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November 20, 2015

VIA HAND DELIVERY

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Core Communications, Inc. v. Verizon of Pennsylvania, Inc. and Verizon North, LLC
Docket Nos. C-2011-2253750, C-2011-2253787 and P-2011-2253650

Dear Secretary Chiavetta:

In accordance with the Briefing Order issued on November 9, 2015 in the above-captioned matter, enclosed for filing is an original plus one copy of the Supplemental Main Brief of Core Communications, Inc. Please note that the document attached as **Tab I** to the Main Brief has been marked as **Confidential**, and is being submitted in a separate envelope for filing under seal. A copy of this document has been served upon the parties of record in accordance with the attached Certificate of Service.

Please return a time-stamped copy of the filing to our courier. If you have any questions, please feel free to contact me.

Sincerely,

STEVENS & LEE

Michael A. Gruin

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC.	:	
Complainant	:	
	:	
v.	:	Docket No. C-2011-2253750
	:	Docket No. C-2011-2253787
VERIZON PENNSYLVANIA INC.	:	
And	:	
VERIZON NORTH, LLC	:	
Respondents	:	
	:	
	:	
	:	

SUPPLEMENTAL MAIN BRIEF

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November 20, 2015

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Pursuant to the Orders issued by the Pennsylvania Public Utility Commission (“Commission”) on May 28, 2015 (the “*May 2015 Order*”) and November 9, 2015 (“*November 2015 Order*,” and the Briefing Order issued by the Administrative Law Judge (“ALJ”) on November 9, 2015, Core Communications, Inc. (“Core”) hereby files its Supplemental Main Brief in the above-referenced matter.

I. INTRODUCTION AND STATEMENT OF THE CASE

The *May 2015 Order* instructed the parties to address whether the FCC’s February, 2015 *VOIP Symmetry Order*¹ impacts the intercarrier compensation issues in this matter, as well as “whether either party has met its burden of proof with regard to the amount of traffic for the claimed backbilling as well as the appropriate compensation.”² The “backbilling” in question relates, at a minimum, to Core’s issuance of intrastate and interstate switched access bills to Verizon in January of 2012, covering the period from February 2009 to December 2011, for toll traffic that Verizon sent to Core’s network for termination over Local Interconnection Trunk Groups (“LITGs”).³ Core’s claim also involves toll traffic sent by Verizon over these LITGs from January 2012 through June 2012, for which Core billed switched access on a monthly basis.⁴ Core’s switched access backbilling from February 2009 to December 2011, and the monthly switched access bills issued by Core between January 2012 and June 2012, shall be referred to collectively herein as “Core’s Switched Access Claim”.

The traffic at issue in Core’s Switched Access Claim is comprised entirely of non-local, toll traffic that Verizon transmitted to Core for termination to Core’s end users. This traffic was a mix of toll calls terminated to dial-up ISPs and toll Voice over Internet Protocol (“VOIP”) calls

¹ *In the Matter of Connect Am. Fund*, 30 F.C.C. Rcd. 1587 (2015)(“*VOIP Symmetry Order*”). A copy of this order is attached hereto as **Tab A**.

² *May 2015 Order*, at 10.

³ Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 32.

⁴ Core Stmt. 1.0, at 32-33 and 35; and Exhibit BLM-5.

terminated to Core's VOIP-carrier customers.⁵ As Core maintained throughout this proceeding, the Interconnection Agreements ("ICAs") between the parties permit the party terminating toll traffic to bill the sending party at intrastate or interstate switched access rates, by rating each call using the Calling Party's Number ("CPN").⁶ The ICAs specifically reference and incorporate the parties' respective intrastate and interstate switched access tariffs to establish the rates and rate elements applicable to the termination of toll traffic.⁷ Core's switched access billings to Verizon were calculated using the rate elements set forth in Core's Commission-approved intrastate switched access tariff and FCC-approved interstate switched access tariff, depending on the CPN of each call.⁸

Core's position throughout this proceeding has been that the toll traffic sent by Verizon to Core was – and is – billable at switched access rates, regardless of whether the traffic was ISP-bound traffic or VOIP traffic. Neither party advocated for any distinction between the two types of traffic in their written testimony in this case. Verizon first raised the issue of VOIP symmetry during its cross-examination of Core's witnesses at the December, 2012 hearings,⁹ even though Core has been completely open and forthright about the VOIP nature of the traffic it terminates, from the very beginning of this case.

In its briefs to the ALJ, Verizon argued that the FCC's decision in *YMax*¹⁰ barred Core from collecting compensation for VOIP calls, because (Verizon argued) Core did not provide

⁵ Core Stmt. 1.0, at 2-4; *also see*, Tr., at 340.

⁶ ICAs, Attachment IV, § 7.3. The ICAs between Core and Verizon Pennsylvania, LLC and Verizon North, Inc. are publicly available and on file with the Commission. The two ICAs are identical, except for the adoption letter, the pricing schedule and certain amendments.

⁷ Verizon Pennsylvania-Core ICA Pricing Schedule, App. 2, p. 23, Item B.III.

⁸ Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 15-16.

⁹ As Verizon puts it, "the topic came up at the hearing." Verizon Reply Brief, at 41.

¹⁰ *AT&T v. YMax*, 26 FCC Rcd 5742 (2011) ("YMax").

traditional incumbent rate elements, or the functional equivalent thereof.¹¹ Notably, Verizon never raised any issue of functional equivalency in any dispute letter to Core, when the bills were issued beginning in early 2012, or subsequently. This is consistent with the FCC's finding (in the *VOIP Symmetry Order*), that Verizon generally did not begin to dispute VOIP symmetry issues until 2013 – a year or more following issuance of the 2011 *ICC Transformation Order* – and long after discovery and briefing had concluded in this case.¹² For this reason, the record is not as complete on the VOIP symmetry issue as it might have been if Verizon had raised the issue in the ordinary course of business or litigation. Nevertheless, as set forth herein, there is ample evidence to demonstrate that Core provides the functions for which it billed Verizon, consistent with the *VOIP Symmetry Order*.

The ALJ, without specifically addressing VOIP traffic or *YMax*, agreed with Verizon's overall conclusion that Core was entitled to no compensation because it did not provide traditional incumbent rate elements or the functional equivalent thereof.¹³ Verizon raised the *YMax* issue once more in its replies to Core's exceptions,¹⁴ in its letter to the Commission enclosing a decision of the U.S. District Court for the Eastern District of Virginia,¹⁵ and in its letter enclosing the Fourth Circuit decision which overturned, in part and affirmed, in part, the

¹¹ Verizon Initial Brief, at 53 (“The FCC announced a new rule beginning January 1, 2012 so that CLECs acting as wholesale intermediaries for cable VoIP providers will be able to charge for access functions provided by the retail cable partner, but this rule does not apply to Core because it does not provide that function... Core does not provide most or all of these switched access functions, and thus cannot charge for them.”); *and*, Verizon Reply Brief, at 41-42 (“Not only is Core not providing any “end user common lines” for which it could justify charging Verizon a CCL, but it also is not providing end office switching, for the same reasons the FCC disallowed that charge in the *YMax Order*.”).

¹² *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 47.

¹³ I.D., FOF #s 60-62.

¹⁴ Verizon Replies to Exceptions, at 11-12.

¹⁵ Letter from Susan DeBusk Paiva to Secretary Chiavetta (April 24, 2013)(arguing that “[s]everal of the issues in the Virginia case are virtually identical to those pending in the instant proceeding,” and asserting that the court had “held that Core VA [sic], which uses the Internet (or IP cloud) to route calls from its switches to its customers, does not terminate end user lines in any of its switches.”).

District Court's rulings in that same case.¹⁶ Now that Verizon has lost the VOIP symmetry issue at the FCC, and the reach of *YMax* has been narrowly restricted to the specific network and tariff at issue in that case, Verizon tells the Commission that the VOIP symmetry issue is moot and "the Commission need never reach this issue."¹⁷ The Commission should reject that suggestion. As set forth herein, the FCC's *VOIP Symmetry Order*, combined with the record evidence compiled in this case, demonstrates that Core is entitled to bill and collect from Verizon all of the switched access charges it claims. In particular, the *VOIP Symmetry Order*, bolsters Core's claim related to end-office switching charges and carrier common line charges.

In keeping with the scope of the limited remand ordered by the Commission, this Supplemental Main Brief will focus on the *VOIP Symmetry Order*'s guidance on the compensability of the non-local VOIP traffic that Core terminated on behalf of Verizon. However, the Brief will touch on, and reiterate, the reasons why switched access charges apply to non-local ISP-bound traffic as well. Finally, because switched access charges apply equally to both toll VOIP traffic and toll ISP-bound traffic, there was, and is, no need for Core to provide a breakout of the traffic into these two categories.

A. Procedural History

The Procedural History of this case is lengthy and complex, and is set forth at length in the Commission's *May 2015 Order*, at pages 5-7, and in the Commission's November 9, 2015 Opinion and Order denying Verizon's Petition for Reconsideration, at pages 10-13. Core adopts and restates the Commission's recitation of the procedural history from those two Orders, as well as the background of claims set forth in its Exceptions, at pages 1-2.

¹⁶ Letter from Susan DeBusk Paiva to Secretary Chiavetta (June 16, 2014), at 2.

¹⁷ Letter from Susan DeBusk Paiva to Secretary Chiavetta (February 26, 2015), at 1.

B. Summary of Core's Switched Access Claim

Core submitted evidence demonstrating that Verizon owes Core \$2,532,143.22 in switched access charges for traffic delivered to Core's SS7 network, with \$711,259.34 being due for interstate switched access charges pursuant to Core's FCC Tariff No. 1 and \$1,820,883.88 being due for intrastate switched access charges pursuant to Core's Pa. P.U.C. Tariff No. 4.¹⁸ This claim relates to the toll traffic Verizon sent to Core over SS7 trunk groups. Core indicated that to the extent Verizon has already paid for some or all of this traffic at the FCC's rate of \$0.0007/MOU, Core would credit such amounts back to Verizon upon payment of the bills.¹⁹ Core also submitted evidence demonstrating that Verizon owes Core an additional \$2,661,655.78 in switched access charges for traffic delivered on Core's older MF network.²⁰

With respect to the data to support Core's bills, Core provided voluminous CDRs to support its switched access billing to Verizon as part of the discovery in this case.²¹ Core explained the methodology that it employed to generate its access bills to Verizon, and the safeguards that were employed to protect against double-billing of Verizon and another carrier for the same switched access call.²² Core compared the NPA-NXX of calling and called parties to rate calls as local or toll, consistent with ICA, Att. IV, § 7.3 and industry standard practice.²³ Notably, this methodology is fully consistent with the manner in which Verizon bills Core for traffic Core sends Verizon over the interconnection trunks.²⁴ Core then used a matching algorithm to weed out calls for which EMI records provided by Verizon permitted Core to bill

¹⁸ Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 32-33 and 35; and Exhibit BLM-5; Relevant excerpts from Core's Pa. P.U.C. switched access tariff (as amended over time) are attached hereto as **Tabs B – D**; and excerpts from Core's FCC switched access tariff are attached as **Tabs E – G**.

¹⁹ Core Stmt. 1.0, at 35

²⁰ Core Stmt. 1.0, at 35-36

²¹ Core Statement 4.0 (Panel Surrebuttal Testimony), at 14.

²² Core's Main Brief, at 13-15.

²³ Core Statement 1.0 (Direct Testimony of Bret L. Mingo), at 31

²⁴ See, Exhibit Core R-27.

another IXC for switched access calls.²⁵ For its part, Verizon proffered no alternative methodology for Core to bill Verizon for the toll calls Verizon sent Core. Instead Verizon relied on the notion, which appears nowhere in the ICA or any applicable legal authority, that it is a tandem provider, and thus entitled to send Core traffic without having any responsibility to pay intercarrier compensation.²⁶ In these circumstances, Core has met its burden of proof with respect to its Switched Access Claim, and Verizon has failed to establish its burden of persuasion to rebut Core's claim.²⁷

C. Switched Access Charges For VOIP & the VOIP Symmetry Rule

Since at least 2010, the Commission has consistently ruled that IP-based communications are subject to switched access charges, and in fact, has gone to great lengths to ensure that appropriate charges are paid in connection with VOIP traffic in Pennsylvania.²⁸ Meanwhile, the FCC for many years failed to act on the burgeoning issue of VOIP compensation. As the FCC noted in the *VOIP Symmetry Order*, “[p]rior to the [*ICC Transformation Order*], the Commission had declined to expressly address the intercarrier compensation obligations associated with VoIP traffic.”²⁹

Finally, in the 2011 *ICC Transformation Order*, the FCC approved new rules (effective January 1, 2012) which clarify compensation for VOIP traffic moving forward.³⁰ The FCC's

²⁵ Core Statement 4.0 (Panel Surrebuttal Testimony), at 17.

²⁶ Core Stmt 4.0, at 17.

²⁷ The Commission provided a thorough restatement of the burdens of proof and persuasion in the *May 2015 Order*, at 7-8.

²⁸ *Palmerton Tel. Co.*, Docket No C-2009-2093336, 2010 WL 1259661, at *21 (Order entered Feb. 11, 2010) (“The evidentiary record is clear that GNAPs has not paid *any* access charges to Palmerton, whether interstate or intrastate, and that Palmerton's monetary claim is concentrated on the intrastate portion of the intercarrier compensation dispute at issue that is clearly within this Commission's jurisdiction.”); *and, id.* (“The fact that GNAPs transports and indirectly terminates traffic that may have initially originated in IP, inclusive of nomadic VoIP, is largely immaterial to this analysis on whether this Commission has subject matter jurisdiction and whether the appropriate jurisdictional intercarrier compensation should apply for this common carriage function.”).

²⁹ *VOIP Symmetry Order*, 30 F.C.C. Red. 1587, ¶ 4.

³⁰ *In the Matter of Connect Am. Fund A Nat'l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier*

2011 rules define “VOIP-PSTN” traffic as traffic “exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format,”³¹ with the additional clarification that “[t]elecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.”³² The FCC requires that carriers pay for terminating, toll-dialed VOIP-PSTN traffic at the applicable interstate rate, both for interstate and intrastate VOIP.³³

The FCC clarified that “[n]otwithstanding any other provision of the Commission’s rules, a local exchange carrier shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier’s interstate or intrastate tariff for the access services defined in § 51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party’s premises or delivers the call to the called party’s premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic.”³⁴ This rule became known as the “VOIP Symmetry Rule,” which Core duly incorporated into its tariffs.³⁵ In

Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform -- Mobility Fund, 26 F.C.C. Rcd. 17663, 18005, ¶ 939 (2011) (“*ICC Transformation Order*”) (“despite the varied opinions in the record regarding the appropriate approach to VoIP-PSTN intercarrier compensation, there is widespread agreement that the Commission needed to act to address that issue now.”). Although several carriers filed petitions to preempt or forbid state commission imposition of switched access charges on VOIP calls, the FCC, at ¶ 975, neither approved nor denied claims for VOIP compensation arising prior to the *ICC Transformation Order*.

³¹ 47 C.F.R. § 51.913(a)(1).

³² 47 C.F.R. § 51.913(a)(3).

³³ 47 C.F.R. § 51.913(a)(1).

³⁴ 47 C.F.R. § 51.913(b).

³⁵ Core Communications, Inc. Pa. P.U.C. Tariff No. 4, Supp. No. 2 (Tab D), Original Sheet No. 52.37 (Effective Feb. 11, 2012); and, Core Communications, Inc. FCC Tariff No. 3 (Tab G), 5th Revised Page No. 13 (Effective March 27, 2012) and 4th Revised Page No. 79 (Effective March 27, 2012).

accordance with the FCC's *ICC Transformation Order*, Core revised its FCC and Pennsylvania switched access tariffs to explicitly list the applicable charges for VOIP-PSTN traffic.³⁶

In adopting the VOIP Symmetry Rule, the FCC “determined that it was appropriate to adopt a ‘symmetric’ framework” in which “providers that benefit from lower VoIP-PSTN rates when their end-user customers' traffic is terminated to other providers' end-user customers also are restricted to charging the lower VoIP-PSTN rates when other providers' traffic is terminated to their end-user customers.”³⁷ The FCC “reasoned that a symmetrical approach best balanced its policy goals of encouraging migration to an all-IP network, reducing intercarrier compensation disputes, providing greater certainty to the industry regarding intercarrier compensation revenue streams, avoiding marketplace distortions and arbitrage that could arise from an asymmetrical approach to compensation, and advancing competitive and technological neutrality.”³⁸

The VOIP Symmetry Rule “permit[s] a LEC to charge the relevant intercarrier compensation for functions performed by it and/or by its retail VoIP partner, regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture.” The rule ensures that VOIP providers and their LEC partners will have “the same opportunity, during the transition to bill-and-keep, to collect intercarrier compensation for VoIP-PSTN traffic as providers that use traditional telecommunications infrastructure,”³⁹ and allows “competitive LECs to charge the same intercarrier compensation as

³⁶ Core Communications, Inc. Pa. P.U.C. Tariff No. 4, Supp. No. 2 (Tab D), Original Sheet No. 52.37 (Effective Feb. 11, 2012); and, Core Communications, Inc. FCC Tariff No. 3 (Tab G), 5th Revised Page No. 13 (Effective March 27, 2012) and 4th Revised Page No. 79 (Effective March 27, 2012).

³⁷ *VOIP Symmetry Order*, 30 F.C.C. Rec. 1587, ¶ 5; citing, *ICC Transformation Order*, 26 F.C.C. Rec. 17663, 18007, at ¶ 942.

³⁸ *Id.*

³⁹ *VOIP Symmetry Order*, 30 F.C.C. Rec. 1587, ¶ 7.

incumbent LECs under comparable circumstances for functions performed by them and/or their retail VoIP partners.⁴⁰

With respect to the end office switching rate elements, the FCC noted that “[l]ocal switching is one of the rate elements of End Office Access Charges, whereas there are separate common line charges that recover, as a general matter, the costs associated with the physical loop and line port.”⁴¹ The FCC further noted that its rules have always provided that “the definitions of both ‘end office access’ service and ‘end office access’ rate elements explicitly encompass ‘functionally equivalent’ services.”⁴² The FCC found that “[w]hereas earlier decisions focused on switching functionality in the context of TDM networks, the VoIP symmetry rule took the next logical step by allowing compensation for functionally equivalent services provided outside the TDM context.”⁴³

D. The VOIP Symmetry Order

Despite the clarifications provided by the VoIP Symmetry Rule, the FCC found, in the years following the *ICC Transformation Order*, “that two IXCs - AT&T and Verizon - are withholding payment for certain access elements when they partner with over-the-top VoIP providers.”⁴⁴ The FCC rejected the AT&T/Verizon position in the *VOIP Symmetry Order*, in which the FCC “clarif[ied] that the [FCC]’s VoIP symmetry rule does not require a competitive LEC or its VoIP provider partner to provide the physical last-mile facility to the VoIP provider’s end user customers in order to provide the functional equivalent of end office switching, and thus for the competitive LEC to be eligible to assess access charges for this service.”⁴⁵

⁴⁰

Id.

⁴¹ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 8.

⁴² *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 9.

⁴³ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 10.

⁴⁴ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 16.

⁴⁵ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 19.

The FCC specifically noted that:

- The language of the VoIP symmetry rule contemplates symmetrical compensation when providing VoIP services via new and different technologies.⁴⁶
- The rule places no restrictions on the types of VoIP providers with which competitive LECs may form partnerships.⁴⁷
- Competitive LECs may partner with a variety of VoIP partners and collect symmetrical access charges for covered services as long as one of the partners jointly providing a call delivers the end office switching functionality.⁴⁸

The FCC found that “[d]irect comparisons between TDM network architecture and IP network architecture cannot be made precisely because IP-based networks do not involve the same types of physical connections as those found in traditional TDM networks.”⁴⁹

The FCC identified “a number of basic switching functions associated with a TDM call” which “[w]hile not controlling,” were nevertheless “instructive.” Specifically, the FCC identified certain “call control” functions which are “necessary to ensure call set-up, conduct and take-down.” Whereas, “[i]n the case of a traditional TDM call, this is accomplished by a local switch connecting the trunk to the termination line/end-point phone device,” the FCC found that “[i]n the case of a VoIP call, the call management system connects the packet stream crossing the Internet (transport) to the termination point (phone device). The FCC concluded that, “under the VoIP Symmetry Rule, the functional equivalent of end-office switching exists when the intelligence associated with call set-up, supervision and management is provided;”⁵⁰ and that

⁴⁶ *VOIP Symmetry Order*, 30 F.C.C. Rec. 1587, ¶ 21.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *VOIP Symmetry Order*, 30 F.C.C. Rec. 1587, ¶ 27.

⁵⁰ *VOIP Symmetry Order*, 30 F.C.C. Rec. 1587, ¶ 28.

“competitive LECs and their over-the-top VoIP partners undoubtedly provide the call intelligence associated with call set-up, supervision and management.”⁵¹

The FCC found that “[i]n a circuit-switched network the connection of trunks to lines is critical to call control because of the network architecture, which requires physical connections to be made between pieces of physical equipment.”⁵² However, “[i]n an IP world, the customer is separately paying for its broadband connection, which interconnects that customer to the Internet... [and] IP-based call control, the equivalent of end office switching, therefore does not require a physical connection of trunks to lines in order to provide the functional equivalent of end-office switching.”⁵³

The FCC dismissed Verizon’s continuing reliance on *YMax*, which preceded the *ICC Transformation Order*: “[T]he Commission carefully restricted its findings to ‘the particular language in *YMax*’s tariff and the specific configuration of *YMax*’s network architecture.”⁵⁴ The FCC further stated: “[e]ven assuming *arguendo* that the *YMax Complaint* could be read more broadly, the VoIP symmetry rule adopted in the *USF/ICC Transformation Order* supersedes any potential limitation suggested by that decision with respect to traffic encompassed by that rule.”⁵⁵

With respect to the *CoreTel Virginia* case, upon which Verizon also relies, the FCC stated: “[t]he court held that because CoreTel converts calls into an IP stream and delivers them over the Internet, it does not provide ‘the physical infrastructure over which calls are delivered from CoreTel’s premises to its customers,’” and that, “although the general definition of switched access service in CoreTel’s tariff made reference to IP technology, the tariff’s specific definition

⁵¹ *VOIP Symmetry Order*, 30 F.C.C. Rec. 1587, ¶ 29.

⁵² *VOIP Symmetry Order*, 30 F.C.C. Rec. 1587, ¶ 30.

⁵³ *Id.*

⁵⁴ *VOIP Symmetry Order*, 30 F.C.C. Rec. 1587, ¶ 34; *citing*, *YMax*, 26 F.C.C. Rec. 5742, 5761.

⁵⁵ *VOIP Symmetry Order*, 30 F.C.C. Rec. 1587, ¶ 35. (emphasis added)

of end office switched access did not....”⁵⁶ In the FCC’s view, “the *CoreTel* decision rests primarily on tariff language describing traditional TDM network architecture.”⁵⁷ Without specifically approving or disapproving the court’s analysis in *CoreTel Virginia*, or the applicability of CoreTel’s tariff to VOIP-PSTN traffic, the FCC observed: “[m]any competitive LECs have incorporated tariff language that describes functionally equivalent services under the VoIP symmetry rule, either by explicitly reciting the VoIP symmetry rule, or by referring to the ‘functional equivalent’ of TDM-based end office switching.”⁵⁸

Finally, the FCC clarified that the *VOIP Symmetry Order* applies retroactively to the effective date of the *ICC Transformation Order*,⁵⁹ which, for this purpose, is January 1, 2012. With respect to Verizon in particular, the FCC noted that “The record reveals that Verizon did not initially dispute payment for this traffic, and only began doing so in 2013, more than a full year after the relevant rules took effect.”⁶⁰

II. ARGUMENT

A. The Record Demonstrates That Core Met Its Burden of Proof With Respect to Its Switched Access Claim, Consistent with the *VOIP Symmetry Order*

Although the issue was not raised until the last possible moment in the case, there is nevertheless ample evidence in the record to support Core’s Switched Access Claim, and meet Core’s burden of proof, in the face of Verizon’s *YMax* defense. In keeping with the limited nature of this remand, the following discussion relates to the proper application of the FCC’s *VOIP Symmetry Order* to issues in this case, such as end office switching, carrier common line and symmetrical compensation.

⁵⁶ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 39.

⁵⁷ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 40.

⁵⁸ *Id.*

⁵⁹ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 42.

⁶⁰ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 47.

1. Toll ISP-Bound Traffic and Toll VOIP-PSTN Traffic Are Equally Subject to Switched Access Charges

(a) The Calls At Issue Are Toll Calls

Since 2000, Core has provided service to dial-up ISPs in Pennsylvania.⁶¹ Beginning in 2009, Core began providing service to VOIP customers as well.⁶² The calls at issue in Core's claim for switched access are entirely made up of toll calls, as determined by the NPA-NXX of the calling and called parties.⁶³ Verizon does not dispute that these calls are toll-dialed; rather it claims either that the precise wording in Core's tariffs does not cover the calls, or that some third party IXC(s), not Verizon, are responsible for compensating Core for these calls.⁶⁴ However, Core's FCC and Pa. P.U.C. switched access tariffs unquestionably apply to toll calls, whether delivered to Core by an IXC, or by another LEC, such as Verizon.⁶⁵

(b) The ISP Remand Order is Irrelevant to Core's Switched Access Claims, Because the ISP Remand Order Does Not Apply to Toll Calls

Verizon argues that the *ISP Remand Order* applies to all of the calls that it sends to Core, because Core did not distinguish ISP-bound from VOIP calls.⁶⁶ But it is settled law that

⁶¹ *Core Commc'ns, Inc. v. AT&T Corp.*, Docket No. C-2009-2108186, 2013 WL 4499089, at *7 (Order entered Aug. 15, 2013)(“AT&T”)(“From the time Core began providing telecommunications services in Pennsylvania through the end of September 2009, Core's only customers in Pennsylvania were ISPs. In or about October 2009, Core alleged that it began providing service to VoIP providers.”).

⁶² *Id.* See also, Core Statement 1.0, Direct Testimony of Bret Mingo, at pp. 2-3, and Tr. at pp. 272, 363.

⁶³ Core Stmt. 1.0, at 31:5-15; *and*, ICAs, Att. IV, § 7.3 (“At such time as either Party has the ability, as the Party receiving the traffic, to use such CPN information to classify on an automated basis traffic delivered by the other Party as either Local Traffic or toll traffic, such receiving Party shall bill the originating Party the Local Traffic termination rates, intrastate Exchange Access rates, or interstate Exchange Access rates applicable to each minute of traffic for which CPN is passed....”).

⁶⁴ Verizon's Replies to Exceptions, at 11 (“Core should have billed the originating IXCs, not the Verizon local exchange carriers.”). The Commission should note that Verizon's *IXC's* have not paid *any* Core invoice for switched access since 2010. Core Statement 2.0 (Direct Testimony of Christopher Van de Verg), at 5:24-6:2.

⁶⁵ *AT&T*, 2013 WL 4499089, at *29 (“carriers other than interexchange carriers, such as other local exchange carriers and wireless carriers that are not interexchange carriers, also transmit toll or non-local calls that are subject to Core's Switched Access Tariff.”).

⁶⁶ Verizon Replies to Exceptions, at 11 (“Commission precedent involving Core requires the Commission to assume that all of the traffic at issue is ISP-bound, meaning that no access charges apply.”).

the *ISP Remand Order* only applies to locally-dialed calls,⁶⁷ not toll calls.⁶⁸ The Commission's order in the *AT&T* case, for example, was specifically confined to locally-dialed ISP traffic.⁶⁹ Since the *ISP Remand Order* does not apply, neither does the so-called 3:1 ratio for identifying ISP-bound traffic, which is part and parcel of that order. Indeed, since the *ISP Remand Order* does not apply to Verizon's toll traffic, there is no reason why Core needs to distinguish ISP from VOIP traffic, as Verizon contends. Whether destined for an ISP or a VOIP customer, Verizon's toll traffic is subject to appropriate switched access charges.

(c) Neither An ISP, Nor A Conference Call Provider, is an Interexchange Carrier

Core provides service to two types of wholesale customer: ISP and VOIP.⁷⁰ ISPs purchase "Managed Port Service" and VOIP providers purchase "Superport" services from Core out of Core's Pa. P.U.C. Tariff No. 1 ("Local Exchange Services").⁷¹ Both ISPs and VOIP providers are therefore "End Users" of Core's tariffed local exchange services, for purposes of

⁶⁷ *Global Naps, Inc. v. Verizon New England, Inc.*, 444 F.3d 59, 72 (1st Cir. 2006) ("Global NAPs cannot point to any language in the order that explicitly preempts state regulation of access charges for the non-local ISP-bound traffic at issue."); *Verizon California, Inc. v. Peevey*, 462 F.3d 1142, 1158 (9th Cir. 2006). ("[T]he *ISP Remand Order* was exclusively concerned with the operation of § 251(b)(5) of the Act and the imposition of reciprocal compensation charges on ISP-bound traffic."); *Global NAPs, Inc. v. Verizon New England, Inc.*, 454 F.3d 91, 99 (2d Cir. 2006) ("The ultimate conclusion of the *2001 Remand Order* was that ISP-bound traffic *within a single calling area* is not subject to reciprocal compensation.").

⁶⁸ The ancillary issue whether a so-called "VNXX" call is local or toll is not at issue here, because all of the calls that comprise Core's Switched Access Claim were dialed by the calling end user as a toll call. VNXX calls are by definition locally-dialed calls. By contrast, the decision to dial a toll call to access the Internet, and thereby possibly incur end user toll charges, is the consumer's own choice, and may reflect a relative lack of competitive choice for Internet access. In any event, Core cannot and does not control these consumer dialing choices, and the Commission should ignore Verizon's predictable cries of "regulatory arbitrage" when it comes to these toll calls.

⁶⁹ *AT&T*, 2013 WL 4499089, at *7 ("In our *December 2012 Order*, we ruled that we are authorized to establish rates consistent with the FCC's intercarrier compensation regime for ISP-bound traffic. As such, we determined, consistent with federal law, that the FCC's rate cap of \$0.0007 per minute of use is the appropriate reciprocal compensation rate that should apply to the locally-dialed ISP-bound traffic that AT&T sends to Core for termination on Core's network.") (Emphasis added).

⁷⁰ Core Stmt. 1.0, at 2, lines 1-16.

⁷¹ *Id.*, at 2:17-25; *also see*, Core Communications, Inc. Pa. P.U.C. Tariff No. 1, Supp. No. 4 ("Local Exchange Services"), 4th Revised Sheet No. 81 (Effective: October 24, 2005) (tariffing Managed Port Services as a local exchange service for ISPs); *and, id.*, 1st Revised Sheet No. 81.1 (Effective June 18, 2009) (Superport Services) (tariffing Superport as a local exchange service for VOIP providers. Relevant excerpts from Core's Local Exchange Services tariff are attached hereto as **Tab H**).

