

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**MCI COMMUNICATIONS
SERVICES, INC.,**

Complainant,

v.

WIDE VOICE, LLC,

Defendant.

Proceeding Number 19-121

**Bureau ID Number
EB-19-MD-003**

**JOINT STATEMENT OF
MCI COMMUNICATIONS SERVICES, INC. AND WIDE VOICE, LLC**

Pursuant to the Commission's Notice of Formal Complaint of June 18, 2019, and 47 C.F.R. § 1.733(b)(1), MCI Communications Services, Inc. ("Verizon") and Wide Voice, LLC ("Wide Voice") submit this joint statement. The statement addresses the following issues:

- (I) **Stipulated facts;**
- (II) **Wide Voice benchmarking;**
- (III) **Disputed facts;**
- (IV) **Key legal issues;**
- (V) **Discovery;**
- (VI) **Schedule for pleadings; and**
- (VII) **Settlement.**

I. Stipulated Facts

Verizon and Wide Voice agree that if a document is quoted, it simply represents the parties' agreement that the quote is accurate. Neither party admits that the stipulated facts in this Joint Statement are necessarily relevant or material to the issues that must be decided by the Commission. Subject to this understanding, Verizon and Wide Voice stipulate and agree to the following facts:

1. Verizon is a Delaware corporation that provides and purchases communications and other services, with its principal place of business in New Jersey.
2. This Complaint relates to Verizon's role as a customer and purchaser of switched access services, not as a common carrier.
3. Defendant Wide Voice, LLC is a Nevada limited liability company, with its principal place of business in Nevada.
4. Wide Voice is a common carrier and, specifically, a Competitive Local Exchange Carrier ("CLEC"). For purposes of this Complaint, Wide Voice is specifically a CLEC subject to the Act.
5. On July 16, 2015, Wide Voice amended its FCC Tariff No. 3 (Transmittal No. 5) to, *inter alia*, amend two dispute resolution provisions reflected in § 2.10.4(A) and (B). 2.10.4 (A) provides:

All bills are presumed accurate, and shall be binding on the Customer unless written notice of a good faith dispute is received by the Company. For the purposes of this Section, "notice of a good faith dispute" is defined as written notice to the Company's contact within a reasonable period of time after the invoice has been issued, containing sufficient documentation to investigate the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed. A separate letter of dispute must be submitted for each and every individual bill that the Customer wishes to dispute.

Section 2.10.4(B) provides:

Prior to or at the time of submitting a good faith dispute, Customer shall tender payment for any undisputed amounts, as well as payment for any disputed charges relating to traffic in which the Customer transmitted an interstate telecommunications to the Company's network.

6. On July 31, 2015, the provisions in Wide Voice's FCC Tariff No. 3 amended through Transmittal No. 5 became effective.

7. On July 14, 2017, Wide Voice amended its FCC Tariff No. 3 (Transmittal No. 7) to, *inter alia*, insert § 3.6.4 separating terminating Tandem-Switched Transport rates into two categories of rates: "Affil PCL" and "Standard." Section 3.6.4 provides:

The terminating Tandem-Switched Transport rate schedules are bifurcated into "Standard" and "Affil PCL" rates. The Affil PCL terminating Tandem-Switched Transport rates apply to terminating traffic traversing a Company Access Tandem switch when the terminating carrier is a Company-affiliated price cap carrier. All other terminating Tandem-Switched Transport traffic is subject to the Standard terminating Tandem-Switched Transport rates. "Affil PCL" terminating Tandem-Switched Transport rates are benchmarked to the price cap LEC rates which are subject to the step-down specified in Commission Rules 51.907(g)(2) and 51.907(h). "Standard" terminating Tandem-Switched Transport rates are benchmarked to the price cap LEC rates which are not subject to the step-down specified in Commission Rules 51.907(g)(2) and 51.907(h)..

8. On July 29, 2017, the provisions in Wide Voice's FCC Tariff No. 3 amended through Transmittal No. 7 became effective.

9. On July 18, 2018, Wide Voice amended its FCC Tariff No. 3 (Transmittal No. 8) to reduce the "Affil PCL" rate to \$0 per minute of use. On August 2, 2018, the provisions in Wide Voice's FCC Tariff No. 3 amended through Transmittal No. 8 became effective.

