18-221

Before the
Federal Communications Commission
Washington, D.C 20554

In the Matter of	)	
	)	
Verizon Petition for Declaratory Ruling	)	WC Docket No. 18-___
Regarding Two-Stage Traffic	)	

Accepted / Filed

JUN 15 2018

Federal Communications Commission
Office of the Secretary

VERIZON PETITION FOR DECLARATORY RULING REGARDING TWO-STAGE TRAFFIC

DOCKET FILE COPY ORIGINAL

Scott H. Angstreich
Grace W. Knofczynski
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

Steven H. Hartmann
VERIZON
1320 North Courthouse Road, 9th Floor
Arlington, VA 22201
703-351-3059

William H. Johnson
Of Counsel

Counsel for Verizon

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Verizon Petition for Declaratory Ruling Regarding Two-Stage Traffic	))	WC Docket No. 18-___

Verizon[1] petitions the Commission for a declaratory ruling confirming that a local exchange carrier ("LEC") cannot assess tariffed end office terminating switched access charges on calls delivered to any two-stage dialing platform, including Internet Protocol ("IP") enabled platforms. In this scenario, the LEC does not terminate the call to the called party and therefore does not perform — and cannot bill for — end office switched access.

Although the Commission's rules clearly establish that a LEC cannot bill for an access function that neither it nor its Voice over Internet Protocol ("VoIP") partner provide,[2] some LECs nevertheless have billed Verizon tariffed terminating end office switched access rates for calls delivered to entities operating two-stage dialing platforms. These "two-stage dialing platforms" consist of equipment that allows end-user customers to complete a call by first dialing a long distance number to reach the calling platform and then dialing a second (typically international) telephone number to reach the called party. The LEC in this scenario does not perform terminating switched access functions. It simply hands the call to its two-stage dialing platform customer, which hands it to someone else; any terminating end office functions are

[1] The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

[2] *See*, *e.g.*, 47 C.F.R. § 51.913(b) ("This rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself of the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service.").

performed by some unknown third-party, usually in another country, when the call reaches the called party.

Long-standing Commission precedent holds that the LEC does not terminate two-stage calls by delivering them to a two-stage platform and cannot charge its tariffed terminating end office switched access rates for them. Nothing about the introduction of VoIP and IP-enabled platforms, and no Commission precedent, alters the analysis or conclusion. The Commission should now confirm that, if a LEC delivers a call to an IP-enabled two-stage dialing platform, it similarly cannot charge the interexchange carrier ("IXC") that delivered the call to the LEC tariffed end office terminating access charges for that call. The LEC has not in fact terminated the call, and it cannot bill its tariffed switched access charges for the work performed by unknown providers — often in other countries — after the call leaves the two-stage platform and ultimately reaches its actual destination.

I. Controversies Over Terminating Access On Two-Stage Calling Continue To Affect Ongoing Traffic Exchanges.

Under its rules, the Commission may, on motion of an interested party, issue a declaratory ruling terminating a controversy or removing uncertainty..[3] Here, the relevant issue — the applicability of a LEC's tariffed end office terminating switched access charges to calls delivered to an IP-enabled two-stage dialing platform — remains a live issue in several ways.

First, although the intercarrier charge rate for terminating end office access service is now at bill-and-keep for price cap carriers, charges for periods prior to July 1, 2017 remain in dispute. Second, rate-of-return LECs and rural competitive LECs can bill terminating end office access charges until July 1, 2020.

[3] 47 C.F.R. § 1.2.

The continued existence of a dispute is borne out by ongoing litigation regarding this issue. For example, subsidiaries of Peerless Network, Inc. ("Peerless") are competitive LECs that deliver calls to two-stage calling platforms. For years, Peerless has billed its tariffed terminating end office switched access charges to the interexchange carriers ("IXCs") that passed these calls to Peerless, including Verizon. Whether the Commission's rules prohibit Peerless from billing these charges is a central issue in litigation between Peerless and Verizon, and in March 2018 the United States District Court for the Northern District of Illinois referred this issue to the Commission for resolution based on primary jurisdiction.[4]

II. Calls Do Not Terminate At Two-Stage Platforms, And LECs Cannot Charge Tariffed Terminating End Office Switched Access Charges.