Core's switched access tariffs.⁷² During the period covered by the evidentiary record in this case, which runs through mid-2012, Core's VOIP customers were limited to conference service companies ("CSCs").⁷³ Contrary to Verizon's claim,⁷⁴ neither an ISP nor a CSC carries communications between exchanges. Rather, they receive traffic in one exchange, and use IP equipment to furnish enhanced services to their customers. An ISP receives TDM traffic, converts it into IP packets using modem equipment, and thereby enables an Internet browsing session.⁷⁵ A CSC uses IP-enabled equipment to bridge together multiple calls to form a conference call.⁷⁶

2. Core Provides End Office Switching

Whether a call is terminated to an ISP or a VOIP customer, Core unquestionably "provide[s] the call intelligence associated with call set-up, supervision and management,"⁷⁷ which is the touchstone of end office switching established by the *VOIP Symmetry Order*. No matter whether Core's customer is an ISP or CSC, Core switches the call to the appropriate

⁷² Core Communications, Inc. Pa. P.U.C. Tariff No. 4 (Switched Access Tariff), Original Sheet No. 7 (Effective July 2, 2008)(defining "End User" as "[a]ny ... entity... which subscribes to intrastate service provided by an Exchange Carrier."); *and*, Core Communications, Inc., et al. FCC Tariff No. 2 (Interstate Access Services Tariff), Original Page No. 7 (Effective: October 3, 2009)(defining "Company End User" as "[a]ny... entity that subscribes to or otherwise uses the local exchange services of the Company."). Relevant excerpts from Core's Pa. P.U.C. switched access tariff, including all revisions and versions of same from 2009 through the present day, are attached hereto as **Tab B through D** and relevant FCC tariff excerpts and revisions are at **Tab E through G**.

⁷³ I.D., FOF #s 5 and 36 (referring to Core's VOIP customers as ISPs and CSCs).

⁷⁴ Verizon Initial Brief, at 50. ("Under Core's intrastate access tariff, ISPs, conference calling providers, and other such entities are "Interexchange Carriers" rather than "End Users," and transmissions to their premises would not constitute Switched Access Service for which Core is entitled to bill Verizon.").

⁷⁵ *In Re Core Commc'ns, Inc. Application to Provide Local Exchange Services*, Docket No. A-310922F0002AMA, 2006 WL 3523755, at *15 (Order entered Dec. 4, 2006)("ISPs themselves, are treated as end users of telecommunications services, while the underlying service they provide to ISP subscribers, Internet access, is information."); *aff'd sub nom, Rural Tel. Co. Coal. v. Pub. Util. Comm'n*, 941 A.2d 751, 752 (Pa. Commw. Ct. 2008).

⁷⁶ **Tab J -- *Sprint v. Crow Creek Sioux Tribal Court***, Docket No. 4:10-CV-04110-KES, Doc. 243, Order Denying Sprint's Partial Motion for Partial Summary Judgment, at 20-21("[T]he switching service provided by NAT to Free Conferencing required IP-compatible customer premises equipment to complete the call... Consequently, the calls terminated in IP format... Because the traffic was exchanged over PSTN facilities and terminated in IP format, the calls were VoIP-PSTN traffic.").

⁷⁷ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 29.

destination⁷⁸ and is therefore entitled to end office switching compensation. Indeed, the switching functionality Core provides in Pennsylvania was the subject of specific Commission findings in a previous case and subsequent appeal.⁷⁹ Core's tariffs, which were updated immediately following promulgation of the *ICC Transformation Order*, clearly and unequivocally reference and incorporate the VOIP Symmetry Rule, 47 C.F.R. § 51.913, as it applies to end office switching and other switched access rate elements.⁸⁰

In the case of calls to an ISP or CSC, Core also, in addition to call intelligence, "own[s] or control[s] the transmission path over which the call is finally transmitted to the end user,"⁸¹ which the FCC has identified as the more traditional, pre-VOIP Symmetry Rule, test for end office switching. Core delivers calls to its ISP and CSC customers (which are "end users" for

⁷⁸ Core Stmt. 1.0, at 5:4 through 7:2 (describing functions performed by Core's switches, to include TDM switching, packet switching, session initiation protocol ("SIP") support and SS7 signaling); *and see*, Proprietary Exhibit BLM-1 (Network/Call Flow Diagrams)(describing Core's switches' handling of calls coming from Verizon). For the sake of convenience, Exhibit BLM-1 is attached hereto at **Tab I**.

⁷⁹ *In Re Core Commc'ns, Inc.*, A-310922F0002AMA, 2006 WL 3523755, at *13 (Dec. 4, 2006)("Core... uses a self-provision[ed] switch, or switch equivalent, for service"); *and*, *Rural Tel. Co. Coal. v. Pub. Util. Comm'n*, 941 A.2d 751, 757 (Pa. Commw. Ct. 2008)("The record reflects that Core has installed switches in Altoona, Harrisburg, Philadelphia and Wilkes-Barre. Core's transmission path service originates and terminates dial-up calls... to Core's switch facilities located in Pennsylvania. From that point, Core hands the calls off to the ISP. Core contends, and the Commission agreed, that the use of some, but not all, of one's own facilities (in this case switches and a transmission path) makes a CLEC a facilities-based carrier.").

⁸⁰ Core Communications, Inc. PA P.U.C. Tariff No. 4, (**Tab D**), Supplement No. 2, Original Sheet No. 52.37 (Effective February 11, 2012)("In the absence of an interconnection agreement between Customer and Company that provides otherwise, Customer shall compensate Company for Switched Access Service as set forth in this Tariff for any traffic that falls within the scope of "toll VoIP-PSTN traffic" (as that term is discussed in FCC Item No. 11-161 (rel. November 18, 2011) and 47 U.S.C. § 51.913(a)), at the interstate switched access rates for the state of Pennsylvania as set forth in section 5.6 of this tariff (Intrastate Switched Access Tariff PA PUC No. 4). Customer shall be entitled to assess and collect Switched Access Charges for toll VoIP-PSTN traffic from Customer to the full extent permitted under applicable law, including the functions described in FCC Item No. 11-161 and 47 C.F.R. § 51.913(b)); *and*, Core Communications, Inc. FCC Tariff No. 3, (**Tab G**), 5th Revised Page No. 13 (Effective March 27, 2012)("Switched Access Service includes, but is not limited to, the functional equivalent of the incumbent local exchange carrier interstate exchange access services typically associated with following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination; tandem switched transport facility (per mile); tandem switching; common transport multiplexing; and common trunk port. Consistent with 47 C.F.R. § 61.26(a)(3)(ii), Switched Access Services includes the termination of interexchange telecommunications traffic to any retail end user, either directly or via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. § 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. § 153(36), that does not itself seek to collect reciprocal compensation charges prescribed by this subpart for that traffic, regardless of the specific functions provided or facilities used.")

⁸¹ *VOIP Symmetry Order*, 30 F.C.C. Red. 1587, ¶ 31.

telecommunications purposes) over hard-wired connections to their collocated servers within Core's central office switch sites.⁸² Verizon does not contest this fact.⁸³ With respect to Core's services in Verizon territory, the Commission found in 2006 that Core hands off the calls to its ISP customers and thereby provides the "transmission path."⁸⁴ While this hand-off may not correlate precisely to an incumbent's copper POTS line, as Verizon argues, that is not the relevant standard. Core controls the physical hand-off, consistent with the definitions of "end user" and "terminations in the end office of end user lines" as set forth in Core's switched access and local exchange services tariffs.⁸⁵ To be clear, the ISP or CSC is the "end user" which interfaces with Core via IP-enabled customer provided equipment ("CPE"), and the "line" is the physical connection between Core's switch and the ISP's or CSC's server. Accordingly, with respect to ISP and CSC traffic, Core provides end office switching both under the new, VOIP model (call intelligence) and the old TDM model (physical connection).

⁸² See, Proprietary Exhibit BLM-1 (Network/Call Flow Diagrams), **Tab I hereto** (Second diagram depicts transmission lines connecting Core's Lucent APXs to Core's LAN switches to Managed Modems and Collocated Voice Customers).

⁸³ Verizon Reply Brief, at 42 ("[A]s Core explained at hearing, it terminates traffic to pieces of equipment..."). In fact, all telecommunications are terminated to "pieces of equipment." While the specific equipment to which Core terminates calls are more comparable to a large business or government PBX system than to a residential handset, Core nevertheless terminates calls to customer premise equipment, just like any traditional carrier.

⁸⁴ *Rural Tel. Co. Coal. v. Pub. Util. Comm'n*, 941 A.2d 751, 757 (Pa. Commw. Ct. 2008).

⁸⁵ Core Communications, Inc. Pa. P.U.C. Tariff No. 4, (**Tabs B through D**), Original Sheet No. 7 (defining "End User" as any "entity... which subscribes to intrastate service provided by an Exchange Carrier"), Original Sheet No. 44 ("Switched Access Service is available when... terminating calls... to an end user which subscribes to [Core's] Local Exchange Services."); and Original Sheet No. 48 ("The End Office Switching cost category establishes the charges related to the use of end office switching equipment, the terminations in the end office of end user lines, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP."); Core Communications, Inc. FCC Tariff No. 2, (**Tabs E through G**), Original Page No. 7 (defining "Company End User" as any "entity that subscribes to or otherwise uses the local exchange services of the Company."); Original Page No. 42 ("Switched Access Service is available when... terminating calls... to an End User which subscribes to the Company's Local Exchange Services."); and Original Page No. 42 (The End Office Switching rate category establishes the charges related to the use of end office switching equipment, the terminations in the end office of end user lines, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP."); *and*, Core Communications, Inc. Pa. P.U.C. Tariff No. 1, (**Tab H**), *Supp. No. 18* ("Local Exchange Services"), 1st Revised Sheet No. 81.1 (Effective: June 18, 2009)(Superport Services)(a VOIP customer "must collocate its equipment for the purpose of interfacing with Superport service...").

3. Core Provides Carrier Common Line

For the same reasons set forth above, Core provides the functionality associated with carrier common line. Core's tariff defines "Common Line" as "charges related to the use of Company-provided end user common lines by customers and end users for interstate access."⁸⁶ Core provides the physical connection (line) between its customer (the carrier) and its end user (the ISP or CSC). No other carrier provides any part of any of these lines; Core does. The FCC has clarified that CCL charges are separate and distinct from end-office switching.⁸⁷ Therefore, Core is entitled to CCL charges. This result is fully consistent with the FCC's policy to ensure that VOIP providers and their LEC partners will have "the same opportunity, during the transition to bill-and-keep, to collect intercarrier compensation for VoIP-PSTN traffic as providers that use traditional telecommunications infrastructure."⁸⁸

4. YMax is Inapplicable to Core

In the *VOIP Symmetry Order*, the FCC cautioned against applying *YMax* generally to bar CLEC switched access charges, which is precisely what Verizon is attempting to do in this case. The FCC noted that it "carefully restricted its findings to 'the particular language in YMax's tariff and the specific configuration of YMax's network architecture,'"⁸⁹ and that "[e]ven assuming *arguendo* that the *YMax Complaint* could be read more broadly, the VoIP symmetry rule adopted in the *USF/ICC Transformation Order* supersedes any potential limitation suggested by that decision with respect to traffic encompassed by that rule."⁹⁰ With these caveats in mind, *YMax* clearly has no application to Core's Switched Access Claim.

⁸⁶ Core Communications, Inc. PA P.U.C. Tariff No. 4, (Tab B), Original Sheet No. 48.

⁸⁷ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 8 ("Local switching is one of the rate elements of End Office Access Charges, whereas there are separate common line charges that recover, as a general matter, the costs associated with the physical loop and line port.").

⁸⁸ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 7.

⁸⁹ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 34; citing, *YMax*, 26 F.C.C. Rcd. 5742, 5761.

⁹⁰ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 35.

The record reflects numerous differences between Core’s network and tariffs and the network and tariff at issue in *YMax*. First, the FCC specifically found that, for many of its POPs, “YMax has no equipment of its own and leases no space at these locations... [and] [a]s it turns out, all of the equipment, facilities, configurations and interconnections in these 110 locations are actually provided exclusively [to YMax] by AT&T.”⁹¹ By contrast, Core owns and operates six switches at six different wire centers in Pennsylvania, one in each LATA.⁹² Second, in the tariff at issue in *YMax*, “[a]n ‘End User’ is defined as a person or entity ‘that uses the service of the Company [YMax] under the terms and conditions of this Tariff,’” meaning, YMax’s federal switched access tariff. *YMax*, 26 F.C.C. Rec. 5742, 5749. Critically, Core’s switched access tariffs define “End User” very differently. In Core’s tariffs, “End User” means a customer of Core’s *local exchange services*, such as an ISP or VOIP provider.⁹³ Third, and most importantly, Core, as demonstrated herein, provides the physical line connection to its customers, whereas YMax had no physical connection to its customers.⁹⁴

5. CoreTel Virginia Is Not On Point

The *CoreTel Virginia* case involved over-the-top (“OTT”) traffic solely.⁹⁵ There is no OTT traffic on record in this case. As discussed at length herein, Core’s customers through mid-

⁹¹ *YMax*, 26 F.C.C. Rec. 5742, 5746.

⁹² Core Stmt. 1.0, at 5:4 through 7:2.

⁹³ Core Communications, Inc. PA P.U.C. Tariff No. 4 (Switched Access Tariff), Original Sheet No. 7 (Effective: July 2, 2008)(**Tab B**)(defining “End User” as “[a]ny ... entity... which subscribes to intrastate service provided by an Exchange Carrier.”); *and*, Core Communications, Inc., et al. FCC Tariff No. 2 (Interstate Access Services Tariff), Original Page No. 7 (Effective: October 3, 2009)(**Tab E**)(defining “Company End User” as “[a]ny... entity that subscribes to or otherwise uses the local exchange services of the Company.”).

⁹⁴ *YMax*, 26 F.C.C. Rec. 5742, 5757(“YMax does not provide any physical transmission facilities that establish point-to-point connections between the premises of Called/Calling Parties and YMax equipment.¹¹⁹ Instead, multiple parties other than YMax -- starting with the Called/Calling Parties’ ISPs and ending with [Redacted confidential information regarding YMax’s network configuration] or AT&T, with a number of unknown ISPs in between -- must provide physical transmission facilities to complete a link between the premises of Called/Calling Parties and YMax.”).

⁹⁵ *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 374 (4th Cir. 2014)(“CoreTel converts incoming calls into a data stream once they reach its office and then delivers these calls to its customers over the public internet.”); *also see*, Letter from Susan DeBusk Paiva to Secretary Chiavetta (April 24, 2013)(asserting that

2012 were ISPs and CSCs, to whom Core delivered calls through physical connections provided by Core. The *CoreTel Virginia* court, which did not have the benefit of the *VOIP Symmetry Order* when it ruled, relied on *YMax* to reach its findings. Not surprisingly, the *CoreTel Virginia* court's analysis is inconsistent with the *VOIP Symmetry Order*, which in many ways restricted or even contradicted *YMax*. For example, the court, relying on *YMax*, found that end office switching charges enable carriers "to construct the tangible connections between themselves and their customers,"⁹⁶ but the FCC explained in the *VOIP Symmetry Order*, "[l]ocal switching is one of the rate elements of End Office Access Charges, whereas there are separate common line charges that recover, as a general matter, the costs associated with the physical loop and line port."⁹⁷ The court also found CoreTel Virginia's then-current FCC tariff, which recites verbatim the VOIP Symmetry Rule, lacking,⁹⁸ whereas the FCC spoke approvingly of CLEC tariffs which "explicitly recit[e] the VoIP symmetry rule."⁹⁹ Finally, the court obviously did not have any reason to review Core's Pennsylvania P.U.C. tariff, which covers the bulk of Core's Switched Access Claim, and which clearly incorporates the VOIP Symmetry Rule, 47 C.F.R. § 51.913, in an independent section of the tariff devoted to VOIP-PSTN traffic.¹⁰⁰

B. Verizon May Not Collect Switched Access For VOIP At a Rate Higher Than the Rate It Pays Core

In the *VOIP Symmetry Order*, the FCC reiterated "that it was appropriate to adopt a 'symmetric' framework" for VOIP traffic, one in which "providers that benefit from lower VoIP-PSTN rates when their end-user customers' traffic is terminated to other providers' end-user

the court "held that Core VA [sic], which uses the Internet (or IP cloud) to route calls from its switches to its customers, does not terminate end user lines in any of its switches.").

⁹⁶ *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 375 (4th Cir. 2014).

⁹⁷ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 8.

⁹⁸ *CoreTel Virginia, LLC v. Verizon Virginia, LLC*, 752 F.3d 364, 375 (4th Cir. 2014).

⁹⁹ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 40.

¹⁰⁰ Core Communications, Inc. Pa. P.U.C. Tariff No. 4, Supp. No. 2 (Tab D), Original Sheet No. 52.37 (Effective February 11, 2012).

customers also are restricted to charging the lower VoIP-PSTN rates when other providers' traffic is terminated to their end-user customers."¹⁰¹ According to Verizon, "[Core's originating] traffic is all VoIP-originated...."¹⁰² That being the case, Verizon may not charge Core a higher rate for VOIP traffic than Core charges Verizon for VOIP traffic. Thus, whatever rate the Commission determines to be applicable to VOIP traffic, that rate must be applied symmetrically between the parties. Only in this way can the Commission further the FCC's "policy goals of encouraging migration to an all-IP network, reducing intercarrier compensation disputes, providing greater certainty to the industry regarding intercarrier compensation revenue streams, avoiding marketplace distortions and arbitrage that could arise from an asymmetrical approach to compensation, and advancing competitive and technological neutrality."¹⁰³

III. CONCLUSION

The *VOIP Symmetry Order* provided important and definitive clarifications that bear directly on Core's Switched Access Claims, and the Commission was correct to seek additional briefing from the parties on this topic. The *VOIP Symmetry Order* makes it abundantly clear that CLECs that provide the functional equivalent of end office switching are entitled to collect access charges under the VoIP Symmetry Rule. Furthermore, the *VOIP Symmetry Order* confirmed that the functional equivalent of end-office switching exists when a CLEC provides intelligence associated with call set-up, supervision and management, and the record in this case clearly demonstrates that Core provides these functions to its end-users. Finally, the *VOIP Symmetry Order* mandates rejection of Verizon's main argument against paying Core's switched access charges, i.e., the *YMax* defense. Accordingly, Core respectfully requests that the

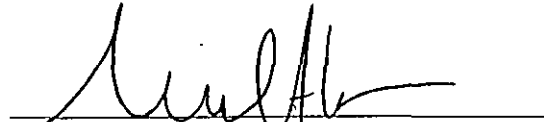
¹⁰¹ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 5; citing, *ICC Transformation Order*, 26 F.C.C. Rcd. 17663, 18007, at ¶ 942.

¹⁰² I.D., FOF # 81.

¹⁰³ *VOIP Symmetry Order*, 30 F.C.C. Rcd. 1587, ¶ 5; citing, *ICC Transformation Order*, 26 F.C.C. Rcd. 17663, 18007, at ¶ 942.

Commission enter an Order which confirms that Core is entitled to the full amount of its Switched Access Claim.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael A. Gruin", is written over a horizontal line.

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November 20, 2015

List of Tabs

- Tab A** – *In the Matter of Connect Am. Fund*, 30 F.C.C. Rcd. 1587 (2015)(“*VOIP Symmetry Order*”)
- Tab B** – Core Communications, Inc. Pa. P.U.C. Tariff No. 4 (Effective July 2, 2008)
- Tab C** – Core Communications, Inc. Pa. P.U.C. Tariff No. 4, Supp. 1 (Effective July 21, 2009)
- Tab D** – Core Communications, Inc. Pa. P.U.C. Tariff No. 4, Supp. 2 (Effective February 11, 2012)
- Tab E** – Core Communications, Inc. FCC Tariff No. 2 (Effective October 3, 2009)
- Tab F** – Core Communications, Inc. FCC Tariff No. 3 (Effective January 1, 2011)
- Tab G** – Core Communications, Inc. FCC Tariff No. 3 (Changes effective March 27, 2012)
- Tab H** – Core Communications, Inc. Pa. P.U.C. Tariff No. 1, Supp. 18 (Effective June 18, 2009)
- Tab I** – Confidential Exhibit BLM-1
- Tab J** – *Sprint v. Crow Creek Sioux Tribal Court*, Docket No. 4:10-CV-04110-KES, Doc. 243 (Order Denying Sprint’s Partial Motion for Partial Summary Judgment)

TAB A

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

DECLARATORY RULING

Adopted: February 2, 2015

Released: February 11, 2015

By the Commission: Chairman Wheeler issuing a separate statement; Commissioners Pai and O’Rielly dissenting and issuing separate statements.

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I. INTRODUCTION

1. In this document, on our own motion, we issue a declaratory ruling to ensure that the policies enacted by Congress and implemented by the Commission embrace modern communications networks, and encourage the deployment of, and transition to, IP-based networks and services.¹ The

¹ See *Technology Transitions et al.*, GN Docket No. 13-5 et al., Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, 29 FCC Rcd 1433, 1435, para. 1 (2014) (*2014 Technology Transitions Order*) (describing the “historic technology transitions that are transforming our nation’s voice communications services – from a network based on time-division multiplexed (TDM) circuit-switched voice services running on copper loops to an all-Internet Protocol (IP) using copper, co-axial cable, wireless, and fiber as physical infrastructure.” The Commission observed (continued...)

record in this proceeding reveals a dispute regarding the appropriate interpretation of the so-called “VoIP symmetry” rule that the Commission adopted in the 2011 *USF/ICC Transformation Order*. Importantly, the record suggests that the conflicting interpretations of the VoIP symmetry rule are hindering IP-to-IP interconnection negotiations.² To further the goals enacted by Congress and implemented by the Commission of promoting and protecting competition and increased access for voice services, we clarify that the VoIP symmetry rule applies in a technology- and facilities-neutral manner.

2. Specifically, this declaratory ruling terminates a controversy surrounding the assessment of end office switching charges under the VoIP symmetry rule as applied to VoIP-PSTN traffic.³ Traditionally, end office switching charges are assessed by the local exchange carrier (LEC) that serves a particular customer. In its 2011 *USF/ICC Transformation Order*, the Commission addressed a situation that is becoming increasingly more common as customers migrate from legacy voice to VoIP services. In many cases now, customers purchase their voice services from interconnected VoIP providers, rather than LECs. Those VoIP providers, however, still in most cases rely upon LECs to deliver traffic to and from the public switched telephone network (PSTN). The majority of VoIP providers are “facilities-based,” typically meaning that they provide the last-mile facility to the customer as well as the VoIP service (e.g., a cable provider that bundles VoIP services with video and broadband). But in some cases, the VoIP provider does not also provide the last-mile facility, and situations involving these “over-the-top” providers (e.g., Vonage) and the LECs they use to exchange traffic with the PSTN have generated disagreement about the intent of the Commission’s rule. In the *USF/ICC Transformation Order*, the Commission stated that a LEC providing end office switching or its “functional equivalent” may assess Reciprocal Compensation Access Charges (access charges) for such services pursuant to the VoIP symmetry rule.⁴

3. In this declaratory ruling, we remove a question surrounding the VoIP symmetry rule⁵ and confirm that it is technology and facilities neutral. It does not require, and has never required, an

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that modernized networks “dramatically reduce network costs, allowing providers to service customers with increased efficiencies that can lead to improved and innovative product offerings and lower prices,” and can lead to “further investments in innovation that both enhance existing products and unleash new services, applications, and devices.” *Id.* at 1435, para. 2).

² See, e.g., Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-2 (filed Feb. 12, 2014) (Vonage Feb. 12, 2014 *Ex Parte* Letter); see also Letter from Joseph C. Cavender, Vice President, Level 3, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-5 at 2 (filed May 16, 2014) (Level 3 May 16, 2014 *Ex Parte* Letter).

³ See 47 C.F.R. § 1.2(a) (“The Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty.”). The VoIP symmetry rule was adopted in the *USF/ICC Transformation Order*. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663, 18026-28, paras. 970-71 (2011) (*USF/ICC Transformation Order* or *Transformation Order*), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). We use the following acronyms in a manner similar to their use in the *USF/ICC Transformation Order*: “VoIP” stands for “Voice over Internet Protocol”; “PSTN” stands for “Public Switched Telephone Network”; “IP” stands for “Internet Protocol”; and “TDM” stands for “Time Division Multiplexing.” The Commission defines VoIP-PSTN traffic as “traffic exchanged over PSTN facilities that originates and/or terminates in IP format,” and the definition is broad enough to include both interconnected and non-interconnected VoIP traffic. See *id.* at 18005-06, paras. 940-41 & n.1891 (explaining that VoIP-PSTN traffic in the *USF/ICC Transformation Order* includes “interconnected VoIP,” and “PSTN” refers to traffic exchanged in TDM format).

⁴ *USF/ICC Transformation Order*, 26 FCC Red at 18026-28, paras. 970-71.

⁵ See, e.g., Letter from Tamar Finn, Counsel to Bandwidth.com, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2-3 (filed June 11, 2012) (Bandwidth June 11, 2012 *Ex Parte* Letter); Letter from Jack Zinman, General Attorney and Associate General Counsel, AT&T, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 et al., at 1-2 (filed July 16, 2012) (AT&T July 16, 2012 *Ex Parte* Letter); Letter from Tamar Finn, Counsel to

(continued...)

entity to use a specific technology or its own facilities in order for the service it provides to be considered the functional equivalent of end office switching.⁶ Indeed, the record reflects no disagreement that a competitive LEC partnering with a facilities-based VoIP provider provides the “functional equivalent” of end office switching. As explained below, the same is true when the competitive LEC partners with an *over-the-top VoIP provider to exchange traffic with interconnected carriers, and in both instances the competitive LECs may assess end office switching charges for such services.*⁷

II. BACKGROUND

A. The *USF/ICC Transformation Order*

4. Prior to the *USF/ICC Transformation Order*, the Commission had declined to expressly address the intercarrier compensation obligations associated with VoIP traffic.⁸ Some parties asserted that traffic originating or terminating in IP was subject to the same compensation as traditional voice traffic, while other carriers maintained that no compensation was due.⁹ VoIP-PSTN traffic had been a particular source of intercarrier compensation disputes and litigation, with some states allowing providers to assess different access charges in various circumstances, with widely varying results.¹⁰ Evidence in the record demonstrated asymmetric revenue flows for traffic exchanged between a traditional wireline LEC and a LEC partnering with a VoIP provider.¹¹ The Commission found that the existing intercarrier compensation system was “fundamentally in tension with and a deterrent to the deployment of IP networks,” and was “riddled with inefficiencies and opportunities for wasteful arbitrage.”¹² Finding that “current uncertainty and associated disputes” were “likely deterring innovation and introduction of new IP services to consumers,” the Commission determined it appropriate, for the first time, to address intercarrier compensation for VoIP-PSTN traffic.¹³

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Bandwidth.com, and John Nakahata, Counsel to Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 5-10 (filed Sept. 10, 2012) (Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter).

⁶ *USF/ICC Transformation Order*, 26 FCC Red at 18026, para. 970.

⁷ We interpret the filings that we address in this declaratory ruling to be premised on the fact that the LEC seeking to assess end office access charges also assigned the calling party telephone number as reflected in the database of the Number Portability Administration Center (NPAC). See, e.g., Bandwidth June 11, 2012 *Ex Parte* Letter at 4 (noting that the competitive LEC assigns the NPAC number). We do not address the interpretation or application of our VoIP symmetry rule in cases where the LEC seeking to charge end office access charges does not assign the calling party telephone number. Compare Letter from Alan Buzacott, Executive Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Jan. 13, 2015) (Verizon Jan. 13, 2015 *Ex Parte* Letter) (arguing that the VoIP symmetry rule only applies if the competitive LEC is listed in the database of the NPAC as providing the calling party number), and Letter from Alan Buzacott, Executive Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Jan. 29, 2015) (Verizon Jan. 29, 2015 *Ex Parte* Letter) (asking the Commission to apply its ruling only if the competitive LEC is listed in the NPAC database as providing the calling party number), with Letter from Henry T. Kelly, Counsel to Peerless Network, to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 et al., at 8-9 (filed Dec. 10, 2014) (Peerless Dec. 10, 2014 *Ex Parte* Letter) (stating that the payment of originating end office switched access charges is not limited to circumstances where the competitive LEC provides the ANI (automatic number identifier)).

⁸ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Red 4554, 4746, para. 610 (2011) (*USF/ICC Transformation NPRM*).

⁹ *Id.*

¹⁰ *USF/ICC Transformation Order*, 26 FCC Red at 18003-04, para. 937.

¹¹ See *id.* at 18005, para. 938; see also *USF/ICC Transformation NPRM*, 26 FCC Red at 4746, para. 610 & n.920.

¹² *USF/ICC Transformation Order*, 26 FCC Red at 17669, para. 9.

¹³ *Id.* at 18005, para. 939.

5. Accordingly, the Commission adopted a prospective transitional intercarrier compensation framework for VoIP-PSTN traffic.¹⁴ In particular, the Commission determined that it was appropriate to adopt a “symmetric” framework.¹⁵ The Commission explained that, under a symmetric approach, “providers that benefit from lower VoIP-PSTN rates when their end-user customers’ traffic is terminated to other providers’ end-user customers also are restricted to charging the lower VoIP-PSTN rates when other providers’ traffic is terminated to their end-user customers.”¹⁶ It reasoned that a symmetrical approach best balanced its policy goals of encouraging migration to an all-IP network, reducing intercarrier compensation disputes, providing greater certainty to the industry regarding intercarrier compensation revenue streams, avoiding marketplace distortions and arbitrage that could arise from an asymmetrical approach to compensation, and advancing competitive and technological neutrality.¹⁷

6. To effectuate these goals, the Commission adopted rules that “permit a LEC to charge the relevant intercarrier compensation for functions performed by it and/or by its retail VoIP partner, regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture.”¹⁸ This rule is commonly referred to as the “VoIP symmetry rule.” The rule ensures that VoIP providers and their LEC partners will have “the same opportunity, during the transition to bill-and-keep, to collect intercarrier compensation” for VoIP-PSTN traffic as providers that use traditional telecommunications infrastructure.¹⁹ The Commission allowed, on a prospective basis, competitive LECs to charge the same intercarrier compensation as incumbent LECs under comparable circumstances for functions performed by them and/or their retail VoIP partners.²⁰ This rule was a departure from prior Commission policy that providers were allowed to charge for services that only they themselves provided.²¹ The availability of these access charges is limited, however, as all terminating switched end office access charges will have transitioned to a bill-and-keep regime by 2020.²²

7. The VoIP symmetry rule, codified in section 51.913(b) of the Commission’s rules, specifies:

Notwithstanding any other provision of the Commission’s rules, a local exchange carrier shall be entitled to assess and collect the full Access

¹⁴ See *id.* at 18026-27, para. 970; see also 47 C.F.R. §§ 51.913, 61.26(f). Specifically, this framework established default intercarrier compensation rates for toll VoIP-PSTN traffic equal to interstate access rates and default intercarrier compensation rates for other VoIP-PSTN traffic at otherwise applicable reciprocal compensation rates. See *USF/ICC Transformation Order*, 26 FCC Red at 18008, para. 944.

¹⁵ *USF/ICC Transformation Order*, 26 FCC Red at 18026-28, paras. 970-71.

¹⁶ *Id.* at 18007, para. 942.

¹⁷ *Id.* at 18009-13, paras. 946-53.

¹⁸ *Id.* at 18026-27, para. 970.

¹⁹ *Id.* at 18025, para. 968.

²⁰ *Id.* at 18026-27, para. 970.

