

# **Exhibit 13**

**REFILED DECLARATION OF JOHN W. HABIAK  
("Habiak Decl.")**

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

In the Matter of

AT&T SERVICES INC.  
1120 20th Street, N.W.  
Washington, D.C. 20036  
202-457-3090

AT&T CORP.  
One AT&T Way  
Bedminster, NJ 07921  
202-457-3090

*Defendants,*

v.

GREAT LAKES COMNET, INC.  
1515 Turf Lane, Suite 100  
East Lansing, MI 48823  
517-664-1600

WESTPHALIA TELEPHONE  
COMPANY  
109 E. Main Street  
P.O. Box. 368  
Westphalia, MI 48894-0368  
989-587-5008

*Defendants.*

File No. EB-14-MD-013

**REFILED DECLARATION OF JOHN W. HABIAK**

1. My name is John (Jack) W. Habiak. My business address is 1 AT&T Way, 2A127, 7 Bedminster, NJ 07921. I am a Director Financial Analysis for AT&T Corp.

2. I lead AT&T Corp.'s investigation and resolution of disputes involving switched access charges billed to AT&T Corp., including disputes that may involve arrangements by carriers to inflate access charges billed to AT&T Corp. My responsibilities include the

coordination of data collection and analysis, the review of switched access bills, and the support of policy and litigation efforts. I also participate in the Interstate Regulatory Team, which includes analysis of regulatory filings and support of policy development. In addition, I lead the Global Connectivity Billing Integrity Project for Switched Access.

3. I have worked for AT&T Corp. and affiliated companies for over 30 years, primarily in the Access Management organization. I also have experience in Network Engineering. My previous positions include: District Manager – Interstate Access Budget and Regulatory, Manager – Local Issues and Local Connectivity Costs, Manager – Business to Business Access Team Leader, Manager – Access Tariff Issues Management and Analysis, Supervisor – Intrastate Access Budget, Supervisor – Network Engineering Cost Model Tool Development and EDP. Before joining AT&T, I earned a Bachelor of Science degree in Natural Resource Management from Rutgers University. I have a comprehensive science teaching certificate for the state of New Jersey.

4. The purpose of my testimony is to explain why AT&T has disputed the interstate switched access charges assessed by the Defendants – Westphalia Telephone Company (“WTC”) and Great Lakes Comnet, Inc. (“GLC”).

5. My testimony is organized as follows. *First*, in Part I, I describe the parties and relevant non-parties. *Second*, in Part II, I describe the aggregated 8YY wireless traffic at issue and the call routing of this traffic, based on AT&T’s current understanding. *Third*, in Part III, I explain the switched access service charges that are billed to AT&T on this traffic. *Fourth*, in Part IV, I discuss the increases in the volume of traffic billed by WTC and GLC. *Fifth*, in Part V, I discuss the source of the aggregated 8YY wireless traffic and new increases in the traffic billed by the GLC that appear related to another CLEC. *Sixth*, in Part VI, I explain that AT&T

Michigan is the “competing ILEC” on most of the services billed by GLC, because the traffic is handed off to GLC within AT&T Michigan’s territory and near AT&T Michigan’s tandem switch. *Seventh*, in Part VII, I explain that AT&T has paid GLC/WTC’s improperly billed charges prior to February, 2013, and then withheld a portion of the billed charges since that time.

## **I. The Parties and Relevant Non-Parties**

6. AT&T Corp. is one of the Complainants in this case. As relevant to this case, AT&T Corp. provides long-distance service and acts as an interexchange carrier (“IXC”) to provide end users with the ability to make interexchange or long-distance calls. AT&T Corp. also provides 8YY toll-free service to end users across the country, generally mid-size businesses. With 8YY service, the customer receiving the call (rather than the customer making the call) pays for the call. The service is generally purchased by businesses that want to make it cheap and easy for their customers to call them. AT&T Corp.’s 8YY customers are the businesses that receive the 8YY calls.

7. Defendant WTC is an incumbent local exchange carrier (“ILEC”) that provides telecommunications exchange and exchange access services to business and residential customers in Michigan. Its main switch is located in Westphalia, Michigan, and as of 2011, WTC provided roughly 964 basic local exchange access lines in that exchange. WTC participates in the switched access tariff filed by NECA.<sup>1</sup> Westphalia acts as a billing agent for GLC.

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<sup>1</sup> Ex. 6, NECA Tariff F.C.C. No. 5., Issuing Carriers, 15th Revised Title Page 65.1, filed June 16, 2014 (“NECA Tariff 5”).

8. Defendant GLC is a competitive local exchange carrier, or CLEC. For years, it has tariffed and billed exchange access services, including certain types of tandem switching and tandem transport services. My understanding is that GLC is owned by a consortium of other LECs. Further, I understand that GLC is the owner of WTC; more specifically, WTC is owned by Clinton County Telephone Company (“CCTC”), and in September 2011, CCTC became a subsidiary of GLC.<sup>2</sup> GLC operates a tandem switch in Westphalia, MI.<sup>3</sup>

9. According to its website, GLC has a fiber network and switches that it uses to provide services.<sup>4</sup> The GLC website has a network map, which shows intercity fiber between such cities as Chicago, South Bend, Grand Rapids, Lansing, Ann Arbor, Flint and Toledo.<sup>5</sup> The website also has a list of “Optical Sites” that show the locations where GLC offers services.<sup>6</sup> These locations include several addresses in Grand Rapids, Lansing, Ann Arbor and Flint.<sup>7</sup> GLC’s service locations also include a “GLC POP,” which is listed at “350 Cermak, 5<sup>th</sup> Floor, Chicago, Illinois.”<sup>8</sup> This is near McCormick Place, one of the largest convention centers in the country.

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<sup>2</sup> Public Notice, *Domestic Section 214 Application Filed For the Transfer of Control of Clinton County Tel. Co. to Great Lakes Comnet, Inc.*, 26 FCC Rcd. 5972 (2011).

<sup>3</sup> Ex. 19 is a screenshot of the Local Exchange Routing Guide. It depicts an entry for a tandem switch (with CLLI code (*i.e.*, a Common Language Location Identifier)) of WPHLMIXI00T. The “T” refers to tandem. The operating company number (OCN) for this switch is 5164, which corresponds to GLC (not WTC). This listing has been in place since about 2001.

<sup>4</sup> Ex. 17, <http://www.glcom.net/network/>

<sup>5</sup> Ex. 17, [http://www.glcom.net/network/glc\\_network\\_map.pdf](http://www.glcom.net/network/glc_network_map.pdf)

<sup>6</sup> Ex. 17, [http://www.glcom.net/network/glc\\_optical\\_sites.pdf](http://www.glcom.net/network/glc_optical_sites.pdf)

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

10. As to GLC's switch facilities, the GLC website states that "[s]witching is an integral part of the company's overall plans and involves the placement of a state of the art centralized switch owned by the company on the existing premises of a shareholder company. The company's centralized switch provides host/remote (class 5) local exchange, voice mail, and tandem services."<sup>9</sup>

11. As discussed below, other parties are also involved in the routing of the calls at issue. These entities include Local Exchange Carriers of Michigan, Inc. ("LEC-MI"), which is a competitive LEC that operates a switch in Southfield, Michigan, a suburb of Detroit. Other relevant entities involved in the call routing are "traffic aggregators" that serve as intermediate service providers to carry the calls from wireless carriers to the facilities of LEC-MI and/or the Defendants.

12. In addition, AT&T has recently seen, over the last several months, a large volume of traffic being billed in part by GLC, and this new traffic appears to be associated with the facilities of Peerless Network, a competitive LEC that offers services in various markets, including in and around Chicago.

## **II. The Aggregated 8YY Wireless Traffic And The Call Routing Of The Traffic.**

13. Except for some newer traffic that AT&T began to notice around March, 2014 (which I discuss below), most of the traffic in dispute between AT&T and GLC/WTC is referred to as aggregated 8YY wireless traffic. What this means is that LECs such as GLC and WTC accept relatively large volumes of traffic originated not by their own end users, but by the end user customers of various wireless carriers. The wireless customers originating these calls

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<sup>9</sup> Ex. 17, <http://www.glcom.net/network/>

are generally located across the nation, but their 8YY calls are aggregated to locations in Michigan, and handed off to AT&T there, to be transported to AT&T's 8YY customers.

14. Generally speaking, wireless carriers cannot themselves file tariffs for switched access services to collect tariffed fees for access services. As a consequence, some wireless carriers have directed such traffic to entities, sometimes called "traffic aggregators," that accept wireless-originated 8YY traffic. The traffic aggregators then send the calls to wireline LECs and other access providers, which can charge, and do charge, for certain rate elements of switched access service on these calls. Based on my experience, it is common for the LECs to agree to share a portion of the access revenues with the traffic aggregators.<sup>10</sup> In this case, Defendants have unlawfully billed AT&T over ten million dollars in access services, and because Defendants have admitted that they have revenue sharing arrangements, then of the moneys collected from AT&T and other long distance carriers, millions have been paid out pursuant to those revenue sharing arrangements.

15. AT&T does not decide which LEC will "originate" or "terminate" any long-distance call.<sup>11</sup> AT&T does not decide which end users call its long-distance or 8YY customers, nor does it decide which calls its long-distance customers make. The end users make that choice. And obviously, AT&T does not decide where those end users live, or which carrier those end users select to provide their phone service and originate or terminate their

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<sup>10</sup> See, e.g., *Hypercube Telecom v. Level 3 Commc'ns*, 2011 WL 2907304 (Cal. PUC, July 14, 2011) (Hypercube, the aggregating CLEC, "admitted that it has contracts with certain CMRS providers pursuant to which it makes payments to the CMRS providers"); *Hypercube v. Comtel Telecom Assets*, 2009 WL 3075208 (N.D. Tex. Sept. 25, 2009) ("Hypercube shares its fees from [the long distance provider] with the wireless company to induce the wireless company to continue sending Hypercube calls").

<sup>11</sup> See generally *CLEC Access Charge Order*, 16 FCC Rcd. 9923, ¶¶ 30-31 (2001).

calls. Once a LEC delivers a call intended for an 8YY customer served by AT&T, AT&T has no choice but to accept and carry the call. Additionally, AT&T generally cannot block calls coming from or going to a particular LEC, even if that LEC's access charges do not comply with the law.

16. On these aggregated 8YY wireless calls, AT&T does not know in the ordinary course of business the identity of all of the entities involved in the call routing. Nor does AT&T know all of the details of how the calls at issue are routed. Nevertheless, based on AT&T's investigation, my understanding of the industry and its key players, and various filings recently made by WTC, GLC, and other parties, AT&T's current understanding of the call flow on the aggregated 8YY wireless traffic is as follows.

- a. An end user who buys wireless service makes an 8YY call to a business served by AT&T.
- b. The end user's wireless carrier routes the call to a traffic aggregator.
- c. The traffic aggregator routes the call to one or more intermediate carriers that, at GLC's direction, take the call to LEC-MI's switch in Southfield.
- d. LEC-MI receives the 8YY aggregated traffic in Southfield and hands it off to GLC.
- e. The call is transferred to Westphalia (where GLC's tandem switch is located), and GLC (or, prior to May, 2013, WTC) charges AT&T Corp. for 83 miles of switched access transport service.
- f. GLC hands the call off to WTC in or around the Westphalia exchange where GLC's tandem switch is located.



- g. WTC carries the aggregated 8YY traffic from the exchange boundary of the Westphalia exchange to GLC's tandem switch. This distance is less than 1 mile.
- h. An 8YY database dip is performed to identify the carrier providing the 8YY service on that particular call (*e.g.*, AT&T), and GLC's switch directs the call to that carrier. According to AT&T's records, the database dip was billed by LEC-MI through June 2013 and beginning in July 2013, this dip charge was billed by WTC.
- i. For calls going to AT&T end users, AT&T accepts the call and it is transported to locations across the country for termination to the 8YY toll-free customer.

17. Until recently, AT&T's understanding was that GLC transports these calls over its own facilities from Southfield to Westphalia, Michigan. AT&T's understanding was based in part on the fact that, as explained below, either WTC or GLC has consistently billed AT&T 83 miles of transport charges corresponding to the distance (in airline mileage) between Southfield and Westphalia, Michigan.

18. However, AT&T has learned that LEC-MI, and not GLC or WTC, carried the aggregated 8YY traffic over LEC-MI facilities from Southfield to Flint, Michigan, and handed it off to GLC there. GLC then carried the traffic from Flint to Westphalia, Michigan.

19. In other words, contrary to the bills received by AT&T, about 44 percent of the

83 miles of transport is actually provided by LEC-MI.<sup>12</sup> GLC provided only a portion of the 83 miles of transport, about 56 percent. Defendants' decision to bill the entire transport in their own names resulted in substantial overcharges, because Defendants' transport rates (which are based on NECA rates) are higher than those of LEC-MI.

20. Exhibit 10 provides a graphic illustration of this call routing.

21. When the volumes of traffic billed by Defendants began to increase, AT&T also had a limited understanding into the financial arrangements that led to the aggregated 8YY wireless traffic – which originated from wireless callers across the country – being routed to Defendants' facilities in Michigan. As a result of discovery and further investigation, however, AT&T has learned that Defendants and their affiliate entered into contracts providing that, in return for the traffic being sent over Defendants' network, Defendants (or their affiliate) would pay out part of their access charges they collected.

22. [REDACTED]

[REDACTED]

[REDACTED]

23. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>12</sup> The 44% figure was calculated as follows: The distance from LECMI's switch in Southfield to the point in Flint at which LECMI delivered the traffic to GLC is 44 miles (using V&H coordinates). The distance from that point in Flint to GLC's switch in Westphalia is 57 miles. Thus, the transport provided by LECMI constitutes 44% of the whole.

24. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. [REDACTED]

[REDACTED]

26. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

28. This new evidence shows that Defendants (along with their affiliate Comlink) were instrumental participants in arranging for the aggregated 8YY wireless traffic to come to their networks via LEC-MI.

### **III. The Access Service Rate Elements Billed To AT&T On The Wireless Calls At Issue**

29. As to this aggregated 8YY wireless traffic, AT&T is billed a variety of switched access charges, including (1) end office switching and related access charges by LEC-MI and

(2) tandem transport, tandem switching, tandem switched termination, and 8YY database query charges by GLC/WTC. Specifically, for most of the period in dispute, on the aggregated 8YY wireless traffic, GLC/WTC billed AT&T about 4.2341 cents per minute, for tandem transport, tandem switching and tandem termination.<sup>13</sup> AT&T is also billed an 8YY database query charge of 0.55 cents per call.

30. For most of the period in dispute, on the aggregated 8YY wireless traffic, LEC-MI billed AT&T 0.3594 cents per minute, which include charges for (1) end office switching (0.3116 cents per minute), (2) shared port, and (3) transport termination. After AT&T filed an informal complaint, LEC-MI admitted that these charges were improper under the Commission's rules.<sup>14</sup>

31. Prior to May, 2013, GLC/WTC's tandem-related charges were billed only in WTC's name. Specifically, GLC/WTC (under Westphalia's operating company number, or OCN) billed AT&T interstate tandem switching charges of 0.5476 cents per minute, tandem termination charges of 0.2171 cents per minute, and 83 miles of tandem transport, billed at 0.0418 cents per mile per minute. The total per minute charges on this traffic were about 4.2341 cents per minute.

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<sup>13</sup> Defendants base their tariffed rates and charges to AT&T on the rates in the NECA tariff, and NECA generally updates its rates every two years. For purposes of my Declaration and to simplify the issues, I set forth the tariffed rates that Defendants billed from about July, 2012 to about July 2014. This is only for purposes of illustration, and Defendants' charges in other periods, both prior to July 2012 and after July 2014, are also improperly based on NECA rates. AT&T will provide the detailed charges it has been billed, and for which it is owed refunds or credits, at a later time.

<sup>14</sup> Ex. 8, LEC-MI Resp. To AT&T Inf. Compl., File No. EB-14-MDIC-003, at 5 (May 12, 2012).

32. On March 20, 2013, I sent an email to WTC and LEC-MI to dispute their charges and routing arrangements.<sup>15</sup> My email raised several issues, including a dispute that WTC's charges for 83 miles of transport charges crossed "LATA" boundaries, even though WTC's tariff provides that its access services would be provided only in or within a single LATA.<sup>16</sup> My email also informed WTC that it was billing AT&T tandem switching charges for a tandem switch that appeared to be owned and operated by GLC.

