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August 3, 2018

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Access Arbitrage, WC Docket No. 18-155

Dear Ms. Dortch:

Grace Knofczynski, of Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., and I met yesterday with Pam Arluk, Victoria Goldberg, Irina Asokov, and Rhonda Lien of the Wireline Competition Bureau. We discussed two issues.

First, consistent with our comments and reply comments on CenturyLink's petition,¹ we urged the Commission to deny quickly CenturyLink's petition and reaffirm that a LEC cannot assess tariffed end-office switching charges on over-the-top VoIP traffic. We explained that active disputes involving tens of millions of dollars related to this issue have generated litigation in federal court, at state regulatory commissions, and at the FCC.²

¹ See Comments of Verizon on Petition of CenturyLink for a Declaratory Ruling, WC Docket No. 10-90 and CC Docket No. 01-92 (June 18, 2018); Reply Comments of Verizon on Petition of CenturyLink for a Declaratory Ruling, WC Docket No. 10-90 and CC Docket No. 01-92 (July 3, 2018).

² *Peerless Network, Inc. v. MCI Communications Servs., Inc.*, No. 14 C 7417 (N.D. Ill.) (primary jurisdiction referral to the Commission); *Peerless Network, Inc. v. AT&T Corp.*, No. 1:15-cv-00870 (S.D.N.Y.); *Teliax, Inc. v. AT&T Corp.*, No. 1:15-cv-01472-RBJ (D. Colo.) (primary jurisdiction referral to the Commission); *Teliax, Inc. v. Verizon Servs. Corp.*, No. 1:18-cv-01266-RM-MEH (D. Colo.); *O1 Communications, Inc. v. AT&T Corp.*, No. 3:16-cv-01452-VC (N.D. Cal.); *O1 Communications, Inc. v. MCI Communications Servs., Inc.*, C.17-12-014 (Cal. PUC).

Marlene H. Dortch

August 3, 2018

Page 2

Second, we also urged the Commission to reaffirm that a carrier-customer cannot violate the Communications Act by withholding payment of tariffed charges. Several commenters have raised this issue in response to CenturyLink's petition and the Access Arbitrage NPRM. As we explained in our reply comments in both proceedings, despite two recent, erroneous federal court rulings,³ the Commission has consistently held—in an unbroken line of precedent dating back to 1989—that a failure to pay tariffed charges does not violate the Act. It should clarify that the contrary federal court decisions are inconsistent with decades of Commission precedent.⁴

Very truly yours,



Copies: Pam Arluk
Victoria Goldberg
Irina Asokov
Rhonda Lien

³ *CenturyTel of Chatham, LLC v. Sprint Communications Co.*, 861 F.3d 566 (5th Cir. 2017); *Peerless Network, Inc. v. MCI Communications Servs., Inc.*, No. 14 C 7417, 2018 WL 1378347 (N.D. Ill. Mar. 16, 2018).

⁴ Reply Comments of Verizon on Petition of CenturyLink for a Declaratory Ruling, WC Docket No. 10-90 and CC Docket No. 01-92 (July 3, 2018); Reply Comments of Verizon, WC Docket No. 18-155 (Aug. 3, 2018).