10. Accordingly, Wide Voice's "Terminating – Affil PCL" tandem switching rate was \$0.0007 until August 2, 2018, at which time it stepped down to zero.

11. Some of the Tandem-Switched Transport charges at issue in this Formal Complaint were assessed on traffic that traversed a tandem switch that Wide Voice owned before being routed through a Wide Voice end office switch for termination.

12. Currently, there are no price cap local exchange carriers affiliated with Wide Voice.

13. On December 21, 2018 and December 31, 2018, counsel for Verizon and Wide Voice exchanged letter correspondence about the parties' disputes.

II. Wide Voice Benchmarking

1. Wide Voice asserts that it benchmarks its rates to the following ILECs: (AT&T (former BellSouth areas), AT&T (former SBC areas), AT&T (former PacBell areas), Frontier (former AT&T/SNET areas), AT&T (former Nevada Bell areas), AT&T (former Ameritech areas), CenturyLink (former Qwest areas), Verizon (former Bell Atlantic areas), Frontier (former Verizon/GTE areas), CenturyLink (former Embarq areas), Consolidated (former Fairpoint areas), Cincinnati Bell, Frontier (former Verizon areas), and ACS of Anchorage.

III. Disputed Facts

The parties set forth their respective presentation of disputed facts below.

Verizon's Statement of Disputed Facts:

1. Whether Wide Voice and Native American Telecom, LLC and Native American Telecom – Pine Ridge, LLC (together, "Native American Telecom") share common ownership or control.

Wide Voice's Statement of Disputed Facts:

1. Wide Voice's benchmarking compliance provisions are not unique. Several of the CLEC access tariffs filed at the same time, in response to the Step 6 and Step 7 rate reductions, are identical, or substantially similar to, Wide Voice's filings. The CLECs with similar or identical provisions are some of largest providers of competitive tandem services in

the country, like Onvoy, LLC, Inteliquent (formerly Neutral Tandem, Inc.), and West Telecom Services, LLC.

2. There are carriers with filed tariffs that completely fail to address the circumstances under which reduced tandem switched access rates are changed. An AT&T affiliate CLEC, Teleport Communications Group (“TCG”), has included no provisions for a rate step-down *at all* even though it includes several pages of terminating tandem and transport rates.

3. Verizon’s affiliated ILECs charge full rates for the same tandem-switched access services for which Verizon demands that Wide Voice step-down rates to zero.

4. Beginning on June 16, 2017, all Verizon ILECs (Bell Atlantic, NYNEX, etc.), via FCC Tariff No. 1 and FCC Tariff No. 11 (“Verizon ILECs’ Tariffs”), separated tandem-switched transport rates into two categories in connection with “Step 6.” The Verizon ILECs’ Tariffs identify a reduced rate (now zero) category of tandem-switched transport as applying to traffic “Terminating to Telephone Company End Offices.” The full-rate category of tandem-switched transport rates applies to all other traffic, including traffic destined for termination by the Verizon ILECs’ non-price cap LEC affiliates. The Verizon ILECs’ Tariffs define “Telephone Company” as the price cap ILEC issuers of the tariffs. The term “Telephone Company” excludes any Verizon affiliates that are not classified as price cap LECs. Thus, Verizon’s ILECs charge full rates for all traffic where the terminating carrier/provider is one of Verizon ILEC’s non-price cap LEC affiliates.

5. Level 3 adopts the wording of the ILEC tariffs such that it can retain full tandem and transport rates if it were, for example, to be the tandem provider for its CenturyLink price cap LEC affiliates.

6. The Commission's Staff provided price cap LECs with informal guidance on the step-downs required by Section 51.907(g), confirming to the price-cap carriers that the step-down in Section 51.907(g) does not apply when the price cap carrier does not operate both the terminating tandem switch and the terminating end office switch.