²¹ Historically, the Commission’s policy generally had been that carriers could assess charges only for services they themselves provided. See *Access Charge Reform*, CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Red 9108, 9118-19, para. 21 (2004) (*Eighth Report and Order*). In 2004, the Commission extended this longstanding policy to competitive LECs. Thus, “the carriers needed both to provide the relevant access service and ensure that their access tariffs accurately identified the services provided.” *Id.* at 9117, para. 18 (“access tariffs, like all other tariffs, must clearly identify each of the services offered and the associated rates, terms, and conditions”); see also 47 C.F.R. § 61.2(a).

²² See *USF/ICC Transformation Order*, 26 FCC Red at 17934-6, para. 801 & Figure 9. Under a bill-and-keep regime, “carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary.” *Id.* at 17676, para. 34.

Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier's interstate or intrastate tariff for the access services defined in § 51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic.²³

8. Section 51.913(b) provides that a LEC is entitled to assess and collect access charges for services "defined in § 51.903."²⁴ Among the categories of services defined in 51.903 is End Office Access Services, which are defined as "the switching of access traffic at the carrier's end office switch and the delivery to or from of such traffic to the called party's premises."²⁵ Local switching is one of the rate elements of End Office Access Charges,²⁶ whereas there are separate common line charges that recover, as a general matter, the costs associated with the physical loop and line port.²⁷

9. Pursuant to our rules, one of the permissible definitions of "End Office Access Service" is "any functional equivalent of the incumbent local exchange carrier access service."²⁸ Rule 51.903 also notes that "End Office Access Service rate elements" for a non-incumbent local exchange carrier may include "any functionally equivalent access service."²⁹ Thus, the definitions of both "end office access"

²³ 47 C.F.R. § 51.913(b).

²⁴ *Id.* §§ 51.913(b), 51.903.

²⁵ *Id.* § 51.903(d)(1).

²⁶ *Id.* §§ 51.903(d)(3), 69.106. The Commission has noted that "end office switching rates are among the highest recurring intercarrier compensation charges." *AT&T Corp. v. YMax Communications Corp.*, EB-10-MD-005, 26 FCC Red 5742, 5757, para. 40 (2011) (*YMax Complaint*).

²⁷ *See, e.g.*, 47 C.F.R. §§ 54.901, 69.152-54, 69.104. Specifically, the line port provides the connection between the switch and the physical loop and is recovered through common line charges or universal service support. In 1997 and 2001, the Commission moved line port cost recovery from the local switching category to the common line categories. *See Access Charge Reform et al.*, First Report and Order, CC Docket No. 91-213 et al., 12 FCC Red 15982, 16035, para. 125 (1997) (reassigning the line-side port costs from local switching rate element to the common line rate elements for price cap regulated carriers) (subsequent history omitted); *Multi-Ass'n Grp. (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 96-45 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Red 19613, 19735, para. 303 (2001) (reallocating line port costs from local switching to the common line category for rate-of-return regulated carriers) (subsequent history omitted). Thus, costs associated with the line port are currently recovered through such common line charges as the End User Common Line (EUCL) charge, the Presubscribed Interexchange Carrier Charge (PICC), or the Carrier Common Line (CLL) charge. Except in the limited circumstances where a PICC or CCL is being charged, there is no danger that competitive LECs would be recovering these costs through benchmarked access charges.

²⁸ 47 C.F.R. § 51.903. *See id.* § 51.903(d)(3) ([End Office Access Service means] "Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. End Office Access Service rate elements for an incumbent local exchange carrier include the local switching rate elements specified in § 69.106 of this chapter, the carrier common line rate elements specified in § 69.154 of this chapter, and the intrastate rate elements for functionally equivalent access services. End Office Access Service rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the information surcharge and residual rate elements. End office Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.").

²⁹ *Id.* § 51.903.

service and “end office access” rate elements explicitly encompass “functionally equivalent” services. In the *USF/ICC Transformation Order*, the Commission also adopted measures to protect against double billing, and it clarified that the VoIP symmetry rule does not permit a LEC to charge for functions performed neither by itself nor its retail service provider partner.³⁰

10. In adopting this rule, the Commission developed an approach designed to prevent the kinds of disputes arising from the “use of IP technology as well as the structure of the relationship between retail VoIP service providers and their wholesale carrier partners” that had arisen under the pre-existing intercarrier compensation regimes.³¹ Whereas earlier decisions focused on switching functionality in the context of TDM networks,³² the VoIP symmetry rule took the next logical step by allowing compensation for functionally equivalent services provided outside the TDM context. The Commission recognized that its approach to intercarrier compensation needed to evolve along with changing technologies and network functions.³³ Accordingly, the Commission determined that “VoIP calls will be on equal footing in their ability to obtain compensation for this traffic” during the multi-year transition of intercarrier compensation rates.³⁴

B. Switching Functionality Guidance

11. Some parties have asserted that a competitive LEC partnering with an over-the-top VoIP provider cannot deliver the functional equivalent of end office switching,³⁵ and thus the competitive LEC is not entitled to assess and collect access charges for end office (or local) switching under the VoIP symmetry rule.³⁶ Parties rely on a number of Commission decisions, many of which were adopted prior to the *USF/ICC Transformation Order*, that address different aspects of switching and network architecture to identify the key end office switching functions, and therefore what the functional equivalent of end office switching may entail. We summarize these decisions below.

³⁰ *Id.* § 51.913(b); *USF/ICC Transformation Order*, 26 FCC Red at 18027, para. 970.

³¹ *USF/ICC Transformation Order*, 26 FCC Red at 18025, para. 968.

³² See *infra* Section II.B.

³³ See *USF/ICC Transformation Order*, 26 FCC Red at 17670, paras. 10-11.

³⁴ *Id.* at 17678, para. 40.

³⁵ In 2005, the Commission stated that it “found it useful to divide VoIP providers into two general types: (1) facilities-based VoIP providers and (2) ‘over-the-top’ VoIP providers.” See *Verizon Communications Inc. and MCI, Inc. Application for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Red 18433, 18479, para. 87 (2005) (*Verizon/MCI Order*). Facilities-based VoIP providers, “including certain cable VoIP providers,” are providers that “own and control the last mile facility” and “may own or lease the switching and transmission networks that are used to carry VoIP calls.” *Id.* The other type of VoIP providers, called “over-the-top” VoIP providers, include “providers that require the end user to obtain broadband transmission from a third-party provider, and such VoIP providers can vary in terms of the extent to which they rely on their own facilities.” *Id.* See also *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, Memorandum Opinion and Order, 20 FCC Red 18290, 18337-38, para. 86 (2005) (*SBC/AT&T Order*).

³⁶ See, e.g., Letter from David L. Lawson, Counsel to AT&T, to Marlene H. Dortch, FCC, CC Docket No. 96-45 et al., at 1-13 (filed Jan. 17, 2013) (AT&T Jan. 17, 2013 *Ex Parte* Letter); Letter from Alan Buzacott, Executive Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 at 1-2 (filed Feb. 28, 2013) (Verizon Feb. 28, 2013 *Ex Parte* Letter). Information filed in the record indicates that parties often use the terms “end office switching” and “local switching” synonymously. See, e.g., AT&T Jan. 17, 2013 *Ex Parte* Letter at 6 (“A local, or end office, switch”); Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter at 1; Bandwidth June 11, 2012 *Ex Parte* Letter at 1.

12. *RAO Letter 21, RAO Recon Order.* Several carriers cite to *RAO Letter 21* as an order that identifies the defining characteristics of switching functionality.³⁷ In 1992, the Common Carrier Bureau's Accounting and Auditing Division released *RAO Letter 21* to provide carriers with guidance about the correct accounting classification of remote switching equipment.³⁸ In an effort to distinguish between terminals that are part of the switching plant and terminals that are part of the loop plant, the Bureau identified a number of basic switching functions.³⁹ In response to petitions for reconsideration of the Bureau's letter, the Commission released the *RAO Recon Order*.⁴⁰ In that order, the Commission found that "interconnection, i.e., the actual connection of lines and trunks, is the characteristic that distinguishes switches from other central office equipment" in traditional circuit-switched networks.⁴¹

13. *YMax Complaint.* Several parties cite as dispositive a 2011 Commission-level decision concerning competitive LEC/over-the-top VoIP provider partnership functions. The *YMax Complaint* resolved a formal complaint between a competitive LEC named YMax and AT&T concerning disputed switched access charges.⁴² YMax partnered with magicJack, a company that provided a device that plugged into a computer's USB port and a telephone jack on the other end.⁴³ Parties who wished to use the YMax-magicJack service had to agree to a service agreement requirement to "separately procure high speed Internet access service from a third-party ISP in order to use the magicJack device to place or receive calls."⁴⁴

14. In the complaint, AT&T, in its role as an interexchange carrier (IXC), alleged that YMax violated the Act by assessing interstate switched access charges not authorized by its tariff.⁴⁵ The Commission examined YMax's tariff and noted that in its tariff definition, "end office switching" included "end office switches" where "station loops" that connect to end user premises are "terminated," and appeared to be "based on traditional ILEC tariffs, describing traditional networks."⁴⁶ The Commission held that, by construing these phrases together, "according to their common meaning in the industry," the phrases generally "refer to a physical transmission facility that provides a point-to-point

³⁷ See, e.g., Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter at 4-5; Letter from John T. Nakahata, Counsel to Level 3 et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3-4 (filed Oct. 4, 2012) (Level 3 and Bandwidth Oct. 4, 2012 *Ex Parte* Letter). *But cf.* AT&T Jan. 17, 2013 *Ex Parte* Letter at 11 (asserting that the "Revised RAO 21 Letter do[es] not support the CLECs' claim").

³⁸ *Classification of Remote Central Office Equipment*, Letter, Responsible Accounting Officer, DA 92-1091, 7 FCC Red 5205 (Comm. Carr. Bur. 1992) (*RAO Letter 21*).

³⁹ *Id.* at 5205 n.1 ("The basic switching functions are: 1) Attending - monitors for off-hook signals; 2) Control - determines call destination and assigns call to available line or trunk; 3) Busy testing - determines whether the called line/trunk is busy; 4) Information receiving - receives control and busy test results; 5) Information transmitting - transmits control and busy test results to tell the alerting and interconnection functions whether to complete the call; 6) Interconnection - connects subscriber line to subscriber line or subscriber line to trunk; 7) Alerting - rings the called subscriber's line or other signaling means if the call is destined for another exchange; 8) Supervising monitors for call termination so the line can be released.").

⁴⁰ See *Petitions for Reconsideration and Applications for Review of RAO 21*, Order on Reconsideration, AAD 92-86, 12 FCC Red 10061 (1997) (*RAO Recon Order*).

⁴¹ See *id.* at 10066-67, para. 11.

⁴² *YMax Complaint*, 26 FCC Red 5742.

⁴³ *Id.* at 5744, para. 4.

⁴⁴ *Id.* at 5745, para. 5. The Complaint notes that "MagicJack . . . relies on YMax to obtain telephone numbers and interconnection to the public switched telephone network ("PSTN") for magicJack purchasers." *Id.* at 5744, para. 4.

⁴⁵ *Id.* at 5742, para. 1.

⁴⁶ *Id.* at 5755-56, para. 36 & n.108.

connection between an individual home or business and a telephone company office.”⁴⁷ Because YMax did not provide a “physical transmission facility that provides a point-to-point connection,” the Commission determined that YMax was not providing “end office switching” pursuant to its tariff.⁴⁸ The Commission declined to address, however, whether interconnected VoIP was “subject to intercarrier compensation rules and, if so, the applicable rate for such traffic.”⁴⁹

15. *YMax Clarification Order*. Several parties also rely on a 2012 Bureau-level decision that addressed a dispute over the recently-adopted VoIP symmetry rule. YMax sought clarification that it was entitled to charge the full benchmark level of access charges pursuant to the new VoIP symmetry rule “whenever it is providing telephone numbers and some portion of the interconnection with the PSTN, and regardless of how or by whom the last-mile transmission is provided.”⁵⁰ The Wireline Competition Bureau (Bureau) held that interpreting the rule in the manner proposed by YMax could enable double billing.⁵¹ The possibility of double billing was an outcome that the Commission was careful to avoid in the *USF/ICC Transformation Order*.⁵² Based on these potential outcomes, the Bureau disagreed with YMax’s proposed interpretation of the VoIP symmetry rule.⁵³

C. Nature of the Disputes

16. Numerous competitive LECs complain that two IXCs – AT&T and Verizon – are withholding payment for certain access elements when they partner with over-the-top VoIP providers.⁵⁴

⁴⁷ *Id.* at 5756-57, paras. 38-39.

⁴⁸ *Id.* at 5756-57, paras. 37-41.

⁴⁹ *Id.* at 5743 n.7.

⁵⁰ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 27 FCC Red 2142, 2144, para. 4 (Wireline Comp. Bur. 2012) (*Clarification Order*) (quoting Letter from John B. Messenger, VP-Legal & Regulatory, YMax, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Feb. 3, 2012) (YMax Petition for Clarification)).

⁵¹ *Id.* at 2144, para. 4.

⁵² *Id.* (citing *USF/ICC Transformation Order*, 26 FCC Red at 18026-27, para. 970). YMax’s interpretation could lead to double billing because, under that interpretation, YMax could charge the full benchmark access charge for providing “some portion” of the interconnection with the PSTN, but other entities involved in the last-mile transmission would also be able to charge the full benchmark access charge.

⁵³ *Id.* at 2144, para. 4.

⁵⁴ *See, e.g.*, Bandwidth June 11, 2012 *Ex Parte* Letter at 2-4; Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter at 1-2, 14; Level 3 and Bandwidth Oct. 4, 2012 *Ex Parte* Letter at 1-2, 4-5. *See also* Letter from Jennifer P. Bagg, Counsel to Broadvox, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Dec. 21, 2012) (Broadvox Dec. 21, 2012 *Ex Parte* Letter); Letter from James C. Falvey, Counsel to CoreTel Virginia, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed July 1, 2013) (CoreTel July 1, 2013 *Ex Parte* Letter); Letter from Michel Singer Nelson, Vice President of Regulatory and Public Policy, OI Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-2 (filed Aug. 22, 2013) (OI Aug. 22, 2013 *Ex Parte* Letter); Letter from KC Halm, Counsel to TeleQuality Communications, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed March 22, 2013) (TeleQuality March 22, 2013 *Ex Parte* Letter); Letter from Lisa R. Youngers, Vice President and Assistance General Counsel, Federal Affairs, XO Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-2 (filed Dec. 23, 2013) (XO Dec. 23, 2013 *Ex Parte* Letter). We find no evidence in the record that IXCs other than AT&T and Verizon are disputing local switching charges assessed by competitive LECs partnering with over-the-top VoIP providers. *See* Letter from Tamar E. Finn, Counsel to Bandwidth.com, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 et al., at 2 (filed Oct. 22, 2014) (Bandwidth Oct. 22, 2014 *Ex Parte* Letter) (asserting that other than AT&T, “[n]o other carrier disputed Bandwidth’s end office switching charges under the VoIP symmetry rule until Verizon belatedly did so—nearly three years after the rule was adopted”); *see also* Letter from Christopher J. Wright, Counsel to Level 3 Communications, to Ms. Marlene H. Dortch, CC Docket No. 01-92 et al., at 4 n.16 (filed Dec. 10, 2014) (Level 3 Dec. 10, 2014 *Ex Parte* Letter).

AT&T and Verizon's refusal to pay is based on an assertion that neither the competitive LECs, nor their VoIP provider partners, provide either end office switching or the "functional equivalent" of end office switching, and thus neither party qualifies for access charges pursuant to the VoIP symmetry rule.⁵⁵ AT&T and Verizon claim that end office switching entails the "physical" work of connecting trunks to loops.⁵⁶ They argue that this physical work occurs only when a competitive LEC partners with a facilities-based VoIP provider because such a scenario provides the last-mile transmission into a home via an actual physical facility.⁵⁷

17. The competitive LECs, in contrast, assert that they or their VoIP provider partner, when working together, provide the functional equivalent of end office switching and are eligible under the VoIP symmetry rule to charge end office switching for traffic that terminates to the VoIP provider's end user.⁵⁸ They argue that the position of AT&T and Verizon runs counter to the VoIP symmetry rule and the policy goals articulated in the *USF/ICC Transformation Order*.⁵⁹ Specifically, the competitive LECs observe that, in the *USF/ICC Transformation Order*, the Commission declined to adopt proposals that would apply VoIP-specific rates for only IP-originated or IP-terminated traffic, and that nothing in the *USF/ICC Transformation Order* or corresponding rules suggests that differences should exist in treatment between facilities-based VoIP providers and over-the-top VoIP providers.⁶⁰

18. Level 3 urges this clarification of the VoIP symmetry rule pursuant to the Commission's authority under section 1.2 of its rules to issue a declaratory ruling interpreting rules, terminating controversies, and ending uncertainty.⁶¹ Level 3 and Bandwidth also argue that such a declaratory ruling must be given retroactive effect.⁶² AT&T and Verizon disagree and assert that the VoIP symmetry rule is clear that competitive LECs and their over-the-top VoIP provider partners may not assess intercarrier compensation charges for end office switching, and contend that if the Commission were to clarify rules to the contrary, it may only do so prospectively.⁶³

⁵⁵ See Bandwidth June 11, 2012 *Ex Parte* Letter at 2-3; Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter at 1-2; AT&T July 16, 2012 *Ex Parte* Letter at 1-2. In 2013, Verizon met with Bureau staff to express its opposition to the competitive LECs' assertion that they are entitled to assess end office switching when they partner with over-the-top VoIP provider partners. See, e.g., Verizon Feb. 28, 2013 *Ex Parte* Letter at 1-2; see also Letter from Alan Buzacott, Executive Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-3 (filed May 6, 2013) (Verizon May 6, 2013 *Ex Parte* Letter); Letter from Alan Buzacott, Executive Director, Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-3 (filed May 24, 2013) (Verizon May 24, 2013 *Ex Parte* Letter).

⁵⁶ See, e.g., AT&T Jan. 17, 2013 *Ex Parte* Letter at 5-6; Verizon Feb. 28, 2013 *Ex Parte* Letter at 1-2.

⁵⁷ See, e.g., AT&T Jan. 17, 2013 *Ex Parte* Letter at 5-6; Verizon Feb. 28, 2013 *Ex Parte* Letter at 1-2, 16.

⁵⁸ See, e.g., Bandwidth June 11, 2012 *Ex Parte* Letter at 2-3; Level 3 and Bandwidth Sept. 10 2012 *Ex Parte* Letter at 1-17; Bright House Feb. 1, 2013 *Ex Parte* Letter, Attach, 3-6; Inteliquent May 10, 2013 *Ex Parte* Letter, Attach, 3-4.

⁵⁹ See, e.g., Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter at 5-6.

⁶⁰ See *id.*

⁶¹ See Letter from John T. Nakahata, Counsel to Level 3 Communications, and Tamar Finn, Counsel to Bandwidth.com, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 5-6 (filed Aug. 6, 2013) (Level 3 and Bandwidth Aug. 6, 2013 *Ex Parte* Letter) (citing 47 C.F.R. § 1.2).

⁶² Letter from John T. Nakahata, Counsel to Level 3 Communications, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 6 (filed Nov. 3, 2014) (Level 3 Nov. 3, 2014 *Ex Parte* Letter); Letter from Tamar E. Finn, Counsel to Bandwidth.com, to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket No. 10-92 et al., at 2 (filed Dec. 8, 2014) (Bandwidth Dec. 8, 2014 *Ex Parte* Letter). See also Peerless Dec. 10, 2014 *Ex Parte* Letter at 15.

⁶³ See, e.g., AT&T *Ex Parte* Letter of Jan. 17, 2013 at 15-16; Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 6 (filed Nov. 5, 2014) (Verizon Nov. 5, 2014 *Ex Parte* Letter).

III. DISCUSSION

19. For the reasons described below, we clarify that the Commission's VoIP symmetry rule does not require a competitive LEC or its VoIP provider partner to provide the physical last-mile facility to the VoIP provider's end user customers in order to provide the functional equivalent of end office switching, and thus for the competitive LEC to be eligible to assess access charges for this service.⁶⁴ It is apparent that some carriers may have interpreted the VoIP symmetry rule in a manner that is inconsistent with the Commission's intent in the *USF/ICC Transformation Order*. This misinterpretation is resulting in significant access charge disputes regarding legacy technological distinctions that were the subject of reform in the *USF/ICC Transformation Order*. As discussed below, such a result is contrary to both the language of the VoIP symmetry rule and the policies underlying its adoption. Moreover, the record suggests that this misinterpretation of the VoIP symmetry rule may be impacting negotiations concerning IP interconnection.⁶⁵ For these reasons, we find it necessary to address these issues and ensure that carriers are implementing our rules consistent with the *USF/ICC Transformation Order*.

A. The VoIP Symmetry Rule is Not Limited to Facilities-Based VoIP Services

20. In the *USF/ICC Transformation Order*, the Commission carefully considered various approaches to intercarrier compensation for VoIP-PSTN traffic.⁶⁶ Ultimately, it determined that a symmetrical approach would be most consistent with the Commission's policy goals.⁶⁷ The VoIP symmetry rule was adopted to effectuate the Commission's policy goals with an understanding that "competitive LECs should be entitled to charge the same intercarrier compensation as incumbent LECs do under comparable circumstances."⁶⁸ In particular, as noted above, the Commission stated that a competitive LEC may charge the relevant intercarrier compensation "for functions performed by it and/or its retail VoIP partner, regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture."⁶⁹ Thus, in adopting the VoIP symmetry rule, the Commission intended to provide similar, i.e., symmetric, intercarrier compensation rights for competitive LECs partnering with VoIP providers, and specifically where new and different technologies are used. There is nothing in the *USF/ICC Transformation Order* to suggest that the VoIP symmetry rule intended to draw any distinction between competitive LECs partnering with facilities-based VoIP providers and those partnering with over-the-top VoIP providers. That is, there is no explicit distinction made, nor is there analysis that implies such a distinction is appropriate. Rather, the discussion of the VoIP symmetry rule in the *USF/ICC Transformation Order* embraces the concept of compensation for new and non-traditional functionality.⁷⁰

21. The language of the VoIP symmetry rule contemplates symmetrical compensation when providing VoIP services via new and different technologies. Section 51.913(b) provides that a LEC "shall be entitled to assess and collect the full Access Reciprocal Compensation charges" for access

⁶⁴ Because such charges ultimately are governed by applicable tariffs, however, we cannot conclude that access charges for end office switching are due in every circumstance. Assuming that the applicable tariff language contemplates charging for functionally equivalent services, a competitive LEC partnering with an over-the-top VoIP provider partner would presumably be entitled to collect for such charges.

⁶⁵ See, e.g., Vonage Feb. 12, 2014 *Ex Parte* Letter at 1-2; see also Level 3 May 16, 2014 *Ex Parte* Letter at 2.

⁶⁶ *USF/ICC Transformation Order*, 26 FCC Red at 18003-05, 18009-13, paras. 936-39, 946-53.

⁶⁷ *Id.* at 18007, para. 942.

⁶⁸ *Id.* at 18026-27, para. 970.

⁶⁹ *Id.*

⁷⁰ See, e.g., *id.* at 1813, 18025, 18026-27, paras. 953, 968, 970 ("we seek to ensure that our policies do not hinder the ongoing migration to all-IP networks;" "freeing up resources for investment and innovation;" "regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture").

services defined in § 51.903 whether the LEC carrier itself, or its affiliated or unaffiliated VoIP partner delivers the calls, as long as at least one member of the partnership provides the requisite functionality.⁷¹ The rule places no restrictions on the types of VoIP providers with which competitive LECs may form partnerships.⁷² Competitive LECs may partner with a variety of VoIP partners and collect symmetrical access charges for covered services as long as one of the partners jointly providing a call delivers the end office switching functionality. The final sentence of this rule emphasizes the flexibility allowed for functions provided by a LEC or its VoIP partner as part of transmitting telecommunications between designated points “using, in whole or in part, technology other than TDM” as long as the technology is used “in a manner that is comparable to a service offered by a local exchange carrier.”⁷³ These phrases indicate an inherent flexibility in the rule and make clear that technology other than TDM can support similar compensation, as long as it is used in a comparable manner. Thus a competitive LEC/over-the-top VoIP provider partnership may use TDM technology or some other type of technology, so long as either the LEC or VoIP provider provides the functionally equivalent services at issue. Any prior Commission rules to the contrary were overridden by the VoIP symmetry rule.⁷⁴

B. Application of the VoIP Symmetry Rule to Over-the-Top VoIP Furthers Commission and Congressional Policy to Embrace Modernized Networks and Services

22. The clarification provided here supports the goals articulated in the *USF/ICC Transformation Order* of encouraging the deployment of all-IP networks, protecting and promoting competition in the voice marketplace, reducing intercarrier compensation disputes, and avoiding marketplace distortions and arbitrage that could arise from an asymmetrical approach to compensation.⁷⁵ The clarification also supports the goals of the *2014 Technology Transitions Order* of “embracing[ing] modernized communications networks” that can “dramatically reduce network costs,” while ensuring that the Commission’s core statutory values remain, including “ubiquitous and affordable access” and competition.⁷⁶ Allowing more than just facilities-based VoIP providers to partner with competitive LECs to provide and collect access charges for the functional equivalent of end office switching will benefit consumers by broadening the number of innovative IP-based service offerings.⁷⁷ Clarifying when symmetry is required for compensation for VoIP-PSTN traffic under our rules further encourages migration to all-IP networks because such clarification eliminates asymmetry that some carriers may try to import into their IP-to IP interconnection negotiations informed by a misinterpretation or misapplication of that rule.⁷⁸ Finally, we expect that clarifying the Commission’s intent concerning the

⁷¹ 47 C.F.R. § 51.913(b).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ The first phrase of the rule is “notwithstanding any other provision of the Commission’s rules.” That phrase makes clear that the VoIP symmetry rule takes priority over potentially conflicting rules.

⁷⁵ *USF/ICC Transformation Order*, 26 FCC Red at 18009-13, paras. 946-53. In rejecting AT&T’s challenge to the VoIP symmetry rule, the 10th Circuit held that it was “reasonable” for the Commission to adopt the rule in an effort to advance “the goal of promoting IP deployment.” *In re FCC 11-161*, 753 F.3d at 1148.

⁷⁶ *2014 Technology Transitions Order*, 29 FCC Red at 1435, paras. 1-2.

⁷⁷ *See, e.g., USF/ICC Transformation Order*, 26 FCC Red at 17671, para. 14 (“Those prior [reform] efforts helped usher in significant reductions in long distance rates and the proliferation of innovative new offerings . . . with substantial consumer benefits. We expect that today’s ICC actions will have similar pro-consumer, pro-innovation results. . . . These benefits may take many forms, including . . . more innovative IP-based communications offerings.”); *id.* at 17692, para. 78 (consumers “reap the benefits of the new technology and service offerings.”).

⁷⁸ *See, e.g., id.* at 18009-13, paras. 946-53.

proper application of the VoIP symmetry rule in the *USF/ICC Transformation Order* will reduce the intercarrier compensation disputes that have arisen over various interpretations of this rule.⁷⁹

23. We also find that equal application of the rule furthers the goal of the *USF/ICC Transformation Order* to “reduce disputes and provide greater certainty to the industry regarding intercarrier compensation revenue streams.”⁸⁰ Disputes and litigation divert critical carrier resources from the development of modern networks and services, thereby frustrating Commission and Congressional goals.⁸¹ To implement the interpretation of the VoIP symmetry rule advanced by AT&T and Verizon, that is, to treat services differently based on the end-user’s choice of broadband providers, would require AT&T and Verizon to distinguish between over-the-top VoIP services and other VoIP services.⁸² Based on experience to date, we find it likely that treating over-the-top VoIP differently from facilities-based VoIP would only lead to additional intercarrier compensation disputes, costly litigation, and less certainty to the industry. Indeed, the record makes clear that the number of intercarrier compensation disputes regarding the VoIP symmetry rule arising from the very distinction that AT&T and Verizon support is rising.⁸³ Moreover, endorsing disparate treatment based on technological distinctions between facilities-based and over-the-top providers directly contradicts the advancement of “competitive or technological neutrality,” as well as the ongoing migration to broadband networks through, among other things, competitive LEC-VoIP partnerships.⁸⁴

24. We are not persuaded by AT&T’s assertion that requiring symmetrical compensation for services provided jointly by a competitive LEC and its over-the-top VoIP provider partner is bad public

⁷⁹ See, e.g., *id.* at 18003, 18009, paras. 935, 946.

⁸⁰ *Id.* at 18020-22, para. 963 (discussing various ways in which carriers could distinguish VoIP-PSTN traffic during the transition, including the use of signaling, call detail information, or default or proxy mechanisms to account for such traffic).

⁸¹ See, e.g., Letter from Tamar E. Finn, Counsel to Bandwidth.com, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 et al., at 1 (filed Dec. 5, 2014) (Bandwidth Dec. 5, 2014 *Ex Parte* Letter); O1 Aug. 22, 2013 *Ex Parte* Letter at 1-2. See also Peerless Dec. 10, 2014 *Ex Parte* Letter at 7 (stating that a rejection of the IXCs’ “categorical exclusion to compensation for end office switched access services will further encourage investment in IP infrastructure by giving the industry assurances that the functions and rate elements that they provide in IP will be compensated”).

⁸² *USF/ICC Transformation Order*, 26 FCC Red at 18020-21, para. 963.

⁸³ See, e.g., Peerless Dec. 10, 2014 *Ex Parte* Letter at 2 (asserting that since the adoption of the VoIP symmetry rule, Verizon and AT&T began “to significantly increase the volume of disputes for Peerless access charges for the end office services provide[d] and its VoIP partners” and that they “not only refuse to pay access charges on VoIP OTT traffic, but [have] invented new disputes for access charges they had previously paid, resulting in a claimed ‘claw back’ of prior payments”); Bandwidth Oct. 22, 2014 *Ex Parte* Letter at 2 (asserting that Verizon has “belatedly” disputed “all previously paid tariffed end office charges in their entirety, and refused to pay all such charges prospectively,” and that “the sums at issue in the dispute are significant”); Bandwidth Dec. 5, 2014 *Ex Parte* Letter at 1 (asserting that “[e]very month of delay in addressing this issue costs Bandwidth time and money in disputed and unpaid access bills, diverting resources from running and growing its business, unlocking IP innovation for well-established and emerging partners on the creative edge of IP user experiences”); XO Communications Dec. 23, 2013 *Ex Parte* Letter at 1-2 (stating that “AT&T’s interpretation of access charges applicable to VoIP-PSTN traffic turns the VoIP symmetry rule on its head, increasing carrier disputes where AT&T has withheld payment of end office access charges that do not meet AT&T’s criteria”); O1 Aug. 22, 2013 *Ex Parte* Letter at 1-2 (stating that it “has been attempting to resolve intercarrier compensation disputes without success . . . for years” with AT&T and Verizon, and that since January 2, 2012, “this issue alone has tied up millions of dollars . . . capital that O1 would like to invest into its network and the company”). See also Bandwidth June 11, 2012 *Ex Parte* Letter at 2; Bright House Feb. 1, 2013 *Ex Parte* Letter, Attach. 3; Broadvox Dec. 21, 2012 *Ex Parte* Letter at 2; CoreTel July 1, 2013 *Ex Parte* Letter at 2; Inteliquent May 10, 2013 *Ex Parte* Letter at 2; Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter at 1-2; Telequality March 22, 2013 *Ex Parte* Letter at 1.

