Before the

Federal Communications Commission

Washington, D.C. 20554

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

COMMENTS OF TELIAX, INC.

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COMMENTS OF TELIAX, INC.

Teliax, Inc. ("Teliax"),[1] through its counsel, respectfully submits its comments in support of the Petition of CenturyLink, Inc. ("CenturyLink") for a Declaratory Ruling filed May 11, 2018 ("Petition").

I. Introduction and Summary

CenturyLink[2] has filed a Petition to address the application of access charges to over-the-top ("OTT") VoIP traffic as was clarified in the *2015 Declaratory Ruling.* The Commission adopted both the 2011 *Transformation Order* and the *2015 Declaratory Ruling* as part of a comprehensive compromise plan to reform intercarrier compensation; to make it clear access charges applies when VoIP providers and their CLEC partners provide the "functional equivalent" of end-office switching services; and to minimize billing disputes.

The *2015 Declaratory Ruling* was later vacated and remanded by the D.C. Circuit Court of Appeals on the ground that the FCC had failed to distinguish adequately between end office and tandem switching. The Commission did not take action on the remand (until CenturyLink filed its

[1] Teliax is a competitive local exchange carrier ("CLEC") based in Denver, Colorado. The Company provides voice and data services to both retail and wholesale customers, including toll free (8YY) origination service. Through an affiliate, Teliax also offers access to the Toll Free Exchange, a propriety platform that allows carriers and service providers to offer toll free calling services completely through IP transport, bypassing the unnecessary costs and technical limitations of the Public Switched Telephone Network ("PSTN").

[2] All abbreviations, references and short-form citations are provided and explained in the body of these comments.

Petition) and as result, many billing disputes and expensive lawsuits arose as IXCs and CLECs quarreled over the meaning of the FCC's rules and *Transformation Order*.

CenturyLink's Petition and accompanying Declaration more than adequately answer the questions raised by the court in its decision vacating and remanding the *2015 Declaratory Ruling*. CenturyLink clearly explained how AT&T's argument to the court about "loops" and "trunks" "results in a definition of 'end office switching' that is both incorrect and entirely circular." In addition, Teliax provides additional technical support for the FCC's original conclusions drawn in *2015 Declaratory Ruling*.

Commission precedent and sound public policy favor grant of CenturyLink's Petition. Intercarrier compensation changes have always involved compromise and industry cooperation. However, likely as a means of reducing operating costs, the largest IXCs have often failed to pay access on VoIP-PSTN traffic without also challenging the rates or their application as provided in the Act. Such self-help violates the Act. The Commission's VoIP Symmetry Rule and the application of access to OTT VoIP traffic was part of the compromise access reform plan that transformed terminating end office to Bill and Keep while requiring access to be paid on VoIP-PSTN traffic. And the *Transformation Order* does not place any restrictions on business arrangements, such as prohibiting the VoIP provider and its CLEC partner from obtaining wholesale call origination services, such as 8YY origination from third-party carriers.

In sum, not only does CenturyLink's Petition and accompanying declaration provide the necessary technical justification for the re-adoption of the *2015 Declaratory Ruling*, but the history of intercarrier compensation reform with its compromises supports the Commission's decision to adopt that ruling.

II. CenturyLink's Petition and the Commission's 2015 Declaratory Ruling

CenturyLink's Petition addresses the:

> applicability of end office local switching access reciprocal compensation, under Section 51.913 of the Commission's Rules, for traffic that originates from or terminates to an end user customer of

> an "over the top" Voice over Internet Protocol ("VoIP") provider that partners with a local exchange carrier ("LEC") to exchange traffic to and from the public switched telephone network ("PSTN").

Petition at 1.

CenturyLink notes the Commission previously released a declaratory ruling on this issue in 2015.[3] The *2015 Declaratory Ruling* was subsequently vacated and remanded in *AT&T Corp. v. FCC,* 841 F.3d 1047 (D.C. Cir. 2016). Unfortunately, the *2015 Declaratory Ruling* has remained dormant for a considerable period of time. Meanwhile, many billing disputes and related lawsuits about access and OTT VoIP have consumed industry resources. Nevertheless, the Commission quickly responded to the May 11, 2018 Petition by issuing a public notice on May 18, 2018.[4] Teliax commends the Commission for its prompt action in response to CenturyLink's petition.