7. Wide Voice's dispute resolution provision requiring customers to dispute within a "reasonable" time is **identical** to the provision that resulted from the resolution of an FCC formal complaint against a different CLEC, Northern Valley Communications, LLC ("Northern Valley") and is specifically not the complained-of language. *See Sprint Commc's Co., L.P. v. N. Valley Commc's, LLC* ("N. Valley Order"), 26 FCC Rcd 10780 (FCC 2011)

8. The Chief of the Pricing Policy Division for the Commission reviewed Northern Valley's revised tariff provisions, which are identical to Wide Voice's, and concluded that they are suitable for filing. Northern Valley filed its tariff revisions on July 26, 2011. Those revisions contained the identical dispute language at issue here.

9. In billing its "Standard" rates, Wide Voice assessed charges pursuant to a composite rate comprised of the charges found in §§ 3.8-3.16.

10. Verizon stopped paying Wide Voice in July 2018.

11. Verizon proclaimed Wide Voice's tariff as "unlawful" and has continued to withhold payment while continuing to send calls to Wide Voice.

12. Verizon has continued to withhold payment for Wide Voice's services while using this connection as a necessary wholesale input for providing chargeable services to third parties.

13. Verizon has continued to withhold payment for Wide Voice's services even while it has asked Wide Voice for increases in the capacity of the connection between the parties.

14. To date, Verizon owes Wide Voice over \$400,000, not including late payment charges.

15. Verizon did not challenge Wide Voice's Tariff when it amended it in 2015, 2017, or 2018, nor did it initiate a "dispute," as defined in Tariff § 2.10.4, until the end of 2018.

16. On July 3, 2019, Wide Voice filed an amendment to its FCC Tariff No. 3 (through Transmittal No. 13). The revisions to § 3.6.4 continue to bifurcate "Affil PCL" and "Standard" rates and illustrates the application of the bifurcated rates by setting out 10 categories of terminating carriers/providers to which the "Standard" rates apply to traffic traversing a Wide Voice tandem-switched transport facility.

17. On July 10, 2019, Verizon and AT&T challenged Wide Voice's tariff revisions pursuant to 47 C.F.R. § 1.773, making substantially the same claims and arguments as in this formal complaint. On July 18, 2019, the Commission denied Verizon and AT&T's petition, by virtue of not acting on it, apparently concluding that the parties had not presented issues regarding the transmittals that raised significant questions of lawfulness that require investigation of the tariff transmittals. Thus, on July 18, 2019, the provisions in Wide Voice's FCC Tariff No. 3 amended through Transmittal No. 13 became effective.

IV. Key Legal Issues

The parties set forth their respective presentation of the key legal issues below.

Verizon's Statement of Key Legal Issues:

1. Whether, as a CLEC, Wide Voice is subject to Steps 6 and 7 of the Commission's step-down rules under 47 C.F.R. § 51.907(g)-(h), 47 C.F.R. § 51.911(c), and 47 C.F.R. § 61.26(b).

2. Whether terminating traffic that is routed from a Wide Voice tandem switch to a Wide Voice end office is subject to Steps 6 and 7 under §§ 51.907(g)-(h), 51.911(c), and 61.26(b).

3. Whether terminating traffic that is routed from a Wide Voice tandem switch to an end office owned by a CLEC that is an affiliate of Wide Voice is subject to Steps 6 and 7 under §§ 51.907(g)-(h), 51.911(c), and § 61.26(b).

4. Whether § 3.6.4 of Wide Voice's tariff is unlawful and void *ab initio* under the Commission's rules, including 47 C.F.R. §§ 51.907(g)-(h), 51.911(c), and 61.26(b).

5. Whether, in the alternative, Wide Voice violated 47 U.S.C. § 203(c) by failing to bill in accordance with its tariff, when it charged Verizon "Standard" rates for traffic that should have been billed at the "Affil PCL" rates pursuant to § 3.6.4 of its tariff.

6. Whether Wide Voice and Native American Telecom are "affiliate[s]" under 47 U.S.C. § 153(2).

7. Whether § 2.10.4(A) and (B) of Wide Voice's tariff are unjust and unreasonable, in violation of 47 U.S.C. § 201(b), including as interpreted in the Commission's *Northern Valley Order*.

Wide Voice's Statement of Key Legal Issues:

1. Whether the step-down rate applies to tandem switching and transport traffic depends upon "the regulatory classification of the terminating carrier." *Level 3 Commc'ns, LLC v. AT&T Inc.* ("Level 3 Order"), 33 FCC Rcd 2388, 2392 ¶ 17 (FCC 2018).

