applicant does not currently provide telecommunications services that the Applicant intends to provide in Arizona in five or less states, list the key personnel employed by the Applicant. Indicate each employee's name, title, position, description of their work experience, and years of service in the telecommunications services industry.

None

(A-20) List the names and addresses of any alternative providers of the service that are also affiliates of the telecommunications company, as defined in R14-2-801.

None.

(A-21) Check here if you wish to adopt as your petition a statement that the service has already been classified as competitive by Commission Decision:

Decision # 64178 Resold Long Distance

Decision # 64178 Resold LEC

Decision # 64178 Facilities Based Long Distance

Decision # 64178 Facilities Based LEC

B. FINANCIAL INFORMATION

(B-1) Indicate if the Applicant has financial statements for the two (2) most recent years.

Yes

No

If "No," explain why and give the date on which the Applicant began operations.

(B-2) Include "Attachment D".

Provide the Applicant's financial information for the two (2) most recent years.

1. A copy of the Applicant's balance sheet.
2. A copy of the Applicant's income statement.
3. A copy of the Applicant's audit report.
4. A copy of the Applicant's retained earnings balance.
5. A copy of all related notes to the financial statements and information.

Note: Make sure "most recent years" includes current calendar year or current year reporting period.

(B-3) Indicate if the Applicant will rely on the financial resources of its Parent Company, if applicable.

Yes

(B-4) The Applicant must provide the following information.

1. Provide the projected total revenue expected to be generated by the provision of telecommunications services to Arizona customers for the first twelve months following certification, adjusted to reflect the maximum rates for which the Applicant requested approval. Adjusted revenues may be calculated as the number of units sold times the maximum charge per unit.
2. Provide the operating expenses expected to be incurred during the first twelve months of providing telecommunications services to Arizona customers following certification.
3. Provide the net book value (original cost less accumulated depreciation) of all Arizona jurisdictional assets expected to be used in the provision of telecommunications service to Arizona customers at the end of the first twelve months of operation. Assets are not limited to plant and equipment. Items such as office equipment and office supplies should be included in this list.
4. If the projected value of all assets is zero, please specifically state this in your response.
5. If the projected fair value of the assets is different than the projected net book value, also provide the corresponding projected fair value amounts.

See "Attachment E"

C. RESOLD AND/OR FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(C-1) Indicate if the Applicant has a resale agreement in operation,

Yes No

If "Yes", please reference the resale agreement by Commission Docket Number or Commission Decision Number.

D. FACILITIES-BASED LONG DISTANCE AND/OR FACILITIES BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(D-1) Indicate if the Applicant is currently selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona. This item applies to an Applicant requesting a geographic expansion of their CC&N:

Yes No

If "Yes," provide the following information:

1. The date or approximate date that the Applicant began selling facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services in Arizona.
2. Identify the types of facilities-based long distance telecommunications services AND/OR facilities-based local exchange telecommunications services that the Applicant sells in Arizona.

If "No," indicate the date when the Applicant will begin to sell facilities-based long distance telecommunications AND/OR facilities-based local exchange telecommunications services in Arizona:

E. FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

(E-1) Indicate whether the Applicant will abide by the quality of service standards that were approved by the Commission in Commission Decision Number 59241:

Yes No

(E-2) Indicate whether the Applicant will provide all customers with 911 and E911 service, where available, and will coordinate with incumbent local exchange carriers ("ILECs") and emergency service providers to provide this service:

Yes No

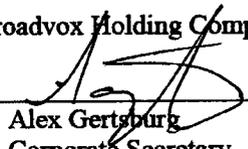
(E-3) Indicate that the Applicant's switch is "fully equal access capable" (i.e., would provide equal access to facilities-based long distance companies) pursuant to A.A.C. R14-2-1111 (A):

Yes No

I certify that if the applicant is an Arizona corporation, a current copy of the Certificate of Formation is on file with the Arizona Corporation Commission and the applicant holds a Certificate of Good Standing from the Commission. If the company is a foreign corporation or partnership, I certify that the company has authority to transact business in Arizona. I certify that all appropriate city, county and/or State agency approvals have been obtained. Upon signing of this application I attest that I have read the Commission's rules and regulations relating to the regulations of telecommunications services and that the company will abide by Arizona State Law including the Arizona Corporation Commission Rules and Regulations. I agree that the Commission's rules apply in the event there is a conflict between those rules and the company's tariff, unless otherwise ordered by the Commission. I certify that to the best of my knowledge the information provided in this Application and Petition is true and correct.

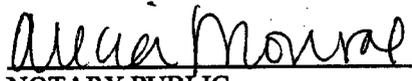
Broadvox-CLEC, LLC

By: The Broadvox Holding Company, LLC, Member

By: 
Alex Gertsburg
Corporate Secretary

Date: 2/13/09

SUBSCRIBED AND SWORN to before me this 13th day of February, 2009.


NOTARY PUBLIC

My Commission Expires: 1/5/2011

ALECIA MONROE
NOTARY PUBLIC • STATE OF OHIO
Recorded in Cuyahoga County
My commission expires Jan. 5, 2011

ATTACHMENTS

- A - Certificate of Good Standing, List of Officers and Directors or Owners and Percentage of Ownership
- B - Proposed Tariff
- C - Legal Notice
- D - Financial Information
- E - Arizona Projections

A - Certificate of Good Standing and

Officers, Directors and Owners

Percentage Ownership

Officers:

Alex Gertsburg, Corporate Secretary
Andre Temnorod, Chief Executive Officer
Eugene Blumin, Chief Operating Officer & Treasurer

Directors:

None

Owners:

The Broadvox Holding Company, LLC 100%

STATE OF ARIZONA



Office of the CORPORATION COMMISSION

CERTIFICATE OF REGISTRATION

To all to whom these presents shall come, greeting:

I, Michael P. Kearns, Interim Executive Director of the Arizona Corporation Commission, do hereby certify that

*****BROADVOX-CLEC, LLC*****

a foreign limited liability company organized under the laws of the jurisdiction of Delaware did obtain a Certificate of Registration in Arizona on the 23rd day of February 2009.

This certificate relates only to the legal authority of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 24th Day of March, 2009, A. D.



Michael P. Kearns
Interim Executive Director

By: *Susan Hunt*

STATE OF ARIZONA



Office of the CORPORATION COMMISSION

CERTIFICATE OF GOOD STANDING

To all to whom these presents shall come, greeting:

I, Michael P. Kearns, Interim Executive Director of the Arizona Corporation Commission, do hereby certify that

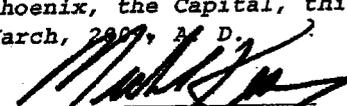
*****BROADVOX-CLEC, LLC*****

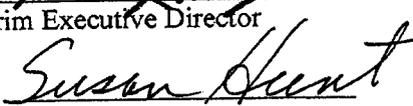
a foreign limited liability company organized under the laws of the jurisdiction of Delaware did obtain a Certificate of Registration in Arizona on the 23rd day of February 2009.

I further certify that according to the records of the Arizona Corporation Commission, as of the date set forth hereunder, the said limited liability company has not had its Certificate of Registration revoked for failure to comply with the provisions of A.R.S. section 29-601 et seq., the Arizona Limited Liability Company Act; and that the said limited liability company has not filed a Certificate of Cancellation as of the date of this certificate.

This certificate relates only to the legal authority of the above named entity as of the date issued. This certificate is not to be construed as an endorsement, recommendation, or notice of approval of the entity's condition or business activities and practices.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission. Done at Phoenix, the Capital, this 24th Day of March, 2009, A. D.


Interim Executive Director

By: 



**APPLICATION FOR REGISTRATION
OF A FOREIGN LIMITED LIABILITY COMPANY**
Pursuant to A.R.S. §29-802 et seq.

1. The company name must contain an ending which may be "limited liability company," "limited company," or the abbreviations "LLC," "L.C.," "LLC" or "L.C.". If you are the holder or assignee of a trademark, attach a copy of the trademark certificate. If your name is not available for use in Arizona, you must adopt a fictitious name and provide a resolution adopting the name, which must be signed by a manager, member or authorized agent.

2. Provide the name of the state or jurisdiction under whose laws your company was formed.

3. Provide the date on which your company organized in the state or jurisdiction under whose laws it was formed.

4. Provide the general character of business you plan to transact in Arizona.

5. The statutory agent must provide a street address. If statutory agent has a P.O. Box, then they must also provide a street address/location.

1. The name of the foreign limited liability company is:
BROADVOX-CLEC, LLC

1. a. If the exact name of the foreign limited liability company is not available for use in this state, then the fictitious name adopted for use by the limited liability company in Arizona is:

(FN)

2. The company is organized under the laws of: Delaware
(State)

3. The date of the company's formation is: 11/24/2006

4. The purpose of the company or the general character of business it proposes to transact in Arizona is:
Provide Telecommunications Services

5. The name and street address of the statutory agent for the foreign limited liability company in Arizona is:
Incorp Services, Inc.
2338 W. Royal Palm Rd., Ste. J
Phoenix, AZ 85021-8339

ACCEPTANCE OF APPOINTMENT BY STATUTORY AGENT

The agent must consent to the appointment by executing the consent.

I, Incorp Services, Inc., having been designated to act as
(Print Name)
statutory agent, hereby consent to act in that capacity until removed or resignation is submitted in accordance with the Arizona Revised Statutes.

Tennie Sedlacek, C.O.O.
Signature

Incorp Services, Inc.
If signing on behalf of a company, print company name here

LL-0005
Rev. 10/2006

AZ CORPORATION COMMISSION
FILED

AZ CORPORATION COMMISSION
FILED

FEB 2 3 2009
FILE NO. R:15079944

MAR 17 2009
FILE NO. R15079944

6. Check which management structure will be applicable to your company. Provide name, title and address for each person.

7. If the jurisdiction under the law of which your company is formed, you must provide the address of the principle office of the company, in whatever state or jurisdiction it is located.

The application must be signed by a member, manager or duly authorized agent.

Attach a certificate of existence or document of similar import duly authenticated (within sixty (60) days) by the official having custody of corporate records in the state, province or county under whose laws the corporation is incorporated.

Your phone and fax numbers are optional.

LL-0005
Rev. 10/2008

6. Management Structure (select option A or B):

A Management of the limited liability company is vested in a manager or managers. The names and addresses of each person who is a manager AND each member who owns a twenty percent or greater interest in the capital or profits of the limited liability company are:

Name: _____ Name: _____
 member manager member manager

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

Name: _____ Name: _____
 member manager member manager

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

B Management of the limited liability company is reserved to the members. The names and addresses of each person who is a member are:

See attached list.

Name: _____ Name: _____

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

Name: _____ Name: _____

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

7. The address of the office required to be maintained in the jurisdiction under the laws of which the company is organized, if required; or, if not required, the address of the principal office of the company is:
1228 Euclid Ave., Ste. 390, Cleveland, OH 44115

Executed this 19th day of January, 2009.

Broadvox-CLEC, LLC

By: The Broadvox Holding Company, LLC, Member

A. G. G.
By: Alex Gertsburg, Corporate Secretary

LIST OF MEMBERS & DIRECTORS OF
Broadvox-CLEC, LLC

Members

The Broadvox Holding Company, LLC 100%
Officers of The Broadvox Holding Company, LLC:
 Alex Gertsburg, Member
 Andre Temnorod, Member
 Eugene Blumin, Member

Directors

None

All the above referenced Members & Directors can be reached at:
1228 Euclid Avenue, Suite 390, Cleveland, Ohio 44115

B - Proposed Tariff

07/07/06

TITLE SHEET

ARIZONA TELECOMMUNICATIONS TARIFF

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service or facilities for Telecommunications Services furnished by Broadvox-CLEC, LLC ("Broadvox-CLEC"), with principal offices at 1228 Euclid Avenue, Suite 390, Cleveland, Ohio 44115. This tariff applies for services furnished within the State of Arizona. This tariff is on file with the Arizona Corporation Commission, and copies may be inspected, during normal business hours, at the company's principal place of business.

ISSUE DATE: April 6, 2009

EFFECTIVE DATE: May 6, 2009

ISSUED BY:

**Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115**

CONCURRING, CONNECTING OR OTHER PARTICIPATING CARRIERS

1. **Concurring Carriers - None**
2. **Connecting Carriers - None**
3. **Other Participating Carriers - None**

ISSUE DATE: April 6, 2009

EFFECTIVE DATE: May 6, 2009

ISSUED BY:

**Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115**

CHECK SHEET

The Sheets of this tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this sheet.

<u>SHEET</u>	<u>REVISION</u>	<u>SHEET</u>	<u>REVISION</u>
1	Original	19	Original
2	Original	20	Original
3	Original	21	Original
4	Original	22	Original
5	Original	23	Original
6	Original	24	Original
7	Original	25	Original
8	Original	26	Original
9	Original	27	Original
10	Original	28	Original
11	Original	29	Original
12	Original	30	Original
13	Original	31	Original
14	Original	32	Original
15	Original		
16	Original		
17	Original		
18	Original		

* New or Revised Sheet

ISSUE DATE: April 6, 2009

EFFECTIVE DATE: May 6, 2009

ISSUED BY:

**Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115**

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ISSUE DATE: April 6, 2009

EFFECTIVE DATE: May 6, 2009

ISSUED BY:

**Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115**

TARIFF FORMAT

A. Sheet Numbering: Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between pages 11 and 12 would be page 11.1.

B. Sheet Revision Numbers: Revision numbers also appear in the upper right corner of each sheet where applicable. These numbers are used to indicate the most current page version on file with the Commission. For example, 4th Revised Sheet 13 cancels 3rd Revised Sheet 13. Consult the Check Sheet for the sheets currently in effect.

C. Paragraph Numbering Sequence: There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

- 2.
- 2.1
- 2.1.1
- 2.1.1.A
- 2.1.1.A.1
- 2.1.1.A.1.(a)
- 2.1.1.A.1.(a).I
- 2.1.1.A.1.(a).I.(i)
- 2.1.1.A.1.(a).I.(i).(1)

D. Check Sheets: When a tariff filing is made with the Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the sheets contained in the tariff, with a cross reference to the current Revision Number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some sheets). The tariff user should refer to the latest Check Sheet to find out if a particular sheet is the most current on Commission file.

ISSUE DATE: April 6, 2009
ISSUED BY:

Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

EFFECTIVE DATE: May 6, 2009

SYMBOLS

The following are the only symbols used for the purposes indicated below:

- (C) to signify change in regulation
- (D) to signify a deletion
- (I) to signify a rate increase
- (L) to signify material relocated in the tariff
- (N) to signify a new rate or regulation
- (R) to signify a rate reduction
- (T) to signify a change in text, but no change in rate or regulation

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ISSUED BY:

**Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115**

EFFECTIVE DATE: May 6, 2009

SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS

Access Line - An arrangement from a local exchange telephone company or other common carrier, using either dedicated or switched access, which connects a Customer's location to the Company's location or switching center.

Authorization Code - A numerical code, one or more of which may be assigned to a Customer, to enable the Company to identify the origin of the Customer so it may rate and bill the call. Automatic number identification (ANI) is used as the authorization code wherever possible.

Commission - Used throughout this tariff to mean the Arizona Corporation Commission.

Customer - The person, firm, corporation or other legal entity which orders the services of the Company and is responsible for the payment of charges and for compliance with the Company's tariff regulations.

Company or Broadvox-CLEC - Used throughout this tariff to mean Broadvox-CLEC, LLC, a Delaware Limited Liability Company.

Dedicated Access - The Customer gains entry to the Company's services by a direct path from the Customer's location to the Company's point of presence.

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Resp. Org - Responsible Organization or entity identified by a Toll-Free service Customer that manages and administers records in the toll free number database and management system.

Switched Access - The Customer gains entry to the Company's services by a transmission line that is switched through the local exchange carrier to reach the Company's point of presence.

Telecommunications - The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Underlying Carrier - The telecommunications carrier whose network facilities provide the technical capability and capacity necessary for the transmission and reception of Customer telecommunications traffic.

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SECTION 2 - RULES AND REGULATIONS**2.1 Undertaking of the Company**

This tariff contains the regulations and rates applicable to intrastate interexchange telecommunications services provided by the Company for telecommunications between points within the State of Arizona. Services are furnished subject to the availability of facilities and subject to the terms and conditions of this tariff in compliance with limitations set forth in the Commission's rules. The Company's services are provided on a statewide basis and are not intended to be limited geographically. The Company offers service to all those who desire to purchase service from the Company consistent with all of the provisions of this tariff. Customers interested in the Company's services shall file a service application with the Company which fully identifies the Customer, the services requested and other information requested by the Company. The Company reserves the right to examine the credit record and check the references of all applicants and Customers prior to accepting the service order. The service application shall not in itself obligate the Company to provide services or to continue to provide service if a later check of applicant's credit record is, in the opinion of the Company, contrary to the best interest of the Company. The Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities when authorized by the Customer, to allow connection of a Customer's location to a service provided by the Company. The Customer shall be responsible for all charges due for such service arrangement.

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- 2.1.1 The services provided by the Company are not part of a joint undertaking with any other entity providing telecommunications channels, facilities, or services, but may involve the resale of the Message Toll Services (MTS) and Wide Area Telecommunications Services (WATS) of underlying common carriers subject to the jurisdiction of this Commission.
- 2.1.2 The rates and regulations contained in this tariff apply only to the services furnished by the Company and do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other common carriers for use in accessing the services of the Company.
- 2.1.3 The Company reserves the right to limit the length of communications, to discontinue furnishing services, or limit the use of service necessitated by conditions beyond its control, including, without limitation: lack of satellite or other transmission medium capacity; the revision, alteration or repricing of the Underlying Carrier's tariffed offerings; or when the use of service becomes or is in violation of the law or the provisions of this tariff.

2.2 Use of Services

- 2.2.1 The Company services may be used for any lawful purpose consistent with the transmission and switching parameters of the telecommunications facilities utilized in the provision of services, subject to any limitations set forth in this Section 2.2.
- 2.2.2 The use of the Company services to make calls which might reasonably be expected to frighten, abuse, torment, or harass another or in such a way as to unreasonably interfere with use by others is prohibited.

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- 2.2.3 The use of the Company services without payment for service or attempting to avoid payment for service by fraudulent means or devices, schemes, false or invalid numbers, or false calling or credit cards is prohibited.
- 2.2.4 The Company services are available for use 24 hours per day, seven days per week.
- 2.2.5 The Company does not transmit messages, but the services may be used for that purpose.
- 2.2.6 The Company services may be denied for nonpayment of charges or for other violations of this tariff.
- 2.2.7 Customers shall not use the service provided under this tariff for any unlawful purpose.
- 2.2.8 The Customer is responsible for notifying the Company immediately of any unauthorized use of services.

2.3 Liability of the Company

- 2.3.1 The Company shall not be liable for any claim, loss, expense or damage for any interruption, delay, error, omission, or defect in any service, facility or transmission provided under this tariff, if caused by the Underlying Carrier, an act of God, fire, war, civil disturbance, act of government, or due to any other causes beyond the Company's control.
- 2.3.2 The Company shall not be liable for, and shall be fully indemnified and held harmless by the Customer against any claim, loss, expense, or damage for defamation, libel, slander, invasion, infringement of copyright or patent, unauthorized use of any trademark, trade name or service mark, proprietary or creative right, or any other injury to any person, property or entity arising out of the material, data or information transmitted.

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- 2.3.3 No agent or employee of any other carrier or entity shall be deemed to be an agent or employee of the Company.
- 2.3.4 The Company's liability for damages, resulting in whole or in part from or arising in connection with the furnishing of service under this tariff, including but not limited to mistakes, omissions, interruptions, delays, errors, or other defects or misrepresentations shall not exceed an amount equal to the charges provided for under this tariff for the long distance call for the period during which the call was affected. No other liability in any event shall attach to the Company.
- 2.3.5 The Company shall not be liable for and shall be indemnified and saved harmless by any Customer or by any other entity from any and all loss, claims, demands, suits, or other action or any liability whatsoever, whether suffered, made, instituted, or asserted by any Customer or any other entity for any personal injury to, or death of, any person or persons, and for any loss, damage, defacement or destruction of the premises of any Customer or any other entity or any other property whether owned or controlled by the Customer or others.
- 2.3.6 The Company shall not be liable for any indirect, special, incidental, or consequential damages under this tariff including, but not limited to, loss of revenue or profits, for any reason whatsoever, including the breakdown of facilities associated with the service, or for any mistakes, omissions, delays, errors, or defects in transmission occurring during the course of furnishing service.

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2.3.7 The remedies set forth herein are exclusive and in lieu of all other warranties and remedies, whether express, implied, or statutory, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2.4 Responsibilities of the Customer

2.4.1 The Customer is responsible for placing any necessary orders and complying with tariff regulations. The Customer is also responsible for the payment of charges for services provided under this tariff.

2.4.2 The Customer is responsible for charges incurred for special construction and/or special facilities which the Customer requests and which are ordered by the Company on the Customer's behalf.

2.4.3 If required for the provision of the Company's services, the Customer must provide any equipment space, supporting structure, conduit and electrical power without charge to the Company.

2.4.4 The Customer is responsible for arranging access to its premises at times mutually agreeable to the Company and the Customer when required for Company personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of the Company's services.

2.4.5 The Customer shall cause the temperature and relative humidity in the equipment space provided by Customer for the installation of the Company equipment to be maintained within the range normally provided for the operation of microcomputers.

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- 2.4.6 The Customer shall ensure that the equipment and/or system is properly interfaced with the Company facilities or services, the signals emitted into the Company network are of the proper mode, bandwidth, power and signal level for the intended use of the subscriber and in compliance with criteria set forth in this tariff, the signals do not damage equipment, injure personnel, or degrade service to other Customers. If the FCC or some other appropriate certifying body certifies terminal equipment as being technically acceptable for direct electrical connection with interstate communications service, the Company will permit such equipment to be connected with its channels without the use of protective interface devices. If the Customer fails to maintain the equipment and/or the system properly, with resulting imminent harm to the Company equipment, personnel or the quality of service to other Customers, the Company may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service.
- 2.4.7 The Customer must pay the Company for replacement or repair of damage to the equipment or facilities of the Company caused by negligence or willful act of the Customer or others, by improper use of the services, or by use of equipment provided by Customer or others.
- 2.4.8 The Customer must pay for the loss through theft of any Company equipment installed at Customer's premises.
- 2.4.9 If the Company installs equipment at Customer's premises, the Customer shall be responsible for payment of any applicable installation charge.
- 2.4.10 The Customer must use the services offered in this tariff in a manner consistent with the terms of this tariff and the policies and regulations of all state, federal and local authorities having jurisdiction over the service.

2.5 Cancellation or Interruption of Services

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2.5.1 Without incurring liability, upon five (5) working days' (defined as any day on which the company's business office is open and the U.S. Mail is delivered) written notice to the Customer, the Company may immediately discontinue services to a Customer or may withhold the provision of ordered or contracted services:

2.5.1.A For nonpayment of any sum due the Company for more than thirty (30) days after issuance of the bill for the amount due,

2.5.1.B For violation of any of the provisions of this tariff,

2.5.1.C For violation of any law, rule, regulation, policy of any governing authority having jurisdiction over the Company services, or

2.5.1.D By reason of any order or decision of a court, public service commission or federal regulatory body or other governing authority prohibiting the Company from furnishing its services.

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- 2.5.2 Without incurring liability, the Company may interrupt the provision of services at any time in order to perform tests and inspections to assure compliance with tariff regulations and the proper installation and operation of Customer and the Company equipment and facilities and may continue such interruption until any items of noncompliance or improper equipment operation so identified are rectified.
- 2.5.3 Service may be discontinued by the Company without notice to the Customer, by blocking traffic to certain countries, cities or NXX exchanges, or by blocking calls using certain Customer authorization codes, when the Company deems it necessary to take such action to prevent unlawful use of its service. The Company will restore service as soon as it can be provided without undue risk, and will, upon request by the Customer affected, assign a new authorization code to replace the one that has been deactivated.
- 2.5.4 The Customer may terminate service upon thirty (30) days written notice for the Company's standard month to month contract. Customer will be liable for all usage on any of the Company's service offerings until the Customer actually leaves the service. Customers will continue to have Company usage until the Customer notifies its local exchange carrier and changes its long distance carrier. Until the Customer so notifies its local exchange carrier, it shall continue to generate and be responsible for long distance usage.

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2.6 Credit Allowance

2.6.1 Credit may be given for disputed calls, on a per call basis.

2.6.2 Credit shall not be issued for unavailability of long distance services.

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2.7 Restoration of Service

The use and restoration of service shall be in accordance with the priority system specified in part 64, Subpart D of the Rules and Regulations of the Federal Communications Commission.

2.8 Deposit

The Company does not require deposits.

2.9 Advance Payments

The Company does not require advance payments; therefore, the Company does not have a Prepayment Policy.

2.10 Payment and Billing

2.10.1 Service is provided and billed on a billing cycle basis, beginning on the date that service becomes effective. Billing is payable upon receipt.

2.10.2 The customer is responsible for payment of all charges for services furnished to the Customer, as well as to all persons using the Customer's codes, exchange lines, facilities, or equipment, with or without the knowledge or consent of the Customer. The security of the Customer's Authorization Codes, subscribed exchange lines, and direct connect facilities is the responsibility of the Customer. All calls placed using direct connect facilities, subscribed exchange lines, or Authorization Codes will be billed to and must be paid by the Customer. Recurring charges and non-recurring charges are billed in advance. Charges based on actual usage during a month and any accrued interest will be billed monthly in arrears.

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2.10.3 All bills are presumed accurate, and shall be binding on the customer unless objection is received by the Company in writing within 30 days after such bills are rendered. No credits, refunds, or adjustments shall be granted if demand therefore is not received by the Company in writing within such 30 day period.

2.11 Billing Terms and Procedures

2.11.1 The billing date shall be printed on the bill and the date rendered shall be the mailing date.

2.11.2 Bills for telephone services may be considered delinquent 15 days after the date the bill is rendered.

2.11.3 Delinquent accounts for which payment has not been received may be terminated 22 days after the date the bill is rendered.

2.11.4 All payments shall be made at or mailed to the office of the Company or to the utility's duly authorized representative.

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2.12 Collection Costs

In the event Company is required to initiate legal proceedings to collect any amounts due to Company for regulated or non-regulated services, equipment or facilities, or to enforce any judgment obtained against a Customer, or for the enforcement of any other provision of this tariff or applicable law, Customer shall, in addition to all amounts due, be liable to Company for all reasonable costs incurred by Company in such proceedings and enforcement actions, including reasonable attorneys' fees, collection agency fees or payments, and court costs. In any such proceeding, the amount of collection costs, including attorneys' fees, due to the Company, will be determined by the court.

2.13 Taxes

All federal, state and local taxes, assessments, surcharges, or fees, including sales taxes, use taxes, gross receipts taxes, and municipal utilities taxes, are billed as separate line items and are not included in the rates quoted herein.

2.14 Late Charge

A late fee of 1.5% per month or the amount otherwise authorized by law, whichever is lower, will be charged on any past due balances.

2.15 Returned Check Charge

A fee of \$25 will be charged whenever a check or draft presented for payment for service is not accepted by the institution on which it is written.

2.16 Reconnection Charge

A reconnection fee of \$25 per occurrence will be charged when service is reestablished for Customers which have been disconnected due to non-payment. Payment of the reconnection fee and any other outstanding amounts will be due in full prior to reconnection of service.

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SECTION 3 - DESCRIPTION OF SERVICE

3.1 Computation of Charges

3.1.1 The total charge for each completed call may be a variable measured charge dependent on the duration, distance and time of day of the call. The total charge for each completed call may also be dependent only on the duration of the call, i.e. a statewide flat rate per minute charge. The variable measured charge is specified as a rate per minute which is applied to each minute. All calls are measured in increments as set forth in the Rates Section of this tariff. Fractions of a billing increment are rounded up to a full billing increment on a per call basis. Fractions of a cent per minute are rounded up to a full cent on a per call basis.

3.1.2 Where mileage bands appear in a rate table, rates for all calls are based upon the airline distance between the originating and terminating points of the call, as determined by the vertical and horizontal coordinates associated with the exchange (the area code and three digit central office code) associated with the originating and terminating telephone numbers. If the Customer obtains access to the Company's network by a dedicated access circuit, that circuit will be assigned an exchange for rating purposes based upon the Customer's main telephone number at the location where the dedicated access circuit terminates. The vertical and horizontal (V & H) coordinates for each exchange and the airline distance between them will be determined according to industry standards.

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3.1.3 Timing begins when the called station is answered and two way communication is possible, as determined by standard industry methods generally in use for ascertaining answer, including hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. Recognition of answer supervision is the responsibility of the Underlying Carrier. Timing for each call ends when either party hangs up. The Company will not bill for uncompleted calls.

3.2 Customer Complaints and/or Billing Disputes

Customer inquiries or complaints regarding service or accounting may be made in writing or by telephone to the Company at:

1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115
(877) 884-6597

Any objection to billed charges should be reported promptly to the Company. Adjustments to Customers' bills shall be made to the extent that records are available and/or circumstances exist which reasonably indicate that such charges are not in accordance with approved rates or that an adjustment may otherwise be appropriate. Where overbilling of a subscriber occurs, due either to Company or subscriber error, no liability exists which will require the Company to pay any interest, dividend or other compensation on the amount overbilled.

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If a Customer accumulates more than One Dollar of undisputed delinquent the Company 800 Service charges, the Company Resp. Org. reserves the right not to honor that Customer's request for a Resp. Org. change until such undisputed charges are paid in full.

3.3 Level of Service

A Customer can expect end to end network availability of not less than 99% at all times for all services.

3.4 Billing Entity Conditions

When billing functions on behalf of the Company or its intermediary are performed by local exchange telephone companies or others, the payment of charge conditions and regulations of such companies and any regulations imposed upon these companies by regulatory bodies having jurisdiction apply. The Company's name and toll-free telephone number will appear on the Customer's bill.

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3.5 Service Offerings

3.5.1 1+ Dialing

This service permits Customers to originate calls via switched or dedicated access lines, and to terminate intrastate calls. The customer dials "1+" followed by "ten digits" or dials "101XXXX" followed by "1+ ten digits".

3.5.2 Travel Cards

The Customer utilizes an 11 digit "toll-free" access number established by the Company to access a terminal. Upon receiving a voice prompt, the Customer uses push button dialing to enter an identification code assigned by the Company, and the ten digit number of the called party.

3.5.3 Toll-Free Service

This service is inbound calling only where an 800, 888 or other toll-free prefix number rings into a Customer's premise routed to a specific telephone number or terminated over a dedicated facility.

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BROADVOX-CLEC, LLC

**ORIGINAL SHEET 25
ARIZONA CC TARIFF NO. 1**

3.5.4 Reserved for Future Use.

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3.5.5 Directory Assistance.

Access to long distance directory assistance is obtained by dialing 1 + 555-1212 for listings within the originating area code and 1 + (area code) + 555-1212 for other listings. When more than one number is requested in a single call, a charge will apply for each number requested. A charge will be applicable for each number requested, whether or not the number is listed or published.

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3.5.6 Specialized Pricing Arrangements.

Customized service packages and competitive pricing packages at negotiated rates may be furnished on a case-by-case basis in response to requests by Customers to the Company for proposals or for competitive bids. Service offered under this tariff provision will be provided to Customers pursuant to contract. Unless otherwise specified, the regulations for such arrangements are in addition to the applicable regulations and prices in other sections of the tariff. Specialized rates or charges will be made available to similarly situated Customers on a non-discriminatory basis. Discounts may apply based upon volume, affinity group plans, or term plan commitments.

3.5.7 Emergency Call Handling Procedures

Emergency "911" calls are not routed to company, but are completed through the local network at no charge.

3.5.8 Promotional Offerings

The Company may, from time to time, make promotional offerings to enhance the marketing of its services. These offerings may be limited to certain dates, times and locations. The Company will notify the Commission of such offerings as required by Commission rules and regulations.

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SECTION 4 - RATES

4.1 1+ & 101XXXX Dialing

\$0.15 per minute. Billed in one minute increments.

A \$4.95 per month per number service charge applies.

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4.2 Toll Free Service

\$0.25 per minute. Billed in one minute increments.

A \$10 per month per number service charge applies.

4.3 Travel Cards

\$0.25 per minute

4.4 Directory Assistance

\$1.15 per call

4.5 Returned Check Charge

\$25.00

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4.6 **Rate Periods**

	Monday - Friday	Sat.	Sun.
8 a.m. to 5 p.m.*	Daytime Rate Period		
5 p.m. to 11 p.m.*	Evening Rate Period		Evening Rate Period
11 p.m. to 8 a.m.*	Night/Weekend Rate Period		

* To, but not including

When a message spans more than one rate period, total charges for the minutes in each rate period are calculated and the results for each rate period are totaled to obtain the total message charge. If the calculation results in a fractional charge, the amount will be rounded up to the higher cent.

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4.7 Payphone Dial Around Surcharge

A dial around surcharge of \$.60 per call will be added to any completed intrastate toll access code and subscriber toll-free 800/888 type calls placed from a public or semi-public payphone.

4.8 Universal Service Fund Assessment & Presubscribed Interexchange Carrier Charge

The Customer will be assessed a monthly Universal Service Fund Contribution charge on all telecommunications services, which in no event shall be less than the prevailing contribution percentage rate charged the Company on intrastate traffic by the Universal Service Administrative Company (or any successor) or any state agency or its administrator. A Presubscribed Interexchange Carrier Charge ("PICC") applies on a monthly basis to all Customer monthly bills at the prevailing rate.

4.9 Carrier Cost Recovery Charge

In order to recover costs the Company incurs with regard to TeleRelay service, National Number Portability and Federal Regulatory fees, a \$.99 monthly surcharge will be assessed per account per month. This surcharge will appear as a separate line item on your invoice.

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SECTION 5 - MINIMUM/MAXIMUM RATES

5.1 1 + Dialing

\$0.04 per minute Minimum

\$0.25 per minute Maximum

5.2 Toll-Free Service

\$0.04 per minute Minimum

\$0.25 per minute Maximum

5.3 Travel Cards

\$0.04 per minute Minimum

\$0.25 per minute Maximum

5.4 Directory Assistance

\$0.50 Minimum

\$1.50 Maximum

5.5 Payphone Dial Around Surcharge

\$0.35 Minimum

\$0.60 Maximum

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Arizona
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES TARIFF
OF
Broadvox-CLEC, LLC

This tariff contains the descriptions, regulations, and rates applicable to the provision of local exchange telecommunications services provided by Broadvox-CLEC, LLC with principal offices at 1228 Euclid Avenue, Suite 390, Cleveland, Ohio 44115 for services furnished within the State of Arizona. This tariff is on file with the Arizona Corporation Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

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Corporate Secretary of The Broadvox Holding Company, LLC, Member
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CHECK SHEET

Pages of this tariff are effective as of the date shown at the bottom of the respective page(s). Original and revised pages as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

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CHECK SHEET, (CONT'D.)

Pages of this tariff are effective as of the date shown at the bottom of the respective page(s). Original and revised pages as named below comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

SECTION	PAGE	REVISION	SECTION	PAGE	REVISION	SECTION	PAGE	REVISION
4	61	Original	5	93	Original	10	120	Original
4	62	Original	5	94	Original	10	121	Original
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4	64	Original	5	96	Original	10	123	Original
4	65	Original	5	97	Original	10	124	Original
4	66	Original	5	98	Original	10	125	Original
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5	70	Original	5	102	Original	10	129	Original
5	71	Original	5	103	Original			
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5	74	Original	7	106	Original			
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5	76	Original	7	108	Original			
5	77	Original	7	109	Original			
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5	86	Original	10	118	Original			
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**EXPLANATION OF SYMBOLS, REFERENCE
MARKS, AND ABBREVIATIONS OF TECHNICAL
TERMS USED IN THIS TARIFF**

The following symbols shall be used in this tariff for the purpose indicated below:

- (C) To signify changed regulation.
- (D) To signify discontinued rate or regulation.
- (I) To signify increased rate.
- (M) To signify a move in the location of text.
- (N) To signify new rate or regulation.
- (R) To signify reduced rate.
- (S) To signify reissued matter.
- (T) To signify a change in text but no change in rate or regulation.

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APPLICATION OF TARIFF

This tariff sets forth the service offerings, rates, terms and conditions applicable to the furnishing of intrastate end-user local exchange communications services by Broadvox-CLEC, LLC, hereinafter referred to as the Company, to Customers within the state of Arizona. Broadvox-CLEC's services are furnished subject to the availability of facilities and subject to the terms and conditions set forth herein.

This tariff is on file with the Arizona Corporation Commission. In addition, this tariff is available for review at the main office of Broadvox-CLEC, LLC at 1228 Euclid Avenue, Suite 390, Cleveland, Ohio 44115.

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TARIFF FORMAT

- A. Page Numbering** - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. However, new pages are occasionally added to the tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.
- B. Page Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Commission. For example, the 4th revised Page 14 cancels the 3rd revised Page 14. Because of various suspension periods, deferrals, etc., the most current page number on file with the Commission is not always the tariff page in effect. Consult the Check Sheet for the page currently in effect.
- C. Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2.
 - 2.1.
 - 2.1.1.
 - 2.1.1.A.
 - 2.1.1.A.1.
 - 2.1.1.A.1.(a).
 - 2.1.1.A.1.(a).I.
 - 2.1.1.A.1.(a).I.(i).
 - 2.1.1.A.1.(a).I.(i).(1).
- D. Check Sheets** - When a tariff filing is made with the Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the pages contained in the tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some pages.) The tariff user should refer to the latest Check Sheet to find out if a particular page is the most current on file with the Commission.

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SECTION 1.0 – DEFINITIONS

Access Line - An arrangement from a local exchange telephone company or other common carrier, using either dedicated or switched access, which connects a Customer's location to Carrier's location or switching center.

Account - A Company accounting category containing up to two (2) residential local exchange access lines billed to the same Customer at the same address. The second or non-primary local exchange access line will share any call allowance of the primary local exchange access line. The second or non-primary local exchange access line therefore will not be provisioned to include a separate call allowance structure. No features are included with the second or non-primary local exchange access line.

Account Codes - Permits Centrex Stations and attendants to dial an account code number of up to eight digits. For use when placing calls over facilities arranged for Automatic Message Accounting (AMA) recording. The account or project number must be input prior to dialing the called number.

Advance Payment - Part or all of a payment required before the start of service.

Authorization Code - A numerical code, one or more of which may be assigned to a Customer, to enable Carrier to identify the origin of service of the Customer so it may rate and bill the call. All authorization codes shall be the sole property of Carrier and no Customer shall have any property or other right or interest in the use of any particular authorization code. Automatic numbering identification (ANI) may be used as or in connection with the authorization code.

Authorized User - A person, firm or corporation authorized by the Customer to be an end-user of the service of the Customer.

Automatic Numbering Identification (ANI) - A type of signaling provided by a local exchange telephone company which automatically identifies the local exchange line from which a call originates.

Commission - Arizona Corporation Commission.

Common Carrier - An authorized company or entity providing telecommunications services to the public

Company - Broadvox-CLEC, LLC, the issuer of this tariff.

Customer - The person, firm or corporation that orders service and is responsible for the payment of charges and compliance with the terms and conditions of this tariff.

Customer Premises - A location designated by the Customer for the purposes of connecting to the Company's services.

Customer Terminal Equipment - Terminal equipment provided by the Customer.

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SECTION 1.0 - DEFINITIONS, (CONT'D.)

Deposit - Refers to a cash or equivalent of cash security held as a guarantee for payment of the charges.

End Office - The LEC switching system office or serving wire center where Customer station loops are terminated for purposes of interconnection to each other and/or to trunks.

Equal Access - A form of dialed access provided by local exchange companies whereby interexchange calls dialed by the Customer are automatically routed to the Company's network. Presubscribed Customers may also route interexchange calls to the Company's network by dialing an access code supplied by the Company.

Exchange Telephone Company or Telephone Company - Denotes any individual, partnership, association, joint-stock company, trust, or corporation authorized by the appropriate regulatory bodies to engage in providing public switched communication service throughout an exchange area, and between exchange areas within the LATA.

ICB - Individual Case Basis.

IXC or Interexchange Carrier - A long distance telecommunications services provider.

Interruption - The inability to complete calls due to equipment malfunctions or human errors. Interruption shall not include, and no allowance shall be given for service difficulties such as slow dial tone, circuits busy or other network and/or switching capability shortages. Nor shall Interruption include the failure of any service or facilities provided by a common carrier or other entity other than the Carrier. Any Interruption allowance provided within this Tariff by Carrier shall not apply where service is interrupted by the negligence or willful act of the Customer, or where the Carrier, pursuant to the terms of this Tariff, terminates service because of non-payment of bills, unlawful or improper use of the Carrier's facilities or service, or any other reason covered by this Tariff or by applicable law.

LATA - A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4, or its successor tariff(s).

LEC - Local Exchange Company refers to the dominant, monopoly local telephone company in the area also served by the Company.

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SECTION 1.0 - DEFINITIONS, (CONT'D.)

Monthly Recurring Charges - The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

MOU - Minutes of Use.

NECA - National Exchange Carriers Association.

Non-Recurring Charge ("NRC") - The initial charge, usually assessed on a one-time basis, to initiate and establish service.

PBX - Private Branch Exchange

PIN - Personal Identification Number. See Authorization Code.

Point of Presence ("POP") - Point of Presence

Recurring Charges - Monthly charges to the Customer for services, and equipment, which continues for the agreed upon duration of the service.

Service - Any means of service offered herein or any combination thereof.

Service Order - The written request for Company services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order Form by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff.

Serving Wire Center - A specified geographic point from which the vertical and horizontal coordinate is used in calculation of airline mileage.

Shared Inbound Calls - Refers to calls that are terminated via the Customer's Company-provided local exchange line.

Shared Outbound Calls - Refers to calls in Feature Group (FGD) exchanges whereby the Customer's local telephone lines are presubscribed by the Company to the Company's outbound service such that "1 + 10-digit number" calls are automatically routed to the Company's or an IXC's network. Calls to stations within the Customer's LATA may be placed by dialing "10XXX" or "101XXXX" with 1 + 10-digit number."

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SECTION 1.0 - DEFINITIONS, (CONT'D.)

Station - The network control signaling unit and any other equipment provided at the Customer's premises which enables the Customer to establish communications connections and to effect communications through such connections.

Subscriber - The person, firm, partnership, corporation, or other entity who orders telecommunications service from Broadvox-CLEC. Service may be ordered by, or on behalf of, those who own, lease or otherwise manage the pay telephone, PBX, or other switch vehicle from which an End User places a call utilizing the services of the Company.

Switched Access Origination/Termination - Where access between the Customer and the interexchange carrier is provided on local exchange company Feature Group circuits and the connection to the Customer is a LED-provided business or residential access line. The cost of switched Feature Group access is billed to the interexchange carrier.

Terminal Equipment - Any telecommunications equipment other than the transmission or receiving equipment installed at a Company location.

Usage Charges - Charges for minutes or messages traversing over local exchange facilities.

User or End User - A Customer, Joint User, or any other person authorized by a Customer to use service provided under this tariff.

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SECTION 2.0 - REGULATIONS

2.1 Undertaking of the Company

2.1.1 Scope

The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points within the state of Arizona.

The Company is responsible under this tariff only for the services and facilities provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own customers.

2.1.2 Shortage of Equipment or Facilities

2.1.2.A. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.

2.1.2.B. The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.3 Terms and Conditions

2.1.3.A. Service is provided on the basis of a minimum period of at least thirty (30) days, 24-hours per day. For the purpose of computing charges in this tariff, a month is considered to have 30 days.

2.1.3.B. Except as otherwise stated in this tariff, Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.

2.1.3.C. At the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month-to-month basis at the then current rates unless terminated by either party upon notice. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the service order and this tariff prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the service order shall survive such termination.

2.1.3.D. In any action between the parties to enforce any provision of this tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.

2.1.3.E. Service may be terminated upon written notice to the Customer if:

2.1.3.E.1 the Customer is using the service in violation of this tariff; or

2.1.3.E.2 the Customer is using the service in violation of the law.

2.1.3.F. This tariff shall be interpreted and governed by the laws of the state of Arizona regardless of its choice of laws provision.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.3 Terms and Conditions, (Cont'd.)

2.1.3.G. Any other Telephone Company may not interfere with the right of any person or entity to obtain service directly from the Company. No person or entity shall be required to make any payment, incur any penalty, monetary or otherwise, or purchase any services in order to have the right to obtain service directly from the Company.

2.1.3.H. To the extent that either the Company or any other telephone company exercises control over available cable pairs, conduit, duct space, raceways, or other facilities needed by the other to reach a person or entity, the party exercising such control shall make them available to the other on terms equivalent to those under which the Company makes similar facilities under its control available to its customers. At the reasonable request of either party, the Company and the other telephone company shall join the attempt to obtain from the owner of the property access for the other party to serve a person or entity.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Limitations on Liability

2.1.4.A. Except as otherwise stated in this section, the liability of the Company for damages arising out of either: (1) the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or (2) the failure to furnish its service, whether caused by acts or omission, shall be limited to the extension of allowances to the Customer for interruptions in service as set forth in Section 2.6.

2.1.4.B. Except for the extension of allowances to the Customer for interruptions in service as set forth in Section 2.6, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.

2.1.4.C. The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Limitations on Liability, (Cont'd.)

2.1.4.D. The Company shall be indemnified and saved harmless by the Customer from and against all loss, liability, damage and expense, including reasonable counsel fees, due to:

2.1.4.D.1 Any act or omission of: (a) the Customer, (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) common carriers or warehousemen, except as contracted by the Company;

2.1.4.D.2 Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;

2.1.4.D.3 Any unlawful or unauthorized use of the Company's facilities and services;

2.1.4.D.4 Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the material transmitted by means of Company-provided facilities or services; or by means of the combination of Company-provided facilities or services;

2.1.4.D.5 Breach in the privacy or security of communications transmitted over the Company's facilities;

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Limitations on Liability, (Cont'd.)

2.1.4.D. (Cont'd.)

- 2.1.4.D.6** Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in paragraph A. of this Subsection 2.1.4.
- 2.1.4.D.7** Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof;
- 2.1.4.D.8** Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;
- 2.1.4.D.9** Any noncompletion of calls due to network busy conditions;
- 2.1.4.D.10** Any calls not actually attempted to be completed during any period that service is unavailable;
- 2.1.4.D.11** And any other claim resulting from any act or omission of the Customer or patron(s) of the Customer relating to the use of the Company's services or facilities.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Limitations on Liability, (Cont'd.)

- 2.1.4.E.** The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere.
- 2.1.4.F.** The Company makes no warranties or representations, EXPRESS OR IMPLIED, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular use, except those expressly set forth herein.
- 2.1.4.G.** Failure by the Company to assert its rights pursuant to one provision of this rate sheet does not preclude the Company from asserting its rights under other provisions.
- 2.1.4.H. Directory Errors** - In the absence of gross negligence or willful misconduct, no liability for damages arising from errors or mistakes in or omissions of directory listings, or errors or mistakes in or omissions of listing obtainable from the directory assistance operator, including errors in the reporting thereof, shall attach to the Company. An allowance for errors or mistakes in or omissions of published directory listings or for errors or mistakes in or omissions of listing obtainable from the directory assistance operator shall be at the monthly tariff rate for each listing, or in the case of a free or no-charge directory listing, credit shall equal two times the monthly tariff rate for an additional listing, for the life of the directory or the charge period during which the error, mistake or omission occurs.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Limitations on Liability, (Cont'd.)

