

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

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

**REPLY COMMENTS OF O1 COMMUNICATIONS, INC.
AND PEERLESS NETWORK, INC.**

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I. INTRODUCTION

O1 Communications, Inc. ("O1") and Peerless Network, Inc. ("Peerless") (collectively "Joint CLECs") respectfully file Reply Comments in response to the Federal Communications Commission's ("FCC" or "Commission") May 18, 2018 Public Notice requesting comments on CenturyLink's *Petition* for Declaratory Ruling filed on May 11, 2018.¹

In their Opening Comments, the Joint CLECs supported CenturyLink's *Petition* requesting the Commission to confirm that local exchange carriers ("LECs") and their Voice over Internet Protocol ("VoIP") provider partners perform the functional equivalent of end office switching functions when originating or terminating over the top VoIP calls. The Joint CLECs initially noted that controversies continue regarding the intercarrier compensation rates that apply to over the top VoIP traffic, and enforcement of the Commission's existing rules is necessary to ensure uniformity. In addition, the Joint CLECs demonstrated that: (1) when the existing rule was adopted, the Commission expressly intended that the VoIP Symmetry Rule, 47 C.F.R. §51.913 apply to all VoIP traffic, including over the top VoIP traffic; (2) over the top VoIP services are the functional equivalent of traditional end office switching access services; and (3) the Commission's decision in *AT&T v. YMax Communications Corp.*² did not determine that over the top VoIP services are *not* the functional equivalent of end office switching charges, nor did the Commission decide in the *Clarification Order*³ whether any specific function is required for the LEC and the VoIP partner to charge switched access compensation or whether an interexchange carrier ("IXC") could deny compensation for switched access services actually performed.

¹ Public Notice, "Pleading Cycle Established for CenturyLink Petition for Declaratory Ruling," DA 18-517 (May 18, 2018).

² *AT&T Corp. v. YMax Communications Corp.*, 26 FCC Rcd 574252 (2011) ("*YMax Order*").

³ *Connect America Fund*, 27 FCC Rcd 2142 (2012) ("*Clarification Order*")

The Joint CLECs further demonstrated that, even if the Commission were to now decide for the first time that CLECs and their VoIP partners do not perform the functional equivalent of end office switching in an over the top VoIP call scenario, the Commission should only apply such a ruling prospectively, in order to avoid wreaking havoc in the telecommunications industry and prevent manifest injustice. Lastly, the Joint CLECs asked the Commission to confirm and enforce its policy against IXC self-help non-payment tactics in intercarrier compensation disputes with LECs and impose penalties on IXCs that fail to comply.

Comments filed by Teliax, Inc. also support CenturyLink's *Petition*, showing that (1) CenturyLink's filing addresses all of the D.C. Circuit Court's concerns in *AT&T v. FCC*⁴; (2) sound engineering principles support CenturyLink's *Petition*; and, (3) Commission precedent and sound public policy favor the granting of the *Petition*.⁵

Not surprisingly, the only two commenters that oppose CenturyLink's *Petition* are the two largest IXCs, AT&T Corp.⁶ and Verizon,⁷ which are also the most active in refusing to pay LEC end office switched access charges. For all the reasons set forth in the Joint CLECs' Opening Comments, these Reply Comments as well as those set forth by Teliax and in the CenturyLink *Petition* itself, the Commission should reject the IXC arguments and grant CenturyLink's *Petition*, confirming once again that LECs and their over the top VoIP provider partners perform the functional equivalent of end office switching in the over the top VoIP call scenario.

⁴ *AT&T Corp. v. Federal Communications Commission*, 841 F.3d 1047 (D.C. Cir. 2016) ("*AT&T v. FCC*").

⁵ Comments of Teliax, Inc., WC Docket No. 10-90; CC Docket No. 01-92 (June 18, 2018) ("Teliax Comments").

⁶ Comments of AT&T on CenturyLink Petition for Declaratory Ruling, WC Docket No. 10-90; CC Docket No. 01-92 (June 18, 2018) ("AT&T Comments").

⁷ Comments of Verizon on Petition of CenturyLink for a Declaratory Ruling, WC Docket No. 10-90; CC Docket No. 01-92 (June 18, 2018) ("Verizon Comments").

