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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Filing of Annual :  
Reports for Calendar Year 2013 by : Case No. 14-01-AU-RPT  
all Regulated Entities. :

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APPLICATION FOR REHEARING  
AND  
MOTION FOR SPECIAL ORDER FOR STAY  
OF  
BROADVOX-CLEC, LLC

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PUCO

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Broadvox-CLEC, LLC ("Broadvox"), pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35(A), Ohio Administrative Code ("OAC"), hereby applies for rehearing from the Commission's August 20, 2014 finding and order in this docket, and, more specifically, from the Commission's determination that Broadvox's certificate (CLEC Certificate No. 90-9302) should be revoked for Broadvox's failure to pay its 2013 PUCO assessment of \$100. As more fully discussed in the accompanying supporting memorandum, Broadvox submits that the Commission's finding and order is unreasonable and unlawful on the following ground:

Where the failure of a regulated CLEC to remit payment of its annual PUCO assessment was obviously an oversight, and where the amount due was nominal, the extraordinary sanction of revoking the entity's certificate is unreasonable and inappropriate and would result in irreparable harm to the CLEC and in a disruption of service to its customers, including other carriers that rely on service provided by the CLEC pursuant to interconnection agreements or tariffs.

To prevent disruption of service to its customers, Broadvox hereby moves for a special order pursuant to Section 4903.10(B), Revised Code, staying the revocation of its certificate until such time as the Commission has an opportunity to consider its application for rehearing. If the

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Commission acts on the application for rehearing without first granting the requested stay, Broadvox requests that its certificate be reinstated retroactively to the date of the finding and order.

WHEREFORE, Broadvox respectfully requests that the Commission grant its application for rehearing and reinstate its certificate. Broadvox further requests that the Commission stay the revocation of its certificate pending its ruling on the application for rehearing, or, if the Commission acts on the application without first granting the requested stay, that the rehearing entry reinstate its certificate *nunc pro tunc*.

Respectfully submitted,

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MEMORANDUM IN SUPPORT  
OF  
APPLICATION FOR REHEARING  
AND  
MOTION FOR SPECIAL ORDER FOR STAY  
OF  
BROADVOX-CLEC, LLC

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In its finding and order of August 20, 2014 (“Order”), the Commission identified certain regulated entities that failed to file their annual reports to the Commission in a timely manner or that had failed to remit payment of the 2013 PUCO assessment required by Section 4905.10, Revised Code. With respect to the latter, the Commission noted that its January 22, 2014 finding and order in this docket identified the regulated entities that had not paid the 2013 PUCO assessment and had granted each such company until February 13, 2014 to remit payment or to show cause why its certificate(s) should not be revoked.<sup>1</sup> The Commission went on to find that certificates of the companies that had not acted in response to this earlier directive should be revoked, that each listed company should immediately notify its customers that it was no longer permitted to operate in Ohio, and that any company that continued to provide service under a cancelled certificate could be subject to a \$10,000 per day forfeiture pursuant to Section 4905.04, Revised Code.<sup>2</sup>

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<sup>1</sup> Order, 3.

<sup>2</sup> Order, 4.

Broadvox-CLEC, LLC (“Broadvox”) is a Delaware limited liability company with headquarters in Cleveland, Ohio. Broadvox is a Commission-certified competitive local exchange carrier (“CLEC”) and has, for the past five years, provided Voice over Internet Protocol (“VoIP”)-based telecommunications services in Ohio under Certificate No. 90-9302. Broadvox was identified in the Order as one of the regulated entities that failed to pay its 2013 PUCO assessment amount, which, in Broadvox’s case, was the minimum assessment of \$100. Thus, Broadvox was one of the companies whose certificate was revoked. Although Broadvox acknowledges that it failed to pay the 2013 PUCO assessment, Broadvox submits that, under the circumstances, the revocation of its certificate was unreasonable and inappropriate.

At the outset, Broadvox would emphasize that it takes its regulatory obligations very seriously. Broadvox has routinely paid both its PUCO and OCC assessments in a timely manner, and has also filed its annual reports in compliance with the applicable rule. Indeed, as evidenced by the copy of the cancelled check attached hereto as Attachment A, Broadvox paid its 2013 OCC assessment on December 4, 2013, and, as a review of the Commission records will reflect, Broadvox submitted its 2013 annual report on April 24, 2014, well in advance of the April 30, 2014 deadline for the 2013 annual reports. Thus, Broadvox’s failure to remit its 2013 PUCO assessment was clearly unintentional. Upon receipt of the Order, Broadvox immediately initiated the process to remit the \$100 payment to the Commission, and said payment will be delivered to the Commission forthwith.