2.1.4.I. With respect to Emergency Number 911 Service:

2.1.4.I.1 This service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies. The Company is not responsible for any losses, claims, demands, suits or any liability whatsoever, whether suffered, made instituted or asserted by the Customer or by any other party or person for any personal injury or death of any person or persons, and for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused by: (1) mistakes, omissions, interruptions, delays, errors or other defects in the provision of service, or (2) installation, operation, failure to operate, maintenance, removal, presence, condition, local or use of any equipment and facilities furnishing this service.

2.1.4.I.2 Neither is the Company responsible for any infringement, nor invasion of the right of privacy of any person or persons, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of emergency 911 service features and the equipment associated therewith, or by any services furnished by the Company, including, but not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing emergency 911 service, and which arise out of the negligence or other wrongful act of the Company, the Customer, its users, agencies or municipalities, or the employees or agents of any one of them.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.4 Limitations on Liability, (Cont'd.)****2.1.4.I. With respect to Emergency Number 911 Service, (Cont'd.)**

2.1.4.I.3 When a Customer with a nonpublished telephone number, as defined herein, places a call to the emergency 911 service, the Company will release the name and address of the calling party, where such information can be determined, to the appropriate local governmental authority responsible for emergency 911 service upon request of such governmental authority. By subscribing to service under this rate sheet, the Customer acknowledges and agrees with the release of information as described above.

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.6 Provision of Equipment and Facilities

- 2.1.6.A.** The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- 2.1.6.B.** The Company shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- 2.1.6.C.** The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.
- 2.1.6.D.** Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which it was provided.
- 2.1.6.E.** The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the Premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.6 Provision of Equipment and Facilities, (Cont'd.)

2.1.6.F. The Company shall not be responsible for the installation, operation, or maintenance of any Customer-provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Subject to this responsibility, the Company shall not be responsible for:

- (1) the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission; or
- (2) the reception of signals by Customer-provided equipment.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.1 Undertaking of the Company, (Cont'd.)****2.1.7 Non-routine Installation**

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.1.8 Special Construction

Subject to the agreement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken:

- A. where facilities are not presently available, and there is no other requirement for the facilities so constructed;
- B. of a type other than that which the Company would normally utilize in the furnishing of its services;
- C. over a route other than that which the Company would normally utilize in the furnishing of its services;
- D. in a quantity greater than that which the Company would normally construct;
- E. on an expedited basis;
- F. on a temporary basis until permanent facilities are available;
- G. involving abnormal costs; or
- H. in advance of its normal construction.

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this rate sheet remains in the Company, its partners, agents, contractors or suppliers.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.2 Prohibited Uses**

- 2.2.1** The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2** The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and Commission regulations, policies, orders, and decisions.
- 2.2.3** The Company may block any signals being transmitted over its Network by Customers which cause interference to the Company or other users. Customer shall be relieved of all obligations to make payments for charges relating to any blocked Service and shall indemnify the Company for any claim, judgment or liability resulting from such blockage.
- 2.2.4** A customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated communications services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this tariff will apply.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.3 Obligations of the Customer****2.3.1 General**

The Customer is responsible for making proper application for service; placing any necessary order, complying with tariff regulations; payment of charges for services provided. Specific Customer responsibilities include, but are not limited to the following:

- A. the payment of all applicable charges pursuant to this tariff;
- B. damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer, with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- C. providing at no charge, as specified from time to time by the Company, any needed personnel, equipment space and power to operate Company facilities and equipment installed on the premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- D. obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduits necessary for installation of fiber optic cable and associated equipment used to provide Communication Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1(C.) Any and all costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for service;

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.3 Obligations of the Customer, (Cont'd.)****2.3.1 General, (Cont'd.)**

- E.** providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company's employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. asbestos) prior to any construction or installation work;
- F.** complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in any Customer premises or the rights-of-way for which Customer is responsible under Section 2.3.1D.; and granting or obtaining permission for Company agents or employees to enter the premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company;
- G.** not creating, or allowing to be placed, any liens or other encumbrances on the Company's equipment or facilities; and
- H.** making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance will be made for the period during which service is interrupted for such purposes.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.3 Obligations of the Customer, (Cont'd.)****2.3.2 Liability of the Customer**

- A. The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invites, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B. To the extent caused by any negligent or intentional act of the Customer as described in A., preceding, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, and (2) any liability incurred by the Company to any third party pursuant to this or any other rate sheet of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided by the Company to such third party.
- C. The Customer shall not assert any claim against any other Customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this rate sheet including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other Customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other Customer or user and not by any act or omission of the Company. Nothing in this rate sheet is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.4 Customer Equipment and Channels****2.4.1 General**

A User may transmit or receive information or signals via the facilities of the Company. The Company's services are designed primarily for the transmission of voice-grade telephonic signals, except as otherwise stated in this tariff. A User may transmit any form of signal that is compatible with the Company's equipment, but the Company does not guarantee that its services will be suitable for purposes other than voice-grade telephonic communication except as specifically stated in this tariff.

2.4.2 Station Equipment

- A. Terminal equipment on the User's Premises and the electric power consumed by such equipment shall be provided by and maintained at the expense of the User. The User is responsible for the provision of wiring or cable to connect its terminal equipment to the Company Point of Connection.
- B. The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense, subject to prior Customer approval of the equipment expense.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.4 Customer Equipment and Channels, (Cont'd.)

2.4.3 Interconnection of Facilities

- A. Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communication Services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- B. Communication Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers that are applicable to such connections.
- C. Facilities furnished under this tariff may be connected to Customer-provided terminal equipment in accordance with the provisions of this tariff. All such terminal equipment shall be registered by the Federal Communications Commission pursuant to Part 68 of Title 47, Code of Federal Regulations; and all User-provided wiring shall be installed and maintained in compliance with those regulations.
- D. Users may interconnect communications facilities that are used in whole or in part for interstate communications to services provided under this tariff only to the extent that the user is an "End User", as defined in Section 69.2(m), Title 47, Code of Federal Regulations (1992 edition).

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.4 Customer Equipment and Channels, (Cont'd.)

2.4.4 Inspections

- A. Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2A. for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.
- B. If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.5 Payment Arrangements****2.5.1 Payment for Service**

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Authorized Users by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

The Customer is responsible for payment of any sales, use, gross receipts, excise, access or other local, state, federal and 911 taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

The security of the Customer's PIN is the responsibility of the Customer. All calls placed using a PIN shall be billed to and shall be the obligation of the Customer. The Customer shall not be responsible for charges in connection with the unauthorized use of PINs arising after the Customer notifies the Company of the loss, theft, or other breach of security of such PINs.

Customers will only be charged once, on either an interstate or intrastate basis, for any nonrecurring charges.

2.5.2 Billing and Collection of Charges

The Customer is responsible for payment of all charges incurred by the Customer or other Authorized Users for services and facilities furnished to the Customer by the Company.

- A. Nonrecurring charges are due and payable within thirty (30) days after the invoice date, unless otherwise agreed to in advance.
- B. The Company shall present invoices for recurring charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within thirty (30) days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.2 Billing and Collection of Charges, (Cont'd.)**

- C. When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have thirty (30) days.
- D. Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E. If any portion of the payment is not received by the Company, or if any portion of the payment is received by the Company in funds that are not immediately available, within twenty (20) days of the mail date on the bill, then a late payment penalty shall be due the Company. The late payment penalty shall be that portion of the payment not received by the date due minus any charges billed as local taxes multiplied by 1.5%.
- F. The Customer will be assessed a *maximum* charge of thirty-five (\$35.00) for each check or other payment type submitted by the Customer to the Company that a bank or financial institution refuses to honor. See Section 10, Page 9 for current charges.
- G. If service is disconnected by the Company in accordance with Section 2.5.6 following and later restored, restoration of service will be subject to all applicable installation charges.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.5 Payment Arrangements, (Cont'd.)

2.5.3 Disputed Bills

- A. In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, the Company may require the Customer to pay the undisputed portion of the bill to avoid discontinuance of service for non-payment. The Customer must submit a documented claim for the disputed amount. The Customer will submit all documentation as may reasonably be required to support the claim. All claims must be submitted to the Company within 90 days of receipt of billing for those services. If the Customer does not submit a claim as stated above, the Customer waives all rights to filing a claim thereafter.
- B. Unless disputed the invoice shall be deemed to be correct and payable in full by the Customer. If the Customer is unable to resolve any dispute with the Company, then the Customer may file a complaint with the Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007.
- C. If the dispute is resolved in favor of the Customer and the Customer has withheld the disputed amount, no interest, credits or penalties will apply.

2.5.4 Advance Payments

The Company does not collect advance payments.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.5 Payment Arrangements, (Cont'd.)

2.5.5 Deposits

- A. The Company does not collect deposits.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.5 Payment Arrangements, (Cont'd.)

2.5.5 Reserved For Future Use

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.5 Payment Arrangements, (Cont'd.)

2.5.6 Discontinuance of Service

- A. Upon nonpayment of any amounts owing to the Company, the Company may, by giving five (5) days written notice to the Customer, discontinue or suspend service without incurring any liability.
- B. Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving five (5) days written notice to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C. Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.6 Discontinuance of Service, (Cont'd.)**

- D.** Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E.** Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- F.** In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- G.** Upon the Company's discontinuance of service to the Customer under Section 2.5.6 A. or 2.5.6 B., the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges that would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).
- H.** Without notice in the event of Customer use of equipment or services in such a manner as to adversely affect the Company's service to others.
- I.** Without notice in the event of tampering with the equipment or services furnished by the Company.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.7 Cancellation of Application for Service**

- A. Applications for service cannot be canceled without the Company's agreement. Where the Company permits a Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- B. Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs incurred by the Company, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service commenced (all discounted to present value at six percent).
- C. Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred by the Company, less net salvage, applies. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- D. The special charges described in 2.5.7 A. through 2.5.7 C. will be calculated and applied on a case-by-case basis.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.5 Payment Arrangements, (Cont'd.)

2.5.8 Changes in Service Requested

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.6 Allowances for Interruptions in Service

Interruptions in service that are not due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer or the operation or malfunction of the facilities, power or equipment provided by the Customer, will be credited to the Customer as set forth in 2.6.1 for the part of the service that the interruption affects.

2.6.1 General

- A. A credit allowance will be given when service is interrupted, except as specified below. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this rate sheet.
- B. An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.6 Allowances for Interruptions in Service, (Cont'd.)****2.6.1 General, (Cont'd.)**

- C. If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, or refuses access to its premises for test and repair by the Company, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.
- D. The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

2.6.2 Limitations of Allowances

No credit allowance will be made for any interruption in service:

- A. Due to the negligence of or noncompliance with the provisions of this rate sheet by any person or entity other than the Company, including but not limited to the Customer;
- B. Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- C. Due to circumstances or causes beyond the reasonable control of the Company;
- D. During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- E. A service will not be deemed to be interrupted if a Customer continues to voluntarily make use of the such service. If the service is interrupted, the Customer can get a service credit, use another means of communications provided by the Company (pursuant to Section 2.6.3), or utilize another service provider;

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.6 Allowances for Interruptions in Service, (Cont'd.)****2.6.2 Limitations of Allowances, (Cont'd.)**

- F. During any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G. That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
- H. That was not reported to the Company within thirty (30) days of the date that service was affected.

2.6.3 Use of Another Means of Communications

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

2.6.4 Application of Credits for Interruptions in Service

- A. Credits for interruptions in service that is provided and billed on a flat rate basis for a minimum period of at least one month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- B. For calculating credit allowances, every month is considered to have thirty (30) days.
- C. A credit allowance will be given for interruptions of thirty (30) minutes or more. Two or more interruptions of fifteen (15) minutes or more during any one 24-hour period shall be combined into one cumulative interruption.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.6 Allowances for Interruptions in Service, (Cont'd.)****2.6.4 Application of Credits for Interruptions in Service, (Cont'd.)****D. Interruptions of 24 Hours or Less**

Length of Interruption	Amount of Service To Be Credited
Less than 30 minutes	None
30 minutes up to but not including 3 hours	1/10 Day
3 hours up to but not including 6 hours	1/5 Day
6 hours up to but not including 9 hours	2/5 Day
9 hours up to but not including 12 hours	3/5 Day
12 hours up to but not including 15 hours	4/5 Day
15 hours up to but not including 24 hours	One Day

E. Interruptions Over 24 Hours and Less Than 72 Hours

Interruptions over 24 hours and less than 72 hours will be credited 1/5 day for each 3-hour period or fraction thereof. No more than one full day's credit will be allowed for any period of 24 hours.

F. Interruptions Over 72 Hours

Interruptions over 72 hours will be credited 2 days for each full 24-hour period. No more than thirty (30) days credit will be allowed for any one month period.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.6 Allowances for Interruptions in Service, (Cont'd.)****2.6.5 Cancellation For Service Interruption**

Cancellation or termination for service interruption is permitted only if any circuit experiences a single continuous outage of 8 hours or more or cumulative service credits equaling 16 hours in a continuous 12-month period. The right to cancel service under this provision applies only to the single circuit that has been subject to the outage or cumulative service credits.

2.7 Use of Customer's Service by Others**2.7.1 Joint Use Arrangements**

Joint use arrangements will be permitted for all services provided under this tariff. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the service will be allocated. The Company will accept orders to start, rearrange, relocate, or discontinue service only from the designated Customer. Without affecting the Customer's ultimate responsibility for payment of all charges for the service, each joint user shall be responsible for the payment of the charges billed to it.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.8 Cancellation of Service/Termination Liability**

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 2.6.1 above), the Customer agrees to pay to the Company termination liability charges, as defined below. These charges shall become due as of the effective date of the cancellation or termination and be payable within the period, set forth in Section 2.5.2.

2.8.1 Termination Liability

The Customer's termination liability for cancellation of service shall be equal to:

- A. all unpaid Non-Recurring charges reasonably expended by the Company to establish service to the Customer; plus
- B. any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of the Customer; plus
- C. all Recurring Charges specified in the applicable Service Order Tariff for the balance of the then current term discounted at the prime rate announced in the Wall Street Journal on the third business day following the date of cancellation;
- D. minus a reasonable allowance for costs avoided by the Company as a direct result of the Customer's cancellation.

2.9 Transfers and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties:

- 2.9.1 to any subsidiary, parent company or affiliate of the Company; or
- 2.9.2 pursuant to any sale or transfer of substantially all the assets of the Company; or
- 2.9.3 pursuant to any financing, merger or reorganization of the Company.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.10 Customer Liability for Unauthorized Use of the Network**

Unauthorized use of the network occurs when a person or entity that does not have actual, apparent, or implied authority to use the network, obtains the Company's services provided under this rate sheet.

2.10.1 Customer Liability for Fraud and Unauthorized Use of the Network

A. The Customer is liable for the unauthorized use of the network obtained through the fraudulent use of a Company calling card, if such a card is offered by the Company, or an accepted credit card, provided that the unauthorized use occurs before the Company has been notified.

B. A Company calling card is a telephone calling card issued by the Company at the Customer's request, which enables the Customer or user(s) authorized by the Customer to place calls over the Network and to have the charges for such calls billed to the Customer's account.

An accepted credit card is any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph is an accepted credit card when received by the cardholder.

C. The Customer must give the Company written or oral notice that an unauthorized use of a Company calling card or an accepted credit card has occurred or may occur as a result of loss, and/or theft.

D. The Customer is responsible for payment of all charges for calling card services furnished to the Customer or to users authorized by the Customer to use service provided under this rate sheet, unless due to the negligence of the Company. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by third parties, the Customer's employees, or the public.

The liability of the Customer for unauthorized use of the Network by credit card fraud will not exceed the lesser of fifty dollars (\$50.00) or the amount of money, property, labor, or services obtained by the unauthorized user before notification to the Company.

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SECTION 2.0 - REGULATIONS, (CONT'D.)**2.11 Notices and Communications**

- 2.11.1** The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.11.2** The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- 2.11.3** Except as otherwise stated in this tariff, all notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.11.4** The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

2.12 Taxes, Fees and Surcharges

The Company reserves the right to bill any and all applicable taxes, fees and surcharges in addition to normal rates and charges for services provided to the Customer. Taxes and fees include, but are not limited to: Federal Excise Tax, State Sales Tax, Municipal Tax, and Gross Receipts Tax. Unless otherwise specified in this tariff, such taxes, fees and surcharges are in addition to rates as quoted in this tariff and will be itemized separately on Customer invoices.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.12 Taxes, Fees and Surcharges, (Cont'd.)

2.12.1 Arizona Universal Service Fund (AUSF)

In addition to all other taxes and fees that are listed herein or passed through in the normal course of business (e.g. sales tax), the Company shall also add an amount to be collected to each bill for recovery of the Arizona Universal Service Fund (AUSF).

Towards the ultimate goal that basic service be available and affordable to all citizens of the state, the Arizona Corporation Commission has created support mechanisms to assist in the provision of such service in high-cost areas. Pursuant to Arizona Administrative Code, R14-2, Article 12, the Rule directs that the surcharge will be levied on all telecommunications service purchased by end-users.

The Arizona Universal Service Fund (AUSF) surcharge will be the amount set forth in the Arizona Administrative Code, R14-2, Article 12. The percentage and amounts set forth will be subject to periodic adjustment by the Company.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.13 Miscellaneous Provisions

2.13.1 Telephone Number Changes

Whenever any Customer's telephone number is changed after a directory is published, the Company shall intercept all calls to the former number for at least one hundred and twenty (120) days and give the calling party the new number provided existing central office equipment will permit, and the Customer so desires.

When service in an existing location is continued for a new Customer, the existing telephone number may be retained by the new Customer only if the former Customer consents in writing, and if all charges against the account are paid or assumed by the new Customer.

2.13.2 Maintenance and Operations Records

Records of various tests and inspections, to include non-routine corrective maintenance actions or monthly traffic analysis summaries for network administration, necessary for the purposes of the Company or to fulfill the requirements of Commission rules shall be kept on file in the office of the Company as required under Commission rules.

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SECTION 2.0 - REGULATIONS, (CONT'D.)

2.14 Customer Responsibility

A. Cancellation by Customer

Customers may cancel service verbally or in writing. The company shall hold the Customer responsible for payment of all charges, including fixed fees, surcharges, etc., which accrue up to the cancellation date. Customers that cancel the primary local exchange line will have the entire Account disconnected, including any secondary line and all associated features. In the event the Customer executes a term commitment agreement with the Company, the Customer must cancel service and terminate the agreement in accordance with the agreement terms.

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SECTION 3.0 - SERVICE AREAS

3.1 Exchange Service Areas

Local exchange services are provided, subject to availability of facilities and equipment, in areas currently served by the following Incumbent LECs: 1) Qwest, Inc.

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SECTION 4.0 - BASIC SERVICES AND RATES

4.1 Call Timing for Usage Sensitive Services

Where charges for a service are specified based on the duration of use, such as the duration of a telephone call, the following rules apply:

- 4.1.1 Calls are measured in durational increments identified for each service. All calls which are fractions of a measurement increment are rounded-up to the next whole unit.
- 4.1.2 Timing on completed calls begins when the call is answered by the called party. Answering is determined by hardware answer supervision in all cases where this signaling is provided by the terminating local carrier and any intermediate carrier(s).
- 4.1.3 Timing terminates on all calls when the calling party hangs up or the Company's network receives an off-hook signal from the terminating carrier.

4.2 Reserved for Future Use

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service****4.3.1 General**

Broadvox-CLEC offers basic local exchange service only as part of a bundle or package of telecommunications services. All packages include local service, long distance service (interstate and intrastate toll) and selected custom calling features. Voice Mail and Optional Internet access 1 may be available with some packages at an additional charge. The aforementioned services are only available as part of the bundled service offering and are not available on an individual service basis. Customers will be billed directly by the Company.

The Company provides Customers with the option of obtaining a Primary Line and Secondary Line per account:

A. Primary Line

The initial residential local exchange access line per account.

B. Secondary Line

The second or additional residential local exchange access line, billed to the same address as the Primary Line, the Secondary Line will share the monthly call allowance with the Primary Line. The Secondary Line does not automatically include or share any Custom Calling Features. Feature packages may be purchased separately.

Should a Customer with both lines opt to disconnect the Primary Line, the remaining Secondary Line will automatically convert to a Primary Line with all features and functionality of such, and at the Primary Line monthly recurring rate.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.1 General, (Cont'd.)**

Network Exchange Bundled Service may include the calling features listed below:

These features are offered subject to availability of suitable facilities. Certain features may not be available with all classes of services.

Call Forwarding - Fixed, Busy Line No Answer - This feature, when activated, redirects attempted terminating calls to another Customer-specified line. Call originating ability is not affected by Call Forwarding - Fixed, Busy Line No Answer. The calling party is billed for the call to the called number. If the forwarded leg of the call is chargeable, the Customer with the Call Forwarding - Fixed, Busy Line No Answer is billed for the forwarded leg of the call. Calls cannot be transferred to an International Direct Distance Dialing number.

Caller ID with Name - Allows a Customer to see a caller's name and number previewed on a display screen before the call is answered allowing a Customer to prioritize and or screen incoming calls. Caller ID records the name, number, date and time of each incoming call - including calls that aren't answered by the Customer. Caller ID service requires the use of specialized CPE not provided by the company. It is the responsibility of the Customer to provide the necessary CPE. In areas where Caller ID with Name is not available, Caller ID, which only displays the incoming telephone number, will be substituted.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.1 General, (Cont'd.)**

Network Exchange Bundled Service may include the calling features listed below, (cont'd.):

Call Forwarding - Variable - a Customer activated feature that automatically transfers all incoming calls from the Customer's telephone number to another dialable telephone number until the Customer deactivates the feature. If forwarded to a long distance number the Subscriber will incur the long distance charges.

Call Forwarding with Remote Activation- This service allows Customers who subscribe to Call Forward to access, activate, or deactivate Call Forward from a remote location using a touchtone telephone. If forwarded to a long distance number the Subscriber will incur the long distance charges.

Call Trace - Allows a called party to initiate an automatic trace of the last call received. Call Trace is available on a usage basis only. After receiving the call which is to be traced, the Customer dials a code and the traced telephone number is automatically sent to the Company for action. The Customer originating the trace will not receive the traced telephone number. The results of the trace will be furnished only to legally constituted law enforcement agencies or authorities upon proper request by them.

Call Blocking- Call Blocking allows Customer to block calls from different telephone numbers. A screening list is created by Customer either by adding the last number associated with the line (incoming or outgoing) or by pre-selecting the telephone number to be blocked. Callers from such numbers hear an announcement that the calling party is not accepting calls and Customer's phone will not ring. The screening list may be edited and revised at Customer's discretion.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.1 General, (Cont'd.)**

Network Exchange Bundled Service may include the calling features listed below, (cont'd.):

Caller ID Per Line Blocking- Allows a Customer to prevent the transmission and display of their directory number and/or directory name information on outgoing calls. Line Blocking is in operation on a continuous basis and is applicable on all outgoing calls from Customer's blocked line. Line Blocking does not prevent transmission of the calling party information to emergency services that utilize automatic number identification for delivery of the calling information.

VIP Alert - Allows a customer to program telephone numbers of selected callers, enabling the customer to distinguish certain incoming calls from all others by a distinctive ring tone.

Privacy Service- A feature which intercepts calls that are marked "private" and "out of area," or "unavailable" on Caller ID units. When unidentified callers dial the Subscriber's number, they will receive an announcement informing them that the party they are calling does not accept calls from unidentified callers. They will receive a prompt to identify their name or state their intention and the service will then attempt to connect the call. Only if the caller responds will the call be connected.

The Subscriber's Caller ID will display the platform number and the name of the service. If the Subscriber chooses not to take the call the caller will hear a message which states the Subscriber is unavailable.

Privacy Service is offered subject to availability of suitable facilities. This service will be provisioned on a line-by-line basis and Customers with more than one line would need to have the service activated on each line if they want the ability to intercept unknown and blocked calls to each line.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.1 General, (Cont'd.)**

Call Waiting with Caller ID with Name - Call Waiting with Caller ID with Name provides a tone signal to indicate to a Customer already engaged in a telephone call that a second caller is attempting to dial in and allows a Customer to see a caller's name and number previewed on a display screen allowing a Customer to prioritize and or screen incoming calls. This feature permits the Customer to place the first call on hold, answer the second call and then alternate between both callers. Cancel Call Waiting (CCW) allows a Call Waiting (CW) Customer to disable CW for the duration of an outgoing telephone call. CCW is activated (i.e., CW is disabled) by dialing a special code prior to placing a call, and is automatically deactivated when the Customer disconnects from the call. In areas where Caller ID with Name is not available, Caller ID, which only displays the callers telephone number, will be substituted.

Speed Calling - This feature allows a user to dial selected numbers by means of an abbreviated code. This feature is available in either an 8 number or a 30 number capacity. The Speed Calling list can only accommodate a number consisting of 15 digits or less.

Three Way Calling - Permits the Customer to add a third party to an established connection. When the third party answers, a two-way conversation can be held before adding the original party for a three-way conference. The Customer initiating the conference controls the call and may disconnect the third party to reestablish the original connection or establish a connection to a different third party. The feature may be used on both outgoing and incoming.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.2 Arizona Home Edition - Standard Service**

Arizona Home Edition is a package of features available to residential customers in conjunction with an individual flat rate or additional flat rate access line. Residence customers are entitled to choose three services/features from the following list in their package.

- Anonymous Call Rejection
- Caller ID – Name and Number
- Call Forwarding Busy Line/Don't Answer
- Call Following
- Call Forwarding Variable
- Selective Call Forwarding
- Call Rejection
- Call Waiting
- Call Waiting ID
- Selective Call Waiting
- Custom Ringing (first Custom Ringing number only)
- Directory Assistance (6 calls above allowance)
- Last Call Return
- Message Waiting Indication – Audible or Audible/Visual
- Three-Way Calling

All terms and conditions specified elsewhere for the respective services/features requested as part of this package shall apply.

- a. A customer may choose one or more of the features in the Caller ID Family as one of their selections
- b. A customer may choose Call Waiting, Call Waiting ID or Selective Call Waiting from the Call Waiting Family as one of their selections.
- c. A customer choosing Caller ID - Name and Number will automatically be provided with Anonymous Call Rejection.
- d. All services or features selected in the package can only be provided where technically available and compatible with other features the customer may choose to order.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)

4.3 Network Exchange Bundled Service, (Cont'd.)

4.3.2 Arizona Home Edition - Standard Service, (Cont'd.)

Rates

Arizona Home Edition will be provided at the following rates:

	MAXIMUM MONTHLY RATE
• Per individual flat rate residence line with three features	\$25.00
• Per additional flat rate residence line with three features	30.00

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.3 Arizona Home Edition - Deluxe Service**

Arizona Home – Deluxe Edition is a package of features available to residential customers in conjunction with an individual flat rate or additional flat rate access line. Residence customers subscribing to the package are entitled to unlimited use of the services/features specified below:

- Anonymous Call Rejection
- Caller ID – Name and Number
- Call Forwarding Busy Line/Don't Answer
- Call Following
- Call Forwarding Variable
- Selective Call Forwarding
- Call Rejection
- Call Waiting
- Call Waiting ID
- Selective Call Waiting
- Custom Ringing (first Custom Ringing number only)
- Directory Assistance (6 calls above allowance)
- Last Call Return
- Message Waiting Indication – Audible or Audible/Visual
- Three-Way Calling

All terms and conditions specified elsewhere for the respective services/features requested as part of this package shall apply.

- a. A customer may choose one or more of the features in the Caller ID Family as one of their selections
- b. A customer may choose Call Waiting, Call Waiting ID or Selective Call Waiting from the Call Waiting Family as one of their selections.
- c. A customer choosing Caller ID - Name and Number will automatically be provided with Anonymous Call Rejection.
- d. All services or features selected in the package can only be provided where technically available and compatible with other features the customer may choose to order.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)

4.3 Network Exchange Bundled Service, (Cont'd.)

4.3.3 Arizona Home Edition - Deluxe Service, (Cont'd.)

Rates

Arizona Home Edition – Deluxe Service will be provided at the following rates:

	MAXIMUM MONTHLY RATE
• Per individual flat rate residence line with three features	\$40.00
• Per additional flat rate residence line with three features	40.00

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4.3 Network Exchange Bundled Service, (Cont'd.)

4.3.3 RESERVED FOR FUTURE USE

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.4 Arizona Home Edition - Deluxe Service**

Package Price for Deluxe Service

	Maximum
Primary Line, per month	\$130.00
Secondary Line, per month	\$100.00
Service Connection Fee, one time charge per line *	
Primary Line	\$130.00
Secondary Line	\$100.00

* Service Connection fee waived for those customers who meet the Company's enrollment criteria and who retain their existing telephone number when switching their service to Broadvox-CLEC.

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4.3 Network Exchange Bundled Service, (Cont'd.)

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)

4.3 Network Exchange Bundled Service, (Cont'd.)

4.3.5 Business A La Carte Service

Business A La Carte service is targeted at small business Customers and provides options based on the Customers calling patterns and estimated usage. . Customers who subscribe to this service must designate Broadvox-CLEC as the presubscribed carrier for local calling concurrent with enrollment for this service. Business A La Carte provides Customers with the option of selecting Broadvox-CLEC for toll services.

A. Local Exchange Service

.1	Local Access Line	Maximum
	Local Business Line	
	Monthly Rate	\$120.00
	Service Connection Fee, one-time charge per line ¹	
	Per Line	\$200.00
.2	PBX	Maximum
	Monthly Rate	\$120.00
	Service Connection Fee, one-time charge per line ¹	
	Per Line	\$200.00

¹ Service Connection fee is waived for those customers who retain their existing telephone number when switching their service to Broadvox-CLEC. The charge will apply if additional lines are transferred to Broadvox-CLEC after the initial order.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)

4.3 Network Exchange Bundled Service, (Cont'd.)

4.3.5 Business A La Carte Service, (Cont'd.)

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)

4.3 Network Exchange Bundled Service, (Cont'd.)

4.3.5 Business A La Carte Service, (Cont'd.)

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4.3 Network Exchange Bundled Service, (Cont'd.)

4.3.5 Business A La Carte Service, (Cont'd.)

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.5 Business A La Carte Service, (Cont'd.)****E Custom/Optional Calling Features**

Business A La Carte may include the calling features listed below:

Call Forwarding - Call Forwarding, when activated, redirects attempted terminating calls to another Customer-specific line. The Customer may have to activate and deactivate the forwarding function and specify the desired terminating telephone number during each activation procedure. Call originating ability is not affected by Call Forwarding. The calling party is billed for the call to the called number. If the forwarded leg of the call is chargeable, the Customer with the Call Forwarding is billed for the forwarded leg of the call. Calls cannot be transferred to an International Direct Distance Dialing number.

Speed Calling - This feature allows a user to dial selected numbers by means of an abbreviated code. This feature is available in an 8 number capacity. The Speed Calling list can only accommodate a number consisting of 15 digits or less.

Caller ID - Allows a Customer to see a caller's telephone number previewed on a display screen before the call is answered allowing a Customer to prioritize and or screen incoming calls. Caller ID records the number, date and time of each incoming call - including calls that aren't answered by the Customer. Caller ID service requires the use of specialized CPE not provided by the company. It is the responsibility of the Customer to provide the necessary CPE.

Call Waiting - Call Waiting provides a tone signal to indicate to a Customer already engaged in a telephone call that a second caller is attempting to dial in. This feature permits the Customer to place the first call on hold, answer the second call and then alternate between both callers. Cancel Call Waiting (CCW) allows a Call Waiting (CW) Customer to disable CW for the duration of an outgoing telephone call. CCW is activated (i.e., CW is disabled) by dialing a special code prior to placing a call, and is automatically deactivated when the Customer disconnects from the call. Customers must actively choose this feature on a line-by-line basis. Call Waiting is not available on lines enabled for Rotary Hunting.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.5 Business A La Carte Service, (Cont'd.)****E. Custom/Optional Calling Features, (Cont'd.)**

Three Way Calling - Permits the Customer to add a third party to an established connection. When the third party answers, a two-way conversation can be held before adding the original party for a three-way conference. The Customer initiating the conference controls the call and may disconnect the third party to reestablish the original connection or establish a connection to a different third party. The feature may be used on both outgoing and incoming.

Hunting - Routes a call to an idle station line in a prearranged group when the called station line is busy. This feature is available at no charge but must be requested by the Customer.

a. Maximum rates

.1	Monthly Rates, per Feature:	\$15.00
.2	Monthly Rate, Feature Pack, (3 or more features):	\$45.00

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.6 Arizona Business Edition - Standard Service**

Business Edition - Standard is a package of features available to business customers in conjunction with an individual flat rate or additional flat rate access line. Business customers subscribing to the package are entitled to choose three services/features from the following list in their package.

- Anonymous Call Rejection
- Caller ID - Name and Number
- Call Forwarding Busy Line
- Call Forwarding Busy Line/Don't Answer
- Call Forwarding Don't Answer
- Call Forwarding Variable
- Remote Access Forwarding
- Call Transfer
- Call Waiting
- Call Waiting ID
- Selective Call Waiting
- Custom Ringing
- Directory Assistance (6 calls above allowance)
- Last Call Return
- Message Waiting Indication – Audible or Audible/Visual
- Three-Way Calling

Terms and Conditions

- a. All terms and conditions specified elsewhere for the respective services/features requested as part of this package shall apply.
- b. A customer choosing Caller ID - Name and Number will automatically be provided with Anonymous Call Rejection.
- c. A customer may choose one or more compatible features in the Call Forwarding Family as one of their selections.
- d. A customer may choose Call Waiting, Call Waiting ID or Selective Call Waiting from the Call Waiting Family as one of their selections. They may add Long Distance Alert as part of that selection.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.6 Arizona Business Edition - Standard Service, (Cont'd.)**

Terms and Conditions, (Cont'd.)

- e. A customer who chooses Voice Messaging Service will also be provided with Call Forwarding Busy Line/Don't Answer, Easy Access and Message Waiting Indication as part of their Voice Messaging Service selection. A customer who wishes to use another provider's Voice Messaging Service will be provided with Call Forwarding Busy Line/Don't Answer, Easy Access and Message Waiting Indication and it will not be counted as one of their three selections of features/services.
- f. All services or features selected in the package can only be provided where technically available and compatible with other features the customer may choose to order.
- g. Customers selecting Directory Assistance may make six calls above the allowance to the Company's 411 service.

Rates and Charges

- a. The monthly rate that follows includes a business individual flat rate or additional flat rate line as specified in 4.3.5A, preceding. Where applicable, incremental charges, apply.
- b. Normal nonrecurring charges associated with the line as specified in 4.3.5, preceding, apply where the Company's Business is provided in association with the installation of a new business individual or additional flat rate line or the move of a business individual or additional flat rate line from one location to another.
- c. Any mandated charges or special surcharges, e.g., 911, TDD, EUCL, Telephone Assistance Plan, will apply to Add-A-Line under the same terms as a flat rate business line.
- d. Arizona Business Edition - Standard Service will be provided at the following rate:

	MAXIMUM MONTHLY RATE
Per individual or additional flat rate business line	\$75.00

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service, (Cont'd.)****4.3.7 Arizona Business Edition - Deluxe Service**

Business Edition - Deluxe is a package of features available to business customers in conjunction with an individual flat rate or additional flat rate access line. Business customers subscribing to the package are entitled to unlimited use of the services/features specified below:

- Anonymous Call Rejection
- Caller ID - Name and Number
- Call Forwarding Busy Line
- Call Forwarding Busy Line/Don't Answer
- Call Forwarding Don't Answer
- Call Forwarding Variable
- Remote Access Forwarding
- Call Transfer
- Call Waiting
- Call Waiting ID
- Selective Call Waiting
- Custom Ringing
- Directory Assistance (6 calls above allowance)
- Last Call Return
- Message Waiting Indication – Audible or Audible/Visual
- Three-Way Calling

Terms and Conditions

- a. All terms and conditions specified elsewhere for the respective services/features requested as part of this package shall apply.
- b. A customer choosing Caller ID - Name and Number will automatically be provided with Anonymous Call Rejection.
- c. A customer may choose one or more compatible features in the Call Forwarding Family as one of their selections.

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SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)

4.3 Network Exchange Bundled Service, (Cont'd.)

4.3.7 Arizona Business Edition - Deluxe Service, (Cont'd)

Terms and Conditions, (Cont'd.)

- d. A customer may choose Call Waiting, Call Waiting ID or Selective Call Waiting from the Call Waiting Family as one of their selections. They may add Long Distance Alert as part of that selection.
- e. A customer who chooses Voice Messaging Service will also be provided with Call Forwarding Busy Line/Don't Answer, Easy Access and Message Waiting Indication as part of their Voice Messaging Service selection. A customer who wishes to use another provider's Voice Messaging Service will be provided with Call Forwarding Busy Line/Don't Answer, Easy Access and Message Waiting Indication and it will not be counted as one of their three selections of features/services.
- f. All services or features selected in the package can only be provided where technically available and compatible with other features the customer may choose to order.
- g. Customers selecting Directory Assistance may make six calls above the allowance to the Company's 411 service.

Rates and Charges

- a. The monthly rate that follows includes a business individual flat rate or additional flat rate line as specified in 4.3.5A, preceding. Where applicable, incremental charges, apply.
- b. Normal nonrecurring charges associated with the line as specified in 4.3.5, preceding, apply where the Company's Business is provided in association with the installation of a new business individual or additional flat rate line or the move of a business individual or additional flat rate line from one location to another.
- c. Any mandated charges or special surcharges, e.g., 911, TDD, EUCL, Telephone Assistance Plan, will apply to Add-A-Line under the same terms as a flat rate business line.
- d. Arizona Business Edition - Deluxe will be provided at the following rate:

	MAXIMUM MONTHLY RATE
Per individual or additional flat rate business line	\$100.00

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES**5.1 Service Order and Change Charges**

Non-recurring charges apply to processing Service Orders for new service and for changes in service.

5.1.1 Service Order Charges

	Maximum Rates	
	Residence	Business
Primary and Secondary Service Connection Charge	\$50.00	\$80.00
Transfer of Service Charge, Primary Line	\$110.00	\$130.00
Transfer of Service Charge, Secondary Line	\$110.00	\$130.00
Technician Dispatch Charge (or Trouble Isolation Charge)	\$160.00	\$160.00
Service Order Charge	\$30.00	\$30.00
Premises Visit Charge, first 15 minutes	80.00	80.00
Premises Visit Charge, add'l 15 minutes	60.00	60.00

5.1.2 Change Order Charges:

Telephone Number Change Order	\$20.00	\$55.00
Feature or Feature Pack Change Order	\$20.00	\$55.00
Toll Restriction Fee Order	\$20.00	\$55.00
Listing Change Charge	\$20.00	\$55.00
Home Edition Change Charge	\$20.00	\$55.00

5.1.3 Record Change Charges

Record Order Charge	15.00	45.00
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5.1.4 Miscellaneous Charges

Duplicate Invoice	\$25.00	\$25.00
Call Detail Report	\$25.00	\$25.00

Service Connection Fees are listed with the rates for the specific service tariffed.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.1 Service Order and Change Charges, (Cont'd.)****5.1.5 Service Order Charges – Definitions**

Primary Service Connection Charge - applies to requests for initial connection or establishment of telephone service to the Company.

Secondary Service Connection Charge - applies to the second or additional line of a new access line installation and connection and customer requests for an inside move, change or addition to regular service. This charge applies only when the second or additional line is ordered simultaneously with the initial connection for service.

Transfer of Service Charge, Primary Line - applies to the first line of a Transfer of Service Order, (TOS) when a customer requests a move or change in physical location. This charge applies whether a customer changes telephone number or not. If, in addition, the Customer requests the telephone number be changed, a separate charge may apply.

Transfer of Service Charge, Secondary Line - applies to the second, or third, etc., line of a Transfer of Service Order, (TOS) when a customer requests a move or change in physical location. This charge applies whether a customer changes telephone number or not. If, in addition, the Customer requests the telephone number be changed, a separate charge may apply.

Technician Dispatch (or Trouble Isolation) Charge - A separate Technician Dispatch Charge (or Trouble Isolation Charge) applies, in addition to all other charges for the visit, when a visit to the Customer's premises is necessary to isolate a problem reported to the Company but identified by the Company's technician as attributable to Customer-provided equipment or inside wire. This charge also applies for visits by the Company's agents or employees, at the Customer's request, to the Premises of the Customer, when the Customer fails to meet the Company's agent or employees for the prearranged appointment as requested.

Service Order Charge - This charge, applicable to Business Customers only, applies to customer-requested changes in service not covered specifically on other identified non-recurring service order and change charges. This charge is applied in cases where Hunting is added after the initial order is placed.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.1 Service Order and Change Charges, (Cont'd.)****5.1.6 Change Order Charges – Definitions**

Change Order Charges apply to work associated with providing exchange line service or customer-requested changes to existing services. One charge applies for each change order requested by the customer. If multiple changes listed below are requested by the Customer and occur on the same order/request one charge only applies. A Change Order Service Charge applies to the following customer-initiated changes:

Feature or Feature Pack Change Order - applies when a customer requests a change, adding or removing a feature or feature pack.

Toll Restriction Fee Order - applies when a Customer requests a change, adding or removing Toll Restriction Service.

Telephone Number Change Order - applies to each telephone number change request/order.

Long Distance Minutes Pack Change Order - applies to residential Customers who request/order a change to add or delete an LD Minutes Pack.

Listing Change Charge - applies when a Customer requests/orders a change to add or delete a white pages listing or requests a change to add/delete listings. This charge also applies to request for Non-Published or Non-Listed numbers.

Home Edition Change Charge - applies when a residential Customer requests/orders a change in service from Home Edition- Basic Service to Home Edition- Standard Service or from Home Edition - Standard Service to Home Edition - Basic Service.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.1 Service Order and Change Charges, (Cont'd.)

5.1.7 Record Change Charges – Definitions

A Record Change charge applies when a Customer requests/orders a change to Company records such as adding/changing a name on said Customer's account, changing billing address or contact information, adding/changing the person(s) authorized to make changes on said Customer's account.

5.1.8 Miscellaneous Charges – Definitions

Duplicate Invoice - applies each time a Customer requests an additional copy of a current bill or invoice.

Call Detail Report - applies each time a Customer requests local call detail for a given month.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.2 Reserved For Future Use

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5.2 Reserved For Future Use

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.3 Restoration of Service**

A restoration charge applies to the restoration of suspended service and facilities because of nonpayment of bills and is payable at the time that the restoration of the suspended service and facilities is arranged. The restoration charge does not apply when, after disconnection of service, service is later re-installed.

	Maximum Rates	
	Residence	Business
Per occasion, per line	\$50.00	\$110.00

5.4 Temporary Suspension/Restoration of Service

Upon the request of the customer, service may be temporarily suspended. Suspension of service may begin or terminate on any day of the month provided notice is given sufficiently in advance for arrangements to be made. Service will be disconnected to the extent necessary to assure that no inward or outward service will be available during the period of suspension.

	Maximum Rates	
	Residence	Business
Nonrecurring charge, per line suspended	\$20.00	\$55.00
Recurring charge, per line suspended	50% of regular service rates	
Nonrecurring charge, per line restored	\$20.00	\$55.00

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.5 Public Telephone Surcharge**

In order to recover the Company's expenses to comply with the FCC's pay telephone compensation plan effective on October 7, 1997 (FCC 97-371), an undiscountable per call charge is applicable to all intrastate calls that originate from any pay telephone, not presubscribed to the Company, used to access Company provided services. This surcharge, which is in addition to standard tariffed usage charges and any applicable service charges and surcharges associated with service, applies for the use of the instrument used to access Company provided service and is unrelated to the service accessed from the pay telephone.

Pay telephones include coin-operated and coinless phones owned by local telephone companies, independent companies and interexchange carriers. The Public Pay Telephone Surcharge applies to the initial completed call and any reoriginated call. The Public Pay Telephone Surcharge does not apply to calls placed from pay telephones at which the Customer pays for service by inserting coins during the progress of the call.

Whenever possible, the Public Pay Telephone Surcharge will appear on the same invoice containing the usage charges for the surcharged call. In cases where proper pay telephone coding digits are not transmitted to the Company prior to completion of a call, the Public Pay Telephone Surcharge may be billed on a subsequent invoice after the Company has obtained information from a carrier that the originating station is an eligible pay telephone.

Maximum Rate Per Call: \$1.00

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.6 Optional Calling Features**

The features in this section are made available to Residential and Business Customers on a per use basis. All features are provided subject to availability. Customers may utilize each feature by dialing the appropriate access code. The Customer will be billed the per feature activation charge shown in the table below each time a feature is used by the Customer. Transmission levels for calls forwarded or calls placed or received using optional calling features may not be acceptable for all some uses in some cases.

5.6.1 Feature Descriptions

Return Call: Allows a Customer to return the most recent incoming call and, after dialing a code, hear an announcement of the last telephone number that called. If the Customer wishes to return the call right away, voice prompts will instruct the Customer to dial a certain digit and the call will automatically be returned.

Call Trace: Allows a Customer to initiate an automatic trace of the last call received. After receiving the call which is to be traced, the Customer dials a code and the traced telephone number is automatically sent to the Company. The Customer using Call Trace is required to contact the Company for further action. The Customer originating the trace will not receive the traced telephone number. The results of a trace will be furnished only to legally constituted authorities upon proper request by them.

Repeat Dialing: Permits the Customer to redial automatically the last number dialed.

Three Way Calling: permits the Customer to add a third party to an established connection. When the third party answers, a two-way conversation can be held before adding the original party for a three-way conference. The Customer initiating the conference controls the call and may disconnect the third party to reestablish the original connection or establish a connection to a different third party. The feature may be used on both outgoing and incoming.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.6 Optional Calling Features, (Cont'd.)

5.6.1 Feature Descriptions, (Cont'd.)

Caller Identification Blocking: Allows the name and number of the calling party to be blocked from being transmitted when placing outbound calls.

Per Call Blocking: To activate per-call blocking, a Customer dials a special code prior to placing a call. Blocking will be activated for that outgoing call only. There is no charge for using per call blocking, and it is provided on an unlimited basis.

Per Line Blocking: When blocking is established on the line, it can be deactivated by dialing a code before each call. This one call unblock allows the name and/or number to be sent for that one call only. Customers who choose per line blocking for the first time will not be charged the nonrecurring charge. After the first time, customers requesting per line blocking will pay a nonrecurring charge for each line equipped with per line blocking. Per line blocking will be provided free to law enforcement and domestic violence agencies and individual victims of domestic violence upon request.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.6 Optional Calling Features, (Cont'd.)

5.6.2 Maximum Rates

FEATURE	Residential	Business
	Monthly Maximum	Monthly Maximum
Speed Calling		
8 Number	12.00	12.00
30 Number	12.00	12.00
Call Forwarding		
Variable	12.00	12.00
Busy Line (Expanded)	12.00	12.00
Busy Line (Overflow)	12.00	12.00
Busy Line (Programmable)	12.00	12.00
Don't Answer	12.00	12.00
Don't Answer (Expanded)	12.00	12.00
Don't Answer (Programmable)	12.00	12.00
Busy Line/Don't Answer	12.00	12.00
Busy Line (External)/DA	12.00	12.00
Call Rejection	12.00	12.00
Call Waiting	12.00	12.00
Call Transfer	12.00	12.00
Caller ID		
Name and Number	12.00	12.00
Number	12.00	12.00
Continuous Redial	12.00	12.00
Distinctive Alert	12.00	12.00
Hot Line	12.00	12.00
Priority Call	12.00	12.00
Remote Access Forwarding	12.00	12.00
Selective Call Forwarding	12.00	12.00

FEATURE	Residential		Business	
	Per Use	Monthly Maximum	Per Use	Monthly Maximum
Call Tracing - per use	\$4.00	\$12.00	\$4.00	\$12.00
Repeat Call (*66) - per use	\$1.50	\$12.00	\$1.50	\$12.00
Return Call (*69) - per use	\$1.50	\$12.00	\$1.50	\$12.00
Three Way Calling - per use	\$1.50	\$12.00	\$1.50	\$12.00

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.7 Directory Assistance Services

A Customer may obtain assistance, for a charge, in determining a telephone number by dialing Directory Assistance Service. A Customer can also receive assistance by writing the Company with a list of names and addresses for which telephone numbers are desired.