II. DISCUSSION

A. The LEC and its VoIP partner provide the functional equivalent of end office switching in an over the top VoIP scenario.

All commenters agree that to collect intercarrier compensation, a LEC generally must perform the "functional equivalent" of the incumbent local exchange carrier ("LEC") service for which the LEC seeks compensation.⁸ Commenters further agree that in the *Transformation Order*,⁹ through adoption of the VoIP Symmetry Rule, the Commission expanded a LEC's authority to collect switched access charges to include not only the functions performed by the LEC itself, but also those performed by an affiliated or unaffiliated provider of interconnected and non-interconnected VoIP services.¹⁰ Finally, commenters do not dispute that in the *RAO Letter 21*,¹¹ the Commission articulated eight functions that comprise end office switching functions in a traditional time-division multiplexing ("TDM") technology: (1) attending; (2) control; (3) busy testing; (4) information receiving; (5) information transmitting; (6) interconnection; (7) altering; and (8) supervising.

The only end office switching function identified by AT&T and Verizon in their comments as one that is not performed by the LEC or its VoIP partner in an over the top VoIP call is "interconnection," which AT&T and Verizon both contend is provided only if the LEC or its VoIP provider partner provide the last mile physical connection – the loop.¹² To the contrary, the Commission held that the end office switching interconnection function is provided by the switching matrix of the end office switch. Ownership of the physical last mile loop is not

⁸ 47 C.F.R. §§61.26(a)(3), (b) and (c).

⁹ *Report and Order and Further Notice of Proposed Rulemaking, Connect America Fund*, 26 FCC Rcd 17663 (2011) ("*Transformation Order*").

¹⁰ 47 C.F.R. §51.913; 47 C.F.R. §61.26(a)(3)(ii); *Transformation Order* at ¶¶969, 970.

¹¹ *Classification of Remote Central Office Equipment for Accounting Purposes, RAO Letter 21*, 7 FCC Rcd 6075 (1992) ("*RAO Letter 21*").

¹² AT&T Comments at Section I.A., pp. 6-8; Verizon Comments at I.A., pp. 2-5.

required to perform this function, and the end office switched access rates that are properly billed by the LEC/VoIP partner are not intended to recover the last-mile loop facilities. It is a long-held principle of the Commission's intercarrier compensation framework that LECs that perform actual switching functions be compensated for those functions they perform as well as those performed by the VoIP Partner.

1. The FCC's Switched Access Rules Establish a Difference Between "Interconnection" in the Context of Switching Functions Performed by the LEC and VoIP Partner, and the Last-Mile Loop Facilities

AT&T argues in its Comments that the end office function of "interconnection" is not provided by the LEC and its VoIP partner in an over the top VoIP scenario, placing special emphasis on the physical aspects of interconnection, such as ownership and control of the lines connecting calling parties to end office switches on the PSTN and decisions regarding packet transport and routing in broadband networks.¹³ AT&T also suggests that third party broadband providers make the final switching decision, performing the interconnection aspect of end office switching.¹⁴ Verizon's arguments are similar.¹⁵

These arguments ignore the existing framework of the FCC's switched access rules. Switched exchange access services covers the following independent functions, each of which have separate historically established cost-based rate elements: (1) carrier common line (originating and terminating); (2) local end office switching (originating and terminating); (3) tandem switching (originating and terminating, and where applicable); (4) tandem switched transport termination; (5) tandem switched transport facility (per mile); (5) interconnection or

¹³ AT&T Comments at Section I. A., pp. 6-11.

¹⁴ AT&T Comments at Section I. D., pp. 13-15.

¹⁵ Verizon Comments at Sections I. A. and B., pp. 3-8.

entrance facilities; and (6) information surcharges.¹⁶ Each of these functions have rules that define the applicable rates that a LEC may charge. *See* 47 C.F.R. § 61.26(c). The VoIP Symmetry Rule merely provides that calls exchanged in “Time Division Multiplexing (TDM) format that originate and/or terminate in IP format shall be subject to a rate equal to the relevant interstate” access charges under 47 C.F.R. § 61.26(a).¹⁷