Broadvox is currently conducting an internal investigation to determine where the fault lies for the failure to pay the 2013 assessment, and suspects, but has not yet confirmed, that the fact that the two Ohio agency assessments were for the same amount may have created confusion – *i.e.*, the personnel responsible for arranging for the payments may have assumed that the two

assessments were one and the same, and that the payment of the OCC assessment satisfied Broadvox's obligations in this regard. In addition, Broadvox is also investigating whether the January 22, 2014 finding and order containing the show cause requirement was actually received, and, if it was received, why the PUCO assessment was not paid at that time. Based on the results of its investigation, Broadvox will implement whatever internal measures are necessary to assure this situation does not occur again in the future.

Broadvox understands that the Commission expects regulated entities comply with its rules and that penalties for noncompliance may be appropriate in certain instances. However, Broadvox believes that, in this instance, the penalty of revoking its certificate is totally out of proportion to the offense of failing to make a \$100 payment, particularly when the failure to make the payment was completely inadvertent and when the question of whether Broadvox actually received the January 22, 2014 show cause notice has not yet been resolved. Further, not only would the revocation of its certificate potentially cause Broadvox to lose all its customers, it would also be extremely disruptive to the customers themselves, including other carriers that rely on Broadvox for service pursuant to interconnection agreements or its tariffs. These customers would be left without service until they could make other arrangements, and those new arrangements might be less favorable than their existing arrangements with Broadvox. As the Ohio Supreme Court noted in *Adams v. Pub. Util. Comm.*, 141 Ohio St. 255, 258 (1943), "(c)ertificates of public convenience and necessity are granted for the benefit of the public and not the recipients of the certificates. Anticipated benefits to the applicants or possible detriment to other certificate holders are only incidental and secondary." Here, the revocation of Broadvox's certificate would also directly penalize Broadvox's customers, an outcome that is clearly contrary to sound public policy.

If the Commission agrees that the revocation of Broadvox's certificate is not appropriate under the circumstances, but determines that some penalty is warranted, Broadvox would respectfully submit that a civil forfeiture of \$1,000 would be far more proportional to the offense than certificate revocation, which would have dire consequences for both Broadvox and its customers. Indeed, the Order itself states that "any listed entity seeking to restore its revoked certificate . . . may be assessed a forfeiture of \$1,000 pursuant to R.C. 4905.04, in addition to paying any balance owed."<sup>3</sup> Broadvox would readily accept such a penalty, and would promptly comply with an order directing it to pay a \$1,000 civil forfeiture.

Section 4903.10(B), Revised Code, provides that, where the "application for rehearing has been filed before the effective date of the order as to which rehearing is sought, the effective date of such order, unless otherwise ordered by the commission, shall be postponed or stayed pending the disposition of the matter by the commission or by operation of law." However, in this instance, the revocation of Broadvox's certificate was effective as of the date of the Order.<sup>4</sup> Thus, by the motion coupled with the foregoing application for rehearing, Broadvox seeks a special order from the Commission staying the revocation of its certificate until the Commission has the opportunity to consider its rehearing application. Special orders of this type are specifically contemplated by the following provision of Section 4903.10(B), Revised Code:

In all other cases the making of such an application [*for rehearing*] shall not excuse any person from complying with the order, or operate to stay or postpone the order, without a special order of the commission.

In view of the irreparable harm Broadvox will suffer and the disruption of service its customers will experience if the certificate is not reinstated, Broadvox respectfully requests that

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<sup>3</sup> Order, 4.

<sup>4</sup> *Id.*

the Commission issue a special order staying the order revoking its certificate until the Commission has an opportunity to consider the application for rehearing. However, in the event that the Commission elects to act on the application for rehearing without considering the motion for a stay, Broadvox urges the Commission to reinstate its certificate retroactive to the date of the Order so that Broadvox will not be subject to additional penalties for continuing to serve its customers during the period its rehearing application was pending.

WHEREFORE, Broadvox respectfully requests that the Commission grant its application for rehearing and reinstate its certificate. Broadvox further requests that the Commission stay the revocation of its certificate pending its ruling on the application for rehearing, or, if the Commission acts on the application without first granting the requested stay, that the rehearing entry reinstate its certificate *nunc pro tunc*.

Respectfully submitted,

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## **ATTACHMENT A**



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FOR DEPOSIT ONLY  
PAY TO THE ORDER OF  
TREASURER OF THE STATE OF OHIO  
CONSUMERS' COUNSEL