5.7.1 Basic Directory Assistance

The rates specified following apply when Customers request company assistance in determining telephone numbers of Customers who are located in the same local service area or who are not located in the same local service area but who are located within the same NPA.

There are no call allowances for Directory Assistance.

Charges will not apply for calls placed from hospital services or calls placed from telephones where the Customer or, in the case of residence service, a member of the Customer's household, has been affirmed in writing as unable to use a Company provided directory because of a visual, physical or reading handicap.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.7 Directory Assistance Services, (Cont'd.)

5.7.2 Directory Assistance Call Completion

Directory Assistance Call Completion (DACC) is a service that provides customers the option of having their local or intraLATA calls automatically completed when they request a telephone listing from the Directory Assistance operator. The call may be completed automatically or by the Directory Assistance operator.

The DACC portion of the call may either be billed in the same manner as the DA portion or alternately billed by using a calling card, billing to a third number, or collect. All operator-handled charges, as specified in 5.8, apply as appropriate.

There are no allowances for DACC, however, the Directory Assistance portion of the call is still governed by the appropriate call allowance as stated in Section 5.7.1.

For local and intraLATA calls, charges for DACC service are not applicable to calls placed by those customers with reading, visual, or physical handicaps.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.7 Directory Assistance Services, (Cont'd.)

5.7.3 National Directory Assistance Service

National Directory Assistance Service is provided to customers of the Company for the purpose of requesting telephone numbers of individuals or businesses who are located outside the customer's local Directory Assistance service area.

There are no call allowances or exemptions for National Directory Assistance.

A maximum of two(2) requested telephone numbers are allowed per call.

This service may be alternately billed by using a calling card, billing to a third number, or collect. Operator-handled charges, as specified in 5.8, apply as appropriate.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.7 Directory Assistance Services, (Cont'd.)

5.7.4 Maximum Rates

A. Basic Directory Assistance

	<u>Per query</u>
Local Directory Assistance	
Direct dialed (in excess of allowance)	\$2.00
Via operator (no allowance)	\$3.00

B. Directory Assistance Call Completion
Per completed call

\$1.00

C. National Directory Assistance
Direct dialed

\$2.00

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.8 Local Operator Service**

The Company's operator services, available to presubscribed Customers, are accessible on a twenty-four (24) hour per day seven (7) days per week basis. In addition to the per call service charge, usage rates apply. The types of calls handled are as follows:

Customer Dialed Calling/Credit Card Call - This charge applies in addition to usage charges for station to station calls billed to an authorized Calling Card or Commercial Credit Card. The Customer must dial the destination telephone number where the capability exists for the Customer to do so. A separate rate applies in the event operator assistance is requested for entering the Customer's card number for billing purposes.

Operator Dialed Calling/Credit Card Call - This charge applies in addition to usage charges for station to station calls billed to an authorized telephone Calling Card or Commercial Credit Card and the operator dials the destination telephone number at the request of the Customer.

Operator Station - These charges apply in addition to usage charges for non-Person-to-Person calls placed using the assistance of a Company operator and billed Collect, to a Third Party, by deposit of coins in Pay Telephones, or via some method other than a Calling Card or Commercial Credit Card.

Person-to-Person - This charge applies in addition to usage charges for calls placed with the assistance of a Company operator to a particular party at the destination number. This charge applies regardless of billing method, including but not limited to billing to a Calling Card, Commercial Credit Card, Collect, by deposit of coins in Pay Telephones, or to a Third Party. Charges do not apply unless the specified party or an acceptable substitute is available.

Usage charges for local operator assisted calls are those usage charges that would normally apply to the calling party's service. In addition to usage charges, an operator assistance charge applies to each call.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.8 Local Operator Service, (Cont'd.)

5.8.1 Maximum Local and IntraLATA Per Call Service Charges:

Customer Dialed Calling Card	\$4.50
Customer Dialed/Operator Assisted Calling Card	\$6.05
Collect	\$3.30
Third Party Billed	\$3.30
Person-to-Person	\$6.50

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.9 Busy Line Verification and Emergency Interrupt Service**

Upon request of a calling party the Company will verify a busy condition on a designated local service line. The operator will determine if the line is clear or in use and report to the calling party. At the request of the Customer, the operator will interrupt the call on the busy line. Emergency Interruption is only permitted in cases where the calling party indicates an emergency exists and requests interruption. If the Customer has the operator interrupt a call, both the Busy Line Verification and the Emergency Interrupt charge will apply.

No charge will apply when the calling party advises that the call is to or from an official public emergency agency. Busy Verification and Interrupt Service is furnished where and to the extent that facilities permit.

The Customer shall identify and save the Company harmless against all claims that may arise from either party to the interrupted call or any person.

5.9.1 Maximum Rates

	Per call
Busy Line Verification, per request	\$3.00
Emergency Interruption	\$6.00

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.10 Directory Listing Service

5.10.1 General

The following rates and regulations apply to standard listings in light face type in the white pages (alphabetical section) of the telephone directory and to the Directory Assistance records of the Company.

Directory listings are limited to such information as is essential to the identification of the listed party. The listing of a service, commodity, or trade name is not permitted unless it is the name, or an integral part of the name, under which the Customer does business.

A listing is limited to one line in the directory, except where in the judgment of the Company, more than one line is required to identify the Customer properly. In such cases, the additional lines required are provided at no extra charge.

Listing services are available with all classes of main telephone exchange service.

5.10.2 Listings

A. Primary Listing

One listing, termed the primary listing, is included with each exchange access line or each joint user service.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.10 Directory Listing Service, (Cont'd.)****5.10.2 Listings, (Cont'd.)****B. Additional Listings**

Additional listings may be the listings of individual names of those entitled to use the customer's service or, for business, Departments, Divisions, Tradenames, etc.

In connection with business and residence service, regular additional listings are available only in the names of Authorized Users of the Customer's service.

Ordinarily, all additional listings are of the same address and telephone number as the primary listings, except as provided for joint user and alternate number listings. However, when it appears necessary as an aid to the use of the directory and provided satisfactory service can be furnished, a listing will be permitted under the address of a branch exchange, Centrex or extension of an exchange service line installed on the premises of the Customer, but at an address different from that of the attendant position of main service.

Business additional listings are not permitted in connection with residence service. Residence additional listings are also permitted in connection with business service which is located in a residence and for permanent or season guests residing in a hotel or club.

A residence dual name additional listing is comprised of a surname, two first names, address and telephone number. A residence dual name additional listing may be provided for two persons who share the same surname and reside at the same address, or for a person known by two first names.

Special types of additional listings, such as Alternate, Alpha and Informational, Duplicate and Reference Listings, Foreign Listings, etc. take the same business or residence classification as the service with which such listings are furnished.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.10 Directory Listing Service, (Cont'd.)****5.10.2 Listings, (Cont'd.)****C. Nonpublished Service**

The telephone numbers of nonpublished service are not listed in either the Company's alphabetical directory or Directory Assistance records available to the general public.

Non published information may be released to emergency service providers, to customers who subscribe to Company offerings which require the information to provide service and/ or bill their clients, or, to telephone customers who are billed for calls placed to or from nonpublished numbers and to entities which collect for the billed services. Nonpublished names and/or telephone numbers may also be delivered to customers on a call-by-call basis.

Incoming calls to nonpublished service will be completed by the Company only when the calling party places the call by number. The Company will adhere to this practice not withstanding any claim the calling party may present, except claims of emergencies involving life and death. In such cases, the Company will call the non-published number and request permission to make an immediate connection to the calling party.

When the Company agrees to keep a number unlisted, it does so without any obligation. Except for cases of gross negligence or willful misconduct, the Company is not liable for any damages that might arise from publishing a non-published number in the directory or disclosing it to some. If, in error, the telephone number is published in the directory, the Company's only obligation is to credit or refund any monthly charges the Customer paid for non-published service.

The Subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-published service or the disclosing of said number to any person.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.10 Directory Listing Service, (Cont'd.)

5.10.2 Listings, (Cont'd.)

D. Nonlisted Service

Non-listed service means that the Customer's telephone number is not listed in the directory, but does it appear in the Company's Directory Assistance Records.

This service is subject to the rules and regulations for E911 service, where applicable.

The Company will only complete calls to a nonlisted number, if requested by a caller, during the course of a directory assistance call completion service.

When the Company agrees to keep a number unlisted, it does so without any obligation. Except for cases of gross negligence or willful misconduct, the Company is not liable for any damages that might arise from publishing a non-listed number in the directory or disclosing it to some. If, in error, the telephone number is listed in the directory, the Company's only obligation is to credit or refund any monthly charges the Customer paid for nonlisted service.

The subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-listed service or the disclosing of said number to any person.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.10 Directory Listing Service, (Cont'd.)

5.10.2 Listings, (Cont'd.)

E. Toll-Free Directory Listings

Where available, a listing which references the Toll Free Number for a Business customer will be made available.

F. Straight Line Under Directory Listing

A business listing where one or more listings are indented under an original listing of the same customer without repetition of the name.

G. Caption and Subcaption Directory Listings

Two or more business listings may be placed under a caption consisting of the name of the customer or of any of the parties which the customer is entitled to list together with a designation or title where the name is not indicative of the business or profession. One or more sub captions may be furnished under a caption, each sub caption consisting of a directive heading which serves to identify two or more listings placed thereunder, where this grouping is necessary for the proper routing of calls.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.10 Directory Listing Service, (Cont'd.)****5.10.3 Maximum Rates and Charges**

	Per Month
Primary Listings	\$0.00
Change in Primary Listing	
Business, each	---
Residence, each	---
Additional Listings	
Business, each	\$6.00
Residence, each	\$3.00
Nonlisted Service	
Business, each	\$3.00
Residence, each	\$3.00
Nonpublished Service	
Business, each	\$3.60
Residence, each	\$3.80
Toll-Free Directory Listings	
Business, each	\$30.00
Residence, each	N/A
Straight Line Under Listings	
Business, each	\$10.00
Residence, each	N/A
Captions and Subcaptions Listings	
Business, each	\$10.00
Residence, each	N/A

For non-recurring charges associated with a customer-initiated change in a directory listing, see Section 10.2.1 of this tariff.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.11 Carrier Presubscription****5.11.1 General**

Carrier Presubscription is a procedure whereby a Customer designates to the Company the carrier which the Customer wishes to be the carrier of choice for intraLATA and interLATA toll calls. Such calls are automatically directed to the designated carrier, without the need to use carrier access codes or additional dialing to direct the call to the designated carrier. Presubscription does not prevent a Customer who has presubscribed to an IntraLATA or InterLATA toll carrier from using carrier access codes or additional dialing to direct calls to an alternative long distance carrier on a per call basis.

5.11.2 Presubscription Options - Customers may select the same carrier or separate carriers for intraLATA and interLATA long distance. The following options for long distance Presubscription are available:

- Option A:** Customer selects the Company as the presubscribed carrier for IntraLATA and InterLATA toll calls subject to presubscription.
- Option B:** Customer may select the Company as the presubscribed carrier for IntraLATA calls subject to presubscription and some other carrier as the presubscribed carrier for interLATA toll calls subject to presubscription.
- Option C:** Customer may select a carrier other than the Company for intraLATA toll calls subject to presubscription and the Company for interLATA toll calls subject to presubscription.
- Option D:** Customer may select the carrier other than the Company for both intraLATA and interLATA toll calls subject to presubscription.
- Option E:** Customer may select two different carriers, neither being the Company for intraLATA and interLATA toll calls. One carrier to be the Customer's primary intraLATA interexchange carrier. The other carrier to be the Customer's primary interLATA interexchange carrier.
- Option F:** Customer may select a carrier other than the Company for no presubscribed carrier for intraLATA toll calls subject to presubscription which will require the Customer to dial a carrier access code to route all intraLATA toll calls to the carrier of choice for each call.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.11 Carrier Presubscription, (Cont'd.)****5.11.3 Rules and Regulations**

Customers of record will retain their primary interexchange carrier(s) until they request that their dialing arrangements be changed.

Customers of record or new Customers may select either Options A, B, C, D, E or F for intraLATA Presubscription.

Customers may change their selected Option and/or presubscribed toll carrier at any time subject to charges specified in 5.11.5 below:

5.11.4 Presubscription Procedures

A new Customer will be asked to select intraLATA and interLATA toll carriers at the time the Customer places an order to establish local exchange service with the Company. The Company will process the Customer's order for service. All new Customers' initial requests for intraLATA toll service presubscription shall be provided free of charge.

If a new Customer is unable to make selection at the time the new Customer places an order to establish local exchange service, the Company will read a random listing of all available intraLATA and interLATA carriers to aid the Customer in selection. If selection is still not possible, the Company will inform the Customer that he/she will be given 90 calendar days in which to inform the Company of his/her choice for primary toll carrier(s) free of charge. Until the Customer informs the Company of his/her choice of primary toll carrier, the Customer will not have access to long distance services on a presubscribed basis, but rather will be required to dial a carrier access code to route all toll calls to the carrier(s) of choice. Customers who inform the Company of a choice for toll carrier presubscription within the 90 day period will not be assessed a service charge for the initial Customer request.

Customers of record may initiate an intraLATA or interLATA presubscription change at any time, subject to the charges specified in 5.11.5 below. If a Customer of record inquires of the Company of the carriers available for toll presubscription, the Company will read a random listing of all available intraLATA carriers to aid the Customer in selection.

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.11 Carrier Presubscription, (Cont'd.)

5.11.5 Presubscription Charges

A. Application of Charges

After a Customer's initial selection for a presubscribed toll carrier and as detailed in above, for any change thereafter, an Presubscription Change Charge, as set for the below will apply. Customers who request a change in intraLATA and interLATA carriers with the same order will be assessed a single charge per line.

B. Maximum Nonrecurring Charges

Per business or residence line, trunk, or port: \$10.00

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)

5.12 Intercept Referral Service

5.12.1 General

Intercept Referral Service is a service used when a Customer disconnects service or changes telephone numbers. Calls to the intercepted telephone number are referred to an operator or a recorded message. Intercept services are offered for periods up to three (3) months for residential Customers and up to twelve (12) months for business Customers. Service is available subject to the availability of facilities and the disconnected number. The following Intercept services are available.

Basic Intercept Referral Service - Basic Intercept Service includes all intercept recordings that do not provide the new telephone number information.

New Number Referral Service - New Number Referral Service includes all intercept recordings that provide the new telephone number information.

Split Referral Intercept Service - Split Referral Intercept Service provides for calls to the disconnected number to be routed to the operator who will challenge the incoming call and provide the new number information dependent on the caller's response. The minimum billing period for this service is three months.

5.12.2 Maximum Rates

Basic Intercept Service is provided at no charge.

New Number Referral Service is provided at no charge.

Split Referral Intercept Service

	<u>Business</u>	<u>Residence</u>
Three months	\$250.00	\$80.00
Six months	\$490.00	n/a
Nine months	\$730.00	n/a
Twelve months	\$980.00	n/a

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.13 Toll Restriction Service**

Provides for Exchange Access lines or trunks to be restricted from dialing billable toll calls. Local directory assistance calls are allowed. This service is offered subject to the availability of facilities to individual line residence, individual line business and dial switching type customers. Provision of toll restriction does not alleviate customer responsibility for completed toll calls.

Toll Restriction may include Billed Number Screening (BNS) for residential customers. BNS prohibits collect and/or third number billed calls from being charged to BNS equipped numbers. Some calls, originating from locations that do not have screening capabilities, may not be capable of being intercepted and denied. These calls will be billed to the customer if completed.

5.13.1 Maximum Rates

	Residence	Business
Nonrecurring charge, per line	\$12.00	\$55.00
Monthly, per line	---	\$10.00

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.14 900 Service Access Restriction**

900 Service Access Restriction enables residence or business exchange access line customers to prohibit dialing of calls with the 900 prefix. Customers who choose this service will also be restricted from calling calls with the prefix of 976 and 676. This service is offered only where facilities permit and is only available on direct dialed calls.

5.14.1 Maximum Rates

	Residence	Business
Nonrecurring charge, per line	\$0.00	\$0.00
Monthly rate, per line	\$0.00	\$0.00

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SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.15 Blocking for 10XXX1+/10XXX011+**

This service prevents 10XXX1+ and 10XXX011+ calls from being completed and is offered subject to the availability of facilities. Provision of this service does not alleviate customer responsibility for completed toll calls.

5.15.1 Maximum Rates

	Nonrecurring Charge	Monthly Rate
Per line or trunk arranged	\$6.00	\$0.20

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SECTION 6.0 - LONG DISTANCE SERVICES

6.1 General

Rates and regulations for the Company's Long Distance Services may be found in the Company's **Arizona Tariff No. 1.**

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SECTION 7 – ADVANCED SERVICES**7.1 Direct Inward Dial (DID) Service**

DID service is an optional feature which can be purchased in conjunction with Company-provided Basic Trunks or Digital Trunks. DID service transmits the dialed digits for all incoming calls allowing the Customer's PBX to route incoming calls directly to individual stations corresponding to each individual DID number. Charges for DID capability and DID numbers apply in addition to charges specified for Basic Trunks or Digital Trunks.

So the Company may efficiently manage its number resource, the Company, at its sole discretion, reserves the right to limit the quantity of DID numbers a Customer may obtain. Requests for 300 or more DID numbers must be provided to the Company in writing no less than five (5) months prior to activation. In addition, the Company reserves the right to review vacant DID stations or stations not in use to determine their utilization. Should the Company determine, based on its own discretion, that there is inefficient number utilization, the Company may reassign the DID numbers.

The Customer has no property right to the telephone number or any other call number destination associated with DID service furnished by the Company, and no right to the continuance of service through any particular end office. The Company reserves the right to change such numbers, or the end office designation associated with such numbers, or both, assigned to the Customer, whenever the Company deems it necessary to do so in the conduct of its business.

DID Numbers	<u>Maximum Monthly Rates</u>
Block of 20 DID Numbers	6.00
Individual DID Number	0.30
DID Trunk Termination	90.00

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SECTION 7 – ADVANCED SERVICES

7.2 Advanced Service Packages

7.2.1 ISDN PRI Service with Unlimited Local Calling

ISDN PRI offers an array of value-added features, such as calling number identification and call-by-call selection that enhance productivity. ISDN PRI is configured with 23 64 Kbps bi-directional B (Bearer) channels and one 64 Kbps D (Data) channel. Unique to ISDN PRI is its ability to designate the D channel to handle all of the signaling and call control requirements and leave the remaining 23 B channels free for any mix of circuit-switched voice and data.

Each of these products is offered under a 12, 24 or 36 month term agreement. Rates include unlimited local calling for sent-paid, directly dialed calls. Rates do not include calling card calls, information type calls to Time and Weather, 555, 700, 900, 976 Services, Directory Assistance or any other type of Operator Handled call.

ISDN PRI includes the following non-optional Feature Package: Inbound Calling Line ID-Name & Number and Call by Call Selection.

Regional Toll and Long Distance Services must be PIC'd to the Company. These rates are in addition to ISDN PRI and DS1 rates below.

Recurring Charges

	Monthly Recurring Charge		
	12 Months	24 Months	36 Months
	ICB	ICB	ICB

Non-Recurring Charges

	Non-Recurring Charge		
	12 Months	24 Months	36 Months
	ICB	ICB	ICB
First Line			
Each Add'l Line	ICB	ICB	ICB
Expedite Service Charge ¹	Per PRI		
	ICB		
Order Supplement Charge ²	First Change	Subsequent Change	
Verizon	ICB	ICB	
Order Cancellation Charge ^{Error!}	Per PRI		
<small>Bookmark not defined.</small>	ICB		

¹ Expedite Service Charges apply when customer requests installation of service in less time than normal installation interval of 30 business days.

² Order Supplement Charges apply when a change of the Requested Service Date is requested by customer. A change of requested service date must be within 30 days of the previous requested service date. In no event will the Company be obligated to accept more than three (3) changes to a requested service date. The service will be deemed canceled upon the fourth (4) such request and applicable Order Cancellation Charges will apply.

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SECTION 7 – ADVANCED SERVICES

7.2 Advanced Service Packages, (Cont'd.)

7.2.2 Digital DS-1 PBX Service with Unlimited Local Calling

This service provides a trunk side DS1 electrical interface from the customer's digital PBX system to a digital port on a local Company switch for the origination and termination of calls. Traffic to and from the digital PBX can be received or dialed directly from any PBX station without the need for an attendant.

These digital trunks deliver a high-speed DS1 (T1) connection between your PBX and the Company network. There are up to 24 channels on one facility, each of which can be used to place or receive calls. This multi-channel capability dramatically reduces the need for additional PBX circuit cards.

Each of these products is offered under a 12, 24 or 36 month term agreement. Rates include unlimited local calling for sent-paid, directly dialed calls. Rates do not include calling card calls, information type calls to Time and Weather, 555, 700, 900, 976 Services, Directory Assistance or any other type of Operator Handled call.

Regional Toll and Long Distance Services must be PIC'd to the Company. These rates are in addition to ISDN PRI and DS1 rates below.

Monthly Recurring Charges

	Monthly Recurring Charge		
	12 Months	24 Months	36 Months
	ICB	ICB	ICB

Non-Recurring Charges

	Non-Recurring Charge		
	12 Months	24 Months	36 Months
	ICB	ICB	ICB
First Line	ICB	ICB	ICB
Each Add'l Line	ICB	ICB	ICB
Expedite Service Charge ³ SBC/Pacific Bell	Per DS1 ICB		
Order Supplement Charge ⁴	First Change ICB	Subsequent Change ICB	
Order Cancellation Charge ^{Error!} <small>Bookmark not defined.</small>	Per DS1 ICB		

³ Expedite Service Charges apply when customer requests installation of service in less time than normal installation interval of 30 business days.

⁴ Order Supplement Charges apply when a change of the Requested Service Date is requested by customer. A change of requested service date must be within 30 days of the previous requested service date. In no event will the Company be obligated to accept more than three (3) changes to a requested service date. The service will be deemed canceled upon the fourth (4) such request and applicable Order Cancellation Charges will apply.

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SECTION 7 – ADVANCED SERVICES**7.2 Advanced Service Packages, (Cont'd.)****7.2.3 ISDN PRI Service with Unlimited Local Calling and Bundled Toll/LD Service**

ISDN PRI offers an array of value-added features, such as calling number identification and call-by-call selection that enhance productivity. ISDN PRI is configured with 23 64 Kbps bi-directional B (Bearer) channels and one 64 Kbps D (Data) channel. Unique to ISDN PRI is its ability to designate the D channel to handle all of the signaling and call control requirements and leave the remaining 23 B channels free for any mix of circuit-switched voice and data.

This product is offered under a 12, 24 or 36 month term agreement. Rates include unlimited local calling for sent-paid, directly dialed calls. Rates do not include calling card calls, information type calls to Time and Weather, 555, 700, 900, 976 Services, Directory Assistance or any other type of Operator Handled call.

The Unlimited Local Calling and Bundled Toll/LD Service Products are offered with six different increments of Toll/LD Minutes of Use: 5,000, 10,000, 15,000, 30,000, 50,000 and 100,000. Installation charges are included in the monthly recurring charges. Regional Toll and Long Distance Services must be PIC'd to the Company.

ISDN PRI with Unlimited Local and Bundled 5,000 Long Distance MOU

This package includes unlimited local and 5,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number & Call-by-Call Selection (ISDN PRI) long distance usage @ 5,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

Monthly Recurring Charge		
12 Months	24 Months	36 Months
ICB	ICB	ICB

ISDN PRI with Unlimited Local and Bundled 10,000 Long Distance MOU

This package includes unlimited local and 10,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number & Call-by-Call Selection (ISDN PRI) long distance usage @ 10,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

Monthly Recurring Charge		
12 Months	24 Months	36 Months
ICB	ICB	ICB

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SECTION 7 – ADVANCED SERVICES

7.2 Advanced Service Packages, (Cont'd.)

7.2.3 ISDN PRI Service with Unlimited Local Calling and Bundled Toll/LD Service, (Cont'd.)

ISDN PRI with Unlimited Local and Bundled 15,000 Long Distance MOU

This package includes unlimited local and 15,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number & Call-by-Call Selection (ISDN PRI) long distance usage @ 15,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

	Monthly Recurring Charge		
	12 Months	24 Months	36 Months
ICB	ICB	ICB	ICB

ISDN PRI with Unlimited Local and Bundled 30,000 Long Distance MOU

This package includes unlimited local and 30,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number & Call-by-Call Selection (ISDN PRI) long distance usage @ 30,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

	Monthly Recurring Charge		
	12 Months	24 Months	36 Months
SBC/Pacific Bell Area	ICB	ICB	ICB

ISDN PRI with Unlimited Local and Bundled 50,000 Long Distance MOU

This package includes unlimited local and 50,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number & Call-by-Call Selection (ISDN PRI) long distance usage @ 50,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

	Monthly Recurring Charge		
	12 Months	24 Months	36 Months
ICB	ICB	ICB	ICB

ISDN PRI with Unlimited Local and Bundled 100,000 Long Distance MOU

This package includes unlimited local and 100,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number & Call-by-Call Selection (ISDN PRI) long distance usage @ 100,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

	Monthly Recurring Charge		
	12 Months	24 Months	36 Months
ICB	ICB	ICB	ICB

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SECTION 7 – ADVANCED SERVICES**7.2 Advanced Service Packages, (Cont'd.)****7.2.4 Digital DS-1 PBX Service with Unlimited Local Calling and Bundled Toll/LD Service**

This service provides a trunk side DS1 electrical interface from the customer's digital PBX system to a digital port on a local Company switch for the origination and termination of calls. Traffic to and from the digital PBX can be received or dialed directly from any PBX station without the need for an attendant.

These digital trunks deliver a high-speed DS1 (T1) connection between your PBX and the Company network. There are up to 24 channels on one facility, each of which can be used to place or receive calls. This multi-channel capability dramatically reduces the need for additional PBX circuit cards.

Each of these products is offered under a 12, 24 or 36 month term agreement. Rates include unlimited local calling for sent-paid, directly dialed calls. Rates do not include calling card calls, information type calls to Time and Weather, 555, 700, 900, 976 Services, Directory Assistance or any other type of Operator Handled call.

The Digital DS-1 PBX Service with Unlimited Local Calling and Bundled Toll/LD Service Products are offered with six different increments of Toll/LD Minutes of Use: 5,000, 10,000, 15,000, 30,000, 50,000 and 100,000. Installation charges are included in the monthly recurring charges. Regional Toll and Long Distance Services must be PIC'd to the Company.

ISDN DS1 with Unlimited Local and Bundled 5,000 Long Distance MOU

This package includes unlimited local and 5,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number and long distance usage @ 5,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

	Monthly Recurring Charge		
12 Months	24 Months	36 Months	
ICB	ICB	ICB	

ISDN DS1 with Unlimited Local and Bundled 10,000 Long Distance MOU

This package includes unlimited local and 10,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number and long distance usage @ 10,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

	Monthly Recurring Charge		
12 Months	24 Months	36 Months	
ICB	ICB	ICB	

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SECTION 7 – ADVANCED SERVICES

7.2 Advanced Service Packages, (Cont'd.)

7.2.4 Digital DS-1 PBX Service with Unlimited Local Calling and Bundled Toll/LD Service, (Cont'd.)

ISDN DS1 with Unlimited Local and Bundled 15,000 Long Distance MOU

This package includes unlimited local and 15,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number and long distance usage @ 15,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

Monthly Recurring Charge		
12 Months	24 Months	36 Months
ICB	ICB	ICB

ISDN DS1 with Unlimited Local and Bundled 30,000 Long Distance MOU

This package includes unlimited local and 30,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number and long distance usage @ 30,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

Monthly Recurring Charge		
12 Months	24 Months	36 Months
ICB	ICB	ICB

ISDN DS1 with Unlimited Local and Bundled 50,000 Long Distance MOU

This package includes unlimited local and 50,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number and long distance usage @ 50,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

Monthly Recurring Charge		
12 Months	24 Months	36 Months
ICB	ICB	ICB

ISDN DS1 with Unlimited Local and Bundled 100,000 Long Distance MOU

This package includes unlimited local and 100,000 long distance minutes of use. Also included is Inbound Calling Line ID-Name & Number and long distance usage @ 100,000 MOUs (including regional toll). Usage over the selected LD package will be billed at \$0.049 per minute.

Monthly Recurring Charge		
12 Months	24 Months	36 Months
ICB	ICB	ICB

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Issued by:

Effective: May 6, 2009

Alex Gertsburg
Corporate Secretary of The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

SECTION 7 – ADVANCED SERVICES

7.2 Advanced Service Packages, (Cont'd.)

7.2.5 ISDN BRI Service

ISDN BRI (Basic Rate Interface) uses standard “twisted pair” cables and is nearly three times faster than a 56K dial up line. ISDN PRI (Primary Rate Interface) uses a 1.544 Mbps digital transport facility (T1). Both services provide the superior clarity of digital transmission, a high-speed data interface and sufficient bandwidth capacity to fulfill your current and future communication needs.

ISDN BRI consists of two 64 Kbps B (Bearer) channels and one 16 Kbps D (Data) channel. Each B channel has the ability to integrate voice, data, image and video. The B channels may be kept separate or bonded together to deliver 128 Kbps.

Monthly Recurring Charges

	Monthly Recurring Charge ⁵
ISDN Basic Exchange Digital Line, each	\$10.00
ISDN Basic Exchange Circuit Switched Voice	
First Line	n/a
Second Line	2.00
ISDN Basic Exchange Circuit Switched Data, each	2.00
ISDN Basic Exchange Alternate Circuit Switched Voice/Data, each	2.00

⁵ These ISDN BRI rates are a supplement to individual Message Rate Service.

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SECTION 7 – ADVANCED SERVICES**7.2 Advanced Service Packages, (Cont'd.)****7.2.6 Digital Centrex Service**

Digital Centrex Service delivers superior performance, PBX-like functionality including abbreviated dialing, and is compatible with many telephone sets. Each user has a unique seven-digit direct telephone number and customized features. The service is affordable, power failure safe and provides a scalable platform for future growth and technology.

Monthly Recurring Charges

Contract Length

Monthly Recurring Charge

12 months – Assume Dial 9	26.61
12 months	23.15
24 months	21.05
36 months	17.59
60 months	16.51
84 months	15.80

NOTES FOR ALL ADVANCED SERVICES: Availability of services must be verified with the Company based on customer address and NPA-NXX. Rates do not include FCC End User Charge, FCC Port Charge, or other surcharges and taxes. Minimum service period is 12 months. If service is cancelled prior to the end of the contract, a termination charge will be calculated as follows: a. The average of the sum of all line charges on three previous Company invoices to the customer (excluding taxes) multiplied by the number of months remaining in the term agreement.

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SECTION 8 - SPECIAL ARRANGEMENTS

8.1 Individual Case Basis (ICB) Arrangements

Arrangements will be developed on a case-by-case basis in response to a bona fide special request from a Customer or prospective Customer to develop a competitive bid for a service not generally offered under this tariff. Rates quoted in response to such competitive requests may be different than those specified for such services in this tariff. ICB rates will be offered to the Customer in writing and on a nondiscriminatory basis.

ICB will be filed with the Communications Division of the Commission.

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SECTION 9 - PROMOTIONAL OFFERINGS

9.1 Special Promotions

The Company may, from time to time, offer services in this Tariff at special promotional rates and/or terms. Such promotional arrangements shall be filed with the Commission when so required. All rates and terms contained in this Tariff shall continue to apply unless specifically addressed in the promotional agreements.

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Issued by:

Alex Gertsburg
Corporate Secretary of The Broadvox Holding Company, LLC, Member
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Cleveland, Ohio 44115

SECTION 10 - CURRENT PRICE LIST**10.1 Basic Services and Rates****10.1.1 Network Exchange Bundled Service****A. Arizona Home Edition - Standard Service**

Arizona Home Edition will be provided at the following rates:

	MONTHLY RATE
• Per individual flat rate residence line with three features	\$12.81
• Per additional flat rate residence line with three features	15.99

B. Arizona Home Edition - Deluxe Service

Arizona Deluxe Edition will be provided at the following rates:

	MONTHLY RATE
• Per individual flat rate residence line with three features	\$19.81
• Per additional flat rate residence line with three features	22.99

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Cleveland, Ohio 44115

SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)**10.1 Basic Services and Rates, (Cont'd.)****10.1.1 Network Exchange Bundled Service, (Cont'd.)****D. Business A La Carte Service**

Business A La Carte service is targeted at small business Customers and provides options based on the Customers calling patterns and estimated usage. Customers who subscribe to this service must designate Broadvox-CLEC as the presubscribed carrier for local calling concurrent with enrollment for this service. Business A La Carte provides Customers with the option of selecting Broadvox-CLEC for toll services.

Local Exchange Service**Local Access Line**

Local Business Line	
Monthly Rate, per line	\$30.40

Service Connection Fee, one-time charge per line*	
Per Line	\$42.50

PBX Trunk

Monthly Rate	\$38.51
--------------	---------

Service Connection Fee, one-time charge per line*	
Per Line	\$56.00

* Service Connection fee is waived for those customers who retain their existing telephone number when switching their service to Broadvox-CLEC. The charge will apply if additional lines are transferred to Broadvox-CLEC after the initial order.

* Service Connection fee is waived for those customers who retain their existing telephone number when switching their service to Broadvox-CLEC. The charge will apply if additional lines are transferred to Broadvox-CLEC after the initial order.

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SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)**10.1 Basic Services and Rates, (Cont'd.)****10.1.1 Network Exchange Bundled Service, (Cont'd.)****D. Arizona Business Edition - Standard Service**

Arizona Business Edition - Standard Service will be provided at the following rate:

	MONTHLY RATE
Per individual or additional flat rate business line	\$39.99

E. Arizona Business Edition - Deluxe Service

Arizona Business Edition - Deluxe will be provided at the following rate:

	MONTHLY RATE
Per individual or additional flat rate business line	\$49.99

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SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)

10.1 Basic Services and Rates, (Cont'd.)

10.1.2 Direct Inward Dial (DID) Service

	<u>Monthly</u> <u>Recurring</u>
DID Numbers	
Block of 20 DID Numbers	3.00
Individual DID Number	0.15
DID Trunk Termination	45.00

10.1.3 Advanced Services

RESERVED FOR FUTURE USE

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Issued by:

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SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)**10.2 Miscellaneous Services and Rates****10.2.1 Service Order and Change Charges**

Non-recurring charges apply to processing Service Orders for new service and for changes in service.

	Residence	Business
<u>Service Order Charges</u>		
Primary and Secondary Service Connection Charge*	\$27.50	\$42.50
Transfer of Service Charge, Primary Line	\$89.99	\$49.99
Transfer of Service Charge, Secondary Line	\$75.00	\$49.99
Technician Dispatch Charge (or Trouble Isolation Charge)	\$69.99	\$79.99
Service Order Charge	10.00	22.00
Premises Visit Charge, first 15 minutes	60.00	60.00
Premises Visit Charge, add'l 15 minutes	30.00	30.00
<u>Change Order Charges:</u>		
Telephone Number Change Order	\$10.00	\$10.00
Feature or Feature Pack Change Order	\$10.00	\$10.00
Toll Restriction Fee Order	\$10.00	\$10.00
Listing Change Charge	\$10.00	\$10.00
Home Edition Change Charge	\$10.00	\$10.00
<u>Record Change Charges:</u>		
Record Order Charge	8.50	22.00
<u>Miscellaneous Charges</u>		
Duplicate Invoice	\$5.00	\$5.00
Call Detail Report	\$5.00	\$5.00

* This charge not applicable where a Service Connection Fee is listed for a specific service such as Network Bundled Service. See Section 10.1.1 for Network Bundled Service nonrecurring charges.

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SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)

10.2 Miscellaneous Services and Rates, (Cont'd.)

10.2.2 RESERVED FOR FUTURE USE

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Alex Gertsburg
Corporate Secretary of The Broadvox Holding Company, LLC, Member
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SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)**10.2 Miscellaneous Services and Rates, (Cont'd.)****10.2.3 Restoration of Service**

	<u>Residence</u>	<u>Business</u>
Per occasion, per line	\$25.00	\$55.00

10.2.4 Temporary Suspension/Restoration of Service

	<u>Residence</u>	<u>Business</u>
Nonrecurring charge, per line suspended	\$10.00	\$27.50
Recurring charge, per line suspended	50% of regular service rates	
Nonrecurring charge, per line restored	\$10.00	\$27.50

10.2.5 Public Telephone Surcharge

Rate Per Call:	\$0.75
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SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)**10.2 Miscellaneous Services and Rates, (Cont'd.)****10.2.6 Optional Calling Features**

FEATURE	Residential	Business
	Monthly	Monthly
Speed Calling		
8 Number	1.75	2.50
30 Number	2.50	4.00
Call Forwarding		
Variable	2.50	4.30
Busy Line (Expanded)	0.30	2.50
Busy Line (Overflow)	0.30	4.00
Busy Line (Programmable)	1.60	7.50
Don't Answer	0.65	3.50
Don't Answer (Expanded)	0.65	3.50
Don't Answer (Programmable)	2.10	4.00
Busy Line/Don't Answer	0.85	5.00
Busy Line (External)/DA	0.85	5.00
Call Rejection	4.00	4.00
Call Waiting	2.50	7.00
Call Transfer	5.50	5.50
Caller ID		
Name and Number	5.00	7.45
Number	5.00	7.45
Continuous Redial	2.25	3.00
Distinctive Alert	0.08	0.75
Hot Line	1.75	1.75
Priority Call	2.25	3.00
Remote Access Forwarding	3.45	7.25
Selective Call Forwarding	2.25	3.00

Per Use Features

FEATURE	Residential		Business	
	Per Use	Monthly	Per Use	Monthly
Call Tracing - per use	\$2.00	N/A	\$2.00	N/A
Repeat Call - per use	\$0.75	\$2.25	\$0.75	\$3.00
Return Call - per use	\$0.75	\$2.70	\$0.75	\$2.50
Three-Way Calling, per use	\$0.75	\$2.50	\$0.75	\$3.50

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SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)

10.2 Miscellaneous Services and Rates, (Cont'd)

10.2.7 Directory Assistance Services

A. Basic Directory Assistance

Local Directory Assistance	<u>Per query</u>
Direct dialed (in excess of allowance)	\$1.15
Via operator (no allowance)	\$1.50

B. Directory Assistance Call Completion
Per completed call \$0.50

C. National Directory Assistance
Direct dialed \$1.50

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SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)

10.2 Miscellaneous Services and Rates, (Cont'd.)

10.2.8 Local Operator Service

Local and IntraLATA Per Call Service Charges:

Customer Dialed Calling Card	\$2.00
Customer Dialed/Operator Assisted Calling Card	\$3.00
Collect	\$1.30
Third Party Billed	\$1.30
Person-to-Person	\$3.50

10.2.9 Busy Line Verification and Emergency Interrupt Service

	<u>Per call</u>
Busy Line Verification, per request	\$2.25
Emergency Interruption	\$3.00

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Cleveland, Ohio 44115

SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)**10.2 Miscellaneous Services and Rates, (Cont'd.)****10.2.10 Directory Listing Service**

	<u>Per Month</u>
Primary Listings	\$0.00
Change in Primary Listing	
Business, each	----
Residence, each	----
Additional Listings	
Business, each	\$2.50
Residence, each	\$1.25
Nonlisted Service	
Business, each	\$1.20
Residence, each	\$1.30
Nonpublished Service	
Business, each	\$1.55
Residence, each	\$1.65
Toll-Free Directory Listings, each	
Business, each	\$15.00
Residence, each	N/A
Straight Line Under Listings	
Business, each	\$2.00
Residence, each N/A	
Captions and Subcaptions Listings	
Business, each	\$2.00
Residence, each	N/A

For non-recurring charges associated with a customer-initiated change in a directory listing, see Section 10.2.1 of this tariff.

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Cleveland, Ohio 44115

SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)

10.2 Miscellaneous Services and Rates, (Cont'd.)

10.2.11 Carrier Presubscription

Nonrecurring Charges

Per business or residence line, trunk, or port: \$5.00

10.2.12 Intercept Referral Service

Basic Intercept Service is provided at no charge.

New Number Referral Service is provided at no charge.

Split Referral Intercept Service

	Business	Residence
Three months	\$125.00	\$40.00
Six months	\$245.00	n/a
Nine months	\$365.00	n/a
Twelve months	\$490.00	n/a

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Issued by:

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Cleveland, Ohio 44115

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SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)

10.2 Miscellaneous Services and Rates, (Cont'd.)

10.2.13 Toll Restriction Service

	Residence	Business
Nonrecurring charge, per line	\$6.00	\$27.50
Monthly, per line	-----	\$5.00

10.2.14 900 Service Access Restriction

	Residence	Business
Nonrecurring charge, per line	\$0.00	\$0.00
Monthly rate, per line	\$0.00	\$0.00

10.2.15 Blocking for 10XXX1+/10XXX011+

	Nonrecurring Charge	Monthly Rate
Per line or trunk arranged	\$3.00	\$0.10

10.2.16 Returned Check Charge

Per dishonored check returned	\$25.00
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Effective: May 6, 2009

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1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

C - Legal Notice

Will be submitted when Docket No. Assigned by Commission.

07/07/06

SECTION "D"

Confidential Financial Information will be provided to Staff.

ORIGINAL

Lance J.M. Steinhart, P.C.
1720 Windward Concourse
Suite 115
Alpharetta, Georgia 30005

Also Admitted in New York
and Maryland

Telephone: (770) 232-9200
Facsimile: (770) 232-9208
Email: lsteinhart@telecomcounsel.com

December 7, 2009

VIA OVERNIGHT DELIVERY

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007
(602) 542-2237

Arizona Corporation Commission
DOCKETED
DEC - 8 2009

Re: Broadvox-CLEC, LLC
Docket No. T-20666A-09-0173

DOCKETED BY *MS*

Dear Sir/Madam:

Enclosed please find for filing an original and thirteen (13) copies of Broadvox-CLEC, LLC's responses to the Commission's request for information in Broadvox-CLEC, LLC's Application and Petition for Certificate of Public Convenience and Necessity to Provide Competitive Intrastate Telecommunications.

I have also enclosed an extra copy of this letter to be date stamped and returned to me in the enclosed, self-addressed, postage prepaid envelope.

If you have any questions or if I may provide you with additional information, please do not hesitate to contact me.

Respectfully submitted,

[Signature]
Lance J.M. Steinhart
Attorney for Broadvox-CLEC, LLC

cc: Alecia Monroe

Michael W. Patten, Esq. - Via email

Armando Fimbres, Utilities Division - Via email to: AFimbres@azcc.gov

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EXHIBIT
A-2
ADMITTED

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.1 Please confirm that Broadvox does not seek authority to provide Facilities-Based Long Distance Communications services?

RESPONSE: Broadvox is not seeking authority to provide Facilities-Based Long Distance Communication services.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.2 Section (A-11) of Broadvox's CC&N application responds specifically to 'complaint' proceedings. Has Broadvox been involved in any investigations or inquiries before any state or federal regulatory commission, administrative agency, or law enforcement agency during the last 24 months? If yes, please explain:

- 1 - the nature of such proceedings, and
- 2 - the current status of such proceedings.

RESPONSE: No.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.3 Section (A-18) of Broadvox's CC&N application states that service approval has been received in Colorado, Idaho, Indiana, Iowa, Kentucky, New Jersey, Rhode Island, Vermont and Washington. Section (A-19) of Broadvox's CC&N application states that services are not yet being provided in any states.

Please confirm that Staff will be notified as soon as possible should Broadvox begin providing services in any state before a decision is reached by the Arizona Corporation Commission ("Commission") in this matter.

RESPONSE: Staff will be notified as soon as possible should Broadvox begin providing services in any state before a decision is reached by the Arizona Corporation Commission ("Commission") in this matter.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.4 Broadvox's financial reports are labeled 'Broadvox, Inc. & Subsidiaries'. Does Broadvox have any subsidiaries operating in Arizona? If yes, please provide:

- 1 - the corresponding names, and
- 2 - briefly explain their business role.

RESPONSE: At December 31, 2008, Broadvox, Inc.'s subsidiaries included Broadvox, LLC, BroadvoxGo!, LLC, Broadvox-CLEC, LLC, and Origination Technologies, LLC. Since December 31, 2008, Broadvox, Inc. has also created a subsidiaries called Brivia Acquisition, LLC, , and the Broadvox Holding Co., LLC (which now holds Broadvox-CLEC, LLC). Attached is a chart of the current Broadvox, Inc. corporate structure.

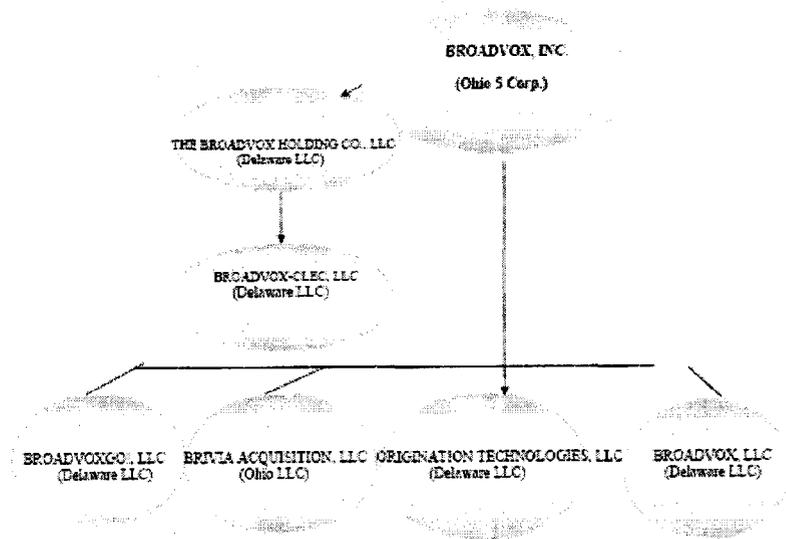
These subsidiaries include operating businesses providing VoIP services, and which perform marketing activities in Arizona; some may also purchase information services, and other goods and services used in the businesses, from Arizona vendors.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

LEGAL ENTITIES & RELATIONSHIP DIAGRAM



All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.5 Section (B-3) of Broadvox's CC&N application states Broadvox will rely on the financial resources of its Parent.

Please provide an organization chart that illustrates the linkages among the Parent and all subsidiaries.

RESPONSE: Please see response to STF 1.4.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.6 Does Broadvox intend to deploy a facilities-based local exchange network or any elements of a facilities-based local exchange network? If yes, please explain if the network or network elements will be based on traditional wireline or voice over the internet protocol ("VoIP") technology.

RESPONSE: Broadvox does not intend to deploy a facilities-based local exchange network or any elements of a facilities-based local exchange network in Arizona.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.7 Please provide a summary of the business experience for the Chief Executive Officer and all direct reports.