⁸⁴ See *USF/ICC Transformation Order*, 26 FCC Red at 18010, 18013, paras. 948, 953.

policy because “low barriers to entry” to over-the-top VoIP service will create a “blueprint for economic distortion” by allowing over-the-top VoIP entities who only need a “negligible investment in a rack of equipment” to form for the purpose of collecting access charges.⁸⁵ The Commission’s goal in the *USF/ICC Transformation Order* was to facilitate the deployment of and transition to all-IP networks.⁸⁶ To that end, the Commission is in the process of transitioning to a default bill-and-keep framework where carriers look to their end users to cover the costs of the network.⁸⁷ The VoIP symmetry rule was adopted to bring VoIP-PSTN traffic within the framework adopted as part of its plan for addressing VoIP-PSTN traffic. The Commission stated that its prospective intercarrier compensation framework “best balances the relevant policy considerations,”⁸⁸ and that it did not want its policies during this transition, including symmetrical compensation for functionally equivalent services, to “hinder the ongoing migration to all IP networks.”⁸⁹ Further, as discussed below, asymmetric compensation for over-the-top VoIP services raises policy concerns because such a framework may create marketplace distortions and perverse incentives for LECs to perpetuate legacy TDM technology.⁹⁰ Thus, consistent with the Commission’s conclusions and overall policy goals in the *USF/ICC Transformation Order*, we find the VoIP symmetry rule as described herein will protect and promote competition for voice services, and facilitate the transition to an all IP network. Importantly, we retain jurisdiction to address any problems that may occur in the future under this framework.⁹¹ Finally, as discussed above, the availability of these access charges is limited, as terminating switched end office access charges will have transitioned to bill-and-keep by 2020.⁹²

25. Verizon expresses concern that the clarification adopted here would exacerbate both new and existing arbitrage schemes, especially with regard to originating 8YY traffic, and urges us to limit any clarification to terminating end office switching.⁹³ But Verizon presents no persuasive evidence to support its claim that such “schemes” are prevalent or will somehow proliferate under the clarification

⁸⁵ Letter from Christi Shewman, General Attorney, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. 2 at 2 (filed May 17, 2013) (AT&T May 17, 2013 *Ex Parte* Letter) (“If the Commission endorses the CLECs’ position, it will have created a blueprint for economic distortion . . . a thousand YMax’s will bloom.”). As an example of economic distortion, Verizon claims that allowing competitive LECs that partner with over-the-top VoIP providers to assess and collect end office switching will result in a “windfall, not symmetry,” because neither provider has incurred “infrastructure investment.” Verizon Nov. 5, 2014 *Ex Parte* Letter at 3; see also Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3 (filed Nov. 10, 2014) (Verizon Nov. 10, 2014 *Ex Parte* Letter). The rationale underlying the VoIP symmetry rule was to give providers using IP networks and technology the same opportunity during the transition to collect intercarrier compensation as those providers that had not yet undertaken the transition. See *USF/ICC Transformation Order*, 26 FCC Red at 18025, para. 968. We agree with Level 3’s assertion that the economic structure of ISP services is different than traditional PSTN services, and that the two should not be compared directly for investment recovery purposes. See Letter from Tamar Finn, Counsel to Bandwidth.com, and John Nakahata, Counsel to Level 3, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 6-7 (filed April 15, 2013) (Level 3 and Bandwidth April 15, 2013 *Ex Parte* Letter).

⁸⁶ See, e.g., *USF/ICC Transformation Order*, 26 FCC Red at 18025-26, paras. 968-70.

⁸⁷ See *id.* at 17676, para. 34.

⁸⁸ See *id.* at 18009, para. 946.

⁸⁹ See *id.* at 18013, para. 953.

⁹⁰ See *infra* Section III.F (IP interconnection discussion). See also Vonage Feb. 12, 2014 *Ex Parte* Letter at 1-2; Level 3 May 16, 2014 *Ex Parte* Letter at 2.

⁹¹ See 47 U.S.C. § 403.

⁹² See *USF/ICC Transformation Order*, 26 FCC Red at 179034-6, para. 801 & Figure 9.

⁹³ Verizon Nov. 5, 2014 *Ex Parte* Letter at 2; see also Verizon Jan. 13, 2015 *Ex Parte* Letter at 2-3. See also Letter from James C. Falvey, Counsel to Broadvox, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 et al., at 2 (filed Nov. 6, 2014) (dismissing Verizon’s traffic pumping claims as “fearmongering”).

advanced here. And if parties do attempt to engage in any such 8YY originating arbitrage, the Commission has rules in effect specifically designed to address access stimulation.⁹⁴ The access stimulation rules as adopted in the *USF/ICC Transformation Order* apply to both originating and terminating traffic. To the extent there is any evidence of such abuses, such evidence should be presented to the Commission in the context of a complaint to determine whether there is a potential violation of our access stimulation rules. If Verizon believes that the current access stimulation rules are somehow insufficient to address such conduct, Verizon should present information and analysis supporting its contention to the Commission. Moreover, in the Further Notice portion of the *USF/ICC Transformation Order*, the Commission sought additional comment on issues related to originating access reform, including the appropriate treatment of 8YY originated minutes and whether it should distinguish between originating access reform for 8YY traffic and originating access reform more generally.⁹⁵ The arbitrage concerns raised by Verizon would arguably apply to all types of originating 8YY traffic and thus could be considered as part of the record on originating access reform more generally.

C. Functional Equivalency

26. The definition of “end office access service” in section 51.903 of the Commission’s rules, as referenced in the language of the VoIP symmetry rule, allows for assessment of charges for services that are a “functionally equivalent access service.”⁹⁶ By its terms, this “functionally equivalent” language applies to all VoIP traffic, but disputes have arisen regarding whether a competitive LEC and an over-the-top VoIP provider together provide the functional equivalent of end office switching. As discussed above, the Commission reasoned that a new functional equivalence approach to VoIP-PSTN traffic best balanced its policy goals of promoting competition in the voice marketplace, encouraging migration to all-IP networks, reducing intercarrier compensation disputes, providing greater certainty to the industry regarding intercarrier compensation revenue streams, and avoiding marketplace distortions and arbitrage that could arise from an asymmetrical approach to compensation.⁹⁷ This new approach takes a more holistic look at how calls are delivered to the end user, and represents a departure from prior Commission policy in which providers were allowed to charge access for services that only they themselves provided.⁹⁸

27. Some parties to this dispute assert that the Commission should look to key physical switching functions identified in the TDM network, and attempt to identify similar physical functions in the IP network to determine whether the functional equivalent of end office switching occurs for competitive LECs partnering with over-the-top VoIP providers.⁹⁹ We decline to adopt such a constricted,

⁹⁴ See 47 C.F.R. § 61.26(g).

⁹⁵ See *USF/ICC Transformation Order*, 26 FCC Red at 18109-12, paras. 1296-1305.

⁹⁶ See *supra* Section II.A. See also 47 C.F.R. § 51.903(d)(3) (“End Office Access Service rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the information surcharge and residual rate elements. End office Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.”).

⁹⁷ See *supra* Section III.B.

⁹⁸ See *supra* Section II.A. Importantly, the Commission in the *USF/ICC Transformation Order* identified new considerations for determining functional equivalency in this specific context when it stated that the functions or technologies used under the VoIP symmetry rule do not need to “correspond precisely to those used under a traditional TDM architecture.” *USF/ICC Transformation Order*, 26 FCC Red at 18026-7, para. 970. There is no reason to assume that preexisting, technology-specific, TDM-based guidance for determining functional equivalency would apply to the newly-adopted VoIP symmetry rule, particularly when the Commission emphasized in the *USF/ICC Transformation Order* that the functions or technologies used to provide VoIP are not constrained by traditional TDM architecture.

⁹⁹ See, e.g., Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter at 7-13. See also Letter from Christi Shewman, General Attorney, AT&T, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. (filed Mar. 14, 2013) (AT&T March 14, 2013 *Ex Parte* Letter); AT&T Jan. 17, 2013 *Ex Parte* Letter at 5-6.

narrow interpretation of “functionally equivalent.” Direct comparisons between TDM network architecture and IP network architecture cannot be made precisely because IP-based networks do not involve the same types of physical connections as those found in traditional TDM networks. The fact that the two types of networks are different, however, does not mean that IP networks cannot deliver the functions that are equivalent to end office switching on TDM networks.¹⁰⁰ Indeed, the Commission’s decision to consider the functions performed by competitive LECs and their over-the-top VoIP partners to be “functionally equivalent” to end office switching is consistent with longstanding Commission precedent regarding the nature of switching, as opposed to transmission or loop functions.

28. In *RAO Letter 21*, the Bureau identified a number of basic switching functions associated with a TDM call.¹⁰¹ While not controlling in light of that decision’s TDM focus and the intervening adoption of the *USF/ICC Transformation Order*, this enumeration of relevant functions is instructive. Together, these are an aggregation of functions that, solely for purposes of this decision, we will identify as call *control*, i.e., the functions necessary to ensure call set-up, conduct and take-down. Local switching ensures a connection from the transport (across the network) to the termination point (phone device). In the case of a traditional TDM call, this is accomplished by a local switch connecting the trunk to the termination line/end-point phone device.¹⁰² In the case of a VoIP call, the call management system connects the packet stream crossing the Internet (transport) to the termination point (phone device).¹⁰³ In both cases, the connection between the transport and termination point is accomplished via call control functions. Thus, our application of the VoIP symmetry rule draws upon these call control functions when determining whether the functional equivalent of end office switching is provided, doing so in a manner consistent with the Commission’s intent that its approach to intercarrier compensation evolve along with technological and marketplace changes.¹⁰⁴ The fact that an over-the-top VoIP provider and its competitive LEC partner perform functions different from those performed previously under a traditional TDM architecture does not mean that they are not providing the functional equivalent of end office switching pursuant to the VoIP symmetry rule. Accordingly, we find that, under the VoIP symmetry rule, the functional equivalent of end-office switching exists when the intelligence associated with call set-up, supervision and management is provided.

¹⁰⁰ The Commission has addressed the concept of functional equivalency in a variety of legal contexts and has concluded that functions do not need to be identical in order to be equivalent. These cases support our more holistic approach to functional equivalency as described above. See *supra* Section III.C. See, e.g., *Ad Hoc Telecommunications Users Committee v. FCC*, 680 F.2d 790, 797 (D.C. Cir. 1982) (“The focus of the [functional equivalency] test should be practical, oriented to customers: what function or need do customers perceive to be satisfied by the services under examination? If customers perceive that two services perform the same function, price will govern choice. Sensibly, the functional equivalency test should be allowed to yield a determination that these services are ‘like,’ whether or not they are ‘identical,’ and we so hold.”) (*Ad Hoc Telecommunications Users Committee*); *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, CC Docket No. 90-571, Fifth Report and Order, 17 FCC Red 21233, 21246, para. 27 (2002) (“Section 225 does not mandate identical payment methods, only functionally equivalent services at equivalent rates.”); *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act, as Amended, to Provide In-Region, InterLata Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Red 20543, 20618, para. 139 (1997) (“equivalent access, as required by the Act and our rules, must be construed broadly to include comparisons of analogous functions between competing carriers and the BOC, even if the actual mechanism used to perform the function is different for competing carriers than for the BOC’s retail operations.”); *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 93-197, Further Notice of Proposed Rulemaking, 10 FCC Red 7854, 7862, para. 38 n.106 (1995) (“Services need not be ‘identical’ to be functionally equivalent.”).

¹⁰¹ See *supra* Section II.B.

¹⁰² See generally AT&T Jan. 17, 2013 *Ex Parte* Letter.

¹⁰³ See Level 3 and Bandwidth April 15, 2013 *Ex Parte* Letter at 1-6.

¹⁰⁴ See Level 3 and Bandwidth April 15, 2013 *Ex Parte* Letter at 1-2, 5.

29. The record indicates that competitive LECs and their over-the-top VoIP partners undoubtedly provide the call intelligence associated with call set-up, supervision and management.¹⁰⁵ Numerous filings detail the call control functions provided when delivering calls, including over-the-top VoIP calls.¹⁰⁶ Accordingly, we find that, under the VoIP symmetry rule, the call control functions provided jointly by a competitive LEC and its over-the-top VoIP partner are the functional equivalent of end-office switching.

30. AT&T contends that the defining function of end office switching is the actual connection of subscriber lines and trunks and that because that function is absent when competitive LECs and their over-the-top VoIP partners provide call control, they cannot be providing the equivalent of end office switching.¹⁰⁷ AT&T's argument, however, is inconsistent with the VoIP symmetry rule as adopted in the *USF/ICC Transformation Order* because it relies entirely on the technology used and ignores the functions provided. In a circuit-switched network the connection of trunks to lines is critical to call control because of the network architecture, which requires physical connections to be made between pieces of physical equipment. The Commission recognized this fact in the *RAO Recon Order*, when it found this connection fundamental to end office switching.¹⁰⁸ That is, absent the connection of trunks to lines on a circuit-switched network, there is no open line over which all the elements of call control can be exercised and a call can take place. In an IP world, the customer is separately paying for its broadband connection, which interconnects that customer to the Internet. This broadband service, whether purchased from an affiliate of the VoIP provider or a third party provider, is the facility over which the call transmission will take place. In order for an IP-based call to take place, broadband service must be operational. IP-based call control, the equivalent of end office switching, therefore does not require a physical connection of trunks to lines in order to provide the functional equivalent of end-office switching.¹⁰⁹

31. AT&T and Verizon implicitly concede that competitive LECs partnering with *facilities-based* VoIP partners do provide the functional equivalent of end office switching.¹¹⁰ The only significant

¹⁰⁵ See Letter from John T. Nakahata, Counsel to Level 3 Communications, and Tamar Finn, Counsel to Bandwidth.com, Inc. to Marlene H. Dortch, FCC, CC Docket No. 96-45 et al., at 7 (Aug. 8, 2013) (Level 3 and Bandwidth Aug. 8, 2013 *Ex Parte* Letter) (explaining that the functions performed by the switching equipment are the same for over-the-top VoIP calls as for all other calls). Specifically, the competitive LEC and VoIP partner determine call destination and directly code the call for receipt and decoding by the called party. *Id.* at 8. See also Level 3 and Bandwidth April 15, 2013 *Ex Parte* Letter at 1-2, 5.

¹⁰⁶ See e.g., Bandwidth June 11, 2012 *Ex Parte* Letter at 2-4; Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter at 2-4, 9-12; Level 3 and Bandwidth Aug. 8, 2013 *Ex Parte* Letter at 7-8; Level 3 and Bandwidth April 15, 2013 *Ex Parte* Letter at 1-2.

¹⁰⁷ See Letter from Christi Shewman, General Attorney, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Feb. 21, 2014) (AT&T Feb. 21, 2014 *Ex Parte* Letter) (citing *RAO Recon Order*, 12 FCC Red at 10062-63, para. 11).

¹⁰⁸ *RAO Recon Order*, 12 FCC Red at 10062-63, para. 11.

¹⁰⁹ Because we find that no physical connection is necessary, we likewise reject claims by Verizon that the media translation function in a VoIP originated or terminated call fails to provide the connection necessary to justify the imposition of end office switching charges. See Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 4 (filed Oct. 27, 2014) (Verizon Oct. 27, 2014 *Ex Parte* Letter).

¹¹⁰ See, e.g., Verizon Feb. 28, 2013 *Ex Parte* Letter at 2 (“[U]nlike facilities-based VoIP providers who typically provide this functionality, Level 3 and other competitive LECs that partner with over-the-top VoIP providers do not do this.”); AT&T May 17, 2013 *Ex Parte* Letter at 1 (“[W]here a competitive LEC has lawfully tariffed charges for access functions provided by it or its retail VoIP partner, AT&T pays those charges without dispute. Here, however, the competitive LECs have billed AT&T substantial charges for end office switch services that neither they nor their over-the-top VoIP partners provide . . .”). See also AT&T Jan. 17, 2013 *Ex Parte* Letter at 5-6, 16 (claiming that end office switching entails the “physical” work of connecting trunks to loops, and that this physical work occurs

(continued...)

difference in provisioning between facilities-based VoIP services and over-the-top VoIP services is whether the VoIP provider happens to own or control the transmission path over which the call is finally transmitted to the end user. Thus, a key distinction between facilities-based VoIP and over-the-top VoIP lies not in the switching or call control functionality, but rather in the ownership or leasing of the means of transmission to the customer premises.¹¹¹ This difference relates to transmission, which is distinct from end office switching,¹¹² and thus is not material to our determination that both facilities-based and over-the-top VoIP partnerships provide the functional equivalent of end office switching.¹¹³ From the consumer's point of view, the issue of who owns the last-mile facility does not affect the perceived functionality.¹¹⁴ Indeed, competitive LECs have explained that they "use the same switching plant to perform the same functions regardless of whether the call is sent to the called party over a TDM loop, a cable system owned by a loop-facilities-based VoIP partner, or an [over-the-top] VoIP partner."¹¹⁵ If no difference exists in the *switching* functionality, then there is no reason under our rule why end office *switching* compensation can be provided in one case and denied in the other. As discussed above, the language of the VoIP symmetry rule contemplates compensation for new and different technology.¹¹⁶ We therefore conclude that, under section 51.903 of our rules, a competitive LEC in conjunction with its over-the-top VoIP provider partner provides the functional equivalent of end office switching.

D. Precedent Revisited

32. AT&T and Verizon contend that we need not address this controversy because the Commission considered and rejected the competitive LECs' arguments in prior orders.¹¹⁷ We disagree.

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only when a competitive LEC partners with a facilities-based VoIP provider because such a scenario provides the last-mile transmission into a home via an actual physical facility). No party disagrees with the concept that a competitive LEC/facilities-based VoIP provider partnership provides the functional equivalent of end office switching.

¹¹¹ See, e.g., AT&T Jan. 17, 2013 *Ex Parte* Letter at 5-6. See also *supra* n.35 (Commission has found it useful to divide VoIP providers into two categories of providers, facilities-based and over-the-top, based on several factors, including whether the providers own or lease the last mile facility).

¹¹² The Commission's access charge rules recognize this difference: local switching and "carrier common line," or transmission and related services, are different rate elements. See 47 C.F.R. §§ 69.106, 69.154. Similarly, assertions that competitive LECs do not bear the cost of long transport between the switch and the end user's premises are not relevant to our determination of whether an over-the-top VoIP provider and its competitive LEC provider partner provide the functional equivalent of end office switching. See, e.g., AT&T Jan. 17, 2013 *Ex Parte* Letter at 3-5.

¹¹³ We also reject any suggestion that the "packet switching" referenced by AT&T is providing some type of control or intelligence function. See AT&T Feb. 21 *Ex Parte* Letter at 2 n.4. The packet switching described there can most accurately be described as IP network routing. As described in the article cited by AT&T, "packet switching," divides the input flow of information into small segments, or packets, of data which move through the network in a manner similar to the handling of mail but at immensely higher speeds." Lawrence G. Roberts, *The Evolution of Packet Switching* (Nov. 1978), available at <http://www.packet.cc/files/ev-packet-sw.html> (last visited Nov. 4, 2014). Thus, there is a distinction between packetized transmission or "packet switching" as referenced by AT&T and the call control functions discussed herein.

¹¹⁴ Cf. *Ad Hoc Telecommunications Users Committee*, 680 F.2d at 797 ("The focus of the [functional equivalency] test should be practical, oriented to customers: what function or need do customers perceive to be satisfied by the services under examination?").

¹¹⁵ Level 3 and Bandwidth Aug. 8, 2013 *Ex Parte* Letter at 7.

¹¹⁶ See *supra* Section II.A.

¹¹⁷ See, e.g., AT&T Jan. 17, 2013 *Ex Parte* Letter at 8-9; Verizon May 6, 2013 *Ex Parte* Letter at 1 ("over-the-top VoIP providers do not provide end-office switching. That is why the Commission has ruled that competitive LECs cannot assess local end-office switching charges when they route over-the-top VoIP traffic over the public Internet.") (citing *YMax Complaint*, 26 FCC Red at 5742, paras. 36-45).

Below we discuss how the cases cited by these carriers are distinguishable from the facts before us or have been superseded by the changes adopted in the *USF/ICC Transformation Order*.¹¹⁸

33. *YMax Complaint*. Verizon argues that, in the *YMax Complaint*, “the Commission had . . . made clear that an over-the-top provider does not provide end office switching.”¹¹⁹ AT&T asserts that the Commission “recently and emphatically confirmed” in the *YMax Complaint* that “the Internet is *not* equivalent to a subscriber line, and the ‘exchange of packets over the Internet’ does not entitle a carrier [to] assess end office switching charges.”¹²⁰ AT&T argues that this decision is “squarely on point” and refutes the competitive LECs’ assertion that they may charge for end office switched access.¹²¹ AT&T further alleges that competitive LECs partnering with over-the-top VoIP providers perform “the very same function that YMax was performing; they make the same arguments that YMax made; and the Commission’s holdings that the central functionality of end office switching is connecting trunks to loops and that the exchange of packets over the Internet is not the connection of trunks to loops is as applicable to them as it was to YMax.”¹²² AT&T asserts that what the competitive LEC/over-the-top VoIP partnerships provide “more closely resembles tandem switching” than end office switching and states that it has been paying the competitive LECs for this traffic “at the tandem switching rate.”¹²³

34. *AT&T and Verizon read the YMax Complaint decision too broadly*. In that order, the Commission carefully restricted its findings to “the particular language in YMax’s tariff and the specific configuration of YMax’s network architecture.”¹²⁴ YMax’s tariff contained definitions and descriptions based on TDM-based functions and networks.¹²⁵ At the time the *YMax Complaint* was adopted, YMax (1) was not providing exchange access service using the technology described in its tariff, and (2) was prohibited from tariffing or otherwise recovering access charges for the services that it was providing in partnership with another company unless it provided the relevant functions itself. In contrast, the VoIP symmetry rule specifically provides that a competitive LEC may now (1) tariff and recover access charges for services that it provides in partnership with VoIP providers, and (2) charge the relevant intercarrier compensation regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture.¹²⁶ The Commission also

¹¹⁸ One of the decisions cited by AT&T is a proposed order issued by an administrative law judge of the Maryland Public Service Commission. See Letter from David L. Lawson, Counsel to AT&T, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 9 (AT&T Dec. 17, 2014 *Ex Parte* Letter) (discussing Proposed Order of Public Utility Law Judge, *In re Dispute between AT&T Commc’ns of Maryland, LLC, TCG Maryland and YMax Commc’ns Corp.*, Case No. 9295, at 11 (Oct. 26, 2012)). This proposed order is not a Commission precedent and does not represent the views of the Commission, and we therefore do not address it here. We note that this proposed order was ultimately set aside as moot by the Maryland Public Service Commission and therefore has no legal relevance even under Maryland law. See *Dispute between AT&T Commc’ns of Maryland, LLC, TCG Maryland and YMax Commc’ns Corp.*, Slip Op., Case No. 9295, Order No. 85321, 2013 WL 265254 (Md. Pub. Serv. Comm. Jan. 18, 2013).

¹¹⁹ Verizon Feb. 28, 2013 *Ex Parte* Letter at 1-2.

¹²⁰ AT&T Jan. 17, 2013 *Ex Parte* Letter at 2, citing *YMax Complaint*, 26 FCC Red at 5759, para. 44.

¹²¹ AT&T Mar. 14, 2013 *Ex Parte* Letter at 3, citing *YMax Complaint*, 26 FCC Red at 5759, para. 44.

¹²² *Id.* at 3, citing *YMax Complaint*, 26 FCC Red at 5759, para. 44.

¹²³ AT&T May 17, 2013 *Ex Parte* Letter at 1. See also AT&T Feb. 21, 2014 *Ex Parte* Letter at 1-2.

¹²⁴ *YMax Complaint*, 26 FCC Red at 5743 n.7 (“Moreover, we emphasize that this Order addresses only the particular language in YMax’s Tariff and the specific configuration of YMax’s network architecture, as described in the record.”).

¹²⁵ *Id.* at 5756 n.108.

¹²⁶ See *USF/ICC Transformation Order*, 26 FCC Red at 18026-27, para. 970. Additionally, the Commission’s reference to prior orders, such as the *YMax Complaint*, in the VoIP symmetry section of the *USF/ICC Transformation Order* was part of a discussion of measures taken to prevent double billing under the new rule and in (continued...)

declined to make any conclusions about the functions that YMax provided at that time and whether such functions were the basis for a tariffed service, stating that “we express no view about whether or to what extent YMax’s functions, if accurately described in a tariff, would provide a lawful basis for any charges.”¹²⁷ Additionally, in the *YMax Complaint* the Commission looked to a number of “well established meanings within the telecommunications industry” for several terms because YMax’s tariff did not contain definitions for those terms.¹²⁸ The Commission thus was not looking to those meanings for purposes of interpreting or applying the intercarrier compensation rules in place at that time, but for purposes of the tariff analysis. Noting that “it is well established” that “any ambiguity in a tariff is construed against the party who filed the tariff, in this case YMax,”¹²⁹ the Commission ultimately determined that it was “bound to resolve the [tariff term] ambiguities against YMax as the drafting party.”¹³⁰ Consequently, insofar as industry-understood meanings of terms used in the tariff cut against YMax’s proposed interpretation, that would be key to the tariff analysis.

35. Due to the narrow focus and holding of the *YMax Complaint*, we find that its narrow findings do not apply to the dispute before us. Even assuming *arguendo* that the *YMax Complaint* could be read more broadly, the VoIP symmetry rule adopted in the *USF/ICC Transformation Order* supersedes any potential limitation suggested by that decision with respect to traffic encompassed by that rule.¹³¹ The *USF/ICC Transformation Order* changed the law with respect to the propriety of assessing access charges, and, as explained above, prospectively allowed competitive LECs to collect access charges for services that are functionally equivalent to TDM network functions and for functions performed in conjunction with their VoIP provider partners. While the Commission rule still exists that carriers must accurately describe services offered in their tariffs,¹³² carriers are now allowed to charge for services that either they or their retail VoIP partners provide, as long as one of them provides the service and no double billing occurs.¹³³

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no way suggested that the Commission was endorsing the reasoning underlying those prior decisions with respect to the new considerations adopted in the *USF/ICC Transformation Order*: that the functions or technologies used under the VoIP symmetry rule do not need to “correspond precisely to those used under a traditional TDM architecture.” See *id.* at 18026-27, para. 970 & n.2028 (citing *YMax Complaint*, 26 FCC Red at 5757, 5758-59, paras. 41, 44 & n.120).

¹²⁷ *YMax Complaint*, 26 FCC Red at 5749 n.55.

¹²⁸ See *id.* at 5755-56, paras. 36-39.

¹²⁹ See *id.* at 5755, para. 33.

¹³⁰ See *id.* at 5758, para. 45.

¹³¹ As discussed above, and contrary to the repeated objections of AT&T and Verizon, in the *YMax Complaint*, the Commission was careful to restrict its holdings to the facts of that case (“Moreover, we emphasize that this Order addresses only the particular language in YMax’s Tariff and the specific configuration of YMax’s network architecture, as described in the record.”) *YMax Complaint*, 26 FCC Red at 5743 n.7. *Contra* Letter from Christi Shewman, General Attorney, AT&T, to Ms. Marlene H. Dortch, WC Docket No. 10-90 et al., at 3-4 (filed Nov. 6, 2014) (AT&T Nov. 6, 2014 *Ex Parte* Letter) (“The mere fact that the case involved YMax’s tariff provisions does not mean that the legal principles stated in that decision had application only to YMax. To the contrary, the Commission considered YMax’s tariff with reference to Commission rules and policy.”); Letter from Christi Shewman, General Attorney, AT&T, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2-3 (filed Nov. 19, 2014) (AT&T Nov. 19, 2014 *Ex Parte* Letter); Verizon Nov. 10, 2014 *Ex Parte* Letter at 5-6 (“nothing in that [*YMax Complaint*] changed the Commission’s longstanding view of the functions that constitute end office switching”).

¹³² 47 C.F.R. § 61.2(a).

¹³³ See *USF/ICC Transformation Order*, 26 FCC Red at 18026-7, paras. 970-71.

36. *Clarification Order*. We also disagree with those commenters who assert that the Commission previously considered and rejected these arguments in the *Clarification Order*.¹³⁴ As noted above, in 2012, YMax sought clarification that it was entitled to charge the full benchmark level of access charges pursuant to the new VoIP symmetry rule adopted in the *USF/ICC Transformation Order* “whenever it is providing telephone numbers and some portion of the interconnection with the PSTN, and regardless of how or by whom the last-mile transmission is provided.”¹³⁵ The Bureau held that YMax’s proposed interpretation of the VoIP symmetry rule “could enable double billing” as well as enable providers to charge “for functions not actually provided” due to the possibility of numerous carriers performing and charging for overlapping parts of end office switched access.¹³⁶ Because the Commission had been careful in the *USF/ICC Transformation Order* to avoid both double billing and charging for functions not performed, the Bureau denied YMax’s requested interpretation.¹³⁷

37. In the *Clarification Order*, the Bureau addressed the very narrow question of whether the provision of “telephone numbers and some portion of the interconnection with the PSTN” entitles a competitive LEC to charge the full symmetrical access charges.¹³⁸ In the dispute underlying this declaratory ruling, however, the competitive LECs do not claim to provide merely telephone numbers and “some portion of interconnection” with the PSTN. Rather, they claim that they are providing the functional equivalent of all of the end office switching functions, not just “some portion” of it.¹³⁹ Moreover, we find there is no indication in the record that double billing would occur if we issue this declaratory ruling.

38. *RAO Letter 21/RAO Recon Order*. Interested parties also cite the *RAO Letter 21* and *RAO Recon Order* to support their claims about end office switching functionality.¹⁴⁰ We recognize that elements of these decisions emphasize, among other things, the function of connecting lines and trunks in end-office switching. However, arguments based on these decisions are necessarily tied to TDM-based technologies.¹⁴¹ Even under the preexisting access charge regime, the Commission declined to address

¹³⁴ See, e.g., AT&T Jan. 17, 2012 *Ex Parte* Letter at 9.

¹³⁵ *Clarification Order*, 27 FCC Rcd at 2144, para. 4.

¹³⁶ *Id.*

¹³⁷ *Id.* (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 18026-7, para. 970). YMax’s interpretation could have led to double billing because, under its reading of the rule, YMax could charge the full benchmark access charge for providing “some portion” of the interconnection with the PSTN, but other entities involved in the last-mile transmission would also be able to charge the full benchmark access charge.

¹³⁸ *Id.* In the *Clarification Order*, the Bureau responded to the specific request therein: “YMax asks the Commission to confirm that under its new VoIP-PSTN ‘symmetry’ rule, a LEC is performing the functional equivalent of ILEC access service, and therefore entitled to charge the full ‘benchmark’ rate level, whenever it is providing telephone numbers and some portion of the interconnection within the PSTN, and regardless of how or by whom the last-mile transmission is provided.” YMax Petition for Clarification at 1. We reject parties’ attempts to infer findings outside of what was found in the *Clarification Order*. See AT&T Nov. 19 *Ex Parte* Letter at 3 (if the “Bureau intended CLECs to be able to assess local switching in these circumstances; it is inconceivable that it would have responded to YMax’s request for clarification in the way that it did.”); see also AT&T Nov. 6 *Ex Parte* Letter at 4; Verizon Nov. 10, 2014 *Ex Parte* Letter at 6-7; AT&T Nov. 19, 2014 *Ex Parte* Letter at 3. However these commenters or others might interpret YMax’s request, the holdings in the *Clarification Order* were limited solely to the request as understood and characterized by the Bureau.