33. A few weeks later, AT&T began receiving revised bills for the 8YY wireless calls at issue. Beginning with invoices dated May 2013, all of the tandem switching charges, as well as 82.17 miles of tandem transport service, were billed using GLC's OCN. In turn, the bills no longer included any tandem switching charges under Westphalia's OCN, and the tandem transport services billed under Westphalia's OCN decreased from charges for 83 miles of transport to charges for just 0.83 of a mile of transport. The changes appear to be strictly a paper change as to the name on the billing, in reaction to AT&T's dispute letter, and there did not appear to be any actual change in the how the services were in fact provisioned.

34. Accordingly, starting in May, 2013, on the aggregated 8YY wireless calls at issue, the charges to AT&T include:

- (1) LEC-MI's charges of 0.3594 cents per minute;
- (2) Defendants' charges of 4.1994 cents per minute using GLC's OCN, which include

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<sup>15</sup> See Ex. 11, Letter from J. Habiak, AT&T, to Westphalia and LEC-MI, dated March 20, 2013.

<sup>16</sup> See Ex. 6, NECA Tariff 5, Title Page, 4<sup>th</sup> Rev. Title Page 1; *id.* § 6.1, 10th Revised Page 6-1; *AT&T Corp. v. Alpine Commc'ns, et al.*, 27 FCC Rcd. 11513, ¶¶ 31-34 (2012), *recon. denied*, 27 FCC Rcd. 16606 (2012) ("*Alpine*") (interpreting same tariff language to bar provision of interLATA transport charges).

- (i) 82.17 miles of transport charges and billed at 0.0418 cents per mile per minute (that is, 3.4347 cents per minute),
  - (ii) a transport termination charge of 0.2171 cents per minute, and
  - (iii) a tandem switching charge of 0.5476 cents per minute;
- (3) Defendants' charges of 0.03469 cents per minute using Westphalia's OCN, which consist of 0.83 miles of transport charges at 0.0418 cents per minute; and
- (4) A database dip charge of 0.55 cents per call.

35. In total, for the 8YY calls, the Defendants and LEC-MI bill AT&T more than 4.5935 cents per minute for origination access services and the database dip charge. Assuming that AT&T receives a full credit for the charges improperly billed by LEC-MI, Defendants are billing AT&T 4.231 cents for each minute of aggregated 8YY wireless service (plus a database query on a per call basis).

#### **IV. The Volumes of Traffic Billed To AT&T**

36. Beginning in or around 2010, the volume of traffic billed by Defendants to AT&T began to increase significantly. Exhibit 2 is a chart that shows the volume of interstate traffic to and from AT&T through LEC-MI's switch in Southfield, Michigan from July 2009, to July, 2014.

37. In essence, the chart shows that the number of minutes of traffic to and from AT&T through LEC-MI's switch in Southfield, Michigan went from about 1 million minutes per month, as late as November, 2009, and then began to rise steadily, reaching a peak of about 25 million minutes in May, 2013.

38. Nearly all of the increase relates to charges for originating switched access. In January 2010, GLC and WTC billed slightly more for terminating access than originating

access. By September 2011, the originating switched access charges were roughly three times the corresponding charges for terminating switched access.

39. Since the end of 2011, when the FCC's access stimulation rules became effective, the volume of interstate access minutes of use between AT&T Corp. and this switch increased by 170 percent between May 2011 (7.46 million MOUs) and May 2012 (20.13 million MOUs); it increased by 123 percent between June 2011 (8.63 million MOUs) and June 2012 (19.20 million MOUs).

**V. The Source Of The Increased 8YY Traffic And The New Increases In Billed Traffic That Appear To Be Related to Peerless.**

40. Earlier this year, AT&T learned that Leap/Cricket was one of the wireless carriers whose customers were originating the traffic that eventually was routed to GLC/WTC under the arrangements described above. In March 2014, Cricket was acquired by AT&T Corp.'s parent company, AT&T Inc., and the flow of wireless 8YY traffic from Cricket through Defendants ceased. As you can see from Exhibit 2, GLC/WTC's switched access billings to AT&T dropped sharply in March 2014.

41. Almost immediately after the aggregation of Cricket traffic stopped in March 2014, GLC/WTC began billing AT&T for a significant amount of new traffic. In March 2014, the volumes dipped to about 10.4 million minutes. But in April 2014, it increased to about 16.7 million minutes, and it has stayed at around that level since then.

42. Based on GLC/WTC's bills, it appears that the traffic comes from a Chicago switch assigned to a CLEC called "Peerless" that operates in Michigan and Illinois. GLC/WTC's bills for the Peerless traffic include charges for GLC's tandem switching in Westphalia, and GLC delivers the traffic over switched access direct trunks from the GLC

tandem to the AT&T POP in Grand Rapids. GLC's switched access charges for the Peerless traffic do not include any transport charges and consist only of tandem switching charges. As with the 8YY traffic discussed above, the tandem switching rate billed by GLC to AT&T on the Peerless traffic is \$0.5476 cents per minute.

43. AT&T does not know the details of the routing of the Peerless traffic, or how the traffic is originated. The ultimate source of the Peerless traffic may be a wireless carrier or carriers.

## **VI. The "Competing ILEC" on The 8YY Traffic and the Peerless Traffic.**

44. Although I am not a lawyer, I have a general familiarity with the Commission's rules that apply to switched access charged tariffed and billed by competitive LECs like GLC. In general, GLC, as a CLEC, may not file a tariff for switched access services containing rates that exceed those of the "competing ILEC."

45. Under those rules, the "competing ILEC" is the ILEC that "would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC." 47 C.F.R. § 61.26(a)(1).

46. On the 8YY wireless aggregated traffic at issue, AT&T Michigan is the competing ILEC. As noted, this traffic is handed off to LEC-MI in and around Southfield, Michigan, a suburb of Detroit. AT&T Michigan is the ILEC that operates in and around the Detroit and Southfield, Michigan area. In fact, AT&T Michigan has a tandem switch located only 7 miles from LEC-MI's Southfield end office.



47. There is no technical reason why the traffic at issue could not be handed off from LEC-MI directly to AT&T Michigan.<sup>17</sup> The routing of the traffic from Southfield, over 80 miles to Westphalia, Michigan does not result in any additional benefits to callers, to AT&T, or to AT&T's 8YY customers. In other words, the quality of service is no better under the existing routing arrangement than if the traffic was routed to AT&T Michigan's nearby tandem switch.

48. In these circumstances, it makes sense that, on these calls, the competing ILEC for purpose of the FCC's rules is AT&T Michigan. AT&T Michigan's rates are much lower than the rates tariffed and charged by GLC. I provide a comparison of GLC's rates versus AT&T Michigan's rates, in the 2013 time frame, at Exhibit 12. The relevant tariff pages are attached as Exhibits 6, 7 and 14.<sup>18</sup>

49. If the access services for the aggregated wireless 8YY calls were billed at the rates charged by the competing ILEC (AT&T Michigan) for the same functions, using seven miles of transport because that is the distance between LEC-MI's switch and AT&T Michigan's tandem, the charge to AT&T would be only 0.1280 cents per minute (plus a database query). *See* Ex. 12.

50. As to the Peerless traffic described above, while AT&T currently does not know as many of the details of the routing of these calls, GLC delivers the traffic to AT&T in Grand

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<sup>17</sup> AT&T Michigan's tandem switch is not the only tandem switch located in or near Southfield, Michigan. For example, according to entries in the Local Exchange Routing Guide, LECs such as XO/Global Crossing, Neutral Tandem, and Peerless have tandem switches in Southfield, MI.

<sup>18</sup> AT&T Michigan's tariff contains slightly different rates for use in different "zones." For these purposes, I am using the "Zone 3" rates, because the AT&T tandem at issue is located in West Bloomfield, Michigan, which is in Zone 3 (the LEC-MI switch is in Zone 1, but the rates in Zone 3 are generally higher, so the use of Zone 3 is conservative and beneficial to GLC).

Rapids. AT&T Michigan is the ILEC in Grand Rapids, and if GLC were not handling this traffic, then it stands to reason that it would be handled by AT&T Michigan.<sup>19</sup> Accordingly, AT&T Michigan is the “competing ILEC” under the Commission’s rules for this Peerless traffic.

51. As shown in Exhibit 12, the GLC tandem switching rate of 0.5476 cents per minute is higher than the tandem switching rate of AT&T Michigan, which is 0.112 cents per minute.

## **VII. Withholding By AT&T And Damages.**

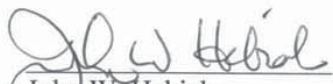
52. Because WTC/GLC’s charges for switched access were improper on several grounds, AT&T began to dispute those charges and also to withhold a portion of Defendants’ bills (reflecting the improper charges for non-rural CLEC traffic, wireless 8YY traffic, and excessive mileage) beginning with their bills for February 2013 usage. Prior to that time, AT&T paid GLC/WTC’s bills, without realizing that a substantial portion of those bills was improper. AT&T has suffered damages by paying for these charges, and it requests a refund of the improperly billed charges. As I understand it, once it is determined that the WTC/GLC charges were improperly billed, the amount of any damages will be determined in a subsequent proceeding.

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<sup>19</sup> It is also possible the traffic is handed off in or around the Chicago area. In that case, the competing ILEC would be AT&T Illinois, which has the same rates as AT&T Michigan (although the appropriate zone could differ).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/20, 2014.

  
John W. Habiak

# **Exhibit 14**

**Joint Statement of Stipulated Facts  
("GLC Joint Stmt.")**

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

In the Matter of

AT&T Services Inc. and AT&T Corp.,

*Complainants,*

v.

Great Lakes Comnet, Inc. and Westphalia  
Telephone Company,

*Defendants.*

File No. EB-14-MD-013

**JOINT STATEMENT OF STIPULATED FACTS,  
DISPUTED FACTS, KEY LEGAL ISSUES, AND  
DISCOVERY AND SCHEDULING**

AT&T Services Inc. and AT&T Corp. (collectively, “AT&T”), Great Lakes Comnet, Inc. (“GLC”), and Westphalia Telephone Company (“WTC”) (collectively, the “Parties”), in accordance with the Commission's October 23, 2014 Notice of Formal Complaint and Sections 1.732(h), 1.733(b)(1)(v), and 1.733(b)(2) of the Commission’s Rules, 47 C.F.R. §§ 1.732(h), 1.733(b)(1)(v), and 1.733(b)(2), respectfully submit the following Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues. In addition, in Section IV below, the Parties provide their Joint Statement on Discovery and Scheduling in accordance with the Notice and Section 1.733(b)(1)(i)-(iv) of the Commission’s Rules, 47 C.F.R. §§ 1.733(b)(1)(i)-(iv).

The Parties have defined stipulated facts to be facts upon which both Parties agree and disputed facts to be facts upon which both Parties do not agree, but the inclusion of any fact as a stipulated fact or disputed fact does not constitute an admission by any Party that the fact is relevant or material to the legal issues in dispute.

The stipulated facts and disputed facts listed below are not meant to address comprehensively every fact that has been raised by either Party in this case, but rather are meant to identify central facts upon which the parties agree or disagree. Where the parties agree, the stipulated facts are presented as organized below within fact clusters that are relevant to key issues in this case. The absence of a particular fact in the lists below should thus not be construed as an admission that any such fact is irrelevant or insignificant. Neither Party waives the right to rely or assert a fact that is not included in this stipulation. The Parties stipulate to these facts for purposes of this proceeding only.

## **I. STIPULATED FACTS**

### **A. Parties**

#### **1. AT&T**

1. AT&T Services, Inc. performs centralized administrative support services including information technology and billing support services, real estate support services, procurement support services, human resources support services, training services and finance support services. AT&T Services, Inc. is not a carrier and it was not involved in the routing of any traffic in dispute in this case.

2. For purposes of this case, AT&T Corp. is an interexchange carrier (“IXC”) and provides end users the ability to make long distances calls (*i.e.*, calls between exchanges).

3. AT&T Corp. offers and provides 8YY (or “toll-free”) service to end-user customers. 8YY is a service in which the customer receiving the call (rather than the customer making the call) pays for the call. AT&T’s 8YY customers are the businesses that receive the 8YY calls. For purposes of any traffic in dispute, AT&T Corp. (not AT&T Services, Inc.) is the AT&T entity that was and is involved with the routing of the traffic.

4. AT&T Michigan is an incumbent LEC in certain parts of Michigan. It is an affiliate of AT&T Corp. and AT&T Services, Inc.

## **2. WTC and GLC**

5. WTC is a rural incumbent local exchange carrier (“RLECs”) that provides telephone exchange and exchange access services to business and residential customers in Michigan. Its end office switch is located in Westphalia, Michigan. WTC’s Operating Company Number (“OCN”) is 0735.

6. WTC acts as a billing agent for certain other carriers, including GLC.

7. WTC is owned by Clinton County Telephone Company (“CCTC”).

8. As a result of GLC’s purchase of CCTC, GLC owns WTC. GLC’s CEO is Paul Bowman.

9. WTC is a member of the National Exchange Carrier Association, Inc. (“NECA”) and concurs in the NECA Tariff F.C.C. No. 5 (“NECA Tariff No. 5”). Copies of various pages of the NECA Tariff No. 5 appear at Exhibit 6 of the AT&T Complaint and Exhibit 31 of the GLC and WTC’s Answer in this proceeding, which are applicable and relevant to certain issues in dispute only to extent each applicable tariff page was in effect during the particular portion of the period at issue.

10. GLC is registered with the Michigan Public Service Commission (“Michigan PSC”) as a competitive access provider (“CAP”).

11. GLC has filed an interstate access service tariff with the Commission designated as Great Lakes Comnet, Inc. Tariff F.C.C. No. 20 (“GLC Tariff”) that governs the rates and terms of its interstate switched and special access services. The original version of the GLC Tariff was filed April 1, 2002 and became effective April 2, 2002. GLC has revised this tariff on various occasions, including, among other revisions, the revision made on November 7, 2014.

See Answer at Exhibit 48. Copies of various pages of the GLC Tariff appear at Exhibit 7 of the AT&T Complaint and Exhibits 6 and 48 of GLC and WTC's Answer in this proceeding, which are applicable and relevant to certain issues in dispute only to extent each applicable tariff page was in effect during the particular portion of the period at issue. GLC's OCN is 5164.

12. GLC provides interstate switched and special access services. In providing switched access services, GLC provides, among other things, tandem switched transport, which includes tandem switched facility, tandem switched termination, and tandem switching to sophisticated carrier customers, including local exchange carriers ("LECs") and IXC's.

13. GLC is not registered with the Michigan PSC as a competitive LEC ("CLEC"). GLC surrendered its CLEC license with the Michigan PSC in 2003. GLC has never provided local exchange service in any exchanges.

14. GLC is not an incumbent LEC ("ILEC").

15. GLC operates a tandem switch in Westphalia, Michigan.

16. GLC's fiber network includes transport facilities to certain RLECs and CLECs that home on GLC's tandem switch in Westphalia, Michigan. A diagram of the LECs that home on GLC's tandem switch as of September 1, 2014 is attached as Exhibit 52 to GLC and WTC's Answer. In addition, GLC has extended its transport facilities to other locations throughout Michigan that also reach into certain areas of certain surrounding states. A diagram of the GLC's transport facilities is shown in Exhibit 49 to GLC and WTC's Answer and Exhibit 17 to AT&T's Complaint.

17. GLC has transport facilities in a building in Chicago, Illinois that is near McCormick Place.

18. GLC has transport facilities that are located in both rural and urban areas.



19. GLC's Chief Executive Officer is Paul Bowman.

20. In 2011, GLC purchased CCTC, and as a result WTC is owned by GLC.

21. GLC and WTC are common carriers engaged in providing services subject to Title II of the Communications Act.

### **3. Non-Parties**

22. 123.net a/k/a Local Exchange Carriers of Michigan, Inc. ("LEC-MI"), a relevant non-party, is a CLEC that operates an end office switch in Southfield, Michigan, a suburb of Detroit. Prior to September 19, 2014, LEC-MI's end office switch in Southfield, Michigan had been homing on GLC's tandem switch since October 21, 2003. LEC-MI is not affiliated with WTC or GLC. LEC-MI's OCN is 2550.

23. Cricket Communications, Inc. ("Cricket") is a Commercial Mobile Radio Service ("CMRS") provider, commonly referred to as a wireless or cellular provider. Cricket became a corporate affiliate of AT&T following the completion of AT&T's acquisition of Cricket and its affiliates on March 13, 2014. Prior to that date, Cricket was owned, managed, and operated separately from AT&T or any AT&T affiliate.