RESPONSE:

Andre Temnorod- Chairman & Chief Executive Officer

Building on 12 years of executive management experience, Mr. Temnorod has excelled in business operations and the high tech industry. Mr. Temnorod is the strategy behind the Broadvox vision to be a leader in the telecommunications world, as well as its wholesale long-distance deployment and its initiative in the hosted Centrex and converged communications efforts.

Prior to founding Broadvox, Mr. Temnorod served as the Chief Executive Officer of Nexbell Communications, a leader in VoIP (purchased by COUNSEL Communications in 2001). Mr. Temnorod then served as Chief Technology Officer at Unicent Technologies, where he spearheaded the research and deployment testing of early VoIP initiatives.

Mr. Temnorod is among the most respected VoIP technology leaders in the market today. He has been featured in numerous professional forums in print, video and as a guest speaker on a variety of panels.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

Eugene Blumin- Chief Operating Officer

Mr. Blumin has more than 15 years of experience in the technology field and has held a range of executive positions in senior management, operations and finance related roles.

Eugene S. Blumin is Chief Operating Officer and Co-Founder of Broadvox. Utilizing his vast experience in operations, sales and finance, Mr. Blumin is now focused on day to day operations with significant involvement in customer and vendor relationships. Prior to Broadvox, Mr. Blumin was co-founder of Nexbell Communications and served as Director of Carrier Relations. Nexbell Communications was sold to COUNSEL Communications in 2001. Prior to Nexbell Communications, Mr. Blumin served as President and COO of Unicent Technologies, a 100 million dollar privately held PC and communications company.

Alex Gertsburg- Corporate Secretary

Mr. Gertsburg handles and supervises all of the company's legal work. Prior to joining Broadvox, Mr. Gertsburg's primary legal focus was business litigation with the law firms of Calfee, Halter & Griswold LLP in Cleveland, and Roetzel & Andress LPA in Akron. In both firms, he worked with closely-held, publicly-traded and foreign clients in developing strategies to resolve complex and diverse legal disputes, both inside and outside the courtroom. He also dedicated a significant amount of his practice to First Amendment, antitrust, real estate and commercial disputes.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

Jeff Slater- President

Prior to joining Broadvox-CLEC, Mr. Slater held several executive positions including: Vice President of Planning of CIMCO Communications a Chicago CLEC; President of Cedar Valley Communications, a Texas CLEC; Executive Vice President of TotalTel USA a large East Coast IXC; and Corporate Director of Product Development for LCI International, a Midwestern facilities-based carrier. In addition, Mr. Slater was the President of JTek Systems, Ltd, a management consulting company he founded providing executive management, business development, operations management, and strategic planning services to local, national and international telecommunications carriers.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
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**ARIZONA CORPORATION COMMISSION
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Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.8 Section 2.15 of Broadvox's proposed tariff 1 contains a maximum returned check charge of \$25 and a current returned check charge of \$25 in Section 4.5. Section 2.5.2.F of the proposed tariff 2 contains a maximum returned check charge of \$35 and a current returned check charge of \$25 in Section 10.2.16. Please:

- 1 - justify why a \$35 maximum returned charge is appropriate in tariff 2 versus a \$25 maximum returned check charge in tariff 1, or
- 2 - submit a revision for tariff 2 that revises the maximum returned check charge to \$25.

RESPONSE: See attached replacement page 20 to Arizona CC Tariff No. 1 to reflect maximum returned check charge of \$25.00.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

2.12 Collection Costs

In the event Company is required to initiate legal proceedings to collect any amounts due to Company for regulated or non-regulated services, equipment or facilities, or to enforce any judgment obtained against a Customer, or for the enforcement of any other provision of this tariff or applicable law, Customer shall, in addition to all amounts due, be liable to Company for all reasonable costs incurred by Company in such proceedings and enforcement actions, including reasonable attorneys' fees, collection agency fees or payments, and court costs. In any such proceeding, the amount of collection costs, including attorneys' fees, due to the Company, will be determined by the court.

2.13 Taxes

All federal, state and local taxes, assessments, surcharges, or fees, including sales taxes, use taxes, gross receipts taxes, and municipal utilities taxes, are billed as separate line items and are not included in the rates quoted herein.

2.14 Late Charge

If any portion of the payment is not received by the Company, or if any portion of the payment is received by the Company in funds that are not immediately available, within twenty (20) days of the mail date on the bill, then a late payment penalty shall be due the Company. The late payment penalty shall be that portion of the payment not received by the date due minus any charges billed as local taxes multiplied by 1.5%.

2.15 Returned Check Charge

A fee of \$25 will be charged whenever a check or draft presented for payment for service is not accepted by the institution on which it is written.

2.16 Reconnection Charge

A reconnection fee of \$25 per occurrence will be charged when service is reestablished for Customers which have been disconnected due to non-payment. Payment of the reconnection fee and any other outstanding amounts will be due in full prior to reconnection of service.

ISSUE DATE: April 6, 2009

EFFECTIVE DATE: May 6, 2009

ISSUED BY:

Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

**ARIZONA CORPORATION COMMISSION
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Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.9 Section 2.5.2.E of Broadvox's proposed tariff 2 states that a late payment charge will not apply until a payment is late by more than 20 days. Section 2.14 of the proposed tariff 1 does not contain a 20 day grace period. Please:

- 1 - explain why the 20 day grace period should not be included in both tariffs, or
- 2 - provide a revision for tariff 1 that includes a 20 grace period.

RESPONSE: See attached replacement page 31 to Arizona CC Tariff No. 2 to reflect 20 grace period.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

SECTION 2.0 - REGULATIONS, (CONT'D.)**2.5 Payment Arrangements, (Cont'd.)****2.5.2 Billing and Collection of Charges, (Cont'd.)**

- C. When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have thirty (30) days.
- D. Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- E. If any portion of the payment is not received by the Company, or if any portion of the payment is received by the Company in funds that are not immediately available, within twenty (20) days of the mail date on the bill, then a late payment penalty shall be due the Company. The late payment penalty shall be that portion of the payment not received by the date due minus any charges billed as local taxes multiplied by 1.5%.
- F. The Customer will be assessed a *maximum* charge of twenty-five (\$25.00) for each check or other payment type submitted by the Customer to the Company that a bank or financial institution refuses to honor. See Section 10, Page 9 for current charges.
- G. A reconnection fee of \$25 per occurrence will be charged when service is reestablished for Customers which have been disconnected due to non-payment. Payment of the reconnection fee and any other outstanding amounts will be due in full prior to reconnection of service.

Issued: April 6, 2009
Issued by:

Alex Gertsburg
Corporate Secretary of The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

Effective: May 6, 2009

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Docket No. T-20666A-09-0173
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STF 1.10 Section 2.16 of Broadvox's proposed tariff 1 contains a reconnection charge of \$25. The proposed tariff 2 does not contain a reconnection charge. Please:

- 1 - explain why the Commission should approve a reconnection charge in either tariff, or
- 2 - provide a revision for tariff 1 that removes the reconnection charge.

RESPONSE: See attachment to STF 1.8 response reflecting requested change.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
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STF 1.11 The language in Section 3.2, top of page 23, in Broadvox's proposed tariff 1 is unclear. Please:

- 1 - review the language and provide an explanation, or
- 2 - submit revised tariff 1 information as needed.

RESPONSE: See attached replacement page 22 to Arizona CC Tariff No. 1 to reflect revised language.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

3.1.3 Timing begins when the called station is answered and two way communication is possible, as determined by standard industry methods generally in use for ascertaining answer, including hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. Recognition of answer supervision is the responsibility of the Underlying Carrier. Timing for each call ends when either party hangs up. The Company will not bill for uncompleted calls.

3.2 Customer Complaints and/or Billing Disputes

Customer inquiries or complaints regarding service or accounting may be made in writing or by telephone to the Company at:

1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115
(877) 884-6597

Any objection to billed charges should be reported promptly to the Company. The Customer should notify the Company of any disputed items on an invoice within thirty (30). In the event of a dispute between the customer and the utility respecting any bill, the utility may require the customer to pay the undisputed portion of the bill to avoid discontinuance of service for nonpayment. The utility shall make such investigation as may be appropriate to the particular case and report the result thereof to the customer. In the event the dispute is not reconciled, either party may make application to the Commission for review and disposition of the matter.

Where overbilling of a subscriber occurs, due either to Company or subscriber error, no liability exists which will require the Company to pay any interest, dividend or other compensation on the amount overbilled.

ISSUE DATE: April 6, 2009
ISSUED BY:

Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

EFFECTIVE DATE: May 6, 2009

**ARIZONA CORPORATION COMMISSION
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STF 1.12 Section 4.8 of Broadvox's proposed tariff 1 is entitled 'Universal Service Fund Assessment & Presubscribed Interexchange Carrier Charge'. The section language does not specific the amount of the corresponding charges or the methods by which such charges will be calculated. Please:

- 1 - clarify the language and provide revised tariff information, or
- 2 - delete the section and provide revised tariff information.

RESPONSE: See attached replacement page 31 to Arizona CC Tariff No. 1 to reflect deletion of Universal Service Fund Assessment & Presubscribed Interexchange Carrier Charge language.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

4.7 Payphone Dial Around Surcharge

A dial around surcharge of \$.60 per call will be added to any completed intrastate toll access code and subscriber toll-free 800/888 type calls placed from a public or semi-public payphone.

ISSUE DATE: April 6, 2009

EFFECTIVE DATE: May 6, 2009

ISSUED BY:

**Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115**

**ARIZONA CORPORATION COMMISSION
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STF 1.13 Section 4.9 of Broadvox's proposed tariff 1 is entitled 'Carrier Cost Recovery Charge'. The section contains a charge which Staff does not believe typical in AZ tariffs. Please:

- 1 - provide the names of (2-3) providers in Arizona utilizing this charge,
- 2 - provide the corresponding tariff references of (2-3) providers in Arizona utilizing this charge, or
- 2 - delete the section and provide revised tariff information.

RESPONSE: See attachment to STF 1.12 response reflecting requested change.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
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STF 1.14 Section 5.4 of Broadvox's proposed tariff 1 contains a Directory Assistance maximum charge of \$1.50. Please:

- 1 - explain how this charge is reasonable compared to the \$1.15 maximum of Qwest Corporation for Directory Assistance with Call Completion, or
- 2 - submit a revision for tariff 1 that reduces the maximum to the current charge in Broadvox's proposed tariff 1, section 4.4.

RESPONSE: See attached replacement page 32 to Arizona CC Tariff No. 1 to reflect maximum charge of \$1.50.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

SECTION 5 - MINIMUM/MAXIMUM RATES

5.1 1 + Dialing

\$0.04 per minute Minimum

\$0.25 per minute Maximum

5.2 Toll-Free Service

\$0.04 per minute Minimum

\$0.25 per minute Maximum

5.3 Travel Cards

\$0.04 per minute Minimum

\$0.25 per minute Maximum

5.4 Directory Assistance

\$0.50 Minimum

\$1.15 Maximum

5.5 Payphone Dial Around Surcharge

\$0.35 Minimum

\$0.60 Maximum

ISSUE DATE: April 6, 2009

EFFECTIVE DATE: May 6, 2009

ISSUED BY:

Alex Gertsburg, Corporate Secretary of
The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

**ARIZONA CORPORATION COMMISSION
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STF 1.15 Section 5.7.4.A of Broadvox's proposed tariff 2 contains a direct dialed (in excess of allowance) Directory Assistance maximum charge of \$2.00. Please:

- 1 - explain how this charge is reasonable compared to the \$1.15 maximum of Qwest Corporation for Directory Assistance with Call Completion, or
- 2 - submit a revision for tariff 2 that reduces the maximum to the current charge in Broadvox's proposed tariff 2, section 10.2.7.A.

RESPONSE: See attached replacement page 88 to Arizona CC Tariff No. 2 to reflect the maximum charge of \$1.15.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.7 Directory Assistance Services, (Cont'd.)****5.7.4 Maximum Rates****A. Basic Directory Assistance**

	<u>Per query</u>
Local Directory Assistance	
Direct dialed (in excess of allowance)	\$1.15
Via operator (no allowance)	\$3.00

B. Directory Assistance Call Completion

Per completed call	\$.50
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C. National Directory Assistance

Direct dialed	\$1.15
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Issued: April 6, 2009

Effective: May 6, 2009

Issued by:

Alex Gertsburg
Corporate Secretary of The Broadvox Holding Company, LLC, Member
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Cleveland, Ohio 44115

**ARIZONA CORPORATION COMMISSION
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STF 1.16 Section 5.7.4.B of Broadvox's proposed tariff 2 contains a Directory Assistance Call Completion maximum charge of \$1.00. When combined with the Directory Assistance maximum rate in section 5.7.4.A, the direct dialed maximum rate for Directory Assistance Call Completion equals \$3.00. Please:

- 1 - explain how this charge is reasonable compared to the \$1.15 maximum of Qwest Corporation for Directory Assistance with Call Completion, or
- 2 - submit a revision for tariff 2 that reduces the maximum to the current charge in Broadvox's proposed tariff 2, section 10.2.7.B.

RESPONSE: See attachment to STF 1.15 response reflecting requested change.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
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STF 1.17 Section 5.7.4.C of Broadvox's proposed tariff 2 contains a National Directory Assistance maximum charge of \$2.00. Please:

- 1 - explain how this charge is reasonable compared to the \$1.15 maximum of Qwest Corporation for National Directory Assistance, or
- 2 - submit a revision for tariff 2 that reduces the maximum to the current charge in Broadvox's proposed tariff 2, section 10.2.7.C.

RESPONSE: See attachment to STF 1.15 response reflecting requested change.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

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STF 1.18 Section 3.1 of Broadvox's proposed tariff 2 refers to the incumbent local exchange carrier as 'Qwest, Inc.'. Please change the reference to 'Qwest Corporation' and provide revised tariff information.

RESPONSE: See attached replacement page 50 to Arizona CC Tariff No. 2 to reflect the name Qwest Corporation.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

SECTION 3.0 - SERVICE AREAS

3.1 Exchange Service Areas

Local exchange services are provided, subject to availability of facilities and equipment, in areas currently served by the following Incumbent LECs: 1) Qwest Corporation.

Issued: April 6, 2009
Issued by:

Alex Gertsburg
Corporate Secretary of The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

Effective: May 6, 2009

**ARIZONA CORPORATION COMMISSION
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December 7, 2009**

STF 1.19 Section 4.3.1 of Broadvox's proposed tariff 2 states in part "Should a Customer with both lines opt to disconnect the Primary Line, the remaining Secondary Line will automatically convert to a Primary Line with all features and functionality of such, and at the Primary Line monthly recurring rate." Please:

- 1 - clarify the intent of the information referenced above,
- 2 - explain under what circumstances a customer would remove a primary line without closing the entire account,
- 3 - explain why the secondary line should be assigned the features and functionality of the primary line that was disconnected without an explicit end-user request, and
- 4 - submit revised tariff information if appropriate.

RESPONSE: See attached replacement page 52 to Arizona CC Tariff No. 2 to reflect revised language.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

SECTION 4.0 - BASIC SERVICES AND RATES, (CONT'D.)**4.3 Network Exchange Bundled Service****4.3.1 General**

Broadvox-CLEC offers basic local exchange service only as part of a bundle or package of telecommunications services. All packages include local service, long distance service (interstate and intrastate toll) and selected custom calling features. Voice Mail and Optional Internet access 1 may be available with some packages at an additional charge. The aforementioned services are only available as part of the bundled service offering and are not available on an individual service basis. Customers will be billed directly by the Company.

The Company provides Customers with the option of obtaining a Primary Line and Secondary Line per account:

A. Primary Line

The initial residential local exchange access line per account.

B. Secondary Line

The second or additional residential local exchange access line, billed to the same address as the Primary Line, the Secondary Line will share the monthly call allowance with the Primary Line. The Secondary Line does not automatically include or share any Custom Calling Features. Feature packages may be purchased separately.

Should a Customer with both lines opt to disconnect a line, the remaining line will automatically convert to the Primary Line with all features and functionality of such, and at the Primary Line monthly recurring rate.

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STF 1.20 Section 5.5 of Broadvox's proposed tariff 2 contains a Public Telephone Surcharge maximum of \$1.00. Staff will not support a maximum charge greater than \$0.60. Please revise section 5.5 and 10.2.5 accordingly and provide revised tariff information.

RESPONSE: See attached replacement page 81 and 123 to Arizona CC Tariff No. 2 to reflect the maximum charge of \$.60.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

SECTION 5.0 - MISCELLANEOUS SERVICES AND RATES, (CONT'D.)**5.5 Public Telephone Surcharge**

In order to recover the Company's expenses to comply with the FCC's pay telephone compensation plan effective on October 7, 1997 (FCC 97-371), an undiscountable per call charge is applicable to all intrastate calls that originate from any pay telephone, not presubscribed to the Company, used to access Company provided services. This surcharge, which is in addition to standard tariffed usage charges and any applicable service charges and surcharges associated with service, applies for the use of the instrument used to access Company provided service and is unrelated to the service accessed from the pay telephone.

Pay telephones include coin-operated and coinless phones owned by local telephone companies, independent companies and interexchange carriers. The Public Pay Telephone Surcharge applies to the initial completed call and any reoriginated call. The Public Pay Telephone Surcharge does not apply to calls placed from pay telephones at which the Customer pays for service by inserting coins during the progress of the call.

Whenever possible, the Public Pay Telephone Surcharge will appear on the same invoice containing the usage charges for the surcharged call. In cases where proper pay telephone coding digits are not transmitted to the Company prior to completion of a call, the Public Pay Telephone Surcharge may be billed on a subsequent invoice after the Company has obtained information from a carrier that the originating station is an eligible pay telephone.

Maximum Rate Per Call: \$.60

Issued: April 6, 2009
Issued by:

Effective: May 6, 2009

Alex Gertsburg
Corporate Secretary of The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

SECTION 10.0 - CURRENT PRICE LIST, (CONT'D.)**10.2 Miscellaneous Services and Rates, (Cont'd.)****10.2.3 Restoration of Service**

	<u>Residence</u>	<u>Business</u>
Per occasion, per line	\$25.00	\$55.00

10.2.4 Temporary Suspension/Restoration of Service

	<u>Residence</u>	<u>Business</u>
Nonrecurring charge, per line suspended	\$10.00	\$27.50
Recurring charge, per line suspended	50% of regular service rates	
Nonrecurring charge, per line restored	\$10.00	\$27.50

10.2.5 Public Telephone Surcharge

Rate Per Call:	\$0.60
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Issued: April 6, 2009

Effective: May 6, 2009

Issued by:

Alex Gertsburg
Corporate Secretary of The Broadvox Holding Company, LLC, Member
1228 Euclid Avenue, Suite 390
Cleveland, Ohio 44115

**ARIZONA CORPORATION COMMISSION
STAFF'S FIRST SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.21 Please provide a comparison between Broadvox's proposed Arizona rates and those of key competitors in Arizona. If Broadvox's proposed Arizona rates are higher than key competitors in Arizona, please explain why Broadvox's rates should be considered just and reasonable.

(For the Applicant's ease, comparison templates are included in Attachments A & B. Please complete the page as appropriate for at least Qwest and two other competitors in Arizona. If preferred, an excel file can be obtained by contacting Armando Fimbres at afimbres@azcc.gov.)

RESPONSE: Broadvox-CLEC, LLC has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
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Docket No. T-20666A-09-0173
December 7, 2009**

STF 1.22 Please provide a comparison between Broadvox's proposed Arizona rates and those of Broadvox's, or affiliates, in other states where similar services are provided. If the proposed Arizona rates are higher than other states, please explain why Broadvox's proposed Arizona rates should be considered just and reasonable.

(For the Applicant's ease, comparison templates are included in Attachments C & D. Please complete the page as appropriate. If preferred, an excel file can be obtained by contacting Armando Fimbres at afimbres@azcc.gov)

RESPONSE: Broadvox-CLEC, LLC has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

ORIGINAL

Lance J.M. Steinhart, P.C.

1720 Windward Concourse
Suite 115
Alpharetta, Georgia 30005

Also Admitted in New York
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Telephone: (770) 232-9200

Facsimile: (770) 232-9208

Email: lsteinhart@telecomcounsel.com

January 19, 2010

VIA OVERNIGHT DELIVERY

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007
(602) 542-2237

Re: Broadvox-CLEC, LLC
Docket No. T-20666A-09-0173

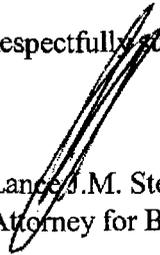
Dear Sir/Madam:

Enclosed please find for filing an original and thirteen (13) copies of Broadvox-CLEC, LLC's responses to the Commission Staff's Second set of data requests for information in Broadvox-CLEC, LLC's Application and Petition for Certificate of Public Convenience and Necessity to Provide Competitive Intrastate Telecommunications.

I have also enclosed an extra copy of this letter to be date stamped and returned to me in the enclosed, self-addressed, postage prepaid envelope.

If you have any questions or if I may provide you with additional information, please do not hesitate to contact me.

Respectfully submitted,

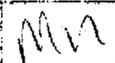

Lance J.M. Steinhart
Attorney for Broadvox-CLEC, LLC

Arizona Corporation Commission

DOCKETED

JAN 21 2010

DOCKETED BY



cc: Alecia Monroe

Michael W. Patten, Esq. – Via email

Armando Fimbres, Utilities Division – Via email to: AFimbres@azcc.gov



**ARIZONA CORPORATION COMMISSION
STAFF'S SECOND SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")**

Docket No. T-20666A-09-0173

January 19, 2010

STF 2.1 Does Broadvox have any corporate affiliation with Broadvox Distribution, LLC? If yes, please explain the affiliation.

RESPONSE: Broadvox does not have any corporate affiliation with Broadvox Distribution, LLC.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S SECOND SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
January 19, 2010**

STF 2.2 If the response to STF 2.1 is 'no', does Broadvox have any business relationship with Broadvox Distribution, LLC? If yes, please explain the relationship.

RESPONSE: Broadvox does not have any business relationship with Broadvox Distribution, LLC.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S SECOND SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
January 19, 2010**

STF 2.3 Is Broadvox seeking a facilities-based local exchange CC&N for the purpose of providing Arizona telephone numbers obtained from the North American Numbering Plan Administration ("NANPA") to Broadvox affiliates or third-parties?

RESPONSE: This is service currently not a priority with Broadvox-CLEC.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S SECOND SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
January 19, 2010**

STF 2.4 Is Broadvox seeking a facilities-based local exchange CC&N for the purpose of providing interconnection access services to Broadvox affiliates or third-parties?

RESPONSE: This is service currently not a priority with Broadvox-CLEC.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**ARIZONA CORPORATION COMMISSION
STAFF'S SECOND SET OF DATA REQUESTS TO
BROADVOX-CLEC, LLC ("BROADVOX")
Docket No. T-20666A-09-0173
January 19, 2010**

STF 2.5 Broadvox's response to STF1.6 states "Broadvox does not intend to deploy a facilities-based local exchange network or any elements of a facilities-based local exchange". Please explain why Broadvox is seeking a facilities-based local exchange Certificate of Convenience & Necessity ("CC&N")?

RESPONSE: Broadvox seeks a facilities-based CPCN in order to have the ability to deploy UNE facilities as market conditions warrant.

All Contacts Providing Information/Response for the above question:

Jeff Slater, President
1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115
E-Mail: jslater@infotelecom.us
Telephone Number: (216) 373-4623

**RESPONSES OF BROADVOX-CLEC, LLC TO
STAFF'S THIRD SET OF DATA REQUESTS
DOCKET NO. T-20666A-09-0173
April 7, 2010**

STF 3.1 The consolidated financial statements attached with Broadvox-CLEC's CC&N application were through end of year 2007. Please provide the consolidated statements for 2008 & 2009. If the consolidated statements for 2009 are not available, please explain when they will be available.

Broadvox considers the consolidated financial statements to be confidential and competitively sensitive. Broadvox will provide the full financial statements pursuant to a protective agreement. Broadvox agrees that the three financial numbers typically contained in CLEC CC&N Staff Reports may be disclosed publicly.

STF 3.2 Please describe/name the ownership of Broadvox, Inc. and provide the corresponding ownership percentages.

Andre Temnorod	43.6620%
Eugene Blumin	21.8310%
Alex Bederman	21.8310%
Gary Tabachnik	3.7223%
Peter Sandrev	3.7223%
Sergey Galchenko	3.7223%
Richard Enriquez	0.9054%
Alex Gertsburg	0.6036%
TOTAL	100.0000%

STF 3.3 Qwest Corporation recently filed a complaint in a Texas federal district court alleging that Broadvox, Inc. is misrepresenting the types of calls it is transporting to avoid paying Qwest and other phone companies appropriate access charges, case # 4:10-cv-00134-A. Staff needs to understand how the issues raised in the complaint involve Arizona and, perhaps, Broadvox-CLEC in general. Please explain:

Neither Broadvox, Inc. nor any of its subsidiaries has ever improperly manipulated, altered, or done anything else to the ANI or data stream that accompanies its traffic. Broadvox believes that Qwest is simply misguided as to its understanding of the facts, and/or is making the broadest possible claims in order to improve its chances of withstanding a motion to dismiss. We anticipate that the complaint will either be dismissed, will be referred to the FCC on the basis of primary jurisdiction, or will be stayed pending resolution of the FCC proceeding.



**RESPONSES OF BROADVOX-CLEC, LLC TO
STAFF'S THIRD SET OF DATA REQUESTS
DOCKET NO. T-20666A-09-0173
April 7, 2010**

Qwest's complaint was filed against Broadvox, Inc. and two of its subsidiaries, but not against Broadvox-CLEC, which did not exist during the relevant time period. Broadvox LLC is the only one of the three defendants that had any operations during the relevant time period (which Qwest would easily have known had it conducted minimal due diligence into its claims).

The complaint does not allege any specific geographic location for the termination of the referenced calls, so Broadvox LLC is unable to determine whether the complaint involves Arizona. The basis for the complaint is Qwest's erroneous assertion that Broadvox, Inc. and two subsidiaries are interexchange carriers and therefore that their traffic is subject to access charges. This is factually incorrect, and because the law is clear that access charges apply only to IXCs, we view the complaint as completely frivolous, baseless and unfounded. Broadvox LLC only IP-originated traffic. Access charges therefore do not apply.

Also, the issue of termination charges for VoIP traffic is currently pending with the Federal Communications Commission (FCC). Once the FCC issues a ruling regarding VoIP termination charges, Broadvox-CLEC anticipates that the ruling would apply to traffic terminated in all states, including Arizona.

1. Are any of the Officers or Executives of Broadvox-CLEC involved in the complaint? If yes, please explain who is involved and how.

None of the officers or executives of Broadvox-CLEC are named individually in the Qwest complaint. Broadvox-CLEC and Broadvox, LLC do, however, have common officers, and both are subsidiaries of the same parent company, Broadvox, Inc. Above all, because the allegations in the complaint are false, none of the officers or executives of Broadvox-CLEC are involved in any of them.

2. Are any Broadvox-CLEC affiliates operating in Arizona involved in the complaint? If yes, please name the affiliates and briefly explain how they are involved.

The complaint does not make clear what traffic it asserts is being incorrectly terminated, so it is not possible to determine whether Qwest's blanket allegations are intended to relate to operations in Arizona. Broadvox-CLEC does have affiliates, however, with operations relating to Arizona as they are interconnected VoIP service providers providing nationwide service to their customers and end-users. These affiliates include Broadvox, LLC (a wholesale VoIP provider) and BroadvoxGo, LLC (a retail VoIP provider), both of whom terminate and originate traffic to and from the state of Arizona. Again, because the allegations of the complaint are completely false, no affiliates of Broadvox-CLEC (in Arizona or anywhere else) are involved in such allegations.

RESPONSES OF BROADVOX-CLEC, LLC TO
STAFF'S THIRD SET OF DATA REQUESTS
DOCKET NO. T-20666A-09-0173
April 7, 2010

3. Is Broadvox-CLEC involved in the complaint related to operations in any states served by Qwest Corporation? If yes, please name the states and how Broadvox-CLEC is involved in each.

See response to No. 2. Further, Broadvox-CLEC has never had any operations, and was not in existence during the time period relevant to the Complaint.

ORIGINAL

Lance J.M. Steinhart, P.C.

Attorney At Law
1720 Windward Concourse
Suite 115
Alpharetta, Georgia 30005

Also Admitted in New York
and Maryland

Telephone: (770) 232-9200
Facsimile: (770) 232-9208
Email: lsteinhart@telecomcounsel.com

January 20, 2010

VIA OVERNIGHT DELIVERY

Docket Control Center
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007
(602) 542-2237

Re: Broadvox-CLEC, LLC
Docket No. T-20666A-09-0173

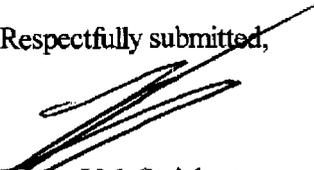
Dear Sir/Madam:

Enclosed please find for filing an original and thirteen (13) copies of revised page 4 (specifically Section A, Questions (A-13) and (A-14)) of Broadvox-CLEC, LLC's Application and Petition for Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services. The Applicant has previously filed a \$125,000 Bond with the Commission, and would respectfully request that it be released so the Applicant can cancel such Bond.

I have also enclosed an extra copy of this letter to be date stamped and returned to me in the enclosed, self-addressed, postage prepaid envelope.

If you have any questions or if I may provide you with any additional information, please do not hesitate to contact me. Thank you for your attention to this matter.

Respectfully submitted,


Lance J.M. Steinhart
Attorney for Broadvox-CLEC, LLC

Enclosures

cc: Alecia Monroe
Michael W. Patten, Esq. if Facilities Based (Via e-mail)

07/07/06

Arizona Corporation Commission
DOCKETED
JAN 22 2010

DOCKETED BY 

EXHIBIT
AS
ADMITTED

(A-13) Indicate if the Applicant's customers will be able to access alternative toll service providers or resellers via 1+101XXXX access.

Yes

No

(A-14) Is applicant willing to post a Performance Bond? Please check appropriate box(s).

For Long Distance Resellers, a \$10,000 bond will be recommended for those resellers who collect advances, prepayments or deposits.

Yes

No

If "No", continue to question (A-15).

For Local Exchange Resellers, a \$25,000 bond will be recommended.

Yes

No

If "No", continue to question (A-15).

For Facilities-Based Providers of Long Distance, a \$100,000 bond will be recommended.

Yes

No

If "No", continue to question (A-15).

For Facilities-Based Providers of Local Exchange, a \$100,000 bond will be recommended.

Yes

No

If any box in (A-14) is marked "No", continue to question (A-15).

Note: Amounts are cumulative if the Applicant is applying for more than one type of service.

(A-15) If any box in (A-14) is marked "No", provide the following information. Clarify and explain the Applicant's deposit policy (reference by tariff page number). Provide a detailed explanation of why the Applicant's superior financial position limits any risk to Arizona consumers.

The Bonding requirements are not applicable to Applicant because it does not collect advances, prepayments or deposits. Further, Applicant does not provide service to residential customers. Rather, Applicant intends to provide service to enterprise business customers, who are sophisticated businesses that have sufficient resources to pursue resolution of any dispute that may arise with Applicant. Therefore, a bonding requirement is not necessary to protect these customers.

(A-16) Submit copies of affidavits of publication that the Applicant has, as required, published legal notice of the Application in all counties where the Applicant is requesting authority to provide service.

Note: For Resellers, the Applicant must complete and submit an Affidavit of Publication Form as Attachment "C" before Staff prepares and issues its report. Refer to the Commission's website for Legal Notice Material (Newspaper Information, Sample Legal Notice and Affidavit of Publication). For Facilities-Based Service Providers, the Hearing Division will advise the Applicant of the date of the hearing and the publication of legal notice. Do not publish legal notice or file affidavits of publication until your are advised to do so by the Hearing Division.

ORIGINAL

LANCE J. M. STEINHART, P.C.

ATTORNEY AT LAW
1720 WINDWARD CONCOURSE
SUITE 115
ALPHARETTA, GEORGIA 30005

Also admitted in New York
and Maryland

Telephone: (770) 232-9200
Facsimile: (770) 232-9208
E-mail: lsteinhart@telecomcounsel.com

August 11, 2010

VIA OVERNIGHT DELIVERY

Docket Control Center
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007-2927
(602) 542-2237

Arizona Corporation Commission
DOCKETED

AUG 12 2010

DOCKETED BY *[Signature]*

RE: **Broadvox-CLEC, LLC**
Docket No. T-20666A-09-0173

Dear Sir or Madam:

Enclosed please find for filing an original and thirteen (13) copies of notarized Affidavits attesting that Broadvox-CLEC, LLC has published the required public notice of its Application for a Certificate of Convenience and Necessity in The Arizona Republic newspaper on July 26, 2010.

I have enclosed an extra copy of this letter to be date-stamped and returned in the enclosed envelope provided.

If you have any questions, please feel free to give me a call or e-mail at (678) 775-2253 or ajanasen@telecomcounsel.com.

Respectfully submitted,

[Signature]

Angela Janssen
Legal Assistant to
Lance J.M. Steinhart
Attorney for Broadvox-CLEC, LLC

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2010 AUG 12 A.M. 5:3
AZ CORP COMMISSION
DOCKET CONTROL

Enclosures

cc: **Alecia Monroe**
Michael W. Patten, Esq.

EXHIBIT
A6
ADMITTED
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

**KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP**

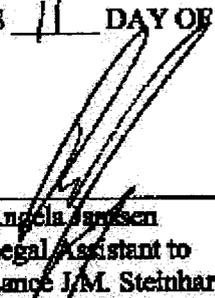
**IN THE MATTER OF THE APPLICATION)
OF BROADVOX-CLEC, LLC)
FOR APPROVAL OF A CERTIFICATE OF)
CONVENIENCE AND NECESSITY TO)
PROVIDE RESOLD LONG DISTANCE,)
RESOLD LOCAL EXCHANGE, AND)
FACILITIES-BASED LOCAL EXCHANGE)
TELECOMMUNICATIONS SERVICES)
IN ARIZONA)**

Docket No. T-20666A-09-0173

**NOTICE OF FILING OF
AFFIDAVIT OF PUBLICATION**

Broadvox-CLEC, LLC hereby submits an original and thirteen (13) copies of the Affidavit of Publication from The Arizona Republic as verification that the public notice in this matter was published in this newspaper on the date specified.

RESPECTFULLY SUBMITTED THIS 11 DAY OF August, 2010.



Angela Janssen
Legal Assistant to
Lance J.M. Steinhart
Attorney for Broadvox-CLEC, LLC

IN THE MATTER OF THE APPLICATION OF BROADVOX-CLEC, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE, AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATION SERVICES IN ARIZONA (DOCKET NO. 1-20666A-09-0173). On April 6, 2009, Broadvox-CLEC, LLC ("Broadvox") filed an application with the Arizona Corporation Commission ("Commission") for approval of a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, resold local exchange, and facilities-based local exchange telecommunication services in Arizona. Broadvox also petitioned the Commission for a determination that its proposed services are competitive in Arizona. The Commission's Utilities Division ("Staff") has recommended approval of Broadvox's application, subject to certain conditions. The Commission is not bound by the proposals made by Broadvox, Staff, or any intervenors, and the Commission will issue a decision following consideration of testimony and evidence presented at an evidentiary hearing. Copies of the application, Staff Report, and any written objections to the Staff Report filed by Broadvox or any intervenor(s) will be available at Broadvox's offices, 1228 Euclid Ave., Suite 390, Cleveland, Ohio 44115, and on the Internet via the Commission's website (www.azcc.gov) using the e-docket function. The Commission will hold a hearing on Broadvox's application on September 14, 2010, at 10:00 a.m. at the Commission's offices, 1200 West Washington Street, Room 100, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted via email (http://www.azcc.gov/visions/utilities/forms.asp for instructions) or by mailing a letter, referencing Docket No. 1-20666A-09-0173, to Arizona Corporation Commission, Consumer Services Section, 1200 West Washington Street, Phoenix, AZ 85007. If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251. The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. If you would like to intervene, you must file a written motion to intervene with the Commission, and you must send copies of the motion to Broadvox or its counsel and to all parties of record in the case. Your motion to intervene must contain the following: 1. The name, address, and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different from the intervenor; 2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Company, a shareholder of the Company, etc.); and

3. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case. The granting of motions to intervene shall be governed by A.A.C.R. 14-3-105, except that all motions to intervene must be filed on or before August 15, 2010. The granting of intervention, among other things, entitles a party to present sworn evidence at the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. If representation by counsel is required by Rules 31 and 38 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format by contacting the ADA Coordinator, Shavlin Bernal at SABernal@azcc.gov, voice phone number: (602) 542-3931. Requests should be made as early as possible to allow time to arrange the accommodation. Published: July 26, 2010

THE ARIZONA REPUBLIC

STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

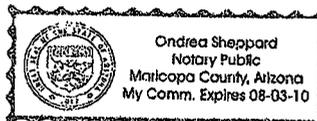
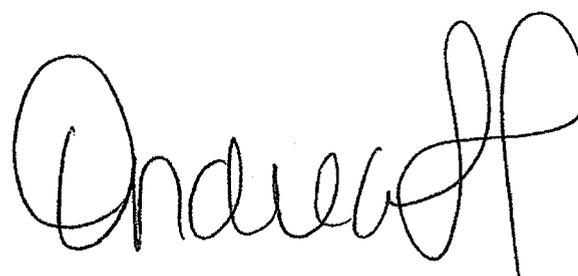
Manny Vargas, being first duly sworn, upon oath deposes and says: That he is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

July 26, 2010



Sworn to before me this
26th day of
July A.D. 2010



Notary Public

IN THE MATTER OF THE APPLICATION OF BROADVOX-CLEC, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE RESOLD LONG DISTANCE, RESOLD LOCAL EXCHANGE, AND FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATION SERVICES IN ARIZONA

(DOCKET NO. 7-20666A-09-0173) On April 6, 2009, Broadvox-CLEC, LLC

("Broadvox") filed an application with the Arizona Corporation Commission ("Commission") for approval of a Certificate of Convenience and Necessity (CC&N) to provide resold long distance, resold local exchange, and facilities-based local exchange telecommunication services in Arizona. Broadvox also petitioned the Commission for a determination that its proposed services are competitive in Arizona. The Commission's Utilities Division ("Staff") has recommended approval of Broadvox's application, subject to certain conditions. The Commission is not bound by the proposals made by Broadvox, Staff, or any intervenors, and the Commission will issue a Decision following consideration of testimony and evidence presented at an evidentiary hearing. Copies of the application, Staff Report, and any written objections to the Staff Report filed by Broadvox or any intervenor(s) will be available at Broadvox's offices 1228 Euclid Ave, Suite 390, Cleveland, Ohio 44115 and on the internet via the Commission's website (www.azcc.gov) using the e-docket function. The Commission will hold a hearing on Broadvox's application on September 4, 2010, at 10:00 a.m. at the Commission's offices, 1200 West Washington Street, Room 100, Phoenix, Arizona. Public comments will be taken on the first day of the hearing. Written public comments may be submitted via email (http://www.azcc.gov/dockets/utility/forms.asp) for instructions or by mailing a letter, referencing Docket No. 7-20666A-09-0173, to: Arizona Corporation Commission, Consumer Services Section, 1200 West Washington Street, Phoenix, AZ 85007. If you require assistance, you may contact the Consumer Services Section at 1-800-222-7000 or 602-542-4251. The law provides for an open public hearing at which, under appropriate circumstances, interested parties may intervene. Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene if you would like to intervene, you must file a written motion to intervene with the Commission, and you must send copies of the motion to Broadvox, or its counsel, and to all parties of record in the case. Your motion to intervene must contain the following: 1. The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different from the intervenor; 2. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Company, a shareholder of the Company, etc.); and

3. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case. The granting of motions to intervene shall be governed by A.R.C. 314-216, except that all motions to intervene must be filed on or before August 16, 2010. The granting of intervention, among other things, entitles a party to the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. If representation by counsel is required by Rules 31 and 36 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, as well as request this document in an alternative format by contacting the ADA Coordinator, Shaylin Bernal at SBernal@azcc.gov, voice phone number (602) 542-3331. Requests should be made as early as possible to allow time to arrange the accommodation. Published: July 26, 2010.

4. The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different from the intervenor; 5. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Company, a shareholder of the Company, etc.); and

6. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case. The granting of motions to intervene shall be governed by A.R.C. 314-216, except that all motions to intervene must be filed on or before August 16, 2010. The granting of intervention, among other things, entitles a party to the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. If representation by counsel is required by Rules 31 and 36 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, as well as request this document in an alternative format by contacting the ADA Coordinator, Shaylin Bernal at SBernal@azcc.gov, voice phone number (602) 542-3331. Requests should be made as early as possible to allow time to arrange the accommodation. Published: July 26, 2010.

7. The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different from the intervenor; 8. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Company, a shareholder of the Company, etc.); and

9. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case. The granting of motions to intervene shall be governed by A.R.C. 314-216, except that all motions to intervene must be filed on or before August 16, 2010. The granting of intervention, among other things, entitles a party to the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. If representation by counsel is required by Rules 31 and 36 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, as well as request this document in an alternative format by contacting the ADA Coordinator, Shaylin Bernal at SBernal@azcc.gov, voice phone number (602) 542-3331. Requests should be made as early as possible to allow time to arrange the accommodation. Published: July 26, 2010.

10. The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different from the intervenor; 11. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Company, a shareholder of the Company, etc.); and

12. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case. The granting of motions to intervene shall be governed by A.R.C. 314-216, except that all motions to intervene must be filed on or before August 16, 2010. The granting of intervention, among other things, entitles a party to the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. If representation by counsel is required by Rules 31 and 36 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, as well as request this document in an alternative format by contacting the ADA Coordinator, Shaylin Bernal at SBernal@azcc.gov, voice phone number (602) 542-3331. Requests should be made as early as possible to allow time to arrange the accommodation. Published: July 26, 2010.

13. The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different from the intervenor; 14. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Company, a shareholder of the Company, etc.); and

15. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case. The granting of motions to intervene shall be governed by A.R.C. 314-216, except that all motions to intervene must be filed on or before August 16, 2010. The granting of intervention, among other things, entitles a party to the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. If representation by counsel is required by Rules 31 and 36 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, as well as request this document in an alternative format by contacting the ADA Coordinator, Shaylin Bernal at SBernal@azcc.gov, voice phone number (602) 542-3331. Requests should be made as early as possible to allow time to arrange the accommodation. Published: July 26, 2010.

16. The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different from the intervenor; 17. A short statement of the proposed intervenor's interest in the proceeding (e.g., a customer of the Company, a shareholder of the Company, etc.); and

18. A statement certifying that a copy of the motion to intervene has been mailed to the Company or its counsel and to all parties of record in the case. The granting of motions to intervene shall be governed by A.R.C. 314-216, except that all motions to intervene must be filed on or before August 16, 2010. The granting of intervention, among other things, entitles a party to the hearing and to cross-examine other witnesses. However, failure to intervene will not preclude any interested person or entity from appearing at the hearing and making a statement on their own behalf. If representation by counsel is required by Rules 31 and 36 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, as well as request this document in an alternative format by contacting the ADA Coordinator, Shaylin Bernal at SBernal@azcc.gov, voice phone number (602) 542-3331. Requests should be made as early as possible to allow time to arrange the accommodation. Published: July 26, 2010.

THE ARIZONA REPUBLIC

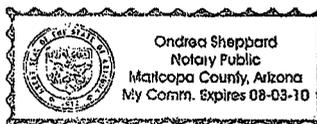
STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

Manny Vargas, being first duly sworn, upon oath deposes and says: That he is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

July 26, 2010

Sworn to before me this
26TH day of
July A.D. 2010



Notary Public

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GLOSSARY OF KEY TELECOMMUNICATIONS TERMS

“ICA”: An interconnection agreement is a contract pursuant to 47 U.S.C. Section 251 setting forth rates, terms and conditions for interconnecting an incumbent local exchange carrier’s network with a competitive local exchange carrier’s network.

“IP”: Internet Protocol is a formatting procedure used to transmit blocks of data from sources to destinations over the Internet. <http://www.fcc.gov/pshs/techtopics/tech-ip-interop.html>

“ISDN”: A standard and integrated digital network that allows users to simultaneously send voice, data and video over multiple multiplexed communications channels from a common network interface. <http://www.fcc.gov/Bureaus/Cable/Reports/g-broadbandtoday.doc>.

“IXC”: An interexchange carrier is a common carrier that carries a call across exchange boundaries.

“PBX”: A Private Branch Exchange is a private telephone system switch that interconnects telephone extensions to each other, as well as to the outside telephone network. <http://www.fcc.gov/Bureaus/Cable/Reports/g-broadbandtoday.doc>.

“PRI”: Primary Rate Interface is an interface standard for ISDN that provides total bandwidth capacity of 1.544 Megabits per second <http://www.fcc.gov/Bureaus/Cable/Reports/g-broadbandtoday.doc>.

“PRI trunk”: A network facility that provides 1.544 Megabits per second of capacity.

“Protocol”: A strict procedure for the initiation, maintenance, and termination of data communications. <http://www.fcc.gov/pshs/techtopics/tech-ip-interop.html>.

“TDM”: Time Division Multiplexing is a technique of transmitting multiple digitized data, voice, and video signals simultaneously over one communication media by interleaving pulses representing bits from different channels or time slots. The Public-Switched Telephony Network (PSTN) is based on the TDM technologies and often called a TDM access network. <http://www.networkdictionary.com/telecom/tdm.php>.

“VoIP”: Voice over Internet Protocol is a technology that converts traditional analog voice calls into a digital signal using Internet protocol. FCC VoIP Fact Sheet, <http://www.fcc.gov/cgb/consumerfacts/voip.pdf>.

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Broadvox, Inc., Broadvox, LLC, and BroadvoxGo!, LLC ("Broadvox" or "Broadvox Defendants") respectfully move the Court for a dismissal of all claims asserted by Qwest Corporation ("Qwest"). In the alternative, Broadvox moves to dismiss or to stay this case until an identical complaint previously filed by Qwest in the Western District of Washington is resolved or in deference to the Federal Communications Commission ("FCC"). If, however, the Court does not dismiss or stay, then the Court should require Qwest to re-plead under FED. R. CIV. P. 12(e).

Qwest's Complaint fails to state a claim against Broadvox because:

- (1) Qwest has failed to allege facts sufficient to support a plausible conclusion that Broadvox is an interexchange carrier ("IXC"), the only type of entity liable for access charges under federal law (All Counts);
- (2) All state law claims are barred by the filed rate doctrine (All Counts);
- (3) Qwest fails to allege facts sufficient to support unjust enrichments (Count III);
- (4) Qwest fails to plead fraud with the particularity required by FED. R. CIV. P. 9 (Counts IV and V);
- (5) Qwest fails to allege the elements necessary for tortious interference (Count VI);
- (6) Qwest's claim for declaratory relief is duplicative of its claims for the payment of tariffed access charges and fraud, and therefore suffers from the same fatal defects identified above, and thus must be dismissed (Count VII).

I. PRELIMINARY STATEMENT AND BACKGROUND

The fundamental issue in this case is whether Broadvox is an IXC under applicable law, and, therefore, subject to access charges under federal law. Broadvox is not an IXC.