¹³⁹ See, e.g., Level 3/Bandwidth June 4, 2012 *Ex Parte* Letter at 1-2.

¹⁴⁰ See, e.g., AT&T Jan. 17, 2013 *Ex Parte* Letter at 6-15; Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter at 7-13.

¹⁴¹ See generally *RAO Letter 21*; *RAO Recon Order*.

whether or how that precedent applied in the context of IP networks.¹⁴² In any case, the issue here is whether, under the holistic approach to interpreting the VoIP symmetry rule subsequently adopted in the *USF/ICC Transformation Order* described above, which is consistent with key elements of *RAO Letter 21* and the *RAO Recon Order*, an over-the-top VoIP provider provides the functional equivalent of end office switching.¹⁴³ We conclude that it does, and we find that the RAO precedents, although relevant, are not controlling to our findings here.

39. *CoreTel Virginia v. Verizon Virginia*. The Fourth Circuit recently issued an opinion that addressed a tariff billing dispute involving a competitive LEC's use of over-the-top VoIP to terminate traffic.¹⁴⁴ Verizon alleged that CoreTel, a competitive LEC, improperly billed for "end office switched access" because the service that CoreTel provided did not match the service described in CoreTel's tariff.¹⁴⁵ The court agreed, noting that CoreTel's state and federal tariffs provided that end office switching would include "terminations in the end office of end user lines."¹⁴⁶ The court observed that the Commission had interpreted this very phrase in the *YMax Complaint* and had held that it carried "a specific and established meaning: 'a physical transmission facility that provides a point-to-point connection between a customer premises and a telephone company office.'"¹⁴⁷ The court held that because CoreTel converts calls into an IP stream and delivers them over the Internet, it does not provide "the physical infrastructure over which calls are delivered from CoreTel's premises to its customers."¹⁴⁸ The court also noted that, although the general definition of switched access service in CoreTel's tariff made reference to IP technology, the tariff's specific definition of end office switched access did not, and that, because "the specific governs the general," the specific definition of end office switched access governed the dispute between CoreTel and Verizon.¹⁴⁹

40. We find that this case does not impact the clarification provided here. Similar to the Commission's decision in the *YMax Complaint*, the CoreTel decision rests primarily on tariff language describing traditional TDM network architecture and functionality.¹⁵⁰ Many competitive LECs have incorporated tariff language that describes functionally equivalent services under the VoIP symmetry rule, either by explicitly reciting the VoIP symmetry rule, or by referring to the "functional equivalent" of TDM-based end office switching.¹⁵¹ Because tariff language may now include compensation for

¹⁴² See, e.g., *YMax Complaint*, 26 FCC Red at 5743 n.7 (declining to address whether interconnected VoIP was "subject to intercarrier compensation rules and, if so, the applicable rate for such traffic"); *id.* at 5749 n.55 ("we express no view about whether or to what extent YMax's functions, if accurately described in a tariff, would provide a lawful basis for any charges"); *USF/ICC Transformation NPRM*, 26 FCC Red at 4745-46, para. 610 (stating that "the Commission has declined to explicitly address the intercarrier compensation obligations associated with VoIP traffic" and citing precedent).

¹⁴³ See *supra* Section III.A.

¹⁴⁴ *CoreTel Virginia v. Verizon Virginia, LLC*, 752 F.3d 364 (4th Cir. 2014) (*CoreTel*).

¹⁴⁵ *Id.* at 374.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 374, citing *YMax Complaint*, 26 FCC Red at 5742, para. 40.

¹⁴⁸ *Id.* at 374.

¹⁴⁹ *Id.*

¹⁵⁰ See, e.g., *id.* at 374-75.

¹⁵¹ See, e.g., Level 3 Tariff, Tariff F.C.C. No. 4, Revised Page 6.1, Replaces Original Page 6.1 (effective Dec. 29, 2011) ("End Office Access Service" includes: "(3) Any functional equivalent of the incumbent local exchange carrier access service provided by Company including local switching, the carrier common line rate elements, and intrastate access services. End Office Access service rate elements for Company includes [sic] any functionally equivalent access service."); Broadband.com Tariff, FCC Tariff No. 1, Second Revised Page 36, Cancels First Revised Page 36 (effective Dec. 30, 2011) ("the Company will assess and collect switched access rate elements

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functional equivalent services provided by a competitive LEC or its VoIP provider partner under the VoIP symmetry rule, the CoreTel case does not necessarily preclude the application of end office switching charges in every case.

E. Retroactive Effect of the Declaratory Ruling

41. “Retroactivity is the norm in agency adjudications,” and our declaratory ruling regarding the interpretation of the VoIP symmetry rule in the context at issue here thus appropriately applies retroactively.¹⁵² We reject AT&T and Verizon’s argument that a “manifest injustice” would occur if the clarification adopted here was applied retroactively.¹⁵³ Manifest injustice results from reliance that is “reasonably based on settled law contrary to the rule established in the adjudication.”¹⁵⁴ We find neither factor—departure from settled law nor reasonable reliance—present here.

42. In this declaratory ruling, we clarify the VoIP symmetry rule adopted in the *USF/ICC Transformation Order*; we do not depart from “settled law,”¹⁵⁵ nor do we substitute “new law for old law that was reasonably clear.”¹⁵⁶ In particular, since shortly after the VoIP intercarrier compensation rules took effect, filings in the docket make clear that there was disagreement among some carriers regarding the interpretation of the VoIP symmetry rule in this context—first specific to traffic exchanged with AT&T, and later including Verizon.¹⁵⁷ These disputes involve the assertion by AT&T and Verizon that the VoIP symmetry rule contains a limitation or technical restriction that is not in the rule itself, nor the *USF/ICC Transformation Order*’s analysis, nor other subsequent precedent interpreting or applying that rule.¹⁵⁸ We agree with Level 3 that the “mere lack of clarity in the law does not make it manifestly unjust

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under this tariff for access services, regardless of whether the Company itself delivers such traffic to the called party’s premises or delivers the call to the called party’s premises with contractual or other arrangements with an affiliated or unaffiliated provider of VoIP service. . . . [F]unctions provide[d] by the Company as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission in a manner that is comparable to a service offered by a local exchange carrier constitutes the functional equivalent of carrier access service.”).

¹⁵² *Qwest Services v. FCC*, 509 F.3d 531, 539 (D.C. Cir. 2007) (*Qwest v. FCC*) (quoting *Am. Tel. & Tel. Co. v. FCC*, 454 F.3d 329, 332 (D.C. Cir. 2006) (*AT&T v. FCC*)).

¹⁵³ See, e.g., Level 3 Nov. 3, 2014 *Ex Parte* Letter at 5-6 (interpreting arguments made by AT&T as alleging a “manifest injustice” and citing *Qwest v. FCC*, 509 F.2d at 540).

¹⁵⁴ *Qwest v. FCC*, 509 F.3d at 540. See also *AT&T v. FCC*, 454 F.3d at 332; *Verizon Telephone Co. v. FCC*, 269 F.3d 1098, 1109 (D.C. Cir. 2011) (*Verizon v. FCC*).

¹⁵⁵ *Qwest v. FCC*, 509 F.3d at 540.

¹⁵⁶ *Verizon v. FCC*, 269 F.3d at 1109.

¹⁵⁷ See, e.g., Bandwidth June 11, 2012 *Ex Parte* Letter (“the purpose of the meeting was to discuss one IXC’s overbroad interpretation of” the *Clarification Order* and its interpretation of the VoIP symmetry rule); Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter (discussing access charge dispute with AT&T); AT&T Nov. 15, 2012 *Ex Parte* Letter (discussing access charge dispute with AT&T). See also Telequality March 22, 2013 *Ex Parte* Letter at 1 (discussing access charge dispute with Verizon).

¹⁵⁸ For similar reasons, we reject numerous assertions by AT&T that our actions here represent “a sharp departure from prior practice and understandings,” including well-settled terms and meanings. See AT&T Dec. 17 *Ex Parte* Letter at 3. As discussed herein, the “settled meanings” referenced by AT&T are either specific to TDM network functions and/or discrete circumstances where competitive LECs could only charge for services they themselves provided. See, e.g., *id.* at 5-6. Moreover, the “functional equivalence” description that AT&T contends establishes a general standard, see *id.* at 7, was specific to its circumstances and indisputably more constricted than the standard contained in the VoIP symmetry rule, which includes functions or technology that may not correspond precisely to TDM networks. *USF/ICC Transformation Order*, 26 FCC Red at 18026-7, para. 970. In light of these differences, we find that AT&T’s alleged reliance on these “well-settled” meanings and understanding was not reasonable.

to apply a subsequent clarification of that law to past conduct.¹⁵⁹ Accordingly, we find that retroactive application of the VoIP symmetry rule as clarified in this declaratory ruling does not constitute a departure from a prior interpretation that was settled or reasonably clear.

43. We likewise reject any theory that our interpretation of the VoIP symmetry rule departs from reasonably clear law based just on our pre-*USF/ICC Transformation Order* precedent insofar as particular rules or decisions were not expressly disavowed in the *USF/ICC Transformation Order*. As described above, while certain older Commission precedent resolving issues arising in the context of TDM networks included criteria in the interpretation of end-office switching that are not all met in the context of VoIP services, prior to the *USF/ICC Transformation Order* the Commission expressly reserved judgment on the application of the prior legal framework to VoIP services.¹⁶⁰ As a general matter, then, there was no precise Commission interpretation of how prior access charge precedent applied to VoIP that the Commission necessarily would have expressly singled out and disavowed, particularly because the *USF/ICC Transformation Order* addressed intercarrier compensation associated with VoIP traffic on a purely prospective basis.¹⁶¹ Moreover, the Commission recognized that the backdrop for its prospective VoIP intercarrier compensation rules was not just the disputed interpretations of its access charge rules but also reciprocal compensation precedent, which had operated in a different manner than its historical access charge rules in relevant respects.¹⁶²

44. Rather than making incremental modifications to a particular, clearly applicable preexisting legal framework, the Commission thus was making a clean break from the intercarrier compensation regimes—and associated disputes—of the past in its prospective intercarrier compensation rules governing VoIP traffic. As a result, it only discussed specific ways in which the new framework departed from particular prior precedent to the extent it found it warranted by the record. In the case of the structure of LECs' relationships with VoIP providers, the Commission discussed in some detail how its new approach compared and contrasted with the various approaches reflected in prior access charge and reciprocal compensation precedent to emphasize how its VoIP symmetry rule would address the double-billing policy concerns underlying the prior access charge framework.¹⁶³ By comparison, the Commission addressed concerns arising from historical disputes about the relative operation of TDM and IP networks in a higher-level manner, but nonetheless indicated that the prospective approach it adopted was intended to ward off the types of disputes regarding IP networks and services that had occurred in the past under historical intercarrier compensation rules.¹⁶⁴ Consequently, we reject arguments for finding manifest injustice based on pre-*USF/ICC Transformation Order* precedent coupled with that *Order's* failure to expressly disavow those particular decisions. Such arguments give undue weight to pre-

¹⁵⁹ See Level 3 Nov. 3, 2014 *Ex Parte* Letter at 5 (citing *Qwest v. FCC*, 509 F.2d at 540). See also *id.* at 5 (disputing AT&T and Verizon's assertion that "manifest injustice" would occur if the Commission were to allow retroactive application of the VoIP symmetry rule because such "injustice" would only result from a dramatic change from a preexisting rule, which "does not exist here."). Further, as stated in *Qwest v. FCC*, the "obvious fact that every loss that retroactive application of its . . . interpretation would inflict . . . is matched by an equal and opposite loss that non-retroactivity would inflict" on others." *Qwest v. FCC*, 509 F.2d at 540.

¹⁶⁰ See *supra* nn.8, 142.

¹⁶¹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Red at 18008, para. 943.

¹⁶² See *id.* at 18027-28, para. 971 & n.2029.

¹⁶³ See *id.* at 18026-28, paras. 970-71 (noting differences between the new approach and historical access charge rules and similarities between the new approach and the historical reciprocal compensation regime).

¹⁶⁴ See *id.* at 18025, paras. 968-69. See also *id.* at 18027-28, para. 971 n.2029 (comparing the VoIP symmetry rule to the historical reciprocal compensation framework, including among other things the fact that that framework "prohibits 'establishing with particularity the additional costs of transporting or terminating calls'" (citations omitted)).

USF/ICC Transformation Order precedent in interpreting and applying the VoIP symmetry rule adopted in the *Order*.

45. Nor do we find evidence of reasonable reliance in the record here. Indeed, there is minimal evidence in the record of any reliance at all—reasonable or otherwise—on a contrary interpretation of the VoIP symmetry rule. Other than AT&T and Verizon, there is no record evidence of IXCs disputing payment for this traffic.¹⁶⁵ Insofar as the record does not reveal that AT&T and Verizon previously relied on a contrary interpretation of the VoIP symmetry rule, that counsels strongly against a finding of manifest injustice here.

46. We also do not find the evidence of reliance by AT&T and, later, Verizon to have been reasonable for purposes of the reliance component of the manifest injustice analysis. As to AT&T, as Level 3 observes, in a filing prior to the *USF/ICC Transformation Order*, AT&T recognized that a VoIP symmetry rule could lead to intercarrier compensation charges even in the case of over-the-top VoIP traffic.¹⁶⁶ For the reasons described above, we also do not find that the Commission precedent cited by AT&T provided a reasonable basis for it to rely on its contrary reading of the VoIP symmetry rule, given the language of the rule, the limits of the text of those prior decisions, and the ongoing disputes in the record regarding the interpretation of the rule as relevant here, which began shortly after the VoIP symmetry rule took effect. To the contrary, that collectively reveals a lack of clarity regarding how the issue here ultimately would be resolved. As the court explained in *Qwest v. FCC*, “[t]he mere possibility that a party may have relied on its own (rather convenient) assumption that unclear law would ultimately be resolved in its favor is insufficient to defeat the presumption of retroactivity when that law is finally clarified.”¹⁶⁷ We thus likewise do not find any reliance by AT&T to have been reasonable, reinforcing our conclusion here that there is no manifest injustice from retroactive application of our interpretation of the rule to AT&T.

47. The record reveals that Verizon did not initially dispute payment for this traffic, and only began doing so in 2013, more than a full year after the relevant rules took effect.¹⁶⁸ By the time Verizon notified the Commission of its interpretation of the VoIP symmetry rule and decision to dispute these charges, the record before the Commission clearly revealed disagreements between AT&T and several competitive LECs regarding the interpretation of the VoIP symmetry rule.¹⁶⁹ Given that, coupled with the

¹⁶⁵ See, e.g., Bandwidth Oct. 22, 2014 *Ex Parte* Letter at 2 (asserting that other than AT&T, “[n]o other carrier disputed Bandwidth’s end office switching charges under the VoIP symmetry rule until Verizon belatedly did so—nearly three years after the rule was adopted”); Level 3 Dec. 10, 2014 at 4 n.16.

¹⁶⁶ Level 3 Nov. 3, 2014 *Ex Parte* Letter at 6 (citing Letter from Robert W. Quinn, Jr., AT&T to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 07-135, GN Docket No. 09-51 at 5 (filed Oct. 21, 2011)).

¹⁶⁷ *Qwest v. FCC*, 509 F.3d at 540.

¹⁶⁸ See Verizon Feb. 28, 2013 *Ex Parte* Letter; see also *supra* n.55. See also Telequality March 22, 2013 *Ex Parte* Letter at 2 (first discussion of access charge dispute with Verizon); Bandwidth Oct. 22, 2014 *Ex Parte* Letter at 2 (asserting that other than AT&T, “[n]o other carrier disputed Bandwidth’s end office switching charges under the VoIP symmetry rule until Verizon belatedly did so—nearly three years after the rule was adopted”); Level 3 Dec. 10, 2014 *Ex Parte* Letter at 4 n.16.

¹⁶⁹ See, e.g., Bandwidth June 11, 2012 *Ex Parte* Letter (“the purpose of the meeting was to discuss one IXC’s overbroad interpretation of” the *Clarification Order* and its interpretation of the VoIP symmetry rule); AT&T July 16, 2012 *Ex Parte* Letter; Level 3 and Bandwidth Sept. 10, 2012 *Ex Parte* Letter. Indeed, the fact that Verizon paid end office switched access charges to competitive LECs partnering with over-the-top VoIP providers for years before it began disputing them, while other carriers paid the charges and AT&T simply has refused to pay the charges, highlights the controversy at issue here. See Bandwidth Oct. 22, 2014 *Ex Parte* Letter at 2 (asserting that “[n]o other carrier disputed Bandwidth’s end office switching charges under the VoIP symmetry rule until several weeks ago, when Verizon belatedly did so—nearly three years after the rule was adopted” and that “Verizon now retroactively disputes all previously paid tariffed end office charges in their entirety and refuses to pay all such charges prospectively.”); see also Broadvox Nov. 6, 2014 *Ex Parte* Letter at Attach, 6 (asserting that “AT&T and

(continued...)

other findings in our manifest injustice analysis above, we thus do not find any reliance by Verizon on a contrary interpretation to have been reasonable, and thus retroactive application to Verizon of our interpretation here would not be manifestly unjust.

48. For their part, AT&T and Verizon contend that the VoIP symmetry rule is “already clear” in that competitive LECs and their over-the-top VoIP retail partners may not assess end office switching charges, and accordingly, if the Commission were to “clarify” rules to the contrary, it must enact a rule change, which it may only implement on a prospective basis.¹⁷⁰ As an initial matter, for all the reasons discussed herein, we reject the assertion that our clarification constitutes a rule or policy change in light of prior precedent. As discussed above, the findings and conclusions in the *USF/ICC Transformation Order* do not support the limited application of the VoIP symmetry rule advanced by these parties.¹⁷¹ Indeed, all of the policies underlying adoption of the transitional VoIP intercarrier compensation regime, including the VoIP symmetry rule, support the clarification advanced by the Commission here.¹⁷² Additionally, as also discussed above, the description in the *USF/ICC Transformation Order* of how the rule would be applied and the text of the adopted rules support the clarification adopted herein. Further, the cases cited by AT&T and Verizon to support their proposed interpretation are distinguishable from the facts before us or have been superseded by the changes adopted in the *USF/ICC Transformation Order*.¹⁷³ Declaratory rulings are adjudicatory matters, in which retroactivity is presumed,¹⁷⁴ and clarifying the law and applying that clarification to past behavior are routine functions of adjudications.¹⁷⁵ Accordingly, we reject the contention that the clarification adopted in this declaratory ruling is a change in rule or change in interpretation that can only be applied prospectively.

49. AT&T and Verizon alternatively argue that, “even if the current rule were ambiguous,” the Commission may not retroactively impose a “new, contrary interpretation” of the VoIP symmetry rule compared to the interpretation they have relied on up to this point; otherwise, an “unfair surprise” would result.¹⁷⁶ AT&T and Verizon suggest that an “unfair surprise” standard, which they draw from

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Verizon cannot claim that the VoIP Symmetry Rule read clearly in their favor because for years Verizon interpreted it like Broadvox” and that “Verizon paid Broadvox’s end office charges for services rendered for two whole years from January 2012 through January 2014” and that “it appears that Verizon only began disputing end office switching after it became aware of AT&T’s self-help campaign”). This history contradicts any claim that the VoIP symmetry rule was settled before today.

¹⁷⁰ See, e.g., AT&T Jan. 17, 2013 *Ex Parte* Letter at 15-16 (asserting that “the current rules are already clear” and that the Commission “could only adopt the CLECs’ change in policy through a new rulemaking” and “only prospectively”); Letter from Henry Hulquist, Vice President, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. B at 3 (filed Oct. 3, 2014) (AT&T Oct. 3, 2014 *Ex Parte* Letter) (asserting that “agencies must ‘deny retroactive effect’ when there is ‘a substitution of new law for old law that was reasonably clear’”) (citing *Verizon v. FCC*, 269 F.3d at 1109); Verizon Oct. 27, 2014 *Ex Parte* Letter at 6-7 (asserting that the “plain text” of the VoIP symmetry rule in § 51.913 “precludes a LEC like Level 3 for charging for functions” like over-the-top VoIP/competitive LEC provider partner end office switching, and any “new interpretation” of 51.913 “would be a legislative rule and may only be applied prospectively”).

¹⁷¹ See *supra* Section III.A.

¹⁷² See *supra* Section III.B.

¹⁷³ See *supra* Section III.D.

¹⁷⁴ See, e.g., *AT&T v. FCC*, 454 F.3d at 332 (citations omitted). See also *Qwest v. FCC*, 509 F.3d at 536 (“there is no question that a declaratory ruling can be a form of adjudication”) (citations omitted); 509 F.3d at 539 (“We start with the presumption of retroactivity for adjudications”).

¹⁷⁵ See *Qwest v. FCC*, 509 F.3d at 540.

¹⁷⁶ See AT&T Oct. 3, 2014 *Ex Parte* Letter at Attach. 2 at 3, citing *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2168 (2012) (*Christopher v. SmithKline*) (asserting that, as in this case, the “potential for unfair surprise is acute”); Verizon Nov. 5, 2014 *Ex Parte* Letter at 8-11.

Christopher v. SmithKline, is applicable because they contend they reasonably relied on their contrary interpretation of the relevant precedent. As a threshold matter, we are not persuaded that *Christopher v. SmithKline*'s discussion of "unfair surprise" is the appropriate standard here because that case dealt with questions of deference to an agency interpretation expressed in a brief, not the retroactivity of a decision an agency reaches in adjudication. Even if it were appropriate, we disagree that "unfair surprise" that would preclude any retroactive effect exists in this matter, and we find the case cited to support such assertion to be distinguishable.¹⁷⁷ As described above, we conclude that we are not changing our rules or our interpretation of them, and reject arguments that there was reasonable reliance on a contrary interpretation. Moreover, the *Christopher v. SmithKline* decision is distinguishable on a number of grounds. *Christopher v. SmithKline* involved 60-year old Fair Labor Standards Act rules, "decades-long practices of classifying" a type of sales team, and a "very lengthy period of conspicuous inaction" by the applicable regulatory body.¹⁷⁸ Unlike the facts in that case, there is no "long period of inaction" by the Commission, or "decades-long practices" regarding the interpretation and application of the VoIP symmetry rule to consider in the present dispute.¹⁷⁹ Additionally, all stakeholders on this issue, including both AT&T and Verizon, have debated the interpretation of this rule actively, both in written *ex parte* filings and in-person meetings, nearly since the adoption of the VoIP symmetry rule. Further, the dispute at issue in *Christopher v. SmithKline* involved a new interpretation of the relevant rule that only recently was put forward in agency *amicus* briefs, which involved rationales that evolved and changed as additional briefs were filed, ultimately persuading the Court that they were not entitled to deference.¹⁸⁰ In this declaratory ruling we do not change our VoIP symmetry rule or our interpretation of it. As a result, we find *Christopher v. SmithKline* inapplicable here.¹⁸¹

F. Effect on IP-to-IP Interconnection

50. Finally, the record suggests that some carriers have misinterpreted the nature and intent of the VoIP symmetry rule, resulting in intercarrier compensation disputes and asymmetric payments based on technological distinctions. This misinterpretation of the VoIP symmetry rule may be impacting negotiations concerning IP interconnection.¹⁸² Parties allege that some providers will not enter into direct IP interconnection arrangements unless an "asymmetrical compensation structure" is adopted that tracks what such providers contend they are entitled to collect and obligated to pay for PSTN/over-the-top VoIP traffic.¹⁸³ IP interconnection arrangements that contain asymmetrical compensation schemes may create

¹⁷⁷ AT&T Oct. 3, 2014 *Ex Parte* Letter at Attach. 2 at 3; Verizon Nov. 5, 2014 *Ex Parte* Letter at 8-11.

¹⁷⁸ See *Christopher v. SmithKline*, 132 S. Ct. at 2167-68.

¹⁷⁹ See Level 3 Nov. 3, 2014 *Ex Parte* Letter at 7. AT&T's claim that "the Commission took no enforcement action for years prior to the *Connect America Order*" is beside the point, since any such inaction predated the adoption of the VoIP symmetry rule that is at issue here. AT&T Dec. 17, 2014 *Ex Parte* Letter at 14. Similarly, AT&T's claim that the Commission has taken no action "for more than two years" after adoption of the VoIP symmetry rule, *id.*, does not establish the kind of "very lengthy period of conspicuous inaction" that was at issue in *Christopher v. SmithKline*, 132 S. Ct. at 2168.

¹⁸⁰ *Christopher v. SmithKline*, 132 S. Ct. at 2165-67.

¹⁸¹ For the same reasons, we reject AT&T's claim that equity requires prospective application of our interpretation of the VoIP symmetry rule. See AT&T Dec. 17, 2014 *Ex Parte* Letter at 2, 10 (citing *Retail, Wholesale & Dep't Store Union v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972)). Where, as here, an agency is not changing its rules or its interpretation of them, there was no reasonable reliance on a contrary interpretation or on any applicable settled law, and the proper interpretation of the relevant rule has been "the subject of active debate" since its adoption, equity is fully aligned with "the presumption of retroactivity for adjudications." *Qwest v. FCC*, 509 F.3d at 539, 540.

¹⁸² See, e.g., Vonage Feb. 12, 2014 *Ex Parte* Letter at 1-2; Level 3 May 16, 2014 *Ex Parte* Letter at 2. But see AT&T Feb. 21, 2014 *Ex Parte* Letter at 3-4; Verizon Nov. 10, 2014 *Ex Parte* Letter at 10.

¹⁸³ See, e.g., Vonage Feb. 12, 2014 *Ex Parte* Letter at 1-2.

unbalanced compensation, marketplace distortions, and perverse incentives for LECs to perpetuate legacy TDM technology. We encourage parties to move toward all-IP networks and reiterate the important policy goals underlying the VoIP symmetry rule of advancing competition, moving toward an all-IP network, reducing intercarrier compensation disputes, and remaining technologically neutral.¹⁸⁴

IV. CONCLUSION

51. For all the reasons discussed above, we clarify that the Commission's VoIP symmetry rule does not require a competitive LEC or its VoIP provider partner to provide the physical last-mile facility to the VoIP provider's end user customers in order to provide the functional equivalent of end office switching, and thus for the competitive LEC to be eligible to assess access charges for this service.

V. ORDERING CLAUSES

52. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 201, 202, and 251 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201, 202, and 251, and sections 1.1 and 1.2 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.2, this Declaratory Ruling in WC Docket No. 10-90 and CC Docket No. 01-92 IS ADOPTED.

53. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 C.F.R. §1.103, this Declaratory Ruling SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁸⁴ See, e.g., *USF/ICC Transformation Order*, 26 FCC Red at 17669, 18009-13, paras. 9, 948-53. We also remind parties of their obligations to negotiate IP interconnection agreements in good faith. See *id.* at 17873, para. 652.

**STATEMENT OF
CHAIRMAN TOM WHEELER**

Re: *Connect America Fund*, WC Docket No. 10-90, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92.

Today, we adopt a declaratory ruling to ensure that the transition to IP-based networks and services is not impeded by outdated technological distinctions. In the *2011 USF/ICC Transformation Order*, the Commission adopted the VoIP symmetry rule as part of its effort to abandon outdated approaches to intercarrier compensation, eliminate competitive distortions, and encourage the transition to IP-based networks and services. The action we take today precludes carriers from advancing self-serving interpretations of this rule in an effort to skew the competitive landscape, today and into the future.

I continue to believe that technology transitions will be speeded by technology-neutral rules that promote, preserve, and protect the competitive choices that consumers expect. Today's decision will help maintain those competitive choices through symmetrical treatment of like services and additional regulatory certainty for all parties.

**DISSENTING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Connect America Fund*, WC Docket No. 10-90, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92.

The FCC's rules allow a local exchange carrier (LEC) to charge other carriers for certain "access services" defined by our rules. At dispute here is whether a LEC may collect a particular kind of charge for an access service—an end office switching charge—when its VoIP partner transmits calls to an unaffiliated Internet service provider (ISP) for routing over the Internet. In this order, the Commission says yes. Because the order adopts a new rule that contravenes our precedent without first seeking comment, I dissent.

I.

Start with some basic background. A LEC may only collect access charges for intercarrier services actually performed.¹ And a LEC partnered with a VoIP provider may collect charges for services that either it or its VoIP provider actually perform.² A non-incumbent LEC and its VoIP partner need not perform precisely the same service as an incumbent; the LEC can perform the "functional equivalent."³ And "using . . . technology other than [time-division multiplexing] transmission" counts so long as it is done "in a manner that is comparable" to traditional transmission.⁴ Finally, for end office switching charges, the associated service is "end office access service," which our rules define in relevant part as "[t]he switching of access traffic at the carrier's end office switch."⁵

Putting this all together, a LEC may collect end office switching charges if and only if that LEC or its VoIP partner actually performs the functional equivalent of end office switching.

So what is the IP equivalent of end office switching? Our precedent makes clear that it is the interconnection of calls with last-mile facilities.

¹ *Access Charge Reform: Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc. for Temporary Waiver of Commission Rule 61.26(d) To Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9118-19, para. 21 (2004) ("[O]ur long-standing policy with respect to incumbent LECs is that they should charge only for those services that they provide" and "[w]e believe that a similar policy should apply to competitive LECs.").

² 47 C.F.R. § 51.913(b). Conversely, our rules do "not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service." *Id.*

³ *Access Charge Reform: Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9981 (2001) (*Seventh Access Charge Reform Order*) (Appendix B) (adopting 47 C.F.R. § 61.26(a)(3) ("Interstate switched exchange access services' shall include the functional equivalent of the ILEC interstate exchange access services . . .")); *see also* 47 C.F.R. § 51.903(d)(3) (defining "end office access service" to include the "functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier").

⁴ 47 C.F.R. § 51.913(b).

⁵ 47 C.F.R. § 51.903(d)(1). No one, as far as I can tell, contends that the service performed by LECs and their over-the-top VoIP partners fits within another definition of "end office access service"—namely, the "routing of interexchange telecommunications traffic to or from the called party's premises." 47 C.F.R. § 51.903(d)(2). Nor could they, since there is no question in this case that the unaffiliated ISP routes the over-the-top VoIP call.

First, the Commission stated in 1997 that “interconnection, i.e., the actual connection of lines [or loops] and trunks, is the characteristic that distinguishes switches from other central office equipment.”⁶ Although a switch may also perform other functions—a Bureau-level order had previously identified eight⁷—the FCC reasoned that these other functions are in the end peripheral to end office switching: “units that interconnect lines and trunks . . . are capable of providing all of the essential features and capabilities of a switch.”⁸ Or as the FCC put it in the 2011 *YMax Order*, “[c]nd office switching charges were and are authorized by law to allow local exchange carriers to recover the substantial investment required to construct the tangible connections between themselves and their customers throughout their service territory.”⁹

Second, the FCC’s 2011 *Universal Service Transformation Order* made clear that when a LEC partners with a VoIP provider that itself interconnects with a customer’s last-mile facilities, the LEC may collect end office switching charges: “We thus adopt rules making clear that origination and termination charges may be imposed . . . when an entity ‘uses Internet Protocol facilities to transmit such traffic to [or from] the called party’s premises.’”¹⁰ That ruling was of course codified as part of the VoIP Symmetry Rule.

