



broadvoxTM
BUSINESS CONNECTS HERE

ORIGINAL



0000123341

Direct Fax: 216.373.4812
Email: agertsburg@broadvox.com

February 22, 2011

VIA UPS OVERNIGHT DELIVERY

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

Arizona Corporation Commission
DOCKETED

FEB 24 2011

DOCKETED BY *DESJ*

AZ CORP COMMISSION
DOCKET CONTROL

2011 FEB 24 A 9:58

RECEIVED

RE: DOCKET T-20666A-09-0173 DECISION NO: 72061
Qwest Corporation v. Broadvox, Inc., et al.
U.S. Northern District Court of Texas (Fort Worth)
Case No. 4:10-cv-00134-A

Dear Sir or Ma'am:

Please find enclosed the following documents regarding the above referenced matter for filing with the Commission:

- Order Denying Motion to Dismiss Complaint
- Agreed Motion to Extend Defendants' Deadline to Answer
- Agreed Order Granting Agreed Motion to Extend Defendants' Deadline
- Motion to Withdraw as Attorney; Motion to Substitute Attorney
- Application for Admission *Pro Hac Vice* with Certificate of Good Standing (Buntrock)
- Application for Admission *Pro Hac Vice* with Certificate of Good Standing (Hazzard)
- Application for Admission *Pro Hac Vice* with Certificate of Good Standing (Carter)
- Order Granting Motion to Withdraw and Substitute Counsel
- Order Granting Application for Admission *Pro Hac Vice*
- Answer to First Amended Complaint Filed by Defendants

I have enclosed per the Compliance Filing Instructions, an original and (13) copies of the aforementioned documents. Thank you.

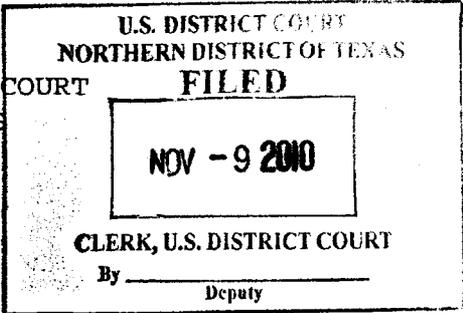
Sincerely,

Alexander E. Gertsburg
Executive Vice President - General Counsel
Broadvox-CLEC, LLC

AEG:kd
Encls.

cc: Brian K. Bozzo
Compliance Section

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



QWEST CORPORATION,

Plaintiff,

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VS.

NO. 4:10-CV-134-A

BROADVOX, INC., ET AL.,

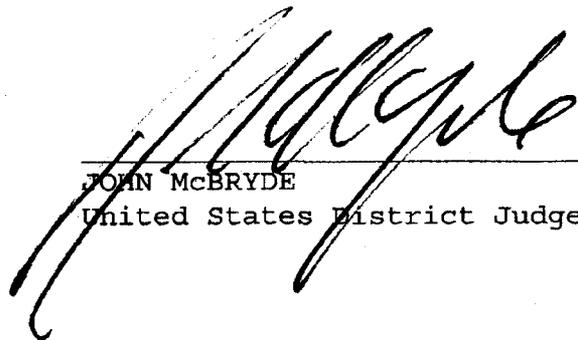
Defendant.

O R D E R

Came on for consideration the motion to dismiss complaint, alternative motion to stay or dismiss under first filed or primary jurisdiction doctrines, filed in the above action by defendants, Broadvox, Inc., Broadvox, LLC, and Broadvoxgo!, LLC. Plaintiff, Qwest Corporation, filed a response, and defendants filed a reply. Having considered all the filings of the parties, the complaint by which plaintiff initiated this action, and applicable legal authorities, the court concludes that the motions should be denied. Therefore,

The court ORDERS that defendants' above-described motion be, and is hereby, denied.

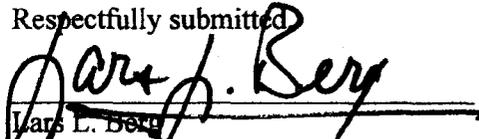
SIGNED November 9, 2010.



JOHN MCBRYDE
United States District Judge

through December 23, 2010. The parties further request any and all other relief to which they may be justly entitled.

Respectfully submitted



David L. Berg

State Bar No. 00787072

KELLY HART & HALLMAN, L.L.P.

201 Main Street, Suite 7500

Fort Worth, Texas 76102

(817) 878-3524

(817) 878-9280 fax

R. Paul Yetter

State Bar No. 22154200

Collin J. Cox

State Bar No. 24031977

Ryan P. Bates

State Bar No. 24055152

YETTER, WARDEN & COLEMAN, L.L.P.

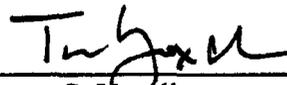
Two Houston Center

909 Fannin, Suite 3600

Houston, Texas 77010

(713) 632-8000

**ATTORNEYS FOR QWEST
CORPORATION**



Thomas G. Yoxall

State Bar No. 00785304

Kelly Orlando

State Bar No. 24046560

LOCKE LORD BISSELL & LIDDELL LLP

2200 Ross Avenue

Suite 2200

Dallas, TX 75201

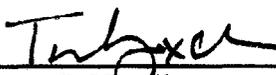
(214) 740-8000 (Telephone)

(214) 740-8800 (Telecopy)

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

The undersigned has conferred with counsel for Plaintiff, Lars Berg, and he has confirmed that Plaintiff is in agreement with this Motion.



Thomas G. Yorkall

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on this the 12th day of November, 2010 on the following counsel of record, via certified mail, return receipt requested:

Lars L. Berg
KELLY HART & HALLMAN, L.L.P.
201 Main Street, Suite 2500
Fort Worth, Texas 76102
(817) 878-3524
(817) 878-9280 fax
lars.berg@kellyhart.com

R. Paul Yetter
Collin J. Cox
State Bar No. 24031977
Ryan P. Bates
State Bar No. 24055152
YETTER, WARDEN & COLEMAN, L.L.P.
Two Houston Center
909 Fannin, Suite 3600
Houston, Texas 77010
(713) 632-8000
ccox@ywcllp.com



Thomas G. Yoxall

ORIGINAL

aj w/o

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

2010 DEC -7 AM 11:25
CLERK OF COURT

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

**QWEST CORPORATION,
Plaintiff,**

v.

**BROADVOX, INC.,
BROADVOX, LLC, and
BROADVOXGO!, LLC**

Defendants.

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CASE NO. 4:10-CV-134-A

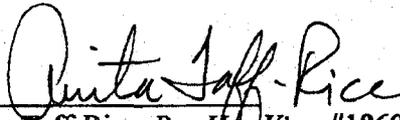
MOTION TO WITHDRAW AND SUBSTITUTE COUNSEL

Under Local Rule 83.12, counsel for Defendants, Anita Taff-Rice, hereby moves to withdraw from representing Broadvox at Broadvox's request, and substitute as counsel Attorneys Ross Buntrock, Michael B. Hazzard and David Carter (collectively "Substituting Counsel") from the law firm of Arent Fox, LLP. Attorney Tom Yoxall will remain as local counsel for Defendants. Each Substituting Counsel is filing a motion to appear *pro hac vice* contemporaneously herewith.

The contact information for each of the Substituting Counsel is:

Arent Fox, LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
P: (202) 857-6000 / F: (202) 857-6395

Respectfully submitted this 30th day of November, 2010

By: 
Anita Taff-Rice, *Pro Hac Vice*, #186039
Law Offices of Anita Taff-Rice
1547 Palos Verdes, #298
Walnut Creek, CA 94597
Telephone: (415) 699-7885
E-Mail: anitataffrice@earthlink.net

By: 
Thomas G. Voxall, #00785304
Locke Lord Bissell & Liddell, LLP
2200 Ross Avenue, Suite 2200
Dallas, TX 75201-6776
Telephone: (214) 740-8683/
Fax: (214) 740-8800
E-Mail: anitataffrice@earthlink.net

Attorneys for Defendants
Broadvox, Inc., Broadvox, LLC and
BroadvoxGo!, LLC

CERTIFICATE OF SERVICE

I hereby certify that on ~~November~~ ^{December} 6, 2010, I electronically filed the foregoing Motion with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

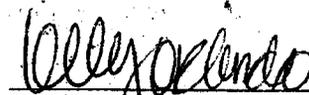
R. Paul Yetter, Esq.
Ryan P. Bates, Esq.
Collin J. Cox, Esq.
Yetter Coleman, LLP
Two Houston Center
909 Fannin, Suite 3600
Houston, TX 77010
pyetter@yettercoleman.com
rbates@yettercoleman.com
ccox@yettercoleman.com

Lars L. Berg, Esq.
Kelly, Hart & Hallman
201 Main Street, Suite 2500
Fort Worth, TX 76102-3194
Lars.berg@khh.com

Kelly Orlando
Kelly Orlando

CERTIFICATE OF CONFERENCE

I certify that on December 6, 2010, I conferred with counsel for Qwest, and Qwest is unopposed to this Motion.