A. Qwest Does Not and Cannot Allege Facts that Broadvox is an IXC

Despite the acronyms and technical jargon, the issues in this proceeding are simple and the conclusions straightforward.¹ Under current law, access charges (formally called carrier's

¹ For the benefit of the Court, Broadvox has included a Glossary of Key Telecommunications Terms after the Table of Authorities at the beginning of this Motion to Dismiss.

carrier charges) may be applied only to IXC's under 47 C.F.R. § 69.5(b). That regulation states that "[c]arrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services." The regulation, by its plain language, applies access charges only to IXC's, not to other entities. Qwest offers a legal conclusion that Broadvox is an IXC, but does not (and cannot) plead any facts to support that conclusion.

Qwest does not (and cannot) allege that Broadvox has received a certificate to operate as an IXC, nor that any regulatory body has ruled that Broadvox is an IXC. It fails to plead any facts showing that Broadvox offers its services indiscriminately to the entire public via tariff or otherwise as a common carrier. These elements are fundamental requirements for, and clear indicia of, operating as an IXC. Qwest instead offers only the vague claim that Broadvox "provides for the transport of long-distance calls between local exchanges." First Amended Complaint at ¶ 37 ("Complaint") (emphasis added).² Read most favorably to Qwest, the Complaint claims no more than that Broadvox participates in some fashion in the transport of a long-distance call. Such participation simply does not create an IXC, yet that vague statement is the only paragraph, out of 137 in its Complaint, in which Qwest attempts to offer a factual basis for its claim that Broadvox is an IXC. In all other instances, Qwest merely asserts the legal conclusion that Broadvox is an IXC. Such legal conclusions are not entitled to the same assumption of truth as are facts when a court is evaluating the sufficiency of a claim. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50 (2009).

² One must wonder why Qwest would use such obtuse language, if in fact it could plead facts demonstrating unequivocally that Broadvox is an IXC (as it must to support a claim that access charges may be applied to Broadvox's traffic). The answer, of course, is simple: Broadvox is not an IXC, and Qwest cannot allege any such facts.

Qwest also expressly limits its Complaint to “traditional long-distance calls, which both begin and end as ordinary circuit-switched telephone calls.” (Compl. ¶ 52). The Court may not look beyond the face of Qwest’s pleadings to resolve an issue that Qwest expressly excludes – namely what charges, if any, might be due for termination of non-traditional traffic such as Voice over Internet Protocol traffic (“VoIP”). *See St. Paul Ins. Co. v. AFIA Worldwide Ins. Co.*, 937 F.2d 274, 279 (5th Cir. 1991). Even if the Court looked beyond the scope of the pleadings to examine whether access charges may be applied to non-traditional, non-IXC services, there is no law to apply. As Qwest has failed to support its legal conclusion that Broadvox is an IXC, the Court need not, and should not, go further.

B. Qwest’s State-Law Claims Fail as A Matter of Law

Qwest also fails to support its claim that Broadvox is a customer of its tariffed access services. Implicitly recognizing that there is no business relationship between the two companies, Qwest turns instead to equitable remedies and state law in an effort to impose access charges on Broadvox. Each of the state-law claims, however, is based on Qwest’s unsupported allegations that Broadvox is an IXC that owes access charges for termination of its traffic. Also, under the filed rate doctrine, Qwest must rely on the terms of its tariff for any remedy, which tariff applies only to “subscribers.” Broadvox is not a “subscriber” of Qwest’s tariffed services. Qwest’s state-law claims are barred by the filed rate doctrine.

C. Identical Issues Are Pending in Other Jurisdictions

Broadvox respectfully submits that this Court need not, and should not, consider Qwest’s Complaint because the identical issues are currently being litigated and/or considered in two other jurisdictions. First, Qwest commenced an identical lawsuit in the Western District of

Washington in November of 2008 against Broadvox and several other defendants.³ That case involves the same plaintiff, the same defendant, the same set of transactions (the alleged termination of Broadvox traffic to Qwest's network in Washington, Arizona, Idaho, Oregon and Utah), and the same legal issues.⁴ In fact, Qwest's Washington Amended Complaint is almost entirely identical to its Complaint here. The Court should apply the first filed doctrine and dismiss or stay this proceeding until after the resolution of that identical complaint in Washington which is now on appeal to the United States Court of Appeals for the Ninth Circuit.

Second, the FCC is actively conducting a comprehensive review and revision of the fees that all types of common carriers and other types of providers, including VoIP providers like Broadvox, must pay one another for terminating traffic – the exact issue in this proceeding. Qwest's Complaint attempts to shortcut the FCC's role as a policymaker by asking this Court to apply access charges to a type of traffic for which the FCC has not authorized such charges. The Court should therefore apply the doctrine of primary jurisdiction to dismiss or stay this litigation in deference to the FCC, which has the authority and the expertise to rule on the technical, regulatory and policy issues raised by the complaint. A dismissal or stay will avoid duplicative litigation which wastes judicial and party resources.

II. ARGUMENT AND AUTHORITIES

A. **Rule 12(b)(6) Motion to Dismiss Standard**

The standards for deciding a motion to dismiss for failure to state a claim are well-settled. To survive a 12(b)(6) motion, a complaint must allege "enough facts to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Bell Atlantic*

³ *Qwest Corp., v. Anovian*, Case No. C08-1715 RSM (W.D. Wa. filed Nov. 26, 2008) (cited as "Qwest 2008 Washington Complaint") (PACER Doc. No. 1).

⁴ Qwest 2008 Washington Complaint at ¶ 47. Qwest identifies these same five states in ¶ 77 of the Complaint in this case.

Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A plaintiff alleging facts that are merely conceivable does not meet his burden. *See Twombly*, 550 U.S. at 570.

A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 129 S. Ct. at 1499 (citing *Twombly*, 550 U.S. at 556). The plausibility standard is not akin to a “probability requirement”; it requires more than a sheer possibility that a defendant has acted unlawfully. *Id.* A pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action” is not sufficient. *Id.* (quoting *Twombly*, 550 U.S. at 555); *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994). The Court cannot accept conclusory allegations or unwarranted deductions of fact as true. *Twombly*, 550 U.S. at 555. On a motion to dismiss, courts are “not bound to accept as true a legal conclusion couched as factual allegation.” *Papasan v. Allain*, 478 U.S. 265, 286 (1986); *see also Z-TEL Commc'ns, Inc. v. SBC Commc'ns, Inc.*, 331 F. Supp. 2d 513, 557 (E.D. Tex. 2004) (“Conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.”) (quoting *Jones v. Alcoa, Inc.*, 339 F.3d 359, 362 (5th Cir. 2003)).

Qwest’s Complaint does not meet the Rule 12(b)(6) standard. It is, in fact, formulaic and insupportable and therefore should be dismissed.

B. Qwest Fails To Plead Facts Sufficient To Support A Claim That Broadvox Is An IXC Subject To Tariffed Access Charges

The “access charges” Qwest pursues in this action are “carriers’ carrier” charges. *See, e.g.*, (Compl. ¶¶ 19, 20) (explaining the access charge regime applicable to IXCs for interexchange calls). Section 69 of the FCC’s rules governs the access charges that lie at the heart of Qwest’s claims. 47 C.F.R. § 69. In particular, Section 69.5(b) provides that “[c]arrier’s carrier charges shall be computed and assessed upon all interexchange carriers that use local

exchange switching facilities for the provision of interstate or foreign telecommunications services.” 47 C.F.R. § 69.5(b). The regulation applies “carrier’s carrier charges” only to IXCs, not to other entities like Broadvox. *Id.*

1. Qwest alleges no facts demonstrating that Broadvox is a common carrier

For Qwest to allege that Broadvox is an IXC, Qwest must establish that Broadvox is a “common carrier.” The term “carrier” has a fixed meaning: it means a “common carrier.” 47 U.S.C. § 153(10) (defining “carrier” as “common carrier”); *see also FCC v. Midwest Video Corp.*, 440 U.S. 689, 701 & n.10 (1979) (“carriers” under the Communications Act hold themselves out to serve the general public indifferently, without individualized decision-making as to customer dealings); *Request for Review of the Decision of the Universal Serv. Adm’r by Va. State Dep’t of Educ.*, Order, 17 FCC Rcd 8677, 8678 ¶ 3 (2002). Qwest’s own Tariff explicitly makes the definition of “carrier” synonymous with “common carrier.” Qwest FCC Tariff No. 1, § 2.6 located at <http://tariffs.qwest.com:8000>; *see also* (Compl. ¶ 77, n.12).

A claim that a non-common carrier has violated duties imposed only upon a common carrier is subject to dismissal. *See Howard v. Am. Online, Inc.*, 208 F.3d 741, 752-53 (9th Cir. 2000). In *Howard*, as in this case, the plaintiff claimed that a non-common-carrier was liable under obligations that federal communications law imposes only upon common carriers. The district court dismissed the complaint (affirmed by the Ninth Circuit), holding that the defendant was not a common carrier and therefore could not be liable for violating a duty applicable only to common carriers. *Id.*; *see also Am. Online, Inc. v. Greatdeals.net*, 49 F. Supp. 2d 851, 855-57 (E.D. Va. 1999). Here, Qwest’s claims rest entirely upon nonpayment of access charges—a liability imposed solely upon IXC common carriers. *See* 47 C.F.R. §§ 69.4, 69.5.

Interexchange service is defined as a call that “terminates in a local calling area different than the one in which it originates.” *In the Matter of Unbundled Access to Network Elements*

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 20 FCC Rcd 2533, 2534 (2005). Qwest alleges that Broadvox carries calls between local exchanges. (Compl. ¶ 53). Simply alleging that Broadvox's traffic crosses an exchange boundary, however, is not sufficient to support an allegation that Broadvox is a common carrier to which access charges apply. Rather, Qwest must also demonstrate that Broadvox has regulatory status as an IXC, as required by Section 47 C.F.R. § 69.5(b).

Qwest wholly fails to allege facts sufficient to support a plausible conclusion that Broadvox is a common carrier, an indispensable requirement for an entity to be classified as an IXC. As noted above, Rule 69.5(b) provides that access charges are assessed only on IXCs. 47 C.F.R. § 69.5(b). Qwest makes two arguments that Broadvox is a common carrier, but both are completely deficient. First, Qwest offers the circular legal conclusion that Broadvox "is a common carrier because it plays an integral part in providing common carriage service" (Compl. ¶ 54; *see also* Compl. ¶¶ 55-58). Such "labels and conclusions" are not sufficient to state a claim under *Twombly* and *Iqbal*, particularly when, as here, they are circular and baseless.

Second, Qwest claims that Broadvox is a common carrier because it "does not differentiate one call from another . . . transports each and every call that is passed to it . . . and provides non-discriminatory telecommunications services to the public. . . ." (Compl. ¶ 59). Such assertions, even if true, do not establish that Broadvox is a common carrier. Federal courts have established a well-settled two-part test for a common carrier. *See Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 642 (D.C. Cir. 1976), *cert. denied*, 524 U.S. 992 (1976). Courts "must inquire, first, whether there will be any legal compulsion . . . to serve indifferently, and if not, second, whether there are reasons implicit in the nature of [the service at issue] to expect an indifferent holding out to the eligible user public." *Id.* A common carrier does not

“make individualized decisions, in particular cases, whether and on what terms to deal.” *FCC v. Midwest Video Corp.*, 440 U.S. 689, 701 (1979) (citing *Nat’l Ass’n of Regulatory Util. Comm’rs*, 525 F.2d. at 641)).

Qwest does not and cannot allege that Broadvox is legally obligated to serve all persons requesting services indifferently, nor does it allege that Broadvox’s offerings are uniform and without any individualized rates, terms or conditions. Qwest’s assertion that Broadvox terminates “each and every call passed to it” does not establish the circumstances under which Broadvox agreed to accept the traffic in the first place, nor that Broadvox had “any legal compulsion” to accept every requester’s business. *Nat’l Ass’n of Regulatory Util. Comm’rs*, 525 F.2d at 642. Qwest’s assertion that Broadvox provides “non-discriminatory telecommunications,” even if true, is at best a legal conclusion devoid of any facts demonstrating that Broadvox has a legal compulsion to serve indifferently. Therefore, Qwest falls far short of the factual pleading required. *Papasan*, 478 U.S. at 286. Because Qwest has not pled facts to support a plausible conclusion that Broadvox is a common carrier, Qwest’s complaint must be dismissed. *Howard*, 208 F.3d 752-53.

2. Qwest alleges no facts demonstrating that Broadvox is an IXC

The long-standing rule set forth in 47 C.F.R. § 69.5(b) that only IXCs are liable for “carrier’s carrier charges” is dispositive in this case because Qwest does not and cannot plead facts sufficient to support a plausible conclusion that Broadvox is an IXC. Indeed, Qwest has not alleged that Broadvox has been certified by any state or federal regulatory body to operate as an IXC, that Broadvox has an IXC tariff on file in any jurisdiction, that Broadvox files mandatory IXC annual reports at the FCC or state commissions, or that Broadvox is subject to IXC equal access obligations to accommodate disabled persons. Instead, Qwest offers only the solitary, vague claim that Broadvox “provides for the transport of long-distance calls between local

exchanges.” (Compl. ¶ 37). Read most favorably to its benefit, Qwest claims no more than that Broadvox participates in some fashion in the transport of traffic that crosses exchange boundaries; or that Broadvox acts like an IXC. But simply participating in the transmission of a call does not determine the type of entity that participates. Many different types of entities may “participate” in the transmission of interexchange communications, but that does not mean they are all “carriers” under federal law, much less an IXC and therefore liable for access charges. The FCC has ruled that even when multiple entities are involved in the transmission [as in this case], *only* “the interexchange carrier is obligated to pay terminating access charges.” *See Pet. for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Servs. Are Exempt from Access Charges*, Order, 19 FCC Rcd 7457, 7470 ¶ 19 (2004) (emphasis added) (“AT&T IP-in-the-Middle Order”).

Importantly, the FCC has held that access charges apply only to the actual IXC, not to other providers in the transmission chain. AT&T IP-in-the-Middle Order, 19 FCC Rcd at 7469-72 ¶¶ 19, 23 n.92. Moreover, it is not at all unusual for access charges to be inapplicable to entities that arguably “act” like an IXC. Local cellular-phone traffic, for example, can traverse the interexchange network, but this does not somehow rewrite the entire national regulatory scheme so as to impose access charges on non-IXC providers. *See Atlas Tel. Co. v. Okla. Corp. Comm’n*, 400 F.3d 1256, 1266 (10th Cir. 2005) (rejecting assertion that intra-MTA CMRS traffic “qualifies as exchange access traffic because it transits the IXC network.”). Likewise, long-distance traffic reaching the public-switched telephone network through routing known as “leaky” PBXs has long been exempted from access charges. *See* 47 C.F.R. § 69.115. Finally, local exchange carriers carrying traffic from a third party to a cellular carrier are not required to

bear the access charges for that traffic. See *Texcom, Inc. v. Bell Atl. Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 21493, 21496 ¶ 8 (2001). Like Broadvox, they are not IXCs.

3. The nature of Broadvox's traffic is irrelevant to Broadvox's status as a non-IXC

Qwest seems to contend that even if Broadvox's traffic includes some portion that is not in the "traditional" format, it still may be an IXC. (Compl. ¶¶ 63-65). For several reasons, the Court need not examine the nature of Broadvox's traffic because the nature of its traffic does not confer regulatory status, and thus is irrelevant to whether Broadvox is an IXC.

First, the FCC ruled that if *an IXC* temporarily converts a "traditional" call into IP format unbeknownst to the caller and recipient and simply for convenience (because transport of IP traffic is more efficient and less costly than TDM), then access charges may be assessed. AT&T IP-in-the-Middle Order, 19 FCC Rcd, at 7466-7467. That order, however, is limited to IXCs. *Id.* Because Qwest has failed to allege sufficient facts to demonstrate that Broadvox is an IXC, the FCC's order does not provide a basis to apply access charges.

Second, it is irrelevant whether Broadvox originates traffic in an IP format or instead simply converts calls to an IP format for convenience at an intermediate point in the call because neither type of traffic is a "traditional" voice call. Both types therefore fall outside the scope of Qwest's Complaint, which limits its request for access charges to "traditional long-distance calls." (Compl. ¶ 52). Because Qwest seeks access charges only for "traditional long-distance calls, which both begin and end as ordinary circuit-switched telephone calls," the Court need not determine whether Broadvox's traffic is "IP in the middle." By Qwest's own admission, such traffic falls outside of the traditional long distance calls for which Qwest seeks access charges.

Third, the FCC has unequivocally held that IP-based information services are exempt from access charges, but has not determined whether some other type of charge should be

assessed on VoIP. See *In re Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, FCC 05-33, 20 FCC Rcd 4685, ¶¶ 7 n.18, 99 (rel. March 3, 2005) (“2005 Intercarrier Compensation FNPRM”); *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, 01-92, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, ¶¶ 15-16 (rel. Nov. 5, 2008), pets. for review filed, D.C. Cir. Nos. 08-1365, 08-1393, 09-1044, 09-1046 (consolidated) (“ISP Mandamus Order”).

Finally, the FCC has not yet determined whether VoIP traffic is properly categorized as an information service or as a telecommunications service. Several years ago when it was not clear when the FCC might act to issue rules on termination charges for non-IXCs, two federal courts have examined this issue and concluded that VoIP has all of the characteristics of an information service.⁵ The FCC is currently examining this precise issue -- what termination charge, if any, should apply to VoIP -- and it has announced it will issue a proposed order by the fourth quarter of 2010. See Proposed 2010 Key Broadband Agenda Items, <http://www.broadband.gov/plan/chart-of-key-broadband-action-agenda-items.pdf>.

C. Qwest Fails to Plead Sufficient Facts That Broadvox Subscribes to Its Tariff

Qwest’s claim that Broadvox owes tariffed access charges is premised on the assertion that Broadvox is a “customer” pursuant to its tariff. Qwest, however, offers only a legal conclusion, and no facts to support this claim.

⁵ *Sw. Bell Tel., L.P. v. Missouri Pub. Serv. Com’n*, 461 F. Supp. 2d 1055, 1082 (E.D. Mo. 2006) (“IP-PSTN traffic is an information service within the meaning of the Act because it offers the ‘capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.’”) (quoting 47 U.S.C. § 153(20)); *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm.*, 290 F. Supp. 2d 993, 999-1001 (D. Minn. 2003) (holding that the VoIP services provided by Vonage constitutes an information service because it offers the “capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing or making available information via telecommunications.”) (also quoting 47 U.S.C. § 153(20)).

Under Qwest's tariff, a customer "subscribes" to services offered under this tariff"

Qwest FCC Tariff No. 1, § 2.6 located at <http://tariffs.qwest.com:8000>; *see also* (Compl. ¶ 77, n.12). The term "subscribes" is not defined in the tariff, but under any plain meaning of that word, Broadvox would need to either purchase or take some affirmative step to alert Qwest that it wants to purchase Qwest's service. Qwest, however, fails to plead facts showing that it has a contract with Broadvox, that it has any business relationship with Broadvox, or even that it receives traffic directly from Broadvox. (Compl. ¶13, 45). Instead, it alleges that it is doing business with Broadvox via tariff, by default, and therefore its access charge rates apply. *Id.* Such activity cannot be deemed "subscription" by any reasonable inference. Qwest does not and cannot allege that Broadvox agreed to purchase Qwest's tariffed services, that Broadvox has ever sent Qwest an order for such services, or that Qwest has ever sent Broadvox a bill for tariffed services. Simply put, Broadvox is not a subscriber, and therefore cannot be liable as such.

Qwest implicitly concedes that Broadvox is not a tariff subscriber because it resorts to an argument that Broadvox is a customer through the "constructive ordering doctrine." (Compl. ¶ 30). Under that doctrine, an entity may be deemed to have ordered services offered in a carrier's tariff if the entity (1) is interconnected in such a manner that it can expect to receive access services, (2) fails to take reasonable steps to prevent the receipt of services, and (3) does in fact receive such services. *Alliance Commc'ns Coop., Inc. v. Global Crossing Telecomms, Inc.*, 690 F. Supp. 2d 889, 894 (D.S.D. 2010). Broadvox cannot be held to have constructively ordered service. In *Alliance*, the incumbent carrier argued that multiple carriers involved with the handling of a call constructively ordered access services, but the court held that Alliance was entitled only to "bill the entity that received the services, not . . . to bill and recover from any entity that touched the traffic. Indeed, plaintiffs do not and cannot argue that defendants are

liable for access charges if they did not receive the access services offered under the tariff.” *Alliance*, 690 F. Supp. 2d. at 897.

Qwest admits that it is the Competitive Local Exchange Carriers (“CLECs”) with whom it has interconnection agreements (“ICAs”), not Broadvox, that terminated calls over Qwest’s access facilities. (Compl. ¶ 60). Thus, as the court held in *Alliance*, Qwest may not demand access charges from Broadvox, which had no contract, no order, and no subscription with Qwest so as to be its “subscriber”.

D. Qwest’s State Law Claims Are Barred By The Filed Rate Doctrine

Once a carrier’s tariff is approved by a regulatory body such as the FCC, its terms are considered to be “the law” and it conclusively and exclusively enumerates the rights and liabilities as between the carrier and the customer. *Int’l Tel. Ctr., Inc. v. Am. Tel. & Tel. Co.*, No. Civ. A. 96-3398, 1997 WL 599618, at *3 (E.D. La. Sept. 16, 1997) (unreported decision) (citing *Carter v. Am. Tel. & Tel. Co.*, 365 F.2d 486, 496 (5th Cir. 1966) (“[A] tariff, required by law to be filed, is not a mere contract. It is the law.”)). “The legal rights of parties contracting for regulated services are governed by tariffs published with the appropriate regulatory agency.” *Id.* “The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier.” *Id.* (citing *Square D Co. v. Niagara Frontier Tariff Bureau, Inc.*, 476 U.S. 409, 416-17 (1986); see also *Am. Tel. & Tel. Co. v. Cent. Office Tel., Inc.*, 524 U.S. 214, 230 (1998) (Rehnquist, C.J., concurring) (confirming that the tariff itself provides “the exclusive source of the terms and conditions by which the common carrier provides to its customers the services covered by the tariff”) (“*AT&T v. Central*”)).

This principle, known as the “filed rate doctrine” is “a tough and durable barrier” to state-law claims deriving from allegations of non-compliance with filed tariffs. See *Verizon Del., Inc. v. Covad Commc’ns Co.*, 377 F.3d 1081, 1088 (9th Cir. 2004). Qwest alleges that its federal and

state tariffs apply to the alleged activities of Broadvox (Compl. ¶¶ 80, 91), but it may not then go outside the four corners of the tariffs to assert that it is entitled to relief under state law. *See Verizon*, 377 F.3d at 1085-86. Based on the filed rate doctrine, federal courts have barred a wide variety of state-law claims, including every state-law claim raised by Qwest. *See Access Telecom, Inc. v. MCI Telecomms Corp.*, 197 F.3d 694, 710-11 (5th Cir. 1999) (citing *Marcus v. AT&T Corp.*, 938 F. Supp. 1158, 1170-73 (S.D.N.Y. 1996), *aff'd*, 138 F.3d 46 (2d Cir. 1998) (holding the following claims were preempted: deceptive acts and practices, false advertising, fraud and deceit, negligent misrepresentation, breach of warranty, and unjust enrichment by failing to disclose that customers were billed per minute rounded up to the next higher full minute for long distance services)). In *Access Telecom*, the Fifth Circuit also acknowledged that the leading and controlling case relating to the filed rate doctrine and its impact on state-law claims is *AT&T v. Central*. *Id.* at 711. In *AT&T v. Central*, the Supreme Court held that the filed rate doctrine bars state-law claims for breach of contract and derivative claims for tortious interference. 524 U.S. at 230.

Because “[t]he filed rate doctrine turns upon an examination of the claim, not the asserted defenses to the claim[,]” the doctrine applies even when a defendant argues (as Broadvox does in this case) that it is not subject to the plaintiff’s tariff. *Freedom Ring Commc’ns, LLC v. AT&T Corp.*, 229 F. Supp. 2d 67, 69-70 (D.N.H. 2002). In other words, regardless of whether Qwest’s tariff applies to Broadvox, Qwest may not assert state-law claims so long as they are “primarily founded upon the contention that [Broadvox] failed to pay [Qwest] for services rendered under its filed tariffs.” *Id.* at 70.

Each of Qwest’s state-law claims relies on Broadvox’s alleged failure to pay access charges pursuant to Qwest’s tariffs. The filed rate doctrine therefore bars Qwest’s state-law

claims for unjust enrichment (Count III), fraud (Counts IV and V), tortious interference (Count VI), and by extension, the declaratory judgment claim (Count VII), and the Court should dismiss those counts in their entirety. As discussed below, however, even if it were proper for Qwest to assert state-law claims, it has not alleged facts sufficient for the Court to reach a plausible conclusion that the elements of those claims have been met.

E. Qwest's Unjust Enrichment Claim Fails To Plead Facts Supporting A Claim

Under Texas law, unjust enrichment “characterizes the result of a failure to make restitution of benefits either wrongfully or passively received under circumstances that give rise to an implied or quasi-contractual obligation to repay.” *Albemarle Corp. v. MEMC Elec. Materials, Inc.*, 685 F. Supp. 2d 652, 658 (S.D. Tex. 2010) (citing *R.M. Dudley Constr. Co. v. Dawson*, 258 S.W.3d 694, 703 (Tex. App.—Waco 2008, pet. denied)).

Recovery under unjust enrichment is appropriate “when a contemplated agreement is unenforceable, impossible, not fully performed, thwarted by mutual mistake, or void for other legal reasons.” *Verizon Employee Benefits Comm. v. Frawley*, No. 3:05-CV-2105-P, 2007 WL 2051113, at *3 (N.D. Tex. July 12, 2007) (unreported decision) (citing *City of Harker Heights v. Sun Meadows Land, Ltd.*, 830 S.W.2d 313, 319 (Tex. App.—Austin 1992, no writ). Unjust enrichment also arises when a person fails to “make restitution of benefits either wrongfully or passively received under circumstances that give rise to an implied or quasi-contractual obligation to repay.” *Id.* (emphasis omitted) (citing *Walker v. Cotter Props., Inc.*, 181 S.W.3d 895, 900 (Tex. App.—Dallas 2006, no pet.)). It is not a separate cause of action, and a successful claim must arise from an underlying contractual arrangement in which the court implies a remedy because one party received an unjust benefit. *R.M. Dudley Constr. Co.*, 258 S.W.3d at 703. For example, an unjust enrichment claim might be successfully brought to

recover money advanced in anticipation of consideration that later failed. *Id.* (citing *Oxford Fin. Cos. v. Velez*, 807 S.W.2d 460, 465 (Tex. App.—Austin 1991, writ denied)).

Qwest does not allege that it has a contract with Broadvox and it does not plead facts sufficient to show that Broadvox has subscribed to its tariffs. See, §II.C, *supra*. Moreover, Qwest admits that Broadvox does not terminate any traffic directly to Qwest, but rather purportedly terminates traffic to Qwest's network via third party CLECs. (Compl. ¶¶ 45, 60). Thus, Qwest does not allege a benefit that it has conferred on Broadvox, either in the form of termination services or money. If Qwest believes that it has not been properly paid for its termination services, it must seek redress from the parties with whom it has a contract, and who do receive access services – the CLECs that have interconnection agreements with Qwest. (Compl. ¶¶ 28, 60).⁶ Broadvox simply has not been unjustly enriched under Texas law.

F. Qwest Fails To Plead Facts Sufficient To Support Its Fraud Claims For Misrepresentation or Non-Disclosure (Counts IV and V), As Well as Other Claims Based on Alleged Fraudulent Conduct (Counts VI and VII)

Rule 9(b) of the Federal Rules of Civil Procedure requires all averments of fraud to be stated with particularity. *See* FED. R. CIV. P. 9(b). Rule 9(b) applies to all claims based on, or intertwined with, allegations of fraud, including all state-law claims premised on fraudulent conduct. *See, e.g., Borsellino v. Goldman Sachs Group, Inc.*, 477 F.3d 502, 507 (7th Cir. 2007) (tortious interference subject to Rule 9(b)); *Breckenridge Enters., Inc. v. Avio Alternatives, LLC*, No. 3:08-CV-1782-M, 2009 WL 1469808, at *10 (N.D. Tex. May 27, 2009) (unreported decision) (unjust enrichment subject to Rule 9(b) where based on fraud allegations); *see Carroll v. Fort James Corp.*, 470 F.3d 1171, 1174 (5th Cir. 2006) (Rule 9(b) applied to fraudulent non-disclosure claim).

⁶ Qwest states that it “exchanges traffic with the CLECs on the basis of contract, not tariff. These contracts, called interconnection agreements, provide that each carrier compensates the other for the ‘transport and termination’ of local traffic.” (Compl. ¶ 28).

In order to support a claim of fraud, a plaintiff in Texas must allege facts sufficient to show that the defendant made (1) a material representation; (2) that was false when made; (3) which the speaker knew was false, or made recklessly without knowledge of its truth and as a positive assertion; (4) the speaker made it with the intent that it should be acted upon; and (5) the party acted in reliance and suffered injury as a result. *Daldav Assocs., L.P. v. Lebor*, 391 F. Supp. 2d 472, 475 (N.D. Tex. 2005). The elements of a claim for fraud by nondisclosure are identical to a claim for fraud except “that the misrepresentation element can be proven by the nondisclosure or concealment of a material fact in light of a duty to disclose.” *United Teacher Assocs. Ins. Co. v. Union Labor Life Ins. Co.*, 414 F.3d 558, 567 (5th Cir. 2005). Fraud must be pled with particularity under Rule 9(b), which “typically requires the claimant to plead the type of facts omitted, the place in which the omissions should have appeared, and the way in which the omitted facts made the representations misleading.” *Carroll*, 470 F.3d at 1174 (citing *United States ex rel. Riley v. St. Luke’s Episcopal Hosp.*, 355 F.3d 370, 381 (5th Cir. 2004)).

Qwest’s claim for fraud is completely devoid of any specificity or particulars. It asserts that, somehow, through some sort of agreements with unidentified CLECs or possibly some IXC, Broadvox purportedly “provides for” the transport of some individuals’ calls that crossed local exchange boundaries. (Compl. ¶ 37). The sole basis on which a misrepresentation or omission allegedly occurred, is that Broadvox purportedly uses a PRI trunk to transmit traffic from its network to unnamed CLECs’ network(s). (Compl. ¶ 60). Qwest alleges that use of this PRI trunk “suggests” that the traffic is local, and thereby disguises the true nature of the traffic and causes it to be misrouted. (Compl. ¶¶ 31-32). Qwest does not allege however that the unnamed CLEC uses a PRI trunk to transmit traffic to Qwest. If the CLEC does not also use the same “misleading” PRI trunk, then it is completely irrelevant what type of trunk Broadvox may

use to transmit traffic to the CLEC. Qwest thus fails to establish any causal link between Broadvox's use of a PRI trunk and the actual facility that is used by the CLEC to terminate traffic to Qwest. It therefore fails to allege facts sufficient to plausibly conclude that Broadvox's use of a PRI trunk makes any kind of representation to Qwest, much less a false one.

G. Qwest Has Failed to State a Claim for Tortious Interference with Contractual Relationship.

To support a claim for tortious interference in Texas, Qwest must demonstrate that it was a party to a valid contract, that Broadvox was not a party to the contract, that Broadvox intentionally interfered with the contract, and that Qwest therefore suffered damage. *See Juliette Fowler Homes, Inc. v. Welch Assocs.*, 793 S.W.2d 660, 664 (Tex. 1990). "Interference with a contract is tortious only if it is intentional." *Southwestern Bell Tel. Co. v. John Carlo Texas, Inc.*, 843 S.W.2d 470, 472 (Tex. 1992).

First, Qwest has failed to allege facts supporting intentional conduct. Second, Qwest alleges it has agreements with IXCs and that Broadvox has separate agreements with IXCs and CLECs. (Compl. ¶¶ 45, 125). If Qwest believes it has been deprived of access charges, its claim lies contractually against its IXCs, not tortiously against Broadvox. Unjust enrichment does not allow Qwest to transform such contractual claims into tort claims against Broadvox. Thus, Qwest's tortious interference claim fails for some of the same reasons as its unjust enrichment claim. Finally, Qwest's tortious interference claims are entirely based on its fraud claims: it contends that "but for Broadvox's fraudulent scheme" in disguising its allegedly long-distance calls as local, then "Broadvox's upstream connecting IXCs" would have delivered the calls to Qwest over facilities for interexchange traffic. (Compl. ¶ 123). Thus, Qwest's tortious interference claim fails for the same reason that its fraud claims fail. *Borsellino*, 477 F.3d at 507 (tortious interference subject to Rule 9(b)).

H. Qwest's Claim for Declaratory Judgment Also Should Be Dismissed Under Rule 12(b)(6) for Insufficient Pleading.

Qwest's claim for declaratory judgment is based on the same fraud allegations in Counts IV and V, namely that Broadvox "misroutes and disguises traffic" and thereby avoids paying access charges. (Compl. ¶¶ 134-36). Therefore, the declaratory judgment claim is also subject to Rule 9(b) and should be dismissed for the reasons discussed in Section II.F above.

In considering a declaratory judgment claim, a court must determine (1) whether the action is justiciable or an "actual controversy"; (2) whether it has the "authority" to grant declaratory relief; and (3) how to exercise its broad discretion. *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000). Qwest has failed to allege the existence of an "actual controversy" because it has failed to allege facts supporting any contention that Broadvox has an obligation to Qwest for access charges. Qwest seeks a declaration that "the long distance traffic that Broadvox causes to be routed to Qwest for termination is subject to the terminating switched access charges" (Compl. ¶ 137). Qwest admits throughout its Complaint, however, that Broadvox delivers traffic to CLECs, not Qwest. (Compl. ¶¶ 13, 32, 36, 45, 60). Moreover, a question exists as to whether this Court has authority to grant the declaratory relief sought given (1) Qwest's failure to allege facts supporting its IXC conclusion and (2) the fact that such a decision is arguably better left to the FCC and its rulemaking authority.

Above all, Qwest cannot attempt to obtain the same relief sought under its other claims indirectly through a declaratory judgment. *See, e.g., Sanijet Corp. v. Lexor Int'l, Inc.*, No. 3:06-CV-1258-B, 2008 WL 2201451, at *3 (N.D. Tex. May 15, 2008) (unreported decision) ("[C]ourts regularly reject declaratory judgment claims that seek resolution of matters that will already be resolved as part of the claims in the lawsuit."); *Xtria LLC v. Tracking Sys., Inc.*, No. 3:07-CV-0160-D, 2007 WL 1791252, at *3 (N.D. Tex. June 21, 2007) (unreported decision)

(dismissing the plaintiff's declaratory judgment claim under Rule 12(b)(6) because it "essentially duplicate[d]" plaintiff's substantive claim); *Kougl v. Xspedius Mgmt. Co.*, No. 3:04-CV-2518-D, 2005 WL 1421446, at *4 (N.D. Tex. June 1, 2005) (unreported decision) (refusing to consider the plaintiffs' declaratory judgment actions because "[t]hese questions will be resolved in the context of [the substantive] actions" and because "[s]eparate declaratory judgment actions would be redundant"); *Albritton Props. v. Am. Empire Surplus Lines*, No. 3:04-CV-2531-P, 2005 WL 975423, at *2 (N.D. Tex. Apr. 25, 2005) (unreported decision) ("Generally, a declaratory judgment is unavailable to resolve disputes already pending before the court.").

I. In The Event The Court Retains This Matter, It Should Require Qwest Under FRCP 12(e) To Make A More Definite Statement As To Its Entire Complaint

To the extent the Court is not willing to dismiss or stay this case, Broadvox respectfully requests that Qwest provide a more definite statement of its claims. FED. R. CIV. P. 12(e).

J. The Court Should Dismiss or Stay This Proceeding Under The First Filed Doctrine

As part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit. *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). The doctrine is meant to "avoid duplicative litigation" and promote judicial economy and "to avoid piecemeal resolution of issues that call for a uniform result." *Id.*; *see also W. Gulf Mar. Ass'n v. ILA Deep Sea Local 24*, 751 F.2d 721, 729 (5th Cir. 1985). A court may curtail the duplicative litigation either by issuing a stay or by dismissing the second litigation. *See W. Gulf Mar. Ass'n*, 751 F.2d at 729 n.1; *Kerotest Mfg. Co. v. C-O-Two Fire Equip. Co.*, 342 U.S. 180, 183-84 (1952).

The Court should apply the first filed doctrine and either stay or dismiss this case because Qwest commenced an identical lawsuit in the Western District of Washington in December of 2008 against Broadvox and several other defendants. *See Qwest Corp. v. Anovian*, No. C-08-

1715 RSM (W.D. Wa. filed Nov. 26, 2008) (“Qwest 2008 Washington Complaint”). That case involves the same plaintiff, the same defendant, the same claim that Broadvox failed to pay access charges for traffic terminated to Qwest’s network in Washington, Arizona, Idaho, Oregon and Utah,⁷ the same legal issues, and (until Qwest’s were disqualified) the same attorneys as this case.⁸ Indeed, this Complaint and the Washington complaint are nearly verbatim. The Washington court ultimately dismissed Broadvox and one of the other defendants from the proceeding for lack of personal jurisdiction (though that dismissal did not stop Qwest from wrongfully naming Broadvox in its Amended Complaint in Washington anyway).⁹ It then dismissed the one remaining defendant on the grounds that Qwest failed to state a claim “because Qwest has failed in asserting that UniPoint is an IXC.”¹⁰ Qwest appealed the dismissal of Broadvox, and the matter is currently pending before the Ninth Circuit.¹¹ In its appeal papers filed with Ninth Circuit Court of Appeals, Qwest acknowledged that this case is related to the Washington litigation.¹² Qwest did not give this Court the courtesy of the same notice, even though it was required to disclose any related case, “whether pending or closed” on the civil cover sheet. (See Compl. at Civil Cover Sheet (PACER Doc. No. 1)).

If Qwest should prevail in its Ninth Circuit appeal on personal jurisdiction, Qwest will resume its case in Washington state against Broadvox. There would otherwise be no purpose in appealing that decision. Indeed, Qwest filed a stipulated motion asking the Washington court to

⁷ Qwest 2008 Washington Complaint at ¶ 47. Qwest identifies these same five states in ¶ 77 of this Complaint.

⁸ See *Qwest v. Anovian*, No. C08-1715 RSM, Order on Mot. for Disqualification, April 8, 2010 (PACER Doc. No. 104).

⁹ *Qwest v. Anovian*, No. C-08-1715 RSM (PACER Doc. Nos. 67 and 68).

¹⁰ *Qwest v. Anovian*, No. C-08-1715 RSM (PACER Doc. No. 66).

¹¹ Case No. 10-35177, U. S. Court of Appeals for the Ninth Circuit.

¹² Qwest Mediation Questionnaire, *Qwest v. Anovian*, No. 10-35177 (9th Cir. filed Feb. 19, 2010) p. 2 (PACER Doc. No. 2).

stay the proceeding against UniPoint (the remaining defendant) until the resolution of the Ninth Circuit appeal, so that the case against UniPoint and any other defendant that might be re-added could proceed in unison. In other words, Qwest is hedging its bets by maintaining the same litigation in two courts in case it loses its Ninth Circuit appeal.

K. The Court Should Apply The Primary Jurisdiction Doctrine To Refer This Case To The FCC For Resolution In A Currently Pending Proceeding

Qwest invites this court to accept a novel theory that non-IXCs should be subject to access charge liability. The Court should decline Qwest's invitation to write federal communications policy, and should defer instead to the primary jurisdiction of the FCC.

Under the primary jurisdiction doctrine, a court may dismiss or stay a proceeding that is otherwise cognizable if resolution of the dispute requires a determination from an expert agency with special competence over the subject matter. *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 532 F.2d 412, 417 (5th Cir. 1976). "In short, the agency should have the first word." *Id.* (citing *Marine Eng'rs Beneficial Ass'n v. Interlake Steamship Co.*, 370 U.S. 173, 185 (1962)). There is no "fixed formula" for applying the primary jurisdiction doctrine, but the advisability of invoking primary jurisdiction is greatest when the issue is already before the agency. *See id.* at 419; *Indus. Commc'ns Sys., Inc. v. Pac. Tel. & Tel. Co.*, 505 F.2d 152, 157 (9th Cir. 1974); *MCI Commc'ns Corp. v. Am. Tel. & Tel. Co.*, 496 F.2d 214, 223-24 (3d Cir. 1974); see also *La. Power & Light v. Fed. Power Comm'n*, 526 F.2d 898, 910 (5th Cir. 1976). It is not necessary that the expert agency's proceeding conclusively put an end to the matter in order for the Court to defer. *See Carter v. Am. Tel. & Tel. Co.*, 365 F.2d 486, 497 (5th Cir. 1966) (primary jurisdiction invoked where there was only a "strong possibility" that the FCC decision would resolve the dispute.). Rather, deferral to the expert agency is appropriate if the agency's decision would provide "material aid" to the court. *Miss. Power*, 532 F.2d at 418-21.

Where interpretation of a tariff is at issue, the matter is properly passed upon in the first instance by the FCC. *See id.* at 420. Indeed, this Circuit has opined that “reference by a court to a regulatory agency may not even be discretionary on such an issue.” *Id.* (citing *Interstate Commerce Comm’n v. Atl. Coast Line R. Co.*, 383 U.S. 576, 600-01 (1966); *United States v. W. Pac. R.R. Co.*, 352 U.S. 59, 63 (1956)). The novel theories of liability that Qwest advances raise complex and interrelated policy questions that fall squarely within the FCC’s expertise and authority. If this Court were to entertain Qwest’s innovative access-charge arguments, it would necessarily insert itself into federal communications policymaking, thereby duplicating or contradicting the FCC in the midst of a comprehensive deliberative process on access charges.

Indeed, the FCC is currently deliberating on the precise issues raised in the complaint as part of its National Broadband Plan announced on March 16, 2010. This plan includes a proposal for implementing comprehensive reforms for intercarrier compensation, and explicitly will address “the treatment of VoIP traffic for purposes of ICC [Inter-carrier Compensation].”¹³ The proceedings are intended to comprehensively revise intercarrier compensation issues, and the FCC has expressly included the issue of whether access charges are applicable to VoIP traffic within the scope of that proceeding.¹⁴ These proceedings collectively constitute an effort by the FCC to address intercarrier compensation comprehensively, including rules regarding intercarrier compensation for VoIP traffic, by the fourth quarter of this year.¹⁵

¹³ *See* National Broadband Plan, Recommendation 8.7, ¶¶ 1, 4 (2010), <http://www.broadband.gov/plan/8-availability/#r8> (“During Stage One, the FCC should establish a framework for phased reform of ICC [Inter-Carrier Compensation] to eliminate current distortions that are created by recovering fixed network costs through per-minute rates for the origination and termination of traffic. . . . The FCC also should address the treatment of VoIP traffic for purposes of ICC.”).

¹⁴ *See id.*

¹⁵ *See* Proposed 2010 Key Broadband Agenda Items, <http://www.broadband.gov/plan/chart-of-key-broadband-action-agenda-items.pdf>.

The FCC's current effort is the culmination of several prior proceedings in which the FCC has attempted to determine what (if any) termination charges should apply to VoIP. In 2004, the FCC opened a comprehensive rulemaking process (the "IP-Enabled Services Proceeding") to address the "revolutionary" changes wrought "by the rise of IP-enabled communications."¹⁶ Among the major questions raised by this rulemaking is the applicability of access charges to IP-enabled services, including the appropriate intercarrier-compensation obligations of "providers of [IP-enabled] services."¹⁷ Since initiating this rulemaking, the FCC has addressed many of the difficult issues it raised, but it has not determined that access charges may be applied to IP-enabled services such as VoIP.¹⁸ These are the very issues in this case.

The FCC's analysis of termination charges for IP-enabled services will reach far beyond simply setting a termination rate, if any. The FCC will consider numerous overarching policy issues, which it is uniquely qualified to resolve, such as promoting the economically efficient use of (and investment in) telecommunications networks, encouraging efficient competition, preserving universal service, encouraging technological neutrality, reviewing the effect of

¹⁶ See *IP-Enabled Servs.*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4867 ¶ 5 (2004).

¹⁷ *Id.* at ¶ 61.

¹⁸ For example, the Commission has determined that interconnected VoIP providers (a subset of IP-enabled service providers) must provide E911 service, comply with the requirements of the Communications Assistance for Law Enforcement Act, pay into the federal Universal Service Fund, safeguard Customer Proprietary Network Information, satisfy disability access requirements, meet the FCC's regulatory fee obligations, and comply with local number portability requirements. See *E911 Requirements for IP-Enabled Serv. Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005); *Commc'ns Assistance for Law Enforcement Act and Broadband Access and Servs.*, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92 ¶ 8 (2005); *IP-Enabled Servs.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7520 ¶ 2 (2005); *Implementation of the Telecomm. Act of 1996: Telecomms. Carriers' Use of Customer Proprietary Network Info. and Other Customer Info.*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 (2007); *IP-Enabled Servs.*, Report and Order, 22 FCC Rcd 11275 (2007); *Assessment and Collection of Reg. Fees for Fiscal Year 2007*, Report and Order and Further Notice of Proposed Rulemaking, FCC 07-140 at ¶¶ 11-20 (rel. Aug. 6, 2007); *Tel. No. Requirements for IP-Enabled Serv. Providers*, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007).

compensation changes on carrier interconnection rules, and developing a transition plan for carriers to implement any new compensation rules. *See Miss. Power*, 532 F.2d at 417.

The FCC followed the 2004 proceeding with other statements of its intent to address termination charges for VoIP. For example, it released a Further Notice of Proposed Rulemaking ("FNPRM") seeking comment on several intercarrier compensation proposals, including proposals that would address the regulatory classification of calls exchanged between IP-based and circuit-switched networks.¹⁹ In 2008, the FCC issued its ISP Mandamus Order in which it indicated it is considering a new approach to intercarrier compensation that would result in a new uniform set of termination rates for all types of traffic, including VoIP.²⁰ It is clear that the FCC is actively working on a comprehensive plan to revise the intercarrier compensation regime applicable to a wide variety of traffic, including VoIP. The FCC also has previously indicated that it has the discretion to apply rulemaking determinations retroactively, including by implication to this very dispute. *See AT&T IP-in-the-Middle Order*, 19 FCC Rcd at 7471. The Court should defer to the FCC's important policy making role, and should refer this case to the FCC for resolution, or at least hold this case in abeyance until the FCC acts.

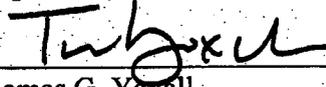
III. CONCLUSION

Broadvox respectfully requests that the Court enter an order granting this Motion, dismissing Qwest's claims for failure to state a claim, or in the alternative, dismissing or staying this proceeding until the prior litigation in federal court in Washington is concluded, or in deference to the FCC for resolution.

¹⁹ *See High-Cost Universal Serv. Support, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, 24 FCC Rcd 6475, 6493 ¶¶ 38-41 (2008) ("FNPRM"); *see also Feature Group IP Pet. for Forbearance, Memorandum Opinion and Order*, FCC, WC Docket No. 07-256, ¶ 6 n.19 (rel. Jan. 21, 2009).

²⁰ *ISP Mandamus Order*, at Appendix A, ¶ 153.