LECs partnering with a VoIP provider to provide service to customers seek to bill and collect only element “(2) local end office switching (originating and terminating),” for which there have been historically established cost-based rates. AT&T and Verizon’s attempt to deny LECs and their VoIP partners “local end office switching” compensation by arguing that the LECs do not provide sub-element “(5) interconnection or entrance facilities.” But the “interconnection and entrance facilities” costs are intended to be recovered by the “carrier common line rate element” for subscriber line and wire facilities under 47 C.F.R. § 69.304. Focusing solely on physical lines and loops, rather than functionality, the IXC’s ignore advances in Internet technology and that the VoIP calls are being connected to called parties as intended by the calling parties. It is the connection of *calls* – not whether old-fashioned traditional lines and loops are used to make the connection – that matter. The IXC’s appear to take issue with the fact that calls have become packetized, traverse a broadband network and that a third party broadband provider may make routing decisions with regard to such packets within their networks as if these facts would somehow preclude the LEC from performing end office switching functions for the voice calls at issue. More importantly, while AT&T cites to the Commission’s *RAO Order on Reconsideration* in support of its argument, AT&T ignores the

¹⁶ 47 C.F.R. § 61.26(a)(3).

¹⁷ 47 C.F.R. 51.913(a).

critical aspect of that Order to claim that the "interconnection of lines and trunks" function is critical in determining whether end office switching has occurred.¹⁸ Specifically, the FCC states:

If, therefore, a piece of remote equipment is capable of interconnecting lines or trunks, *i.e., if it has the switching matrix required for call interconnection*, the costs of that investment should be classified in [the switching accounts] of our Part 32 rules.¹⁹ (*emphasis added*)

Therefore, even where the FCC discussed the “interconnection” function in 1997, its emphasis was on the *connection of calls through a switching matrix* rather than merely the connection of lines and trunks, and this switching function is what the LECs and VoIP Partner are permitted to recover under the FCC’s existing VoIP Symmetry Rule. This point cannot be over emphasized. In that 1997 proceeding, the FCC was dealing with the extent to which certain line concentration equipment should be categorized for cost and rate making purposes as circuit equipment or as switching equipment. Indeed, while the FCC identified eight switching functions, it found that use of a *call matrix* for *call interconnection* to be the critical function of an end office switch.

Here, in 2018, in the context of VoIP services, including over the top VoIP, the LEC switch contains the equivalent of a switching matrix to connect the call between the switch and the VoIP provider's Media Terminal Adapter.²⁰ The LEC and its VoIP partner provide the last point of switching to transmit the call to or from the called/calling party. The LEC's equipment (its switches) (or that of its VoIP partner) performs the necessary interconnection to route the call, properly interpret routing information, and connect the call – the essential end office switching functions. LECs and their VoIP partners control the last switch that converts calls into IP packets and connects those calls. The LEC's VoIP Gateway/Switch and its VoIP partner's

¹⁸ AT&T Comments at Section I. A., pp. 6-7.

¹⁹ *RAO Reconsideration Order*, 12 FCC Rcd. 10061, 10067, ¶11 (1997)

²⁰ See Diagram of an over the top VoIP call attached hereto as Attachment 1.

Media Terminal Adaptor act as the last switch to associate the telephone number and IP address.²¹

Neither the third party broadband provider nor the Internet Service Provider ("ISP") whose network is used to transport the over the top VoIP service provides this critical interconnection function. As pointed out in Mr. Uzelac's Declaration and reiterated in the Teliix Comments, the broadband provider or ISP "simply passes undifferentiated packets through its network." As is the case in TV streaming services accessed using over the top video applications, "[t]he 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 directly with the TV streaming provider in this scenario. "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."²²

Also, as CenturyLink demonstrates in its *Petition* and the Joint CLECs demonstrate in their Opening Comments, the functions LECs and their VoIP provider partners provide are different from tandem functions, which connect calls between other switches. End office switching transmits calls from or to the calling/called party. Here, the LEC's switch is not connected to other switches; rather, the LEC and its VoIP partner provide the functions necessary for the connection of calls between the switch and the end user.²³

In summary, the Commission should reject AT&T and Verizon's arguments that a LEC must own the physical facilities that transmit the call between the LEC's switch and the calling or

²¹ *Id.*

²² Teliix Comments at pp. 9-10 (citing to Mr. Uzelac's Declaration at pp. 8-9).