Kelly Orlando

ORIGINAL

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

2010 DEC -7 AM 11:25

CLERK OF COURT

Qwest Corporation

Plaintiff

v.

Broadvox, Inc., et al.

Defendant

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Case No. 4:10-cv-00134-A

APPLICATION FOR ADMISSION PRO HAC VICE

(Complete all questions; indicate "N/A" if necessary.)

I. Applicant is an attorney and a member of the law firm of (or practices under the name of)
Ross A. Buntrock of Arent Fox LLP- Attorneys at Law, with offices at

1050 Connecticut Avenue, NW,
(Street Address)

Washington, DC 20036 DC 20036
(City) (State) (Zip Code)

202.775.5734
(Telephone No.)

II. Applicant will sign all filings with the name Ross A. Buntrock

OPTIONAL: Applicant wants this form to serve as applicant's registration for electronic case filing and consents under FED.R.CIV.P. 5(b) to accept service electronically at the following e-mail address:

buntrock.ross@arentfox.com
(E-mail Address)

III. Applicant has been retained personally or as a member of the above-named firm by:
(List All Parties Represented)

- Broadvox, Inc.
- Broadvox, LLC
- BroadvoxGo!, LLC

to provide legal representation in connection with the above-styled matter now pending before the United States District Court for the Northern District of Texas.

IV. Applicant is a member in good standing of the bar of the highest court of the state of District of Columbia, where Applicant regularly practices law.

Bar license number: 451946 Admission date: September 6, 1996
Attach to this application an original certificate of good standing issued within the past 90 days from a state or the District of Columbia.

For Court Use Only
Bar Status Verified:

V. Applicant has also been admitted to practice before the following courts:

Court:	Admission Date:	Active or Inactive:
US District Court for the Eastern District of Virginia	November 17, 1995	Active
US Court of Appeals for the 4th Circuit	December 5, 1995	Active
US Bankruptcy Court, District for the Western District of Virginia	September 24, 1996	Active
US Court of Appeals for the District of Columbia Circuit	September 15, 2006	Active
US Court of Appeals for the 9th Circuit	November 30, 2006	Active

VI. Applicant has never involuntarily lost, temporarily or permanently, the right to practice before any court or tribunal, or resigned in lieu of discipline, except as provided below:

None.

VII. Applicant has never been subject to grievance proceedings or involuntary removal proceedings—regardless of outcome—while a member of the bar of any state or federal court or tribunal that requires admission to practice, except as provided below:

None.

VIII. Applicant has not been charged, arrested, or convicted of a criminal offense or offenses, except as provided below (omit minor traffic offenses):

None.

IX. Applicant has filed for *pro hac vice* admission in the United States District Court for the Northern District of Texas during the past three (3) years in the following matters:

Date of Application: Case No. And Style:

N/A

(If necessary, attach statement of additional applications.)

X. Local counsel of record associated with Applicant in this matter is

Thomas G. Yoxall, Locke Lord Bissel & Liddell, LLP who has offices at

2200 Ross Avenue, Suite 2200

(Street Address)

Dallas

(City)

TX

(State)

75201

(Zip Code)

214.740.8000

(Telephone No.)

XI. Check the appropriate box below.

For Application in a Civil Case



Applicant has read *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D.284 (N.D. Tex. 1988) (en banc), and the local civil rules of this court and will comply with the standards of practice adopted in *Dondi* and with the local civil rules.

For Application in a Criminal Case



Applicant has read and will comply with the local criminal rules of this court.

XII. Applicant respectfully requests to be admitted to practice in the United States District Court for the Northern District of Texas for this cause only. Applicant certifies that a true and correct copy of this document has been served upon each attorney of record and the original upon the clerk of court, accompanied by a \$25.00 filing fee, on this the 17th day of November, 2010.

Ross A. Buntrock

Printed Name of Applicant

Ross A Buntrock

Signature

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

Qwest Corporation

Plaintiff

v.

Broadvox, Inc., et al.

Defendant

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Case No. 4:10-cv-00134-A

ORDER FOR ADMISSION PRO HAC VICE

The Court has considered the Application for Admission *Pro Hac Vice* of

-----Ross A. Buntrock-----

It is ORDERED that:

- the application is granted. The Clerk of Court shall deposit the application fee to the account of the Non-Appropriated Fund of this Court. It is further ORDERED that, if the Applicant has not already done so, the Applicant must register as an ECF User within 14 days. See LR 5.1(f) and LCrR 49.2(g).
- the application is denied. The Clerk of Court shall return the admission fee to the Applicant.

DATE

PRESIDING JUDGE



District of Columbia Court of Appeals
Committee on Admissions
430 F Street, N.W. — Room 123
Washington, D. C. 20001
202 / 879-2710

I, JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals, do hereby certify that

ROSS ALLEN BUNTROCK

was on the 6TH day of SEPTEMBER, 1996

duly qualified and admitted as an attorney and counselor and entitled to practice before this Court and is, on the date indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of this Court at the City of Washington, D.C., on November 17, 2010.

JULIO A. CASTILLO
Clerk of the Court

By: _____

[Handwritten Signature]

Deputy Clerk

ORIGINAL

FW 13000

FILED B
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

2010 DEC -7 AM 11:26

CLERK OF COURT

Qwest Corporation

Plaintiff

v.

Broadvox, Inc., et al.

Defendant

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Case No. 4:10-cv-00134-A

APPLICATION FOR ADMISSION PRO HAC VICE

(Complete all questions; indicate "N/A" if necessary.)

I. Applicant is an attorney and a member of the law firm of (or practices under the name of)
Michael B. Hazzard of Arent Fox LLP- Attorneys at Law, with offices at

1050 Connecticut Avenue, NW,

(Street Address)

Washington, DC 20036

(City)

DC

(State)

20036

(Zip Code)

202.857.6029

(Telephone No.)

II. Applicant will sign all filings with the name Michael B. Hazzard

OPTIONAL: Applicant wants this form to serve as applicant's registration for electronic case filing and consents under FED.R.CIV.P. 5(b) to accept service electronically at the following e-mail address:

hazzard.michael@arentfox.com

(E-mail Address)

III. Applicant has been retained personally or as a member of the above-named firm by:
(List All Parties Represented)

Broadvox, Inc.

Broadvox, LLC

BroadvoxGo!, LLC

to provide legal representation in connection with the above-styled matter now pending before the United States District Court for the Northern District of Texas.

IV. Applicant is a member in good standing of the bar of the highest court of the state of District of Columbia, where Applicant regularly practices law.

Bar license number: 483737 Admission date: October 17, 2003
Attach to this application an original certificate of good standing issued within the past 90 days from a state or the District of Columbia.

For Court Use Only.
Bar Status Verified:

V. Applicant has also been admitted to practice before the following courts:

Court:	Admission Date:	Active or Inactive:
US Court of Appeals for the DC Circuit	July 9, 2004	Active
US Court of Appeals for the Third Circuit	May 1, 2006	Active
US Court of Appeals for the Ninth Circuit	Nov. 30, 2006	Active
US District Court for the District of Columbia	Nov. 5, 2007	Active

VI. Applicant has never involuntarily lost, temporarily or permanently, the right to practice before any court or tribunal, or resigned in lieu of discipline, except as provided below:

None.

VII. Applicant has never been subject to grievance proceedings or involuntary removal proceedings—regardless of outcome—while a member of the bar of any state or federal court or tribunal that requires admission to practice, except as provided below:

None.

VIII. Applicant has not been charged, arrested, or convicted of a criminal offense or offenses, except as provided below (omit minor traffic offenses):

None.

IX. Applicant has filed for *pro hac vice* admission in the United States District Court for the Northern District of Texas during the past three (3) years in the following matters:

Date of Application:

01/27/2009
10/19/2010

Case No. And Style:

Hypercube, LLC, et al, v. Comtel Assets, Case No. 3:08-cv-2298-B
Southwestern Bell Telephone Company et al. v. Touch-Tel USA, LLC

(If necessary, attach statement of additional applications.)

X. Local counsel of record associated with Applicant in this matter is

Thomas G. Yoxall, Locke Lord Bissel & Liddell, LLP who has offices at

2200 Ross Avenue, Suite 2200

(Street Address)

Dallas

(City)

TX

(State)

75201

(Zip Code)

214.740.8000

(Telephone No.)