In the two-stage calls at issue here, consumers typically purchase a pre-paid calling card and place a standard long-distance call (that is, not a 1-800 or other toll-free call)[5] to access the provider's calling card platform. The consumer then enters the telephone number of the person with whom she wants to speak, who, because the consumer is already placing a domestic long-distance call to reach the platform, is normally located in another country. The call is then routed to that international destination using the facilities of multiple other carriers or providers. The Commission has described two-stage calls as follows:

> A calling card customer typically dials a number to reach the service provider's centralized switching platform and the platform requests the unique personal identification number associated with the card for purposes of verification and

[4] *Peerless Network, Inc. v. MCI Commc'ns Servs., Inc.*, No. 14 C 7417, 2018 WL 1378347, at *13-14 (N.D. Ill. Mar. 16, 2018).

[5] This dispute only arises if the consumer places a standard long-distance call to reach the calling card platform. Switched access charges do not apply at all to calls placed to two-stage dialing platforms through local telephone numbers and the LEC serving (or partnering with) the two-stage platform would pay originating switched access charges — rather than attempt to bill terminating switched access charges — if callers used an 8YY number to reach the two-stage calling platform.

> billing. When prompted by the platform, the customer dials the destination number and the platform routes the call to the intended recipient..[6]

The Commission has long treated these two-stage calls as a single, "end-to-end" call that terminates at the location where the person answers the telephone, because the Commission "regulate[s] an interstate wire communication under the Communications Act from its inception to its completion."[7] In the *AT&T Calling Card Order*, AT&T sought a declaratory ruling that, by routing a pre-paid calling card call to an out-of-state calling platform, even where the called party was in-state, AT&T actually was handling two jurisdictionally interstate calls rather than a single intrastate call: one between the caller and the out-of-state platform, and one between the out-of-state platform and the called party..[8] The Commission rejected this argument, explaining that it "has applied an 'end-to-end analysis'" and classifies long distance calls "based on the endpoints, not the actual path, of each complete communication."[9]

In 2007, the Commission recognized that, "for calling card platform cases," it had "applied an end-to-end analysis and found that calls dialed in to a calling card platform and then routed to another party *terminated with the ultimate called party, not at the platform.*"[10] Given these Commission decisions, it is clear, as a matter of law, that a LEC delivering such calls to the two-stage platform does not terminate these calls by delivering them to the platform. The LEC

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[6] Order and Notice of Proposed Rulemaking, *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Servs.*, 20 FCC Rcd 4826, ¶ 3 (2005) ("*AT&T Calling Card Order*").

[7] Memorandum Opinion and Order, *Teleconnect Co. v. Bell Tel. Co. of Pa.*, 10 FCC Rcd 1626, ¶ 12 (1995).

[8] *See AT&T Calling Card Order* ¶ 7.

[9] *Id.* ¶ 5.

[10] *Qwest Communs. Corp. v. Farmers & Merchants Mut. Tel. Co.*, 22 FCC Rcd 17973, ¶ 34 & n.114 (2007) (emphasis added).

therefore cannot charge the long-distance carrier from which it received these calls terminating end office switched access charges.

III. Calls Also Do Not Terminate At IP-Enabled Two-Stage Platforms, And The Commission Should Confirm That LECs Still Cannot Charge Tariffed Terminating End Office Switched Access Charges For Such Calls.

The Commission should confirm that the same longstanding rule applies when the two-stage calling card platform is IP-enabled. The LEC is not performing any additional switched access functions by delivering a call to the platform in an IP format as compared to a TDM format. The use of IP at that intermediate stage of the call path also does not change anything about how the call is delivered at the actual terminating end to the called party. Allowing a LEC delivering calls to an IP-enabled platform to bill terminating switched access rates when a LEC delivering calls to a traditional TDM platform cannot would undermine the Commission's repeated commitment to allow all LECs to charge the same access fees for performing the same functions, regardless of the technology they employ..[11]

The 2011 VoIP Symmetry Rule does not permit LECs to assess end office switched access charges for calls delivered to an IP-enabled calling card platform. That rule provides that a LEC can bill and collect its tariffed access charges if it and/or its VoIP provider partner performs the "functional equivalent" of the traditional time division multiplexing transmission even if it uses other technology..[12] But the LEC delivering calls to an IP-enabled calling card platform is only performing intermediate routing of the call on its way to the actual called party and not the functional equivalent of end office switched access. The Commission has repeatedly

[11] *See, e.g., In re Connect America Fund*, 26 FCC Rcd 17663, ¶ 40 (2011) ("*Transformation Order*") ("VoIP calls will be on equal footing in their ability to obtain compensation for this traffic."); *id.* ¶ 970 ("[C]ompetitive LECs should be entitled to charge the same intercarrier compensation as incumbent LECs do under comparable circumstances.").