2. Whether the step-down requirements of 47 C.F.R. § 51.907(g)-(h) prescribe a rate transition that reduces tandem switching and transport charges only when a terminating price cap carrier or its affiliate also owns the tandem in the serving area.

3. Whether Verizon's Formal Complaint is an effort to force disparate treatment on Wide Voice (and similarly situated CLECs) by obtaining free service from Wide Voice while at the same time paying other LECs in full for similar services.

4. Whether Verizon's Formal Complaint is an effort to force disparate treatment on Wide Voice (and similarly situated CLECs) by obtaining free service from Wide Voice at the same time Verizon, in its role as an ILEC, charges full rates for similar service that it terminates to its affiliated CLEC(s).

5. Whether Wide Voice properly benchmarked its tandem-switched access charges to the competing ILEC tandem-switched access charges according to 47 C.F.R. § 61.26(c).

6. Whether requiring that Wide Voice step-down tandem-switched access rates to zero while the ILECs to which Wide Voice benchmarks for the same services are entitled to charge full rates is inconsistent with the CLEC Benchmarking Rule.

7. Whether the *Level 3 Order* limiting the step-down to circumstances where a price cap carrier is terminating traffic (rather than an entity that is an affiliated CLEC or CMRS provider) and the price cap carrier (or its affiliate) also owns the tandem switch necessarily makes Section 3.6.4 of Wide Voice's tariff reasonable.

8. Whether Verizon's interpretation of the step-down rule is discriminatory because it 1) permits non-price cap ILEC end offices, that own tandem switches, to charge full rate, but requires CLECs to charge zero for traffic they terminate to an affiliated or owned end office, and 2) incentivizes all tandem switch owners to terminate traffic to non-price cap ILEC end offices instead of doing business with CLEC.

9. Whether Verizon's declaratory ruling request is improper in its tariff based formal complaint.

10. Whether Verizon's failure to pay for tariff services, while continuing to send traffic to Wide Voice and failing to dispute for almost 6 months, constitutes unlawful self-help.

11. Whether Wide Voice's dispute language in Tariff Sections 2.10.4(A) and (B) mirrors vetted and approved dispute language that has been in effect for almost 8 years and under no circumstances is unreasonable.

12. Whether any changes that the Commission requires to a deemed lawful tariff apply only on a prospective basis.

13. Whether, because at most the law was not clear when Wide Voice filed its tariff, the Commission may not declare Wide Voice's tariff void *ab initio*, and the most it can do is require Wide Voice to operate under a new tariff moving forward.

14. Whether the *Transformation Order* sections relied on by Verizon are policy arguments of what the law should be such, and arguments are not appropriate in this proceeding and should be rejected because they do not and cannot change the meaning of the current rules as written and explained by the Commission.

15. Whether it was appropriate for Wide Voice to list in the Tariff rates that would apply in potential future scenarios, including what Verizon calls the "null set."

16. Whether the Commission's decision to not take any action in connection with Verizon and AT&T's petition challenging provisions in Wide Voice's FCC Tariff No. 3 amended through Transmittal No. 13, and apparent conclusion that the parties had not presented issues regarding the transmittals that raised significant questions of lawfulness that require investigation of the tariff transmittals, necessitates dismissal of Verizon's formal complaint.

V. Discovery

In the Letter Ruling of July 16, 2019, Staff deferred consideration of the issues Verizon and Wide Voice raised in their respective interrogatories. Verizon and Wide Voice stipulate and agree no discovery is necessary during the liability phase of this proceeding. The parties reserve their rights to seek leave for limited and appropriate discovery during any damages proceeding, if necessary.

VI. Schedule for Pleadings

Unless Staff requests further pleadings or briefing, Verizon and Wide Voice do not anticipate any further pleadings.

VII. Settlement

Since Verizon filed its Formal Complaint, Verizon and Wide Voice have again discussed the possibility of settlement, including via phone conversation on July 10, 2019, but have not reached agreement. The parties remain at impasse.

Respectfully submitted,

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