XI. Check the appropriate box below.

For Application in a **Civil Case**



Applicant has read *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D.284 (N.D. Tex. 1988) (en banc), and the local civil rules of this court and will comply with the standards of practice adopted in *Dondi* and with the local civil rules.

For Application in a **Criminal Case**

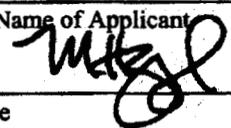


Applicant has read and will comply with the local criminal rules of this court.

XII. Applicant respectfully requests to be admitted to practice in the United States District Court for the Northern District of Texas for this cause only. Applicant certifies that a true and correct copy of this document has been served upon each attorney of record and the original upon the clerk of court, accompanied by a \$25.00 filing fee, on this the 13th day of November, 2010.

Michael B. Hazzard

Printed Name of Applicant


Signature

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

Qwest Corporation

Plaintiff

v.

Broadvox, Inc., et al.

Defendant

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Case No. 4:10-cv-00134-A

ORDER FOR ADMISSION PRO HAC VICE

The Court has considered the Application for Admission *Pro Hac Vice* of

-----Michael B. Hazzard-----

It is ORDERED that:

- the application is granted. The Clerk of Court shall deposit the application fee to the account of the Non-Appropriated Fund of this Court. It is further ORDERED that, if the Applicant has not already done so, the Applicant must register as an ECF User within 14 days. See LR 5.1(f) and LCrR 49.2(g).
- the application is denied. The Clerk of Court shall return the admission fee to the Applicant.

DATE

PRESIDING JUDGE



District of Columbia Court of Appeals
Committee on Admissions
430 F Street, N.W. — Room 123
Washington, D. C. 20001
202/879-2710

I, JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals, do hereby certify that

MICHAEL B. HAZZARD

was on the 17TH day of OCTOBER, 2003,
duly qualified and admitted as an attorney and counselor and entitled to practice before this Court and is, on the date indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of this Court at the City of Washington, D.C., on November 17, 2010.

JULIO A. CASTILLO
Clerk of the Court

By: 
Deputy Clerk

ORIGINAL

FILED 13000
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

2010 DEC -7 AM 11:26
CLERK OF COURT

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

QWEST CORPORATION

Plaintiff

v.

BROADVOX, INC., ET AL.

Defendant

Case No. 4:10-cv-00134-A

APPLICATION FOR ADMISSION PRO HAC VICE
(Complete all questions; indicate "N/A" if necessary.)

I. Applicant is an attorney and a member of the law firm of (or practices under the name of)
G. David Carter of Arent Fox LLP - Attorneys at Law, with offices at

1050 Connecticut Avenue, N.W.
(Street Address)

Washington
(City)

DC
(State)

20036-5339
(Zip Code)

202-857-8972
(Telephone No.)

II. Applicant will sign all filings with the name G. David Carter.

OPTIONAL: Applicant wants this form to serve as applicant's registration for electronic case filing and consents under FED.R.CIV.P. 5(b) to accept service electronically at the following e-mail address:

carter.david@arentfox.com
(E-mail Address)

III. Applicant has been retained personally or as a member of the above-named firm by:
(List All Parties Represented)

BROADVOX, INC.
BROADVOX, LLC
BROADVOXGO!, LLC

to provide legal representation in connection with the above-styled matter now pending before the United States District Court for the Northern District of Texas.

IV. Applicant is a member in good standing of the bar of the highest court of the state of Virginia & District of Columbia, where Applicant regularly practices law.

Bar license number: VA: 72804 Admission date: 10/12/2006
Attach to this application an original certificate of good standing issued within the past 90 days from a state or the District of Columbia.

For Court Use Only:
Bar Status Verified:

V. Applicant has also been admitted to practice before the following courts:

Court:	Admission Date:	Active or Inactive:
1. District of Columbia Court of Appeals	5/11/2007	Active
2. Court of Appeals for the 8th Circuit	11/12/2009	Active
3. District Court for the Western District of Michigan	11/12/2009	Active

VI. Applicant has never involuntarily lost, temporarily or permanently, the right to practice before any court or tribunal, or resigned in lieu of discipline, except as provided below:

N/A

VII. Applicant has never been subject to grievance proceedings or involuntary removal proceedings—regardless of outcome—while a member of the bar of any state or federal court or tribunal that requires admission to practice, except as provided below:

N/A

VIII. Applicant has not been charged, arrested, or convicted of a criminal offense or offenses, except as provided below (omit minor traffic offenses):

N/A

IX. Applicant has filed for *pro hac vice* admission in the United States District Court for the Northern District of Texas during the past three (3) years in the following matters:

Date of Application: Case No. And Style:

N/A

(If necessary, attach statement of additional applications.)

X. Local counsel of record associated with Applicant in this matter is

Thomas G. Yoxall, Locke Lord Bissel & Liddell, LLP who has offices at

2200 Ross Avenue, Suite 2200

(Street Address)

Dallas

(City)

TX

(State)

75201

(Zip Code)

214-740-8000

(Telephone No.)

XI. Check the appropriate box below.

For Application in a Civil Case



Applicant has read *Dondi Properties Corp. v. Commerce Savs. & Loan Ass'n*, 121 F.R.D.284 (N.D. Tex. 1988) (en banc), and the local civil rules of this court and will comply with the standards of practice adopted in *Dondi* and with the local civil rules.

For Application in a Criminal Case



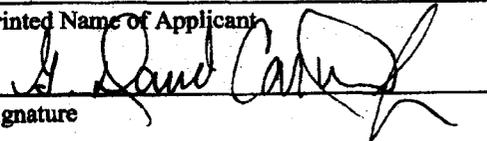
Applicant has read and will comply with the local criminal rules of this court.

XII. Applicant respectfully requests to be admitted to practice in the United States District Court for the Northern District of Texas for this cause only. Applicant certifies that a true and correct copy of this document has been served upon each attorney of record and the original upon the clerk of court, accompanied by a \$25.00 filing fee, on this the 17th day of November, 2010.

G. David Carter

Printed Name of Applicant

Signature



UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

QWEST CORPORATION

Plaintiff

v.

BROADVOX, INC., ET AL.

Defendant

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Case No. 4:10-cv-00134-A

ORDER FOR ADMISSION PRO HAC VICE

The Court has considered the Application for Admission *Pro Hac Vice* of

G. David Carter

It is ORDERED that:

the application is granted. The Clerk of Court shall deposit the application fee to the account of the Non-Appropriated Fund of this Court. It is further ORDERED that, if the Applicant has not already done so, the Applicant must register as an ECF User within 14 days. See LR 5.1(f) and LCrR 49.2(g).

the application is denied. The Clerk of Court shall return the admission fee to the Applicant.

DATE

PRESIDING JUDGE



District of Columbia Court of Appeals
Committee on Admissions
430 F Street, N.W. — Room 123
Washington, D. C. 20001
202 / 879-2710

I, JULIO A. CASTILLO, Clerk of the District of Columbia Court of Appeals, do hereby certify that

GEORGE CARTER, JR.

was on the 11TH day of MAY, 2007

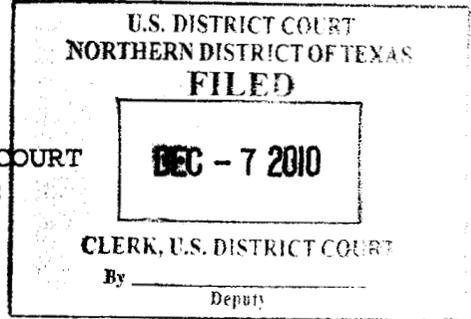
duly qualified and admitted as an attorney and counselor and entitled to practice before this Court and is, on the date indicated below, an active member in good standing of this Bar.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of this Court at the City of Washington, D.C., on November 17, 2010.