24. The 8YY traffic that is the subject of this dispute was originated by customers of Cricket.

25. IBDC Telecom Corporation ("IBDC") is a reseller, with its corporate headquarters in Atlanta, Georgia.

26. NuLeef Communications ("NuLeef") is a domestic and international voice carrier, with headquarters in Atlanta, Georgia and offices in Boston, Dubai, Argentina, and Germany. NuLeef and IBDC are wholly owned by their parent company IBDC Global. *See* <http://www.nuleef.com/about.htm>.

27. U.S. South Communications, Inc. (“U.S. South”) is a certified facilities-based interexchange long distance carrier with its corporate headquarters located in Atlanta, Georgia and is an affiliate of InComm, which is based in Atlanta, Georgia and provides prepaid product and transaction services.

28. Peerless Network (“Peerless”) is a competitive carrier that offers services in various markets, including in and around Chicago, Illinois.

29. ComLink, LLC (“ComLink”) is a competitive LEC and a common carrier that provides interstate and intrastate telecommunications services in Michigan, Ohio, Indiana, and Illinois. ComLink is directly and wholly owned by GLC. As a result of GLC’s purchase of CCTC, ComLink and WTC are affiliated.

**B. Procedural History and Related Proceedings**

30. AT&T Services, Inc. (on behalf of itself and its operating affiliates) filed an informal complaint against GLC, WTC, and LEC-MI on April 4, 2014 (“Informal Complaint”) that was associated with Commission File No. EB-14-MDIC-0003.

31. GLC and WTC filed a response to AT&T’s Informal Complaint on May 12, 2014.

32. AT&T filed a Formal Complaint on September 23, 2014, which AT&T subsequently withdrew without prejudice. AT&T then refiled its Formal Complaint with certain modifications on October 22, 2014 (“Formal Complaint”) that initiated the above-captioned proceeding.

33. While the Formal Complaint raises many of the same issues raised in the Informal Complaint, the Formal Complaint also raises some issues that were not raised in the Informal Complaint.

34. AT&T's claims in its Formal Complaint that relate to Peerless and GLC's tandem switching charges that are assessed for Peerless's traffic were not raised in the Informal Complaint.

35. AT&T's allegations in its Formal Complaint that LEC-MI provisioned 44 percent of the transport at issue were not raised in the Informal Complaint.

36. On February 26, 2014, an informal complaint against GLC, WTC and LEC-MI was filed by three other IXCs, namely MCI Communications Services, Inc. d/b/a Verizon Business Services, Qwest Communications Co., LLC d/b/a CenturyLink QCC, and Sprint Communications Co., L.P., in Commission File No. EB-14-MDIC-0001. That informal complaint involves some of the same claims and some of the same facts as AT&T's Formal Complaint.

37. On May 12, 2014, GLC and WTC filed a collection action complaint against AT&T Corp. before the Michigan PSC in Case No. U-17619 ("MPSC Proceeding"). The MPSC Proceeding involves allegations that AT&T failed to fully pay invoices for intrastate switched access services provided by GLC and WTC, pursuant to their tariffs filed with the Michigan PSC, to AT&T Corp. Some of the same legal and factual issues raised in the Formal Complaint have also been raised by AT&T as counterclaims in the MPSC Proceeding.

38. On July 21, 2014, GLC and WTC filed a collection action complaint against Level 3 Communications, LLC, Global Crossing Local Services, Inc., and WilTel Communications, LLC before the Michigan PSC in Case No. U-17660. Some of the same legal and factual issues raised in the Formal Complaint have also been raised in this Michigan PSC proceeding.

## **C. GLC's Access Tandem<sup>1</sup> and The Routing of Traffic**

### **1. History of GLC's tandem switch**

39. GLC was founded in 1996 as an independent network organization by a group of RLECs, which were located in rural areas throughout Michigan.

40. The GLC organization was created so that the participating RLECs could establish a network of transmission facilities and a centralized tandem switch through which to route traffic in and out of their end offices in their respective serving areas and the end offices of other local exchange carriers.

41. GLC's tandem switch was established in Westphalia, Michigan, due to its centralized location relative to the locations of the founding RLECs and major metropolitan areas of the State of Michigan.

42. GLC's tandem switch was dedicated to service on December 1, 2001.

43. GLC Exhibit 52 shows the hub and spoke network design of GLC's tandem switch and certain associated tandem transport services as of September 1, 2014, which now serve certain RLECs, LECs, and IXC. Exhibit 17 to AT&T's Formal Complaint and Exhibit 49 to GLC and WTC's Answer include a map that reflects GLC's transport facilities. A diagram of the LECs that home on GLC's tandem switch as of September 1, 2014 is attached as Exhibit 52 to GLC and WTC's Answer.

44. LEC-MI's end office switch in Southfield, Michigan homed on GLC's tandem switch from October 21, 2003 to September 18, 2014. The Local Exchange Routing Guide ("LERG") reflects that LEC-MI routed traffic from its Southfield end office switch to GLC's tandem switch from October 21, 2003 to September 18, 2014.

45. As of September 19, 2014, LEC-MI is no longer homing on GLC's tandem

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<sup>1</sup> Referred to herein as GLC's access tandem or GLC's tandem switch.

switch, and thus GLC should no longer be receiving any traffic from LEC-MI.

46. Pursuant to information that is contained in the LERG, AT&T Corp. has routed traffic to and from GLC's tandem switch since its deployment in 2001.

47. On an ongoing basis thereafter, AT&T Corp. submitted orders, known as access service requests ("ASRs"), for service from GLC and WTC.

48. An ASR is an industry standard ordering form for tariffed services and is developed by industry groups.

49. The ASRs submitted by AT&T Corp. to GLC after LEC-MI began homing on GLC's tandem switch covered tandem switch and transport services to and from the LEC-MI end office switch in Southfield, Michigan. GLC Exhibits 4 and 5 that were attached to GLC's Answer show two examples of such ASRs.

50. The location of GLC's Westphalia tandem switch has not changed since the transport route to LEC-MI's Southfield end office switch was established.

51. With GLC's centralized tandem, IXCs like AT&T are able to deliver and receive traffic to and from small LECs located throughout and in remote parts of Michigan, without having to build and maintain fiber optic facilities to each LECs' serving area that home on GLC's tandem switch.

## **2. Transport used to route traffic to GLC's Access Tandem**

52. Since about 2003, GLC has had transport facilities to LEC-MI's end office switch in Southfield, Michigan that route traffic to GLC's access tandem in Westphalia, Michigan.

53. The transport route is 83 airline miles and a small portion of route is provided using transport facilities owned and operated by WTC. Specifically, after the traffic is transported to Westphalia, Michigan, the traffic is handed off to WTC in the Westphalia exchange.

54. In about 2009, LECMI established an additional physical connection to GLC's transport network in Flint, Michigan.

55. While the LERG establishes a given transport route, such as the transport route between LEC-MI's Southfield end office switch and GLC's tandem switch in Westphalia, the LERG does not specify which carriers bill which portion of the transport on the route.

### **3. Types of traffic routed to and from GLC's tandem**

56. In general, the traffic routed between LECMI's end office switch in Southfield, Michigan and GLC's access tandem can be placed into two categories.

57. The first category is long distance traffic to and from end users served by LEC-MI that is routed to and from GLC's tandem switch over Trunk Group 313.

58. Trunk Group 313 was established in 2003 as the transport facility that was used to route switched access traffic to and from GLC's access tandem in Westphalia.

59. The second category involves 8YY toll free traffic that originated from customers of AT&T's wireless affiliate Cricket.

60. Trunk Group 331 was established in early 2010 to handle wireless-originated 8YY traffic that Michigan Network Services (MNS) received at and routed from its Session Border Controller (SBC) to LEC-MI's end office switch in Southfield, Michigan which was then routed to GLC's access tandem.

61. After service was initiated over Trunk Group 331, service quality issues arose over Trunk Group 331. The MNS SBC was malfunctioning and causing call quality issues. To resolve these issues, MNS coordinated with LECMI to remove the MNS SBC and utilize a direct IP interface to a LECMI SBC. MNS was removed from the original call path shortly after Trunk Group 331 was established.

62. For calls to AT&T's 8YY customers, AT&T accepts the call and then uses its long distance network to complete the 8YY wireless-originated calls to its 8YY customers.

**D. Rates for GLC's Access Services**

**1. Switched access charges billed to AT&T**

63. For Cricket's 8YY calls routed to AT&T through the LEC-MI end office switch in Southfield, Michigan and GLC's tandem switch, AT&T has been billed (by WTC as billing agent) (1) end office switching and related access charges, which include, among other things, a tandem switched termination charge, by LEC-MI and (2) tandem switched transport charges which includes tandem switched facility, tandem switched termination, and tandem switching by GLC and WTC.

64. From January 1, 2013 to June 30, 2014, WTC billed, on behalf of itself and GLC, AT&T about \$0.042341 per minute for total charges associated with tandem switched facility, tandem switched termination, and tandem switching.

65. Prior to May 2013, GLC's tandem switched transport charges were billed under WTC's Operating Company Number ("OCN").

66. On March 20, 2013, AT&T wrote to WTC and LEC-MI to dispute their charges and routing arrangements.

67. Among other issues, AT&T's dispute letter stated that the 83 miles of transport charges billed by WTC crossed LATA boundaries.

68. AT&T's dispute letter also stated that WTC was billing AT&T tandem switching charges for a tandem switch that appeared to be owned and operated by GLC.

69. Following the receipt of AT&T's letter, WTC discovered that its CABs invoices at issue had, due to a billing error, referenced WTC's OCN as providing tandem switching, tandem switched termination, and the 82.17 miles of tandem transport, rather than GLC's OCN.

70. Beginning with invoices dated May 2013, WTC corrected the billing error by revising the bills issued after that date so that all of the charges associated with tandem switching, tandem switched termination as well as 82.17 miles of tandem transport, *i.e.*, tandem switched facility charge, were billed under the correct OCN, *i.e.*, GLC's OCN. As such, the bills were corrected after that date so that they no longer included any tandem switching and tandem switched termination charges under WTC's OCN, and the tandem transport services billed under WTC's OCN were corrected to reflect the 0.83 of a mile of transport provided by WTC.

71. The changes were limited to a change of the OCN of the billing party to correctly reflect the billing party. When WTC discovered the billing error, WTC did not reissue CABs bills for the former period because, at that time, it was WTC's understanding that there would be no changes in the total amount invoiced for tandem switched facility, tandem switched termination, and tandem switching.

72. There was no actual change in the how the services were in fact provisioned, because these revisions were made simply to correct a billing error.

73. For bills dated from approximately May, 2013 to June, 2014, for the 8YY wireless calls at issue, the invoices to AT&T included:

(a) LEC-MI's end office switching charges of \$0.003487 (Local Switching \$0.0031160 per minute and Shared End Office –Shared Trunk Port \$ 0.0003710 per minute) plus a Tandem Switched Termination charge of .0001070 for a total of \$0.003594;

(b) GLC's charges of \$0.041994 per minute under GLC's OCN, which include:

- (i) 82.17 miles of Tandem Switched Facility charges billed at \$0.000418 per mile per minute (a total of \$0.034347 per minute),
- (ii) a Tandem Switched Termination charge of \$0.002171 per minute, and
- (iii) a Tandem Switching charge of \$0.005476 per minute;



(c) WTC's charge of \$0.0003469 per minute under WTC's OCN for 0.83 miles of tandem transport at \$0.000418 per minute per mile; and

(d) A database dip charge of \$0.0055 per call (applied approximately as of June 1, 2013).

74. LEC-MI's per mile, per minute rate for transport, *i.e.*, the tandem switched facility rate, is lower than the per mile, per minute rates for tandem switched facility in the NECA Tariff No. 5.

75. From January 2013 through June 2014, WTC billed, on behalf of itself and GLC, AT&T a total of \$0.042341 for each minute of 8YY wireless traffic received from the LEC-MI end office switch in Southfield, Michigan and delivered to AT&T (plus a database query on a per call basis).

76. If the traffic had been delivered to AT&T via AT&T Michigan's tandem switch so that the access services for these calls were billed at the rates set forth in AT&T Michigan's interstate access tariff for the same functions, and assuming 7 miles of transport (the approximate distance between LEC-MI's switch and AT&T Michigan's tandem switch in West Bloomfield, Michigan), the charge to AT&T would be \$0.001280 per minute (plus a database query).

## **2. Rate Bands Applied**

77. The Tandem Switched Transport rates set forth in the GLC Tariff, *i.e.*, GLC Tariff F.C.C. No. 5, reference the rates set forth in the NECA Tariff No. 5, *i.e.*, NECA Tariff F.C.C. No. 5, for the same services.

78. The GLC Tariff states the "Tandem Switched Transport rates consist of a Tandem Switching rate, a Tandem Switched Facility rate, and a Tandem Switched Termination rate."

79. Tandem Switched Facility Rate. The GLC Tariffed rate for Tandem Switched Facility is assessed for transmission facilities, including intermediate transmission circuit equipment, between end points of interoffice circuits and is applied on a per access minute per mile basis for all originating and terminating minutes routed over the facility.

80. The GLC Tariff provides that the rate for “Tandem Switched Facility” is “the applicable current rate at NECA Tariff F.C.C. No. 5, Section 17.2.2., Premium Access – Tandem Switched Transport, Tandem Switched Facility.”

81. In 2013, the section of the NECA Tariff No. 5 contained two “Rate Bands” for Tandem Switched Facility: Rate Band 1, which was \$0.000195 per-mile, per-minute, and Rate Band 2, which was \$0.000418 per-mile, per-minute.

82. In 2013, WTC billed AT&T, on GLC’s behalf, for Tandem Switched Facility charges using Rate Band 2, which in 2013 was \$0.000418 per-mile, per-minute.

83. As of May 15, 2013, AT&T Michigan’s tariffed rate for tandem switched facility was \$0.000014 per-mile, per-minute.

84. WTC assessed AT&T, on GLC’s behalf, for 82.17 miles of Tandem Switched Facility charges for 8YY traffic delivered to AT&T from LEC-MI’s Southfield end office switch, and thus the overall GLC Tandem Switched Facility charge on the 8YY calls at issue was \$0.034347 per minute.

85. In 2013, if the 8YY traffic had been exchanged via the closest AT&T Michigan’s tandem switch to LEC-MI’s Southfield end office switch, which is located approximately seven miles away, then AT&T Michigan could have charged AT&T \$0.000098 per minute for the overall Tandem Switched Facility charges on those calls.

86. Tandem Switching Rate. The GLC Tariffed rate for the Tandem Switching is assessed for switching traffic through GLC's access tandem, which is basically a switch that receives calls on trunks from another switch and places the call on other trunks to be routed to other switches, as opposed to end user lines. GLC Tandem Switching rate is applied on per access minute per tandem basis for all originating and all terminating minutes of use switched at GLC's access tandem.

87. The GLC Tariff provides that its rate for "Tandem Switching" is the "the applicable current rate at NECA Tariff F.C.C. No. 5, Section 17.2.2., Premium Access – Tandem Switched Transport, Tandem Switching."

88. In 2013, this section of the NECA Tariff No. 5 contained two "Rate Bands" for premium tandem switching: Rate Band 1, which was \$0.002564 per-minute, and Rate Band 2, which was \$0.005476 per-minute.

89. In 2013, WTC billed AT&T, on GLC's behalf, for tandem switching charges using Rate Band 2, *i.e.*, at a rate of \$0.005476 per minute.

90. As of May 15, 2013, AT&T Michigan's tariffed rate for Tandem Switching was \$0.001120 per minute.

91. Tandem Switched Termination Rate. The GLC Tariffed rate for Tandem Switched Termination is assessed for circuit equipment necessary for the termination of each end of each measured segment of the Tandem Switched Facility and is applied on a per access minute basis (for all originating and terminating minutes of use routed over the facility) at each end of each measured segment of Tandem Switched Facility (e.g., at the end office, host office and the access tandem).

92. The GLC Tariff provides that its rate for “Tandem Switched Termination” is “the applicable current rate at NECA Tariff F.C.C. No. 5, Section 17.2.2., Premium Access – Tandem Switched Transport, Tandem Switched Termination.”

93. In 2013, this section of the NECA Tariff No. 5 contained two “Rate Bands” for premium Tandem Switched Termination: Rate Band 1, which was \$0.001017 per minute, and Rate Band 2, which was \$0.002171 per minute.

94. In 2013, WTC billed AT&T, on GLC’s behalf, for Tandem Switched Termination charges using Rate Band 2, at a rate of \$0.002171 per minute.