²³ Joint CLEC Comments at Section II. C., pp. 6-9.

called party in order to provide the "interconnection" function of end office switching. The Commission should also reject the IXC arguments that the third party broadband provider provides the interconnection function of end office switching.

2. The *YMax Order* does not establish that the physical last mile connection must be provided by the LEC and its VoIP partner in order to be the functional equivalent of end office switching service for all over the top VoIP services.

AT&T and Verizon both cite to *the YMax Order* to support their arguments that Commission precedent holds that using the Internet, or the physical broadband connections of third parties to reach the end user's premises, is required for a LEC to collect end office switched access charges. As the Joint CLECs demonstrated in their Opening Comments however, the *YMax Order* did not address intercarrier compensation charges due for over the top VoIP services generally. Not only did the Commission expressly prohibit reliance on that Order for that purpose, it also limited its discussion to YMax's network and the language of YMax's tariff, which imposed TDM requirements on YMax's collection of end office switching charges.²⁴

AT&T and Verizon's arguments should not persuade the Commission to change its decision that the *YMax Order* is limited to YMax's network and its TDM-based tariff language. The language of YMax's tariff and its network architecture are not typical for LECs and the VoIP service providers that partner to provide the over the top VoIP services. AT&T argues that in *YMax*, when YMax argued that it was entitled to end office switching charges, the Commission "rejected the argument that a facility that places a call on the Internet is the same thing as an end office switch that places a call onto a loop" and therefore the Commission should also find that end office switching charges are not appropriate in an over the top VoIP scenario where the LEC

²⁴ Joint CLEC Comments at Section II. D., pp. 10-12.

relies on the Internet to transmit a call between its switch and an end user.²⁵ AT&T ignores that the Commission's discussion of this point was in the context of its detailed analysis of the YMax tariff's definition of "End Office Switching" which specifically required YMax to operate "End Office Switches" where "station loops" that connect to End User premises are "terminated," which the Commission found that YMax did not provide.²⁶ Based on YMax's tariff language, it was required to provide the loop in order to be compensated for its switched access services.

The tariff described the "End Office Switching" rate category as "establishing the charges related to, "among other things, "the terminations in the end office of end user lines." It defined "End Office Switch" as a place "where Customer or End User station loops are terminated for purposes of interconnection to other station loops, trunks, or access facilities." An "End Office" was defined as "[t]he Central Office from which the End User's Premises would normally obtain local exchange service." A "Central Office," in turn, was defined as a premises where "End User station loops are terminated for purposes of interconnection to other station loops, trunk or access facilities."²⁷ The Commission held that construing those definitions together, "a facility is not an End Office Switch" unless "End User station loops are terminated" at that facility, and "End Office Switching" does not occur under the tariff without "terminations in the end office of end user lines." The tariff did not define "termination" of "station loops" and "end user lines" so the Commission interpreted those terms consistent with their common meaning in the industry, which referred to "a physical transmission facility that provides a point-to-point connection between a customer premises and a telephone company office."²⁸ Rather than find that a

²⁵ AT&T Comments at Section I. B., at pp. 9-11; See *Transformation Order* at ¶969 (where an "entity uses Internet Protocol facilities to transmit such traffic to the called party's premises.")

²⁶ YMax Order at para. 36.

²⁷ YMax Order at para. 37.

²⁸ YMax Order at paras. 38-39.

connection to the Internet can never result in the appropriate charging of end office switching charges, as argued by AT&T, the Commission found only that applying the industry meanings to the language of YMax's tariff shows that YMax provided no "termination" of "End User station loops" and "end user lines" under its tariff. Because YMax's tariff language required YMax to provide the physical transmission facilities to complete a link between the premises of the calling/called parties and YMax, the Commission found that the "tariff did not authorize YMax to assess End Office Switching charges on AT&T."²⁹

The Commission's discussion of the loop relied upon by AT&T was in response to YMax's argument that YMax provided the "termination" of "End User station loops" as required by its tariff by virtue of the Internet, which was a "virtual loop." The Commission rejected this notion.