JULIO A. CASTILLO
Clerk of the Court

By: _____


Deputy Clerk



IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

QWEST CORPORATION,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	NO. 4:10-CV-134-A
	§	
BROADVOX, INC., ET AL.,	§	
	§	
Defendants.	§	

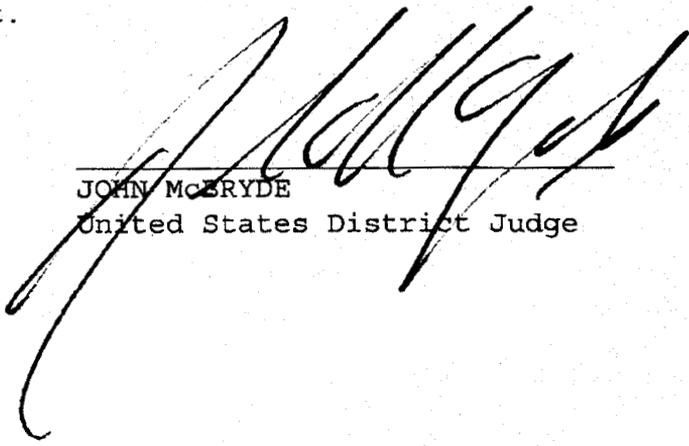
O R D E R

Came on for consideration the applications of Michael B. Hazzard ("Hazzard"), Ross A. Buntrock ("Buntrock"), and G. David Carter ("Carter") for admission pro hac vice in the above-captioned matter. The court finds that the applications should be granted. Therefore,

The court ORDERS that the applications of Hazzard, Buntrock, and Carter for admission pro hac vice be, and are hereby, granted, and that Hazzard, Buntrock, and Carter be, and are hereby, granted leave to appear pro hac vice on behalf of defendants, Broadvox, Inc., Broadvox, LLC, and Broadvoxgo!, LLC, in this action. The court directs the clerk of the court to deposit the application fees into the account of the Non-

Appropriated Fund of this court.

SIGNED December 7, 2010.



JOHN McERYDE
United States District Judge

CTS

ORIGINAL

FILED
U.S. DISTRICT COURT
NORTHERN DIST. OF TX.
FT. WORTH DIVISION

2010 DEC 23 PM 1:04
CLERK OF COURT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

QWEST CORPORATION,
Plaintiff,

v.

BROADVOX, INC.,
BROADVOX, LLC, and
BROADVOXGO!, LLC

Defendants.

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CASE NO. 4:10-CV-134-A

DEFENDANTS' ANSWER AND COUNTERCLAIM

Defendants, Broadvox, Inc., Broadvox, LLC, and BroadvoxGo!, LLC (collectively, "Defendants") state the following in response to Plaintiff's First Amended Complaint:

ANSWER

1. Defendants deny the allegations in Paragraph 1.
2. Defendants deny the allegations in Paragraph 2 for want of knowledge or information sufficient to form a belief as to their truth.
3. Defendants deny the allegations in Paragraph 3.
4. Defendants admit that Qwest is a Regional Bell Operating Company, and deny the remaining allegations in Paragraph 4 for want of knowledge or information sufficient to form a belief as to their truth.
5. Defendant Broadvox, LLC admits only that it acts as an intermediary, and denies the balance of the allegations in Paragraph 5. Broadvox, Inc. and BroadvoxGo!, LLC deny the allegations in their entirety.

6. The allegation in the first sentence in Paragraph 6 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 6.

7. Defendants deny the allegations in Paragraph 7.

8. The allegations in Paragraph 8 state a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations in Paragraph 8.

INTRODUCTION

9. Defendants deny the allegations in Paragraph 9.

10. Defendants deny the allegations in Paragraph 10.

11. Defendants deny the allegations in Paragraph 11.

12. Defendants admit the allegations in the first sentence of Paragraph 12, and deny the remaining allegations in Paragraph 12.

13. Defendants deny the allegations in Paragraph 13.

14. Defendants deny the allegations in Paragraph 14.

15. Defendants deny the allegations in Paragraph 15.

16. Defendants deny the allegations in Paragraph 16.

17. Defendants deny the allegations in Paragraph 17.

18. The allegation that Qwest is authorized and required by law to impose tariffed access charges on IXC's states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations insofar as it relates to Defendants and the facts relevant to this proceeding. Defendants deny the remaining allegations in Paragraph 18.

19. Defendants admit that the Internet is not a "magic wand". The remaining allegations in Paragraph 19 state a legal conclusion to which no response is required. To the

extent a response is required, Defendants deny the allegations insofar as it relates to Defendants and the facts relevant to this proceeding.

JURISDICTION AND VENUE

20. Defendants deny the allegations contained in Paragraph 20 as written, but admit that this Court has jurisdiction over this case.

21. Defendants admit the allegations in Paragraph 21.

PARTIES

22. Upon information and belief, Defendants admit the allegations in Paragraph 22.

23. Broadvox, Inc. admits the first sentence in paragraph 23. Broadvox, LLC admits the second sentence in paragraph 23. BroadvoxGo!, LLC admits the fourth sentence in paragraph 23. Defendants deny the remaining allegations in Paragraph 23.

24. Each of the Defendants deny the allegations in Paragraph 24.

ALLEGATIONS OF FACT

25. Defendants deny the allegations in Paragraph 25.

26. Defendants deny the allegations in Paragraph 26.

27. Defendants deny the allegations in Paragraph 27 for want of knowledge or information sufficient to form a belief as to their truth.

28. Defendants deny the allegations in Paragraph 28 for want of knowledge or information sufficient to form a belief as to their truth.

29. The allegation in the last sentence of Paragraph 29 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

Defendants deny the remaining allegations in Paragraph 29 for want of knowledge or information sufficient to form a belief as to their truth.

30. Defendants deny the allegations in the first sentence of Paragraph 30. The remaining allegation in Paragraph 30 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

31. Defendant Broadvox, LLC admits that it purchased PRI services. Defendants deny the remaining allegations in Paragraph 31.

32. Defendants admit the allegations in the first, second, and third sentences of Paragraph 32, but deny the remaining allegations in Paragraph 32.

33. Defendant Broadvox, LLC admits only that it has contracts with CLECs, that it had a contract with ELI prior to Qwest's intentional interference with that contract, and that it frequently contractually certifies to its CLEC vendors that it is an ESP and is not subject to access charges. Defendants deny the remaining allegations contained in Paragraph 33.

34. Defendants admit that Diagram B depicts the basic model for delivery of some long-distance calls.

35. Defendants deny the allegations in Paragraph 35.

36. Defendants deny for want of knowledge or information sufficient to form a belief as to their truth as to Paragraph 36.

37. Defendants deny the allegations in Paragraph 37.

38. Defendants deny the allegations in Paragraph 38.

39. Defendants deny the allegations in Paragraph 39.

40. Defendants deny the allegations in Paragraph 40.

41. Defendants deny the allegations in Paragraph 41.

42. Defendants deny the allegations in Paragraph 42.

43. The allegation in the first sentence of Paragraph 43 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding. Defendants deny the second sentence of Paragraph 43 as it relates to Defendants. Defendants deny the last sentence in Paragraph 43 for want of knowledge or information sufficient to form a belief as to their truth.

44. Defendants deny the allegations in Paragraph 44 for want of knowledge or information sufficient to form a belief as to their truth.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants deny the allegations in Paragraph 46.

47. Defendants deny the allegations in Paragraph 47 for want of knowledge or information sufficient to form a belief as to their truth.

48. Defendants deny the allegations in Paragraph 48.

49. Defendants deny the allegations in Paragraph 49.

50. Defendants deny the allegations contained in the caption immediately preceding Paragraph 50 as inaccurate and inappropriate. Defendants deny the allegations in Paragraph 50.

51. Defendants admit the allegation made in the first sentence of Paragraph 51. The allegations in the second and third sentences state legal conclusions to which no response is required. To the extent a response is required, Broadvox denies the allegation insofar as it relates to Broadvox and the facts relevant to this proceeding. Defendants deny the allegation in the last sentence of Paragraph 51.

52. Defendants admit the allegations in Paragraph 52.

53. Defendants deny the allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. Defendants deny the allegations in Paragraph 55.

56. Defendants deny the allegations in Paragraph 56.

57. The allegation in Paragraph 57 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

58. Defendants deny the allegations in Paragraph 58.

59. Defendants deny the allegations in Paragraph 59.

60. Defendants admit that they expect to be paid for their services, but Defendants deny the remaining allegations contained in Paragraph 60 as inaccurate and incomplete characterizations of communications relevant to this proceeding.

61. Defendants deny that the allegations in Paragraph 61 accurately characterize Defendants' contracts, which speak for themselves.

62. Defendants deny that the allegations of Paragraph 62 accurately characterize Defendants' contracts, which speak for themselves, and denies that such allegations accurately characterize Defendants' relationships with their customers.

63. Defendants deny the allegations in the first and second sentence of Paragraph 63. The allegation in the last sentence of Paragraph 63 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

64. Defendants deny the allegations in Paragraph 64.

65. Defendants deny the allegations in Paragraph 65.

66. Defendants deny the allegations in Paragraph 66 for want of knowledge or information sufficient to form a belief as to their truth.