95. As of May 15, 2013, AT&T Michigan’s tarified rate for a comparable tandem termination service was \$0.000105 per minute. If LEC-MI had sent the 8YY traffic at issue to AT&T Michigan’s tandem switch, AT&T Michigan could bill a charge of \$0.000053 per minute, which is 50 percent of the tarified rate because AT&T Michigan could only provide tandem termination service at one end of the transport route (with the other end at LEC-MI’s switch).

96. Prior to the filing of AT&T’s Informal Complaint, AT&T never disputed the application of Rate Band 2 rates in NECA Tariff No. 5 for GLC’s Tandem Switching rate and Tandem Switched Facility rate.

**E. Volume of 8YY Traffic Sent to GLC**

97. Beginning in or around 2010, the volume of traffic associated with the LEC-MI route for which WTC billed, on behalf of itself and GLC, AT&T began to increase. This increase in traffic was due to wireless-originated 8YY traffic that originated from customers of Cricket that was eventually routed to the LEC-MI end office switch in Southfield, Michigan and then routed to AT&T via GLC’s tandem switch.

98. Exhibit 2 attached to the Formal Complaint is a chart that shows the volume of interstate traffic to and from AT&T through LEC-MI’s switch in Southfield, Michigan, from

July 2009 to July 2014. GLC, WTC and AT&T stipulate to the traffic volumes set forth in AT&T Exhibit 2 as reflecting the total volumes of traffic that AT&T received via GLC's tandem switch during the stated time periods from LEC-MI's end office switch in Southfield, Michigan.

99. From May 2011 to May 2012, Defendants had more than a 100 percent growth in interstate switched access minutes of use. The same was true from June 2011 to June 2012. Cricket was the wireless carrier whose customers were originating the 8YY traffic that eventually was routed to GLC and WTC from LEC-MI, as described above.

100. The volume of Cricket 8YY traffic decreased beginning with bills to AT&T that were dated March, 2014. Because the services are billed in arrears, the Cricket 8YY traffic decreased at approximately the end of January 2014.

101. In March 2014, Cricket was acquired by AT&T's parent company. Around that same time, the billing for wireless 8YY traffic originating from Cricket that routed through the LEC-MI end office switch in Southfield, Michigan to GLC's access tandem stopped.

102. Increases in access service volumes occurring after bills dated March 2014 related to traffic coming from a Chicago switch assigned to Peerless.

103. The wireless 8YY traffic at issue in this case did not artificially increase AT&T's overall level of 8YY traffic.

104. GLC and WTC did not at any time provide retail conferencing services associated with the traffic delivered to AT&T.

#### **F. Alternative Routing Options**

105. The 8YY calls at issue were originated by Cricket customers, which could be located anywhere in the United States when the calls were placed.

106. AT&T Michigan is the ILEC in and around Southfield and Detroit.

107. Other carriers, including AT&T Michigan, have tandem switches that are located

closer to Southfield, Michigan than GLC's tandem switch in Westphalia, Michigan.

108. AT&T Michigan has a tandem switch in West Bloomfield, Michigan that is located about 7 miles from LEC-MI's Southfield end office switch.

109. There is no technical reason why Cricket's 8YY traffic could not have been routed from the LEC-MI end office switch in Southfield, Michigan directly to AT&T Michigan's access tandem in West Bloomfield, Michigan.

**G. Payments Made that Were Associated with the Routing of Certain 8YY Traffic Originated By Cricket End Users.**

110. Cricket – U.S. South/InComm. Cricket had a contract with U.S. South under which Cricket routed certain 8YY traffic to U.S. South's affiliate InComm. Cricket's wireless customers could be located throughout the country when they placed these 8YY calls.

111. As shown in Exhibit 28 attached to GLC and WTC's Answer, Cricket received payments from InComm for routing the 8YY Traffic to InComm.

112. U.S. South/InComm – NuLeef/IBDC. InComm/U.S. South then routed Cricket's 8YY traffic to NuLeef/IBDC. Pursuant to an agreement InComm/U.S. South had with NuLeef/IBDC, InComm/U.S. South received payments from NuLeef/IBDC for the Cricket 8YY traffic that was routed to NuLeef/IBDC.

113. NuLeef/IBDC-GLC. IBDC then routed the Cricket 8YY traffic to LEC-MI's end office switch in Southfield, and in turn, LECMI routed the Cricket traffic to GLC's access tandem. Pursuant to the agreement IBDC had with ComLink, on behalf of GLC, IBDC was paid by ComLink a per minute of use rate for switched access charges billed to and collected from certain IXCs for toll free 8YY traffic delivered to IXCs for termination. Pursuant to the agreement LEC-MI had with GLC, LEC-MI received certain payments from GLC for 8YY traffic that was sent from LEC-MI's end office switch in Southfield, Michigan to GLC's access

tandem.

#### **H. Revenue Sharing Agreements**

114. GLC. ComLink, on behalf of GLC, had an access revenue sharing agreement with IBDC that was entered into on January 13, 2010. This agreement provided for the payment of compensation to IBDC based upon a per minute use rate for switched access charges billed to and collected from certain IXC's for toll free 8YY traffic delivered to IXC's for termination.

115. This agreement with IBDC remained in effect until December 31, 2013, when it was terminated.

116. GLC also had an access revenue sharing arrangement with LEC-MI, under which LEC-MI received certain payments from GLC for switched access traffic that was sent between LEC-MI's end office switch in Southfield, Michigan and GLC's access tandem.

117. GLC cancelled payment for all traffic under the agreement with LEC-MI as of January 1, 2012.

#### **I. Additional Facts Relating to GLC's and WTC's Affirmative Defenses**

118. AT&T has withheld payment of certain of the access charges WTC billed, on behalf of itself and GLC.

119. WTC's invoices to AT&T are dated and normally sent out on or just before the first day of every month.

120. GLC did not control how Cricket sent its 8YY traffic.

121. GLC did not control how any traffic aggregator or intermediate carrier sent its traffic.

122. The applicable rate pages in NECA Tariff No. 5 were filed in accordance with the requirements of 47 U.S.C. § 204(a)(3), were never suspended or investigated, and went into effect.

## II. DISPUTED FACTS

AT&T Facts	GLC and WTC Facts
GLC is a local exchange carrier and a competitive local exchange carrier.	GLC is a competitive access provider. GLC is not a “CLEC” as that term is defined in 47 C.F.R. § 61.26(a)(1).
GLC provides services used to send traffic to or from an end user.	GLC has never served, <i>i.e.</i> , terminated or originated switched access traffic to or from, end users.
For the 8YY traffic at issue, the calls at issue are handed off from the originating wireless carrier to a traffic aggregator. The traffic aggregator then hands the call off to one or more intermediate providers. An intermediate service provider then hands the call off to LEC-MI’s end office switch.	GLC and WTC are without knowledge as to how any particular call is routed from the originating wireless carrier, <i>i.e.</i> , Cricket in this case, to LEC-MI. However, GLC and WTC understand that Michigan Network Services originally agreed to process the traffic from IBDC and then route the wireless 8YY traffic to LEC-MI’s end office switch in Southfield, Michigan.
The traffic is routed through LEC-MI’s network, in part, because GLC’s network was not equipped to handle the traffic properly.	The arrangements that Cricket had with other carriers prompted the traffic to be routed through LEC-MI’s network. GLC only handles switched access traffic to and from end office switches of LECs. Stated differently, any switched access traffic that GLC switches at its access tandem needs to be routed to or from a LEC’s end office switch, since GLC does not serve ( <i>i.e.</i> , terminate traffic to or originate switched access traffic from) any end user.
GLC requested that LEC-MI establish an IP point of interconnection, provide the necessary protocol conversation for the traffic, and then deliver the traffic from LEC-MI’s VOIP switch located in Southfield to one of its interconnection points with GLC (either Flint or Lansing).	GLC did not request that LEC-MI establish an IP point of interconnection for receiving the traffic. GLC did assist LEC-MI, MNS, and IBDC in establishing interconnectivity.
In response to GLC’s request, LEC-MI	GLC and Michigan Network Services jointly



AT&T Facts	GLC and WTC Facts
created a new trunk group, known as Trunk Group 331, for purposes of handling this 8YY traffic for an on behalf of GLC.	decided to establish Trunk Group 331 for handling 8YY traffic that MNS received from IBDC.
GLC then assigned several unique IP addresses to Trunk Group 331.	GLC never assigned its IP addresses to LEC-MI for the 8YY traffic. Rather, Michigan Network Services assigned the IP addresses.
Pursuant to an oral agreement between LEC-MI and GLC, LEC-MI converts any traffic sent to those IP addresses from IP to TDM format, and then carries that traffic from Southfield to one of its interconnection points with GLC.	GLC did not have a verbal agreement with LEC-MI concerning the conversion of traffic formats. GLC had a Network Operating Agreement (“NOA”) with LEC-MI that required GLC to provide tandem switched transport facilities between LEC-MI’s Southfield end office switch and GLC’s Westphalia tandem switch and tandem switching services.
In exchange for LEC-MI’s services, GLC agreed to pay LEC-MI a lease payment.	GLC did not agree to pay LEC-MI a “lease payment” under the Service Agreement. See further discussion in paragraph 86 of the confidential version of the Summersett Declaration attached to GLC and WTC’s Answer. That discussion is not included here so as to avoid filing a confidential version of this Joint Statement.
The delivery of the aggregated 8YY traffic to LEC-MI is a result of the arrangements between LEC-MI and GLC.	The delivery of the 8YY traffic to LEC-MI is a result of the arrangements that Cricket had with another carrier.
LEC-MI carried the aggregated 8YY traffic over LEC-MI facilities from Southfield to Flint, Michigan, and handed it off to GLC there. GLC then carried the traffic from Flint to Westphalia, Michigan. About 44 percent of the 83 miles of transport is provided by LEC-MI. GLC provided about 56 percent of the 83 miles of transport.	GLC provided transport facilities between the LEC-MI end office switch in Southfield, Michigan and GLC tandem switch at all relevant times since 2003. A redundant route was established in 2009 that created another access point between LEC-MI and GLC in Flint, Michigan, and some of the traffic flowing between LEC-MI’s end office switch in Southfield, Michigan and GLC’s tandem switch traversed this redundant route after it became operational. However, the original transport route provided by GLC remains in place and was still being used after the

AT&T Facts	GLC and WTC Facts
	redundant route was established. <i>See also</i> Additional GLC and WTC Disputed Facts Nos. 8, 9, 10, 11, 12, and 13, <i>infra</i> .
<p>Defendants' 83 miles of transport charged are billed either by WTC or GLC, but LEC-MI is actually transporting the calls from Southfield, to Flint, Michigan. Defendants are billing AT&amp;T for transport at high NECA-based rates for services that are provided by LEC-MI.</p>	<p>Even where traffic traverses a redundant route between LEC-MI's end office in Southfield, Michigan and GLC's tandem switch in Westphalia, Michigan, GLC is the provider of the transport pursuant to the agreed-upon billing percentages established by GLC, WTC and LEC-MI pursuant to the NOA and Service Agreement, GLC Tariff, NECA Tariff No. 4, NECA Tariff No. 4 Handbook and User Manual, and the Multiple Exchange Carrier Access Billing Guidelines. LEC-MI has always had a zero percent on the airline mile route between LEC-MI's end office in Southfield, Michigan and GLC's tandem switch in Westphalia, Michigan. In addition, LECMI has never requested that its percentage be changed. <i>See also</i> Additional GLC and WTC Disputed Facts Nos. 14, 15, 16, 17, and 18, <i>infra</i>.</p>
<p>AT&amp;T Michigan is the ILEC that would be providing services to the extent it was not being provided by LEC-MI and/or GLC.</p>	<p>AT&amp;T Michigan is not the competing ILEC for GLC's services and all 8YY traffic at issue in this case. The competing ILEC is either WTC or the ILEC in the service area where the wireless 8YY calls originated; however, GLC does not know where the wireless 8YY calls originated because GLC, in the normal course of business, does not have access to that information.</p>

AT&T Facts	GLC and WTC Facts
GLC's tariff does not specify which NECA rate band applies for its tandem switched transport, tandem switching, and tandem switched termination services.	GLC's tariff specifies that the highest rate band in the NECA Tariff No. 5 applies. GLC's tariff states that its rates were set as if GLC were a rural CLEC and that rates are applied as premium rates. Among other reasons, the GLC Tariff Section 6.4 had specified that GLC's rates were set <i>as if</i> GLC were a "rural CLEC", and as such, the tariff indicates that GLC will assess the NECA Tariff No. 5 rates for these services in accordance with 61.26(e), which permits the highest rate band, i.e., Rate Band 2, to be assessed for these services. <i>See also</i> Additional GLC and WTC Disputed Facts Nos. 23 and 24, <i>infra</i> .
WTC billed for services it did not provide.	WTC did not bill for services it did not provide. WTC corrected a billing error, which was inadvertent, in May 2013 to bill services provided by GLC under GLC's OCN rather than WTC's OCN. <i>See also</i> Additional GLC and WTC Disputed Facts Nos. 20, 21, and 22, <i>infra</i> .
	GLC did not control how the 8YY traffic was routed to AT&T. <i>See also</i> Additional GLC and WTC Disputed Facts Nos. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, <i>infra</i> .
	GLC made investments in and grew its network to accommodate AT&T's 8YY traffic.
	AT&T's notices of dispute did not specify which amounts AT&T was disputing and did not state the basis of AT&T's dispute with specificity. As a result, AT&T's disputes did not conform with WTC's billing dispute provisions in NECA Tariff No. 5. <i>See also</i> Additional GLC and WTC Disputed Facts Nos. 40, 41, 42, 43, 44, and 45, <i>infra</i> .

**A. Additional AT&T Disputed Facts**

1. Section 2.4.7(B)(3)(b) of GLC's tariff, which is entitled "Determination of Meet

Point Billed Local Transport, and Channel Mileage Charges," provides as follows:

Each Telephone Company's portion of the Local Transport, and Channel Mileage will be developed as follows:

(a) Determine the appropriate Local Transport or Channel Mileage by computing the number of airline miles between the Telephone Company premises (end office, access tandem or serving wire centers for Switched Access or serving wire centers for Special Access) the V & H method set forth respectively in 6.4.6 and 7.2.5 following.

(b) Determine the billing percentage (B P), as set forth in NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. (NECA) TARIFF F.C.C. NO. 4, which represents the portion of the service provided by each Telephone Company.

(c) For Feature Group D Tandem Switched Transport,

multiply the number of originating and terminating access minutes of use routed over the facility times the number of airline miles, as set forth in (a) preceding, times the BP for each Telephone Company, as set forth in (b) preceding, times the Tandem Switched Facility rate;

multiply the Tandem Switched Termination rate times the number of originating and terminating access minutes routed over the facility.

When a tandem office is provided by the Company, multiply the Tandem Switching rate times the number of originating and terminating access minutes that are switched at the tandem

The Tandem Switched Termination rate is applied as set forth in 6.1.3(A) following. The Switched Access Nonrecurring Charges are applied as set forth in 6.4.1(B) following. (Note: The BP is not applied to the Switched Access Tandem Switched Termination rate or any Nonrecurring Charge.)

GLC Ex. 6, GLC Tariff F.C.C. No. 20, § 2.4.7, Original Page 2-51. With an exception not relevant here, Section 2.4.7(B)(3)(b) of WTC's tariff contains the same language. GLC Ex. 31, NECA Tariff F.C.C. No. 5, § 2.4.7(B)(3)(b), 5th Revised Page 2-51.

2. Section 5.3.2 of GLC's tariff, which is entitled "Meet Point Billing Ordering,"

provides as follows:

Each Telephone Company will provide its portion of the Access Service it owns, or leases, to an interconnection point(s) with the other Telephone Company(s).

Billing Percentages will be determined by the Telephone Companies involved in providing the Access Service and listed in NECA TARIFF F.C.C. NO. 4. Each Telephone Company will bill the customer for its portion of the service as set forth in 2.4.7.

GLC Ex. 6, GLC Tariff F.C.C. No. 20, § 5.3.2, Original Page 5-15.

3. Section 5.3.2 of the NECA tariff, entitled “Meet Point Billing Ordering,” provides:

Each Telephone Company will provide its portion of the Access Service within its operating territory to an interconnection point(s) with the other Telephone Company(s). Billing Percentages will be determined by the Telephone Companies involved in providing the Access Service and listed in NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. TARIFF F.C.C. NO. 4. Each Telephone Company will bill the customer for its portion of the service as set forth in 2.4.7. All other appropriate charges in each Telephone Company tariff are applicable.

