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October 6, 2016

**VIA ELECTRONIC SUBMISSION**

Hon. Kathleen H. Burgess  
Secretary to the Commission  
New York State Public Service Commission  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350  
secretary@dps.ny.gov

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RE: *In re Petition of Telxmedia, Inc. for Designation  
as an Eligible Telecommunications Carrier, Case  
No. 16-C-0534*

Dear Secretary Burgess:

As attorneys for AT&T Corp. in connection with the above-referenced matter, we hereby submit an electronic copy of the following for filing: AT&T Corp.'s Response in Opposition to Telxmedia Inc.'s Application for Designation as an Eligible Telecommunications Carrier.

Should the Commission have any questions, please do not hesitate to contact us.

Sincerely,



Andrew J. Calica

Enclosure

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

In the Matter of the Application of	)	
TelxMedia Inc. for	)	
Designation as an Eligible	)	Case No. 16-C-0534
Telecommunications Carrier	)	
Pursuant to 47 U.S.C. 214(e)	)	
	)	

**AT&T CORP.'S RESPONSE IN OPPOSITION TO TELXMEDIA INC.'S  
APPLICATION FOR DESIGNATION AS  
AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

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*Attorneys for AT&T Corp.*

AT&T Corp. respectfully submits this response in opposition to TelxMedia Inc.'s ("TelxMedia") Application for Designation as an Eligible Telecommunications Carrier ("Application" or "App.") pursuant to 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.101, and the rules and regulations of this Commission ("NYPSC"). The NYPSC's designation of TelxMedia as an Eligible Telecommunications Carrier would be contrary to the public interest because there is reason to believe that TelxMedia (i) is engaged in improper and possibly fraudulent billing and other practices, (ii) may not be providing local exchange services, and (iii) may not be providing universal service. In addition, as explained below, at least one other company owned by the President and CEO of TelxMedia, Faizal Hassad, is alleged by AT&T Corp. to have a history of engaging in improper and fraudulent practices. Accordingly, TelxMedia's application should be denied.

**I. TELXMEDIA IS IMPROPERLY CHARGING RURAL END OFFICE RATES**

Invoices submitted to AT&T Corp. by TelxMedia dated June, July, and August 2016 (which AT&T Corp. can submit to the NYPSC under seal at the NYPSC's request) demonstrate that TelxMedia is billing AT&T Corp. at National Exchange Carrier Association ("NECA") end office termination rates. But only competitive local exchange carriers ("CLECs") that meet the narrow eligibility criteria for the Federal Communication Commission's rural exemption are allowed to claim the rural exemption and to bill NECA rates. 47 C.F.R. § 61.26(a)(6); *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9954-55, ¶ 76 (2001) (the rural exemption is available for "a CLEC competing with a non-rural ILEC, where no portion of the CLEC's service area falls within: (1) any incorporated place of 50,000 inhabitants or more, . . . or (2) an urbanized area, as defined by the Census Bureau"). TelxMedia does not meet these criteria. For example, the address contained in TelxMedia's

tariff on file with the FCC, which is the same address that TelxMedia provided in connection with its Application (at p.2), indicates that TelxMedia is ineligible for such exemption. Specifically, Long Island City falls squarely within the New York—Newark, NY-NJ-CT urbanized region (which is the largest urbanized area in the country) as defined by the United States Census Bureau. *See* 2010 Census – Urbanized Area Reference Map: New York—Newark, NY-NJ-CT [http://www2.census.gov/geo/maps/dc10map/UAUC\\_RefMap/ua/ua63217\\_new\\_york--newark\\_ny--nj--ct/DC10UA63217.pdf](http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/ua63217_new_york--newark_ny--nj--ct/DC10UA63217.pdf). Accordingly, TelxMedia is improperly overcharging AT&T Corp. for the exchange access services it allegedly is providing to AT&T Corp.