67. The allegation contained in the caption immediately preceding Paragraph 67 states legal conclusion to which no response is required. To the extent a required, Broadvox denies the allegation insofar as it relates to Broadvox and the facts relevant to this proceeding. The remaining allegations contained in Paragraph 67 state legal conclusions to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

68. The allegation contained in Paragraph 68 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

69. The allegation contained in Paragraph 69 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

70. Defendants deny the allegations in Paragraph 70.

71. Defendants deny the allegations in Paragraph 71.

72. Defendants deny the allegations in Paragraph 72.

73. Defendants deny the allegations in Paragraph 73.

74. The allegation contained in Paragraph 74 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

COUNT I

75. Defendants incorporate the admissions, denials and averments contained in Paragraphs 1 through 74 above as though fully rewritten herein.

76. The allegation contained in Paragraph 76 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

77. Defendants deny the allegations in Paragraph 77.

78. Defendants deny the allegations in Paragraph 78.

79. Defendants deny the allegations in Paragraph 79.

80. Defendants deny the allegations in Paragraph 80.

81. Defendants deny the allegations in Paragraph 81.

82. Defendants deny the allegations in Paragraph 82.

83. Defendants deny the allegations in Paragraph 83.

84. Defendants deny the allegations in Paragraph 84.

COUNT II

85. Defendants incorporate the admissions, denials and averments contained in Paragraphs 1 through 84 above as though fully rewritten herein.

86. Defendants deny the allegations in Paragraph 86.

87. Defendants deny the allegations in Paragraph 87.

88. Defendants deny the allegations in Paragraph 88.

89. Defendants deny the allegations in Paragraph 89.

90. Defendants deny the allegations in Paragraph 90.

91. Defendants deny the allegations in Paragraph 91.

- 92. Defendants deny the allegations in Paragraph 92.
- 93. Defendants deny the allegations in Paragraph 93.
- 94. Defendants deny the allegations in Paragraph 94.
- 95. Defendants deny the allegations in Paragraph 95.

COUNT III
(UNJUST ENRICHMENT)

96. Defendants incorporate the admissions, denials and averments contained in Paragraphs 1 through 95 above as though fully rewritten herein.

- 97. Defendants deny the allegations in Paragraph 97.
- 98. Defendants deny the allegations in Paragraph 98.
- 99. Defendants deny the allegations in Paragraph 99.
- 100. Defendants deny the allegations in Paragraph 100.
- 101. Defendants deny the allegations in Paragraph 101.
- 102. Defendants deny the allegations in Paragraph 102.

COUNT IV
(FRAUD)

103. Defendants incorporate the admissions, denials and averments contained in Paragraphs 1 through 102 above as though fully rewritten herein.

- 104. Defendants deny the allegations in Paragraph 104.
- 105. Defendants deny the allegations in Paragraph 105.
- 106. Defendants deny the allegations in Paragraph 106.
- 107. Defendants deny the allegations in Paragraph 107.
- 108. Defendants deny the allegations in Paragraph 108.
- 109. Defendants deny the allegations in Paragraph 109.

COUNT V
(FRAUD BY NONDISCLOSURE)

110. Defendants incorporate the admissions, denials and averments contained in Paragraphs 1 through 109 above as though fully rewritten herein.

111. Defendants deny the allegations in Paragraph 111.

112. Defendants deny the allegations in Paragraph 112.

113. Defendants deny the allegations in Paragraph 113.

114. Defendants deny the allegations in Paragraph 114.

115. Defendants deny the allegations in Paragraph 115.

116. Defendants deny the allegations in Paragraph 116.

117. Defendants deny the allegations in Paragraph 117.

118. Defendants deny the allegations in Paragraph 118.

119. Defendants deny the allegations in Paragraph 119.

COUNT VI
(TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIP)

120. Defendants incorporate the admissions, denials and averments contained in Paragraphs 1 through 119 above as though fully rewritten herein.

121. Defendants deny the allegations in Paragraph 121.

122. Defendants deny the allegations in Paragraph 122.

123. Defendants deny the allegations in Paragraph 123.

124. Defendants deny the allegations in Paragraph 124.

125. Defendants deny the allegations in Paragraph 125.

126. Defendants deny the allegations in Paragraph 126.

127. Defendants deny the allegations in Paragraph 127.

128. Defendants deny the allegations in Paragraph 128.

129. Defendants deny the allegations in Paragraph 129.

130. Defendants deny the allegations in Paragraph 130.

131. Defendants deny the allegations in Paragraph 131.

COUNT VII
(DECLARATORY JUDGMENT)

132. Defendants incorporate the admissions, denials and averments contained in Paragraphs 1 through 131 above as though fully rewritten herein.

133. The allegation contained in Paragraph 133 states a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegation insofar as it relates to Defendants and the facts relevant to this proceeding.

134. Defendants deny the allegations in Paragraph 134.

135. Defendants deny the allegations in Paragraph 135.

136. Defendants deny the allegations in Paragraph 136.

137. Defendants deny the allegations in Paragraph 137.

PRAYER FOR RELIEF

Defendants deny any and all relief identified and sought by Plaintiff in the Prayer for Relief.

Defendants further deny any and all allegations in the First Amended Complaint which are not expressly admitted herein.

AFFIRMATIVE DEFENSES

1. Qwest's claims are barred in whole or in part by its failure to state a claim upon which relief can be granted.

2. Qwest's claims are barred in whole or in part by Qwest's unclean hands.

3. Qwest's claims are barred in whole or in part by its failure to plead fraud with particularity.
4. Qwest's claims are barred in whole or in part by statute and/or FCC rulings.
5. Qwest's claims are barred in whole or in part on the grounds that Defendants are entitled to the ESP exemption.
6. Qwest's claims are barred in whole or in part by its failure to join necessary and/or indispensable parties.
7. Qwest's claims are barred in whole or in part on the grounds that Defendants are not an IXC.
8. Qwest's claims are barred in whole or in part by the applicable statutes of limitations.
9. Qwest's claims are barred in whole or in part by the fact that it has been paid for all services it provided to its customers by those customers, the CLECs with which Broadvox, LLC contracted.
10. Qwest's claims are barred in whole or in part in that any claims it might have could only be asserted against Qwest's customers, the CLECs with which Defendants contracted.
11. Qwest's claims are barred in whole or in part by the doctrine of waiver.
12. Qwest's claims are barred in whole or in part by the doctrine of laches.
13. Qwest's state-law claims are barred in whole or in part by the doctrine of federal preemption, including the filed tariff doctrine.
14. Qwest's claims are barred in whole or in part by Qwest's failure to mitigate its damages.

COUNTERCLAIM

Broadvox, LLC ("Broadvox") hereby asserts the following Counterclaim against the Plaintiff in this action, Qwest Corporation ("Qwest"):

1. Broadvox restates and incorporates all of the admissions and denials in its Answer to Qwest's Complaint as if fully rewritten herein.

PARTIES

2. Broadvox is a Delaware limited liability company with its principal place of business in Dallas, Texas.

3. Qwest Corporation is a Colorado corporation with its principal place of business in Denver, Colorado. Qwest is a "Telecommunications Carrier" subject to the provisions of the Communications Act of 1934, as amended, 47 U.S.C. § 151, *et seq.*, (the "Act") and is subject to the jurisdiction of the Federal Communications Commission (the "Commission" or "FCC") and various state public service commissions.

JURISDICTION AND VENUE

4. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and 47 U.S.C. §§ 206-07, because the claims arise under the Act and raise questions of federal law.

5. The Court has jurisdiction pursuant to 28 U.S.C. § 1332 because Broadvox and Qwest are citizens of diverse states and the amount in controversy exceeds \$75,000.

6. The Court has supplemental jurisdiction over the pendant state law claims under 28 U.S.C. § 1367.

7. Broadvox's claim for declaratory relief is cognizable under 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c), because Qwest “resides” in this district due to its contacts with this district.

INTRODUCTION

9. Broadvox entered the IP communications market in 2001. It began as a small Voice over Internet Protocol (“VoIP”) service provider to other carriers, when the technology was in its infancy. Broadvox established a reputation for providing a high quality service at a very competitive price and business grew quickly. Broadvox has since established a nationwide network and is known as a preeminent “carriers’ carrier” for VoIP.

10. Broadvox is not a regulated telecommunications carrier. Rather, it provides unregulated information services through commercial arrangements with entities that originate calls using VoIP technology (as compared to the standard landline telephone calls that are originated in what is known as Time-Division Multiplexing (“TDM”) protocol). Once Broadvox’s customer passes its VoIP-originated calls to Broadvox, Broadvox transports those calls through its IP network to other non-party Local Exchange Carriers (“LECs”) with which it has commercial arrangements. These non-party LECs then either terminate the call directly to an end user customer or, as appropriate, transmits that call to another LEC that serves the intended end user recipient of the call. As is relevant hereto, Qwest, as an LEC that serves end user customers, received and continues to receive certain of the calls originated by Broadvox’s customers that are destined for the telephone numbers assigned by Qwest to its end users.