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INTRODUCTION

Defendants ("Broadvox") prematurely attempt to argue the merits of this case and consistently mischaracterize the nature of Qwest's claims, the facts, and the applicable law. The Court should not be misled by the straw-man arguments Broadvox advances. On the facts Qwest alleges, which must be assumed as true. Broadvox is an interexchange carrier under both the clear language of the Communications Act and case law. The calls at issue are not exempt from access charges, as the FCC has repeatedly determined, and Broadvox's liability for access charges is not defeated by its machinations to hide behind another local carrier.

Broadvox's main defense consists of repeating, over and over, that it says it is not an interexchange carrier and so, its logic goes, it must not be. (Broadvox basically admits that if it is an interexchange carrier, it owes Qwest lots of access charges.) But wishing and hoping does not make it so. The proper categorization of Broadvox's service depends on facts -- what Broadvox provides; how and to whom it sells it; and when, how, and for whom it works -- that Broadvox cannot controvert in a motion to dismiss. That issue necessarily turns on the fact-intensive inquiry of what Broadvox actually does, not what it says it does. In short, Broadvox cannot exempt itself from FCC regulations just by saying it is exempt.

Qwest's complaint properly and sufficiently alleges the fraudulent and unlawful regulatory arbitrage scheme in which Broadvox has engaged -- the scheme that forms the basis for Qwest's claims. The complaint fully and fairly apprises Broadvox of the nature and grounds of this suit, which is all that the Court's pleading rules require.

The balance of Broadvox's arguments to deny tort liability and declaratory relief, and to freeze this case indefinitely while we wait for future FCC rulings, are no more convincing. Qwest respectfully submits that the motion should be denied in its entirety, so that this case may proceed to discovery and a final hearing or trial.

STANDARDS GOVERNING THIS MOTION

A motion to dismiss under Rule 12(b)(6) for failure to state a claim is viewed with disfavor. *Lormand v. US Unwired, Inc.*, 565 F.3d 228, 232 (5th Cir. 2009). “The ultimate question” when addressing such a motion “is whether the complaint states a valid claim when all well-pleaded facts are assumed true and are viewed in the light most favorable to the plaintiff.” *Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010).

“To survive a motion to dismiss,” a complaint need only contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)). Plausibility, in turn, requires only “‘enough fact to raise a reasonable expectation that discovery will reveal evidence of’ the necessary claims or elements.” *S. Scrap Material Co. v. ABC Ins. Co.*, 541 F.3d 584, 587 (5th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). Thus, a “claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Hershey v. Energy Transfer Partners, L.P.*, ___ F.3d ___, 2010 WL 2510122, at *4 (5th Cir. 2010).

Rule 9(b) requires that, in “all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” But the pleading requirements of Rule 9(b) “may be to some extent relaxed where . . . the facts relating to the alleged fraud are peculiarly within the perpetrator’s knowledge.” *Willard v. Humana Health Plan of Tex. Inc.*, 336 F.3d 375, 384-85 (5th Cir. 2003). “Courts have also relaxed the specificity requirement of Rule 9(b)” “where the alleged conduct took place over a long period of time or involved numerous occurrences.” *Ellis v. Sheikh*, 583 F. Supp. 2d 434, 439 (W.D.N.Y. 2008) (quote omitted). Thus, where “the course of conduct occurs over an extended time period or consists of a series of transactions, the plaintiff need not allege in detail the facts of each transaction of the

fraudulent scheme.” *Thompson v. Columbia/HCA Healthcare Corp.*, 20 F. Supp. 2d 1017, 1039 (S.D. Tex. 1998).

Of course, if a court finds that dismissal of a claim is warranted under Rules 9 or 12(b), it normally will exercise its discretion to allow leave to amend to cure pleading defects. *See* FED. R. CIV. P. 15(a)(2). “In the context of motions to amend pleadings, ‘discretion’ may be misleading, because FED. R. CIV. P. 15(a) evinces a bias in favor of granting leave to amend.” *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 863 (5th Cir. 2003) (quote omitted).

Finally, a “court considering deferring to an agency’s primary jurisdiction must weigh the benefits of obtaining the agency’s aid against the need to resolve the litigation expeditiously and may defer only if the benefits of agency review exceed the costs imposed on the parties.” *Wagner & Brown v. ANR Pipeline Co.*, 837 F.2d 199, 201 (5th Cir. 1988).

ARGUMENT

I. NONE OF BROADVOX’S ARGUMENTS WARRANTS DISMISSAL OF QWEST’S CLAIMS FOR NONPAYMENT OF ACCESS CHARGES.

A. Qwest Has Alleged Facts Sufficient to Demonstrate That Broadvox Is an Interexchange Carrier Liable for Access Charges.

As Broadvox notes, interexchange service “is defined as a call that terminates in a local calling area different than the one in which it originates,” and Qwest has alleged that “Broadvox carries calls between local exchanges.” Defs.’ Mot. to Dismiss or Stay (Dkt. No. 18) (“MTD”) at 6 (citing First Am. Complaint (Dkt. No. 6) (“Compl.”) ¶ 53). Broadvox does not deny that it provides interexchange service.

Instead, Broadvox argues that providing an interexchange service does not make it an “interexchange carrier” or “carrier’s carrier,” within the scope of 47 C.F.R. § 69.5(b). It says that it is not a common carrier or even a “carrier” at all; that its refusal to meet the regulatory obligations of an interexchange carrier is determinative of its regulatory status; and that status as

an interexchange carrier under FCC regulations cannot arise merely from an entity's engaging in regulated activity. Broadvox is wrong on all three points. Qwest's allegations, if proven at trial, are sufficient to establish that Broadvox is an interexchange carrier liable to Qwest for terminating access charges under 47 C.F.R. § 69.5(b).¹

The essence of Broadvox's argument is that an entity can simply declare itself exempt from the FCC's regulatory framework for telecommunications services. But "a 'common carrier is such by virtue of his occupation,' that is by the actual activity he carries on." *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC (NARUC II)*, 533 F.2d 601, 608 (D.C. Cir. 1976) (quote omitted). Thus, an entity's status as a carrier depends on "the particular practice under surveillance," not the entity's self-serving description of its own conduct. *Sw. Bell. Tel. Co. v. FCC*, 19 F.3d 1475, 1481 (D.C. Cir. 1994). This well-settled and commonsensical rule directly refutes Broadvox's argument that it can avoid FCC regulations just by saying it would prefer not to comply.²

Despite what Broadvox argues, Qwest need not allege that Broadvox is legally obligated to offer service indifferently in order for Broadvox to be a carrier for purposes of Qwest's claim. It is "not necessary that a carrier be *required* to serve all indiscriminately; it is enough that its practice is, in fact, to do so." *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC (NARUC I)*, 525 F.2d 630, 641 (D.C. Cir. 1976) (emphasis added). Rather, as the D.C. Circuit has noted, the

¹ Tellingly, Broadvox promotes itself to other carriers as "one of the country's preeminent 'carrier's carrier' for VoIP [sic]." Broadvox, SIP Trunking Provider Co. History, <http://www.broadvox.com/History.aspx> (last visited July 1, 2010). Yet here it continues to insist that it is not liable for the "[c]arrier's carrier charges" imposed by § 69.5(b).

² Nor are Broadvox's examples of "entities that *arguably* 'act' like an IXC" but receive different regulatory treatment persuasive, see MTD at 9-10, given the specific exemptions created by the FCC for the types of traffic cited. See First Report & Order, *In re Implementation of the Local Competition Provisions in the Telecomms. Act of 1996*, 11 FCC Rcd. 15499, 16014 ¶ 1036 (1996) (specifically exempting "traffic to or from a [Commercial Mobile Radio System] network that originates and terminates within the same [Major Trading Area]" from liability for access charges in favor of a system of reciprocal compensation between the CMRS provider and the local carrier); 47 C.F.R. §§ 69.5(c), 69.115. No such exemption applies to Broadvox's services.

primary *sine qua non* of common carrier status is a quasi-public character, which arises out of the undertaking to carry for all people indifferently. . . . [A] specialized carrier whose service is of possible use to only a fraction of the population may nonetheless be a common carrier if he holds himself out to serve indifferently all potential users

Sw. Bell Tel. Co., 19 F.3d at 1480 (quote and emphasis omitted); *accord United States Telecom Ass'n v. FCC*, 295 F.3d 1326, 1329 (D.C. Cir. 2002). And while “self-certification” as a carrier may suffice to ensure an entity’s treatment as one, *see Iowa Telecomms. Servs., Inc. v. Iowa Utils. Bd.*, 563 F.3d 743, 749 (8th Cir. 2009), nothing makes such registration a prerequisite to carrier status, as Broadvox contends.³

Moreover, Broadvox is a common carrier because, as Qwest alleges, federal law says it is. “Telecommunications,” under the Communications Act, is “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. § 153(43); *cf.* Compl. ¶¶ 52, 63-64. “Telecommunications service,” in turn, includes “the offering of telecommunications for a fee . . . to such classes of users as to be effectively available directly to the public.” 47 U.S.C. § 153(46); *cf.* Compl. ¶¶ 59, 61-62. And “any provider of telecommunications services” is a “telecommunications carrier” that “shall be treated as a common carrier . . . to the extent that it is engaged in providing telecommunications services.” 47 U.S.C. § 153(44). As Qwest sets forth in the complaint, the interexchange services Broadvox provides are telecommunications services. Compl. ¶¶ 52-53. Therefore, Broadvox is a telecommunications carrier, a common carrier for those services, and an interexchange carrier within the meaning of 47 C.F.R. § 69.5(b).

³ Broadvox’s purported “test” for common-carrier status reflects a flawed reading of *NARUC I*. The language it quotes, MTD at 7, sets out the D.C. Circuit’s method for determining prospectively whether certain providers were likely to act as common carriers in the future. *See NARUC I*, 525 F.2d at 642 (“the Court must find a substantial likelihood that SMRS will hold themselves out to serve indifferently”). In that context, inquiring whether an entity is legally compelled to do so is sensible, as it is sufficient (though not necessary) to answer the primary question -- whether “the operator offer[s] indiscriminate service to whatever public its service may legally and practically be of use.” *Id.* *NARUC I* did not purport to impose any legal-compulsion requirement to all contexts.

In any event, notwithstanding Broadvox's rhetoric, neither section 69.5(b) nor FCC precedent requires all interexchange carriers to be common carriers, making Broadvox's argument a red herring. The FCC itself, addressing the issue of how interexchange carriers are qualified, has held that

applicability of interstate carrier charges does not depend on whether the entity taking service is a common carrier. If [the entity] carried interstate traffic for hire between two or more exchanges, interstate carrier access charges would apply.

HAP Servs., Inc. v. Sw. Bell Tel. Co., 2 FCC Rcd. 2948, 2950 ¶ 15 (1987). Here, Qwest alleges in its complaint that Broadvox carried interstate traffic for hire between two or more exchanges, and it thus owes access charges to Qwest. Compl. ¶¶ 52-53, 60. These allegations are sufficient to meet the applicable test.

Contrary to Broadvox's assertion, even a quick review of the complaint reveals factual allegations that go far beyond "the solitary, vague claim . . . that Broadvox participates in some fashion in the transport of traffic that crosses exchange boundaries." MTD at 8-9. Instead, Qwest has pleaded an extensive factual basis for determining that Broadvox is an interexchange carrier:

- Broadvox's service is an "integral part in providing a common carriage service -- ordinary long-distance telephony." Compl. ¶¶ 54, 58; see *In re Bright House Networks, LLC v. Verizon Cal., Inc.*, 23 FCC Rcd. 10704, 10715 ¶ 31 (2008) (services incidental or adjunct to common carrier transmission service "are an integral part of, or inseparable from, transmission of communications" and "should be classified as telecommunications services").
- Broadvox is engaged in the provision of telecommunications services as defined by the Communications Act, Compl. ¶ 55, and provides a service that FCC has held to be a common carrier telecommunications service, *id.* ¶ 56.
- As to the uniform nature of Broadvox's service and its holding itself out as a nondiscriminatory service provider, Broadvox has undertaken to provide service to all users indifferently: "Broadvox provides non-discriminatory telecommunications services to the public or a segment of the public." *Id.* ¶ 59.

- Broadvox “does not differentiate one call from another,” but instead it “accepts and transports each and every call that is passed to it.” *Id.* Broadvox’s contracts with upstream interexchange carriers require it to accept, transport, and assure termination of all calls passed to it. *Id.* ¶ 61. These contracts offer standardized terms and rates for transport and termination services. *Id.* ¶ 62. Neither the contract terms nor the services provided by Broadvox differs significantly among its customers. *Id.*
- As to the interexchange nature of its service, “Broadvox carries the long-distance calls that are the subject of this action between local exchanges.” *Id.* ¶ 58.

These allegations, which must be accepted as true, address directly the question of Broadvox’s status as an interexchange carrier for purposes of carrying the calls at issue, and they provide a factual basis well beyond plausibility to support a key fact issue in this case: Broadvox is an interexchange carrier.⁴

B. Qwest Has Alleged Facts Sufficient to Show That Broadvox’s Services Are Not Exempt from Access Charges.

Broadvox cannot avoid its responsibility to pay access charges on the ground that its service when transporting PSTN-originated calls across exchange boundaries, as Qwest has alleged, is exempt as an “information service.” FCC guidance established and reiterated in two orders (later relied on by federal courts) fatally undermines Broadvox’s contention that its disputed services are exempt.

First, in the *IP-in-the-Middle Order*, the FCC confirmed that interstate carriage of PSTN-originated calls temporarily converted to IP format is a telecommunications service subject to access charges under 47 C.F.R. § 69.5(b). *See Order, In re Petition for Declaratory Ruling That AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd. 7457, 7457-58 ¶ 1 (2004) (“*IP-in-the-Middle Order*”). Specifically, the FCC held that “an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no

⁴ However, in the event that the Court finds dismissal of this or any other of Qwest’s claims to be warranted, Qwest requests leave to amend its complaint to cure any putative pleading defects under Fed. R. Civ. P. 15(a)(2). *See Rosenzweig*, 332 F.3d at 863.

enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology" "is a telecommunications service upon which interstate access charges may be assessed." *Id.* Those are Qwest's allegations about Broadvox's services. *See* Compl. ¶¶ 40-42, 63-66, 69-73. Given the factual inquiry necessary to establish the proper regulatory classifications of the Broadvox service relative to the calls at issue, Broadvox's attempt to short-circuit the process through mere assertions in a Rule 12(b)(6) motion is insufficient.

Moreover, the *IP-in-the-Middle Order* contemplates scenarios in which an interexchange carrier receives calls for termination already converted from PSTN to IP format:

when a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN, the interexchange carrier is obligated to pay terminating access charges.

19 FCC Rcd. at 7470 ¶ 19. The analysis requiring access charges "applies to services that meet these criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport," so as to avoid a situation in which "some carriers may be paying access charges for these services while others are not." *Id.*

The FCC and courts have applied the *IP-in-the-Middle Order* consistently to determine that services functionally indistinguishable from Broadvox's are telecommunications services subject to access charges. In a 2006 order, the FCC again rejected the argument that IP transport somehow converts a telecommunications service into an information service. First, looking back on the *IP-in-the-Middle Order* from two years before, the FCC said, it had found that

the use of IP transport, without more, did not change the regulatory classification of the service at issue. That decision provided ample notice that merely

converting a . . . call to IP format and back does not transform the service from a telecommunications service to an information service.

Report & Order, *Regulation of Prepaid Calling Card Servs.*, 21 FCC Rcd. 7290, 7306 ¶ 43 (2006) (“*Calling Card Order*”). Accordingly, the providers of prepaid calling cards were determined to be “obligated to pay interstate or intrastate access charges” despite their conversion of calls into IP format. *Id.* at 7300 ¶ 27.

Other courts have relied repeatedly on the *IP-in-the-Middle Order*. See, e.g., *PAETEC Commc'ns, Inc. v. CommPartners, LLC*, 2010 WL 1767193, at *3 & n.3, *5 (D.D.C. 2010) (granting summary judgment on claim for access fees owed on IP-in-the-middle calls); *Comcast IP Phone of Mo., LLC v. Mo. Pub. Serv. Comm'n*, 2007 WL 172359 (W.D. Mo. 2007); *Sw. Bell Tel., L.P. v. Mo. Pub. Serv. Comm'n*, 461 F. Supp. 2d 1055, 1077 (E.D. Mo. 2006). This rule articulated by the FCC is settled law, and it subjects Broadvox's service to access charges.⁵

Besides mischaracterizing the importance of the *IP-in-the-Middle Order*, Broadvox also misstates the nature of the calls at issue here. It repeatedly obscures the distinction between IP-originated calls and PSTN-originated calls converted to IP format, including both under the same misleading label (“non-traditional . . . Voice over Internet Protocol traffic,” MTD at 3), and arguing that all such “non-traditional” calls fall outside the Complaint, *id.* at 10. Even worse, Broadvox then suggests that the FCC has “unequivocally held” VoIP to be “exempt from access charges” and “has not yet determined” whether VoIP is an information or a telecommunications

⁵ Regardless of whether Broadvox could succeed in arguing that IP-in-the-middle calls are not subject to access charges despite the *IP-in-the-Middle Order*, Qwest has alleged that Broadvox engages in the same scheme to avoid payment of access charges on some PSTN-originated calls that are never converted to IP format. Compl. ¶ 42. Broadvox does not deny that its carriage of this subset of the calls at issue is telecommunications service subject to access charges.

service -- all without acknowledging that "VoIP traffic" in these contexts actually refers *only* to IP-originated calls, which are not at issue here.⁶ See MTD at 10-11.

The Court should not indulge Broadvox's spin on the complaint, which Qwest focused on Broadvox traffic that "both begin[s] and end[s] as ordinary circuit-switched telephone calls" and may or may not be converted to IP format in transit. See Compl. ¶¶ 10, 52, 62-63. Nor should the Court accept Broadvox's distortions of FCC and federal court decisions. Indeed, within one page of mischaracterizing the FCC's position on IP-in-the-middle traffic, Broadvox concedes that under the *IP-in-the-Middle Order*, a PSTN-originated long-distance call converted into IP format temporarily is subject to access charges (and, by implication, carrying such a call is not an information service exempt from such charges). MTD at 9. That is the gravamen of Qwest's suit, and the reason Broadvox owes Qwest substantial access charges.

Ultimately, the motion does not dispute that by carrying IP-in-the-middle long-distance calls, as Qwest alleges, Broadvox is providing a telecommunications service under the Communications Act. Providing that service makes Broadvox a telecommunications carrier, and a common carrier for purposes of that service, both under the words of the statute, see 47 U.S.C. § 153(44), and, on the facts alleged by Qwest, under the legal standard drawn from *NARUC I* and *II*. And because Broadvox provides that service across multiple exchanges, it is an interexchange carrier. Qwest has alleged facts that, if proven, will prove Broadvox's liability on the claims for unpaid access charges. At the least, Qwest has carried its burden to allege facts

⁶ Moreover, both cases cited by Broadvox in support of its contention that "VoIP has all of the characteristics of an information service," MTD at 11, explicitly note that they considered only IP-originated traffic, not IP-in-the-middle traffic like that at issue here. See *Sw. Bell Tel.*, 461 F. Supp. 2d at 1065 (noting SBC's challenge to an order requiring it to forbear from applying access charges to interexchange calls "where the calls originate in the 'Internet Protocol' format"); *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n*, 290 F. Supp. 2d 993, 999-1000 (D. Minn. 2003) ("Vonage never provides phone-to-phone IP telephony[:] (it only provides computer-to-phone or phone-to-computer IP telephony) . . ."). The same is true of later cases holding specific VoIP services to be information services. E.g., *PAETEC Commc'ns, Inc.*, 2010 WL 1767193, at *2-3 (holding IP-originated calls to be an information service exempt from access charges and noting concession that PSTN-originated calls are subject to access charges).

that allow “the court to draw the reasonable inference that [Broadvox] is liable for the misconduct alleged.” *Hershey*, __ F.3d __, 2010 WL 2510122, at *4.

C. Qwest Has Alleged Facts Sufficient to Demonstrate That Broadvox Is Liable for Access Charges Under the Constructive Ordering Doctrine.

Broadvox has refused to subscribe directly to Qwest’s tariff and, it appears, does not send long-distance traffic to Qwest except through intermediaries. Qwest does not contend otherwise. Compl. ¶ 13. But the absence of contractual privity or another direct business relationship with Qwest does not determine whether Broadvox is liable under Qwest’s tariff, as Broadvox asserts.

Broadvox is a subscriber to Qwest’s tariff under the constructive ordering doctrine. A party makes a “constructive request for service if the receiver of the services (1) is interconnected in such a manner that it can expect to receive access services; (2) fails to take reasonable steps to prevent the receipt of access services; and (3) does in fact receive such services.” *Hypercube LLC v. Comtel Telecom Assets LP*, 2009 WL 3075208, at *7 (N.D. Tex. 2009) (quote omitted); *accord In re Access Charge Reform*, 14 FCC Rcd. 14221, 14318-19 ¶ 188 (1999).

Qwest alleges facts that, if proved, establish each element of the constructive ordering doctrine. The complaint alleges that Broadvox is interconnected with competing local exchange carriers for whom Qwest is the incumbent local exchange carrier, Compl. ¶¶ 12-14, 45, 47, and that Broadvox causes long-distance calls to be delivered to Qwest through competing local exchange carriers that are interconnected with both Broadvox and Qwest, *id.* ¶¶ 13-14, 45. Far from taking steps to prevent receipt of access service, Broadvox intends that Qwest provide terminating access service for these calls. *Id.* ¶¶ 13, 45. And the calls that Broadvox causes to be delivered to Qwest are in fact terminated to Qwest customers. *Id.* ¶¶ 11, 45, 48-49, 66. These allegations satisfy Qwest’s pleading obligations.

Broadvox relies on a single decision, *Alliance Communications Co-operative, Inc. v. Global Crossing Telecommunications, Inc.*, 690 F. Supp. 2d 889 (D.S.D. 2010), to try to avoid application of the constructive ordering doctrine. But *Alliance* was decided at summary judgment, after the plaintiffs failed to put the third prerequisite of the doctrine -- actual receipt of services -- into question. *Id.* at 894-95. A similar resolution of this disputed fact would be inappropriate here, in resolving Broadvox's motion to dismiss, as "all well-pleaded facts are assumed true and are viewed in the light most favorable to the plaintiff." *Lone Star Fund*, 594 F.3d at 387.

Moreover, accepting the rule Broadvox advocates would overthrow the FCC's interstate access charge regime by opening a loophole of dramatic proportions -- any interexchange carrier, VoIP or otherwise, liable for terminating access charges could avoid them simply by structuring its business to deliver calls through a local exchange carrier other than the incumbent. Congress and the FCC, by creating competition among local carriers under the Telecommunications Act of 1996, never intended to undermine the architecture of intercarrier compensation. *Cf. IP-in-the-Middle Order*, 19 FCC Rcd. at 7475 (statement of Chairman Michael K. Powell) ("To allow a carrier to avoid regulatory obligations simply by dropping a little IP in the network would merely sanction regulatory arbitrage and would collapse the universal service system virtually overnight."). "Indeed, only if the constructive ordering doctrine is applied here can massive rate discrimination be avoided." *Advantel, LLC v. AT&T Corp.*, 118 F. Supp. 2d 680, 687 (E.D. Va. 2000).

Because Qwest has alleged the prerequisites of the constructive ordering doctrine, Compl. ¶ 45, no further inquiry is required at this stage.

II. THE FILED-RATE DOCTRINE DOES NOT BAR QWEST'S STATE-LAW CLAIMS.

Under the filed-rate doctrine, “the rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext.” *Am. Tel. & Tel. Co. v. Cent. Office Tel., Inc.*, 524 U.S. 214, 222 (1998) (quote omitted). The doctrine enforces “the policy of nondiscriminatory rates [that] is violated when similarly situated customers pay different rates for the same services” and that “lies at ‘the heart of the common-carrier section of the Communications Act.’” *Id.* at 223 (quote omitted).

But the filed-rate doctrine “does not completely preempt state-law causes of action.” *Premiere Network Servs., Inc. v. SBC Commc'ns, Inc.*, 440 F.3d 683, 691 n.11 (5th Cir. 2006) (“because Premiere’s claims . . . apparently do not challenge SBC’s tariff, the filed-rate doctrine likely does not apply to completely preempt such claims”). The Communications Act itself has preserved rights under state law that do not conflict with filed tariffs. *See* 47 U.S.C. § 414 (“Nothing in this chapter contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.”); *Cent. Office Tel.*, 524 U.S. at 227 (§ 414 preserves all rights under state law “that are not inconsistent with the statutory filed-tariff requirements”). These limits on the doctrine make sense, because for the doctrine “to serve its purpose,” “it need pre-empt only those suits that seek to alter the terms and conditions provided for in the tariff.” *Id.* at 229 (Rehnquist, C.J., concurring).

Broadvox cites *Marcus v. AT&T Corp.*, 138 F.3d 46, 58 (2d. Cir. 1998), and the district court decision it affirmed, 938 F. Supp. 1158 (S.D.N.Y. 1996), for the contention that state-law claims for fraud, tortious interference, or unjust enrichment must be dismissed under the filed-rate doctrine. *See* MTD at 13. Yet it fails to mention critical distinctions that limit *Marcus*’s relevance here. *Marcus* dismissed the various tort claims in that case because the customer-

plaintiffs had paid AT&T's tariffed rates, and so granting any damages relief would have provided them a discount from AT&T's tariff. *See* 938 F. Supp. at 1170 ("As long as the carrier has charged and the plaintiff has paid the filed rate, what bars a claim is not the harm alleged, but the impact of the remedy sought. Any remedy that requires a refund of a portion of the filed rate ... is barred.") In this case, in which Broadvox's regulatory arbitrage has resulted in it unlawfully obtaining a discriminatory competitive advantage over other ratepayers, no similar rationale exists for dismissing Qwest's state-law claims. *See Manhattan Telecomms. Corp. v. Global NAPs, Inc.*, 2010 WL 1326095, at *3 (S.D.N.Y. 2010).

Of particular relevance here, Qwest's state-law claims against Broadvox merely seek to "ensure[] that all who received services from plaintiff[] will be charged the same rate." *Advantel, LLC*, 118 F. Supp. 2d at 687. If Qwest's alternative state-law claims are barred, Broadvox "will have received millions of dollars of services for free -- surely, a result antithetical to the filed-rate doctrine." *Id.* To prevent such results, in similar circumstances, courts have held that the doctrine does not bar state-law claims that, like Qwest's unjust enrichment and tort claims, form a basis for relief that is an alternative to tariff-based claims. *See Manhattan Telecomms. Corp.*, 2010 WL 1326095, at *3 (rejecting as "legally unsupported" the defendant's contention "that it is not subject to MetTel's filed tariff rates, while arguing that the statutory rate system precludes the unjust enrichment claims").

The core premise underlying the filed-rate doctrine -- ensuring the carrier charges all customers, and all customers pay, the same rates -- would be undermined by its rote application here. If Broadvox cannot be called to account for its conduct, it and other IP-based carriers will have full license to receive local carriers' access services at non-tariffed discount rates, to the detriment of interexchange carriers who follow the law and pay Qwest and others for access

charges on long-distance traffic. If anything, the filed-rate doctrine demands that Qwest's state-law claims be permitted to proceed in the alternative, so as to prevent Broadvox from receiving a discriminatorily lower rate. *See W. Transp. Co. v. Wilson & Co.*, 682 F.2d 1227, 1231 (7th Cir. 1982) (disapproving shipper's noncompliance with tariff where by doing so it "received an off-tariff discount"); *see also IP-in-the-Middle Order*, 19 FCC Rcd. at 7470 ¶ 19 (defining applicability of order broadly so as to "not place AT&T at a competitive disadvantage").

III. QWEST HAS SUFFICIENTLY ALLEGED FACTS SUPPORTING ITS CLAIM FOR UNJUST ENRICHMENT.

A. Unjust Enrichment Is Actionable Under Texas Law.

"In Texas, a plaintiff may recover under an unjust enrichment theory when the defendant has obtained a benefit . . . by fraud, duress, or the taking of an undue advantage," *Eagle Metal Prods., LLC v. Keymark Enters., LLC*, 651 F. Supp. 2d 577, 591 (N.D. Tex. 2009) (quote omitted), or when "the person sought to be charged has wrongfully secured a benefit or has passively received one which it would be unconscionable to retain," *Mims v. Stewart Title Guar. Co.*, 521 F. Supp. 2d 568, 574 (N.D. Tex. 2007) (quote omitted). Under either construction, Qwest has stated a claim for unjust enrichment.

Broadvox's assertions that no separate cause of action exists and that unjust enrichment is limited to implied or quasi contract, MTD at 15, are flatly inconsistent with Texas law. "The Texas Supreme Court . . . has recognized unjust enrichment as a cause of action." *Leal v. Weightman*, 2004 WL 2251570, at *4 (Tex. App.--Houston [1st Dist.] 2004, no pet.), *see also, e.g., Newington Ltd. v. Forrester*, 2008 WL 4908200, at *3 (N.D. Tex. 2008) (denying motion to dismiss unjust enrichment claim and rejecting as "incorrect" argument that no independent cause

of action exists); *HECI Exploration Co. v. Neel*, 982 S.W.2d 881, 891 (Tex. 1998) (discussing “cause of action” for unjust enrichment).⁷

Further, not one of the cases Broadvox cites supports its argument that “a successful [unjust enrichment] claim must arise from an underlying contractual arrangement.” MTD at 15; see, e.g., *R.M. Dudley Constr. Co. v. Dawson*, 258 S.W.3d 694, 703 (Tex. App.--Waco 2008, pet. denied) (recognizing validity of recovery “under circumstances in which one person has obtained a benefit from another by fraud, duress, or the taking of undue advantage”); *Walker v. Cotter Props., Inc.*, 181 S.W.3d 895, 900 (Tex. App.--Dallas 2006, no pet.) (“The unjust enrichment doctrine applies principles of restitution to disputes where there is no actual contract and is based on the equitable principle that one who receives benefits which would be unjust for him to retain ought to make restitution.”). Broadvox simply provides no basis for dismissing Qwest’s unjust enrichment claim.

B. Broadvox Obtains a Benefit by Way of Fraud or Taking Undue Advantage.

Qwest alleges that Broadvox obtains terminating service from Qwest for long-distance calls that it causes to be delivered to Qwest disguised as local traffic and does not pay Qwest’s rate for that service. Compl. ¶¶ 7, 13-17, 37-39, 46-49, 61, 98. These allegations sufficiently allege that Broadvox obtains a benefit from Qwest by fraud or undue advantage.

Specifically, Qwest’s terminating service creates a benefit that inures to Broadvox through substantially lower termination rates. *Id.* ¶¶ 17, 98. The very existence of Broadvox’s business is based on transportation and delivery of long-distance calls for termination by Qwest

⁷ Any debate over the existence of a “separate” cause of action is purely academic anyway, because “one thing remains clear: even in the cases that [reject an independent cause of action], the courts have still allowed plaintiffs to recover based on the *theory* of unjust enrichment.” *Newington*, 2008 WL 4908200, at *4. “Texas courts may waffle about whether unjust enrichment is a theory of recovery or an independent cause of action, but either way, they have provided the plaintiff with relief when the defendant has been unjustly enriched.” *Id.*

and other local exchange carriers; there is no dispute that only Qwest can (and does) terminate Broadvox's calls to Qwest's local customers. *See id.* ¶ 11. If Qwest did not complete these long-distance calls sent to it by Broadvox, Broadvox would not have a viable business model. *See id.* ¶ 61. No upstream interexchange carrier would contract with Broadvox if the long-distance traffic being carried by that interexchange carrier could not be completed to the intended end-user customer. *See id.* By failing to pay the required tariff rates for the termination of these calls, *id.* ¶¶ 39, 46-49, Broadvox is unjustly receiving a benefit from Qwest. It accepts and retains that benefit without paying appropriate compensation for termination of long-distance calls. *Id.*⁸ Qwest has stated a claim for unjust enrichment, and the motion should be denied.

IV. QWEST'S ALLEGATIONS ADEQUATELY PLEAD CLAIMS FOR FRAUD AND FRAUD BY NONDISCLOSURE.

Broadvox's argument that Qwest's fraud claims are insufficiently particular is fatally undermined by its refusal to acknowledge the fact allegations contained in the complaint.

Citing only 4 of Qwest's 74 paragraphs of fact allegations, Broadvox asserts that "Qwest's claim for fraud is completely devoid of any specificity or particulars." MTD at 17-18.⁹

But Qwest lays out a sufficient factual basis for its claim:

- Broadvox has "misrepresented to Qwest . . . the types of calls it is carrying" by "disguis[ing] the long-distance calls it delivers, so that they appear to be *local* calls," Compl. ¶¶ 7, 6;
- this misrepresentation is "critical," in that it "prevents Qwest from distinguishing between local and long-distance phone traffic" because "[b]y law, Qwest charges higher rates to terminate long-distance calls . . . than local calls," *id.* ¶¶ 17, 46;

⁸ This is the rationale in *Manhattan Telecommunications* for allowing a local exchange carrier to recover from an interexchange carrier that refused to pay access charges for terminating access service on calls routed through a third-party local exchange carrier. 2010 WL 1326095, at *1-*4. The proper measure of damages was MetTel's federal tariff rate. *Id.*

⁹ Broadvox limits its motion to dismiss to "Qwest's claim for fraud," i.e., Count IV, and it raises no argument against Qwest's separate fraud by nondisclosure claim, Count V. *Id.* at 17. In any event, Qwest has adequately pleaded both claims.

- Broadvox “knowingly and intentionally receives ordinary long-distance traffic from other IXCs, then tells CLECs . . . that [the calls] are local calls that are not subject to higher long-distance access charges,” *id.* ¶ 45;
- Broadvox acts “with the express intent that the CLEC route the long-distance traffic as local traffic to Qwest over the interconnection facilities (LIS trunks) designed for local traffic,” *id.*;
- Broadvox “understands that Qwest will terminate these long-distance calls,” *id.*; and
- Qwest “is and has been unable to bill for a great deal of interexchange long-distance traffic delivered by Broadvox,” *id.* ¶ 46.

These allegations adequately state a claim for fraud with particularity. *See Flexible Innovations, Ltd. v. HR U.S. LLC*, 2007 WL 3341760, at *3 (N.D. Tex. 2007) (approving “allegations [that] apprise [parties] of the who, what, when, where, and how of the alleged fraud” (quote omitted)).

To the extent Qwest’s complaint lacks greater detail, it is because Broadvox’s scheme is designed to mask the very information that Broadvox suggests is lacking. Compl. ¶¶ 7, 15-17, 46. That Broadvox has succeeded to date is not a basis for dismissing Qwest’s valid claims. *See Willard*, 336 F.3d at 385 (particularity requirement relaxed where “the facts relating to the alleged fraud are peculiarly within the perpetrator’s knowledge”); *Lincoln Gen. Ins. Co. v. U.S. Auto Ins. Servs., Inc.*, 2009 WL 1174641, at *6 (N.D. Tex. 2009) (same); *cf.* Compl. ¶¶ 48-49, 108. Similarly, the massive scale of Broadvox’s fraud is itself grounds for relaxing Rule 9(b)’s requirements when, as Qwest has done here, the factual basis of the fraudulent scheme itself is clearly alleged. *See Ellis*, 583 F. Supp. 2d at 439 (invoking exception to Rule 9(b) for “alleged conduct [that] took place over a long period of time or involved numerous occurrences” in light of allegations of “an almost daily pattern of fraudulent billing which occurred over a two-year period”); *cf.* Compl. ¶¶ 46-49 (alleging fraudulent delivery of at least 135 million calls disguised as local traffic).

Broadvox again misreads the Complaint to make its only specific argument for dismissal of Qwest’s fraud claim -- that if the same phone line (a “PRI trunk”) by which Broadvox delivers

traffic to an intermediary local carrier is not also used by that local carrier to pass the traffic along to Qwest, then Broadvox does not “make[] any kind of representation to Qwest, much less a false one.” MTD at 17-18. But Qwest’s claim is not that Broadvox’s use of a PRI trunk, by itself, misrepresents the traffic Broadvox causes to be terminated by Qwest. Rather, use of a PRI trunk -- a technology that allows Broadvox to change the billing information that accompanies the call, including the originating area code and exchange numbers, Compl. ¶¶ 7, 16, 32, 36, 43-44 -- is just one aspect of Broadvox’s scheme. Equally important is that, although Broadvox sends traffic to the intermediary local carrier for eventual delivery to Qwest on those lines, *id.* ¶¶ 31-33, the local carrier routes that traffic to Qwest, as Broadvox knows and intends, over other lines that Qwest has designated as exclusively for local traffic, *id.* ¶¶ 14, 28, 32-33. And Broadvox misrepresents to the local carrier that the traffic is either local calls or information services, not long-distance calls. *Id.* ¶ 33.

Having changed the calls’ billing information to hide the actual originating exchanges *and* caused the calls to be passed to Qwest through channels in which only local traffic should travel, Broadvox fundamentally misrepresents the nature of the calls and causes that misrepresentation to be repeated to Qwest by the delivering local carriers. *See Ernst & Young, L.L.P. v. Pac. Mut. Life Ins. Co.*, 51 S.W.3d 573, 578 (Tex. 2001) (a fraud cause of action “exists if the false representations be made with a view of reaching the third person to whom it is repeated, and for the purpose of influencing him” (quotes omitted)). Neither the creation nor the passage of Broadvox’s falsehood depends upon the local carrier employing the identical phone line that Broadvox uses to pass calls to the local carrier to, in turn, deliver those calls to Qwest. Broadvox’s argument on this point should be rejected.

V. QWEST HAS STATED A CLAIM FOR TORTIOUS INTERFERENCE.

Broadvox's arguments for dismissing Qwest's tortious interference claim need not detain the Court long. Qwest has alleged Broadvox's intentional conduct. Compl. ¶ 5 ("Broadvox determines and controls how to deliver the calls to Qwest"); *id.* ¶¶ 13-16, 33 (detailing Broadvox's intentional acts in hiding the nature of its traffic); *id.* ¶¶ 32, 45 (detailing Broadvox's intentional acts in routing traffic to Qwest). And Qwest's claim is in no way based on the fact that Broadvox's scheme was, in fact, fraudulent. Qwest has alleged all elements of its tortious interference claim: intentional conduct by Broadvox (whether fraudulent or not) that interfered with Qwest's contracts with third parties and damaged Qwest. Indeed, other than noting that the complaint rightfully labels Broadvox's scheme as fraudulent, Broadvox provides no analysis even suggesting that the interference claim is derivative of the fraud claims. And beyond its unsupported contention that Qwest fails to allege intentional conduct, Broadvox does not challenge the pleading. There is no basis for dismissing the interference claim.

Likewise, Broadvox's argument that the claim must be dismissed because Qwest's "claim lies contractually against its IXCs, not tortiously against Broadvox," MTD at 18, is makeweight. The existence of a contract with a third party is an element of a claim of tortious interference with contract. *See Holloway v. Skinner*, 898 S.W.2d 793, 794-95 (Tex. 1995). Thus, *by definition*, every victim of tortious interference necessarily has a potential contract remedy against a third party. Were Broadvox's argument accepted, no claim for interference could ever succeed. That is not the law.

VI. BROADVOX OFFERS NO VALID ARGUMENT FOR DISMISSING QWEST'S DECLARATORY JUDGMENT CLAIM.

Qwest seeks a declaration that "the long-distance traffic that Broadvox causes to be routed to Qwest for termination is subject to the terminating switched access charges as provided

in Qwest's federal and state tariffs." Compl. ¶ 137. Like the interference claim, Qwest's claim for a declaratory judgment does not depend on, and is not derivative of, the fraud claims.

Similarly, there is no question that Qwest has presented a justiciable claim for declaratory relief under Rule 57. A justiciable controversy is one that "can be presently litigated and decided and [is] not hypothetical, conjectural, conditional, or based upon the possibility of a factual situation that may never develop." *Rowan Cos., Inc. v. Griffin*, 876 F.2d 26, 28 (5th Cir. 1989). Broadvox mistakes its own (incorrect) assertions that the facts are not as Qwest has alleged -- assertions that must be disregarded at this stage -- for arguments that there is no case or controversy. Qwest has alleged facts that, if proven true, show that Broadvox acts in the capacity of an interexchange carrier for the calls at issue. The Court has authority to declare Broadvox's liability for access charges and is not divested by the FCC's jurisdiction, because the FCC has made clear that IP-in-the-middle calls are subject to access charges.

Finally, Rule 57 provides that the "existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate." It is established that declaratory relief is "alternative or cumulative and not exclusive or extraordinary." 10B CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2758 (3d ed. 2010) (quote omitted). The relief Qwest seeks under this cause of action is distinct from that available through its damages claims. Therefore, there is no basis for dismissing the declaratory judgment claim. See *Everest Indem. Ins. Co. v. Allied Int'l Emergency LLC*, 2009 WL 2030421, at *4 (N.D. Tex. 2009).

VII. A STAY OR DISMISSAL OF PROCEEDINGS UNDER THE PRIMARY JURISDICTION DOCTRINE IS UNWARRANTED.

Dismissing or staying this litigation in favor of the FCC is unwarranted. The Court has the FCC's guidance on the regulatory questions at issue and need not await the agency's

resolution of other issues irrelevant to this case. Just as it wrongly suggested that its services are not subject to access charges, Broadvox reframes the question as about "VoIP" generally, rather than IP-in-the-middle long-distance calls, to obscure the fact that the FCC has already decided the issue at the heart of this case: entities acting in the capacity of interexchange carriers are liable for access charges when they cause IP-in-the-middle traffic to be passed to a local carrier for termination. *IP-in-the-Middle Order*, 19 FCC Rcd. at 7470 ¶ 19. There is no novelty or innovation here to justify deferring to the FCC, and the Court should not accept Broadvox's assertion that this issue is again before the FCC in its consideration of "the treatment of VoIP traffic for purposes of" inter-carrier compensation. *See* MTD at 22-23.

The primary jurisdiction doctrine does not require that all claims touching on an agency's expertise must be decided by the agency. *Brown v. MCI Worldcom Network Servs., Inc.*, 277 F.3d 1166, 1172 (9th Cir. 2002). This is particularly so when, as here, the agency has already resolved the issue at hand. *See United States v. W. Pac. R. Co.*, 352 U.S. 59, 69 (1956) ("Certainly there would be no need to refer the matter of construction to the Commission if that body, in prior releases or opinions, has already construed the particular tariff at issue or has clarified the factors underlying it."). The FCC has decided and reaffirmed that IP-in-the-middle calls and the interexchange carriers that transport them are subject to access charges, *IP-in-the-Middle Order*, 19 FCC Rcd. at 7470 ¶ 19; *Calling Card Order*, 21 FCC Rcd. at 7297 ¶ 20, as other federal courts have recognized, *see, e.g., Sw. Bell Tel., L.P.*, 461 F. Supp. 2d at 1077 & n.15. Accordingly, there is no basis for referring this matter to the FCC and, indeed, doing so would be improper.

A court “may defer [to the FCC] only if the benefits of agency review exceed the costs imposed on the parties.” *Wagner & Brown*, 837 F.2d at 201. The benefits, in light of the FCC’s prior decisions, of further agency review would be minimal or nonexistent.

On the other hand, deferral would impose significant costs. As Broadvox admits, the FCC has considered the unrelated issue of inter-carrier compensation for IP-originated calls for over six years already. See Notice of Proposed Rulemaking, *IP-Enabled Servs.*, 19 FCC Rcd. 4863 (2004). In 2005, several IP-in-the-middle providers convinced one court to defer to the FCC in considering claims like those Qwest raises. That docket has languished at the FCC, which has taken no action on it in more than *five years*. See *Sw. Bell Tel., L.P. v. Vartec Telecom, Inc.*, 2005 WL 2033416 (E.D. Mo. 2005). Deferral to the FCC will only result in substantial and costly delay. See, e.g., *In re Core Commc’ns, Inc.*, 531 F.3d 849, 850, 858 (D.C. Cir. 2008) (finding the possibility of the FCC completing comprehensive inter-carrier compensation reform hollow and noting that “FCC’s delay in responding to our remand is egregious”).

Accordingly, deferral is unwarranted. See *S. Pac. Transp. Co. v. San Antonio*, 748 F.2d 266, 274 (5th Cir. 1984) (“The trial court’s stay only threatens to add further, indefinite delay as the plaintiffs await a series of decisions by the I.C.C. ‘Whenever’ soon becomes ‘never.’ This case has dragged on long enough without the railroads being able to collect their filed rate.”). At most, should the Court decide to defer, the action should not be dismissed in light of the prejudice to Qwest’s rights under the applicable statute of limitations, see *Wagner & Brown*, 837 F.2d at 206; rather, the action should be stayed only as to Broadvox’s IP-in-the-middle calls and should proceed as to all calls that, as Qwest has alleged, are never converted to IP format.

VIII. APPLICATION OF THE FIRST-TO-FILE RULE IS INAPPROPRIATE.

Broadvox, having previously sought transfer of Qwest's claims to this district, now wants to eat its cake and have it too by asking for dismissal or stay in favor of the Western District of Washington's jurisdiction under the discretionary first-to-file rule. *See Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 603 (5th Cir. 1999). Broadvox should not be heard to complain about venue in light of its explicit request to transfer the Washington litigation *here*, to this Court, in Broadvox's home forum. *See Broadvox Mot. to Dismiss, Stay, or Transfer* (Dkt. No. 48) at 8-10, *Qwest Corp. v. Anovian, Inc.*, No. 08-CV-01715 (W.D. Wash. filed Feb. 6, 2009). Nor does Broadvox explain how transfer to Washington -- the only potential remedy available under the rule, *Cadle Co.*, 174 F.3d at 606 -- could be effected, given that the Washington federal court declared that it lacked personal jurisdiction over Broadvox. *See Amalgamated Gadget, L.P. v. Healthsouth Corp.*, 2004 WL 1283949, at *1 (N.D. Tex. 2004) (weighing *inter alia*, "the comparative advantage and interest of each forum in resolving the dispute" and "the likelihood of a jurisdictional dispute in the first-filed court" in declining to transfer second-filed action); *see also Autonation, Inc. v. Whitlock*, 276 F. Supp. 2d 1258, 1264 (S.D. Fla. 2003) (district court's dismissal of first-filed action moots application of first-to-file rule). Broadvox's bad-faith request is purely tactical and should be denied.

IX. BROADVOX HAS SHOWN NO NEED FOR A MORE DEFINITE STATEMENT.

"If a complaint is ambiguous or does not contain sufficient information to allow a responsive pleading to be framed, the proper remedy is a motion for a more definite statement under [Rule] 12(e)." *Beanal v. Freeport-McMoran, Inc.*, 197 F.3d 161, 164 (5th Cir. 1999). But "all the Rules require is a short and plain statement of the claim that will give notice of what the plaintiff's claim is and the grounds upon which it rests. . . . For this reason, motions for a more definite statement are generally disfavored." *Travelers Indem. Co. of Conn. v. Presbyterian*

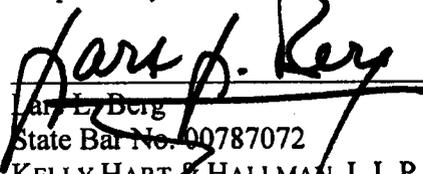
Healthcare Res., 313 F. Supp. 2d 648, 653-54 (N.D. Tex. 2004) (quote omitted). That the motion runs for 25 pages is a sure sign that Broadvox is well-informed of the claims in issue. Qwest has met the pleading requirements of Rules 8 and 9, and no more definite statement of its claims is needed.