Third, the FCC’s 2011 *YMax Order* considered and rejected the contention that an over-the-top VoIP provider performs end office switching by interconnecting virtual loops over the Internet.¹¹ As the Commission reasoned, if “the entire worldwide Internet . . . comprises a ‘virtual’ loop,” then such loops “would be of indeterminate length and configuration” and “could extend thousands of miles via numerous intermediaries throughout the country (or even the world), or only a few miles via a couple of intermediaries in contiguous states. . . . If this exchange of packets over the Internet is a ‘virtual loop,’ then so too is the entire public switched telephone network—and the term ‘loop’ has lost all meaning.”¹²

In short, our precedent makes clear that when a LEC and its VoIP partner merely transmit calls to an unaffiliated ISP for routing over the Internet, the LEC may not collect end office switching charges because it is not interconnecting with the customer’s last-mile facilities.

None of this is to say that a LEC partnered with an over-the-top VoIP provider cannot collect *any* access charges. If such a partnership performs the functional equivalent of other intercarrier services, such as dedicated transport access service or tandem-switched access service,¹³ it may collect the corresponding access charges. But the one thing our precedent makes clear is that transmitting calls to an unaffiliated ISP for routing over the Internet is not the functional equivalent of end office switching.

⁶ *Petitions for Reconsideration and Applications for Review of RAO 21*, AAD 92-86, Order, 12 FCC Red 10061, 10067, para. 11 (1997) (*RAO Recon Order*) (emphasis added); *id.* (A piece of equipment is a switch if and only if it “is capable of interconnecting lines or trunks, i.e., if it has the switching matrix required for call interconnection . . .”).

⁷ See *Classification of Remote Central Office Equipment*, Letter, Responsible Accounting Officer, 7 FCC Red 5205, 5205, n.1 (Comm. Carr. Bur. 1992) (*RAO Letter 21*), revised by *Classification of Remote Central Office Equipment*, Letter, Responsible Accounting Officer, 7 FCC Red 6075, 6075, n.1 (Comm. Carr. Bur. 1992) (*Revised RAO Letter 21*).

⁸ *RAO Recon Order*, 12 FCC Red at 10067, para. 12. As the FCC noted at the time, the other functions are not unique to switches since other equipment “can perform a number of functions historically associated with switches, such as attending, information receiving, and alerting.” *Id.* at 10066-67, para. 11.

⁹ *AT&T Corp., Complainant, v. YMax Communications Corp., Defendant*, File No. EB-10-MD-005, Memorandum Opinion and Order, 26 FCC Red 5742, 5757, para. 40 (2011) (*YMax Order*) (footnote omitted).

¹⁰ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Red 17663, 18025, para. 969 (2011) (*Universal Service Transformation Order*).

¹¹ *YMax Order*, 26 FCC Red 5742.

¹² *Id.* at 5758-59, para. 44.

¹³ 47 C.F.R. § 51.903(c), (i).

II.

With that background, to the order we go. Instead of following the precedent described above, the order decides that “solely for purposes of this decision” the test for whether a LEC and its VoIP partner perform end office switching is whether they provide “the intelligence associated with call set-up, supervision and management,” also known as “call control.”¹⁴ The order primarily defends this decision by pointing to the VoIP Symmetry Rule adopted in the *Universal Service Transformation Order*,¹⁵ which says:

Notwithstanding any other provision of the Commission’s rules, a local exchange carrier shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier’s interstate or intrastate tariff for the access services defined in § 51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party’s premises or delivers the call to the called party’s premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic. This rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service. For purposes of this provision, functions provided by a LEC as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission in a manner that is comparable to a service offered by a local exchange carrier constitutes the functional equivalent of the incumbent local exchange carrier access service.¹⁶

The order apparently interprets the VoIP Symmetry Rule to (a) “supersede[]” the *YMax Order*,¹⁷ (b) adopt a “new functional equivalence approach to VoIP-PSTN traffic” that “takes a more holistic look at how calls are delivered to the end user,”¹⁸ and (c) suggest that a LEC and its over-the-top VoIP partner *must* be able to collect end office switching charges because “the language of the VoIP symmetry rule contemplates compensation for new and different technology”¹⁹ and “places no restrictions on the types of VoIP providers with which competitive LECs may form partnerships.”²⁰ These defenses do not withstand scrutiny.

First, the order cannot credibly claim that the VoIP Symmetry Rule superseded the *YMax Order*. The rule came only six months after the *YMax Order* and did not at any point suggest it was superseding that order. Although both addressed intercarrier compensation, the VoIP Symmetry Rule addressed two analytically distinct issues left open in the *YMax Order*: (1) whether a LEC could collect access charges

¹⁴ *Order* at para. 28 (emphasis in original).

¹⁵ The order also claims that the precedent recited above, and in particular the *YMax Order*, is all “distinguishable from the facts before us,” *Order* at para. 32, but then fails to explain how the “specific configuration of YMax’s network architecture,” *YMax Order*, 26 FCC Red at 5743 n.7—one of the two issues in the *YMax Order*—differs at all from the network architecture in dispute here. Indeed, as far as the record shows, YMax and its VoIP partners were and are providing the exact same functions as the LECs and their VoIP partners that sought clarification here.

¹⁶ 47 C.F.R. § 51.913(b).

¹⁷ *Order* at para. 35.

¹⁸ *Order* at para. 26.

¹⁹ *Order* at para. 31.

²⁰ *Order* at para. 21.

when it transmitted a call using a format other than time-division multiplexing (such as IP) and (2) whether a LEC could collect access charges for functions performed not only by itself but also by its VoIP partner.²¹

Far from undermining the *YMax Order*, the FCC specifically reaffirmed it in adopting the VoIP Symmetry Rule, citing the very portions quoted above in declaring that LECs cannot charge for services not performed.²² Indeed, shortly after the FCC adopted the VoIP Symmetry Rule, YMax of the *YMax Order* returned to the FCC worried that this citation “might appear to be suggesting that if the physical transmission facilities connecting the IXC and the VoIP service customer are provided in part by one or more unrelated ISPs (as is the case with YMax or ‘over-the-top’ VoIP providers such as Skype or Vonage), then the LEC and its VoIP service partner are not performing the ‘access’ function and cannot charge for it.”²³ In response, our staff rejected YMax’s request that it need only perform “some portion of the interconnection”—rather than interconnection all the way to the last-mile facility—in order to assess end office switching charges.²⁴ In other words, the staff made explicit what was already implicit: The *YMax Order* and associated precedent survived the VoIP Symmetry Rule, hence a LEC-VoIP partnership must itself interconnect with last-mile facilities—the IP equivalent of end office switching.

Second, the order incorrectly states that the VoIP Symmetry Rule adopted a “new functional equivalence approach.” One problem with this is that the VoIP Symmetry Rule did not adopt *any* test regarding functionality; it instead cleared up two separate issues as explained above. Perhaps more to the point, the functional equivalence approach codified in other rules²⁵ was nothing new; it was more than a decade old when the FCC adopted the VoIP Symmetry Rule.²⁶ And by adopting that time-tested approach, the FCC implicitly adopted its accompanying precedent—and explicitly endorsed the reasoning of the *YMax Order*.²⁷

Third, the order incorrectly suggests that the language of the VoIP Symmetry Rule means that a LEC and its over-the-top VoIP partner *must* be able to collect end office switching charges. But when it adopted the VoIP Symmetry Rule, the Commission cautioned that “although access services might functionally be accomplished in different ways depending upon the network technology, the right to charge does not extend to functions not performed by the LEC or its retail VoIP service provider

²¹ *Universal Service Transformation Order*, 26 FCC Red at 18025–26, paras. 968–70 (“In particular, providers cite disputes arising from their use of IP technology as well as the structure of the relationship between retail VoIP service providers and their wholesale carrier partners.”). The VoIP Symmetry Rule makes clear that the answer to each of these questions is yes.

²² *Universal Service Transformation Order*, 26 FCC Red at 18027, n.2028 (citing *YMax Order*, 26 FCC Red at 5757, 5758–59, paras. 41, 44 & n.120). Although the order tries to frame the *YMax Order* as having a “narrow focus and holding” about one particular party’s tariff, *Order* at para. 35, the discussion quoted herein and cited in the *Universal Service Transformation Order* shows that the FCC indeed meant what it said in the *YMax Order*: Interconnecting virtual loops over the Internet is not the functional equivalent of end office switching.

²³ Letter from John B. Messenger, VP-Legal & Regulatory, YMax, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Feb. 3, 2012).

²⁴ *Connect America Fund et al.*, WC Docket No. 10-90 et al., *Order*, 27 FCC Red 2142, 2144, para. 4 (Wireline Comp. Bur. 2012). Notably, this entire discussion was about interconnection precisely because “interconnection, i.e., the actual connection of lines [or loops] and trunks, is the characteristic that distinguishes switches from other central office equipment.” *RAO Recon Order*, 12 FCC Red at 10067, para. 11 (emphasis added).

²⁵ See, e.g., 47 C.F.R. § 51.903(d); 47 C.F.R. § 61.26.

²⁶ See *Seventh Access Charge Reform Order*, 16 FCC Red at 9981 (adopting 47 C.F.R. § 61.26(a)(3), which codifies the functional equivalence approach).

²⁷ *Universal Service Transformation Order*, 26 FCC Red at 18027, n.2028 (citing *YMax Order*, 26 FCC Red at 5757, 5758–59, paras. 41, 44 & n.120).

partner.”²⁸ Indeed, the rule itself reiterates that “[t]his rule does not permit a local exchange carrier to charge for functions not performed.”²⁹ So it’s no surprise that VoIP providers performing differing functions would entitle LECs to differing intercarrier compensation, nor that a VoIP provider that interconnects a call with a customer’s last-mile facility performs the function of end office switching whereas a VoIP provider that transmits calls to an unaffiliated ISP for routing over the Internet does not.³⁰

III.

In short, the order’s decision to allow LECs to collect end office switching charges when its VoIP partner transmits calls to an unaffiliated ISP for routing over the Internet alters our rules to mean something they’ve never meant before. The FCC is of course free to amend its rules, but we cannot “under the guise of interpreting a regulation, . . . create de facto a new regulation.”³¹ Nor can we change our rules without abiding by the notice-and-comment requirements laid out in the Administrative Procedure Act.³² Because the FCC has neither proposed nor sought comment on the novel test adopted “solely for purposes of this decision” and because this test undermines well-considered, long-established precedents, I respectfully dissent.

²⁸ *Universal Service Transformation Order*, 26 FCC Red at 18027, n.2028.

²⁹ 47 C.F.R. § 51.913(b).

³⁰ The order mistakenly suggests that the “key distinction between facilities-based VoIP and over-the-top VoIP lies . . . in the ownership or leasing of the means of transmission to the customer premises,” which is “distinct from end office switching, and thus is not material to our determination.” *Order* at para. 31 (footnote omitted). Since this dispute involves end office switching charges, the key distinction is instead between VoIP providers that interconnect directly with last-mile transmission facilities and those that do not, which is very much about end office switching and thus material to our determination.

³¹ *Christensen v. Harris County*, 529 U.S. 576, 588 (2000).

³² 5 U.S.C. § 553.

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92.

I cannot support today's order because it would unfairly penalize certain carriers for reasonably relying on what appeared to be well-settled: that carriers do not owe end office switching charges to other providers that do not actually perform the functional equivalent of end office switching (connecting trunks to loops).

Over several decades, the Commission has given meaning to the key terms at issue here; namely, "end office switching" and "functional equivalent". As a result, we know that the defining feature of end office switching is the actual connection of subscriber lines and trunks. And while the functional equivalent concept provides some flexibility in determining how that key criterion is met, we also know that intermediate routing, such as merely placing calls onto the public Internet, does not count. Against this backdrop, the Commission cannot suddenly reverse its interpretations in the guise of a clarification and apply such "clarification" retroactively.

The order argues that recent decisions that seem to be directly on point should be read narrowly. Even if that were true, it misses the point that the precedent had been established long before those decisions. Indeed, those recent decisions, however narrow, are further evidence that the rule *was* settled because they are consistent with the Commission's long-standing interpretations. That is, they apply a rule that had been reasonably clear to the specific facts at issue.

For example, in the YMax decision, the Commission rejected YMax's contention that it should be entitled to end office switching charges for placing calls onto a "virtual loop" that "could extend thousands of miles via numerous intermediaries throughout the country (or even the world), or only a few miles via a couple of intermediaries in contiguous states."¹ That's not surprising given that the Commission had previously determined, over a decade ago, that carriers that merely pass calls to other carriers rather than placing them directly onto the loops of particular end users do not provide the functional equivalent of end office switching.² Therefore, even if the YMax decision narrowly applies to the particular language in YMax's tariff and the specific configuration of YMax's network architecture, it is a further link in a chain of decisions that show that functional equivalent has specific meaning. It cannot be discarded without fair notice simply because it has become a hindrance to questionable new policies.

Moreover, the fact that the Commission adopted the intervening VoIP symmetry rule in the *USF/ICC Transformation Order* does not change anything because the Commission did not claim to modify the long-settled meanings of the key terms. Nor is a new interpretation necessary to effectuate the intent of that rule in an IP world. Entities that actually provide the functional equivalent of end office switching, such as many facilities-based VoIP providers, do benefit from the rule.

The order also attempts to explain why, as a policy matter, the decision is correct. In particular, the order claims that the decision is necessary to encourage the deployment of all-IP networks, protect and

¹ *AT&T Corp., Complainant, v. YMax Communications Corp., Defendant*, File No. EB-10-MD-005, Memorandum Opinion and Order, 26 FCC Red 5742, 5758-59, para. 44 (2011).

² *Access Charge Reform: Reform of Access Charges Imposed by Competitive Local Exchange Carriers; Petition of Z-Tel Communications, Inc. for Temporary Waiver of Commission Rule 61.26(d) To Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Red 9108 (2004).

promote competition in the voice marketplace, reduce intercarrier compensation disputes, and avoid marketplace distortions and arbitrage. But here again, the policy justifications are also unavailing.

The charges for end office switching have been so high precisely because of the substantial costs of performing the function of connecting trunks and loops; costs that are not justified if providers simply place calls onto the Internet. Allowing such providers to pocket the difference does nothing to guarantee that they will use it to deploy IP networks. But it does promote artificial competition, marketplace distortions, and arbitrage. The order responds that this will be solved by the transition to bill-and-keep, but that does not *address distortions and arbitrage during the transition or for originating end office switching. As a result, I expect disputes will continue.*

Finally, the fact that some carriers chose to pay the charges does not mean that all carriers are legally required to pay the charges as long as the carriers that did not pay can reasonably claim that the applicable rule was settled. AT&T and Verizon have made that claim, and I agree with it. Therefore, I dissent.

In the bigger picture, I find it disturbing to be arguing over compensation and rates built for analog TDM networks when consumers and the industry are moving furiously to IP. It is similar to the fights over shipping costs prevalent in the railroad industry, which still exist to some degree, prior to the expansion and deployment of the airline industry. One of the beautiful features of the Internet is its pricing and traffic carriage structure, which thankfully have been outside the Commission's reach. Traditionally, those have been and continue to be worked out among the parties via market principles and cooperation, not government intervention. The last thing we should do is disrupt this by carrying forth the broken-down, *inefficient call compensation regime.*

Along those lines, I have raised objections to a disturbing trend where the Commission tries to bring new technologies, services or applications within the scope of existing statutory provisions and rules by ignoring or minimizing inconvenient history and precedent. We've seen this happen a number of times with over-the-top services. Sometimes the purpose is to impose new burdens to new market participants. At other times, there is a supposed benefit, but the "benefit" is often short-term or hypothetical, and I am forced to worry about the unintended consequences and possible long-term burdens that could flow from such flawed decisions. This item represents another example in a dangerous course that needs to be curtailed immediately.

TAB B

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SWITCHED ACCESS TARIFF

*This tariff, PA P.U.C. Tariff No. 4
cancels and replaces in its entirety
the Company's PA P.U.C. Tariff No. 3*

CORE COMMUNICATIONS, INC.

REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

APPLYING TO SWITCHED ACCESS SERVICE

WITHIN THE STATE OF PENNSYLVANIA

THROUGHOUT THE SERVICE TERRITORIES OF

VERIZON PENNSYLVANIA, INC.

This tariff is on file with the Pennsylvania Public Utility
Commission and copies may be inspected during normal
business hours at the Company's principal place of business
at 209 West Street, Suite 302, Annapolis, Maryland 21401

Issued: July 1, 2008

Effective: July 2, 2008

By: Christopher Van de Verg
General Counsel
209 West Street, Suite 302
Annapolis, Maryland 21401

PAa0804

SWITCHED ACCESS TARIFF

SECTION 1 - DEFINITIONS, (Cont'd.)

Company: Core Communications, Inc., issuer of this rate sheet

Constructive Order: Delivery of calls to or acceptance of calls from the Company's End User locations over Company-switched local exchange services constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes a Constructive Order of switched access by the Customer.

Customer: The person, firm, corporation or other entity which orders Service and is responsible for the payment of charges and for compliance with the Company's rate sheet regulations. The Customer could be an interexchange carrier, a wireless provider, or any other service provider.

8XX Data Base Access Service: The term "8XX Data Base Access Service" denotes a toll-free originating Trunkside Access Service when the 8XX Service Access Code (i.e., 800, 822, 833, 844, 855, 866, 877, or 888 as available) is used.

End User: Any individual, association, corporation, governmental agency or any other entity other than an Interexchange Carrier which subscribes to intrastate service provided by an Exchange Carrier.

Entrance Facility: A trunk facility connecting the Customer's point of presence with the local switching center.

Exchange Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service.

Firm Order Confirmation (FOC): Acknowledgment by the Company of receipt of an Access Service Request from the Customer and commitment by the Company of a Service Date.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

Issued: July 1, 2008

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PAa0804

SWITCHED ACCESS TARIFF

SECTION 1 - DEFINITIONS, (Cont'd.)

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

Service Order: The written request for Network Services executed by the Customer and the Company in a format devised by the Company; or, in the alternative, the submission of an Access Service Request by the Customer in the manner specified in this rate sheet.

Service(s): The Company's telecommunications Access Services offered on the Company's Network.

Signaling Point of Interface: The Customer designated location where the SS7 signaling information is exchanged between the Company and the Customer.

Signaling System 7 (SS7): The common Channel Out of Band Signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

Switched Access Service: Access to the switched network of an Exchange Carrier for the purpose of originating or terminating communications. Switched Access is available to carriers, as defined in this rate sheet.

Trunk: A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

Wireless Provider: Any carrier authorized to operate as a provider of cellular, personal communications, paging or any other form of wireless transmission.

Core: Core Communications, Inc., issuer of this rate sheet.

Issued: July 1, 2008

Effective: July 2, 2008

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PAa0804

SWITCHED ACCESS TARIFF

SECTION 4 - SWITCHED ACCESS SERVICE

4.1 General

Switched Access Service, which is available to Customers for their use in furnishing their services to end users, provides a two-point communications path between a Customer's Premises and an End User's Premises. It provides for the use of common terminating, switching and transport facilities. Switched Access Service provides the ability to originate calls from an End User's Premises to a Customer's Premises, and to terminate calls from a Customer's Premises to an End User's Premises.

Switched Access Service is available when originating or terminating calls from or to an end user which subscribes to the Company's Local Exchange Services.

Rates and charges are set forth in Section 5. The application of rates for Switched Access Service is described in Section 5.

4.2 Provision and Description of Switched Access Service Arrangements

4.2.1 Feature Group Access

FG Access is provisioned at the DS-1 level and provides trunk-side access to Local Switching Center switches, for the Customer's use in originating and terminating communications. Basic FG Access service will be provided with Multi-Frequency In Band Signaling (SS7 is also available, where capabilities exist).

All traffic is routed to and from the Company's local switching center via the Customer's tandem provider or via end office trucking, where available. Delivery of calls to, or acceptance of calls from, the Company's End User locations over Company-switched local exchange services shall constitute an agreement by the Customer to purchase switched access services as described herein. The Company reserves the right to require the Customer to submit an ASR for switched access.

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SWITCHED ACCESS TARIFF

SECTION 5 - SWITCHED ACCESS RATES, (Cont'd.)

5.2 Rate Categories

5.2.1 There are several rate categories which apply to Switched Access Service:

- Blended Carrier Switched Access Originating
- Blended Carrier Switched Access Terminating
- Toll-Free 8XX Data Base Access Service

The Company provides originating and terminating switched access service through a single blended rate based on aggregate traffic volumes from the following cost categories:

Common Line

The Common Line cost category establishes the charges related to the use of Company-provided end user common lines by customers and end users for interstate access.

Switched Transport

The Switched Transport cost category establishes the charges related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es) where the customer's traffic is switched to originate or terminate the customer's communications.

End Office Switching

The End Office Switching cost category establishes the charges related to the use of end office switching equipment, the terminations in the end office of end user lines, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP.

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TAB C

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CORE COMMUNICATIONS, INC.

REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

APPLYING TO SWITCHED ACCESS SERVICE

WITHIN THE STATE OF PENNSYLVANIA

THROUGHOUT THE SERVICE TERRITORIES OF:

Verizon, Pennsylvania, Inc., The United Telephone Company of Pennsylvania d/b/a Embarq, Verizon-North, Inc., Windstream Pennsylvania, Inc. f/k/a ALLTEL Pennsylvania, Inc., Armstrong Telephone Company – North, Armstrong Telephone Company – Pennsylvania, The Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telecommunications Company of Kecksburg, Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Communications of New York, Commonwealth Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company d/b/a D&E Telephone Company, TDS Telecom/Deposit Telephone Company, Frontier Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC, Frontier Communications of Pennsylvania, LLC, The Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Laurel Highland Telephone Company, Marianna and Scenery Hill Telephone Company, North Penn Telephone Company, Consolidated Communications of Pennsylvania Company, The North-Eastern Pennsylvania Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, TDS Telecom/Mahanoy & Mahantango Telephone Company, TDS Telecom/Sugar Valley Telephone Company, Venus Telephone Corporation, West Side Telephone Co. d/b/a West Side Telecommunications, Yukon Waltz Telephone Company. (C)

This tariff is on file with the Pennsylvania Public Utility Commission and copies may be inspected during normal business hours at the Company's principal place of business at 209 West Street, Suite 302, Annapolis, Maryland 21401 (C)

Issued: May 22, 2009

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PAa0902

SWITCHED ACCESS TARIFF

SECTION 1 - DEFINITIONS, (Cont'd.)

Company: Core Communications, Inc., issuer of this rate sheet

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SWITCHED ACCESS TARIFF

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Core: Core Communications, Inc., issuer of this rate sheet.

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Effective: July 2, 2008

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PAa0804

SWITCHED ACCESS TARIFF

SECTION 4 - SWITCHED ACCESS SERVICE

4.1 General

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SECRETARY'S BUREAU**

SWITCHED ACCESS TARIFF

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CORE COMMUNICATIONS, INC.

REGULATIONS AND SCHEDULE OF INTRASTATE CHARGES

APPLYING TO SWITCHED ACCESS SERVICE

WITHIN THE STATE OF PENNSYLVANIA

THROUGHOUT THE SERVICE TERRITORIES OF:

Verizon, Pennsylvania, Inc., The United Telephone Company of Pennsylvania d/b/a Embarq, Verizon-North, Inc., Windstream Pennsylvania, Inc. f/k/a ALLTEL Pennsylvania, Inc., Armstrong Telephone Company – North, Armstrong Telephone Company – Pennsylvania, The Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telecommunications Company of Kecksburg, Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Communications of New York, Commonwealth Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company d/b/a D&E Telephone Company, TDS Telecom/Deposit Telephone Company, Frontier Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC, Frontier Communications of Pennsylvania, LLC, The Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Laurel Highland Telephone Company, Marianna and Scenery Hill Telephone Company, North Penn Telephone Company, Consolidated Communications of Pennsylvania Company, The North-Eastern Pennsylvania Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, TDS Telecom/Mahanoy & Mahantango Telephone Company, TDS Telecom/Sugar Valley Telephone Company, Venus Telephone Corporation, West Side Telephone Co. d/b/a West Side Telecommunications, Yukon Waltz Telephone Company.

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Issued: January 12, 2012

Effective: February 11, 2012

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PAa1201

SWITCHED ACCESS TARIFF

SECTION 1 - DEFINITIONS, (Cont'd.)

Company: Core Communications, Inc., issuer of this rate sheet

Constructive Order: Delivery of calls to or acceptance of calls from the Company's End User locations over Company-switched local exchange services constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Similarly the selection by a Company's End User of the Customer as the presubscribed IXC constitutes a Constructive Order of switched access by the Customer.

Customer: The person, firm, corporation or other entity which orders Service and is responsible for the payment of charges and for compliance with the Company's rate sheet regulations. The Customer could be an interexchange carrier, a wireless provider, or any other service provider.

8XX Data Base Access Service: The term "8XX Data Base Access Service" denotes a toll-free originating Trunkside Access Service when the 8XX Service Access Code (i.e., 800, 822, 833, 844, 855, 866, 877, or 888 as available) is used.

End User: Any individual, association, corporation, governmental agency or any other entity other than an Interexchange Carrier which subscribes to intrastate service provided by an Exchange Carrier.

Entrance Facility: A trunk facility connecting the Customer's point of presence with the local switching center.

Exchange Carrier: Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service.

Firm Order Confirmation (FOC): Acknowledgment by the Company of receipt of an Access Service Request from the Customer and commitment by the Company of a Service Date.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

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Effective: July 2, 2008

By: Christopher Van de Verg
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PAa0804

SWITCHED ACCESS TARIFF

SECTION 1 - DEFINITIONS, (Cont'd.)

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

Service Order: The written request for Network Services executed by the Customer and the Company in a format devised by the Company; or, in the alternative, the submission of an Access Service Request by the Customer in the manner specified in this rate sheet.

Service(s): The Company's telecommunications Access Services offered on the Company's Network.

Signaling Point of Interface: The Customer designated location where the SS7 signaling information is exchanged between the Company and the Customer.

Signaling System 7 (SS7): The common Channel Out of Band Signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

Switched Access Service: Access to the switched network of an Exchange Carrier for the purpose of originating or terminating communications. Switched Access is available to carriers, as defined in this rate sheet.

Trunk: A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

Wireless Provider: Any carrier authorized to operate as a provider of cellular, personal communications, paging or any other form of wireless transmission.

Core: Core Communications, Inc., issuer of this rate sheet.

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PAa0804

SWITCHED ACCESS TARIFF

SECTION 4 - SWITCHED ACCESS SERVICE

4.1 General

Switched Access Service, which is available to Customers for their use in furnishing their services to end users, provides a two-point communications path between a Customer's Premises and an End User's Premises. It provides for the use of common terminating, switching and transport facilities. Switched Access Service provides the ability to originate calls from an End User's Premises to a Customer's Premises, and to terminate calls from a Customer's Premises to an End User's Premises.

Switched Access Service is available when originating or terminating calls from or to an end user which subscribes to the Company's Local Exchange Services.

Rates and charges are set forth in Section 5. The application of rates for Switched Access Service is described in Section 5.

4.2 Provision and Description of Switched Access Service Arrangements

4.2.1 Feature Group Access

FG Access is provisioned at the DS-1 level and provides trunk-side access to Local Switching Center switches, for the Customer's use in originating and terminating communications. Basic FG Access service will be provided with Multi-Frequency In Band Signaling (SS7 is also available, where capabilities exist).

All traffic is routed to and from the Company's local switching center via the Customer's tandem provider or via end office trucking, where available. Delivery of calls to, or acceptance of calls from, the Company's End User locations over Company-switched local exchange services shall constitute an agreement by the Customer to purchase switched access services as described herein. The Company reserves the right to require the Customer to submit an ASR for switched access.

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By: Christopher Van de Verg
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PAa0804

SWITCHED ACCESS TARIFF

SECTION 5 - SWITCHED ACCESS RATES, (Cont'd.)

5.2 Rate Categories

5.2.1 There are several rate categories which apply to Switched Access Service:

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Common Line

The Common Line cost category establishes the charges related to the use of Company-provided end user common lines by customers and end users for interstate access.

Switched Transport

The Switched Transport cost category establishes the charges related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es) where the customer's traffic is switched to originate or terminate the customer's communications.

End Office Switching

The End Office Switching cost category establishes the charges related to the use of end office switching equipment, the terminations in the end office of end user lines, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP.

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PAa0902

SWITCHED ACCESS TARIFF

SECTION 5 - SWITCHED ACCESS RATES, (Cont'd.)

5.5 VoIP-PSTN Traffic

In the absence of an interconnection agreement between Customer and Company that provides otherwise, Customer shall compensate Company for Switched Access Service as set forth in this Tariff for any traffic that falls within the scope of "toll VoIP-PSTN traffic" (as that term is discussed in FCC Item No. 11-161 (rel. November 18, 2011) and 47 U.S.C. § 51.913(a)), at the interstate switched access rates for the state of Pennsylvania as set forth in section 5.6 of this tariff (Intrastate Switched Access Tariff PA PUC No. 4). Customer shall be entitled to assess and collect Switched Access Charges for toll VoIP-PSTN traffic from Customer to the full extent permitted under applicable law, including the functions described in FCC Item No. 11-161 and 47 C.F.R. § 51.913(b).

5.5.1 Calculation and Application of Percent-VoIP-PSTN Usage Factor

The Company will determine the number of Relevant VoIP-PSTN Traffic minutes of use ("MOU") to which interstate rates will be applied under subsection (B), above, by applying a Percent VoIP Usage ("PVU") factor to the total intrastate access MOU (however determined – either based on call detail information or PIU) exchanged between the Company and the Customer. The PVU will be derived and applied as follows:

1. The customer will calculate and furnish to the Telephone Company a factor ("PVU-A"), along with supporting documentation, representing a whole number percentage based on the customer's total intrastate traffic originated in IP format and delivered to the Telephone Company in the State divided by the customer's total intrastate access MOU exchanged with the Telephone Company in the State.
2. The Telephone Company will, likewise, calculate a factor ("PVU-B"), representing the whole number percentage of the Telephone Company's total intrastate access MOU in the State that the Telephone Company terminates on its network in IP format.
3. The Company will use the PVU-A and PVU-B factors to calculate an effective PVU factor that represents the percentage of total access MOU exchanged between the Company and the Customer that is originated and/or terminated in IP format, whether at the Company's end, at the Customer's end, or at both ends. *The effective PVU factor will be calculated as the sum of: (A) the PVU-A factor and (B) the PVU-B factor times (1.0 minus the PVU-A factor).*

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TAB E

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

This tariff, FCC Tariff No. 2, replaces the Company's FCC Tariff No. 1 in its entirety.

TITLE PAGE

INTERSTATE ACCESS SERVICES TARIFF

OF

CORE COMMUNICATIONS, INC., ET AL.

This tariff contains the descriptions, regulations, and rates applicable to the provision of interstate access services provided by Core Communications, Inc., et al. ("Company" or "the Company"), with principal offices at 209 West Street, Suite 302, Annapolis, MD 21404. This tariff is on file with the Federal Communications Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

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Effective: October 3, 2009

Issued By:
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Annapolis, Maryland 21401

fca0902

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Automatic Number Identification (ANI) - The automatic transmission of a caller's billing account telephone number to a local exchange company, interexchange carrier or a third party Customer. The primary purpose of ANI is for billing toll calls.