11. Qwest has repeatedly made clear that it is seeking compensation only on “Broadvox traffic that ‘both begin[s] and end[s] as ordinary circuit-switched telephone calls....’” Qwest Response to Motion to Dismiss (ECF No. 21) at 10 (quoting Qwest’s Complaint, ¶¶ 10, 52, 62-63. Thus, and as explained more fully below, the vast amount of traffic traversing

Broadvox's network (VoIP-originated calls) for termination to a Qwest end user is not subject to Qwest's complaint for damages.

12. Therefore, this case presents two relatively straight forward examinations: (1) whether Qwest is entitled to collect from Broadvox for any *de minimis* amount of non-IP originated traffic that may have been inadvertently sent from Broadvox's customers to Qwest's end user customers; and (2) whether Qwest was privileged to interfere with the contractual relationship between Broadvox and a non-party, Electric Lightwave, LLC ("ELP"), that carried traffic between Broadvox's network and Qwest's network.

ALLEGATIONS OF FACT

I. THE INTERCARRIER COMPENSATION REGIME

13. Historically, telephone service in the United States was largely provided by a single, integrated company, known as AT&T. In 1984, AT&T was split into "local" and "long distance" or interexchange companies ("IXCs"). The local telephone companies, known as LECs, maintained exclusive franchises to provide telephone service within defined geographic service territories. By contrast, the long distance portion of AT&T was faced with competition from other IXCs, such as MCI, Sprint, and many others.

14. IXCs generally utilized their own lines to carry calls across a state or across the country. They did not, however, own the telephone lines within the local exchange. Rather, those lines were owned by the LECs. To enable long distance competition, the FCC required LECs to allow IXCs to use their local lines for purposes of "originating" and "terminating" telephone calls. For example, when a consumer made a long distance call, the consumer's LEC would "originate" the call and hand it off to the IXC. The IXC would carry the call across its network and deliver it to a LEC to "terminate" the call to the dialed customer. Without this requirement,

LECs could have frustrated long distance competition by refusing to allow IXC's to use the local exchange network for routing long distance calls.

15. To compensate LECs for use of their networks, the FCC required IXC's to pay "access charges" for "originating" and "terminating" long distance telephone calls. These access charges were set forth in regulated price lists, known as tariffs, filed with the FCC and state public service commissions. These tariffs ensured that IXC's were treated fairly by making like service offerings available to all IXC's.

16. In 1996, Congress overhauled the nation's telecommunications laws with the Telecommunications Act ("1996 Act"). As part of the 1996 Act, Congress eliminated the exclusive franchises possessed by incumbent LECs ("ILECs") and preempted state "statute[s]," "regulation [s]," and other "legal requirement[s]" that "prohibit or have the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications services." 47 U.S.C. § 253(a). The effect of this section was to compel all states to open their local telecommunications market to competition from new entrants, known as competitive local exchange carriers ("CLECs").

17. Congress also required all telecommunications carriers - local and long distance carriers, alike - to interconnect their networks "directly or indirectly with the facilities and equipment of other telecommunications carriers." 47 U.S.C. § 251(a). Interconnection ensures that all consumers can place calls to and receive calls from consumers that are served by a different telecommunications carrier. Without an interconnection requirement, consumers that purchase service from one carrier would have no assurance of their ability to place calls to consumers served by other carriers.

18. There are two sets of rules that govern how interconnected carriers compensate each other when they work together to complete a telephone call. The first set of rules, governing “access charges,” predates the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (“Act” or “1996 Act”), and governs traditional long-distance toll calls.

19. Recognizing that it was creating a world in which carriers would be exchanging traffic in fundamentally different ways and new contexts, Congress also established a new intercarrier-compensation scheme, known as “reciprocal compensation.” *See* 47 U.S.C. § 251(a)(1) (“Each telecommunications carrier has the duty to interconnect ... with the facilities and equipment of other telecommunications carriers”); 47 U.S.C. § 251(b)(5) (“Each local exchange carrier has ... [t]he duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.”).

20. Under this new regime, which applies to the exchange of all “telecommunications” that ensued from the 1996 Act carriers either agree on rates in the open market or, failing that, the various state utility commissions set the appropriate rates following a Congressionally prescribed compulsory-arbitration process. *See* 47 U.S.C. § 252; *see also* 47 U.S.C. § 251(b)(5).

21. And hence the two sets of intercarrier-compensation rules. The old model – the access-charge regime – involves long-distance companies paying LECs for the latter’s role in handling the types of traditional long-distance voice traffic that existed before the 1996 Act passed. The new model – the reciprocal-compensation regime – regulates compensation for the exchange of traffic that became possible with the 1996 Act.

II. THE ACCESS-CHARGE REGIME AND THE ESP EXEMPTION

22. Under the access-charge regime, an IXC's compensation comes entirely from its long-distance customer, who selected that carrier to handle his or her outgoing long-distance traffic. *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, 16013 (1996) ("*Local Competition Order*"). The IXC then pays access charges to both the originating LEC and the terminating LEC for its use of (or access to) those LECs' networks. 47 C.F.R. § 69.5(b). A LEC's interstate access charges are set forth in tariffs filed with the FCC. *See* 47 U.S.C. § 204(a); 47 C.F.R. § 61.26 ("*Tariffing of competitive interstate switched exchange access services*").

23. When Congress passed the 1996 Act, it left the FCC's access-charge regime in place until the FCC revised those intercarrier-compensation rules. *See* 47 U.S.C. § 251(g) ("On and after February 8, 1996, each local exchange carrier, to the extent that it provides wireline services, shall provide exchange access...to interexchange carriers and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding February 8, 1996...until such restrictions and obligations are explicitly superseded by regulations prescribed by the Commission after February 8, 1996.").

24. "Access charges historically have included 'significant implicit subsidies' and by definition have been well above cost." *Sw. Bell Tel., L.P. v. Mo. Pub. Serv. Comm.*, 461 F. Supp. 2d 1055, 1075 (E.D. Mo. 2006), *aff'd*, 530 F.3d 676 (8th Cir. 2008) (citing *In re Access Charge Reform*, 12 FCC Rcd. 15982, ¶¶ 39-40 (1997) and quoting *Competitive Telecomms. Ass'n v.*

FCC, 309 F.3d 8, 14-15 (D.C. Cir. 2002)). Thus, a carrier “that collects access charges for terminating traffic receives more money than it would if it exchanged reciprocal compensation for the same traffic.” *Sw. Bell*, 461 F. Supp. 2d at 1075.

25. Long before the 1996 Act was passed, however, the access-charge regime was subject to a substantial carve-out for carriers providing “enhanced services,” known as the “ESP exemption.” As the Supreme Court has described it, enhanced services are “computer-processing applications that act on the subscriber’s information, such as voice and data storage services, as well as ‘protocol conversion,’ *i.e.*, the ability to communicate between networks that employ different data-transmission formats.” *Nat’l Cable & Telecomms. Assn. v. Brand X Internet Servs.*, 545 U.S. 967, 968 (2005).

26. In brief, to avoid the stifling effects that the imposition of access charges could have on “enhanced service” providers and their nascent technologies, the FCC exempted such providers from paying access charges. See *In re Amendments of Part 69 of the Commission’s Rules Relating to Enhanced Service Providers*, 3 FCC Rcd. 2631, 2631 ¶ 2 (1988) (characterizing ESP exemption as a temporary measure to avoid “unduly” burdening the Internet Service Provider industry); *In re Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, 6 FCC Rcd. 4524, 4535 ¶ 60 (1991) (retaining ESP exemption); *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, n.60, ¶ 4 (2004) (“*AT&T Access Charge Order*”) (confirming vitality of ESP exemption).

27. Thus, both before and after 1996, LECs have been entitled to impose access charges on traditional long-distance phone traffic, so long as that traffic was not an enhanced service, otherwise known as an “information service.”

