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Ex Parte

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

In a series of recent ex parte filings,¹ CenturyLink has traveled far afield from the question presented by its Petition for Declaratory Ruling² and the D.C. Circuit's remand in *AT&T Corp. v. FCC*:³ whether a LEC and its VoIP partner together perform the functional equivalent of end office switching when they route over-the-top VoIP traffic to or from the VoIP provider's end-user customer. As both Chairman Pai and Commissioner O'Rielly have already stated, the answer to that question is clear: LECs and their over-the-top VoIP partners do not perform the functional equivalent of end office switching because they do not perform the actual connection of lines and trunks.⁴

¹ See, e.g., Letter from John Nakahata, counsel to CenturyLink, to Marlene Dortch, FCC, WC Docket No. 10-90, *et al.* (Mar. 4, 2019) ("*March 4 Letter*"); Letter from Joseph Cavender, CenturyLink, to Marlene Dortch, FCC, WC Docket No. 10-90, *et al.* (Apr. 1, 2019) ("*April 1 Letter*"); Letter from Joseph Cavender, CenturyLink, to Marlene Dortch, FCC, WC Docket No. 10-90, *et al.* (Apr. 30, 2019) ("*April 30 Letter*").

² CenturyLink Petition for Declaratory Ruling, *Connect America Fund, et al.*, WC Docket No. 10-90, CC Docket No. 01-92 (May 11, 2018) ("*Petition*").

³ *AT&T Corp. v. FCC*, 841 F. 3d 1047 (D.C. Cir. 2016).

⁴ See *Connect America Fund*, Declaratory Ruling, 30 FCC Rcd 1587 (2015) ("*VoIP Declaratory Ruling*"), at Dissenting Statement of Commissioner Ajit Pai ("*Pai Dissent*"); Dissenting Statement of Commissioner Michael O'Rielly ("*O'Rielly Dissent*").

Now, in its latest filing, CenturyLink claims that “it does not appear that any party actually disputes the fundamental premise” of the CenturyLink Petition.⁵ That is an absurd claim. Verizon and other parties opposed the CenturyLink Petition and have continued to oppose the CenturyLink Petition in subsequent ex parte filings.⁶

Moreover, the arbitrage that CenturyLink has asked the Commission to sanction is a widespread and growing driver of disputes throughout the industry. Over-the-top VoIP-based arbitrage schemes seek to exploit high end office charges (set to reflect “the substantial investment required to construct ... tangible connections”⁷) while incurring only the “negligible investment in a rack of equipment”⁸ that merely transfers traffic to or from the Internet. In order to put an end to such arbitrage schemes, the Commission should act now to confirm that a LEC cannot bill its tariffed end office switched access rates when routing over-the-top VoIP traffic.

Nothing in CenturyLink’s multiple filings provides any basis for the Commission to reach a different conclusion. In particular, there is no merit to CenturyLink’s assertion⁹ that Chairman Pai and Commissioner O’Rielly misread the Commission precedent on which they relied in their dissents to the *VoIP Declaratory Ruling*. It is CenturyLink that has the Commission’s precedent wrong.

First, Chairman Pai’s reading of the *RAO Recon Order*¹⁰ was correct. As the Commission explained in the *VoIP Declaratory Ruling*, the *RAO Recon Order* found that the “connection of trunks to lines” is “fundamental to end office switching.”¹¹ And the D.C. Circuit read the *RAO Recon Order* the same way, noting that the order “identif[ies] end-office switching

⁵ *April 30 Letter* at 1.

⁶ See, e.g., Ex Parte Letter from Curtis Groves, Verizon, to Marlene Dortch, FCC, WC Docket No. 10-90, *et al.*, at 1-3 (Nov. 28, 2018); Ex Parte Letter from Curtis Groves, Verizon, to Marlene Dortch, FCC, WC Docket No. 10-90, *et al.*, at 1-4 (Dec. 3, 2018); Ex Parte Letter from Curtis Groves, Verizon, to Marlene Dortch, FCC, WC Docket No. 10-90, *et al.*, at 1-3 (Dec. 19, 2018); Ex Parte Letter from Alan Buzacott, Verizon, to Marlene Dortch, FCC, WC Docket No. 10-90, *et al.* (Feb. 7, 2019).