Verizon also argues that the *YMax Order* requires an end office switching charge to compensate a LEC for the "substantial investment required to construct the tangible connections between themselves and their customers through their service territory."³⁰ This too was in the context of the Commission's attempt to interpret the specific language of YMax's tariff, which expressly required YMax to own the loop to be able to charge End Office Switching charges. The Commission simply found that the higher rate charged by YMax for end office switching than other functions supported the Commission's interpretation of "termination" of "End User station loops" and "end user lines" consistent with the traditional TDM definition of a "loop."³¹ This should not be interpreted generally to require IP networks to invest substantial resources in the last mile transport facility in order to collect the functional equivalent of ILEC end office

²⁹ YMax Order at para. 41.

³⁰ Verizon Comments at Section I. A., p. 5.

³¹ YMax Order at para. 40

switching charges. Indeed, this interpretation would be inconsistent with the Commission's policy to encourage investments in IP networks since LECs that invest in expensive old fashioned loops would be able to collect end office switching charges while LECs that chose instead to invest in an IP network would be precluded from charging those rates despite their provision of the end office switching functions.

YMax cannot be construed generally to preclude VoIP providers that transmit their services to or from the called/calling parties over the Internet from collecting end office switching charges. As demonstrated elsewhere in this record, outside the specific language of YMax's tariff, ownership of the loop or other physical transmission facilities is not a function of end office switching.

3. The same equipment performs the end office switching functions in both a "facilities-based" VoIP call flow and an "over the top" VoIP call flow.

In an attempt to justify its discriminatory treatment of over the top VoIP service providers versus facilities-based VoIP service providers, Verizon tries to distinguish over the top VoIP calls and facilities-based VoIP calls with regard to the functions that each performs.³² The IXC's are willing to pay a facilities-based VoIP provider end office switching charges for their services but will not pay over the top VoIP providers for the very same service. The Joint CLECs have attached two diagrams to these Comments that depict the call flow and equipment used when the calling party is a cable TV subscriber, representing a facilities-based VoIP call, and when the calling party is a Vonage VoIP customer who uses a cable TV provider's broadband line to connect with its Vonage phone services.³³

³² Verizon Comments at Section I. A., pp. 3-5.

³³ Attachment 1 depicts the call flow in an over the top VoIP scenario; Attachment 2 depicts the call flow in a facilities-based VoIP scenario.

Attachment 2, depicting a VoIP call transmitted over a facilities-based provider network, demonstrates that after being converted into an acceptable IP format by the cable TV provider's MTA on the right-hand side of the diagram, the call is transported across the cable TV provider's IP enabled (loop or common line) network to its VoIP enabled Switch and PSTN Gateway where a database query can determine the long distance carrier associated with the called party and the call can be converted into a TDM format (with SS7 signaling) for transmission across the PSTN. It is important to note in this situation that the Cable TV provider's Gateway/Switch and the Media Terminal Adaptor at the customer's premises (all shaded blue), work in unison to match the called party's IP address and equipment with a telephone number and authenticated account. Likewise, these two devices work together to ensure that the IP packets constituting the call are arranged at the MTA and delivered to the caller's phone to facilitate the intended communication. In this way, the cable TV provider's equipment knows which IP address to which a returning transmission should be sent when a call is answered and voice communications are directed back to that particular caller. In short, the VoIP Gateway/Switch and the MTA work together to provide the necessary "interconnection" -- identifying the proper path by which the call should be transmitted from the calling to the called party. The broadband equipment that is not depicted in blue does not perform this interconnection function. The O1/Vonage equipment, shaded in blue in Attachment 1, performs the same end office switching functions as the facilities-based provider's VoIP Gateway/Switch and MTA.

AT&T also joins in Verizon's argument and misleadingly claims that enabling a LEC in the over the top scenario to collect end office switching would assess a "duplicative end office switching charge" already collected by the third party broadband provider. These charges are not

duplicative. The third party broadband provider in an over the top VoIP scenario does not charge the IXC end office switching charges. In fact, the third party broadband provider effectively charges the LEC or VoIP provider for the use of the broadband connection in the form of Internet transit fees. Combined, LECs and VoIP service providers spend tens of millions of dollars per year in Internet transit fees that ultimately benefit the broadband provider. These fees cover the entirety of the cost of the voice usage on the multi-use broadband facility.