Business Hours – The phrase “Business Hours” generally means the time beginning at 8:00 a.m. and ending at 5:00 p.m. local time at the place of Company operation, Monday through Friday excluding holidays.

Business Office – The phrase “Business Office” means the primary location where the business operations of the Company are performed and where a copy of the Company’s tariffs are made available for public inspection.

Carrier – A person, firm, corporation, or other entity that provides communications services.

Central Office - The premises of the Company containing one or more switches where the Company provides local exchange services to Company end users and where Company maintains connections to other carrier’s networks.

Channel - A communications path between two or more points.

CIC - An interexchange carrier identification code.

Commission - Refers to the Federal Communications Commission.

Company - Used throughout this tariff to indicate the Issuing Carriers listed herein.

Company End User - Any person, firm, partnership, corporation or other entity that subscribes to or otherwise uses the local exchange services of the Company.

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Local Exchange Company (LEC) – A company that is certified by the relevant state utility commission to provide local exchange services.

Local Exchange Services – Any service provided pursuant to a LEC's certification by, and/or tariffs filed with, the relevant state utility commission.

N/A - Not Applicable.

Night/Weekend – The words "night/weekend" mean 11:00 p.m. to, but not including, 8:00 a.m. local time in the originating city, all day on Saturday, and all day Sunday except from 5:00 p.m. to, but not including, 11:00 p.m.

Non-business Hours – The phrase "non-business hours" means the time period after 5:00 p.m. and before 8:00 a.m., Monday through Friday, all day Saturday, Sunday, and on holidays.

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

NPA - Numbering Plan Area or area code.

Off-Hook - The active condition of Switched Access service or a telephone exchange line.

On-Hook - The idle condition of Switched Access service or a telephone exchange line.

Originating Direction - The use of Switched Access Service for the origination of calls from a Company End User's Premises to a Customer's Point of Presence.

PIC Authorization - A Customer End User's selection of a PIC that meets the requirements of federal and state law.

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Remote Switching Modules or Remote Switching Systems (RSM/RSS) - Small remotely controlled electronic End Office Switching equipment which obtains its call processing capability from a Host Office. An RSM/RSS cannot accommodate direct trunks to a Customer.

Services – Services provided under this Tariff.

Service Commencement Date - The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards in the service order or this tariff, in which case the service commencement date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute service commencement date.

Switch – An electronic device that is used to provide communications services, including switched access services, long distance toll services and/or local exchange services, and which may perform other functions as well.

Switched Access Service - Access to the switched network of the Company for the purpose of originating or terminating communications. Switched Access is available to carriers, as defined in this rate sheet.

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SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General

- 3.1.1 Switched Access Service is available to Customers for their use in furnishing their services to Customer's End Users. This service provides a two-point communications path between the Customer's Point of Presence and the Company's End Users, the Company's facilities. Switched Access Service provides for the ability to originate calls from End Users to the Customer's Point of Presence and to terminate calls from the Customer's Point of Presence to End Users in the LATA where it is provided.
- 3.1.2 When a rate as set forth in this tariff is shown to more than two decimal places, the charges will be determined using the rate shown. The resulting amount will then be rounded to the nearest penny (i.e., rounded to two decimal places).
- 3.1.3 In the absence of an ASR as described in Section 3.4, Customer's delivery of calls to, or acceptance of calls from, Company End Users via Company-facilities shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's switched access services as described and priced herein.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONTD)

3.2 Manner of Provision

- 3.2.1 Switched Access Service is available when originating or terminating calls from or to an End User which subscribes to the Company's Local Exchange Services.
- 3.2.2 Switched Access is furnished on a per-line or per trunk basis.
- 3.2.3 Originating traffic type represents access capacity within a LATA for carrying traffic from the Company's End User to the Customer; and Terminating traffic type represents access capacity within a LATA for carrying traffic from the Customer to the Company's End User. When ordering capacity for Switched Access, the Customer must at a minimum specify such access capacity in terms of originating traffic type and/or terminating traffic type.
- 3.2.4 Switched Access is provisioned, at minimum, at the DS-1 level and provides line-side or trunk-side access to End Office switches for the Customer's use in originating and terminating communications. Basic Switched Access service will be provided with Multi-Frequency In Band Signaling (SS7 is also available, where capabilities exist).
- 3.2.5 Two types of Switched Access are available:
- A. Tandem Connect Access: This option applies when the customer has no direct facilities to the Company's Central Office. Traffic is routed to and from the Central Office via the Access Tandem. Delivery of calls to, or acceptance of calls from, the Customer's End User location(s) via Company-provided Tandem Connect Access services shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's switched access services as described and priced herein.
 - B. Direct Connect Access: This option applies when the Company or another service provider provides a dedicated transmission path between the Customer's premises and the Company's Central Office. This transmission path is dedicated to the use of a single Customer. The Customer is responsible for providing such facilities itself or for negotiating such arrangements with possible suppliers. To the extent that the Company is able to provide such arrangements, the dedicated portion of Direct Connect Access would be provided on an Individual Case Basis as Special Service Arrangements pursuant to Section 6 of this tariff.

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SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.3 Switched Access Service

3.3.1 Switched Transport

For traffic that EMI records indicate was tandem switched (for example, when traffic is not routed via a direct end office trunk), switched transport rate elements shall apply. As used in this Section 3.3.1, "switched transport rate elements" include (without limitation) tandem switched termination rate elements, tandem switched facility rate elements, tandem switching rate elements, and common transport multiplexing rate elements.

3.3.2 End Office Switching

The End Office Switching rate category establishes the charges related to the use of end office switching equipment, the terminations in the end office of end user lines, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP.

TAB F

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

This tariff, FCC Tariff No. 3, replaces the Company's FCC Tariff No. 2 in its entirety.

TITLE PAGE

INTERSTATE ACCESS SERVICES TARIFF

OF

CORE COMMUNICATIONS, INC., ET AL.

This tariff contains the descriptions, regulations, and rates applicable to the provision of interstate access services provided by Core Communications, Inc., et al. ("Company" or "the Company"), with principal offices at 209 West Street, Suite 302, Annapolis, MD 21404. This tariff is on file with the Federal Communications Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

Issued: December 17, 2010

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Issued By:
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FCC1003

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Automatic Number Identification (ANI) - The automatic transmission of a caller's billing account telephone number to a Carrier or End User.

Business Hours - The phrase "Business Hours" generally means the time beginning at 8:00 a.m. and ending at 5:00 p.m. local time at the place of Company operation, Monday through Friday excluding holidays.

Business Office - The phrase "Business Office" means the primary location where the business operations of the Company are performed and where a copy of the Company's tariffs are made available for public inspection.

Call - A communication attempt for which the complete address code (e.g., 0-, 911, or 10 digits) is provided to the Company's switch or equivalent facility. The term "Call" expressly includes communications that are delivered to, or received from, persons or entities that include, but are not limited to: conference call providers, chat line providers, calling card providers, call centers, enhanced service providers, help desk providers, and residential and/or business users.

Carrier - A person, firm, partnership, corporation, or other entity that provides communications services.

Central Office - The premises of the Company containing one or more Switches where the Company provides Local Exchange Services to Company End Users and where Company maintains connections to other carrier's networks.

Channel - A communications path between two or more points.

CIC - An interexchange carrier identification code.

Commission - Refers to the Federal Communications Commission.

Company - Used throughout this tariff to indicate the Issuing Carriers listed herein.

Company End User - Any person, firm, partnership, corporation or other entity (including, where applicable, a Carrier) that subscribes to or otherwise uses the local exchange services of the Company.

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Local Exchange Carrier (LEC) – A company that is certified by the relevant state utility commission to provide Local Exchange Services.

Local Exchange Services – Any service provided pursuant to a LEC's certification by, and/or tariffs filed with, the relevant state utility commission.

N/A - Not Applicable.

Night/Weekend – The words "night/weekend" mean 11:00 p.m. to, but not including, 8:00 a.m. local time in the originating city, all day on Saturday, and all day Sunday except from 5:00 p.m. to, but not including, 11:00 p.m.

Non-business Hours – The phrase "non-business hours" means the time period after 5:00 p.m. and before 8:00 a.m., Monday through Friday, all day Saturday, Sunday, and on holidays.

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

NPA - Numbering Plan Area or area code.

Off-Hook - The active condition of Switched Access Service or a telephone exchange line.

On-Hook - The idle condition of Switched Access Service or a telephone exchange line.

Originating Direction - The use of Switched Access Service for the origination of calls from a Company End User's Premises to a Customer's Point of Presence.

PIC Authorization - A Customer End User's selection of a PIC that meets the requirements of federal and state law.

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Remote Switching Modules or Remote Switching Systems (RSM/RSS) - Small remotely controlled electronic End Office Switching equipment which obtains its call processing capability from a Host Office. An RSM/RSS cannot accommodate direct trunks to a Customer.

Services - Services provided pursuant to this Tariff.

Service Commencement Date - For Services ordered pursuant to an ASR or Application for Service, the first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards in the service order or this tariff, in which case the service commencement date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute service commencement date.

Switch - An electronic device that is used to provide communications services, including Switched Access Services, long distance toll services and/or Local Exchange Services, and which may perform other functions as well.

Switched Access Service - Access to the network or facilities of the Company for the purpose of originating or terminating communications. Switched Access Service is available to carriers, as defined in this rate sheet. Switched Access Service includes services and facilities provided for the origination or termination of any interstate or foreign communications regardless of the technology used in transmission, including, but not limited to, local exchange, long distance, and data communications services that may use either TDM or Internet Protocol ("IP") or other technology. Switched Access Service includes, but is not limited to, the functional equivalent of the incumbent local exchange carrier interstate exchange access services typically associated with following rate elements: carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination; tandem switched transport facility (per mile); tandem switching; common transport multiplexing; and common trunk port.

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SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General

- 3.1.1 Switched Access Service is available to Customers for their use in furnishing their services to Customer's End Users. This service provides a two-point communications path between the Customer's Point of Presence and the Company's End Users or facilities. Switched Access Service provides Customer with the ability to originate calls from Company End Users to Customer's Point of Presence, and to terminate calls from the Customer's Point of Presence to Company End Users.
- 3.1.2 When a rate as set forth in this tariff is shown to more than two decimal places, the charges will be determined using the rate shown. The resulting amount will then be rounded to the nearest penny (i.e., rounded to two decimal places).0
- 3.1.3 In the absence of an ASR as described in Section 3.4, Customer's delivery of calls to, or acceptance of calls from, Company End Users via direct or indirect interconnection shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's Switched Access Services as described and priced herein.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.2 Manner of Provision

- 3.2.1 Switched Access Service is available when originating or terminating calls from or to a Company End User.
- 3.2.2 Originating traffic represents access capacity for carrying traffic from the Company's End User to the Customer; and Terminating traffic represents access capacity for carrying traffic from the Customer to the Company's End User. When ordering capacity for Switched Access Service, the Customer must at a minimum specify such access capacity in terms of originating traffic and/or terminating traffic.
- 3.2.3 Facilities for Switched Access Service are provisioned, at minimum, at the DS-1 level and provide line-side or trunk-side access to Company Switches for the Customer's use in originating and terminating communications. Basic Switched Access Service will be provided with multi-frequency signaling ("MF"), or with Signaling System 7 "SS7", where capabilities exist).
- 3.2.4 Two types of Switched Access are available:
 - A. Tandem Connect Access: This option applies when there is no direct facilities between the Customer's Point of Presence and the Company's Central Office. Traffic is routed to and from the Central Office via the appropriate third-party Access Tandem.
 - B. Direct Connect Access: This option applies when the Company or a third party provides a dedicated transmission path between the Customer's Point of Presence and the Company's Central Office. The Customer is responsible for providing such facilities itself or for negotiating such arrangements with potential third-party suppliers. To the extent that the Company is able to provide such arrangements, the dedicated portion of Direct Connect Access would be provided on an Individual Case Basis as Special Service Arrangements pursuant to Section 6 of this tariff.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.3 Switched Access Service

3.3.1 Switched Transport

For traffic delivered via Tandem Connect Access, switched transport rate elements shall apply. As used in this Section 3.3.1, "switched transport rate elements" include (without limitation) tandem switched termination rate elements, tandem switched facility rate elements, tandem switching rate elements, common trunk port, and common transport multiplexing rate elements.

3.3.2 End Office Switching

The End Office Switching rate category establishes the charges related to the use of end office switching equipment, the terminations in the end office of end user lines, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP.

3.3.3 Toll Free Transit Traffic Service

Toll Free Transit Traffic Service is a Switched Access Service in which the Company transits toll free traffic originated by a third party who is not a Company End User through Company's Central Office and routes such traffic to Customer. Toll Free Transit Traffic Service is comprised of various facilities, connections, features and functions. It provides for *the use of common terminating, common switching and switched transport facilities of the Company* but does not include local switching. Rates for Toll Free Transit Traffic Service are usage sensitive.

This tariff, FCC Tariff No. 3, replaces the Company's FCC Tariff No. 2 in its entirety.

TITLE PAGE

INTERSTATE ACCESS SERVICES TARIFF

OF

CORE COMMUNICATIONS, INC., ET AL.

This tariff contains the descriptions, regulations, and rates applicable to the provision of interstate access services provided by Core Communications, Inc., et al. ("Company" or "the Company"), with principal offices at 209 West Street, Suite 302, Annapolis, MD 21404. This tariff is on file with the Federal Communications Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

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FCC1003

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Automatic Number Identification (ANI) - The automatic transmission of a caller's billing account telephone number to a Carrier or End User.

Business Hours - The phrase "Business Hours" generally means the time beginning at 8:00 a.m. and ending at 5:00 p.m. local time at the place of Company operation, Monday through Friday excluding holidays.

Business Office - The phrase "Business Office" means the primary location where the business operations of the Company are performed and where a copy of the Company's tariffs are made available for public inspection.

Call - A communication attempt for which the complete address code (e.g., 0-, 911, or 10 digits) is provided to the Company's switch or equivalent facility. The term "Call" expressly includes communications that are delivered to, or received from, persons or entities that include, but are not limited to: conference call providers, chat line providers, calling card providers, call centers, enhanced service providers, help desk providers, and residential and/or business users.

Carrier - A person, firm, partnership, corporation, or other entity that provides communications services.

Central Office - The premises of the Company containing one or more Switches where the Company provides Local Exchange Services to Company End Users and where Company maintains connections to other carrier's networks.

Channel - A communications path between two or more points.

CIC - An interexchange carrier identification code.

Commission - Refers to the Federal Communications Commission.

Company - Used throughout this tariff to indicate the Issuing Carriers listed herein.

Company End User - Any person, firm, partnership, corporation or other entity (including, where applicable, a Carrier) that subscribes to or otherwise uses the local exchange services of the Company.

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Local Exchange Carrier (LEC) – A company that is certified by the relevant state utility commission to provide Local Exchange Services.

Local Exchange Services – Any service provided pursuant to a LEC's certification by, and/or tariffs filed with, the relevant state utility commission.

N/A - Not Applicable.

Night/Weekend – The words "night/weekend" mean 11:00 p.m. to, but not including, 8:00 a.m. local time in the originating city, all day on Saturday, and all day Sunday except from 5:00 p.m. to, but not including, 11:00 p.m.

Non-business Hours – The phrase "non-business hours" means the time period after 5:00 p.m. and before 8:00 a.m., Monday through Friday, all day Saturday, Sunday, and on holidays.

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

NPA - Numbering Plan Area or area code.

Off-Hook - The active condition of Switched Access Service or a telephone exchange line.

On-Hook - The idle condition of Switched Access Service or a telephone exchange line.

Originating Direction - The use of Switched Access Service for the origination of calls from a Company End User's Premises to a Customer's Point of Presence.

PIC Authorization - A Customer End User's selection of a PIC that meets the requirements of federal and state law.

SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General

- 3.1.1 Switched Access Service is available to Customers for their use in furnishing their services to Customer's End Users. This service provides a two-point communications path between the Customer's Point of Presence and the Company's End Users or facilities. Switched Access Service provides Customer with the ability to originate calls from Company End Users to Customer's Point of Presence, and to terminate calls from the Customer's Point of Presence to Company End Users.
- 3.1.2 When a rate as set forth in this tariff is shown to more than two decimal places, the charges will be determined using the rate shown. The resulting amount will then be rounded to the nearest penny (i.e., rounded to two decimal places).0
- 3.1.3 In the absence of an ASR as described in Section 3.4, Customer's delivery of calls to, or acceptance of calls from, Company End Users via direct or indirect interconnection shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's Switched Access Services as described and priced herein.

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SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.2 Manner of Provision

- 3.2.1 Switched Access Service is available when originating or terminating calls from or to a Company End User.
- 3.2.2 Originating traffic represents access capacity for carrying traffic from the Company's End User to the Customer; and Terminating traffic represents access capacity for carrying traffic from the Customer to the Company's End User. When ordering capacity for Switched Access Service, the Customer must at a minimum specify such access capacity in terms of originating traffic and/or terminating traffic.
- 3.2.3 Facilities for Switched Access Service are provisioned, at minimum, at the DS-1 level and provide line-side or trunk-side access to Company Switches for the Customer's use in originating and terminating communications. Basic Switched Access Service will be provided with multi-frequency signaling ("MF"), or with Signaling System 7 ("SS7"), where capabilities exist).
- 3.2.4 Two types of Switched Access are available:
 - A. Tandem Connect Access: This option applies when there is no direct facilities between the Customer's Point of Presence and the Company's Central Office. Traffic is routed to and from the Central Office via the appropriate third-party Access Tandem.
 - B. Direct Connect Access: This option applies when the Company or a third party provides a dedicated transmission path between the Customer's Point of Presence and the Company's Central Office. The Customer is responsible for providing such facilities itself or for negotiating such arrangements with potential third-party suppliers. To the extent that the Company is able to provide such arrangements, the dedicated portion of Direct Connect Access would be provided on an Individual Case Basis as Special Service Arrangements pursuant to Section 6 of this tariff.

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.3 Switched Access Service

3.3.1 Switched Transport

For traffic delivered via Tandem Connect Access, switched transport rate elements shall apply. As used in this Section 3.3.1, "switched transport rate elements" include (without limitation) tandem switched termination rate elements, tandem switched facility rate elements, tandem switching rate elements, common trunk port, and common transport multiplexing rate elements.

3.3.2 End Office Switching

The End Office Switching rate category establishes the charges related to the use of end office switching equipment, the terminations in the end office of end user lines, the terminations of calls at Company Intercept Operators or recordings, the Signaling Transfer Point (STP) costs, and the SS7 signaling function between the end office and the STP.

3.3.3 Toll Free Transit Traffic Service

Toll Free Transit Traffic Service is a Switched Access Service in which the Company transmits toll free traffic originated by a third party who is not a Company End User through Company's Central Office and routes such traffic to Customer. Toll Free Transit Traffic Service is comprised of various facilities, connections, features and functions. It provides for the use of common terminating, common switching and switched transport facilities of the Company but does not include local switching. Rates for Toll Free Transit Traffic Service are usage sensitive.

TAB G

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

SECTION 7 - SECTION 251(b)(5) VOIP-PSTN TRAFFIC

- 7.1 Section 251(b)(5) VOIP-PSTN Traffic is defined as Traffic that is (1) exchanged in time division multiplexing (TDM) format that originates and/or terminates in IP format (as delineated in FCC Item 11-161, ¶¶ 933-975 and 47 C.F.R. § 51.913), and (2) would be rated (if it originated and terminated in purely TDM format) as interstate toll based on a comparison of the NPA-NXX of the calling and called parties.
- 7.2 The rates applicable to Section 251(b)(5) VOIP-PSTN Traffic shall be equivalent to the rates and charges set forth herein in Section 4 of this Tariff.
- 7.3 The Company shall be fully entitled to bill (and collect from) Customer for services, facilities and access to the network provided in connection with Section 251(b)(5) VOIP-PSTN Traffic in the same manner and extent as Company is entitled to bill and collect for Switched Access Services as set forth in Section 3 of this Tariff, and the rules and regulations of Section 2 of this Tariff shall apply to all of the foregoing billing, collection, services, facilities, network access and traffic.

(N)

(N)

Issued: March 12, 2012

Effective: March 27, 2012

Issued By:
Christopher Van de Verg
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Annapolis, Maryland 21401

FCC1206

TAB H

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CORE COMMUNICATIONS, INC.

**COMPETITIVE LOCAL EXCHANGE CARRIER
Regulations and Schedule of Charges**

The Company will mirror the exchange area boundaries as stated in the tariffs of Verizon Pennsylvania, Inc. f/k/a Bell Atlantic Pennsylvania, Inc., The United Telephone Company of Pennsylvania d/b/a Embarq, Verizon-North, Inc., Windstream Pennsylvania, Inc. f/k/a ALLTEL Pennsylvania, Inc., Armstrong Telephone Company – North, Armstrong Telephone Company – Pennsylvania, The Bentleyville Telephone Company, Buffalo Valley Telephone Company, Citizens Telecommunications Company of Kecksburg, Citizens Telecommunications Company of New York, Inc. d/b/a Frontier Communications of New York, Commonwealth Telephone Company, Conestoga Telephone and Telegraph Company, Denver and Ephrata Telephone and Telegraph Company d/b/a D&E Telephone Company, TDS Telecom/Deposit Telephone Company, Frontier Communications of Breezewood, LLC, Frontier Communications of Canton, LLC, Frontier Communications of Lakewood, LLC, Frontier Communications of Oswayo River, LLC, Frontier Communications of Pennsylvania, LLC, The Hancock Telephone Company, Hickory Telephone Company, Ironton Telephone Company, Lackawaxen Telecommunications Services, Laurel Highland Telephone Company, Marianna and Scenery Hill Telephone Company, North Penn Telephone Company, North Pittsburgh Telephone Company, The North-Eastern Pennsylvania Telephone Company, Palmerton Telephone Company, Pennsylvania Telephone Company, Pymatuning Independent Telephone Company, South Canaan Telephone Company, TDS Telecom/Mahanoy & Mahantango Telephone Company, TDS Telecom/Sugar Valley Telephone Company, Venus Telephone Corporation, West Side Telephone Co. d/b/a West Side Telecommunications, Yukon Waltz Telephone Company. Please see Sheet No. 105 for exchange map references.

The Company's tariff is in concurrence with all applicable State and Federal Laws (including, but not limited to, 52 Pa. Code, 66 Pa. C.S. and the Telecommunications Act of 1934, as amended), and with the Commission's applicable Rules and Regulations and Orders. Any provisions contained in this Tariff that are inconsistent with the foregoing mentioned will be deemed inoperative and superseded.

Issued: May 19, 2009
Issued By:

Christopher Van de Verg
General Counsel
209 West Street, Suite 302
Annapolis, Maryland 21401

Effective: June 18, 2009

PA10901

SECTION 1 - DEFINITIONS AND ABBREVIATIONS

1.1 Definitions

Busy Hour - The two consecutive half hours during which the greatest volume of traffic is handled by the Company for a Customer.

Call - A completed connection between the Calling and Called parties.

Calling Station - The telephone number from which a Call originates.

Called Station - The telephone number called.

Commission - The Pennsylvania Public Utility Commission.

Company or Carrier - Core Communications, Inc., unless specifically stated otherwise.

Customer - A person, association, firm, corporation, partnership, governmental agency or other entity, including affiliates or divisions of the Customer, in whose name the telephone number of the Calling Station is registered with the underlying local exchange company. The Customer is responsible for payment of charges to the Company and compliance with all terms and conditions of this tariff.

Day - The period of time from 8:00 a.m. to (but not including) 5:00 p.m., Monday through Friday, as measured by local time at the location from which the Call is originated.

Disconnect - To render inoperable or to disable circuitry thus preventing outgoing and incoming toll communications service.

Evening - The period of time from 5:00 p.m. to (but not including) 11:00 p.m., Sunday through Friday and any time during a Holiday, as measured by local time at the location from which the Call is originated.

Incomplete - Any Call where voice transmission between the Calling and Called station is not established.

Issued: October 6, 2000

Effective: October 9, 2000

By: Core Communications, Inc.
209 West Street
Suite 302
Annapolis, Maryland 21401

SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)

1.1 Definitions (cont'd)

Holiday - For the purposes of this tariff recognized holidays are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

Message - A completed telephone call by a Customer or User.

Normal Business Hours - The hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

Premises - The space occupied by an individual Customer in a building, in adjoining buildings occupied entirely by that Customer, or on contiguous property occupied by the Customer separated only by a public thoroughfare, a railroad right of way, or a natural barrier.

Rate - Money, charge, fee or other recurring or nonrecurring assessment billed to Customers for services or equipment.

State - Commonwealth of Pennsylvania

Terminal Equipment - Telephone instruments, including pay telephone equipment, the common equipment of large and small key and PBX systems and other devices and apparatus, and associated wiring, which are intended to be connected electrically, acoustically, or inductively to the telecommunication system.

User - Customer or any authorized person or entity that utilizes the Company's services.

Voice Services - Two-way, circuit-switched, voice telephony services.

Issued: October 6, 2000

Effective: October 9, 2000

By: Core Communications, Inc.
209 West Street
Suite 302

Annapolis, Maryland 21401

SECTION 3 - DESCRIPTION OF SERVICE (cont'd)

3. **SERVICE DESCRIPTIONS** (Cont'd)

3.2 **Managed Port Services:** Managed Port Services ("MPS") provides an interface to connect Customer with its dial up clients. MPS is purchased in increments of DS0 level modem ports for a minimum term of one year. In the event that busy-hour traffic associated with Customer's clients exceeds the capacity of the number of DS0 ports provided over the course of a calendar month, Customer agrees to purchase additional ports sufficient to permit Customer to provision reasonably adequate service to clients, based on the level of excess traffic observed in the previous month.

3.2.1 **Rate Elements:** A monthly recurring rate applies to each DS0 level port furnished by the Company. Customer must purchase a minimum ten (10) DS0 level ports.

- a. DS0 Port Rate Monthly Recurring Charge Per Port:
Ceiling Price Not to Exceed \$29.00 per month
Floor Price – Individual case basis pricing to meet competitive
Changing conditions in the marketplace.

3.2.2 **Reserved for Future Use**

Some material previously found on this page now found on Original Sheet 81.6.

Issued: October 21, 2005

Effective: October 24, 2005

By: Christopher Van de Verg
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paf0502

SECTION 3 - DESCRIPTION OF SERVICE (cont'd)

3. **SERVICE DESCRIPTIONS** (Cont'd)

3.3 **Superport Services**

Superport service provides a single interface to receive large volumes of telecommunications traffic on a LATA-wide basis. Superport service is purchased in increments of DS0 level ports, subject to the volume and term commitments set forth herein. Superport service is provided on a LATA by LATA basis only. (C)

3.3.1 **Terms and Conditions**

3.3.1.A Customer must collocate its equipment for the purpose of interfacing with Superport service at each of the Company wire centers in the LATA or LATAs in which Customer orders service. Customer must interface with Company-provided equipment using Company-approved equipment and interfaces. (C)

3.3.1.B Customer must order a minimum of 100 DS0 level ports in each LATA in the State. Customer must order service for a minimum three-year term. (C)

3.3.1.C Customer must comply with the Company's technical requirements for the provision of Superport services, including but not limited to requirements governing the appropriate interface for Customer CPE. (C)

Issued: May 19, 2009

Effective: June 18, 2009

By: Christopher Van de Verg
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PAf0901

TAB J

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NOV 20 2015

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

<p>SPRINT COMMUNICATIONS COMPANY L.P., Plaintiff, vs. CROW CREEK SIOUX TRIBAL COURT, NATIVE AMERICAN TELECOM, LLC., and B. J. JONES, in his official capacity as special judge of Tribal Court; Defendants.</p>	<p>4:10-CV-04110-KES ORDER DENYING SPRINT'S MOTION FOR PARTIAL SUMMARY JUDGMENT</p>
---	--

Plaintiff, *Sprint Communications Company, L.P.*, moves for partial summary judgment on Counts I and II of defendant Native American Telecom, L.L.C.'s (NAT) first amended counterclaim. NAT opposes the motion. For the following reasons, the court denies Sprint's motion for partial summary judgment.

BACKGROUND

The facts viewed in the light most favorable to NAT, the nonmoving party, are as follows:

Sprint provides nationwide long-distance telephone services and is known under the telecommunications regulatory framework as an interexchange carrier (IXC). Sprint delivers long-distance calls to a local exchange carrier (LEC) for termination to end-users. Under the FCC's current

regulatory framework, Sprint pays the LEC a terminating access charge based on the LEC's interstate access tariff, which is filed with the FCC.

NAT is an LEC. NAT's interstate tariff number one, filed with the FCC, became effective on September 15, 2009. NAT's second interstate tariff became effective on November 30, 2010, and canceled and replaced NAT's tariff number one. NAT revised its tariff number two, and the revisions became effective on June 26, 2011. NAT's third interstate tariff was filed with the FCC in August 2011.

NAT also operates a free conference calling system (used for conference calling, chat-lines, and similar services) in connection with Free Conferencing Corporation, which is owned by WideVoice. NAT has a conference call bridge located on the Crow Creek Sioux Reservation in South Dakota. A party using NAT's services does not pay NAT for the conference call but rather is assessed normal charges by the party's telecommunications provider. NAT then bills the telecommunications provider an access fee as defined in its interstate tariff. NAT's access charges, which were billed to Sprint for conference calls, are at issue here.

After paying two of NAT's bills for charges connected to conference calls, Sprint ceased paying NAT's terminating access tariffs because Sprint believed that NAT was involved in a traffic-pumping scheme, otherwise known as access stimulation, to generate traffic from free conference calls and chat services. On August 16, 2010, Sprint filed suit against NAT alleging a breach of the Federal Communications Act (FCA) and a state-law unjust enrichment claim. Docket 1.

On March 8, 2011, NAT amended its answer and asserted counterclaims against Sprint alleging a breach of contract and a collection action pursuant to its tariffs, a breach of implied contract resulting from a violation of its tariffs, and a quantum meruit/unjust enrichment claim. NAT also sought declaratory relief. Docket 99.

On November 29, 2011, the FCC released its *Connect America Fund* final rule, which addresses access stimulation and traffic pumping. See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support*, 76 Fed. Reg. 73830 (Nov. 29, 2011). The FCC also created a transitional framework for VoIP intercarrier compensation. *Id.* at ¶ 19. On December 27, 2011, this court issued an order directing the parties to discuss what effect, in any, the FCC's *Connect America Fund* final rule had on the issues presented in this case. Docket 128. Then, on February 22, 2012, this court issued an order discussing the final rule and determined that it did not apply retroactively. Docket 141 at 9-11 ("Thus, the final rule is inapplicable to the time period before the final rule became effective."). As part of the same order, this court granted Sprint's then-pending motion to stay this proceeding and referred three issues to the FCC for resolution. *Id.* at 25. This court also directed the parties to issue periodic updates describing the status of the FCC proceeding. This court received these updates over the next two years, which showed that the status of the FCC referral remained unchanged since November 2012. Compare Docket 154 with Docket 163. Because of the limited

progress on the FCC referral, a telephonic status conference was held on July 23, 2014. *See* Docket 164.