⁷ *AT&T Corp., Complainant, v. YMax Communications Corp., Defendant*, Memorandum Opinion and Order, 26 FCC Rcd 5742, ¶ 40 (2011) (“*YMax Order*”).

⁸ *VoIP Declaratory Ruling* ¶ 24 (citing Letter from Christi Shewman, AT&T, to Marlene Dortch, FCC, WC Docket No. 10-90, *et al.*, Attach 2 at 2 (May 17, 2013)).

⁹ See *March 4 Letter* at 4-9.

¹⁰ *Petitions for Reconsideration and Applications for Review of RAO 21*, Order on Reconsideration, 12 FCC Rcd 10,061 (1997) (“*RAO Recon Order*”).

¹¹ *VoIP Declaratory Ruling* ¶ 30.

as supplying actual or physical interconnection.”¹² CenturyLink thus errs in asserting that the *RAO Recon Order* merely distinguished switches from non-switches.¹³

Second, Chairman Pai correctly noted that paragraph 969 of the *Transformation Order*¹⁴ made clear that a LEC may collect end office switching charges “when a LEC partners with a VoIP provider that itself interconnects with a customer’s last-mile facilities.”¹⁵ CenturyLink disputes this,¹⁶ but ignores the fact that paragraph 969 was quoting a Comcast ex parte that described fixed VoIP services like Comcast’s (which include an actual connection between trunks and lines), not over-the-top VoIP services.¹⁷

Third, Chairman Pai and Commissioner O’Rielly both correctly noted that the Commission, in the *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.”¹⁸ CenturyLink asserts that the holding of the *YMax Order* was limited to the specific terms of YMax’s tariff.¹⁹ But that assertion ignores the reason why both Chairman Pai and Commissioner O’Rielly cited the *YMax Order*: because the Commission held in that order that the Internet is not a loop and to treat the Internet as a loop would mean “the term ‘loop’ has lost all meaning.”²⁰ Nothing in the *Transformation Order* or any subsequent Commission order altered that holding. And because over-the-top VoIP providers, by definition, use the Internet to get calls to and from their end-user customers, the only way a LEC and over-the-top VoIP provider could connect trunks to loops is if the Internet were treated as though it were a loop — the very proposition the *YMax Order* squarely rejects.

In addition to trying and failing to show that Chairman Pai and Commissioner O’Rielly misread Commission precedent regarding the VoIP symmetry rule, CenturyLink has in its recent filings suddenly shifted gears and begun to argue that it does not need the VoIP symmetry rule to justify billing end office rates.²¹ Almost eight years after the Commission adopted the VoIP

¹² *AT&T Corp.*, 841 F.3d at 1056.

¹³ *See March 4 Letter* at 5-6.

¹⁴ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 969 (2011) (“*Transformation Order*”).

¹⁵ *Pai Dissent* at 1616.

¹⁶ *See March 4 Letter* at 6-7.

¹⁷ *See Letter from Mary McManus, Comcast, to Marlene Dortch, FCC, CC Docket No. 01-92, et al.*, at 1 (Sept. 22, 2011).

¹⁸ *Pai Dissent* at 1616; *see also O’Rielly Dissent* at 1620.

¹⁹ *See March 4 Letter* at 7-8.

²⁰ *YMax Order* ¶¶ 39, 44.

²¹ *See March 4 Letter* at 11-12.

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symmetry rule, CenturyLink is now contending that it can bill end office rates without regard to any work its VoIP provider partner performs. But that is *not* the argument CenturyLink advanced in its Petition. There, CenturyLink argued that, “[i]n the over-the-top VoIP context, the IP equivalent functionality of the core TDM end office functions . . . are all performed *by the VoIP provider* and the LEC.”²² Nothing in the CenturyLink Petition suggests that the VoIP providers are, themselves, the end users and that the LECs partnering with them provide the functional equivalent of end office switching merely by routing calls to and from the VoIP providers’ servers. Rather, as CenturyLink correctly recognized in its Petition, the relevant end user is the VoIP provider’s retail customer.²³

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Byers". The signature is fluid and cursive, with the first name "Alan" and last name "Byers" clearly distinguishable.

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

²² CenturyLink Petition at 13 (emphasis added).

²³ *See id.* at 1.