CONCLUSION

For these reasons, plaintiff Qwest respectfully requests that Broadvox's motion to stay or dismiss be denied in its entirety. In the alternative, if dismissal of any Qwest claims is granted, Qwest requests leave to amend its complaint. And if the Court defers to the FCC's jurisdiction, Qwest requests that the Court stay proceedings only as to calls converted to IP format, permit the litigation to proceed as to all remaining calls alleged by Qwest, and retain jurisdiction over the entire litigation pending resolution of all issues referred to the FCC.

Dated: July 9, 2010

Respectfully submitted,


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I hereby certify that a true and correct copy of the foregoing was served on the 9th day of July, 2010 on the following counsel of record, via certified mail, return receipt requested.

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U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

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CLERK OF COURT

QWEST CORPORATION,

Plaintiff,

vs.

CASE NO. 4:10-CV-134-A

BROADVOX, INC.
BROADVOX, LLC,
and BROADVOXGO!, LLC,

Defendants.

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**DEFENDANTS' REPLY TO QWEST'S RESPONSE TO DEFENDANTS' MOTION
TO DISMISS COMPLAINT, OR IN THE ALTERNATIVE, MOTION TO STAY
OR TO DISMISS UNDER FIRST FILED OR PRIMARY JURISDICTION DOCTRINES
AND BRIEF IN SUPPORT**

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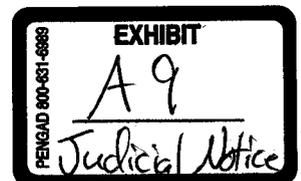


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I. INTRODUCTION

The fundamental issue in this case is whether Qwest is entitled to collect access charges from Broadvox pursuant to Qwest's switched access tariffs for traffic delivered to it by a non-party Competitive Local Exchange Carrier ("CLEC"). Qwest does not dispute that the traffic at issue in this case (which Qwest expressly states is limited to traditional TDM-originated traffic), is not passed to Qwest by Broadvox. Qwest's switched access tariff, however, is clear that Qwest may assess access charges *only* on the carrier that passes the traffic to Qwest, not on any carrier that may have been involved in its transiting. Accordingly, accepting Qwest's complaint as true, there exist no facts upon which Qwest would be entitled to relief for Counts I and II.¹

Qwest's alternative theories of recovery pursuant to state law, including Unjust Enrichment (Count III), Fraud (Count IV), Fraud by Nondisclosure (Count V), and Tortious Interference with Contractual Relations (Count VI) must each fail as well because they are precluded by the filed-rate doctrine, which prevents a carrier from seeking to collect for tariffed services other than pursuant to its filed tariff. Each of these claims are also defective either because they are not recognized under Texas law or because they are inadequately pled. In any event, each of these state law based claims, as well as the claim for declaratory judgment, should be dismissed.

¹ In the unlikely event that the Court does not grant the Motion to Dismiss with regard to Counts I and II, the court should grant the alternative relief of a primary jurisdiction referral to the Federal Communications Commission ("FCC"), so that the FCC may apply its expertise to determining whether Qwest's tariff applies to the disputed traffic. Given the early stage of the case, it would be appropriate for the Court to dismiss, rather than staying, the case if a referral is ordered.

II. ARGUMENT AND AUTHORITIES

A. QWEST FAILS TO PLEAD A CLAIM FOR RELIEF PURSUANT TO ITS STATE OR FEDERAL TARIFFS (COUNTS I AND II).

1. **Qwest Does Not Allege Facts Demonstrating That Broadvox Is An IXC**

First, Qwest does not dispute that the access charges it seeks to impose on Broadvox are applicable only to IXCs. (Qwest Resp. at 4) (alleging that “Broadvox is an interexchange carrier liable to Qwest for terminating access charges under 47 C.F.R. §69.5(b)”). By federal statute, a provider must be a common carrier in order to be an inter-exchange *carrier*. See 47 U.S.C. § 153(10) (defining “carrier” as “common carrier”); Qwest Resp. at 4-7. Qwest, however, asserts the opposite -- that a provider can be judged to be an IXC without also being a common carrier -- based on dicta in a single FCC order that was issued more than 20 years ago and never cited by the FCC again. (Qwest Resp. at 6) (citing *HAP Servs., Inc. v. Sw. Bell Tel. Co.*, 2 FCC Rcd. 2948, 2950 (1987)). Qwest argues that Broadvox is a common carrier by simplistically stating that Broadvox is a telecommunications carrier, and then asserting that that term is synonymous with “common carrier.” (Qwest Resp. at 5). Qwest’s circular argument, however, directly contradicts the law. See *Virgin Islands Tel. Co. v. FCC*, 198 F.3d 921, 27 (D.C. Cir. 1999) (“[T]he two terms, ‘telecommunications carrier’ and ‘common carrier’ are not necessarily identical”).

Common carrier status is not merely a matter of semantics. Rather, as established in a long line of law since 1976, a provider’s status as a common carrier or private carrier depends on the type, scope and nature of customers to whom the provider directs its services. In the seminal *NARUC I* decision, the D.C. Circuit held that the “essential” requirement for finding that a provider is a common carrier is that the provider hold itself out indifferently to serve the public, and that it not make individualized decisions in particular cases whether and on what terms to

deal. *Nat'l Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 641 (D.C. Cir. 1976), *cert. denied*, 524 U.S. 992 (1976) [*NARUC I*]. Qwest has not made such allegations and so it resorts to misleading assertions about the terms of its complaint. Qwest asserts that it pled that Broadvox has "undertaken to provide service to all users indifferently." (Qwest Resp. at 6, citing Compl. ¶ 59). Qwest's complaint actually states, however, that Broadvox "does not differentiate one call from another" but instead "accepts and transports each and every call that is passed to it." (Compl. ¶ 59). This allegation is far different from the facts Qwest would have to allege, namely that Broadvox offers its services generally to the public without limiting its offerings to selected groups of customers, and that it offers its services indifferently without ever engaging in bilateral negotiations as to rates, terms, or conditions of service. Accordingly, Qwest's Counts I and II should be dismissed for failure to state a claim because Qwest has failed to plead the requisite facts that would establish that Broadvox is an IXC that has a duty to pay access charges.

2. Qwest Fails to Plead Facts Showing That Broadvox Subscribes to Its Tariff

Qwest's Counts I and II fail for a separate and independent reason: pursuant to the plain language of Qwest's tariffs, access charges cannot be assessed on anyone other than the carrier passing the traffic to Qwest.

Qwest clearly and unequivocally acknowledges that Broadvox does not directly terminate traffic to Qwest's network. *See* Qwest Resp. at 11 ("The complaint alleges that Broadvox is interconnected with competing local exchange carriers for whom Qwest is the incumbent local exchange carrier and that Broadvox causes *long-distance calls to be delivered to Qwest through competing local exchange carriers* that are interconnected with Broadvox and Qwest.") (citations omitted) (emphasis added).

According to the plain language of the tariff, however, a customer only receives Switched Access Service from Qwest, and Qwest can only bill for Switched Access Service when Qwest

provides “a two-point electrical communication path between a customer’s premises and an end user’s premises. . . .”² Qwest, however, has repeatedly admitted that it receives Broadvox’s traffic not from Broadvox’s premises, but rather from other CLEC carriers. As a result, it is clear that Qwest does not provide Switched Access Service to Broadvox and is not entitled to collect pursuant to its tariff. *See, e.g., Qwest Commc’ns Corp. v. Farmers and Merchs. Mut. Tel. Co.*, Second Order on Recons., No. EB-07-MD-001, FCC 09-103 (Nov. 25, 2009), ¶ 23 (examining similar language in a LEC’s tariff and concluding that access charges cannot be assessed when the traffic does not flow between a customer designated premises and an end user’s premises because “it does not constitute ‘switched access’ within the meaning of tariff section 6.1. . . .”); *see also id.* ¶ 24.

Qwest’s argument that Broadvox should be considered a “customer” under the constructive ordering doctrine must also fail because it puts the proverbial cart before the horse. The constructive ordering doctrine could only be applicable if Qwest first established that Broadvox actually received the service in Qwest’s tariff (i.e., switched access service). Just as in *Alliance Commc’ns Co-op., Inc. v. Global Crossing Telecomms. Inc.*, 690 F. Supp. 2d 889, 894 (D.S.D. 2010), Qwest’s tariff does not allow Qwest to choose among the many companies that

² Pursuant to Qwest’s tariff, Switched Access Service is defined as follows:

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point electrical communications path between a customer's premises and an end user's premises. It provides for the use of terminating, switching, transport facilities and common subscriber plant of the Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer's premises, and to terminate calls from a customer's premises to an end user's premises in the LATA where it is provided.

Qwest FCC Tariff No. 1 at § 6.1 (emphasis added).

Customer, in turn, is defined as:

any individual, partnership, association, joint stock company, trust, corporation, governmental entity or any other entity which subscribes to the services offered under this Tariff, including Interexchange Carriers (ICs), end users and interconnectors.

Id. at § 2.6.

may be involved in handling traffic, but rather the tariff's plain language permits it to "bill the entity that received the services, not . . . to bill and recover from any entity that touched the traffic." *Id.* at 897.³

The *Alliance* court stated that such tariff language imposed liability for access charges only on the final carrier that actually had a path between its premises and an end user's premises. *Id.* at 895 ("[The intermediate carriers] did not designate premises at which plaintiff-LECs delivered traffic Thus, [the intermediate carriers] did not receive 'switched access service' as that term is defined in plaintiffs' tariffs, so [the intermediate carriers] are not liable for switched access charges under plaintiffs' tariffs."); *see also 3 Rivers Tel. Coop. v. U.S. West Commc'ns, Inc.*, No. CV 99-80-GF-CSO, 2003 WL 24249671, at *7 (concluding that Qwest is liable for all traffic it hands off to a LEC, whether or not it originated the traffic, because the LEC was providing a "communications path between [Qwest's] premises" and the LEC's end users and concluding that "[t]his tariff provision's language states only that when Qwest uses Plaintiffs' access service to terminate access traffic *from its premises*, Qwest is liable for paying access charges resulting from provision of the terminating access service.")

Qwest admits that Broadvox sends traffic to it only through intermediaries, and that it is those CLECs with whom Qwest has interconnection agreements ("ICAs") allowing those CLECs to terminate calls (i.e., have the two-point electrical communications path required to receive "switched access service" under Qwest's tariffs) to Qwest. (Qwest Resp. at 11; Compl. ¶ 60). As *Alliance* and *3 Rivers* make clear, because Broadvox does not receive "Switched Access

³ The Alliance tariff language is identical (except for one word) to Qwest's tariff language. Both the Alliance and Qwest tariffs state that switched access service is—or provides—a two-point communications path between a customer's premises and an end user's premises. *See id.* at 894; *see* Qwest FCC Tariff No. 1, §6.1 located at <http://tariffs.qwest.com:8000>; *see also* Compl. ¶ 77 n.12.

Service” as defined by Qwest’s tariffs, Qwest may not obtain access charges from Broadvox. (Qwest Resp. at 11).

B. QWEST’S STATE LAW CLAIMS ARE BARRED BY THE FILED RATE DOCTRINE

Qwest assertion that its state law claims should not be barred by the filed-rate doctrine, which holds that a carrier’s tariff conclusively and exclusively enumerates the rights and liabilities as between the carrier and the customer, is directly at odds with the arguments it has made to other courts. *See, e.g., N’n Valley Commc’ns v. Qwest Commc’ns Corp.*, 09-1004, Qwest’s Memo. of Law in Supp. of Mot. to Dismiss Count VI (Unjust Enrichment) (Sept. 10, 2008 D.S.D.) (Dkt. 17) (“Because the filed rate doctrine prohibits carriers from obtaining compensation for services other than those contained in tariff (*sic*), it bars unjust enrichment claims. . . .”); *Bluegrass Tel. Co. v. Qwest Comm’cns Co.*, No. 4:09-cv-70, Defendants’ Memorandum in Support of Motion to Dismiss Claims (W.D. Ky. Dec. 7, 2009) (Dkt. 8-2), at 11-21 (arguing that the filed tariff doctrine requires the dismissal of alternative claims for unjust enrichment, implied contract, tortious interference with contracts, and the Kentucky Consumer Protection Act).

Qwest now attempts to turn the filed rate doctrine on its head by arguing the exact opposite position, namely, that state law claims are necessary in order to ensure that its tariffs are properly enforced. *See, e.g.,* Qwest Resp. at 14 (arguing that “Qwest’s state-law claims against Broadvox merely seek to ‘ensure [] that all who received services from plaintiff[] will be charged the same rate.’”). Allowing Qwest’s state law claims to stand would serve only to enable it to impose access charge liability on a provider for whom access charges are not allowed under federal law, directly contrary to the filed rate doctrine. Accordingly, the claims for unjust

enrichment, fraud, fraud by non-disclosure, and tortious interference with contractual relations should each be dismissed.

C. QWEST'S UNJUST ENRICHMENT CLAIM FAILS TO PLEAD FACTS SUPPORTING A CLAIM

Qwest seeks to ignore the fact that, under Texas law, unjust enrichment is not an independent cause of action. See, e.g., *Guardianship of Fortenberry*, 261 S.W.3d 904, 915 (Tex. App.—Dallas 2008, no pet.); *Redwood Resort Props., LLC v. Holmes Co. Ltd.*, No. 3:06-CV-1022-D, 2006 WL 3531422, at *9 (N.D. Tex. Nov. 27, 2006) (Fitzwater, J.) (unreported decision); see *Tarrant Dialysis Ctrs., Inc. v. Coresource, Inc.*, No. 4:04-CV-618-A, 2005 WL 1201021, at *3 (N.D. Tex. May 17, 2005) (McBryde, J.) (unreported decision) (stating that unjust enrichment is not a separate cause of action). Qwest's misstatement of the law notwithstanding, the law on this subject is clear.⁴ As Judge Sim Lake explained in *Baisden v. I'm Ready Prods., Inc.*, No. H-08-0451, 2008 WL 2118170, at *10 (S.D. Tex. May 16, 2008) (unreported decision) (citing *Mowbray v. Avery*, 76 S.W.3d 663, 680 n.25 (Tex. App.—Corpus Christi 2002, pet. denied)):

Although in *HECI* the Texas Supreme Court refers to “the cause of action” of unjust enrichment and it also refers to unjust enrichment as a “remedy” and a “basis of recovery,” courts have not read these statements as recognition of an independent cause of action for unjust enrichment but, instead, as reiterations of the well established principle that a suit for restitution may be raised against a party based on the theory of unjust enrichment.

⁴ An argument that unjust enrichment is not an independent cause of action is not “flatly inconsistent with Texas law” as Qwest claims. (Qwest Resp. at 15). Numerous courts of appeal have held that unjust enrichment is not an independent cause of action. See *Foley v. Daniel*, No. 08-07-00188-CV, 2009 WL 3301738, at *2 (Tex. App.—El Paso 2009, no pet.); *Casstevents v. Smith*, 269 S.W.3d 222, 229 (Tex. App.—Texarkana 2008, pet. denied); *R.M. Dudley Constr. Co. v. Dawson*, 258 S.W.3d 694, 703 (Tex. App.—Waco 2008, pet. denied); *Argyle Ind. Sch. Dist. v. Wolf*, 234 S.W.3d 229, 246 (Tex. App.—Fort Worth 2007, no pet.); *Mowbray v. Avery*, 76 S.W.3d 663, 680 n.25 (Tex. App.—Corpus Christi 2002, pet. denied); *RDG Ltd. P'ship v. Gexa Corp.*, No. 14-04-00679-CV, 2005 WL 949171, at *3 (Tex. App.—Houston [14th Dist.] April 26, 2005, no pet.); *Spector v. Norwegian Cruise Line Ltd.*, No. 01-02-00017-CV, 2004 WL 637894, at *8 (Tex. App.—Houston [1st Dist.] March 30, 2004, no pet.); *Oxford Fin. Cos. v. Valez*, 807 S.W.2d 460, 465 (Tex. App.—Austin 1991, writ denied).

In short, the *HECI* decision does not create a new, independent cause of action.⁵ Because unjust enrichment is not an independent cause of action, Qwest's unjust enrichment claim should be dismissed on this ground. See *Redwood*, 2006 WL 3531422, at *9.

D. QWEST FAILS TO PLEAD FACTS SUFFICIENT TO SUPPORT ITS FRAUD CLAIMS

Qwest has failed to plead facts sufficient to support either of its fraud claims (Count IV and V). All averments of fraud, and all other claims based on, or intertwined with, allegations of fraud (including all state-law claims premised on fraudulent conduct) must be stated with particularity. FED. R. CIV. P. 9(b); see, e.g., *Borsellino v. Goldman Sachs Group, Inc.*, 477 F.3d 502, 507 (7th Cir. 2007) (tortious interference subject to Rule 9(b)); *Breckenridge Enters., Inc. v. Avio Alternatives, LLC*, No. 3:08-CV-1782-M, 2009 WL 1469808, at *10 (N.D. Tex. May 27, 2009) (unreported decision) (unjust enrichment subject to Rule 9(b) where based on fraud allegations). The Fifth Circuit's interpretation of Rule 9(b) requires "specificity as to the statements (or omissions) considered to be fraudulent, the speaker, when and why the statements were made, and an explanation of why they were fraudulent." *Berry v. Indianapolis Life Ins. Co.*, 608 F. Supp. 2d 785, 796 (N.D. Tex. 2009).⁶

⁵ In the same paragraph where the Texas Supreme Court purportedly creates an independent cause of action, it cites to *Heldenfels Bros. v. City of Corpus Christi*, 832 S.W.2d 39 (Tex. 1992), an opinion which affirmed a court of appeals decision expressly holding unjust enrichment was not an independent cause of action. See *City of Corpus Christi v. Heldenfels Bros., Inc.*, 802 S.W.2d 35, 40 (Tex. App.—Corpus Christi 1990), *aff'd* 832 S.W.2d 39 (Tex. 1992).

⁶ As Qwest notes, pleading requirements may be relaxed to some extent when the facts relating to the fraud are peculiarly within the perpetrator's knowledge or when the alleged fraud takes place over an extended period of time. See *Willard v. Humana Health Plan of Tex. Inc.*, 336 F.2d 375, 385 (5th Cir. 2003); *United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 20 F. Supp. 2d 1017, 1039 (S.D. Tex. 1998). "Nevertheless, the Fifth Circuit has warned that a relaxed pleading standard 'must not be mistaken for license to base claims of fraud on speculation and conclusory allegations.'" *United States ex rel. Foster v. Bristol-Myers Squibb Co.*, 587 F. Supp. 2d 805, 821 (E.D. Tex. 2008) (citing *Willard*, 336 F.2d at 385).

Neither of the justifications for relaxed pleading exist in this case. First, facts related to the alleged fraud are not peculiarly within Broadvox's knowledge. Qwest and the CLECs have unique knowledge about the traffic terminated to its network by those CLECs. Second, Qwest's assertion about the duration of Broadvox's alleged conduct is also misplaced. The cases Qwest cites only stand for the proposition that facts need not be plead with

Qwest's allegations are insufficient because Qwest has also admitted that it is the intermediate CLEC, not Broadvox, that delivers the traffic to Qwest. The complaint does not provide any specific allegations that, if taken as true, would demonstrate that Broadvox controls how the CLEC delivers traffic to Qwest, or that there are any fraudulent misrepresentations conveyed to Qwest from Broadvox. As such, Qwest has not stated its fraud claim with enough particularity to survive dismissal. *See Berry*, 608 F. Supp. 2d at 796-98 (dismissing a fraud claim for lack of specificity because "the [plaintiffs did] not sufficiently connect the alleged representations and their form (oral or written) to the time and place in which they were made . . .").

Further, Qwest's fraud by nondisclosure claim must fail because such a claim requires a duty to disclose. *See United Teacher Assocs. Ins. Co. v. Union Labor Life Ins. Co.*, 414 F.3d 558, 567 (5th Cir. 2005). Qwest has failed to plead that Broadvox had any such duty.

E. QWEST HAS FAILED TO STATE A CLAIM FOR TORTIOUS INTERFERENCE

Qwest's tortious interference claim fails because Qwest has failed (1) to plead intentional conduct, and (2) to plead with sufficient particularity. Although Qwest's Complaint alleges intentional acts by Broadvox, it does not allege intentional interference with a contract. *See Sw. Bell Tel. Co. v. John Carlo Tex., Inc.*, 843 S.W.2d 470, 472 (Tex. 1992) (stating that tortious interference requires *intent to interfere*, not merely intentional acts); Qwest Resp. at 20 (listing Complaint paragraphs that allege intentional acts). Qwest claims that it sufficiently alleges tortious interference because "intentional conduct by Broadvox . . . interfered with Qwest's contracts," (Qwest Resp. at 20), but that is insufficient to show an *intentional interference with a contract*. *See John Carlo*, 843 S.W.2d at 472 (noting that proof of an intentional act was not

regard to each and every instance, provided that the plaintiff is able to plead fraud with particularity with regard to some of the instances. Qwest has not plead *any* specific instances with the required particularity.

sufficient proof of intentional interference with a contract).

Qwest also fails to plead its tortious interference claim with sufficient particularity. A claim that is premised on a course of fraudulent conduct implicates Rule 9(b)'s heightened pleading standards. *See Borsellino*, 477 F.3d at 508.⁷ Qwest alleges that Broadvox has undertaken a "fraudulent scheme" and that Broadvox "hid[es] the nature of its traffic." (Qwest Resp. at 20). Because Qwest's tortious interference is based on fraudulent conduct and because Qwest has failed to plead with sufficient particularity, its Complaint should be dismissed. *See id.*

F. THE COURT SHOULD APPLY THE PRIMARY JURISDICTION DOCTRINE TO REFER THIS CASE TO THE FCC FOR RESOLUTION IN A CURRENTLY PENDING PROCEEDING

In the event that the Court does not dismiss the case, a primary jurisdiction referral would be appropriate to enable the Federal Communications Commission to examine that specific terms of Qwest's tariff and to promote uniformity in the regulation of switched access charges.⁸

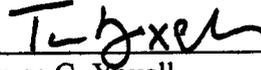
III. CONCLUSION

Qwest's Complaint is insufficient to demonstrate that it would be entitled to compensation from Broadvox pursuant to its tariff for traffic that is delivered to Qwest by third-parties. Moreover, Qwest's alternative state law claims are barred by the filed rate doctrine or otherwise insufficiently pled and should be dismissed.

⁷ Qwest does not allege its tortious interference claim with sufficient particularity for the reasons stated in Sec. II.F.

⁸ Several courts have referred cases to the FCC for evaluation of tariff language. *See, e.g. Sancom, Inc. v. Qwest Commc'ns Corp.*, No. 4:07-cv-04147 (D.S.D.); *Sancom, Inc. v. Sprint Commc'ns Co.*, No. 07-cv-4107 (D.S.D.); *Sancom, Inc. v. AT&T Corp.*, No. 4:08-cv-04211 (D.S.D.); *N'n Valley Commc'ns L.L.C. v. Sprint Commc'ns Co., LP*, No. 08-cv-1003 (D.S.D.); *Splitrock Props. Inc. v. Sprint Commc'ns Corp.*, No. 09-cv-04075 (D.S.D.); *Splitrock Props. Inc. v. Qwest Commc'ns Corp. v. Free Conferencing Corp.*, No. 08-4172 (D.S.D.); *Tekstar Commc'ns, Inc. v. Sprint Commc'ns Co. L.P.*, No. 08-cv-1130 (D. Minn.); *Qwest Commc'ns Co., LLC v. Tekstar Commc'ns, Inc.*, No. 10-cv-490 (D. Minn.); *All American Tel. Co., Inc., et al. v. AT&T Corp.*, No. 07-cv-00861 (SDNY); *Bluegrass Tel. Co. Inc. v. Qwest Commc'ns Co., LLC*, 09-cv-0070-JHM (W.D. Ky.).

Respectfully Submitted,



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I hereby certify that a true and correct copy of the foregoing was served on this the 23rd day of July, 2010 on the following counsel of record, via PDF and certified mail, return receipt requested:

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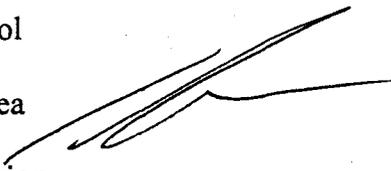
Thomas G. Yoxall

ORIGINAL

MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division



DATE: June 30, 2010

RE: IN THE MATTER OF THE APPLICATION OF BROADVOX-CLEC, LLC
FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES (DOCKET NO. T-20666A-09-0173)

Attached is the Staff Report for the above referenced application, to provide the following services:

- Resold Long Distance Services
- Resold Local Exchange Services
- Facilities-Based Local Exchange Services

Staff is recommending approval with certain conditions.

SMO:AFF:red

Originator: Armando Fimbres

Attachment: Original and Thirteen Copies

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SERVICE LIST FOR: BROADVOX-CLEC, LLC
DOCKET NO.: T-20666A-09-0173

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

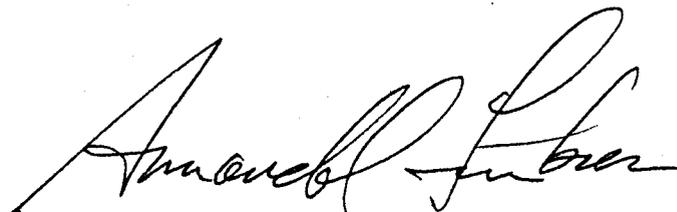
BROADVOX-CLEC, LLC
DOCKET NO. T-20666A-09-0173

IN THE MATTER OF THE APPLICATION OF BROADVOX-CLEC, LLC FOR APPROVAL
OF A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICES

JUNE 30, 2010

STAFF ACKNOWLEDGMENT

The Staff Report for Broadvox-CLEC, LLC, Docket No. T-20666A-09-0173, was the responsibility of the Staff member listed below. Armando Fimbres was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide resold long distance, resold local exchange; facilities-based local exchange; and petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in cursive script, appearing to read "Armando Fimbres", written in black ink. The signature is positioned above a horizontal line.

Armando Fimbres
Public Utility Analyst V

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1. INTRODUCTION

On April 6, 2009, Broadvox-CLEC, LLC ("Broadvox-CLEC" or "Applicant" or "Company") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold long distance, resold local exchange and facilities-based local exchange services on a statewide basis in the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("ACC" or "Commission") for a determination that its proposed services should be classified as competitive.

On April 22, 2009, Staff issued its First Set of Data Requests ("DR1") via email. On July 2, 2009, Staff inquired via email about the status of Broadvox-CLEC's response to DR1. On July 15, 2009, Staff sent a certified letter via regular mail asking for a response to DR1 by July 22, 2009. On July 23, 2009, Staff responded to a July 22, 2009 Broadvox-CLEC email inquiry by explaining that a DR1 response by August 24, 2009 would be acceptable. A DR1 response was not received by Staff. Since Broadvox-CLEC had not responded in a period over 150 days since DR1 was issued, Staff recommended that the application be closed on September 23, 2009. On September 30, 2009, Broadvox-CLEC filed a letter asking for an extension of time until October 30, 2009 to provide responses to DR1. On December 7, 2009, Broadvox-CLEC filed its response to DR1.

On January 8, 2010, Staff issued its Second Set of Data Requests ("DR2") via email. On January 21, 2010, Broadvox-CLEC filed its response to DR2.

On January 22, 2010, Broadvox-CLEC filed a letter asking for cancellation of the \$125,000 bond that Broadvox-CLEC filed with the Commission on June 3, 2009. As the bond was prematurely submitted in this matter, Staff supported Broadvox-CLEC's request and recommended that the Compliance Section of the Commission cancel the bond as requested.

On March 5, 2010, Staff issued its Third Set of Data Requests ("DR3") via email to request updated financials and obtain the Applicant's perspective of a complaint¹ filed by Qwest Corporation ("Qwest") in Texas against a Broadvox-CLEC affiliate. The Applicant responded in part on April 7, 2010. Broadvox provided financial statements that it considered to be confidential on April 14, 2010. On March 29, 2010, Broadvox-CLEC filed a revised application removing confidential information mistakenly included in its April 6, 2009 application.

On April 16, 2010, Staff issued a Data Request to Qwest regarding a complaint filed by Qwest in the United States District Court, Northern District of Texas against Broadvox-CLEC affiliates. Qwest responded on May 7, 2010, that it respectfully declined to respond to the data request but, without waiving objections, submitted to Staff a copy of the First Amended Complaint filed in the above court.

¹ Qwest Corporation vs. Broadvox, Inc., Broadvox, LLC, and BroadvoxGo!, LLC, Case no. 4:10-CV-134-A; United States District Court, Northern District of Texas; Filed February 25, 2010, Amended March 8, 2010

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive, if the Applicant's initial rates are just and reasonable, and if approval of the Applicant's CC&N should be conditioned.

2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Broadvox-CLEC is an indirect subsidiary of Broadvox, Inc. & Subsidiary ("Broadvox, Inc.") a company with several subsidiaries.² Broadvox-CLEC is a direct subsidiary of Broadvox Holding Co., LLC, which is held directly by Broadvox, Inc. The offices of Broadvox-CLEC are located at 1228 Euclid, Avenue, Suite 390, Cleveland, Ohio 44115. The offices of Broadvox, Inc. are located at 1950 N. Stemmons Fwy, Suite 3031, Dallas, Texas 75207. The information submitted by Broadvox-CLEC represents the business nature of Broadvox, Inc as "... a provider of Internet Protocol telephony and enhanced communications services to telecommunications service providers such as broadband service providers. The Company delivers services ranging from the processing of bulk carrier Voice over Internet Protocol (VoIP) minutes to the turnkey enabling of Hosted Telephony VoIP Services."³

In Arizona, Broadvox-CLEC states that its affiliates are "...operating businesses providing VoIP services, and which perform marketing activities in Arizona; some may also purchase information services, and other goods and services used in the businesses, from Arizona vendors."⁴

In Section A-18 of its application, Broadvox-CLEC states that authority to provide telecommunications services had been received in 9 states - Colorado, Idaho, Indiana, Iowa, Kentucky, New Jersey, Rhode Island, Vermont and Washington. As of early March 2010, Broadvox-CLEC had gained authority in 32 more states - Alabama, Connecticut, Florida, Georgia, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming.⁵ However, Broadvox-CLEC states that it has not commenced providing service in any state.⁶

Broadvox, Inc. was founded in 2001 by Mr. Andre Temnorod who remains the Chairman and Chief Executive Officer ("CEO") with a focus on the provision of VoIP technology for

² Broadvox, LLC; BroadvoxGo!, LLC; Broadvox-CLEC, LLC; Origination Technologies; LLC.; Brivia Acquisition, LLC; Broadvox Holding Co., LLC

³ Broadvox-CLEC, Attachment D, Consolidated Financial Statements, prepared by Skoda Minotti; A more detailed explanation of Broadvox, Inc's company history is available in Attachment A

⁴ Broadvox-CLEC response to staff data request 1.4

⁵ Confirmed by Broadvox-CLEC via email dated March 4, 2009

⁶ Broadvox-CLEC response to staff data request 1.3 - "Staff will be notified as soon as possible should Broadvox begin providing services in any state before a decision is reached by the Arizona Corporation Commission ("Commission") in this matter."

carriers. Broadvox-CLEC was formed in November 2008⁷. The Broadvox-CLEC Chief Executive Officer and top two (2) executive officers have over 27 years of combined telecommunications and related technology experience. Based on the information submitted by the Applicant and subsequent Staff research, Staff believes that Broadvox-CLEC possesses the technical capabilities to provide the services it is requesting the authority to provide.⁸

3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Broadvox-CLEC is a direct subsidiary of Broadvox Holding Co., LLC, a direct subsidiary of Broadvox, Inc. As such the Applicant indicated in section (B-3) of its CC&N application that its parent's financial resources would be utilized for support and submitted Broadvox, Inc. consolidated financials for 2007, 2008 and 2009. Broadvox, Inc. reported total assets of \$15.5 million, total shareholders equity of \$6.2 million and net income of \$7.7 million for end-of-year 2009.

Staff believes that advances, deposits, and/or prepayments received from an Applicant's customers should be protected by the procurement of either a performance bond or an Irrevocable Sight Draft Letter of Credit ("ISDLC"). However, the Broadvox-CLEC states in section (A-15) of its CC&N application that it will not collect advances, prepayments or deposits. The Applicant's proposed Tariff No. 1, Sections 2.8 and 2.9, and proposed Tariff No. 2, Sections 2.5.4 and 2.5.5, confirm this stated practice.

Since the Applicant is requesting a CC&N for more than one kind of service, the amount of a performance bond or the ISDLC for multiple services is an aggregate of the minimum bond or the ISDLC amount for each type of telecommunications service requested by the Applicant. The Commission's current performance bond or ISDLC requirements are \$10,000 for resold long distance (for those resellers who collect deposits, advances or prepayments), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance and \$100,000 for facilities-based local exchange services. Based on the services the Applicant is requesting authority to provide, the minimum recommended performance bond or ISDLC should be \$135,000. The performance bond or ISDLC coverage needs to increase in increments equal to 50 percent of the total minimum performance bond or ISDLC amount when the total amount of the deposits is within 10 percent of the total minimum performance bond or ISDLC amount. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with Arizona Administrative Code ("A.A.C.") R14-2-1107.

The Applicant will not be collecting deposits, advances, or prepayments, therefore, Staff recommends that the Applicant procure a performance bond or the ISDLC equal to \$135,000. The minimum performance bond or the ISDLC amount of \$135,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond or the ISDLC amount should be increased in

⁷ T-20666A-09-0173, CC&N application, Attachment A

⁸ Staff research consists of general internet searches, FCC website searches and review of Broadvox-CLEC's home page

increments of \$67,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$13,500 of the performance bond or the ISDLC amount. If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or the ISDLC.

Staff further recommends that proof of the above mentioned performance bond or an ISDLC be docketed within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. Staff also recommends that the Company notify Staff through a compliance filing when the first customer has been served. The original bond or ISDLC should be filed with the Commission's Business Office and copies of the bond or ISDLC with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the bond or ISDLC on behalf of, and for the sole benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its Certificate. The Commission may use the bond or ISDLC funds, as appropriate, to protect the Applicant's customer and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Applicant's customers.

4. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an actual rate and a maximum rate may be listed for each competitive service offered. Should only one rate be listed, that actual rate should be assumed to equal the maximum rate. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Company indicating that its net book value or fair value rate base at the end of its first 12 months of operation would be less than \$1,000.

Broadvox-CLEC submitted Tariff No. 1 and No. 2 with its application. Revisions to both tariffs were submitted in response to Staff's data requests. Staff has reviewed these rates and believes they are comparable to the rates charged by competitive local carriers, local incumbent

carriers and major long distance carriers operating in the State of Arizona. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value rate base information provided should not be given substantial weight in this analysis.

5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of that Local Exchange service are discussed below.

5.1 Number Portability

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

5.2 Provision of Basic Telephone Service and Universal Service

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

5.3 Quality Of Service

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

5.4 Access to Alternative Local Exchange Service Providers

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas

where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

5.5 911 Service

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

5.6 Custom Local Area Signaling Services

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

6. REVIEW OF COMPLAINT INFORMATION

The Applicant states that it has neither had an application for service denied, nor had its authority to provide service revoked in any state. Staff is unaware of any formal complaint proceedings or criminal proceedings against the Applicant. Staff, however, has found evidence of one civil complaint proceeding, information for which is provided below. Consumer Services reports no complaint history within Arizona.

The Applicant indicated that none of its officers, directors or partners have been involved in any civil or criminal investigations, or any formal or informal complaints.⁹ The Applicant also indicated that none of its officers, directors or partners have been convicted of any criminal acts in the past ten (10) years. Staff's internet research did not reveal any issues related to the top executives in Broadvox-CLEC.

The complaint filed in the United States District Court, Northern District of Texas, against Broadvox-CLEC affiliates is of interest in this proceeding as its outcome may impact the resources of the Broadvox-CLEC parent, Broadvox, LLC, and, thereby, the business direction of

⁹ Qwest's civil complaint was filed after the CC&N application by Broadvox-CLEC.

Broadvox-CLEC.¹⁰ In its complaint, Qwest alleges that for years Broadvox, LLC and BroadvoxGo!, LLC have been misrepresenting the types of calls they are transporting to avoid paying Qwest and other phone companies appropriate access charges.

As summarized in TR Newswire on March 3, 2010, "According to Qwest, Broadvox is "dressing long distance calls in the clothes of local calls to get an unauthorized discount which it does not deserve." Qwest said that "a number of clever parties, including Broadvox, have figured out how to disguise long distance calls as local calls in order to make money. Having been discovered, Broadvox, through a semantic sleight of hand, still refuses to pay Qwest's federal and state-tariffed charges for using its local telephone connections." Qwest first amended complaint adds to the original complaint and is provided with this report as Attachment B.¹¹

While Broadvox-CLEC has not had an opportunity to address Qwest's complaint in a legal proceeding, the complaint alleges actions that bear on Arizona and, therefore, the status of the complaint is one that Staff believes should be followed to its conclusion.

7. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

7.1 *Competitive Services Analysis for Local Exchange Services*

7.1.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.

The local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

7.1.2 The number of alternative providers of the service.

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

¹⁰ Broadvox, LLC and BroadvoxGo!, LLC

¹¹ Attachment B, Qwest First Amended Complaint, March 8, 2010

7.1.3 The estimated market share held by each alternative provider of the service.

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Since the CLECs and local exchange resellers have only recently been authorized to offer service they have limited market share.

7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the Applicant, as defined in A.A.C. R14-2-801.

None in Arizona.

7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and which provide them with a virtual monopoly over local exchange service. New entrants are also beginning to enter this market.
- b. One in which new entrants will be dependent upon ILECs:
 1. To terminate traffic to customers.
 2. To provide essential local exchange service elements until the entrant's own network has been built.
 3. For interconnection.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market and one in which new entrants do not have a long history with any customers.

- d. One in which most customers have few, if any choices since there is generally only one provider of local exchange service in each service territory.
- e. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

7.2 Competitive Services Analysis For Interexchange Services

7.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.

The interexchange market that the Applicant seeks to enter is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant will be a new entrant in this market and, as such, will have to compete with those companies in order to obtain customers.

7.2.2 The number of alternative providers of the service.

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

7.2.3 The estimated market share held by each alternative provider of the service.

The large facilities-based interexchange carriers (AT&T, Sprint, MCI, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

7.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications applicant, as defined in A.A.C. R14-2-801.

None.

7.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the ILECs offer similar intraLATA toll services.

7.2.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

8. RECOMMENDATIONS

The following sections contain the Staff recommendations on the application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

8.1 Recommendations on the Application for a CC&N

Staff recommends that Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;

5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from Broadvox-CLEC indicating that its net book value or fair value rate base at the end of 12 months of operation would be less than \$1,000. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other wholesale transport providers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
9. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void, after due process.

1. The Applicant shall docket a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first.
2. The Applicant shall:
 - a. Procure a performance bond or an irrevocable sight draft ISDLC equal to \$135,000. The minimum bond or draft amount of \$135,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$67,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$13,500 of the bond amount or ISDLC amount; and
 - b. File the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the

effective date of a decision in this matter or 10 days before the first customer is served, whichever comes first. The original performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers;

- c. Staff also recommends that the company notify the Commission through a compliance filing within 30 days of the first customer being served; and
3. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Fund. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204 (B).

Furthermore, Staff recommends that approval of this Application to provide Resold Long Distance, Resold Local Exchange Services and Facilities-Based Local Exchange be conditioned on the following:

1. That, Broadvox-CLEC file in this docket any filings by any party filed subsequent to Qwest's First Amended Complaint filing of March 8, 2010 pertaining to Case No. 4:10-CV-134-A; United States District Court, Northern District of Texas, and,
2. That such filings by any party pertaining to Case No. 4:10-CV-134-A; United States District Court, Northern District of Texas be filed in this docket no later than 30 days following the date of a decision in this matter, or,
3. That such filings by any party pertaining to Case No. 4:10-CV-134-A; United States District Court, Northern District of Texas be filed in this docket no later than 30 days following the date of such filings in the above reference complaint matter.

8.2 Recommendation on the Applicant's Petition to Have its Proposed Services Classified as Competitive

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince

customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

Source: <http://www.broadvox.com/History.aspx>

Date: 3/4/2010

Broadvox entered the telecommunications market in 2001. It began as a small provider of VoIP services to other carriers but quickly established a reputation for providing a high quality service at a very competitive price. Our business grew quickly and soon Broadvox had established a nationwide network and was known as one of the country's preeminent "carriers' carrier" for VoIP. In 2003, Broadvox began offering SIP origination and termination, which further improved the quality of the voice transmission and expanded our service offerings. Extending the product offering spurred company growth and Broadvox has been financially stable and profitable since the second half of 2003.

The Broadvox mission statement is "To be the premier provider of VoIP, SIP and IP communication applications and services delivered by the most skilled and motivated team in the industry." As we accomplish our mission, our customers' communications needs are met, our partners are enriched and Broadvox continues to be a leader in the world of SIP.

In 2007, Broadvox began the execution of two strategic initiatives. Broadvox expanded its network capacity by over 50% and announced the launch of its retail SIP Trunking business in September. The network expansion was completed in February of 2008 with new Sonus platforms deployed Dallas, Los Angeles and New York City. The sales of Broadvox GO! SIP Trunking began after we successfully added numerous Master Agents and Independent Agents to our VAR Partner Program. Beginning with our first end-user sell in December of 2007 and continuing today, we are approaching a thousand members in our VAR program. With this kind of growth, we have expanded and evolved our organization to support both a wholesale and retail market.

Our senior management team has over eighty years of telecommunications experience and provides leadership to the company and IP community. Today, Broadvox has nearly one hundred employees and has been adding personnel every month. We now have a nationwide group of Channel Directors and Managers to support our partner sales efforts in every region of the country. Broadvox GO! SIP Trunking is growing at double digits every quarter. Moreover, our wholesale team has successfully grown their business segment and we are on target to see revenues continue to meet record levels there as well.

Broadvox is trusted by over 200 domestic and international telecommunications carriers, ASPs, and ISPs to serve their businesses. We have expanded our Network Operations Center personnel to provide 24x7x365 to our wholesale carriers. We have also continued to expand our offerings to them with international toll-free and CNAM now available.

More than 3000 businesses will enjoy the benefits of SIP Trunking as provided by Broadvox before the end of 2010. In order to support this wide variety of customer needs, Broadvox has certified interoperability with more OEMs of IP PBXs, IADs and routers than any other carrier. We are committed to meeting the evolving industry standard for SIP and testing the industry's finest IP appliances and hardware systems under rigorous conditions to ensure they meet our exacting standards.

ATTACHMENT A

Broadvox is committed to maintaining its position as an industry leader of the VoIP revolution and is the service provider of choice for businesses that are interested in the financial and operational benefits of migrating to IP communications. Broadvox is headquartered in Dallas, Texas and has offices in Cleveland, Ohio.

Norman G. Curtright
Associate General Counsel

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MAY 7 2010

**LEGAL DIV.
ARIZ. CORPORATION COMMISSION**

May 7, 2010

Ayesha Vohra, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Mr. Armando Fimbres
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Re: Staff's First Set of Data Requests to Qwest Corporation Regarding
Broadvox-CLEC, LLC
Docket No. T-20666A-09-0173

Dear Ms. Vohra and Mr. Fimbres:

This letter is written in response to the above-referenced data request served on Qwest Corporation. Qwest Corporation respectfully declines to respond to the questions asked and the requests made pursuant to the data request, because Qwest Corporation is not a party to Docket No. 09-0173. However, without waiving objections, Qwest Corporation transmits to you with this letter, a copy of its First Amended Complaint filed in the United States District Court, Northern District of Texas, which has been docketed as:

Qwest Corporation vs. Broadvox, Inc., Broadvox, LLC, and
BroadVoxGo!LLC, Case no. 4:10-CV-134-A..

The Complaint speaks for itself, and addresses the Defendant's business activities in relation to Arizona in several places. Qwest is not able at this time to state more about the nature and extent of the Defendant entities and their operations in the State of

Ms. Ayesha Vohra
Mr. Armando Fimbres
Arizona Corporation Commission
May 7, 2010
Page 2

Arizona. Further, Qwest does not have a position on the actions the Commission should take with respect to the CC&N application requested in Docket No. 09-0173.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman G. Curtright". The signature is written in a cursive style with a large, sweeping initial "N".

Norman G. Curtright

Cc: Jeff Nodland, Esq.
Reed Peterson
Diane Krpan

handles all the calls made to a particular phone number. All the phone calls at issue here begin and end in standard and familiar telephones, but the methods for transmitting the calls has improved greatly over time.

3. When a local call comes in from a person using a different phone company, the local phone company charges the other company for completing the call. When a long-distance call comes in, the local phone companies for both the caller and the called party charge the companies that transport the call from one local company to the other. By law, the charges are higher for long-distance calls than for local calls. This principle is fundamental to the telecommunications industry and fully supported by an established body of regulations.

4. Qwest is a "Regional Bell Operating Company" -- that is, a "local carrier" -- of telephone services, with local phone service customers in various parts of the United States. It receives phone calls from many companies (in many locations) and delivers those calls to its customers. Like other local carriers, Qwest requires companies delivering long-distance calls to use different connecting wires than when they deliver local calls. This way Qwest can distinguish the two types of calls and bill for them appropriately.

5. For the long-distance phone calls it handles, Broadvox acts as an intermediary, transporting the calls from one phone service carrier to another, often across state lines. Broadvox determines and controls how to deliver the calls to Qwest, which in turn delivers them to its customers. In some instances, Broadvox may convert a long-distance call from an ordinary, circuit-switched format -- the format used to make phone calls for decades -- to Internet Protocol, or "IP," format. All this means is that the call is transported for some portion of its journey by Internet routers and switches. Before delivering the long-distance call to a local phone company like Qwest, however, Broadvox must convert it back to the circuit-switched

format. Then the call reaches Qwest's network, Qwest delivers it to its customer, and the phone in the customer's house rings.

6. The Federal Communications Commission ("FCC") has established that whether a company transports long-distance phone traffic over the Internet (as Broadvox asserts it does) or over traditional telephone lines, it must still pay applicable long-distance charges to local phone companies. Broadvox is free to transport the calls however it wishes, so long as it accurately reports the types of calls it delivers and otherwise follows the law. Unfortunately, it has chosen a different path. To avoid paying the higher charges associated with long-distance calls, Broadvox disguises the long-distance calls it delivers, so that they appear to be *local* calls, and therefore get charged at the lower rate available only for local call delivery.

7. For example, Broadvox may deliver (or cause to be delivered) a call to Qwest's office in Denver with information indicating that the call originated locally (area code 303), even though it actually is a long-distance call from Phoenix (area code 602). From that information, and because Broadvox delivers the call over Qwest's facilities intended *only* for local calls, Qwest has no idea that it is a long-distance call. Meanwhile, Broadvox avoids the higher charges it should be paying for delivering long-distance calls. Broadvox even advertises to other long-distance providers that it offers a cheaper wholesale call transportation and termination service. If that is true, it is only because Broadvox has misrepresented to Qwest (and other local phone companies) the types of calls it is carrying. In effect, Broadvox has dressed long-distance calls in the clothes of local calls to get an unauthorized discount which it does not deserve. Its conduct is no different than a former student who, long after graduation, uses a school ID card to buy a cheaper movie ticket. Here, however, it is not a few bucks, but millions of dollars, at

stake. For years, relying on excuse after excuse, Broadvox has avoided paying appropriate charges for its long-distance traffic. It is time for Broadvox to pay its bill.