As part of a major reform of carrier access charges, the 2011 *Transformation Order*,[5] recognized the existence of OTT VoIP[6] and partnerships between OTT VoIP operators and local exchange carriers ("LECs") to provide end-to-end service to customers. The Commission also took note of the many and billing disputes related to the application of access charges to such calls. It then allowed a VoIP provider and its LEC partner (collectively, "VoIP–LEC") to charge access fees for providing the "functional equivalent" of end-office switching services, or tandem switching services, as the case might be. One of the goals of the *Transformation Order* was to make it clear when access

[3] *Connect America Fund;* and *Developing a Unified Intercarrier Compensation Regime,* Declaratory Ruling, 30 FCC Rcd. 1587 (2015) ("*2015 Declaratory Ruling*").

[4] Public Notice, "Pleading Cycle Established For CenturyLink Petition for Declaratory Ruling," WC Docket No. 10-90; CC Docket No. 01-92, DA 18-517 (rel. May 18, 2018) "("Public Notice").

[5] *Connect America Fund*, Report & Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17,663 (2011) ("*Transformation Order*") (subsequent history omitted).

[6] Some service providers, for example cable TV operators, provide customers with both broadband connections and VoIP services. Other service providers offer their customers VoIP services that operate over-the-top of the customer's existing broadband connection obtained from a different service provider. The presence of OTT VoIP services is consistent with more competition in the voice market. Perhaps, that is why some very large service providers that do not regularly offer OTT VoIP service are seemingly attempting to eliminate OTT competition by ignoring the *Transformation Order* by refusing to pay the intercarrier compensation provided for in that order and associated rules.

charges applied to OTT VoIP and to minimize billing disputes that were consuming resources that could have been spent in network upgrades.

However, despite the hopes and efforts of the FCC, the billing disputes continued. In response, the FCC released its *2015 Declaratory Ruling*. That order interpreted existing FCC rules as:

> permit[ting] a LEC partnered with a VoIP provider to collect end office local switching access reciprocal compensation when the LEC and/or its VoIP partner perform certain critical call initiation or termination processes, as further described herein, irrespective of whether the VoIP provider also controls last-mile facilities used to reach the VoIP provider's end user customer.

Petition at 2.

III. The Appeal and 2016 D.C. Circuit Opinion

A. <u>AT&T's Arguments to the Court</u>

AT&T sought judicial review of the *2015 Declaratory Ruling*, basically arguing OTT VoIP was not subject to access charges. It claimed the *Transformation Order* authorizes LECs to obtain end-office switching charges only if they actually interconnect with the last-mile network leading into a customer's home, a condition satisfied in the PSTN world and by facilities-based providers in the IP world. AT&T argued FCC precedent[7] had previously concluded that, of eight functions of switching, only interconnection of customer-side "loops" and network-side "trunks" distinguished end office switching from other types of switching (e.g., tandem switching).[8] AT&T continued by concluding the *2015 Declaratory Ruling* improperly downgraded interconnection to be merely one of the technical exigencies of Time Division Multiplex ("TDM") networks and not an inherent function of end office switching.[9]

[7] *Classification of Remote Central Office Equipment for Accounting Purposes*, Responsible Accounting Officer Letter 21, DA 92-1091 (Com.Car.Bur. Aug. 7, 1992) ("*RAO 21*").

[8] *AT&T Corp. v. Fed. Commc'ns Comm'n*, 841 F.3d 1047, 1051 (D.C. Cir. 2016).

[9] *Id.* at 1051-52.