GLC Ex. 31, NECA Tariff F.C.C. No. 5, § 5.3.2, 4<sup>th</sup> Revised Page 5-15.

4. By billing AT&T for mileage provided in part by LEC-MI (*i.e.*, the approximately 44% of the route carried over LEC-MI’s facilities), the Defendants violated the provisions of their tariffs requiring them to bill transport mileage by “[d]etermin[ing] the *appropriate* Local Transport or Channel Mileage by computing the number of airline miles *between the Telephone Company premises* (end office, access tandem or serving wire centers for Switched Access or serving wire centers for Special Access) the V & H method set forth respectively in 6.4.6 and 7.2.5 following.” GLC Ex. 6, GLC Tariff F.C.C. No. 20, § 2.4.7, Original Page 2-51; GLC Ex. 31, NECA Tariff F.C.C. No. 5, § 2.4.7(B)(3)(b), 5th Revised Page 2-51 (emphases added).

5. The Defendants billed in their own names, using their own tariffed rates, for the portion of the route between Southfield and Flint, Michigan, even though that route was provided by LECMI, and thus the transport mileage was neither “appropriate” nor “between the [GLC or WTC] premises.”

6. By billing AT&T for mileage provided in part by LEC-MI (i.e., the approximately 44% of the route carried over LEC-MI's facilities), GLC violated the provision in its tariff providing that "[e]ach Telephone Company *will provide its portion of the Access Service it owns, or leases*, to an interconnection point(s) with the other Telephone Company(s)." GLC Ex. 6, GLC Tariff F.C.C. No. 20, § 5.3.2, Original Page 5-15 (emphasis added); *see also* GLC Ex. 31, NECA Tariff F.C.C. No. 5, § 5.3.2, 4<sup>th</sup> Revised Page 5-15 (Each Telephone Company will provide its portion of the Access Service within its operating territory to an interconnection point(s) with the other Telephone Company(s)").

7. Contrary to this tariff provision, GLC billed AT&T for a portion of the access services it does not own or lease, and that instead is owned or leased by LECMI.

8. According to AT&T's records, the database dip on the 8YY calls at issue was billed by LEC-MI through June 2013, and beginning in July 2013, this dip charge was billed by WTC. Habiak Decl. ¶ 16

9. Because of the billing error made by WTC prior to May, 2013, the bills issued by WTC made it appear as though the services were being provided by an incumbent LEC (WTC), instead of a competitive LEC (GLC).

10. On the wireless-originated 8YY calls routed to AT&T, WTC, on behalf of LEC-MI, billed AT&T switched access charges associated with end office switching until about 2014. These charges had the effect of disguising the fact that the billed traffic was not being originated by actual end users of LEC-MI, but was associated with wireless-originated traffic. AT&T never knowingly requested the Defendants that AT&T be billed end office switching charges on any wireless-originated traffic. Prior to 2013, GLC did not disclose to AT&T that it was billing

AT&T for traffic not originated by end users of LEC-MI and that the increase in volumes were attributable to wireless-originated traffic.

11. AT&T obtained no benefits from the Defendants' routing of the aggregated 8YY wireless traffic over 80 miles, at a rate that was about 350 times the prevailing incumbent rate.

12. After AT&T began withholding payments to the Defendants in March, 2013, the Defendants did not seek to invoke provisions in their tariffs that allowed them to refuse additional applications for services from AT&T or discontinue the provision of service to AT&T.

**B. Additional GLC and WTC Disputed Facts**

1. In accordance with the GLC Tariff, GLC provides interstate switched and special access services. In providing switched access services, GLC does not serve any end users.

2. The ASRs submitted by AT&T Corp. to GLC after LEC-MI began homing on GLC's tandem switch indicate that the services in the ASRs covered tandem switching and transport services to and from the LEC-MI end office switch in Southfield, Michigan.

3. The second category of traffic is 8YY toll free traffic that originated from customers of AT&T's wireless affiliate Cricket was delivered via LEC-MI's end office switch in Southfield, Michigan and subsequently routed over GLC's transport network to GLC's access tandem in Westphalia, Michigan on Trunk Group 331

4. On the wireless-originated 8YY calls routed to AT&T, WTC, on behalf of LEC-MI, billed AT&T, at AT&T's insistence, switched access charges associated with end office switching charges until about 2014.

5. AT&T's claim in its Formal Complaint that GLC's tariff is vague and ambiguous as to the tandem switched termination rate was not raised in AT&T's Informal Complaint.

6. By using GLC's tandem switching and transport services, AT&T has received various technical and financial benefits, including the avoidance of expenses it would have otherwise incurred to connect and continuously update and maintain outside plant facilities associated with such connectivity to most of these small LECs.

7. AT&T used and paid for services provided by GLC, including those associated with the LEC-MI transport route, for approximately ten years without having raised any of the disputes at issue under the Formal Complaint.

8. In provisioning connectivity from LEC-MI's end office switch in Southfield, Michigan to GLC's tandem switch, GLC provided 82.17 airline miles of transport to LATA 344 and WTC provided .83 airline miles of transport within LATA 344 to GLC's access tandem in Westphalia, where GLC provided access tandem switching.

9. GLC continues to this day to have transport facilities to LECMI's end office switch in Southfield, Michigan, that were provisioned when the route was established back in 2003.

10. When the connection at Flint was first established in 2009, it was not designed to handle traffic going to and from GLC's access tandem. GLC's original transport route to LEC-MI's end office switch in Southfield, Michigan was used to route such traffic.

11. Sometime after the connection at Flint was established, LEC-MI elected to use that connection to also send certain traffic to GLC's access tandem. The alternative route through Flint was provisioned as an accommodation to LEC-MI for the purpose of providing a redundant and alternative route to improve route diversity and assurance of improved and guaranteed traffic delivery on LECMI's network.



12. Both routes provide 100% diversity and redundancy to each other. In case one route goes down, the other route can be used to send traffic to and from GLC's access tandem resulting in higher reliability for all users including AT&T. This supplemental physical diversity assured the continued and uninterrupted delivery of traffic to the GLC access tandem from LEC-MI.

13. AT&T does not get charged for this additional redundancy and diversity.

14. GLC's and WTC's tariffs require that transport mileage charges associated with a transport route be assessed based on the billing percentage as set forth in NECA Tariff F.C.C. No. 4. GLC Exhibit 31, NECA Tariff F.C.C. No. 5, § 2.4.7(B)(3)(b), 5th Revised Page 2-51 and GLC Exhibit 6, GLC Tariff F.C.C. No. 20, § 2.4.7, Original Page 2-51 state that the billing percentage (BP) is determined "as set forth in NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. Tariff F.C.C. No. 4, which represents the portion of the service provided by each telephone company." GLC Exhibit 31, NECA Tariff F.C.C. No. 5, § 5.3.2, 4<sup>th</sup> Revised Page 5-15 and GLC Exhibit 6, GLC Tariff F.C.C. No. 20, § 5.3.2, Original Page 5-15 states that "Billing Percentages will be determined by the Telephone Companies involved in providing the Access Service and listed in N[ATIONAL] E[XCHANGE] C[ARRIER] A[SSOCIATION, INC.] TARIFF F.C.C. NO. 4."<sup>2</sup>

15. For the transport route between GLC's access tandem and LEC-MI's end office switch in Southfield, Michigan, which is 83 airline miles, the NECA Tariff F.C.C. No. 4 states that GLC (OCN 5164) bills for 99 percent of the transport and WTC (OCN 0735) bills for 1

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<sup>2</sup> In light of the language quoted and/or cited in paragraphs 14 -17 that AT&T disputes, GLC and WTC dispute the implication and relevance of the language relied on by AT&T in Additional AT&T Disputed Facts set forth in Section II.A. paragraphs 1-7.

percent of the transport, and LECMI (OCN 2550) bills for 0 percent of the route. *See* GLC Ex. 23, NECA Tariff F.C.C. No. 4, 300<sup>th</sup> Revised Section 85 and 268<sup>th</sup> Revised Section 85.

16. LECMI has always had a billing percentage of zero for the transport mileage on the route between LEC-MI's end office switch in Southfield, Michigan and GLC's tandem switch. The transport route between LECMI and GLC from Southfield to Westphalia was established in 2003, and is documented in the Network Operating Agreement ("NOA") and Service Agreement between LECMI and GLC, which are attached to GLC and WTC's Answer as GLC Exhibits 19 and 20. *See* GLC Ex. 19, GLC Network Operating Agreement with LECMI, at Paragraph c. at page 1 ("*GLC shall provide tandem switched transport facilities between LECMI's Access Point(s), and GLC's tandem switching location.*") (emphasis added); GLC Exhibit 20 (identifying the "Serving Office" as LECMI's Southfield Michigan location).

17. LECMI agreed to the billing percentage of zero percent on the route. This agreement is consistent with NECA Tariff No. 4 Handbook and User Manual along with the Multiple Exchange Carrier Access Billing Guidelines, which the NOA and GLC's and WTC's tariffs expressly follow for bill rendering. *See* GLC Ex. 25, NECA Tariff F.C.C. No. 4 Handbook, April 2009, at 10 (billing "percentages must be mutually agreed to by the carriers involved and then reported to NECA for inclusion in NECA Tariff F.C.C. No. 4 for the proper billing authority.") at 18 (each company has to concur with the record associated with the billing percentage "before that record can become effective."); GLC Ex. 26, NECA Tariff No. 4 User Manual, at pages 1-3 (stating that the billing percent information contains "agreements" between two or more carriers involved "in the joint provisioning of access service"), 6A-1 (stating that "companies must concur before the Billing Percent[age] Agreement can become effective in the tariff"), 6B-1 (same); GLC Ex. 24, MECAB Guidelines, September 2010, Issue 10, at §§ 3.2 &

3.3, page 3-1 (stating that “[f]or each pair of locations, the involved providers must agree in writing to their respective B[illing] P[ercentages]” and that “BPs may be developed on any *mutually agreeable basis*”) (italics in original); GLC Ex. 19, GLC Network Operating Agreement with LECMI, para. d pages 1-2 (“switched access will be billed in accordance with Multiple Exchange Carrier Billing (“MECAB”) guidelines [and that] ....[c]hanges ...may be made only by the written consent of both GLC and LECMI”). See Ex. 31, NECA Tariff F.C.C. No. 5, § 2.4.7(B), Original Page 2-45 (specifying that billing will be in accordance with MECAB Guidelines); GLC Ex. 6, GLC Tariff F.C.C. No. 20, § 2.4.7(B), Original Page 2-45 (stating same).

18. LEC-MI never requested a change in the billing percentage.

19. When 8YY traffic is routed to GLC’s access tandem, GLC performs an 8YY database dip to identify the long distance carrier providing the 8YY service on that particular call, and the GLC tandem switch then routes the call to that carrier.

20. Between May 2013 and the date of AT&T’s Informal Complaint, AT&T had never raised any dispute with WTC concerning the technical billing correction.

21. In response to the Informal Complaint, WTC indicated that at AT&T’s request, WTC would re-issue invoices that have the same total amount invoiced but with the corrections noted; however, AT&T never made such a request.

22. GLC provided the 82.17 miles of transport that crossed Local Access Transport Area (“LATA”) boundaries, which its tariff permits it to do, and also provided the tandem switching and tandem switched termination. WTC never provided transport services outside of its LATA, which is LATA 344.

23. In accordance with the GLC Tariff, WTC has billed AT&T, on GLC's behalf, using Rate Band 2 for tandem switched transport service, which includes tandem switched facility, tandem switched termination, and tandem switching.

24. Prior to the filing of AT&T's Formal Complaint, AT&T never disputed the application of Rate Band 2 rates in NECA Tariff No. 5 for GLC's Tandem Switched Termination rate.

25. Cricket's 8YY traffic could have been routed directly to AT&T or routed on different paths that did not go through GLC's access tandem.

26. LEC-MI's Southfield end office switch in Southfield, Michigan has direct trunks to AT&T Michigan's tandem switch in West Bloomfield, Michigan and long distance traffic is sometimes sent over these trunks, so AT&T's traffic could have been sent over those trunks.

27. AT&T was free to not use GLC's competitive tandem switching services.

28. AT&T could have cancelled its use of GLC's competitive tandem switching services at any time.

29. AT&T never obtained direct trunking to the LEC-MI end office switch in Southfield, Michigan, even though the cost would have been only approximately one (1) percent of GLC and WTC's total switched access billing.

30. AT&T never arranged for its ILEC affiliate, AT&T Michigan, to demand that LEC-MI send all of AT&T's traffic over LEC-MI's connection to AT&T Michigan's access tandem.

31. AT&T never required LEC-MI to route (or otherwise arranged for LEC-MI to route) AT&T's traffic to AT&T Michigan.

32. AT&T did not seek to obtain a different interconnection arrangement with LEC-MI.

33. In March 2014, AT&T instructed Cricket to re-route its traffic so that it would no longer be delivered to AT&T via GLC's tandem switch. Prior to that time, AT&T never made such a request to Cricket nor did AT&T file a complaint against Cricket for how it was routing its 8YY calls.

34. AT&T never requested Cricket to route its 8YY directly to AT&T.

35. AT&T did not request to negotiate an individual-case-basis agreement or off-tariff agreement with GLC for the traffic being routed from LEC-MI's end office switch in Southfield, Michigan to GLC's access tandem.

36. GLC did not control how LEC-MI sent its traffic.

37. AT&T charges its 8YY customers a default rate of \$0.99 per minute of use.

38. GLC is no longer engaged in "access revenue sharing" with another entity as that term is used, defined, and applied by the Commission in 47 C.F.R. 61.3(bbb).

39. WTC has never had an "access revenue sharing agreement" with another entity as that term is used, defined, and applied by the Commission in 47 C.F.R. 61.3(bbb).

40. AT&T did not inform GLC and WTC of the specific amounts being withheld in accordance with the billing dispute provisions in NECA Tariff No. 5.

41. The bills issued by WTC to AT&T are subject to the limitations period in 47 U.S.C. § 415(b).

42. AT&T did not dispute, on a more formal basis, any of GLC's or WTC's charges until March 20, 2013.

43. After AT&T began to dispute GLC's and WTC's charges, AT&T continued to use GLC's and WTC's services.

44. AT&T withheld unspecified amounts WTC legitimately billed and in doing so, AT&T did not comply with WTC's billing dispute provisions in its Tariff. AT&T continued to use GLC's tandem switching services to exchange traffic with LEC-MI after the traffic volumes increased as shown in Exhibit 2 attached to the Formal Complaint.

45. Prior to 2013, GLC had no obligation to disclose to AT&T that it was billing AT&T for traffic not originated by end users of LEC-MI and that the increase in volumes were attributable to wireless-originated traffic. Moreover, AT&T could have easily looked at call signaling information or the Operating Company Number ("OCN") of the call detail records ("CDRs") to identify the originating wireless provider(s) of the call and could have taken appropriate actions with the identified wireless provider(s).

46. Prior to 2013, AT&T did not inquire into the nature of the traffic, who originated it, or about the increase in volumes that were attributable to wireless-originated traffic. WTC billed AT&T for end office switching charges for this 8YY traffic during this time period at AT&T's insistence.

### **III. KEY LEGAL ISSUES**

#### **A. AT&T's KEY LEGAL ISSUES**

1. Whether GLC's tariff, and charges for to AT&T for access services, violate the rate benchmarks in 47 C.F.R. §§ 61.26(a), (b) or (f) and 47 U.S.C. § 201(b).

2. Whether the Defendants engaged in "access stimulation" as defined in the Commission's rules, and were required to file revised tariffs that complied with the Commission's rules applicable to carriers engaged in access stimulation.

3. Whether WTC misbilled AT&T for access services actually provided by GLC, and is liable for overcharges under 47 U.S.C. § 203, using the benchmark rates in 47 C.F.R. §§ 61.26(a), (b), (f), or (g).

4. Whether the Defendants misbilled AT&T for access services actually provided by LEC-MI, and are liable for overcharges using LEC-MI's rates.

5. Whether, on the wireless aggregated 8YY traffic at issue in the Formal Complaint, Defendants could properly bill AT&T for 83 miles of purportedly "competitive" tandem services, which resulted in a charge about 350 times the prevailing rate.

6. Whether Defendants' affirmative defenses that relate to issues of liability are without merit.

7. Whether AT&T may file a supplemental complaint for damages against the Defendants, based on their overcharges in violation of 47 U.S.C § 203 and GLC's unjust and unreasonable rates in violation of 47 U.S.C. § 201(b).