8. Qwest is entitled to recover its access charges from Broadvox, and, in fact, is required to do so by law. The Court should award damages and other relief to Qwest pursuant to the claims set forth below.

INTRODUCTION

9. Despite all the unfortunate acronyms that exist in the telecommunications world, this is not a complicated matter. It is a simple case about greed. A number of clever parties, including Broadvox, have figured out how to disguise long-distance calls as local calls in order to make money. Having been discovered, Broadvox, through semantic sleight of hand, still refuses to pay Qwest's federal and state-tariffed charges for using its local telephone connections.

10. For decades, long-distance phone calls have been made over a physical telephone network of wires and switches. Although a growing number of long-distance calls are now made over the Internet, in what is called "VoIP" (Voice Over Internet Protocol) telephony, the calls at issue here are not originated in that format. The calls at issue here begin with someone (for example, AT&T long-distance customer James in Austin) picking up his telephone and making a call that is sent out over the wires connecting James to his local phone company. The calls end the same way. The person being called (for example, Qwest customer Mary in Albuquerque) receives the call over the wires of her own local phone company, Qwest. It is what happens in the middle of these calls, and specifically, what Broadvox does to these long-distance calls while they are in transit, that is the focal point of the parties' dispute.

11. When a carrier, like Broadvox, asks a local phone company, like Qwest, to "borrow" its local facilities (switches and wires) so that it can deliver a long-distance call to a Qwest local customer (like Mary in Albuquerque), the carrier is required, pursuant to federal statutes, rules, and operative tariffs, to pay Qwest for the use of those facilities. The charges to "borrow" the switches and wires are called "access charges," because the local carrier is providing access to its customers, so the long-distance company can reach them. Only Qwest can "terminate" long-distance calls made to its local customers (in other words, only Qwest can cause Mary's phone to ring), because only Qwest's local facilities connect customers like Mary to the broader public telephone network. Without this "access," non-Qwest customers like James could never make long-distance calls to Qwest customers like Mary.

12. A number of long-distance carriers, formally known as "interexchange carriers" (or "IXCs"), may be involved in transporting an ordinary long-distance call.¹ Broadvox is an IXC that transports, for some period, the long-distance calls in question here. In fact, Broadvox is the last IXC to handle the calls before they are sent to Qwest (and its customers like Mary). To hide the fact that it is actually delivering long-distance calls (that result in higher access charges), Broadvox takes several critical steps to keep itself and its activities hidden from view.

13. First, Broadvox causes the long-distance calls to be delivered to Qwest by another *local* phone company that is interconnected with Qwest's network. Broadvox never sends these long-distance calls directly to Qwest itself.

14. Second, by sending the calls to Qwest through this other local phone company, Broadvox ensures that the long-distance calls will come to Qwest on facilities Qwest has designated exclusively for receiving local calls from that other local company.

¹ Long-distance calls are more formally known as "interexchange" calls, and the carriers that carry such calls are known as "interexchange carriers," because the long-distance call leaves the local exchange where it originated to be terminated in a different local exchange, and is thus an "interexchange call."

15. Third, because Broadvox causes these long-distance calls to be sent to Qwest on such facilities, the long-distance calls are commingled with, and look like, the local calls that are properly coming to Qwest over those local facilities.

16. Fourth, Broadvox changes the call information for the long-distance calls it transports so that, in most cases, a long-distance call appears to be coming from a local telephone number by the time it reaches Qwest.

17. Qwest's ability to differentiate local calls from long-distance calls is critical. By law, Qwest charges higher rates to terminate long-distance calls (the call from James to Mary) than local calls (a call from Mary's next-door neighbor). Companies like Broadvox stand to gain from their deception if they can disguise long-distance calls as local calls. Broadvox's business model, at least as to its "IP-termination" services, depends on terminating long-distance traffic for other companies at a lower cost, so it can pocket some of that money. But its savings pursuant to this scheme actually belong to Qwest, in the form of the long-distance access charges Broadvox is required by law to pay.

18. Qwest is authorized and required by law to impose tariffed access charges on IXCs like Broadvox. Broadvox's scheme also violates a well-known rule of telecommunications law that spells out that a carrier like Broadvox cannot immunize itself from its obligation to pay access charges by simply using an Internet format of transport.

19. Specifically, the FCC has held that even if an IXC does use Internet technology to transport ordinary long-distance calls, it still must pay a local exchange carrier's tariffed access charges.² The Internet is not a "magic wand" that transforms the nature of the phone calls. James has still picked up his phone in Austin to call Mary in Albuquerque, no matter how many

² *In the Matter of the Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges*, FCC Order No. 04-97, 19 F.C.C.R. 7457 (Docket No. 02-361, April 21, 2004), available at 2004 WL 856557 (the "FCC IP-in-the-Middle Order").

companies combine to “carry” the call between the two cities. The FCC has also held that, even if an IXC purports to add various “enhanced features and functions” to long-distance calls – as Broadvox has claimed in the past – it still must pay long-distance access charges.³ In short, the FCC has flatly rejected both arguments that Broadvox offers to excuse its conduct.

JURISDICTION AND VENUE

20. Because Qwest and Broadvox are citizens of diverse states, and because the amount in controversy in Qwest’s claims exceeds \$75,000.00, exclusive of interest and costs, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332. Further, because Qwest’s claims include claims for violation of Qwest’s tariffs filed and approved at the FCC, relating to interstate long-distance traffic, and having the force of law pursuant to the Communications Act of 1934, 47 U.S.C. § 151 et seq., this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 47 U.S.C. §§ 206-07.⁴

³ *Declaratory Ruling & Report & Order, Regulation of Prepaid Calling Card Services*, 21 FCC Rcd. 7290 (2006) (the “FCC Calling Card Order”).

⁴ In its recent order, the Court directed Qwest to “replead and allege the citizenship of each of the members of Broadvox, LLC and BroadvoxGol, LLC” in order “properly to allege the citizenship of the parties for the purposes of establishing diversity jurisdiction.” Feb. 26, 2010 Order at 1 (“Order”); see ¶ 23 *infra*. In addition, the Court cited *MCI Telecommunications Corp. v. Credit Builders of Am., Inc.*, 980 F.2d 1021, 1022-23 (5th Cir.), *opinion reinstated*, 2 F.3d 103 (5th Cir. 1993), concerning Qwest’s assertion of federal question jurisdiction over its claims arising under the Communications Act of 1934. Order at 2 n.1. However, a pre-*Credit Builders* opinion from the Fifth Circuit, *American Tel. & Tel. Co. v. Florida-Texas Freight, Inc.* (“AT&T”), 485 F.2d 1390 (5th Cir. 1973) (*per curiam*), *aff’g* 357 F. Supp. 977 (S.D. Fla. 1973), constitutes binding circuit precedent confirming that federal courts have jurisdiction over actions “to recover unpaid charges for interstate telecommunications services provided under the terms and conditions of a tariff filed pursuant to the Communications Act of 1934.” *MCI Telecommunications Corp. v. United Showcase, Inc.*, 847 F. Supp. 510, 510-11 (N.D. Tex. 1994). As Judge Fitzwater held in *United Showcase*, “the correct rule, recognized at least implicitly in *AT&T*, is that subject matter jurisdiction exists pursuant to 28 U.S.C. § 1337, in conjunction with 47 U.S.C. § 203, because the carrier’s claim for payment is based on the filed tariff. . . . [T]here is nothing in congressional action, a Supreme Court decision, or an *en banc* Fifth Circuit opinion to undercut the jurisdictional holding of *AT&T*. Therefore, under settled Fifth Circuit law, the [*Credit Builders*] panel opinion must give way to the binding effect of *AT&T*, and this court must respectfully decline to follow [*Credit Builders*].” *Id.* at 541. Accordingly, there was subject-matter jurisdiction over the claims in *United Showcase*, just as there is over Qwest’s claims in this case. See *id.* Even if this Court disagrees with the holding in *United Showcase*, however, Qwest seeks a declaration construing an order of the Federal Communications Commission and applying that order and the federal Communications Act to Broadvox’s conduct, which necessarily involves questions of federal law. See ¶¶ 133-37 *infra*.

21. Venue is proper in this judicial district under 28 U.S.C. § 1391(a)(1), as Broadvox is a resident of this judicial district for purposes of venue, as specified in 28 U.S.C. § 1391(c). It is subject to personal jurisdiction in this judicial district.

PARTIES

22. Qwest Corporation is a Colorado corporation with its principal place of business in Denver, Colorado. Qwest provides, among other things, local telecommunications services in Arizona, Colorado, Iowa, Idaho, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

23. Broadvox, Inc. is an Ohio corporation with its principal place of business in Dallas, Texas. Broadvox, LLC is a Delaware limited liability company with its principal place of business in Dallas, Texas. The sole member of Broadvox, LLC is Broadvox, Inc. BroadvoxGo!, LLC is a Delaware limited liability company with its principal place of business in Dallas, Texas. The sole member of BroadvoxGo!, LLC is Broadvox, Inc. With regard to the actions alleged in this Complaint, the Broadvox defendants function as one entity (collectively, "Broadvox"). Broadvox operates or utilizes facilities that are used in connection with the transmission of long-distance telephone calls that begin and end in the multiple states in which Qwest does business.

24. Broadvox is a "Telecommunications Carrier,"⁵ subject to the provisions of the Communications Act of 1934, as amended, 47 U.S.C. § 151 et seq. (the "Communications Act"), and is subject to the jurisdiction of the FCC and the various state public service commissions ("PSCs"). Broadvox is a common carrier, and as explained herein, Broadvox is also an IXC engaged in the interexchange transport of the long-distance calls at issue.

⁵ 47 U.S.C. § 153(44).

ALLEGATIONS OF FACT

A. The "Access Charge" Regime and the Difference in Terminating Long-Distance and Local Phone Traffic

25. To understand Broadvox's fraudulent scheme, it is necessary to first see how access charges normally are imposed on long-distance calls.

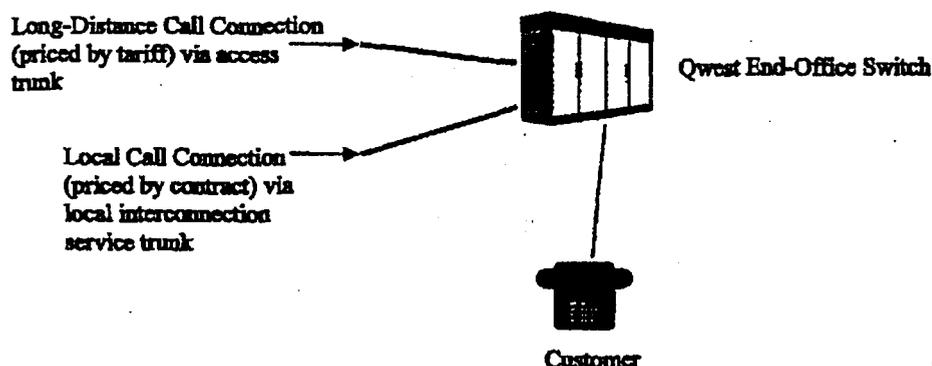
26. Transmitting a long-distance call generally requires local phone companies (generally known in the telecommunications industry as "local exchange carriers" or "LECs") to provide two kinds of switched access service. "Originating" service occurs when a call originates on a LEC's network and is routed elsewhere for completion in a different local exchange. In other words, when James picks up his phone in Austin and dials a number, his LEC provides "originating" switched access service. "Terminating" switched access service occurs when an IXC routes a long-distance call to the called party's carrier for termination. In other words, when Mary hears her phone ring in Albuquerque and answers the call, her LEC (Qwest, in this example) provides "terminating" switched access. The latter is at issue here.

27. Of course, Qwest terminates (or delivers) both long-distance and local calls to its customers. Long-distance calls, however, are routed to Qwest over different facilities than local calls. Long-distance calls must be sent over "access trunk" facilities that connect Qwest's local network to the IXC's network. IXCs order these facilities from Qwest and pay switched access charges for them pursuant to Qwest's federal and state tariffs. This is the only way IXCs can legitimately reach Qwest's customers.

28. Qwest also works with other *competitive* local exchange carriers (or "CLECs") to exchange local traffic (for example, calls within the same metropolitan area). Qwest exchanges traffic with the CLECs on the basis of contract, not tariff. These contracts, called interconnection agreements, provide that each carrier compensates the other for the "transport

and termination" of local traffic. So when Mary, a Qwest customer, calls a next-door neighbor who is not a Qwest customer, Qwest must compensate the other company for completing the call. Typically, this exchange of traffic between two LECs occurs over Local Interconnection Service ("LIS") trunks. Qwest's interconnection agreements with CLECs specify that *only* local calls may be transmitted over these LIS trunks. Diagram A illustrates this fundamental difference between the routing of long-distance, versus local traffic.

DIAGRAM A



29. If an incoming long-distance call comes from outside the state via an access trunk, Qwest imposes switched access charges based on federal tariffs. If an incoming long-distance call comes from inside the state via an access trunk (from Roswell, New Mexico to Albuquerque, New Mexico, for example), Qwest imposes switched access charges based on state tariffs. These charges are typically assessed for each minute of the call and are designed to recover, in part, the costs of using Qwest's facilities (switches, wires, telephone poles, etc.). Historically, long-distance access charges have helped to keep rates for local telephone service low, which is one reason the charges to complete a long-distance call are significantly higher than the charges to complete a local call. In short, the FCC has established a regime to ensure that local callers may call each other affordably.

30. An important fact about the way access charges work in the multi-company process associated with delivering a long-distance telephone call is that a carrier like Broadvox need not have explicitly ordered services from a LEC like Qwest to be responsible for payment of access charges. Under the Constructive Ordering Doctrine, a carrier that has not directly ordered such services is nonetheless held to have "constructively" ordered or subscribed to them (and is obligated to pay for them) if: 1) the carrier is interconnected in such a manner that it can expect to receive access services; 2) the carrier fails to take reasonable steps to prevent the receipt of access services; and 3) the carrier does in fact receive such services.⁶

B. Broadvox's Evasion of Access Charges

31. To accomplish its unlawful objective of paying less for access than is required by law, Broadvox improperly utilizes a local service designed for exchanging only local traffic, a Primary Rate Interface ("PRI") service. Rather than delivering these calls to Qwest as long-distance calls over access trunk facilities, Broadvox instead delivers them to an intermediate CLEC by way of a PRI service, suggesting to Qwest that these are local calls.

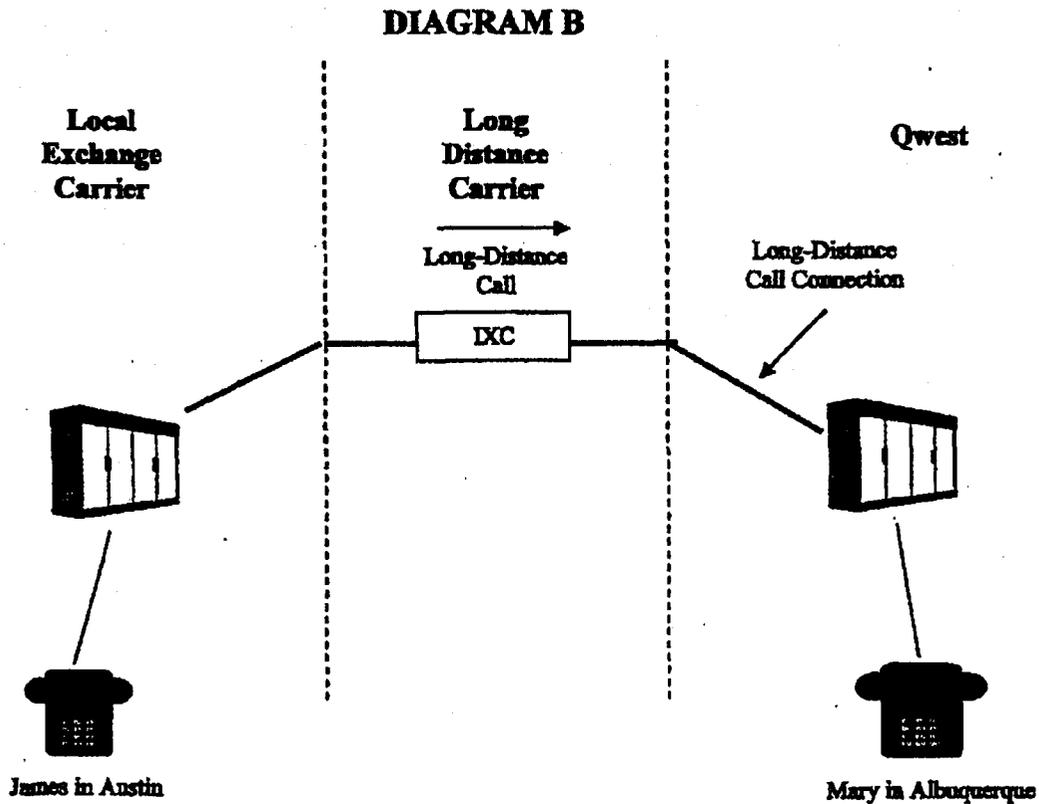
32. Typically, a PRI service connects an "end user," such as a medium- or large-sized business, to the public switched telephone network. This allows the business to make and receive a large volume of calls. Businesses often use PRI services to establish direct-dial numbers for their employees. One of the consequences of delivering calls to CLECs via PRI services is that the billing information transmitted with the call may be changed, making a long-distance call register as a local call when it arrives at Qwest's network. Although Broadvox purchases PRI service from CLECs and uses it to funnel and disguise the long-distance traffic it sends to Qwest, it is not an "end user." Broadvox uses PRI services as conduits for passing long-

⁶ See *In re Access Charge Reform*, FCC Order No. 99-206, 14 F.C.C.R. 14221, ¶ 188 (1999).

distance traffic from other IXCs to the CLEC, which then sends the calls to Qwest for termination.

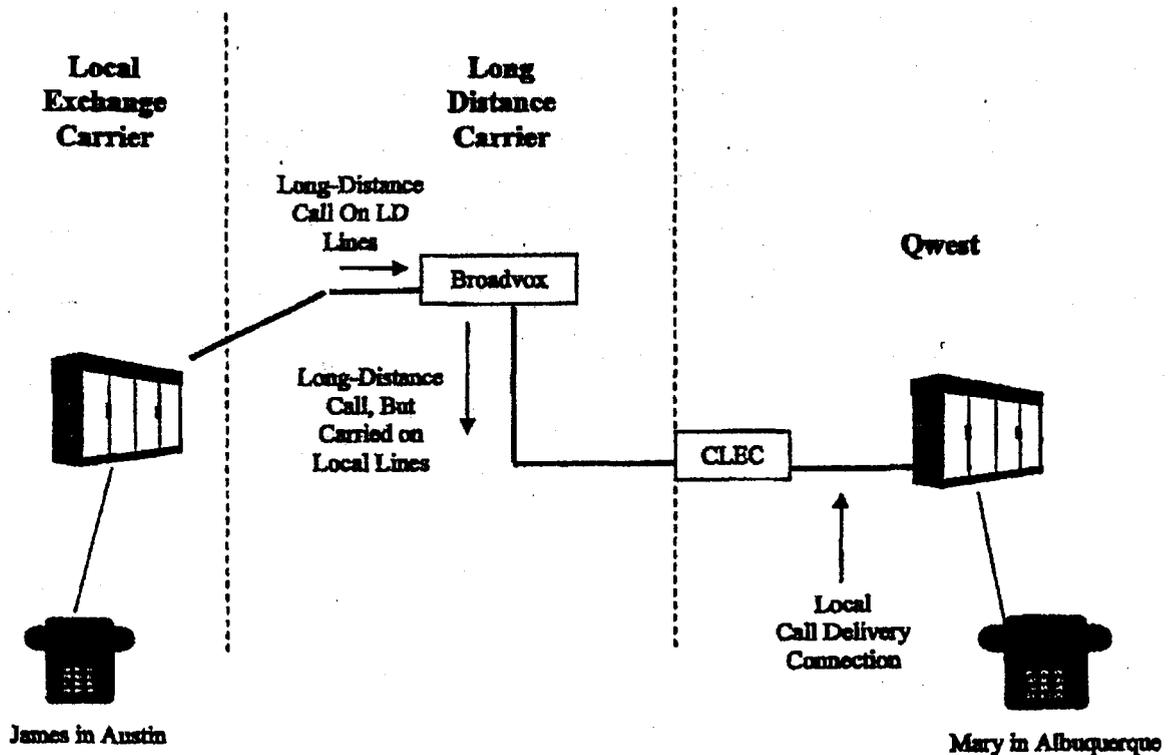
33. Broadvox represents to the CLEC that either the calls it will send along under the PRI service are local calls, or that Broadvox will use these PRI circuits strictly for the provision of "information services" or "enhanced services" (functions that do not include the transport of ordinary long-distance calls). Broadvox has numerous such contracts with different CLECs. The CLEC, which may be complicit in Broadvox's scheme, then routes the disguised long-distance traffic, commingled with true local traffic, to Qwest. It does so over the LIS trunks that are designated exclusively for local traffic.

34. Diagram B depicts the basic model for delivery of long-distance calls.



35. Diagram C depicts the *rerouting* of a normal long-distance call through a CLEC, caused by Broadvox's intervention in the call flow.

DIAGRAM C



36. The process used to pass long-distance calls to a CLEC can also alter the information related to the party who originated the call. For example, when Qwest receives the call, it may see the area code (or other information) of the PRI circuit that Broadvox has ordered from the intermediate CLEC, rather than the originating caller's area code (or other information). Therefore, not only does Qwest receive the call over a trunk designed for local calls, but the call now also carries a local phone number. The full extent of each CLEC's participation in the scheme is yet to be determined, but there may be some degree of complicity.

37. Because it provides for the transport of long-distance calls between local exchanges, Broadvox is itself an IXC. Broadvox advertises to local carriers that it is a "least cost

router.” It tells the originating or intermediate IXCs that it can transport or complete long-distance calls at a substantially lower cost than typically available.

38. Broadvox claims that IXCs utilizing its service will “realize extensive savings (up to 70%) over traditional TDM carriers.”⁷

39. Of course, if these assertions are true, it is largely (perhaps only) because Broadvox’s scheme avoids paying the legally required terminating access charges for long-distance calls. Other IXCs pay these charges, consistent with the law. The “miscellaneous fees” that Broadvox “avoids” are in fact the access charges that belong to Qwest.

40. Broadvox’s own promotional materials claim that the company converts long-distance calls from one of its IXC customers from the ordinary, circuit-switched format to “IP” or “VoIP” format. This means that Broadvox may transport the call using Internet-based packet switches, rather than by the traditional network of dedicated circuit switches and connecting facilities. Even if such a conversion actually takes place, however, Broadvox must convert the calls in this action back to the circuit-switched format prior before delivering the call to Qwest.

41. Even if the call is temporarily converted to IP, from the perspective of the called party, Broadvox does not add any functionality or enhancement to the call or its transmission.

42. Moreover, some calls never are converted to IP format, but remain in circuit-switched format for the entire call path.

43. To ensure that phone traffic is properly differentiated, carriers are required – by FCC rule, federal and state tariffs, and their interconnection agreements – to accurately report the originating location of a call. This information is customarily referred to as “automated

⁷ Broadvox, Voice Over Internet Protocol Value-Added Reseller Partner Program, <http://www.broadvox.com/VARSpending.aspx>.

number information" ("ANI") or "calling number identification" ("CNI"). In much simpler terms, it is often the caller's telephone number.

44. By the time a call handled by Broadvox reaches Qwest for termination, however, the caller's telephone number appears to have changed. In other words, after Broadvox carried the call for some distance, James' call to Mary would no longer have an Austin area code (512), but an Albuquerque area code (505).

45. Broadvox knowingly and intentionally receives ordinary long-distance traffic from other IXCs, then tells CLECs to which it is transmitting the calls that they are local calls that are not subject to higher long-distance access charges. It does so with the express intent that the CLEC route the long-distance traffic as local traffic to Qwest over the interconnection facilities (LIS trunks) designed for local traffic. Broadvox is thereby interconnected with Qwest's network, and understands that Qwest will terminate these long-distance calls using Qwest's terminating access services. Broadvox has failed to take reasonable steps to avoid receiving Qwest's terminating access services, and in fact intends that Qwest will terminate these calls by providing Qwest's terminating access services. Indeed, these calls can *only* be terminated through Qwest's terminating access services.

46. Broadvox's improper scheme prevents Qwest from distinguishing between local and long-distance phone traffic. Qwest thus is and has been unable to bill for a great deal of interexchange long-distance traffic delivered by Broadvox.

47. Qwest knows Broadvox sent long-distance traffic to Qwest over LIS trunks in at least five states where Qwest operates as an incumbent local exchange carrier.

48. Broadvox has routed at least *135,000,000* terminating long-distance calls to Qwest without paying access charges. The estimated access charges for these minutes total more than \$1,100,000.

49. Broadvox has also routed millions of minutes of terminating long-distance traffic to Qwest through various intermediaries, and continues to do so today. The full extent of this improper long-distance traffic is much greater than Qwest has discovered to date.

C. The Temporary IP Conversion Does Not Alter the Applicability of Terminating Switched Access Charges

50. Broadvox maintains that its use of Internet protocol to transport ordinary long-distance calls eliminates any obligation to pay Qwest's terminating access charges. That is not the case. Under governing FCC authority, Broadvox's temporary conversion of a long-distance call does not magically change a long-distance telephone call into something else. Nor does it impact the applicability of Qwest's access tariffs.

51. IP technology is simply the latest of many different transmission technologies for delivering telephone calls. The choice of technology, however, makes no difference to the regulatory classification of a telephone call or the applicability of access charges. Under a longstanding line of FCC decisions, when a call begins and ends as an ordinary, circuit-switched telephone call, the transmission technology in the middle is irrelevant to the access charges. A long-distance call transported by Broadvox still must utilize Qwest's local facilities to complete that call, just like a call carried by any other IXC.

52. Qwest's claims in this case are limited to traditional long-distance calls, which both begin and end as ordinary circuit-switched telephone calls.

53. Broadvox carries these ordinary long-distance calls between local exchanges. Therefore, Broadvox is a common carrier and an interexchange carrier.

54. Broadvox is a common carrier because it plays an integral part in providing a common carriage service -- ordinary long-distance telephony.

55. Furthermore, Broadvox is a common carrier because it is a telecommunications carrier engaged in the provision of telecommunications services, as those terms are defined under the Federal Communications Act and correlative state law.⁵

56. Broadvox provides a service that has been expressly defined by the FCC as a common carrier telecommunications service.

57. Whether an entity is a common carrier depends on the service provided, not on how it may view or attempt to classify itself, or what reservations it seeks to limit its status.

58. Broadvox carries the long-distance calls that are the subject of this action between local exchanges. Broadvox is a link in this uninterrupted end-to-end common carriage service.

59. Broadvox does not differentiate one call from another call. Rather, it accepts and transports each and every call that is passed to it, for ultimate termination to the called party. Therefore, Broadvox provides non-discriminatory telecommunications services to the public or a segment of the public.

60. Broadvox provides its services for hire. It is paid by other IXCs from whom Broadvox receives the calls for further transport and termination. (These IXCs, the names of which are within Broadvox's possession, may also be complicit in Broadvox's scheme.) In turn, Broadvox pays a CLEC, to whom it transfers the calls, for the use of a PRI service that the CLEC provides on a common carrier basis. The CLEC then transfers the call to Qwest for termination over Qwest's access facilities. Qwest is a common carrier in providing its terminating access service.

⁵ 47 U.S.C. §§ 3(44), 3(46).

61. Broadvox's contracts with its IXCs provide that Broadvox will accept all such calls passed to it by their connecting IXCs, will transport all of those calls, and will assure the appropriate termination of those calls to the intended end users, at specified rates.

62. Each of these contracts contains standardized terms and rates for the transport and termination services that Broadvox provides. The terms do not vary, at least not significantly, between customers. Further, the service provided by Broadvox to its respective connecting IXCs does not differ significantly among such respective carriers.

63. The long-distance calls Broadvox transports using IP protocol undergo two protocol changes, from circuit-switched protocol to IP protocol, and back again. These calls, however, undergo no "net protocol conversion," because they begin and end in the same circuit-switched format. The FCC has ruled that long-distance calls that undergo no "net protocol" conversion are subject to terminating access charges.

64. Further, for all of these calls, neither the caller nor the called party has any idea whether their long-distance call has been converted to IP format somewhere in the transmission path. The call was dialed and received in exactly the same manner as any other long-distance call. Customers receive no added functionality as a result of any potential IP conversion.

65. Neither the caller nor the called party has any idea that Broadvox was involved in transporting their long-distance call. Therefore, those persons have not requested any additional "features and functions" Broadvox may claim to provide. They do not even know that any such enhanced functionality is available on their call.

66. Broadvox's service, whether or not an IP conversion takes place, makes the same use of, and imposes the same burden on, Qwest's local exchange facilities for terminating the call as does an ordinary circuit-switched long-distance call.

C. The FCC Has Established That Phone-to-Phone IP Telephony Services Are Subject to Terminating Switched Access Charges

67. In 2004, the FCC ordered that long-distance telephone calls are subject to terminating switched access charges, even if the call undergoes a temporary IP format conversion. The FCC determined that, when an interexchange service “(1) uses ordinary customer premises equipment with no enhanced functionality; (2) originates and terminates on the public switched telephone network (“PSTN”); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider’s use of IP technology,” the service provider is liable for terminating access charges.⁹

68. Furthermore, the FCC held: “Our analysis in this order applies to services that meet these criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.”¹⁰

69. Here, if Broadvox is using IP transport, its services fall within the criteria established by the FCC for applying terminating switched access charges.

70. First, in the long-distance calls at issue, the caller and the called party use ordinary customer premises equipment.

71. Second, these calls originate and terminate on the public, circuit-switched telephone network.

72. Third, these calls undergo no net protocol conversion, and Broadvox provides no enhanced functionality from the perspective of the end users, who have not requested and are not aware of, any purported enhanced functionality provided by Broadvox.

73. For some of these calls, Broadvox may not utilize Internet protocol transport at all, but may transport the call the entire way along a traditional, circuit-switched path.

⁹ FCC *IP-in-the-Middle Order* at 7457-58, ¶ 1.

¹⁰ *Id.* at 7470, ¶ 19.

74. The FCC has stated that local exchange carriers, such as Qwest, should pursue civil actions to collect unpaid terminating switched access charges.¹¹

COUNT I
(NON-PAYMENT OF FEDERALLY TARIFFED ACCESS CHARGES)

75. Qwest incorporates by reference as though fully set forth herein the allegations of paragraphs 1-74 of its Complaint.

76. Qwest's interstate terminating switched access charges for interstate long-distance calls are set forth in Qwest's FCC Tariff No. 1, pursuant to the federal Communications Act, 47 U.S.C. § 151.

77. Under the terms of Qwest's federal tariff, Broadvox is obligated to pay Qwest's terminating switched access charges. Broadvox knowingly and intentionally has sent interstate long-distance traffic to Qwest for termination via Qwest's local exchange switching facilities in numerous Qwest states, including at least Arizona, Idaho, Oregon, Utah, and Washington. Broadvox is therefore a "customer" under Qwest's FCC Tariff No. 1. That tariff specifies that "customer . . . denotes any individual, partnership, association, joint-stock company, trust, corporation, governmental entity or any other entity which subscribes to the services offered under this Tariff, including Interexchange Carriers (ICs), end users and interconnectors." Qwest FCC Tariff No. 1, § 2.6.¹² The services offered under that tariff include the terminating switched access service that Qwest provides to Broadvox.

78. Broadvox is also an "Interexchange Carrier," as defined by Qwest's FCC Tariff No. 1. That tariff provides that "[t]he term 'Interexchange Carrier' (IC) or 'Interexchange

¹¹ *Id.* at 7472, ¶ 23 n.93 ("[T]he Commission does not act as a collection agent for carriers Therefore, we expect that LECs will file any claims for recovery of unpaid access charges in state or federal courts, as appropriate.")

¹² The full tariff is a public document that can be found at http://tariffs.qwest.com:8000/idc/groups/public/documents/tariff/htmltoc_fcc1.htm.

Common Carrier' denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in interstate or foreign communication by wire or radio between two or more exchanges." Qwest FCC Tariff No. 1, § 2.6.

79. Because Broadvox is not an end user customer under Qwest's tariffs, and is prohibited from purchasing service as an end user by those tariffs and FCC rules and regulations, it is required to purchase switched access service under Qwest's tariffs for termination of interstate long-distance communications.

80. Moreover, Qwest's federal tariff applies to the long-distance calls that Broadvox has caused to be routed to Qwest for termination because Broadvox subscribed to Qwest's services pursuant to the Constructive Ordering Doctrine. Broadvox was — and is — interconnected in such a manner that it expects to receive interstate terminating access service from Qwest. It has failed to take steps to prevent the receipt of such service, and it has received and continues to receive such service.

81. Qwest has fully performed its obligations under its federal tariffs.

82. Qwest has demanded, and Broadvox has refused to pay, the terminating switched access charges required by Qwest's federal tariffs.

83. Broadvox has materially violated Qwest's federal tariffs by failing to pay the tariffed rates for the services it has received and continues to receive.

84. Qwest has been damaged in an amount to be determined at trial.

COUNT II
(NON-PAYMENT OF STATE TARIFFED ACCESS CHARGES)

85. Qwest incorporates by reference as though fully set forth herein the allegations of paragraphs 1-74 of its Complaint.

86. Qwest's intrastate terminating switched access charges are set forth in state tariffs, schedules, catalogs, or price lists on file at the respective public utility/service commission.

87. Under the terms of each of Qwest's state tariffs, Broadvox is obligated to pay Qwest's terminating switched access charges. Broadvox knowingly and intentionally sent intrastate long-distance traffic to Qwest for termination via Qwest's local exchange switching facilities in numerous Qwest states, including at least Arizona, Idaho, Oregon, Utah, and Washington. Broadvox is therefore a "customer" under Qwest's various state access tariffs.

88. For example, in Qwest's Access Service tariff on file in Washington, "[t]he term 'customer(s)' denotes any individual, partnership, association, joint-stock company, trust, corporation, governmental entity or any other entity which subscribes to the services offered under this Tariff." Qwest Washington Access Service Tariff, WN U-44, § 2.6.¹³ Qwest's other state tariffs contain similar a similar definition of "customer."¹⁴

89. Broadvox also is an "Interexchange Carrier" as defined, by example, in Qwest's Washington Access Service Tariff. That tariff provides that "[t]he term 'Interexchange Carrier' (IC) or 'Interexchange Common Carrier' denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in intrastate communication by wire or radio between two or more exchanges." Qwest Washington Access

¹³ The full tariff is a public document that can be found at: http://tariffs.qwest.com:8000/ldc/groups/public/documents/tariff/htmltoc_wa_a.htm.

¹⁴ Arizona Access Service Price Cap Tariff Section 2.6 defines customer(s) as "any individual, partnership, association, joint-stock company, trust, corporation, governmental entity or any other entity which subscribes to the services offered under this Tariff." Idaho Access Service Catalog No. 1 Section 2.6 defines customer(s) as "any individual, partnership, association, joint-stock company, trust, corporation, governmental entity or any other entity which subscribes to the services offered under this document." Oregon Access Service Tariff Section 2.6 defines customer(s) as "any individual, partnership, association, joint stock company, trust, corporation, governmental entity or any other entity which subscribes to the services offered under this Tariff, including both Interexchange Carriers (ICs), end users and/or interconnectors." Utah Access Service Tariff and Price List Section 2.6 defines customer(s) as "any individual, partnership, association, jointstock company, trust, corporation, governmental entity or any other entity which subscribes to the services offered under this Tariff, including both Interexchange Carriers (ICs), end users and/or interconnectors."

Service Tariff, WN U-44, § 2.6. Qwest's other state tariffs contain similar a similar definition of "Interexchange Carrier."¹⁵

90. Because Broadvox is not an end user customer under Qwest's state tariffs, and is prohibited from purchasing service as an end user by those tariffs and the rules and regulations of the various state regulatory authorities in those states, it is required to purchase switched access service under Qwest's tariffs for termination of intrastate long-distance communications.

91. Moreover, Qwest's various state tariffs apply to the long-distance calls that Broadvox has caused to be routed to Qwest for termination because Broadvox has subscribed to Qwest's services pursuant to the Constructive Ordering Doctrine. Broadvox was – and is – interconnected in such a manner that it expects to receive intrastate terminating access service from Qwest. It has failed to take steps to prevent the receipt of such service, and it has received and continues to receive such service.

92. Qwest has fully performed its obligations under its various state tariffs.

93. Qwest has demanded, and Broadvox has refused to pay, the terminating switched access charges required by Qwest's various state tariffs.

94. Broadvox has materially violated Qwest's various state tariffs by failing to pay the tariffed rates for the services it has received and continues to receive.

¹⁵ Arizona Access Service Price Cap Tariff Section 2.6 defines Interexchange Carrier (IC) or Interexchange Common Carrier as "any individual, partnership, association, joint-stock company, trust, governmental entity or corporation duly authorized to engage for hire in intrastate communication by wire, fiber optics or radio between two or more exchanges." Idaho Access Service Catalog No. 1 Section 2.6 defines Interexchange Carrier (IC) or Interexchange Common Carrier as "any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in intrastate communication by wire, fiber optics or radio between two or more exchanges." Oregon Access Service Tariff Section 2.6 defines Interexchange Carrier (IC) or Interexchange Common Carrier as "any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in intrastate communication by wire, fiber optics or radio between two or more exchanges." Utah Access Service Tariff and Price List Section 2.6 defines Interexchange Carrier (IC) or Interexchange Common Carrier The term "Interexchange Carrier or Interexchange Common Carrier" as "any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in intrastate communication by wire, fiber optics or radio between two or more exchanges."

95. Qwest has been damaged in an amount to be determined at trial.

COUNT III
(UNJUST ENRICHMENT)

96. Qwest incorporates by reference as though fully set forth herein the allegations of paragraphs 1-74 of its Complaint.

97. Pursuant to Qwest's federal and state tariffs, and the FCC IP-in-the-Middle Order, Broadvox is liable to Qwest for its failure to pay interstate and intrastate terminating switched access charges on long-distance traffic that Broadvox has caused to be delivered to Qwest for termination.

98. By terminating the long-distance calls carried by Broadvox to Qwest's local telephone customers, Qwest has conferred a benefit on Broadvox. Broadvox has caused this long-distance traffic to be misrouted and terminated by Qwest at the substantially lower termination rate charged for local traffic. The arrangement was and is unjust, to the benefit of Broadvox.

99. Broadvox has understood that the termination of long-distance calls by Qwest was important to Broadvox's customers, and accordingly it has recognized that Qwest's termination of long-distance calls was a benefit to them.

100. Broadvox has accepted and retained the benefit of Qwest's terminating switched access services.

101. Broadvox has not provided appropriate compensation to Qwest for having terminated these calls.

102. By accepting and retaining the benefit of Qwest's terminating switched access services without appropriately compensating Qwest, Broadvox has been unjustly enriched in an amount to be determined at trial.

COUNT IV
(FRAUD)

103. Qwest incorporates by reference as though fully set forth herein the allegations of paragraphs 1-74 of its Complaint.

104. For each long-distance call handed, either directly or indirectly, by Broadvox to Qwest for termination, Broadvox has knowingly, and with the intent to defraud, made material misrepresentations of material facts to Qwest, including (but not limited to):

a. Changing or causing to be changed or augmented, either directly or indirectly, the call record information to falsely indicate that the telephone call originated in the local exchange as a local call, when in fact that call originated in another exchange as a long-distance call, and had been carried to the local exchange as a long-distance call by Broadvox;

b. Routing the long-distance telephone call, or causing the long-distance call to be routed, over facilities expressly provisioned to carry local traffic, thereby knowingly and unlawfully avoiding terminating switched access charges.

105. These material misrepresentations were false and misleading at the time they were made.

106. Broadvox made each of these misrepresentations with knowledge of their falsity, or recklessly, as positive assertions, and without knowledge of their truth, intending to induce Qwest to terminate the long-distance calls routed to it by Broadvox.

107. Qwest relied on Broadvox's misrepresentations, to its detriment.

108. Due to Broadvox's fraudulent conduct, Qwest is unable to bill for the full measure of long-distance traffic that Broadvox has terminated over Qwest's local facilities, either directly or indirectly. The truth about the full scope of Broadvox's unlawful conduct remains within the

particular knowledge of Broadvox, which engaged in deceptive acts calculated to mislead and thereby obtain an unfair advantage.

109. Qwest has been injured as a direct and proximate result of Broadvox's misrepresentations in an amount to be determined at trial.

COUNT V
(FRAUD BY NONDISCLOSURE)

110. Qwest incorporates by reference as though fully set forth herein the allegations of paragraphs 1-74 of its Complaint.

111. For each long-distance call handed, either directly or indirectly, by Broadvox to Qwest for termination, Broadvox has knowingly, and with the intent to defraud, made material omissions or partial disclosures of material facts to Qwest, including (but not limited to):

a. Not informing Qwest that the telephone call was a long-distance telephone call subject to applicable tariff charges for terminating access services.

112. Through these omissions and partial disclosures, Broadvox created a false impression that the phone calls at issue were local, when they were actually long-distance in nature. Broadvox had a duty to disclose the true nature of these calls because Broadvox not only created false impression by making a partial disclosure, but it also voluntarily disclosed some information about the calls and therefore had a duty to disclose the whole truth.

113. These were material omissions to Qwest, as they would have been important to it in making decisions on how to bill Broadvox under applicable state and federal law.

114.. These material omissions were false and misleading at the time they were made. Broadvox was deliberately silent about the nature of these calls, in order to gain financial advantage.

115. Broadvox made each of these omissions with knowledge of their falsity, or recklessly, as positive assertions, and without knowledge of their truth, intending to induce Qwest to terminate the long-distance calls routed to it by Broadvox.

116. Qwest was unaware of the fact that these were long-distance calls and did not have an equal opportunity to determine the truth.

117. Qwest reasonably relied on Broadvox's omissions, to its detriment.

118. Due to Broadvox's fraudulent omissions, Qwest is unable to bill for the full measure of long-distance traffic that Broadvox has terminated over Qwest's local facilities, either directly or indirectly. The truth about the full scope of Broadvox's unlawful conduct remains within the particular knowledge of Broadvox, which engaged in deceptive acts calculated to mislead and thereby obtain an unfair advantage.

119. Qwest has been injured as a direct and proximate result of Broadvox's omissions in an amount to be determined at trial.

COUNT VI

(TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIP)

120. Qwest incorporates by reference as though fully set forth herein the allegations of paragraphs 1-74 of its Complaint.

121. When Qwest terminates long-distance calls using its local exchange facilities, Qwest, pursuant to its federal tariffs and its various state tariffs, is entitled to be paid its terminating switched access charges. Qwest's tariffs establish a contract between Qwest and its customers, including carriers who terminate long-distance calls using Qwest's local exchange facilities. Qwest expects that it will be paid its federal and state tariffed charges for providing terminating switched access when it, in fact, provides such terminating switched access.

122. To the extent that Broadvox maintains that its connecting IXCs, rather than Broadvox itself, are the parties liable to Qwest for terminating switched access charges pursuant to Qwest's federal and state tariffs, and to the extent that Broadvox is not found to be directly liable to Qwest for the payment of Qwest's tariffed terminating switched access charges, it is Broadvox's actions that interfered with Qwest's contractual relationships with these other IXCs.

123. But for Broadvox's fraudulent scheme and surreptitious intervention in the normal flow of the long-distance calls that are the subject of this action, Broadvox's upstream connecting IXCs would have delivered these calls to Qwest for termination in Qwest's local exchange over the access trunk facilities that are supposed to be utilized for the termination of long-distance traffic.

124. But for Broadvox's fraudulent scheme and intervention in the normal flow of the long-distance calls that are the subject of this action, Qwest would have been able to identify these calls as long-distance calls, and bill the IXCs passing these calls to Qwest the appropriate tariffed terminating switched access charges.

125. Broadvox had knowledge of Qwest's valid and enforceable relationships with these other IXCs.

126. Broadvox had knowledge of the access charge regime, and how that regime applies to long-distance calls.

127. Broadvox had knowledge that Qwest maintains both federal and state tariffs setting forth Qwest's terminating switched access charges.

128. Broadvox had knowledge that IXCs handing long-distance calls to Qwest for termination in Qwest's local exchanges pay Qwest these federal and state tariffed terminating switched access charges. In fact, Broadvox's business model is *based* on an understanding of

these terminating switched access charges, and a fraudulent scheme to terminate long-distance calls for IXCs at a lower cost by surreptitiously *avoiding* these terminating switched access charges.

129. Broadvox's fraudulent scheme and intervention in the normal flow of the long-distance calls that are the subject of this action interfered with Qwest's contractual relationships with these IXCs.

130. Broadvox's interference was willful and intentional, and caused a breach or termination of Qwest's contractual relationships with these IXCs.

131. As a consequence of Broadvox's interference, Qwest was proximately damaged, in an amount to be proven at trial, by the other IXCs' non-payment of tariffed terminating switched access charges appropriately payable for terminating long-distance calls.

COUNT VII
(DECLARATORY JUDGMENT)

132. Qwest incorporates by reference as though fully set forth herein the allegations of paragraphs 1-74 of its Complaint.

133. Pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, this Court has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

134. Broadvox knowingly and intentionally misroutes and disguises long-distance telephone traffic as local traffic to avoid paying applicable terminating switched access charges.

135. For each misrouted long-distance call passed either directly or indirectly from Broadvox to Qwest that is the subject of this Complaint,

- a. the callers and called parties use ordinary customer premises equipment;

- b. the call originates and terminates on the public switched telephone network;
- c. the call undergoes no net protocol conversion; and
- d. Broadvox provides no enhanced functionality from the perspective of the end users.

136. For the reasons set forth above, the traffic Broadvox causes to be routed to Qwest for termination is subject to the payment of terminating switched access charges, as specified in the FCC *IP-in-the-Middle Order*.

137. Qwest has suffered and will continue to suffer damages as a result of Broadvox's scheme. Accordingly, Qwest seeks a declaration that, in accordance with the FCC *IP-in-the-Middle Order*, and because of Broadvox's willful, intentional, and harmful acts against Qwest, the long-distance traffic that Broadvox causes to be routed to Qwest for termination is subject to the terminating switched access charges as provided in Qwest's federal and state tariffs.

PRAYER FOR RELIEF

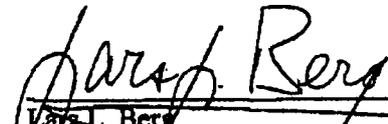
WHEREFORE, Qwest prays that this Court grant it relief, as follows:

- a. A judgment in its favor declaring that pursuant to the federal Communications Act, 47 U.S.C. § 151 et seq., the long-distance traffic that Broadvox has caused and continues to cause to be routed to Qwest for termination is subject to the terminating switched access charges provided in Qwest's federal and state tariffs, and that Broadvox is responsible for the payment of these access charges pursuant to the terms of these tariffs;
- b. Money damages in an amount to be proven at trial, plus all applicable late fees;

- c. All costs and attorney's fees incurred by Qwest, pursuant to 47 U.S.C. § 206 or as otherwise allowed by law;
- d. Exemplary damages based on Broadvox's aggravated conduct;
- e. Pre- and post-judgment interest, as allowed by law;
- f. All other and additional relief to which Qwest may show itself to be justly entitled, whether at law or in equity.

Dated this 8th day of March, 2010.

Respectfully submitted,


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