According to AT&T, the FCC focused on an aggregation of functions, call control (functions needed to ensure call set-up, supervision and take-down) and found OTT VoIP provided call intelligence that determines call destination and then directly codes the call for receipt and decoding by the called party.[10] Ergo, the Commission concluded OTT VoIP providers supply the functional equivalency of end office switching, according to the FCC's *2015 Declaratory Ruling*.[11]

B. The Court's Opinion

The Court agreed with AT&T that the FCC failed to explain sufficiently what "functional equivalence" means and what distinguishes end office switching from tandem switching.[12] The court further concluded that both *RAO 21*[13] and *YMax I*[14] appear to identify interconnection critical to the end office switching function; yet, the *2015 Declaratory Ruling* held interconnection was not critical to VoIP to PSTN calls. Because, according to the Court the FCC failed to explain this distinction adequately, the *2015 Declaratory Ruling* was vacated and remanded back to the FCC, where it sat until CenturyLink filed its Petition.

IV. Argument

A. CenturyLink's Filing Addresses All of the Court's Concerns

When an agency order is vacated and remanded for failing to explain its reasoning adequately, all the agency need only reexamine its earlier ruling, presumably seek additional comments and provide sufficient justification for its earlier ruling.[15] Teliax submits that the Petition and its supporting declaration from Adam Uzelac, Principal Network Architect at CenturyLink, constitute sufficient

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[10] *Id.*

[11] *Connect America Fund*, 30 FCC Rcd 1587 (2015) ("*2015 Declaratory Ruling*")

[12] *AT&T*, 841 F.3d at 1054.

[13] *RAO 21, supra* note 6.

[14] *AT&T Corp. v. YMax Communications Corp.,* 26 FCC Rcd. 5742 (2011) ("*YMax I* ").

[15] *See generally, Office of Communication of United Church of Christ v. FCC*, 911 F.2d 803 (D.C. Cir. 1990). There the court concluded the FCC's action on remand did explain its decision to eliminate its long-standing children's television commercialization guidelines.

evidence to support grant of the Petition as filed. The information in the two documents more than adequately answer the questions raised by the court in its decision vacating and remanding the *2015 Declaratory Ruling*. CenturyLink clearly explained how AT&T's argument to the court about "loops" and "trunks" "results in a definition of 'end office switching' that is both incorrect and entirely circular."[16]

Further, Teliax offers additional technical and engineering facts and policy data that supports the *2015 Declaratory Ruling* and the application end office local switching access reciprocal compensation, under Section 51.913 of the Commission's Rules, for traffic that originates from or terminates to an end user customer of an OTT VoIP provider that public switched telephone network PSTN.

B. <u>Sound Engineering Principles Support CenturyLink's Petition</u>

In describing the functionality of the end office switch and how it performs a different role from other routing devices on the TDM network, Mr. Uzelac refers to the critical call function of placing a call.[17] Another important function of the end office switch (versus a tandem switch) is to apply "calling features" to a telephone call. This means the end office switch is in a status that waits for any additional commands from the end user while the phone is in use on a call. For example, the end user customer on either end of the call (calling party or called party) might wish to cancel the Call Waiting feature while on a call to avoid interruption. The customer does this by dialing *70. This ability for consumers to invoke a calling feature mid-call is another key function that distinguishes an end office switch from any other network device because no other device, including a tandem switch, along the path of the call (whether it be a TDM path or IP path) is waiting, or will respond to, end user commands.

[16] Petition at 17 and following.

[17] Uzelac Declaration at § 6, ¶a.

In the same paragraph,[18] Mr. Uzelac refers to the forwarding or routing of a call. This functionality is also a key distinguishing function of an end office switch from those of a tandem switch and is provided by the serving LEC often with the partnership of an OTT VoIP operator. The end office switch maintains a database of the end user subscribers served by the switch, while other network devices, including tandem switches, do not. As part of the subscribed services, based upon the information in the database, the appropriate routing is applied to the end user's phone calls. This further distinguishes end office switching from tandem switching whether the network is TDM or IP in nature.

As contemplated in the 2011 *Transformation Order* because of technical differences between TDM and IP networks, these end office functions discussed above are not necessarily provided by any individual entity but, rather, by the partnership of OTT VoIP providers and CLECs. The key points are for access charge billing purposes: 1) the functions are provided by the partnership; 2) the functions are comparable to those functions provided by legacy TDM traffic; and 3) only one entity bills end office charges—in the case of Teliax and its partners—by Teliax alone.