## **B. GLC AND WTC's KEY LEGAL ISSUES**

1. Whether GLC is not a "CLEC," as that term is defined in Section 61.26(a)(1) of the Commission's rules and orders, subject to the rate benchmarks established in Section 61.26 (b) and (c) of the Commission's rules.

2. If GLC is a "CLEC," as that term is defined in Section 61.26(a)(1) of the Commission's rules and orders, whether GLC is a "rural CLEC" as that term is defined in Section 61.26(a)(6) of the Commission's rules.

3. Whether GLC is not a "CLEC," as that term is defined in Section 61.26(a)(1) of the Commission's rules and orders, subject to access stimulation rules established in Section 61.26(g) of the Commission's rules.

4. Whether the access stimulation rules established in Sections 61.26(g) and 61.3(bbb) of the Commission's rules and orders, do not apply to 8YY traffic.

5. Whether WTC has not engaged in access stimulation as defined in Section 61.3(bbb) of the Commission's rules and orders, since WTC has never had a revenue sharing agreement.

6. Whether GLC is not currently engaged in access stimulation as defined in Section 61.3(bbb) of the Commission's rules, since GLC does not have any revenue sharing agreements.

7. Whether WTC, as the billing agent, billed AT&T for services it did not receive from WTC and GLC.

8. Whether WTC and GLC properly billed AT&T according to the tariffed billing percentages established for the transport route between LEC-MI's Southfield end office switch in Southfield, Michigan and GLC's tandem switch.

9. Whether GLC and WTC did not engage in "mileage pumping" as that term was defined in *AT&T v. Alpine Communications, LLC*, 27 FCC Rcd. 11511 (2012).

10. Whether GLC's and WTC's transport routing arrangements are just and reasonable.

11. Whether AT&T's claims and/or requests for relief are barred by the affirmative defenses raised by GLC and WTC.

#### **IV. JOINT STATEMENT PURSUANT TO 47 C.F.R. §§ 1.733(b)(1)(i)-(iv).**

Along with their Joint Statement of Stipulated Facts, Disputed Facts, and Key Legal Issues, the Parties hereby provide the following Joint Statement in accordance with 47 C.F.R. §§ 1.733(b)(1)(i)-(iv).



Counsel for the Parties met and conferred by telephone on November 21, 2014 to discuss the Joint Statement. Counsel for GLC and WTC provided a proposed Joint Statement in draft form later that day. On November 24, 2014, Counsel for the Parties discussed by telephone the Joint Statement and AT&T provided a written response to GLC and WTC's November 21, 2014 proposed Joint Statement. On November 25, 2014, Counsel for the Parties discussed by telephone the Joint Statement. On November 26, 2014, Counsel for GLC and WTC provided a written response to AT&T's November 24, 2014 revisions to the Joint Statement and discussed the by telephone the Joint Statement. On November 29, 2014, Counsel for AT&T provided a written response to GLC and WTC's November 26, 2014 revisions to the Joint Statement. On November 30, 2014, Counsel for GLC and WTC provided a written response to AT&T's November 29, 2014 revisions to the Joint Statement. On December 1, 2014, Counsel for the Parties discussed by telephone the Joint Statement and exchanged drafts of the Joint Statement for today's filing.

**A. Settlement Prospects**

Recently, the parties have been engaged in additional settlement discussions. However, no settlement agreement has been reached, either in principle or in writing.

**B. Issues In Dispute**

*AT&T's Position.* AT&T's position is that the issues in dispute include Counts I-IV of AT&T's Formal Complaint, including those set forth in AT&T's Key Legal Issues, *supra*, and in AT&T's Reply Legal Analysis in Support of its Formal Complaint. As to the Defendants' Key Legal issues, *supra*, AT&T agrees that Issues 1 to 7 are legal issues raised by the Defendants' Answer and Legal Analysis, in response to Counts I-III of AT&T's Complaint. As to Issues 8 to 10, AT&T believes the Issues in Dispute relating to Counts III and IV of its Complaint are more

accurately reflected in AT&T's Key Legal Issues 4 and 5, *supra*, in AT&T's Reply Legal Analysis (Part IV), and in its Formal Complaint (Part VI and Count IV).

As to the Defendants' affirmative defenses, AT&T's position is that, while the Commission could reject all of them on the merits, there are certain affirmative defenses – particularly the Third, Fourth, Ninth, Tenth, and Eleventh – that concern the potential amount of AT&T's damages, rather than the Defendants' liability under the Communications Act. Accordingly, although the Commission should address the other affirmative defenses, AT&T's position is that the Disputed Issues do not include at least these five Affirmative Defenses.

*GLC's and WTC's Position.* GLC and WTC's position is that the issues in dispute include Counts I-IV of AT&T's Formal Complaint, including those set forth in GLC and WTC's Key Legal Issues, *supra*, and GLC and WTC's Answer and Legal Analysis in Support of their Answer, which, among other things, includes GLC's and WTC's affirmative defenses.

As to the AT&T's Key Legal issues 1 and 2, *supra*, while they are legal issues that pertain to Counts I and II, respectively, of AT&T's Formal Complaint, the Issues in Dispute that relate to Count I of AT&T's Formal Complaint are more accurately reflected in GLC and WTC's Key Legal Issues 1 and 2, *supra*, and in GLC and WTC's Legal Analysis (Part II). In addition, the Issues in Dispute that relate to Count II of AT&T's Formal Complaint are more accurately reflected in GLC and WTC's Key Legal Issues 3, 4, 5, and 6, *supra*, and in GLC and WTC's Legal Analysis (Part III).

As to AT&T's Key Legal Issues 3, 4, and 7, while these issues relate to Count III of AT&T's Formal Complaint, the Issues in Dispute that relate to Count III of AT&T's Formal Complaint are more accurately reflected in GLC and WTC's Key Legal Issues 7 and 8, *supra*, in GLC and WTC's Legal Analysis (Part IV). Moreover, AT&T now improperly attempts to

transform the issues case into a case about overcharges when AT&T only sought in its Formal Complaint the type of damages that 47 U.S.C. § 415(b) addresses. The Commission should reject AT&T's attempts, through its characterization of the Issues in Dispute, to transform this case into an overcharge case associated with 47 U.S.C. § 415(c) without filing a new formal complaint that expressly seeks overcharges from WTC pursuant to 47 U.S.C. § 415(c).

As to AT&T's Key Legal Issue 5, while these issues relate to Count IV of AT&T's Formal Complaint, the Issues in Dispute that relate to Count IV of AT&T's Formal Complaint are more accurately reflected in GLC and WTC's Key Legal Issue 9 and 10, *supra*, in GLC and WTC's Legal Analysis (Part V).

As to GLC and WTC's affirmative defenses, the Disputed Issues should include all of the Affirmative Defenses. Contrary to AT&T's proposal under which it seeks to exclude five Affirmative Defenses from consideration during this case, all of the Affirmative Defenses represent disputed issues between the parties and in most cases are relevant to both liability and damages. For example, the Third Affirmative Defense (statute of limitations) is relevant to both damages and liability, because the limitations period restricts the time periods during which any liability for the alleged conduct may be found. And, notably, AT&T has alleged facts concerning alleged conduct occurring well-beyond the two-year limitations period. Further, while the Fourth, Ninth, Tenth and Eleventh Affirmative Defenses may relate specifically to whether AT&T may recover any damages, all such defenses reflect important policy considerations that should also be taken into account for determining whether any liability may be found under a claim asserted by AT&T, given AT&T's own conduct and omissions.

## **C. Discovery**

### **1. Depositions and Document Requests**

The Parties agree that the proceedings before the Michigan PSC have resulted in a factual record that includes, *inter alia*, pre-filed written testimony, exhibits, and a live hearing transcript, including cross-examination. The Parties previously agreed that this material could be used in this proceeding. As a result of the MPSC Proceeding, the Parties believe discovery in the form of depositions and document production is not necessary in this case.

### **2. Interrogatories**

Counsel for the Parties have had a number of discussions about potential agreements on the scope of each Party's Request for Interrogatories. However, at the present time, the Parties have not yet reached any agreements. Accordingly, at this juncture, each Party stands by its Request for Interrogatories and its Objections to the other Party's Request for Interrogatories. The Parties will continue to discuss potential agreements on narrowing the scope of any Request for Interrogatories, and intend to report to the Commission Staff no later than December 5, 2014, as to whether any such agreements have been reached.

### **3. Motion of GLC and WTC for Third Party Discovery.**

*GLC and WTC's Position.* GLC and WTC filed with its Answer a Motion for Third Party Discovery ("Motion") as a result of IBDC and LECMI's failure to provide certification that they have (1) never entered into a revenue sharing agreement with WTC and (2) do not currently have any such agreements with GLC, as required by the Commission. Under the Commission's rules and orders, GLC and WTC are required to provide this information in order to fully respond to the claims raised by the Complainants in this proceeding, including specifically the claims in Count II of the Formal Complaint, which allege that GLC and WTC have engaged in

access stimulation.<sup>3</sup> Since the Motion was filed, IBDC has agreed to provide the required certification. LEC-MI does not dispute any facts that would cause them to be unable to sign the certification in good faith. Instead, LEC-MI has refused to sign the certification unless GLC and WTC agree to certain demands. As a result, GLC and WTC will provide a letter to the Commission that will serve to update the record with IBDC's certification and withdraw IBDC from the Motion for Third Party Discovery. In addition, GLC and WTC will provide further evidence demonstrating that third-party discovery on LEC-MI is needed.

Additionally, while GLC and WTC would prefer that AT&T abandon its pretense of treating the information of its ILEC affiliates as "not within the possession, custody or control of Complainants in this proceeding,"<sup>4</sup> GLC and WTC will consider filing an additional Motion for Third Party Discovery on AT&T's ILEC affiliates in order to obtain the information needed by GLC and WTC in order to provide the Commission with the full and complete record it requires.

*AT&T's Position.* For the reasons stated in its Response, AT&T does not believe any third party discovery is necessary in this proceeding.

#### **D. Schedule for Pleadings and Discovery**

Counsel for the Parties have had a number of discussions about potential agreements on narrowing the length and scope of initial and reply briefs in this case. However, at the present

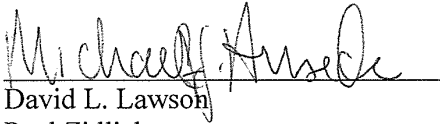
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<sup>3</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*, 26 FCC Rcd. 17663, Report and Order and Further Notice of Proposed Rulemaking, ¶ 699 (2011) ("CAF Order"), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir 2014) ("We decline to require a particular showing, but, at a minimum, an officer of the [accused carrier] must certify that it has not been, or is no longer engaged in access revenue sharing, and the [carrier] must also provide a certification from an officer of the company with whom the [carrier] is alleged to have a revenue sharing agreement(s) associated with access stimulation that that entity has not, or is not currently, engaged in access stimulation and related revenue sharing with the [carrier].")

<sup>4</sup> See AT&T's Objections to First Request for Interrogatories, at 7.

time, the Parties have not yet reached any agreements. The Parties will continue to discuss potential agreements on narrowing the length and scope of briefing, and intend to report to the Commission Staff no later than December 5, 2014, as to whether any such agreements have been reached.

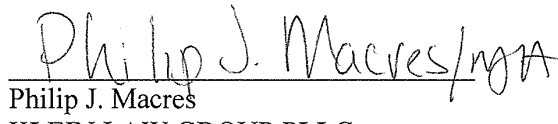
Respectfully submitted,



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*Counsel for Great Lakes Comnet, Inc, and  
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December 1, 2014

# **Exhibit 15**

## **GLC Tariff Excerpts**



## **ACCESS SERVICE**

### **REGULATIONS, RATE, AND CHARGES APPLYING TO THE PROVISION OF ACCESS SERVICES FOR CONNECTION TO INTERSTATE COMMUNICATION FACILITIES FOR INTERSTATE CUSTOMERS RELATED TO THE PROVISION OF SWITCHED AND SPECIAL ACCESS SERVICES**

Access Services are provided by means of wire, fiber optics, radio or any other suitable technology or a combination thereof.

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17DFTC-3 *	Original	17DS-32 *	Original	17ATC-42.2.1 *	Original
17DFTC-4 *	Original	17DS-33 *	Original	17ATC-42.2.2 *	Original
17DFTC-10 *	Original	17DS-34 *	Original	17ATC-42.2.3 *	Original
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17DFTC-10.2.1 *	Original	17DS-37 *	Original	17ATC-43 *	Original
17DFTC-10.3 *	Original	17DS-37.1 *	Original	17ATC-80 *	Original
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17DFTC-11.1 *	Original	17DS-38 *	Original		
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**ACCESS SERVICE**CHECK SHEET

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**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions

Certain terms used herein are defined as follows:

800 Data Base Access Service

The term "800 Data Base Access Service" denotes a service which uses a data base system to identify 800 access customers on a 10-digit basis. For purposes of administering the rules and regulations set forth in this tariff regarding the provision of 800 Database Access, except where otherwise specified, 800 Database Access Service will include the following service access codes 800, 888, 877, 866, 855, 844, 833, and 822.

800 Series

The term "800 series" denotes the service access codes of 800, 888, 877, 866, 855, 844, 833, and 822.

Access Code

The term "Access Code", denotes a uniform access code assigned by the Telephone Company to an individual customer in the form 101XXXX.

Access Minutes

For the purpose of calculating chargeable usage, the term "Access Minutes" denotes customer usage of the Company's facilities in the provision of interstate or foreign service. On the originating end of an interstate or foreign call, usage is measured from the time the originating end user's call is delivered by the Telephone Company to and acknowledged as received by the customer's facilities connected with the originating exchange. On the terminating end of an interstate or foreign call, usage is measured from the time the call is received by the end user in the terminating exchange. Timing of usage at both originating and terminating ends of an interstate or foreign call will terminate when the calling or called party disconnects, whichever event is recognized first in the originating and terminating exchanges, as applicable.

Access Tandem

The term "Access Tandem" denotes a Telephone Company switching system that provides a concentration and distribution function for originating or terminating traffic between end offices and a customer designated premises.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Add/ Drop Multiplexing

The term Add/ Drop Multiplexing denotes a multiplexing function offered in connection with SONET that allows lower level signals to be added or dropped from a high speed optical carrier channel in a wire center. The connection to the add/ drop multiplexer is via a channel to a Central Office Port at a specific digital speed (i.e., DS3, DS1, etc.).

Answer/ Disconnect Supervision

The term "Answer/ Disconnect Supervision" denotes the transmission of the switch trunk equipment supervisory signal (off-hook or on-hook) to the customer's point of termination as an indication that the called party has answered or disconnected.

**ACCESS SERVICE**

2. General Regulations (Cont d)

2.6 Definitions (Cont d)

Attenuation Distortion

The term "Attenuation Distortion" denotes the difference in loss at specified frequencies relative to the loss at 1004 Hz, unless otherwise specified.

Balance (100 Type) Test Line

The term "Balance (100 Type) Test Line" denotes an arrangement in an end office which provides for balance and noise testing.

Bit

The term "Bit" denotes the smallest unit of information in the binary system of notation.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Business Day

The term "Business Day" denotes the times of day that a company is open for business. Generally, in the business community, these are 8:00 or 9:00 a.m. to 5:00 or 6:00 p.m., respectively, with an hour for lunch, Monday through Friday, resulting in a standard forty (40) hour work week. However, Business Day hours for the Telephone Company may vary based on company policy, union contract and location. To determine such hours for an individual company, or company location, that company should be contacted at the address shown under the Issuing Carrier's name listed on Title Pages 2 through 68 preceding.

Busy Hour Minutes of Capacity (BHMC)

The term "Busy Hour Minutes of Capacity (BHMC)" denotes the customer specified maximum amount of Switched Access Service access minutes the customer expects to be handled in an end office switch during any hour in an 8:00 A.M. to 11:00 P.M. period for the Feature Group ordered. This customer specified BHMC quantity is the input data the Telephone Company uses to determine the number of transmission paths for the Feature Group ordered.

Call

The term "Call" denotes a customer attempt for which complete address information (e.g., 0-, 911, or 10 digits) is provided to the serving dial tone office.

Carrier Identification Code (CIC)

The term "Carrier Identification Code (CIC)" denotes a numeric code assigned by the North American Numbering Plan (NANP) Administrator for the provisioning of Feature Group D Switched Access Services. The numeric code is unique to each carrier and is used by the Telephone Company to route switched access traffic to the Customer Designated Premises.