[12] 47 C.F.R. §§ 51.903(d), 51.913(b); *see also Transformation Order* ¶ 970.

held that when a LEC delivers a call to a traditional calling card platform, it does not terminate the call and cannot bill end office switched access charges. Therefore, a LEC could only bill and collect its tariffed end office switched access charges for such a call if the IP-enabled calling card platform were terminating the call and performing the functional equivalent of end office switching. It is not.

Even if the Commission were to conclude that the VoIP Symmetry Rule permits a LEC and its over-the-top VoIP provider partner performing the functional equivalent of end office switching when delivering calls to the public internet for routing to the dialed number of the VoIP provider's customer,.[13] the Commission should not reach that same conclusion in the case of delivering calls to an IP-enabled two-stage platform. In ordinary over-the-top VoIP calls, the dialed number is the number of the actual called party who is the person answering the call; the person answering the call is the VoIP provider's customer; and the call terminates with that customer. In two-stage calls, the call terminates at the number dialed after the connection to the calling platform — not at the number the calling party initially dials, which is merely the number to access the platform. And neither the LEC nor the two-stage platform provider has any relationship with the actual called party. After the call leaves the two-stage dialing platform, numerous other providers are involved in establishing the end-to-end call path. It is the company providing voice service to the called party, which is typically a voice provider in another

[13] As Verizon explains in comments to be filed on CenturyLink's Petition for a Declaratory Ruling, *Connect America Fund*, WC Docket No. 10-90 & CC Docket No. 01-92, a LEC and its VoIP partner are *not* performing the functional equivalent of end office switching when the call is terminated to the dialed number via an over-the-top VoIP provider because neither the LEC nor the VoIP partner provides the actual connection to the called party. The over-the-top VoIP provider merely places the call onto the public Internet, it is the VoIP provider's Internet access provider, various Internet backbone providers, and, ultimately, the called-party's separate broadband Internet access provider that actually deliver it.

country, that performs all of the work of routing and terminating the call to the end user, whether in IP or traditional TDM format. And it is the called party's voice provider that performs the various terminating call-control functions CenturyLink erroneously claims are key to terminating end office switching, such as "monitoring answer supervision, providing an answer message and detecting call termination.".[14] There is no circumstance in which either the domestic LEC receiving the call from the IXC or the IP-enabled two-stage platform can be said to be performing the functional equivalent of terminating end office switching. The Commission should not read the VoIP Symmetry Rule to mean that the functional equivalent of end office switching occurs whenever a call is converted to IP format and placed on the public Internet, which is the only work the LEC and the two-stage platform are performing.

Nor is there any merit to claims that the Commission's end-to-end analysis is limited to classifying these calls for jurisdictional purposes as interstate or intrastate and cannot be used to determine the appropriate compensation for calls delivered to IP-enabled two-stage platforms. The Commission has repeatedly used that end-to-end analysis to determine which switched access charges apply. For example, the dispute at the core of the *AT&T Calling Card Order* was whether the AT&T had to pay "intrastate access charges" for those calls routed through a calling platform in another state, or instead could pay the much lower interstate switched access charges..[15] The Commission has twice explicitly applied the end-to-end analysis to determine applicable tariffed charges because there was "no persuasive argument nor any authority" "to

[14] Petition of CenturyLink for a Declaratory Ruling, *Connect America Fund*, 13, WC Docket No. 10-90 (FCC filed May 11, 2018).

[15] *AT&T Calling Card Order* ¶ 28.

distinguish the so-called 'jurisdictional' nature of a call from its status for 'billing' purposes."[16] The Commission thus limited a provider operating a two-stage calling platform to assessing charges based on the single call from the calling party to the called party and not based on any intermediary "legs" of that end-to-end call.