The parties stated that they had been engaged in litigation before the South Dakota Public Utilities Commission (SDPUC). Docket 169 at 5. In that litigation, NAT was granted a certificate of authority by the SDPUC to provide certain telecommunications services in South Dakota. Based on the results of the SDPUC litigation and the lack of action by the FCC during the period of the stay, the parties discussed whether some of the disputes in this case remained viable. *Id.* at 8-10. The court proposed entering an order that lifted the stay,⁶ withdrew the issues that had been referred to the FCC, and established deadlines for the parties to amend the complaint, counterclaims, and to file any motions to dismiss. *Id.* at 12. The court also stated that it would rule on any motions to dismiss based on a statute of limitations defense and that a new referral of issues to the FCC could then be discussed. *Id.* With the parties in agreement, a formal order was issued that same day. *See* Docket 168.

Sprint did not amend its complaint. NAT amended its counterclaim on September 9, 2014, and added a number of allegations that arose during the period of the stay and FCC referral. Docket 172. A number of procedural motions have since been filed by the parties. Relevant to the present discussion is Sprint's motion for partial summary judgment on Counts I and II of NAT's amended counterclaim. Docket 176.

LEGAL STANDARD

Summary judgment on all or part of a claim is appropriate when the movant “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also *In re Craig*, 144 F.3d 593, 595 (8th Cir. 1998). The moving party can meet its burden by presenting evidence that there is no dispute of material fact or that the nonmoving party has not presented evidence to support an element of its case on which it bears the ultimate burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). Once the moving party has met this burden, “[t]he nonmoving party may not ‘rest on mere allegations or denials, but must demonstrate on the record the existence of specific facts which create a genuine issue for trial.’” *Mosley v. City of Northwoods, Mo.*, 415 F.3d 908, 910 (8th Cir. 2005) (quoting *Krenik v. Cnty. Of Le Sueur*, 47 F.3d 953, 957 (8th Cir. 1995)). “Further, ‘the mere existence of some alleged factual dispute between the parties is not sufficient by itself to deny summary judgment. . . . Instead, the dispute must be outcome determinative under prevailing law.’” *Id.* (quoting *Get Away Club, Inc. v. Coleman*, 969 F.2d 664, 666 (8th Cir. 1992)). The facts, and inferences drawn from those facts, are “viewed in the light most favorable to the party opposing the motion” for summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)).

DISCUSSION

Sprint seeks partial summary judgment on Counts I and II of NAT's amended counterclaim as to all calls delivered by Sprint to NAT on or after December 29, 2011. Sprint contends that NAT seeks to recover terminating access fees for what is known as "VoIP-PSTN" traffic. Sprint argues that the FCC's *Connect America Fund* final rule required NAT to file revisions to its interstate tariff that specified compensation obligations regarding VoIP-PSTN traffic. Sprint concludes that because NAT did not revise its interstate tariff, it cannot recover compensation for such traffic delivered on and after December 29, 2011, the effective date of the *Connect America Fund* final rule.

I. Can Sprint Move for Summary Judgment?

NAT briefly contends that Sprint cannot proceed with its summary judgment motion because Sprint did not amend its complaint to assert a new claim or defense related to its liability for the termination of VoIP-PSTN traffic. Sprint is seeking partial summary judgment, however, as a defendant on Counts I and II of NAT's amended counterclaim. "A defendant may move for summary judgment 'at any time[.]'" *Alholm v. Am. Steamship Co.*, 144 F.3d 1172, 1177 (8th Cir. 1998) (quoting Fed. R. Civ. P. 56(b)). Thus, Sprint was not required to first amend its complaint before seeking partial summary judgment on Counts I and II of NAT's amended counterclaim.

II. The Significance of VoIP-PSTN Traffic to the Present Dispute

Traditionally, telephone companies use what is known as circuit-switching technology in order to carry voice traffic over the Public Switched

Telephone Network (PSTN). *Vonage Holdings Corp. v. Minn. Pub. Utils. Comm'n.*, 290 F. Supp. 2d 993, 995 (D. Minn. 2003) (hereinafter *Vonage Minnesota*). The PSTN is the conventional wireline telephone network available to the general public. *Id.* Voice traffic over the PSTN can be transmitted in Time Division Multiplexing (TDM) format in which “calls are digitized and broken up into segments” and then “sent in order, with segments from other telephone calls placed in between, then reassembled at the other end.” *SightSound.Com Inc. v. N2K, Inc.*, 185 F. Supp. 2d 445, 459 (W.D. Pa. 2002).

By contrast, voice calls may also be carried over the Internet. *Vonage Holdings Corp. v. Neb. Pub. Serv. Comm'n.*, 564 F.3d 900, 902 (8th Cir. 2009) (hereinafter *Vonage Nebraska*). These are known as “Voice Over Internet Protocol,” or “VoIP” communications. *Id.* In general, the term “VoIP” refers to “any IP-enabled services offering real-time, multidirectional voice functionality, including, but not limited to, services that mimic traditional telephony.” *IP-Enabled Services, Notice of Proposed Rulemaking*, 19 FCC Rcd. 4863 at ¶ 3 n.7 (Mar. 10, 2004) (hereinafter *IP-Enabled Services Notice*). Rather than using the traditional circuit-switching technology as used when calls are placed over the PSTN, VoIP calls “utilize[] ‘packet switching,’ a process of breaking down data into packets of digital bits and transmitting them over the Internet.” *Vonage Minnesota*, 290 F. Supp. 2d at 995. “While sophisticated, [VoIP] is also more cost effective than traditional circuit switches.” *Minn. Pub. Utils. Comm'n v. FCC*, 483 F.3d 570, 574 (8th Cir. 2007).

So-called “VoIP-PSTN” traffic is a certain kind of VoIP traffic. *In the Matter of Connect America Fund*, Second Order on Reconsideration, 27 FCC Rcd. 4648 at ¶ 27 (Apr. 25, 2012) (hereinafter *CAF Second Order*). As part of its *Connect America Fund* proceedings, the FCC recognized that “[q]uestions regarding the appropriate intercarrier compensation framework for VoIP traffic have been raised in a number of previous rulemaking notices from varying perspectives and in varying levels of detail.” *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶ 936 (Nov. 18, 2011) (hereinafter *CAF Notice*). And “the lack of clarity regarding the intercarrier compensation obligations for VoIP traffic has led to significant billing disputes and litigation.” *Id.* at ¶ 937. Thus, the FCC felt “it appropriate to address the prospective intercarrier compensation obligations associated with VoIP-PSTN traffic.” *Id.* at ¶ 939.¹

In doing so, the FCC adopted a definition of “VoIP-PSTN traffic” as “traffic exchanged over PSTN facilities that originates and/or terminates in IP format.” *Id.* at ¶ 940. The Commission added that it intended to “focus specifically on whether the exchange of traffic between a LEC and another carrier occurs in Time-Division Multiplexing (TDM) format (and not in IP format), without specifying the technology used to perform the functions subject to the

¹ FCC acknowledged its “prospective” regime did not “resolve the numerous existing industry disputes” regarding VoIP traffic. *CAF Notice*, 26 FCC Rcd, 17663 at ¶ 935.

associated intercarrier compensation charges.” *Id.*² In other words, “all VoIP traffic will be subject to the same intercarrier compensation requirements, regardless of whether TDM or IP technology was used to originate or terminate the call.” *CAF Second Order*, 27 FCC Rcd. 4648 at ¶ 39. “Pursuant to that definition, traffic that terminates in IP format is VoIP traffic regardless of whether it originates in IP or TDM format, so long as it otherwise meets the definition of VoIP traffic.” *Id.* at ¶ 28 n. 69 (citing 47 C.F.R. § 51.913). And traffic is thus said to “terminate in IP format” when “it . . . terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.” 47 C.F.R. § 51.913(a)(3). Finally, “Internet protocol-compatible customer premises equipment” means “end-user equipment that processes, receives, or transmits IP packets.” *In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd. 10245, ¶ 24 n.77 (2005).

A. Focusing on the Service or the Provider?

The parties dispute the proper focus of the word “requires” in the regulation defining whether traffic is said to terminate in IP format. *See* 47 C.F.R. § 51.913(a)(3). NAT takes the position that the issue “is what NAT ‘requires,’ not what the customer actually uses.” Docket 192 at 14 (emphasis omitted). NAT notes that it has a number of customers, including Free Conferencing, and none of them are required to use IP-compatible consumer

² The FCC explained its “reference to ‘PSTN’ refers to the exchange of traffic between carriers in (Time Division Multiplexing) TDM format.” *CAF Notice*, 26 FCC Rcd. 17663 at ¶ 940 n.1891.

premises equipment to be a customer of NAT. Sprint counters that the question is whether “the service requires” the use of IP-compatible customer premises equipment. Docket 200 at 10.

The parties have not provided, and the court is not aware of, any authority specifically interpreting this regulatory language. When setting out its definition of VoIP-PSTN traffic, however, the FCC acknowledged that “[s]ome commenters question the scope of traffic that ‘originates and/or terminates in IP format.’” *CAF Notice*, 26 FCC Rcd. 17663 at ¶ 940, n.1892 (quotation omitted). The FCC stated,

Although our prospective VoIP-PSTN intercarrier compensation is *not circumscribed* by the definition of “interconnected VoIP service” . . . or the definition of “non-interconnected VoIP service” . . . nonetheless, informed by those definitions, *we believe it is appropriate to focus on traffic for services that require* “Internet protocol-compatible customer premises equipment.”

Id. (citations omitted) (emphasis added). Both interconnected and non-interconnected VoIP services are services that require IP-compatible customer premises equipment. 47 C.F.R. § 9.3; 47 C.F.R. § 153(36)(A). Thus, the FCC acknowledged there are a number of potential services, including interconnected and non-interconnected VoIP, that require IP-compatible customer premises equipment. *In the Matter of Connect America Fund*, F.C.C. Declaratory Ruling, 2015 WL 628983 at *1 n.3 (Feb. 11, 2015). The Commission intended to focus on the traffic for those and similar services. Thus, the court concludes that the proper inquiry is whether traffic terminates

to an end-user customer of a service and whether that service (rather than the service provider) requires IP-compatible customer premises equipment.³

III. Does NAT Seek Recovery for VoIP-PSTN Traffic?

NAT does not dispute that it seeks compensation for the terminating access fees that were billed to Sprint pursuant to NAT's interstate tariffs, including its interstate tariff number three filed with the FCC in August 2011. NAT also does not dispute that it is still operating under its interstate tariff number three, and that only immaterial changes to the tariff have been made since August 2011. Furthermore, NAT does not dispute that it billed Sprint pursuant to NAT's tariff number three for telephone calls delivered by Sprint to NAT for termination to NAT's conferencing customer, Free Conferencing Corporation (Free Conferencing). And NAT does not dispute that calls delivered by Sprint to NAT's facilities were delivered over the traditional PSTN facilities.

A. The Call Flow Diagrams

In support of its position, Sprint relies on several so-called "call flow diagrams." These diagrams were originally produced by NAT in discovery

³ Sprint contends that this question can be resolved by the FCC's *Cardinal Broadband* declaratory ruling. There, Cardinal attempted to argue that it was not an interconnected VoIP provider under the Commission's rules because it provided, in addition to an admittedly interconnected VoIP service, an analog telephone service that did not require IP-compatible customer premises equipment. *Cardinal Broadband*, 23 FCC Rcd. 12224 at ¶ 6 (Aug. 15, 2008). The FCC noted that the interconnected VoIP service and analog services were distinct. *Id.* at ¶ 11. Thus, "Cardinal's status as an interconnected VoIP service provider is unaffected by the fact that it also offers analog telephone services." *Id.* *Cardinal Broadband* would be applicable if, for example, NAT admitted the traffic it terminated was VoIP but argued that it should not be classified as such because NAT also terminated non-VoIP calls.

during the SDPUC proceeding. Facially, the diagrams contain a number of illustrations, and each diagram is accompanied by a “Scenario” that describes in technical terms what the illustration depicts. A legend follows each illustration containing two to three graphical explanations: A black arrow is paired with the phrase “TDM Voice Connection,” a blue arrow with “Voice over IP Connection,” and, on some of the diagrams, a red arrow appears alongside the phrase “Inter-Switch Component Control Link.”⁴

When Sprint first moved for summary judgment, NAT originally argued that the documents had not been authenticated and they were not admissible. Then, pursuant to the magistrate judge’s order, Sprint was allowed to conduct a Rule 30(b)(6) deposition of NAT regarding those diagrams. *See* Docket 208. Carey Roesel, NAT’s designated witness, was deposed on February 15, 2015. This court granted Sprint’s request to amend its statement of undisputed material facts in support of its summary judgment motion, which NAT responded to. *See* Docket 235. NAT no longer contests the authenticity or admissibility of the diagrams.

B. Deposition of Carey Roesel

Carey Roesel is an employee of Technologies Management Incorporated, a company based in Florida. He testified as NAT’s representative. In preparation, Roesel stated that he spoke with several individuals about the call flow diagrams, including Keith Williams, who prepared them. Roesel stated that

⁴ These color-based descriptions correlate with the color copies of the diagrams attached as an exhibit in Docket 180-6.

based on his understanding, the diagrams “were prepared to describe the manner in which calls were routed[.]” Docket 218-1 at 3.

Roesel was asked several times about the meaning of the legend that accompanies each of the diagrams. For example, counsel for Sprint asked,

Q: Let me first ask you about the legend. There’s a black line that says “TDM Voice Connection.” And then below it there’s a light blue colored line “Voiceover IP Connection.” Do you see those?

A: I do.

Q: What do those mean?

Id. at 5. Roesel agreed that the black arrow represented “calls that are being carried from one place to another in TDM format[.]” *Id.* When asked about the blue arrow and whether portions of the calls were delivered in “IP format,” however, Roesel qualified his response by stating that,

A: Okay. The terminology is in the context of an engineering diagram. It describes -- the black does describe time-division multiplexing, and blue describes the specific technology used for that leg of the call.

Id.; *see also id.* (referring to the legend as containing “engineering terms that Keith [Williams] used to describe the technology that is used to carry the traffic.”). Roesel was also directly asked about the formatting of calls, such as,

Q: And within that trunk switch is [a] conversion of the call from TDM to IP, right?

A: Yes.

Id. at 13.

Sprint contends that Roesel’s references to internet protocol are sufficient to establish that traffic was, in fact, delivered in IP format as that

phrase is defined by the FCC. But whether a call terminates in IP format depends on whether “it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.” 47 C.F.R. § 51.913(a)(3). And the phrase “Internet protocol” itself refers to one of several “standard operating and transmission protocols that structure the [Internet’s] operation.” *In re DoubleClick Inc. Privacy Litig.*, 154 F. Supp. 2d. 497, 501 (S.D.N.Y. 2001). More specifically, it is the standardized language and set of rules that governs how the packets of data are sent from one location to another. *IP-Enabled Services Notice*, 19 FCC Rcd. 4864 at ¶ 8. Thus, Roesel’s bare references to internet protocol do not automatically satisfy the more specific definition set forth in the regulation.⁵

i. Scenario #1

According to Roesel, the illustrations in Scenario #1 corresponded with the time period of September 2009 to October 2010. As shown in the diagram, calls destined for NAT would have first gone from Sprint to the South Dakota Network (SDN) tandem switch in Sioux Falls, South Dakota. Although Roesel was unsure, he stated it would be “a fair assumption” that those calls would be in TDM format at this time. *Id.* at 6. The purpose of the SDN tandem switch was to determine where the incoming call would go next and to send it on.

⁵ Likewise, during the SDPUC proceeding, one of NAT’s witnesses was asked if “[c]alls come into NAT’s switch and then are switched and delivered in internet protocol to Free Conferencing’s bridge; is that correct?” Docket 180-4 at 4. The witness responded “Basically,” without further elaboration. *See id.* Such an answer, without more, is too conclusory to satisfy the regulatory definition of IP format.

From there the call would then traverse a “dedicated TDM transport facility” from the SDN switch to a WideVoice switch in Los Angeles, California. *Id.* Roesel agreed that the transport facility enabled calls to be delivered from one place to another in TDM format. The WideVoice switch would then identify calls that were specifically destined for Fort Thompson, South Dakota. Roesel was then asked,

Q: And so at some point within [the WideVoice switch] we have a conversion of the call from TDM into internet protocol?

A: Yes.

Id. at 7. The call would then be sent to a router in Los Angeles, which functions as “a basic way of identifying packets and routing the packets according to the specified destination.” *Id.*

From the Los Angeles router, the call would be sent through what was labeled as the “ATT IP Network” to another router that was associated with SDN in Sioux Falls. That SDN router would then direct the call through the “SDN IP Network” to another router which, according to Roesel, was physically located in Fort Thompson. From the Fort Thompson router, which belonged to NAT, there were two possible destinations on the diagram. The router would determine where the call would go depending on the destination’s telephone number. One of the destinations was depicted as a box labeled “NAT Voice Applications Services.” Roesel stated that the router could send the call to the equipment located in that area. Roesel was then asked,

Q: Okay. And within that [“NAT Voice Applications Services” box], that refers to, for this time period, conference bridges owned by a Freec

Conferencing Corporation, is that correct?

A: Yes.

Id. at 8. According to Roesel, a “bridge” is “a device that allows multiple incoming calls that would be joined together or bridged in the device.” *Id.* at 14.

And when asked about what the bridge was connected to, Roesel testified,

Q: And it’s connected to – in this case it’s connected to a piece of NAT equipment which is how the calls get to it, right?

A: Yes.

Q: And is it connected to anything else?

...

A: I believe the only connection to that bridge would be by way of NAT’s services, but again I can’t think of any other connection there[.]

Id. Although Roesel testified that he did not know the specifics of the connection, he testified,

Q: Sure. It would be something that would allow a router to send packets onto a piece of equipment that could then receive and understand those packets?

A: That’s right.

Q: And then the piece of equipment or pieces of equipment there within that [“NAT Voice Applications Services” box] would have the ability to then receive those packets and convert those packets into a voice so that callers can hear conversations?

A: I believe that’s a reasonable description of what’s happening when it comes to the exact technical nature and the use of the term “converting,” yes. There are voice conversations that occur, and the information is coming by way of packets into the bridge.

Id. at 8. Roesel also stated that he “believe[d] the bridge is IP compatible, yes.”

Id. at 15.

The other destination depicted on the diagram was labeled “Wimax Base.” This equipment would be connected to customers via wireless technology. Roesel stated those individuals would possess “equipment that enables the subscriber to talk on a normal telephone. So there’s equipment that makes that conversion.” *Id.* at 9.

ii. Scenario #2

Roesel testified that the illustration in Scenario #2 correlated with the time period of October 2010 through April 12, 2012. For this diagram, Roesel agreed that the first few steps were the same as illustrated by the previous diagram. Thus, calls again came from Sprint to the SDN tandem switch in Sioux Falls in TDM format and were sent to a WideVoice switch before being sent back to an SDN router. During this time period, however, the WideVoice switch had been relocated from Los Angeles to Sioux Falls. There was no longer a depiction of the call being sent from Los Angeles through the “ATT IP Network” before returning to the SDN router. When the call left the WideVoice switch, Roesel was asked,

Q: So within [the box representing the WideVoice switch] we have conversion from TDM into IP?

A: Yes.

Id. at 11.

Roesel agreed that “packets get sent” from the WideVoice switch to the SDN router, and that the call again would traverse the “SDN IP Network” before arriving at NAT’s router. *Id.* And Roesel agreed that the portion of the first diagram that depicted a connection from the NAT router to the “NAT Voice Applications Services” box remained the same. When asked about who or what actually provides the so-called “voice applications,” Roesel testified,

A: I would say that NAT is providing a service to . . . Free Conferencing that they have defined as NAT Voice Application Services. So the services they are providing to the bridge is NAT Switch Applications.

Id. Roesel did not believe the Free Conferencing equipment at that location was any different than before and stated,

Q: . . . the [NAT router] sends packets to the Free Conferencing equipment in [the “NAT Voice Applications Services” box]?

A: Yes.

Q: And those packets get delivered over some kind of physical facility that can accommodate packets?

A: Correct.

Id. Roesel did not believe the diagram’s illustration as to the Wimax destination had changed from before.

iii. Scenario #3

The final diagram involved the time period from April 12, 2012, forward. According to Roesel, this diagram was similar to the last, with the exception of an additional piece of equipment located on the Fort Thompson reservation designated as an “EO Switch.” While Roesel expressed some uncertainty about

the precise function of the additional equipment, he agreed that “it didn’t really change anything fundamentally” as to how calls from Sprint came in and were delivered to their destination. *Id.* at 13.

Like the other diagrams, Roesel agreed that this diagram depicted a call from Sprint to the SDN tandem switch in Sioux Falls in TDM format. Rather than proceed to a WideVoice switch as before, however, the call went to a box labeled “Trunk Switch,” which was nonetheless placed in the same vicinity on the diagram as the other SDN facilities in Sioux Falls. From there, Roesel was asked,

Q: And within that trunk switch is [a] conversion of the call from TDM to IP, right?

A: Yes.

Id. Roesel agreed that the calls were sent as “packets” to the SDN router, and that those packets proceeded through a similar path as depicted in Scenario #2, although it now passed through the “EO Switch” before reaching a box labeled “Colocated Voice Application Services.” *Id.* While the name of the voice applications box was different from the prior diagrams, Roesel was asked if that box “is again Free Conferencing -- conference bridge equipment,” to which Roesel responded affirmatively. *Id.* Regarding the connection between the bridge equipment there and the “EO Switch” box, Roesel was asked,

Q: Okay. We’ve still got packets going from the last piece of NAT equipment to the Free Conferencing equipment?

A: Yes.

Q: Yeah. The Free Conferencing equipment has to be able to receive and process those packets for there to be a call completed?

A: When the call is being delivered in packetized format, yes, the bridge needs to have the ability to process those packets.

Id. The portion of the diagram involving the Wimax base again appeared to be the same as was depicted before.

The record before the court demonstrates that, consistent with the times depicted in the diagrams, calls came in from Sprint and were exchanged in TDM format. Whether at one of the WideVoice switches or the trunk switch located in Sioux Falls, calls were converted from TDM format into packets of data. These packets were sent from either of those switches via routers to NAT's facilities. During each time period depicted in the diagrams, Roesel also testified that Free Conferencing's bridge equipment was located on Fort Thompson and connected to NAT's equipment. Although Roesel did not know the specifics, he stated that NAT provided switching services for its customer, Free Conferencing. The data packets would get routed and delivered to Free Conferencing by a facility or other piece of equipment that could receive and process the packets. According to Roesel, Free Conferencing's bridges were IP compatible. Moreover, Roesel stated that Free Conferencing's equipment would need to be able to receive and process data packets in order for a voice call to be completed. Thus, the switching service provided by NAT to Free Conferencing required IP-compatible customer premises equipment to complete the call. *See In the Matters of IP-Enabled Services E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd. 10245, ¶ 24 n.77 (2005) (defining IP-

compatible customer premises equipment). Consequently, the calls terminated in IP format. See 47 C.F.R. § 51.913(a)(3). Because the traffic was exchanged over PSTN facilities and terminated in IP format, the calls were VoIP-PSTN traffic. *CAF Notice*, 26 FCC Rcd. 17663, at ¶ 940.

IV. Would NAT Need to Refile its Interstate Tariff?

As part of its *CAF* decision, the FCC announced that under its “new intercarrier compensation regime, all traffic—including VoIP traffic—will be subject to a bill-and-keep framework.”⁶ *CAF Final Rule*, 76 Fed. Reg. 73830 at ¶ 62. Moving toward that goal, the Commission adopted a “transitional compensation framework” for VoIP traffic. *Id.* Within that framework, the FCC stated,

- (1) We bring all VoIP-PSTN traffic within the section 251(b)(5) [reciprocal compensation] framework;
- (2) Default intercarrier compensation rates for toll VoIP-PSTN traffic are equal to interstate access rates;⁷
- (3) Default intercarrier compensation rates for other VoIP-PSTN traffic are the otherwise-applicable reciprocal compensation rates; and
- (4) Carriers may tariff these default charges for toll VoIP-PSTN traffic in the absence of an agreement for different intercarrier compensation.

⁶ A “bill-and-keep” system of compensation requires carriers to “look first to their subscribers to cover the costs of the network, then to explicit universal service support when necessary.” *CAF Final Rule*, 76 Fed. Reg. 73830 at ¶ 18. This differs from the “model that dominated ICC regimes of the last century” where the calling party bears the entire cost of originating, transporting, and terminating a call. *Id.*

⁷ “Toll” generally refers to traffic that is exchanged between different exchange areas. *CAF Notice*, 26 FCC Rcd. 17663 at ¶ 944 n.1902.

Id. (numerals added for clarity). As a means “of providing certainty regarding prospective intercarrier compensation obligations for VoIP-PSTN traffic,” the Commission announced that “[c]arriers may tariff charges at rates equal to interstate access rates for toll VoIP-PSTN traffic in federal or state tariffs, though remain free to negotiate interconnection agreements specifying alternative compensation for that traffic.” *Id.* at ¶ 149. Because the Commission recognized the potential difficulty to distinguish VoIP-PSTN traffic from other traffic, it also “permit[ted] LECs to address this issue in their tariffs, much as they do with jurisdictional issues today.” *Id.* at ¶ 63.

These changes were needed in part because “[b]oth state commissions and courts have been called upon to address disputes regarding intercarrier compensation for VoIP traffic in a range of contexts and with a range of outcomes.” *CAF Notice*, 26 FCC Rcd. 17663 at ¶ 937. The Commission also described what it called “numerous informal disputes in this area,” such as “terminating carriers [that] state[d] that they receive[d] no intercarrier compensation payments at all for traffic that is, or is alleged to be, VoIP traffic.” *Id.* at ¶ 938. These rules were thus designed to “reduce disputes and provide greater certainty to the industry regarding intercarrier compensation revenue streams while also reflecting the Commission's move away from the pre-existing, flawed intercarrier compensation regimes that have applied to traditional telephone service.” *Id.* at ¶ 946.

Sprint contends that the FCC sought to achieve those goals by giving LECs such as NAT three options regarding compensation for VoIP-PSTN traffic.

First, NAT could revise its interstate tariff to specifically address VoIP-PSTN traffic compensation obligations. Second, NAT could rely on negotiated interconnection agreements.⁸ Or third, NAT could simply do nothing and thereby forgo compensation altogether. NAT acknowledges that it has a generic tariff that does not specifically address VoIP-PSTN traffic, and did not revise its tariff to do so after the *CAF Order* became effective. Sprint concludes that NAT has therefore, by default, elected not to receive compensation for VoIP-PSTN traffic.

The court is unaware of any authority addressing this issue. From the numerous orders and notices involved in the *CAF* proceedings, Sprint's primary support for its position comes from a single footnote in the November 18, 2011, *CAF Notice* that provides:

CMRS providers currently are subject to detariffing, and nothing in our intercarrier compensation framework [for] VoIP-PSTN traffic disrupts that regulatory approach. (citing *In re Sprint PCS*, 17 FCC Rcd. 13192 (2002). . . . Under our permissive tariffing regime, providers likewise are free not to file federal and/or state tariffs for VoIP-PSTN traffic, and instead seek compensation solely through interconnection agreements (or, if they wish, to forgo such compensation).

CAF Notice, 26 FCC Rcd. 17663 at ¶ 961 n.1974. In contrast to this footnote, the FCC reiterated throughout the body of the same *CAF Notice* that it was establishing a set of default intercarrier compensation rates applicable to VoIP-

⁸ Interconnection agreements are analogous to a contract between an LEC and another telecommunications carrier linking the two networks together for the mutual exchange of traffic. See, e.g., *Destek Grp., Inc. v. State of New Hampshire Pub. Utils. Comm'n.*, 318 F.3d 32, 37 (1st Cir. 2003). No such agreement is present here.

PSTN traffic, and that carriers were permitted to include those default rates in their tariffs or address such traffic through negotiated agreements. *See, e.g., id.* at ¶¶ 933, 934, 944, 960-61, 967. The FCC's *CAF Final Rule* contains similarly permissive language. *See, e.g., CAF Final Rule*, 76 Fed. Reg. 73830 at ¶ 149 (“Carriers may tariff charges at rates equal to interstate access rates for toll VoIP-PSTN traffic in federal or state tariffs, though remain free to negotiate interconnection agreements specifying alternative compensation for that traffic.”). And rather than an observation that the FCC was, for the first time, establishing a new obligation for carriers to pay for the exchange of VoIP traffic (which includes VoIP-PSTN traffic), the FCC was “adopt[ing] rules *clarifying the obligation* of VoIP traffic to pay intercarrier compensation charges during the transition to bill and keep.” *CAF Notice*, 26 FCC Rcd. 17663 at ¶ 930.

Moreover, there is some ambiguity about the footnote's initial reference to “CMRS providers,” which Sprint omitted, and the same footnote's later reference to the word “providers” appearing in isolation. While CMRS providers are subject to mandatory detariffing,⁹ *In re Sprint PCS*, 17 FCC Rcd. 13192 at ¶ 8 (July 3, 2002), the FCC has also adopted specific rules regarding the role of tariffs in LEC-CMRS relationships. *See CAF Notice*, 26 FCC Rcd. 17663 at ¶ 964. It is unclear whether the footnote was intended to be read in that context or the context in which Sprint presents it. Even if the footnote's reference that providers may “if they wish, to forgo such compensation” did

⁹ CMRS stands for “Commercial Mobile Radio Service.” CMRS providers include cellular phone service providers, among others. *Alma Commc'ns Co. v. Missouri Pub. Servs. Comm'n.*, 490 F.3d 619, 621 n.5 (8th Cir. 2007).

apply to NAT, it does not follow that the FCC intended that choice to be made presumptively. Likewise, if the Commission's intent was that carriers must revise their tariffs or risk forfeiting all compensation for VoIP-PSTN, it could have said so with greater clarity. *Cf. CAF Notice*, 26 FCC Rcd. 17663 at ¶ 667 ("LECs that meet the access stimulation trigger *are required to refile* their interstate switched access tariffs as outline above.") (emphasis added).

Thus, on one hand, allowing carriers to address what the FCC defined as VoIP-PSTN traffic through tariffs or other agreements during the transitional period would alleviate the Commission's concerns about providing certainty to the industry and reducing the number of disputes regarding VoIP-PSTN compensation. On the other hand, establishing a bright-line rule that simply forbid compensation for VoIP-PSTN traffic in the absence of a revised tariff or agreement that specifically addressed such traffic would also provide certainty, if not reduce litigation. In the absence of a clearer statement that the FCC intended the latter, the court concludes that NAT was permitted—but not required—to amend its interstate tariff defining VoIP-PSTN traffic and its attendant compensation obligations. Although NAT did not do so, that does not preclude it as a matter of law from recovering for the VoIP-PSTN traffic delivered by Sprint and terminated by NAT.

CONCLUSION

NAT seeks recovery under its interstate tariff number three for terminating access fees, including fees related to the termination of VoIP-PSTN traffic. Although the FCC permitted NAT to amend its interstate tariff to specify

how such traffic would be identified and the specific compensation obligations concerning VoIP-PSTN traffic, the Commission did not require NAT to do so.

Accordingly, it is

ORDERED that Sprint's motion for partial summary judgment (Docket 176) is denied.

Dated April 27, 2015.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CORE COMMUNICATIONS, INC.
Complainant

v.

VERIZON PENNSYLVANIA INC.
and

VERIZON NORTH, LLC
Respondents

Docket No. C-2011-2253750
Docket No. C-2011-2253787

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the enclosed Supplemental Main Brief upon the parties listed below, in accordance with the requirements of § 1.54 (relating to service by a party)


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