In addition, as mentioned above and in the Teliax Comments, the third party broadband provider is generally not even aware that its customer has chosen an over the top VoIP service to make and receive voice calls. Rather, if the LEC associated with the over the top VoIP service is not permitted to charge the IXC for end office switching, the IXC will pay no one for this service, giving the IXCs an unjustified windfall since they charge their customers full rates while seeking to pay no end office charges for over the top VoIP traffic. The IXCs cannot deny that an end office switching function was performed since the calls were completed -- there is no basis for the IXC to pay no one for that service.

Because the same end office switching functions are performed by a LEC and its over the top VoIP partner as are performed by a facilities-based VoIP provider, LECs should be able to collect the same end office switched access charges in an over the top VoIP scenario as those collected in a facilities-based scenario. The Commission should therefore reject the IXC arguments that distinguish between the two as well as the argument that allowing the LEC to charge end office switching rates for over the top VoIP traffic would result in duplicative charges.

- 4. The telephone number need not be associated with the LEC in the NPAC database to find that the VoIP Symmetry Rule applies to over the top VoIP services.**

Verizon also argues that the telephone number assigned to an end user must belong to the LEC in order for it to collect end office access charges.³⁴ This is wrong as a matter of law.

47 C.F.R. § 61.26(f) states as follows:

If a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may, to the extent permitted by § 51.913(b) of this chapter, assess a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.

Under the rule, where the LEC is the carrier associated with the customer's phone number listed in the Number Portability Administration Center ("NPAC") database, it can charge the full benchmark for all access services in Section 61.26(a)(3) (unless that would result in double-billing³⁵). Where the LEC is not the carrier listed in the NPAC database, it can still assess access charges, but only for the functions it provides, which may or may not include the physical last mile loop facility.

Verizon's position that CLECs can charge for switched access features and functions (particularly end office/local switching) only when the calling party number or the dialed number is assigned to the CLEC is not only contrary to what the rule says, it flies in the face of the VoIP Symmetry Rule, which expressly states that CLECs are entitled to charge for the functions they and/or their VoIP partners actually provide. Being the assigned carrier of a telephone number in

³⁴ Verizon Comments at Section II, pp. 11-13.

³⁵ The FCC has limited application of § 61.26(f) to preclude double billing. See *Transformation Order* at ¶970 ("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.")

the NPAC is not a physical “function” for which LECs are intended to be compensated under the FCC’s rules.³⁶

Verizon’s position has also been rejected by the only Court that has considered Verizon’s construction of the FCC’s rules. In *Peerless Network, Inc., v. MCI Communications*, the District Court stated that it was “skeptical of Verizon’s arguments on this issue. 47 C.F.R. § 61.26(f) appears to pose two alternatives to collection of switched access charges: (1) calls where the CLEC provides service to the end user where the CLEC may assess a rate not ‘exceed the rate charged by the competing ILEC for the same access services provided’ as long as the CLEC ‘provides some portion of the switched exchange access services used to send traffic to or from an end user,’ and (2) calls where the CLEC is the assigning carrier in the NPAC database, for which the CLEC may assess ‘a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.’ 47 C.F.R. § 61.26(f).”³⁷ The Court further states that “47 C.F.R. § 61.26(f) does not require Peerless to be the assigning carrier in the NPAC database to charge for the services it provides. It only requires Peerless be the assigning carrier to charge the rate charged “for all exchange access services.”³⁸

The apparent basis for the IXC position is that some IXCs rely on calling number information to distinguish tandem transit from end office traffic. But this practice is not a technical or Commission directive. On the contrary, the directives of the *Transformation Order* and Commission rules state that IXCs must pay switched access compensation for the functions

³⁶ See 47 C.F.R. § 61.26(a).

³⁷ *Peerless Network, Inc. v. MCI Communications, Inc.*, 14 C 7417, 2018 WL 1378347, at *12 (N.D. Ill. Mar. 16, 2018).

³⁸ *Id.*

provided on IP traffic.³⁹ As demonstrated elsewhere in these Comments and the Joint CLEC Opening Comments, these functions occur for over the top IP traffic irrespective of whether the CLEC is associated with the originating telephone number in the industry database.

For example, there are frequently circumstances where a PBX or other arrangements result in a calling party's number which is not associated with a CLEC or its VoIP partner in the local exchange routing guide ("LERG"). However, the CLEC still performs end office switched access functions on this call, such as the functions necessary for 911 call completion, Caller ID services and CNAM dips, and functions to ensure that LIDB works. The CLEC also works to properly jurisdictionalize the call for billing purposes.