III. VOIP-ORIGINATED CALLS ARE ENHANCED/INFORMATION SERVICES AND NOT SUBJECT TO ACCESS CHARGES

28. Information – or enhanced – services are “computer-processing applications that act on the subscriber’s information, such as voice and data storage services, as well as ‘protocol conversion,’ *i.e.*, the ability to communicate between networks that employ different data-transmission formats.” *Brand X Internet Servs.*, 545 U.S. at 968. An “information service” provider is defined in the Act as one that offers “a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications.” 47 U.S.C. § 153(20).¹ As the court observed in *Southwestern Bell*, “[n]et-protocol conversion is a determinative indicator of whether a service is an enhanced or information service.” 461 F. Supp. 2d at 1081-82 (citing *In re Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, 11 FCC Rcd. 21905 ¶ 104 (1996)). When a customer can “send information into a network in one protocol and have it exit the network in a different call” – like when Broadvox’s VoIP customers call Qwest’s traditional landline (or POTS – “plain old telephone service”) customers – a net-protocol conversion occurs. 11 FCC Rcd. 21905 ¶ 104. Thus, when carriers provide a service that involves a net change in the call’s protocol, they are providing something more than plain old telephone service, and therefore the FCC’s access-charge rules do not apply.

29. The court in *Southwestern Bell*, for example, ruled that “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

¹ The court in *Southwestern Bell* properly noted that VoIP-originated “traffic’s status as an ‘information service,’ and not a telecommunications service,’ does not take it beyond the scope of the ‘telecommunications’ to which reciprocal compensation applies. By definition, information services are provided ‘*via telecommunications.*’” *Sw. Bell*, 461 F. Supp. 2d at 1081 n.19 (emphasis in original) (quoting 47 U.S.C. § 153(20)).

information via telecommunications.” 461 F. Supp. 2d at 1082 (quoting 47 U.S.C. § 153(20)). The court recognized the protocol conversion that happened during a VoIP-originated call’s path: “The communication originates at the caller’s location in IP protocol, undergoes a net change in form and content when it is transformed at the CLEC’s switch into the TDM format recognized by conventional PSTN telephones, and ends at the recipient’s location in TDM.” *Id.* Thus, the court in *Southwestern Bell* held that “IP-PSTN is an information service.” *Id.*; see also *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm.*, 290 F. Supp. 2d 993, 999-1001 (D. Minn. 2003) (The court there held “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.’” *Id.* (quoting 47 U.S.C. § 153(20)).

30. Accordingly, access charges do not apply to the VoIP-originated traffic – the lion’s share of traffic traversing Broadvox’s network – because that traffic is an “information service” that is exempt from access charges.

IV. QWEST HAS VIOLATED ITS TARIFF BY ATTEMPTING TO ASSESS ACCESS CHARGES ON BROADVOX

31. Turning then to the *de minimis* traffic that may conceivably be subject to the “access charge” regime, an examination of Qwest’s tariff establishes that Qwest is not entitled to collect any such payments from Broadvox.

32. As an ILEC, Qwest has filed a tariff with the Federal Communications Commissioner for interstate access services that it provides and with various state utility commissions for intrastate access services. Qwest attempts to collect for switched access services that it alleges to have provided to Broadvox, even though, as described further below, Qwest’s switched access tariff does not entitle it to collect such charges from Broadvox.

33. The filed rate doctrine, also known as the filed tariff doctrine, is a common law construct that originated in judicial and regulatory interpretations of the Interstate Commerce Act, and was later applied to the Communications Act. It has been applied consistently to a variety of regulated industries for almost a century. The filed rate doctrine stands for the principle that a validly filed tariff has the force of law, and may not be challenged in the courts for unreasonableness, except upon direct review of an agency's endorsement of the rate. *E.g.*, *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 117 (1990); *Telecom Int'l America, Ltd. v. AT&T Corp.*, 67 F. Supp. 2d 189, 216-17 (S.D.N.Y. 1999); *MCI Telecomms. Corp. v. Dominican Comm'ns Corp.*, 984 F. Supp. 185, 189 (S.D.N.Y. 1997).

34. The filed rate doctrine is motivated by two principles. It (1) prevents carriers from engaging in price discrimination between ratepayers and (2) preserves the exclusive role of federal agencies in approving "reasonable" rates for interstate telecommunications services by keeping courts out of the rate-making process. *Marcus v. AT&T Corp.*, 138 F.3d 46, 58 (2nd Cir. 1998). Thus, if a carrier acquires services under a filed tariff, only the rate contained in the tariff for that service will apply. The filed rate doctrine is applied strictly, and it requires a party that receives tariffed services to pay the filed rates, even if that party is dissatisfied with the rates or alleges fraud. *Marcus*, 138 F.3d at 58-59. However, to be entitled to payment pursuant to the filed tariff doctrine, the carrier must first establish that it is providing a tariffed service, which Qwest is not.

35. Qwest's interstate tariff provides that "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." Qwest Tariff ¶ 6.1, General (emphasis added)

36. Qwest's interstate access tariff states that terminating access charges are assessed for providing "the transmission facilities between the *customer's premises* and the end office switch(es) where the customer's traffic is switched to originate or terminate its communications." Qwest Tariff ¶ 6.1.2(A)(1) (emphasis added). The "transmission path permits the transport of calls . . . in the terminating direction (from the *customer's premises* to the end office switch) . . ." *Id.* (emphasis added).

37. The tariff defines "Customer" as:

The 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, including Interexchange Carriers (Ics), end users and interconnectors.

Qwest Tariff, § 2.6 (emphasis added).

38. The tariff defines "Premises" as:

The term "Premises" denotes a building, portion of a building in a multi-tenant building or buildings on continuous property (except Railroad Right-of-Way, etc.) not separate by a public highway. It may also denote a customer-owned enclosure or utility vault located aboveground on private property or on customer acquired Right-of-Way. Except for an end user that offers Telecommunications Services exclusively as a reseller, this term is not to be limited to one building, but applies as well to a complex, or campus-type configuration of buildings.

Id.

39. Qwest has not provided a "two-point electrical communications path between a [Broadvox] premises and an end user's premises." Rather, to the extent it has provided any such service, it has been provided only between the premises of the non-party LECs and Qwest's end user's premises. At no time did Qwest receive traffic from Broadvox's premises.

40. Nor has Broadvox "subscribed" to Qwest's switched access services. Indeed, pursuant to Qwest's tariff, "[w]hen ordering Switched Access Service, the *customer shall specify* on the order for service, the type and number Entrance Facilities to terminate at the customer's SWC, the desired interoffice transport, direct or tandem routing, the number of lines and/or trunks to be provisioned at an end office or access tandem and the desired directionality." Qwest Tariff, ¶ 6.6.1. At no time did Broadvox specify on an "order for service" any of the aforementioned information.

41. Accordingly, Broadvox is not a "customer" of Qwest's switched access tariff and Qwest did not provide Switched Access Service to Broadvox.

42. Indeed, Qwest has never treated Broadvox as a "customer" pursuant to its filed tariff. By way of example, and without limitation, Qwest's tariff requires Qwest to "bill on a current basis all charges incurred by and credits due to the customer under this Tariff attributable to services, including, but not limited to, Maintenance of Service as set forth in 13.4, following, established or discontinued during the preceding billing period. In addition, [Qwest] shall bill in advance charges for all services to be provided during the ensuing billing period except for charges associated with service usage and for the Federal Government, which will be billed in arrears." Qwest Tariff, ¶ 2.4.1(B). Qwest did not render invoices to Broadvox for the switched access services it alleges to have provided.

43. Accordingly, even if Broadvox were a "customer" pursuant to Qwest's tariff, which it is not, Qwest has failed to comply with the express terms of its tariff, which requires a customer to be "bill[ed] on a current basis." *Id.*

44. Upon information and belief, Qwest has never sent invoices to Broadvox because Qwest recognized that Broadvox was not and is not its customer and that Qwest is not lawfully

entitled to collect access charges from Broadvox. Rather, at all times relevant hereto, Qwest viewed the non-party carriers who delivered the traffic directly to Qwest's network as Qwest's customers pursuant to the tariff or other applicable contractual agreements.

45. Upon information and belief, Qwest invoiced those non-party carriers charges associated with the delivery of traffic and received remuneration from those non-party carriers pursuant to the tariff or other applicable contractual agreements. Nevertheless, Qwest now wrongfully seeks a windfall by retaining the payments it has already received from those non-parties while attempting to extort further payment from Broadvox.

V. QWEST'S INTENTIONAL INTERFERENCE WITH BROADVOX'S BUSINESS RELATIONS WITH ELI

46. On or around November 16, 2005, Broadvox entered into a contract with ELI, a LEC having its then principal place of business at 4400 Northeast 77th Avenue, Vancouver, Washington.

47. Pursuant to that contract, Broadvox ordered from ELI two primary rate interfaces ("PRIs").

48. Broadvox agreed to transmit to ELI, and ELI agreed to receive through those PRIs, Broadvox's customers' VoIP communications traffic.

49. ELI was to then transmit Broadvox's VoIP traffic to other companies, including Local Exchange Carriers ("LECs") such as Qwest for termination to the end-user in those companies' calling areas.