## **II. TELXMEDIA MAY BE ENGAGING IN ACCESS STIMULATION**

AT&T Corp. has reviewed its own call detail record summary data relating to traffic exchanged with it by TelxMedia for the most recent few months of data. This data shows that the interstate minutes of use being terminated by AT&T Corp. to TelxMedia substantially exceed the interstate minutes of use that TelxMedia purports to originate and then pass on to AT&T Corp. This traffic data reflects monthly ratios of interstate traffic allegedly terminated by TelxMedia in New York and interstate traffic allegedly originated by TelxMedia in New York—which ratios are well in excess of the 3:1 ratio that the FCC has established as one of the principal markers of improper access stimulation that would subject TelxMedia to the FCC’s special rules applicable to CLECs engaging in access stimulation (again, AT&T Corp. can provide this data under seal to the NYPSC if the NYPSC so desires). This suggests that TelxMedia is engaged in improper access stimulation as defined by the FCC, *see* 47 C.F.R. § 61.3(bbb), and constitutes another reason why TelxMedia’s billing at NECA rates is improper. *See* 47 C.F.R. § 61.26(g)(1) (CLEC engaged in access stimulation “shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the

access tariff of the price cap LEC with the lowest switched access rates in the state”). In addition, AT&T Corp. has performed an analysis of calls terminating to TelxMedia numbers and has found that a significant amount of such traffic is terminated to virtual slot machine services, suggesting that TelxMedia may not be providing local exchange services at all.

### **III. TELXMEDIA’S TRAFFIC APPEARS TO BE MANIPULATED AND POSSIBLY FRAUDULENT**

AT&T Corp.’s investigation of the 5,400,000 minutes of use billed to AT&T Corp. by TelxMedia thus far has uncovered facts indicating that some or all of such traffic is manipulated and may be fraudulent. To start, it appears that the minutes for which TelxMedia has billed AT&T Corp. switched access charges are the result of calls placed using unlimited calling plans that Mr. Hassad himself has established with other carriers. In addition, the calling party numbers associated with these calls are New York telephone numbers that appear to have been hacked or spoofed from legitimate businesses or otherwise have been disguised in a fashion that makes the calls appear as though they are being placed from legitimate businesses. As discussed, much of the traffic for which TelxMedia has billed AT&T Corp. terminating access charges appears to have been placed to virtual slot machine services. As further evidence of this improper activity, AT&T Corp.’s investigation has determined that much of the billed traffic is for calls that were each exactly 60 minutes in length, suggesting that the calls were likely placed by an automated system, not by true end users. Taken together, this information suggests that most if not all of the traffic for which TelxMedia has billed AT&T Corp. switched access charges is not legitimate traffic.

### **IV. TELXMEDIA MAY NOT PROVIDE UNIVERSAL SERVICE**

In addition to the above-described questionable practices, statements made on TelxMedia’s website indicate that TelxMedia may not meet the requirements set forth in 47

U.S.C. § 254(c) and 47 C.F.R. § 54.101(a), despite the representations in TelxMedia's Application (at pp. 2-4). Specifically, the "Terms and Conditions" listed on TelxMedia's website states the following under "Services & Conditions":

3.3. TelxMedia provides Free and prepaid services. For prepaid services You must keep a positive balance to retain prepaid services with TelxMedia. You must pay all negative balances immediately. Customer agrees to keep a positive balance in customer's account at all times and agrees to pay the rate in which the customer signed up for to destinations [sic]. Customer agrees to pay any and all charges that customer incurs while using TelxMedia's service.

**3.4. *TelxMedia services are not intended for use as a primary telephone source for business or residential users. Our services are designed for entertainment and recreational use[.]***

3.5a. TelxMedia unlimited packages are intended for residential use only, solely for live dialog between two individuals. Unlimited voice services may NOT be used for conference calling, call forwarding, monitoring services, data transmissions, transmission of broadcasts, transmission of recorded material, or other connections which do not consist of uninterrupted live dialog between two individuals.

