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Ex Parte

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CenturyLink Petition for Declaratory Ruling, WC Docket No. 10-90 & CC Docket No. 01-92

Dear Ms. Dortch:

Verizon has explained why the Commission should confirm that a LEC and its VoIP provider partner do *not* perform the functional equivalent of end office switching when they route over-the-top VoIP traffic.[1] As Chairman Pai explained, Commission "precedent makes clear" that "the IP equivalent of end office switching" is "the interconnection of calls with last-mile facilities."[2] Therefore, a LEC and VoIP provider, together, provide the functional equivalent of end office switching when the VoIP provider "interconnects a call with the customer's last-facility," but do not when the VoIP provider "transmits calls to an unaffiliated ISP for routing over the Internet."[3] Commissioner O'Reilly similarly recognized the "defining feature of end office switch is the actual connection of subscriber lines and trunks," which is why it is "well-settled" that "carriers do not owe end office switching charges to other providers that do not actually . . . []connect[] trunks to loops."[4]

It is clear that, when a LEC partners with a provider of over-the-top VoIP service, neither the LEC nor the VoIP provider actually connects lines to trunks. Therefore, the VoIP symmetry rule does not allow the LEC to bill its tariffed end office switching rates for those calls. And a prompt ruling precluding LECs from billing those charges also should take the wind out of the sails of so

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[1] *See*, *e.g.*, Verizon Ex Parte Letter, WC Docket No. 10-90 *et al.*, at 1-3 (Nov. 28, 2018); Verizon Ex Parte Letter, WC Docket No. 10-90 *et al.*, at 1-4 (Dec. 3, 2018); Verizon Ex Parte Letter, WC Docket No. 10-90 *et al.*, at 1-3 (Dec. 19, 2018).

[2] *Connect America Fund*, Declaratory Ruling, 30 FCC Rcd 1587, at Dissenting Statement of Commissioner Ajit Pai (2015) ("Pai Dissent").

[3] *Id*.

[4] *Id*. at Dissenting Statement of Commissioner Michael O'Rielly ("O'Rielly Dissent").

many robocall-driven 8YY arbitrage schemes.

CenturyLink disparages as "arbitrary and capricious" the long-standing recognition that the connection of lines to trunks is what distinguishes end office switching from other kinds of switching.[5] But there is nothing arbitrary or capricious about the bright-line rule that, for a LEC handling third-party VoIP traffic to bill tariffed end office switching rates, the "LEC-VoIP partnership must itself interconnect with last-mile facilities."[6] That is because, as Commissioner O'Reilly explained, "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."[7] That bright-line rule also ensures historically "high" end office switching rates apply only where the LEC-VoIP partnership has incurred the "substantial costs of performing the function of connecting trunks and loops"; those high rates are "not justified if providers simply place calls onto the Internet" and shift those costs to third parties.[8]

Contrary to CenturyLink's assertion, this bright-line rule does not draw a line "between forms of VoIP that are compensable and forms of VoIP that are not compensable."[9] As Chairman Pai explained, the inability of a LEC to bill its tariffed end office switching charges for over-the-top VoIP traffic does not mean "that a LEC partnered with an over-the-top VoIP provider cannot collect any access charges."[10] Where such a "partnership performs the functional equivalent of other intercarrier services, such as . . . tandem-switched access service, [the LEC] may collect the corresponding access charges."[11] Nor is there anything "surpris[ing]" about the fact that "VoIP providers performing different functions would entitle LECs to differing intercarrier compensation."[12] After all, that was the purpose of the VoIP symmetry rule, which created an exception to the general rule that LECs may "charge access charges to the extent that they are providing the functions at issue" by allowing LECs also to bill for the specific "functions performed by . . . its retail VoIP partner."[13]

CenturyLink also errs in analogizing over-the-top VoIP traffic to traditional PBX systems and the "leaky PBX" phenomenon.[14] First, the "leaky PBX" problem had nothing to with the amount of

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[5] CenturyLink Ex Parte Letter, WC Docket No. 10-90 *et al*., at 1 (Nov. 28, 2018) ("CenturyLink Ex Parte").

[6] Pai Dissent.

[7] O'Rielly Dissent.

[8] *Id*.

[9] CenturyLink Ex Parte at 1.

[10] Pai Dissent.

[11] *Id*. (footnote omitted).

[12] *Id*.

[13] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 970 (2011).

[14] CenturyLink Ex Parte at 2 & n.4.

switched access charges a LEC could bill a long-distance carrier. As CenturyLink acknowledges, customers with multiple locations used their internal network to transform long-distance calls into apparently *local* calls, for which the LEC would not bill switched access charges to anyone. Second, all external calls handled by the PBX system traveled over the last mile facility connecting the PBX to the LEC providing service to the customer. Therefore, insofar as that LEC was billing switched access charges to a long-distance carrier for those calls, it was billing for the work it was performing.

The remainder of CenturyLink's ex parte describes various scenarios in which enterprise customers can obtain "'bring your own' bandwidth" VoIP services.[15] In each of these cases, the LEC "itself" does not "deliver[] such traffic to the called party's premises," nor does the LEC do so "via contractual or other arrangements with an affiliate or unaffiliated provider of interconnected VoIP service," as the VoIP symmetry rule requires.[16] Instead, the enterprise customer obtains *separately* the last-mile connections that connect an end user's device to the VoIP provider's server. The fact that there are a variety of ways the enterprise customer may separately obtain the bandwidth to make use of the VoIP service does not cause the LEC and its VoIP partner to perform the functional equivalent of end office switching. In this regard, Skype for Business is no different from the Skype that residential customers can purchase. Residential customers can use Skype with wired broadband Internet access service purchased directly from a telephone, cable, or satellite company, mobile broadband Internet access service purchased from a wireless provider, or through any open WiFi network (irrespective of how that WiFi network operator is connected to the Internet).

Finally, CenturyLink addresses the wrong question when it asserts that the "LEC depicted in these scenarios" is performing the functional equivalent of end office switching.[17] CenturyLink ignores the very reason for the VoIP symmetry rule: to allow a LEC to charge for work *it is not performing* but is performed instead by its VoIP partner. If the *LEC* were already performing the functional equivalent of end office switching *on its own* when handling third-party VoIP calls, there would have been no need for the VoIP symmetry rule.

Sincerely,

Alan Buzacott

cc: Lisa Hone
Gil Strobel
Victoria Goldberg
Aaron Garza
Rhonda Lien

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[15] *Id*. at 4 (Figures 2-5).

[16] 47 C.F.R. § 51.913(b).

[17] CenturyLink Ex Parte at 5.