50. On August 15, 2006, however, Broadvox was notified by ELI that Qwest had been complaining to ELI about Broadvox's transmission of non-IP originated traffic to ELI and represented to ELI that Broadvox was continuing to send non-IP originated traffic to ELI for termination with Qwest.

51. Broadvox investigated the allegations raised by ELI and discovered that a *de minimis* amount of non-IP originated traffic may have been inadvertently sent by a Broadvox customer to ELI for termination through its PRIs. Broadvox took prompt corrective action to address this situation. Upon information and belief, the problem was corrected to ELI's satisfaction in or about August 2006, and the parties continued to do business with each other in good faith.

52. On information and belief, and based in part on Qwest's false accusations in its Complaint, and on the allegations of other ELI customers whose contracts were terminated because of Qwest's false accusations, Qwest nevertheless continued making representations to ELI about Broadvox, including that Broadvox was sending non-IP originated traffic, and that Broadvox was manipulating, masking or altering the originating call information (or Automatic Number Identification, hereafter "ANI") embedded in the data stream of calls Broadvox was transmitting to ELI.

53. Broadvox has never manipulated, masked or altered any ANI for the purpose of avoiding access charges to Qwest or anyone else.

54. On information and belief, Qwest used these false and misleading statements for the purpose of pressuring ELI to wrongfully terminate its contractual relationship with Broadvox.

55. On or around November 14, 2006, ELI began shutting down Broadvox's PRIs, and told Broadvox that they had been placed in "temporary disconnect" status for "legal reasons."

56. On information and belief, however, Qwest has slandered Broadvox to ELI, induced ELI to terminate its contract with Qwest, and caused substantial damage to Broadvox's business and reputation.

57. Further, Qwest has no evidence that the Defendants ever manipulated ANI and at the time of making its representations to ELI had no such evidence.

58. Indeed, Qwest has filed a cookie-cutter complaint that is word-for-word identical to the complaint it filed against nine different entities, sued Broadvox's non-operating parent company without any good faith basis for doing so, sued BroadvoxGo! for conduct that preceded BroadvoxGo!'s existence, all without any differentiating or qualifying descriptions, and all in an attempt to recklessly assassinate the character, good names and reputations of Defendants to unfairly compete with it.

59. Prior to filing this case, Qwest filed the identical case in the United States District Court for the Western District of Washington. That case was dismissed because Broadvox was not subject to personal jurisdiction in Washington. While the case was pending there, however, Qwest's attorneys were disqualified for violating conflict of interest rules. These events highlight Qwest's reckless disregard for the rights of others, as well as the real motive for its filing these actions against Broadvox and Qwest's other competitors, namely, to kill competition.

COUNT I
(DEFAMATION)

60. Broadvox restates and incorporates all of the statements contained in Paragraphs 1 through 59 above as though fully rewritten herein.

61. On information and belief, Qwest has negligently, knowingly and/or purposefully accused Broadvox of unlawful acts relating to the avoidance of access charges.

62. Specifically, on information and belief, Qwest has told ELI and possibly others that Broadvox is manipulating, masking or altering ANI, and/or taking other actions such as improperly disguising long-distance traffic as local traffic through the improper use of PRIs.

63. These statements to third parties were published orally and/or in writing.

64. Qwest was not legally privileged to make such false and defamatory statements.

65. On information and belief, at least one entity, ELI, has terminated its relationship with Broadvox based on such statements.

66. As a direct and proximate result of Qwest's conduct, Broadvox has suffered substantial damages.

67. Qwest's conduct constitutes defamation, and Qwest is liable to Broadvox for the aforesaid damages as a result.

COUNT II
(TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIP)

68. Broadvox restates and incorporates all of the statements contained in Paragraphs 1 through 69 above as though fully rewritten herein.

69. Broadvox had a contract with ELI, as described above.

70. Qwest intentionally interfered with Broadvox's contract with ELI by inducing ELI to terminate its contract with Broadvox.

71. It did so by, among other things, improperly billing ELI for access charges to which Broadvox's traffic was not subject, and on information and belief by telling ELI that Broadvox was improperly avoiding access charges through the use of those PRIs and by manipulating ANI, among other things.

72. Qwest's conduct was dishonest and served no legitimate business objective other than to destroy competitors.

73. As a direct and proximate result of Qwest's conduct, Broadvox was first unable to terminate its customer's traffic after ELI suspended its service, and later incurred an increased cost in terminating such traffic when it had to do so through companies other than ELI.

74. Qwest's conduct constitutes tortious interference with business relationship, and it is liable to Broadvox for damages, in an amount to be proven at trial.

COUNT III
(VIOLATIONS OF 47 U.S.C. §§ 201(B))

75. Broadvox restates and incorporates all of the statements contained in Paragraphs 1 through 74 above as though fully rewritten herein.

76. Section 201(b) requires that all charges, practices, classifications, and regulations for and in connection with communication service be just and reasonable; and any charge, practice, classification, or regulation that is unjust or unreasonable is unlawful.

77. Qwest's actions as described above were unjust and unreasonable actions, charges, practices, classifications and regulations that violated § 201(b).

78. By deliberately attempting to collect terminating switched access charges from Broadvox for calls that do not qualify for such charges, Qwest has abused its regulatory status as a common carrier in an effort to extract a windfall from Broadvox.

79. As a direct and proximate result of Qwest's conduct, Broadvox has sustained actual harm in its business or property, which Broadvox will prove at trial. Under § 206, Qwest is liable to Broadvox for the "full amount of damages sustained in consequence of the violations" of the Act. Broadvox is entitled to recover these damages, including attorneys' fees, pursuant to 47 U.S.C. §§ 206 and 207.

COUNT IV
(VIOLATIONS OF 47 U.S.C. §§ 203)

80. Broadvox restates and incorporates all of the statements contained in Paragraphs 1 through 79 above as though fully rewritten herein.

81. Section 203(c) provides that “No carrier, unless otherwise provided by or under authority of this Act, shall engage in or participate in such communications unless schedules have been filed and published in accordance with the provisions of this Act and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation, for such communication, or for any service in connection therewith, between the points named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities, in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.” Section 203(c), therefore, requires carriers like Qwest to provide service only pursuant to tariffs, and Qwest cannot impose charges, classifications or rules or regulations on any person except as strictly provided for by its approved tariff.

82. Qwest has exchange access tariffs with schedules of charges that prescribe the terms, conditions, rules, regulations and classifications that guide and control the provision of exchange access service and the “carrier’s carrier charges” or prices for access service.

83. Qwest’s attempted actions, charges, practices, classifications and regulations under which Qwest insists that Broadvox is required to pay Qwest access charges is therefore inconsistent with Qwest’s tariff and violates § 203(c). Qwest intends this scheme to result in a windfall by which it is paid twice for the termination of the same traffic.

84. Qwest's violation of section 203 has caused Broadvox to suffer actual and consequential economic damages in an amount to be proven at trial. Broadvox is entitled to recover these damages, including attorneys' fees, pursuant to 47 U.S.C. §§ 206 and 207.

COUNT V
(DECLARATORY JUDGMENT)

85. Broadvox restates and incorporates all of the statements contained in Paragraphs 1 through 84 above as though fully rewritten herein.

86. Qwest seeks to collect payment from Broadvox for purportedly providing terminating switched access services.

87. The effort to collect these charges from Broadvox is not authorized by Qwest's filed tariff.

88. Qwest's actions violate relevant provisions of the Communications Act, as alleged above.

89. Broadvox is entitled to judgment under 28 U.S.C. § 2201(a) declaring that, *inter alia*:

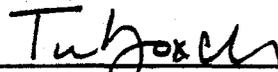
- a. Qwest did not provide a two-way communications path between a Broadvox premises and an end-users premises,
- b. Broadvox is not an Interexchange Carrier;
- c. Broadvox did not "subscribe" to Qwest's Switched Access Services;
- d. Qwest did not invoice Broadvox in accordance with its tariff;
- e. Broadvox is not a customer under Qwest's tariff;
- f. Qwest has violated the Communications Act; and
- g. Qwest is not entitled to payment from Broadvox.

PRAYER FOR RELIEF

WHEREFORE, Broadvox prays that the Court grant the following relief:

- A. An award of compensatory damages in an amount to be proven at trial.
- B. An award of punitive damages.
- C. An award of Broadvox's attorneys' fees and costs.
- D. Such other relief as this Court deems just and equitable.

Respectfully submitted this 23rd day of December, 2010



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CERTIFICATE OF SERVICE

I hereby certify that on December 23rd, 2010, I filed and served the foregoing on opposing counsel via telecopy and certified mail, return receipt requested:

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