Requiring the LEC to be associated with the call in the industry database is also inconsistent with the Commission's rule permitting VoIP providers to have numbers issued in their own name, rather than with a partnered CLEC.⁴⁰ A requirement that the CLEC be associated with the originating telephone number in the NPAC database raises the likelihood that IXC's will refuse compensation to a CLEC for switched access services provided on over the top traffic where the CLEC's VoIP partner provides the telephone number. Such a result would be inconsistent with the Commission's conclusion that a CLEC should be compensated for the switched access functions that it provides on over the top IP originated and terminated traffic.

Permitting IXC's to deny end office switching compensation based solely on the fact that the CLEC is not associated with the telephone number in the NPAC database would allow IXC's to receive services and end office functions without compensation commensurate with traditional LEC's, which conflicts directly with the existing VoIP Symmetry Rule. The Commission should

³⁹ *Transformation Order*, at Section XIV.

⁴⁰ See generally *Numbering Policies for Modern Communications et al.*, Notice of Proposed Rulemaking, Order, and Notice of Inquiry, WC Docket No. 13-97 et al., 28 FCC Rcd 5842 (2013) ("*Direct Access Order*").

reject Verizon's argument and instead clarify that IXCs may not deny end office switched access compensation based solely on whether the calling parties' telephone number assignment matches the LEC seeking compensation. If, however, the Commission concludes that telephone numbers must match the "carrier" in the NPAC, then it must conclude that any telephone numbers directly assigned to the VoIP provider(s) that acquire the numbers directly (and home them in CLEC switches) be included.

B. The Commission should address alleged 8YY fraud schemes in the newly opened proceeding aimed to do just that.

A portion of Verizon's Comments requests that the Commission deny CenturyLink's *Petition* "to avoid encouraging the further proliferation of 8YY originating arbitrage schemes that the Commission seeks to end in its newly opened rulemaking, including schemes based on flooding 8YY numbers with robocalls."⁴¹ The Joint CLECs support Commission action to devise a plan to fight fraudulent schemes engaged in by bad actors that not only annoy and harm consumers, but also interfere with all carriers' network services and divert precious company resources from daily responsibilities to investigate the fraudulent practices. The Joint CLECs disagree, however, that the Commission should resolve CenturyLink's *Petition* focusing on fraud. Over the top VoIP services such as those provided by large VoIP providers like Vonage and Google, for example, are at issue in this proceeding. The Commission should not avoid enforcing the VoIP Symmetry Rule by declaring that this rule applies to these prevalent services (or deny compensation for services provided) because some bad actors are misusing a subpart of certain calling patterns. Instead, the Commission should address those matters in the newly

⁴¹ Verizon Comments at p. 2 and Section II.

opened proceeding where it can develop a thorough record with comments from all interested parties on all involved issues.⁴²

The Joint CLECs also disagree with the recommendation that the Commission limit any ruling in this matter to originating switched access charges. While end office terminating access charges are now reduced to bill and keep as a result of the *Transformation Order*, disputes currently exist between LECs and IXC that relate to the time period before terminating access charges were set at bill and keep. Addressing both originating and terminating access charges in this proceeding, as requested by CenturyLink, will provide the industry with the necessary guidance to resolve all outstanding disputes, including those relating to terminating switched access charges.

III. CONCLUSION

Accordingly, the Joint CLECs support CenturyLink's *Petition* to the Commission to resolve ongoing uncertainty with respect to the application of switched access charges on traffic to or from an over the top VoIP end user by making clear that such charges apply when the LEC or its VoIP partner provides the unique functions of an end office switch, which include the "interconnection of calls."

Additionally, the Joint CLECs ask if the Commission were to reverse its previous precedent on this issue and find now that over the top VoIP services are not the functional equivalent of end office switching, the Commission apply such new law prospectively only.

Finally, the Joint CLECs request that the Commission confirm its policy against disruptive IXC self-help tactics and hold that IXCs found to be engaging in such practices will be subject to penalties.

⁴² *Further Notice of Proposed Rulemaking, 8YY Access Charge Reform*, WC Docket No. 18-156, FCC 18-76 (rel. June 8, 2018).

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