Additionally, in sections 8 and 9 of his Declaration, Mr. Uzelac discusses the functions performed and not performed by the broadband service provider or ISP whose network is used to provide OTT services. Essentially, the ISP simply passes undifferentiated packets through its network. To expand on the role of the ISP versus the VoIP provider one can compare the VoIP provider to other services subscribed by the end user and transported by IP technology. For example, popular TV streaming services, such as Hulu®, Sling®, DirecTV NOW® and YouTube TV® are accessed using over-the-top transmission via the ISP. The ISP merely transports the service-providing video and data from their upstream service providers over the "last mile" transmission paths to the end users via IP packets. The ISP does not participate in the content consumed, it only provides the path. The end user interacts

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[18] *Id.*

directly with the TV streaming provider. This is the functional equivalent to an end user directly interacting with the end office switch to place and receive phone calls using a VoIP system.

It must be noted that infrastructure supporting the existing TDM transmission aspects of the PSTN that remain in place today are often interconnected with a packetized or IP enabled backbone network.[19] Such network architecture allows TDM transport equipment to scale to continue to meet demand and be more robust than traditional legacy circuit architectures. This, in turn, creates the opportunity for TDM networks to be connected in geographically disparate locations via an IP enabled core.[20] This is important to understand because disparate TDM site interconnections are often transported via an IP path. This IP path is the same type path that established from the end user to the VoIP provider.

C. <u>Commission Precedent and Sound Public Policy Favor Grant of CenturyLink's Petition</u>

1. Intercarrier Compensation Changes Have Always Involved Compromise and Industry Cooperation

CenturyLink's Petition that seeks re-justification and re-adoption of the *2015 Declaratory Ruling* is consistent with decades of FCC precedent and policy whereby changes in intercarrier compensation have always incorporated compromise and industry cooperation.

At least since the landmark decision of *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133 (1930), which held the interstate jurisdiction and services must contribute to the recovery of local exchange costs, telephone companies received compensation for their costs in originating and terminating long distance calls and other interstate services. Within the Bell System, compensation was handled through the division of revenues process.[21] Settlement contracts between the Bell System and

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[19] *See* Petition at 18 and following.

[20] For example, a LEC operating TDM-based networks in Colorado and Wyoming could link them by IP facilities and, potentially, use capacity in the other state if needed to address service problems in the first state.

[21] *U.S. v. Western Elec. Co., Inc.*, 569 F.Supp. 1057, 1077 (D.C. Cir. 1983).

Independent Telephone Companies provided compensation for the latter.[22] Suffice it to say, local exchange costs, especially the non-traffic-sensitive cost for the local access line or "loop," were heavily assigned to interstate services to subsidize local service and, as history shows, to incentivize long distance competition.

Without belaboring the reader or writing a detailed history of intercarrier compensation, the FCC ended the Bell System-Independent long distance monopoly; required competitors, such as MCI and Southern Pacific, to pay a smaller contribution to local loop costs;[23] adopted an access charge regime that mandated all IXCs to pay for local connections;[24] required LECs to provide long distance competitors to provide 1+ dialing ("Equal Access");[25] and permitted LECs to charge all IXCs the same relatively high access charges.[26] Next, the FCC began a long and graduated march to reduce the amount of traffic-sensitive subsidies to local loop costs. Among other reforms, the FCC ended mandatory common line pooling and shifted universal service support to rural carriers and markets;[27] and adopted revised and reduced switched access charges for Price Cap LECs[28] and later for Rate-of-Return LECs,[29] all of which led to the *Transformation Order*.

Common among all of the Commission's changes to intercarrier compensation is compromise. No party received all it advocated and no party received nothing. For example, IXC competitors, such

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22 *U.S. v. AT&T Co.*, 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub nom., Maryland v. U.S.*, 460 U.S. 1001 (1983).

23 *Exchange Network Facilities for Interstate Access (ENFIA),* 71 FCC 2d 440 (1979).

24 *MTS and WATS Market Structure*, 93 FCC 2d 241 (1983) (subsequent history omitted) ("*Access Charge Order*").