3.5b. TelxMedia provides conference services (<http://www.openconferenceusa.com>) and "Call to Listen Radio" (<http://www.radiolinknow.com>) FREE for all in network users

3.5c TelxMedia charges \$.10 (10 cents per minute) for calls. To conference, numbers outside of our network [sic] [.]

...

**3.7. *TelxMedia does NOT provide Directory Assistance or Emergency Services.***

See <http://telxmedia.com/terms-conditions.php> (emphasis added). Under "Product Configuration," the website states: "4.1. ***TelxMedia services are not intended for the novice user.*** TelxMedia does not offer technical assistance for third party devices. This includes PBX Servers/Switches, IP Phones and ATA Adapters." *Id.* (emphasis added). Such publicly available statements regarding its service are at odds with the statements made in TelxMedia's Application.

V. **AT LEAST ONE OTHER COMPANY OWNED BY TELXMEDIA'S PRESIDENT & CEO, FAIZAL HASSAD, IS ALLEGED TO HAVE BEEN INVOLVED IN OTHER FRAUDULENT TRAFFIC SCHEMES**

Finally, at least one other company owned by Mr. Hassad, who serves as the President and CEO of TelxMedia and who is also named as the person to which the correspondence regarding the Application should be directed (App. at p.2), is alleged to have been involved in other fraudulent traffic schemes, which have had harmful effects on both other carriers and consumers and by which Hassad's companies have profited. In particular, AT&T Corp. has sued another carrier for which Hassad is the sole owner, President and CEO, Voice Stream Network, Inc. ("Voice Stream"). *See* Docket No. 1 (Complaint), *AT&T Corp. v. Voice Stream Network, Inc.*, No. 15-CV-8155 (S.D.N.Y. filed Oct. 16, 2015). In its federal court complaint, AT&T Corp. alleges that on two separate occasions (in December 2014 and January 2015 and then again in May 2015 and June 2015),<sup>1</sup> Voice Stream purported to act as a least cost router and fraudulently manipulated routing information contained in the data stream of hundreds of thousands of domestic and international long distance calls by inserting AT&T Corp.'s carrier identification code into the stream. AT&T Corp. was thereby misled into carrying the manipulated calls and paying associated access charges for those calls. *See generally id.* In addition, Voice Stream's manipulation caused AT&T Corp. unknowingly to issue bills to consumers for calls that they had already been billed for by their presubscribed long distance service providers and ultimately prevented AT&T Corp. from collecting payment from end users with regard to such calls. *Id.* After Voice Stream failed to answer AT&T Corp.'s Complaint or otherwise plead, AT&T Corp. moved for a default judgment against Voice Stream. *See* Docket

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<sup>1</sup> On both occasions, AT&T Corp. worked with tandem providers to block the manipulated traffic from Voice Stream from getting to AT&T Corp.'s network. Only weeks after his Voice Stream traffic was blocked in June 2015, Hassad incorporated TelxMedia with the New York Department of State, on July 3, 2015, and applied for certification as a competitive local exchange carrier shortly after that, in August 2015. *See* App. at Exhibits A, B, and C.

Nos. 24-29, *AT&T Corp. v. Voice Stream Network, Inc.*, No. 15-CV-8155 (S.D.N.Y. June 30, 2016). To date, Voice Stream has not responded to the motion, and it remains pending.

**CONCLUSION**

For the foregoing reasons, TelxMedia's Application for Designation as an Eligible Telecommunications Carrier and for receipt of federal and state funds to support its services should be denied.

Dated: October 6, 2016

*/s Andrew J. Calica*  
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on October 6, 2016, a true and correct copy of the foregoing AT&T Corp.'s Response in Opposition to TelxMedia Inc.'s Application For Designation as an Eligible Telecommunications Carrier was transmitted to the party below via UPS Overnight Mail:

Faizal Hassad  
44-02 11th Street, Suite 400B  
Long Island City, NY 11101

*/s Kathleen M. Przywara* \_\_\_\_\_  
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