Carrier or Common Carrier

See Interexchange Carrier.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)CCS

The term "CCS" denotes a hundred call seconds, which is a standard unit of traffic load that is equal to 100 seconds of usage or capacity of a group of servers (e.g., trunks).

Central Office

See End Office.

Central Office Maintenance Technician

The term "Central Office Maintenance Technician" denotes a Telephone Company employee who performs installation and/or repair work, including testing and trouble isolation, within the Telephone Company Central Office.

Central Office Prefix

The term "Central Office Prefix" denotes the first three digits (NXX) of the seven digit telephone number assigned to a customer's Telephone Exchange Service when dialed on a local basis.

Channel(s)

The term "Channel(s)" denotes an electrical or photonic, in the case of fiber optic-based transmission systems, communications paths between two or more points of termination.

Channel Service Unit

The term "Channel Service Unit" denotes equipment which performs one or more of the following functions: termination of a digital facility, regeneration of digital signals, detection and/or correction of signal format error, and remote loop back.

Channelize

The term "Channelize" denotes the process of multiplexing-demultiplexing wider bandwidth or higher speed channels into narrower bandwidth or lower speed channels.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Clear Channel Capability

The term "Clear Channel Capability" denotes the ability to transport twenty-four 64 Kbps over a DS1 Mbps High Capacity service via a B8ZS line code format.

C-Message Noise

The term "C-Message Noise" denotes the frequency weighted average noise within an idle voice channel. The frequency weighting, called C-message, is used to simulate the frequency characteristic of the 500-type telephone set and the hearing of the average subscriber.

C-Notched Noise

The term "C-Notched Noise" denotes the C-message frequency weighted noise on a voice channel with a holding tone, which is removed at the measuring end through a notch (very narrow band) filter.

Common Channel Signaling

The term "Common Channel Signaling" (CCS) denotes a high speed packet switched communications network which is separate (out of band) from the public packet switched and message networks. Its purpose is to carry addressed signaling messages for individual trunk circuits and/or database related services between Signaling Points in the CCS network.

Common Line

The term "Common Line" denotes a line, trunk, pay telephone line or other facility provided under the general and/or local exchange service tariffs of the Telephone Company, terminated on a central office switch. A common line-residence is a line or trunk provided under the residence regulations of the general and/or local exchange service tariffs. A common line-business is a line provided under the business regulations of the general and/or local exchange service tariffs.

**ACCESS SERVICE**

2. General Regulations (Cont d)

2.6 Definitions (Cont d)

Communications System

The term "Communications System" denotes channels and other facilities which are capable of communications between terminal equipment provided by other than the Telephone Company.

Customer(s)

The term "Customer(s)" denotes any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or other entity which subscribes to the services offered under this tariff.

Customer Node

The term Customer Node denotes Telephone Company provided equipment located at a customer designated premises that terminate a high speed optical channel.



**ACCESS SERVICE**

2. General Regulations (Cont d)

2.6 Definitions (Cont d)

Customer Designated Premises

The term "Customer Designated Premises" denotes the premises specified by the customer for the provision of Access Service.

Data Transmission (107 Type) Test Line

The term "Data Transmission (107 Type) Test Line" denotes an arrangement which provides for a connection to a signal source which provides test signals for one-way testing of data and voice transmission parameters.

Decibel

The term "Decibel" denotes a unit used to express relative difference in power, usually between acoustic or electric signals, equal to ten (10) times the common logarithm of the ratio of two signal powers.

Detail Billing

The term "Detail Billing" denotes the listing of each message and/or rate element for which charges to a customer are due on a bill prepared by the Telephone Company.

## ACCESS SERVICE

### 2. General Regulations (Cont d)

#### 2.6 Definitions (Cont d)

##### Direct-Trunked Transport

The term "Direct-Trunked Transport" denotes transport from the serving wire center to the end office or from the serving wire center to the access tandem on circuits dedicated to the use of a single customer.

##### Directory Assistance (Interstate)

The term "Directory Assistance" denotes the provision of telephone numbers by a Telephone Company operator when the operator location is accessed by a customer by dialing NPA + 555-1212 or 555-1212.

##### Echo Control

The term "Echo Control" denotes the control of reflected signals in a telephone transmission path.

##### Echo Path Loss

The term "Echo Path Loss" denotes the measure of reflected signal at a 4-wire point of interface without regard to the send and receive Transmission Level Point.

##### Echo Return Loss

The term "Echo Return Loss" denotes a frequency weighted measure of return loss over the middle of the voiceband (approximately 500 to 2500 Hz), where talker echo is most annoying.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)End Office

The term "End Office" denotes a local Telephone Company switching system where Telephone Exchange Service customer station loops are terminated for purposes of interconnection to each other and to trunks. This term includes Remote Switching Modules/ Systems served by a Host Central Office in a different wire center.

End User

The term "End User" means any customer of an interstate or foreign telecommunications service that is not a carrier, except that a carrier other than a telephone company will be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes, and a person or entity that offers telecommunications service exclusively as a reseller will be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller.

**ACCESS SERVICE**

2. General Regulations (Cont d)

2.6 Definitions (Cont d)

Entrance Facility

The term "Entrance Facility" denotes a Switched Access Service dedicated Local Transport facility between the customer's serving wire center and the customer designated premises.

Entry Switch

See First Point of Switching.

Envelope Delay Distortion

The term "Envelope Delay Distortion" denotes a measure of the linearity of the phase versus frequency of a channel.

Equal Level Echo Path Loss

The term "Equal Level Echo Path Loss" (ELEPL) denotes the measure of Echo Path Loss (EPL) at a 4-wire interface which is corrected by the difference between the send and receive Transmission Level Point (TLP). [ELEPL = EPL -TLP (send) + TLP (receive)].

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Exchange

The term "Exchange" denotes a unit generally smaller than a local access and transport area, established by the Telephone Company for the administration of communications service in a specified area which usually embraces a city, town or village and its environs. It consists of one or more central offices together with the associated facilities used in furnishing communications service within that area. The exchange includes any Extended Area Service area that is an enlargement of a Telephone Company's exchange area to include nearby exchanges. One or more designated exchanges comprise a given local access and transport area.

Exit Message

The term "Exit Message" denotes an SS7 message sent to an end office by the Telephone Company's tandem switch to mark the Carrier Connect Time when the Telephone Company's tandem switch sends an Initial Address Message to an interexchange customer.

## ACCESS SERVICE

### 2. General Regulations (Cont d)

#### 2.6 Definitions (Cont d)

##### Expected Measured Loss

The term "Expected Measured Loss" denotes a calculated loss which specifies the end-to-1004-Hz loss on a terminated test connection between two readily accessible manual or remote test points. It is the sum of the inserted connection loss and test access loss including any test pads.

##### Extended Area Service

See Exchange.

##### First Point of Switching

The term "First Point of Switching" denotes the first Telephone Company location at which switching occurs on the terminating path of a call proceeding from the customer designated premises to the terminating end office and, at the same time, the last Telephone Company location at which switching occurs on the originating path of a call proceeding from the originating end office to the customer designated premises.

**ACCESS SERVICE**

2. General Regulations (Cont d)

2.6 Definitions (Cont d)

Frequency Shift

The term "Frequency Shift" denotes the change in the frequency of a tone as it is transmitted over a channel.

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**ACCESS SERVICE**

2. General Regulations (Cont d)

2.6 Definitions (Cont d)

Host Central Office

The term "Host Central Office" denotes an electronic local Telephone Company End Office where Telephone Exchange Service customer station loops are terminated for purposes of interconnection to each other and to trunks. Additionally, this type of End Office contains the central call processing functions which service itself and its Remote Switching Modules/ Systems.

Hub

The term "Hub" denotes a wire center at which bridging or multiplexing functions are performed for customers served out of any wire center.



**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Immediately Available Funds

The term "Immediately Available Funds" denotes a corporate or personal check drawn on a bank account and funds which are available for use by the receiving party on the same day on which they are received and include U. S. Federal Reserve bank wire transfers, U. S. Federal Reserve notes (paper cash), U. S. coins, U. S. Postal Money Orders and New York Certificates of Deposit.

Impulse Noise

The term "Impulse Noise" denotes any momentary occurrence of the noise on a channel over a specified level threshold. It is evaluated by counting the number of occurrences which exceed the threshold.

Individual Case Basis

The term "Individual Case Basis" denotes a condition in which the regulations, if applicable, rates and charges for an offering under the provisions of this tariff are developed based on the circumstances in each case.

Individual Contract Basis

The term Individual Contract Basis denotes a contract negotiated between the Telephone Company and the Customer for Special Access Service or Flat Rated Switched Transport Service that states the rates, minimum period and termination liability for the requested service.

Initial Address Message

The term "Initial Address Message" denotes an SS7 message sent in the forward direction to initiate trunk set up, reserve an outgoing trunk and process the information about that trunk along with other data relating to the routing and handling of the call to the next switch.

Inserted Connection Loss

The term "Inserted Connection Loss" denotes the 1004 Hz power difference (in dB) between the maximum power available at the originating end and the actual power reaching the terminating end through the inserted connection.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Installation and Repair Technician

The term "Installation and Repair Technician" denotes a Telephone Company employee who performs installation and/or repair work, including testing and trouble isolation, outside of the Telephone Company Central Office and generally at the customer designated premises.

Interexchange Carrier (IC) or Interexchange Common Carrier

The terms "Interexchange Carrier" (IC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in interstate or foreign communication by wire or radio, between two or more exchanges.

Intermediate Hub

The term "Intermediate Hub" denotes a wire center at which bridging or multiplexing functions are performed only for customers served by that wire center and wire centers that subtend the hub, as specified in NECA Tariff F.C.C. No. 4.

Intermodulation Distortion

The term "Intermodulation Distortion" denotes a measure of the nonlinearity of a channel. It is measured using four tones, and evaluating the ratios (in dB) of the transmitted composite four-tone signal power to the second-order products of the tones (R2), and the third-order products of the tones (R3).

Interstate Communications

The term "Interstate Communications" denotes both interstate and foreign communications.

Intrastate Communications

The term "Intrastate Communications" denotes any communications within a state subject to oversight by a state regulatory commission as provided by the laws of the state involved.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Legal Holiday

The term "Legal Holiday" denotes days other than Saturday or Sunday for which the Telephone Company is normally closed. These include New Year's Day, Independence Day, Thanksgiving Day, Christmas Day and a day when Washington's Birthday, Memorial Day or Columbus Day is legally observed and other locally observed holidays when the Telephone Company is closed.

Local Access and Transport Area (LATA)

The term "Local Access and Transport Area" denotes a geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes.

Loss Deviation

The term "Loss Deviation" denotes the variation of the actual loss from the designed value.

Major Fraction Thereof

The term "Major Fraction Thereof" denotes any period of time in excess of ½ of the stated amount of time. As an example, in considering a period of 24 hours, a major fraction thereof would be any period of time in excess of 12 hours exactly. Therefore, if a given service is interrupted for a period of thirty-six hours and fifteen minutes, the customer would be given a credit allowance for two twenty-four-hour periods for a total of forty-eight hours.

Message

The term Message denotes a call as defined preceding.

**ACCESS SERVICE**

2. General Regulations (Cont d)

2.6 Definitions (Cont d)

Milliwatt (102 Type) Test Line

The term "Milliwatt (102 Type) Test Line" denotes an arrangement in an end office which provides a 1004 Hz tone at 0 dBm0 for one-way transmission measurements towards the customer's premises from the Telephone Company end office.

North American Numbering Plan

The term "North American Numbering Plan" denotes a three-digit area code (Numbering Plan Area -NPA) and a seven-digit telephone number made up of a three-digit Central Office prefix plus a four-digit station number.

Off-hook

The term "Off-hook" denotes the active condition of Switched Access or a Telephone Exchange Service line.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)On-hook

The term "On-hook" denotes the idle condition of Switched Access or a Telephone Exchange Service line.

Open Circuit Test Line

The term "Open Circuit Test Line" denotes an arrangement in an end office which provides an ac open circuit termination of a trunk or line by means of an inductor of several Henries.

Optical Carrier Channel

The term Optical Carrier Channel denotes the high speed optical communications path for transporting information utilizing a Synchronous Optical Channel platform. The channel is provided at transmission rates of 155.52 Mbps (OC 3) and 622.08 Mbps (OC 12).

Optical Carrier Rate (OC-N)

The term Optical Carrier Rate" denotes the line rate being transmitted on an optical carrier channel. A SONET transmission rate is equivalent to N times the OC 1 line rate of 51.84 Mbps.

Optical Carrier Rate Concatenated

The term Optical Carrier Rate Concatenated denotes the transmission of a combined signal formed by linking together multiple individual signals.

Optical Line Termination

The term Optical Line Termination denotes the network interface on the customer designated premises equipment that provides for an optical handoff.

Originating Direction

The term "Originating Direction" denotes the use of access service for the origination of calls from an End User Premises to an IC Premises.

**ACCESS SERVICE**

2. General Regulations (Cont d)

2.6 Definitions (Cont d)

Pay Telephone

The term "Pay Telephone" denotes a coin or coinless instrument provided in a public or semipublic place where Payphone Service Provider customers can originate telephonic communications and pay the applicable charges by (1) inserting coins into the equipment, or (2) using a credit card, or (3) third party billing the call or (4) calling collect.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Payphone Service Provider

The term Payphone Service Provider denotes an entity that provides pay telephone service, which is the provision of public, semi-public or inmate pay telephone service.

Phase Jitter

The term "Phase Jitter" denotes the unwanted phase variations of a signal.

Point of Termination

The term "Point of Termination" denotes the point of demarcation within a customer-designated premise at which the Telephone Company's responsibility for the provision of Access Service ends.

Premises

The term "Premises" denotes a building or buildings on continuous property (except Railroad Right-of-Way, etc.) not separated by a public highway.

Release Message

The term "Release Message" denotes an SS7 message sent in either direction to indicate that a specific circuit is being released.

Remote Switching Modules/ Systems

The term "Remote Switching Modules/ Systems" denotes small, remotely controlled electronic end office switches which obtain their call processing capability from an electronic Host Central Office. The Remote Switching Modules/ Systems cannot accommodate direct trunks to an IC.

Return Loss

The term "Return Loss" denotes a measure of the similarity between the two impedances at the junction of two transmission paths. The higher the return loss, the higher the similarity.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Service Access Code

The term "Service Access Code" denotes a 3-digit code in the NPA format which is used as the first three digits of a 10-digit address and which is assigned for special network uses. Whereas NPA codes are normally used for identifying specific geographical areas, certain Service Access Codes have been allocated in the North American Numbering Plan to identify generic services or to provide access capability. Examples of Service Access Codes include the 800 and 900 codes.

Service Switching Point (SSP)

The term "Service Switching Point" denotes an end office or tandem which, in addition to having SS7 and SP capabilities, is also equipped to query centralized data bases.

Serving Wire Center

The term "Serving Wire Center" denotes the wire center from which the customer designated premises would normally obtain dial tone.

Shortage of Facilities or Equipment

The term "Shortage of Facilities or Equipment" denotes a condition which occurs when the Telephone Company does not have appropriate cable, switching capacity, bridging or, multiplexing equipment, etc., necessary to provide the Access Service requested by the customer.



**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Short Circuit Test Line

The term "Short Circuit Test Line" denotes an arrangement in an end office which provides for an ac short circuit termination of a trunk or line by means of a capacitor of at least four micro farads.

Signal-to-C-Notched Noise Ratio

The term "Signal-to-C-Notched Noise Ratio" denotes the ratio in dB of a test signal to the corresponding C-Notched Noise.

Signaling Point (SP)

The term "Signaling Point (SP)" denotes an SS7 network interface element capable of originating and terminating SS7 trunk signaling messages.

Signaling Point of Interface (SPOI)

The term "Signaling Point of Interface (SPOI)" denotes the customer designated location where the SS7 signaling information is exchanged between the Telephone Company and the customer.

Signaling Return Loss

The term "Signaling Return Loss" denotes the frequency weighted measure of return loss at the edges of the voiceband (200 to 500 Hz and 2500 to 3200 Hz), where signing (instability) problems are most likely to occur.

Signaling System 7 (SS7)

The term "Signaling System 7 (SS7)" denotes the layered protocol used for standardized common channel signaling in the United States and Puerto Rico.

Signal Transfer Point (STP)

The term "Signal Transfer Point (STP)" denotes a packet switch which provides access to the Telephone Company's SS7 network and performs SS7 message signal routing and screening.