25 Equal access obligations were imposed on non-GTE LECs in *MTS and WATS Market Structure*, 100 FCC2d 860 (1985). Previously, antitrust consent decrees imposed those obligations on the former Bell System Operating Companies (*U.S. v. AT&T Co.*, 552 F. Supp. 131 (D.D.C. 1982) and the GTE Operating Companies (*U.S. v. GTE Corp.*, 660 F.Supp. 730 (D.D.C. 1984)).

26 *Access Charge Order*, *supra*.

27 *MTS and WATS Market Structure*, 2 FCC Rcd 2953 (1987)

28 *Access Charge Reform*, 15 FCC Rcd 12962 (2000).

29 *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244 (2001).

as MCI, were not permitted to have local exchange access for its MTS-like service at local business line rates. But, at the very same time, the Commission rejected the argument of AT&T that MCI's line-side connection should pay the same rates as AT&T did for 1+ dialing and trunk side connections. Similarly, major changes were often phased in over time. Additionally, IXCs generally paid their access charge bills. Of course, there were billing disputes and sometimes LECs resorted to collection actions,[30] but on the whole, there was a general expectation that, in exchange for LECs originating and terminating interstate calls, IXCs would pay tariff access charges even as they were reduced pursuant to FCC regulation. And rather than engage in self-help, IXCs would often file petitions to reject and/or suspend and investigate tariff filings that the IXCs believed were unjust and unreasonable.[31] Alternatively, IXCs filed complaints against the application of tariff rates in an unjust and unreasonable manner, such as when the LEC billed for call termination to an entity with which the LEC did not have a carrier-customer relationship.[32]

2. Large IXCs Have Ignored the Act's Procedures to Challenge Access Rates and Are Engaged in Illegal Self-Help

Quite possibly as part of a desire to cut costs and to take advantage of their superior economic power, large IXCs, such as Verizon and AT&T, stopped using practices to challenge LEC tariff rates before the FCC that have been contemplated by the '34 Act since its inception. Fewer and fewer tariff protests are made today. Many IXCs simply refuse to pay rates in deemed lawful tariffs without also first filing an FCC complaint or an action in federal court.

Moreover, it is quite likely that the large IXCs have adopted a financial strategy to improve their bottom lines and cash flow that includes challenging access bills and engaging in self-help.[33]

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[30] *Frontier Communications v. At & T Corp.*, 957 F.Supp. 170 (C.D. Ill., 1997).

[31] *All American Tel. Co., Inc. Tariff F.C.C. No. 3*, DA 10-922 (rel. May 10, 2010). (petitions were filed by Sprint, AT&T and Qwest).

[32] *Qwest Communications Co., LLC v. Northern Valley Communications, LLC*, 26 FCC Rcd 8332 (2011).

[33] Even though a LEC cannot file an FCC complaint as a collection action, both the FCC and courts have made it clear self-help where IXCs either refuse to pay access charge bills or substitute their own "national average rates" for tariff rates violates the Act. The most recent example is *Peerless Network, Inc. v. MCI Commc'ns Serv., Inc.*, No. 14 C 7417 (E.D. Ill.), Memorandum Opinion & Order (filed March 16, 2018).

That is the very strategy adopted by Sprint in 2009. Earlier Sprint had been a full-service carrier, providing local, long distance and wireless services, among others. When Sprint was still integrated, its IXC operations paid intercarrier compensation on VoIP traffic to its LEC affiliates.[34] Sprint continued to make these payments even after it divested its LEC operations.[35] But in light of the national economic turndown in 2009, Sprint (as IXC) "like many companies at the time, embarked on company-wide cost-cutting efforts. Notably, during this time period, Sprint launched a coordinated effort to contest access charges on VoIP-originated traffic with other carriers across the telecommunications industry."[36]

Is it likely that other IXCs, such as AT&T and Verizon, have engaged in conduct similar to Sprint's and for financial motivations similar to Sprint's? Most certainly. Is it possible they still are engaging in such conduct to bolster their bottom lines? Most certainly. The Commission only needs to look at the case of *Teliax, Inc. v. AT&T Corp, 1*:15-cv-01472-RBJ (D. Colo.). That case, which has been referred to the Commission on the basis of primary jurisdiction,[37] involves a collection action against AT&T to collect tariff access charges, which AT&T has refused to pay, instead substituting certain AT&T-calculated "nationwide average rates."