A Maryland federal court recently and correctly held that a CLEC, Broadvox-CLEC, LLC ("Broadvox"), could not charge a long-distance carrier, AT&T, its tariffed terminating end-office switched access charges for calls delivered to an IP-enabled two-stage calling platform.[17] First, the *Broadvox* court correctly rejected the argument that the D.C. Circuit's decision in *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) held "that the end-to-end analysis cannot apply outside the jurisdictional context."[18] After analyzing the various Commission decisions, the court concluded that "the Commission has made it clear that *the end-to-end analysis applies for purposes of determining access charges* . . . [and two-stage] calls consist of one call that does not terminate until it reaches the called party on the far side of the . . . platform."[19] Therefore, the court found that two-stage calls to IP-enabled platforms also involve "one two-phased call" that terminates with the ultimate called party, rather than two separate calls.[20] Second, the court considered the ordinary commercial meaning of "termination" as "delivery of that traffic from that switch to *the called party's premises*," and concluded that a

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[16] *Teleconnect Co. v. Bell Tel. Co. of Penn.*, 10 FCC Rcd 1626, ¶ 12 (1995); *In re Long Distance/usa, Inc.*, 10 FCC Rcd 1634, ¶ 13 (1995).

[17] *See Broadvox-CLEC, LLC v. AT&T Corp.*, 184 F. Supp. 3d 192 (D. Md. 2016), *reconsideration denied*, No. PWG-13-1130, 2016 WL 5390822 (D. Md. Sept. 27, 2016).

[18] *Id.* at 212.

[19] *Id.* at 213 (emphasis added).

[20] *Id.* at 209.

call does not terminate until it reached the party the customer sought to reach..[21] The Commission should declare that the *Broadvox-CLEC* court reached the correct decision.

In referring the issue to the Commission for resolution, the *Peerless Network* court stated that it did "not find *Broadvox-CLEC* convincing," asserting that it "oversimplif[ied] the D.C. Circuit's holding in *Bell Atlantic*, and it fail[ed] to recognize the important distinctions between services provided by traditional telecommunications providers and internet service providers ("ISPs")."[22] That is incorrect. The D.C. Circuit in *Bell Atlantic* vacated the Commission's application of the end-to-end analysis in the specific context of dial-up Internet access because the Commission "ha[d] not supplied a real explanation for its decision to treat [its] end-to-end analysis as controlling" in the context of calls used to surf the Internet and send emails..[23] The communication initiated by a call to a dial-up ISP "was not really a continuation, in the conventional sense, of the initial call to the ISP; an end user could communicate with multiple destination points either sequentially or simultaneously."[24] Nothing in *Bell Atlantic* suggests that the Commission's use of its end-to-end analysis for both jurisdictional and billing purposes was insufficient in the context where calls "have a point of 'termination' in the traditional sense."[25] That is precisely the context of a call to an IP-enabled two-stage platform, as the call then continues, in the conventional sense, to the called party, who answers the phone and speaks with the calling party until the call ends. Thus, the only distinction the court drew in *Bell*

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[21] *Id.* at 214.

[22] *Peerless Network, Inc.*, 2018 WL 1378347, at *13.

[23] *Bell Atlantic*, 206 F.3d at 8.

[24] *Id.* at 5.

[25] *In the Matter of GTE Tel. Operation Cos. GTOC Tariff No. 1 GTOC Transmittal No. 1148,* 13 FCC Rcd 22466, ¶ 22 (1998).

Atlantic — between telephone companies and dial-up ISPs — does not exist in this case, as an IP-enabled two-stage calling platform does not offer Internet access. It simply offers the ability to place an international call.

CONCLUSION

The Commission should resolve the ongoing uncertainty with respect to the applicability of tariffed end office terminating switched access charges to calls delivered to IP-enabled two-stage dialing platforms by confirming that the LEC delivering such a call cannot charge the upstream IXC tariffed end office terminating access charges for that call.

Respectfully submitted,

Scott H. Angstreich
Grace W. Knofczynski
KELLOGG, HANSEN, TODD, FIGEL
& FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
sangstreich@kellogghansen.com
gknofczynski@kellogghansen.com

Steven H. Hartmann

Curtis L. Groves
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2179

Steven H. Hartmann
VERIZON
1320 North Courthouse Road, 9th Floor
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William H. Johnson
Of Counsel

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