A deeper dig shows AT&T is seeking to avoid paying for tariff rates for traffic it wants and expects to be delivered. Teliax delivers, and AT&T accepts, all toll free calls from Teliax, irrespective of where the calls were dialed, unless AT&T identifies specific calls for blocking. (See Deposition

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Among other decisions, the court held the filed rate doctrine prohibits carriers from simply refusing to pay tariff rates without also raising a legal challenge to the tariff. Indeed, even though the court referred several issues to the FCC on the basis of the primary jurisdiction doctrine, it refused to stay the case (and effectively excuse the IXC from paying filed tariff rates for the months or even years that a referral is pending before the FCC or possibly before a court of appeals on judicial review) because, with a stay, the LEC would not be compensated at its legal or lawful rates.

[34] *Cent. Tel. Co. of Va. v. Sprint Commc'ns Co. of Va*., Inc., 715 F.3d 501, 518-19 (4th Cir.), *cert. denied sub nom. Sprint Commc'ns Co. of Va., Inc. v. Cent. Tel. Co. of Va.*, 134 S.Ct. 423 (2013).

[35] *Id.*, 715 F.3d at 519.

[36] *Id., quoting Cent. Tel. Co. of Va. v. Sprint Commc'ns Co. of Va., Inc.,* 759 F.Supp.2d 789, 796 (E.D. Va. 2011).

[37] *See Teliax, Inc. v. AT&T Corp,* 1:15-CV-01472-RBJ, Slip Op. (D. Colo. Sept. 1, 2017).

Transcript of Alison Miller ("Miller Depo"), attached hereto as Ex. A, at 73:9-74:19; Deposition Transcript of Kimberly Meola ("Meola Depo"), attached hereto as Ex. B, at 40:18-41:3). In the lawsuit, AT&T took the position Teliax should not be permitted to bill end office access when it did not provide the calling party's telephone number (no end office access on wholesale 8YY traffic).[38] However, AT&T Assistant Vice President Kimberly Meola's deposition testimony (December 3, 2015) stated the IXC wants all 8YY calls delivered by Teliax to AT&T irrespective of the source of the telephone numbers. AT&T has stated that, with the exception of known fraudulent calls identified to Teliax, it wants all calls, which are intended for AT&T's network, delivered to AT&T even when calls are originated by end user customers of third-party CLEC and VoIP service providers (OTT VoIP calls). (Meola Depo, Ex. B, at 46:12-:25, 48:22-:25). AT&T simply wants 8YY traffic delivered free of tariff end office access charges.

If "fraud" were truly a problem, rather than a nuisance, AT&T would have contacted Teliax, not with a "deliver all calls" message, but instead with information needed for Teliax to identify the source of and block those "bad" calls. The absence of such blocking requests and the accompanying information needed to block the unwanted traffic is strong evidence that "toll free fraud" is AT&T's excuse to swindle CLECs, just like Sprint swindled its former ILEC affiliates.[39] In fact, Teliax and AT&T already work together, through a cooperative industry workgroup, to identify, trace back and prevent fraudulent traffic and the perpetrators. This has been effective thanks to the effort of the participants. Grant of the CenturyLink Petition will end this "service-for-little-or-nothing" regime imposed by big carriers such as AT&T and Verizon.

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[38] *See* Def's Opp'n to P's Mot. for Summ. J. at 16-17, *Teliax, Inc. v. AT&T Corp,* 1:15-CV-01472-RBJ (Sept. 23, 2016).

[39] Teliax urges the Commission to utilize its authority under Section 218 of the 34 Act, 47 U.S.C. § 218, to inquire into the operations and books of account of the big IXCs to learn their internal financial targets and strategies to avoid paying tariff rates for access services delivered by both ILECs and CLECs. Should the Commission take this step it would most certainly learn the large IXCs have business plans and financial targets that contemplate challenges to access charge and other intercarrier compensation bills that go beyond clear billing errors and misapplication of FCC rules, just as the federal judge caught Sprint doing in *Cent. Tel. Co. of Va. v. Sprint Commc'ns Co. of Va., Inc.*

3. The Transformation Order's Treatment of OTT VoIP Traffic Was Intended as a Compromise

As mentioned earlier, the *Transformation Order* contains major access reforms and included a number of major compromises, including a decision to move many access charges and other forms of intercarrier compensation to Bill and Keep[40] and the definitive clarification that access charges and other intercarrier compensation applied to OTT VoIP.[41] The Commission clearly stated

> Under the new intercarrier compensation regime, all traffic—including VoIP-PSTN traffic—ultimately will be subject to a bill-and-keep framework. As part of our transition to that end point, we adopt a prospective intercarrier compensation framework for VoIP traffic. In particular, we address the prospective treatment of VoIP-PSTN traffic by adopting a transitional compensation framework for such traffic proposed by commenters in the record. Under this transitional framework:
>
> - We bring all VoIP-PSTN traffic within the section 251(b)(5) framework;
> - Default intercarrier compensation rates for toll VoIP-PSTN traffic are equal to interstate access rates;
> - Default intercarrier compensation rates for other VoIP-PSTN traffic are the otherwise-applicable reciprocal compensation rates; and
> - Carriers may tariff these default charges for toll VoIP-PSTN traffic in the absence of an agreement for different intercarrier compensation.[42]

As policy reasons for these decisions, the FCC bluntly stated:

> At the same time, we are mindful of the need for a measured transition for carriers that receive substantial revenues from intercarrier compensation. Although our action clarifying the prospective intercarrier compensation treatment of VoIP-PSTN traffic does not

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[40] *Transformation Order* at ¶¶ 740, *et seq.* Specifically, the Commission stated "We believe that our prospective, intercarrier compensation regime for VoIP-PSTN traffic best balances the relevant policy considerations of providing certainty regarding the prospective intercarrier compensation obligations for VoIP-PSTN traffic while acknowledging the flaws with preexisting intercarrier compensation regimes, and providing a measured transition to the new intercarrier compensation framework." *Id.* at ¶ 946.

[41] *Id.* at ¶¶ 933 *et seq.*

[42] *Id*. at ¶ 933. And the *Transformation Order* made it crystal clear access charges for originating VoIP-PSTN traffic were applicable as part of the [compromise] access reform plan. "Although we consequently do not believe that a permanent regime for section 251(b)(5) traffic could include origination charges, on a transitional basis we allow the imposition of originating access charges in this context, subject to the phase-down and elimination of those charges pursuant to a transition to be specified in response to the FNPRM. See infra Section XVII.M. *See also USF/ICC Transformation NPRM*, 26 FCC Rcd at 4713-14, para. 517." *Id*. at ¶ 961, n.1976. This statement was made unconditionally.

> resolve the numerous existing industry disputes, it should minimize future uncertainty and disputes regarding VoIP compensation, and thereby meaningfully reduce carriers' future costs.[43]

The compromise plan also addressed those situations where an OTT VoIP provider partnered with a CLEC to originate calls.

> [W]e adopt 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. However, our rules include measures to protect against double billing, and we also make clear that our rules do not permit a LEC to charge for functions performed neither by itself or its retail service provider partner.[44]

And the discussion does not place any restrictions on business arrangements, such as prohibiting the VoIP provider and its CLEC partner from obtaining wholesale call origination services, such as 8YY origination from third-party carriers.

In sum, not only does CenturyLink's Petition and accompanying declaration provide the necessary technical justification for the re-adoption of the *2015 Declaratory Ruling*, but the history of intercarrier compensation reform with its compromises supports the Commission's decision to adopt that ruling.

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[43] *Id.* at ¶ 935.

[44] *Id.* at ¶ 970 (footnotes omitted).

V. Conclusion

For the reasons set forth above and well as in CenturyLink's Petition and accompanying declaration of Adam Uzelac, the Commission should promptly readopt the *2015 Declaratory Ruling* and make it clear IXCs must challenge access rates either before the FCC or in court while not engaging in self-help.

Respectfully submitted,

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