Signal Transfer Point (STP) Port

The term "Signal Transfer Point (STP) Port" denotes the point of termination and interconnection to the STP.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Subtending End Office of an Access Tandem

The term "Subtending End Office of an Access Tandem" denotes an end office that has final trunk group routing through that tandem.

Super Intermediate Hub

The term "Super Intermediate Hub" denotes a wire center at which bridging or multiplexing functions are performed for Customers served by all wire centers in the LATA. A Super Intermediate Hub can be restricted to one or more designated NPAs within a LATA and/or to wire centers that are owned by the same telephone company as the hub. Super Intermediate Hubs and the wire centers they serve are identified in NECA TARIFF F.C.C. NO. 4.

Synchronous Optical Network (SONET)

The term SONET denotes a North American Standard for high speed synchronous optical channels having minimum transmission rates of 51.84 Mbps. The standard SONET optical carrier rate of 51.84 Mbps. is called OC1; the equivalent electrical signal rate is called STS-1. SONET standardizes higher transmission bit rates, OCN, as exact multiples of OC1 (N X 51.84 Mbps.). For example, OC3 equals 3 X 51.84 Mbps.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Synchronous Test Line

The term "Synchronous Test Line" denotes an arrangement in an end office which performs marginal operational tests of supervisory and ring-tripping functions.

Synchronous Transport Signal (STS)

The term Synchronous Transport Signal denotes a 51.84 Mbps. electrical signal used within the SONET optical carrier network. The signal consists of the information content and the overhead used by SONET. The overhead is used for controlling, framing and maintaining the STS signal so it can be directly connected to other SONET carrier channels. STS signals are in exact multiples of 51.84 Mbps. (STS-1 is 51.84 Mbps., STS-3 is 155.52 Mbps., etc.).

Tandem Switched Transport

The term "Tandem Switched Transport" denotes transport from the tandem to the end office that is switched at a tandem.

Terminating Direction

The term "Terminating Direction" denotes the use of Access Service for the completion of calls from an IC premise to an End User Premises.

Terminus Hub

The term "Terminus Hub" denotes a wire center at which bridging or multiplexing functions are performed only for Customers served directly by the same wire center.

Throughput

The term Throughput denotes the number of data bits successfully transferred in one direction per unit of time.

Transmission Measuring (105 Type) Test Line/ Responder

The term "Transmission Measuring (105 Type) Test Line/Responder" denotes an arrangement in an end office which provides far-end access to a responder and permits two-way loss and noise measurements to be made on trunks from a near end office.

**ACCESS SERVICE**2. General Regulations (Cont d)2.6 Definitions (Cont d)Transmission Path

The term "Transmission Path" denotes an electrical path capable of transmitting signals within the range of the service offering, e.g., a voice grade transmission path is capable of transmitting voice frequencies within the approximate range of 300 to 3000 Hz. A transmission path comprises physical or derived facilities consisting of any form or configuration of plant typically used in the telecommunications industry.

Trunk

The term "Trunk" denotes a communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

Trunk Group

The term "Trunk Group" denotes a set of trunks which are traffic engineered as a unit for the establishment of connections between switching systems in which all of the communications paths are interchangeable.

Trunk Side Connection

The term "Trunk Side Connection" denotes the connection of a transmission path to the trunk side of a local exchange switching system.

Two-Wire to Four-Wire Conversion

The term "Two-Wire to Four-Wire Conversion" denotes an arrangement which converts a four-wire transmission path to a two-wire transmission path to allow a four-wire facility to terminate in a two-wire entity (e.g., a central office switch).

**ACCESS SERVICE**

2. General Regulations (Cont d)

2.6 Definitions (Cont d)

V and H Coordinates Method

The term "V and H Coordinates Method" denotes a method of computing airline miles between two points by utilizing an established formula which is based on the vertical and horizontal coordinates of the two points.

Wireless Switching Center

The term "Wireless Switching Center" (WSC) denotes a Wireless Service Provider (WSP) switching system that is used to terminate wireless stations for purposes of interconnection to each other and to trunks interfacing with the public switched network.

Wire Center

The term "Wire Center" denotes a building in which one or more central offices, used for the provision of Telephone Exchange Services, are located.

**ACCESS SERVICE****6. Switched Access Service****6.1 General**

Switched Access Service, which is available to customers for their use in furnishing their services to end users, provides a two-point communications path between a customer designated premises and an end user's premises. It provides for the use of common terminating, switching, and trunking facilities and for the use of common subscriber plant of the Telephone Company. Switched Access Service provides for the ability to originate calls from an end user's premises to a customer designated premises, and to terminate calls from a customer designated premises to an end user's premises of LEC whose end office(s) subtend the Company's tandem. Specific references to material describing the elements of Switched Access Service are provided in 6.1.3 and 6.5 through 6.9 following.

Rates and charges for Switched Access Service are set forth in 17.2 following. The application of rates for Switched Access Service is described in 6.4 following. Rates and charges for services other than Switched Access Service, e.g., a customer's interLATA toll message service, may also be applicable when Switched Access Service is used in conjunction with these other services. Descriptions of such applicability are provided in 6.4.5, 6.4.9 and 6.8.1(E) following.

**ACCESS SERVICE**6. Switched Access Service (Cont d)6.1 General (Cont d)6.1.1 Description and Provision of Switched Access Service Arrangements(A) Description

Switched Access Service is provided for only the Feature Group D arrangement which is a service category of standard and optional features.

The provision of Feature Group D requires Local Transport facilities, including an Entrance Facility, and the appropriate End Office functions.

There are three specific transmission specifications (i.e., Types A, B and C) that have been identified for the provision of Feature Group D. The technical specifications for the Entrance Facility and Direct Trunked Transport are the same as those set forth in Section 7. following for Voice Grade, High Capacity and Synchronous Optical Channel Services. The specifications provided are dependent on the Interface Group and the routing of the service, i.e., whether the service is routed directly to the end office or via an access tandem. The parameters for the transmission specifications are set forth in Section 15.1.2 following.

**ACCESS SERVICE**6. Switched Access Service (Cont d)6.1 General (Cont d)6.1.1 Description and Provision of Switched Access Service Arrangements (Cont d)(A) Description (Cont d)

Feature Group D is arranged for either originating, terminating or two-way calling, based on the customer end office switching capacity ordered. Originating calling permits the delivery of calls from Telephone Exchange Service locations to the customer designated premises. Terminating calling permits the delivery of calls from the customer designated premises to Telephone Exchange Service locations. Two-way calling permits the delivery of calls in both directions, but not simultaneously. The Telephone Company will determine the type of calling to be provided unless the customer requests that a different type of directional calling is to be provided. In such cases, the Telephone Company will work cooperatively with the customer to determine the directionality.

There are various optional features associated with Local Transport, Common Switching and Transport Termination available with Feature Group D.

Feature Group D, in Section 6.8, is described terms of its specific physical characteristics and calling capabilities, the optional features available for use with it and the standard testing capabilities.

The Common Switching and Transport Termination optional features, which are described in 6.10 following, unless specifically stated otherwise, are available at all Telephone Company end office switches.



**ACCESS SERVICE**6. Switched Access Service (Cont d)6.1 General (Cont d)6.1.1 Description and Provision of Switched Access Service Arrangements (Cont d)(B) Manner of Provision

Switched Access is furnished in either quantities of lines or trunks, or in busy hour minutes of capacity (BHMCs). FGD Access is furnished on a BHMC and on a per trunk basis as set forth in 5.2 preceding.

BHMCs are differentiated by type and directionality of traffic carried over a Switched Access Service arrangement. Differentiation of traffic among BHMC types is necessary for the Telephone Company to properly design Switched Access Service to meet the traffic carrying capacity requirement of the customer.

There are two major BHMC categories identified as: Originating and Terminating. Originating BHMCs represent access capacity for carrying traffic from the end user to the customer; and, Terminating BHMCs represent access capacity for carrying traffic from the customer to the end user. When ordering capacity for FGD Access in BHMCs, the customer must specify such access capacity in terms of Originating BHMCs and/or Terminating BHMCs.

**ACCESS SERVICE**6. Switched Access Service (Cont d)6.1 General (Cont d)6.1.1 Description and Provision of Switched Access Service Arrangements (Cont d)(B) Manner of Provision (Cont d)

Because some customers will wish to further segregate their originating traffic into separate trunk groups, or because segregation may be required by network considerations originating BHCs are further categorized into Domestic, 700, 800 series, 900, Operator, IDDD and Operator Transfer Services. Domestic BHCs represent access capacity for carrying only domestic traffic other than 700, 800 series, 900, Operator and Operator Transfer Services traffic; IDDD BHCs represent access capacity for carrying only international traffic; and, 700, 800 series, 900 and Operator represent access capacity for carrying, respectively, only 700, 800 series, 900 or Operator traffic. When ordering such types of access capacity, the customer must specify Domestic, 700, 800 series, 900, Operator or IDDD BHCs.

6.1.2 Ordering Options and Conditions

Switched Access Service is ordered under the Access Order provisions set forth in 5.2 preceding. Also, included in that section are regulations concerning miscellaneous service order charges which may be associated with Switched Access Service ordering (e.g., Service Date Changes, Cancellations, etc.).

6.1.3 Rate Categories

The Telephone Company offers two rate categories which apply to Switched Access Service:

- Local Transport (described in 6.1.3(A) following)
- Chargeable Optional Features (described in 6.1.3(C) following)

The Company does not currently provide access services associated with the end office switch or functionality.

**ACCESS SERVICE**

6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

The following diagram depicts a generic view of the components of Switched Access Service and the manner in which the components are combined to provide a complete Access Service.

**ACCESS SERVICE**

## 6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport

The Local Transport rate category establishes the charges related to the transmission and tandem switching facilities between the customer designated premises and the end office switch(es), which may be a Remote Switching Module(s), where the customer's traffic is switched to originate or terminate the customer's communications. Mileage measurement rules are set forth in 6.4.6 following and in this section.

Local Transport is a two-way voice frequency transmission path composed of facilities determined by the Telephone Company. The two-way voice frequency transmission path permits the transport of calls in the originating direction (from the end user end office switch to the customer designated premises) and in the ~~terminating direction (from the customer designated premises to the end office~~ switch), but not simultaneously. The voice frequency transmission path may be comprised of any form or configuration of plant capable of and typically used in the telecommunications industry for the transmission of voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 Hz. The customer must specify the choice of facilities (i.e., Voice Grade 2 or 4 wire, High Capacity DS1 or DS3, or Synchronous Optical Channel OC3 or OC12) to be used in the provision of the Direct Trunked Transport or Entrance Facility. High Capacity DS3 and Synchronous Optical Channel facilities are only available at wire centers identified in NECA TARIFF F.C.C. NO. 4, WIRE CENTER INFORMATION.

The customer must specify when ordering (1) whether the service is to be directly routed to an end office switch or through an access tandem switch, (2) the type of Direct Trunked Transport and whether it will overflow to Tandem Switched Transport when service is directly routed to an end office, (3) the type of Entrance Facility, (4) the directionality of the service, and (5) when multiplexing is required, the hub(s) at which the multiplexing will be provided.

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

(A) Local Transport (Cont d)

When the customer has both Tandem Switched Transport and Direct Trunked Transport at the same end office, the customer will be provided Alternate Traffic Routing as set forth in 6.4.6 following.

Direct Trunked Transport is available at all tandems and at all end offices except those end offices identified in NECA TARIFF F.C.C. NO. 4. as not having the capability to provide Direct Trunked Transport.

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

Local Transport is provided at the rates and charges set forth in 17.2.2 and 17.5.1 following. When more than one Telephone Company is involved in providing the Switched Access Service, the Local Transport rates are applied as set forth in 2.4.7 preceding.

The Local Transport Rate Category includes ten classifications of rate elements: (1) Entrance Facility, (2) Direct Trunked Transport, (3) Tandem Switched Transport, (4) Held for Future Use, (5) Multiplexing, (6) Add/Drop Multiplexing, (7) Customer Node, (8) Interface Group, (9) Nonchargeable Optional Features and, (10) Chargeable Optional Features.

## (1) Entrance Facility

The Entrance Facility recovers a portion of the costs associated with a communications path between a customer designated premises and the serving wire center of that premises. Included as part of the Entrance Facility is a standard channel interface arrangement which defines the technical characteristics associated with the type of facilities to which the access service is to be connected at the customer designated premises and the type of signaling capability, if any.

Four types of Entrance Facility are available:

- High Capacity DS1 an isochronous serial digital channel with a rate of 1.544 Mbps;
- High Capacity DS3 an isochronous serial digital channel with a rate of 44.736 Mbps;
- Synchronous Optical Channel OC3 - a synchronous optical channel with a rate of 155.52 Mbps;
- ~~Synchronous Optical Channel OC12~~ - a synchronous optical channel with a rate of 622.08 Mbps.

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

## (1) Entrance Facility (Cont d)

The minimum period for which a High Capacity DS3 or Synchronous Optical Channel Entrance Facility is provided is twelve months.

One charge applies for each Entrance Facility that is terminated at a customer designated premises. This charge specified in 17.2.2 following will apply even if the customer designated premises and the serving wire center are collocated in a Telephone Company building.

A customer's Local Transport may be connected to the Entrance Facility of another customer, providing the other customer submits a Letter of Authorization for this connection and assumes full responsibility for the cost of the Entrance Facility.

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

## (2) Direct Trunked Transport

The Direct Trunked Transport rate elements recover a portion of the cost associated with a communications path or circuits dedicated to the use of a single customer between:

- the serving wire center and an end office, or
- the serving wire center and a tandem.

Direct Trunked Transport is available at all tandems and to all end offices except those end offices identified in NECA F.C.C. NO. 4, WIRE CENTER INFORMATION as not having the capability to provide Direct Trunked Transport.

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

## (2) Direct Trunked Transport (Cont d)

Four types of Direct Trunked Transport are available:

- High Capacity DS1 - an isochronous serial digital channel with a rate of 1.544 Mbps;
- High Capacity DS3 - an isochronous serial digital channel with a rate of 44.736 Mbps.
- Synchronous Optical Channel OC3 - a synchronous optical channel with a rate of 155.52 Mbps;
- Synchronous Optical Channel OC12 - a synchronous optical channel with a rate of 622.08 Mbps.

High Capacity DS3 Direct Trunked Transport can not be terminated at end offices that are not identified as hub offices that provide DS3 to DS1 multiplexing.

Synchronous Optical Channel Service OC3 or OC12 Direct Trunked Transport can not be terminated at end offices that are not identified as ADM equipped wire centers that provide OC3 to DS1 or OC12 to OC3 Add/Drop Multiplexing.

Additionally, DS1 Direct Trunked Transport can not be terminated at end offices that are not identified as hub offices that provide DS1 to Voice Grade multiplexing or are not electronic end offices.

Offices that provide multiplexing and add/drop multiplexing functions are identified in NECA, TARIFF F.C.C. NO. 4, WIRE CENTER INFORMATION.

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**6. Switched Access Service (Cont d)****6.1 General (Cont d)****6.1.3 Rate Categories (Cont d)****(A) Local Transport (Cont d)****(2) Direct Trunked Transport (Cont d)**

Direct Trunked Transport rates consist of a Direct Trunked Facility rate specified in 17.2.2 following which is applied on a per mile basis and a Direct Trunked Termination rate which is applied at each end of each measured segment of the Direct Trunked Facility (e.g., at the end office, tandem, hub, ADM equipped wire center, and serving wire center). When the Direct Trunked Facility mileage is zero, neither the Direct Trunked Facility rate nor the Direct Trunked Termination rate will apply.

The Direct Trunked Facility rate recovers a portion of the costs of transmission facilities, including intermediate transmission circuit equipment, between the end points of the interoffice circuits.

The Direct Trunked Termination rate specified in 17.2.2 following recovers a portion of the costs of the circuit equipment that is necessary for the termination of each end of the Direct Trunked Facility.

The minimum period for which High Capacity DS3 or Synchronous Optical Channel Direct Trunked Transport is provided is twelve months.

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

## (3) Tandem Switched Transport

The Tandem Switched Transport rate elements recover a portion of the costs associated with a communications path between a tandem and an end office on circuits that are switched at a tandem switch.

Tandem Switched Transport rates consist of a Tandem Switching rate, a Tandem Switched Facility rate, and a Tandem Switched Termination rate.

- (a) The Tandem Switching rate recovers a portion of the costs of switching traffic through an access tandem. The Tandem Switching rate specified in 17.2.2 following is applied on a per access minute per tandem basis for all originating and all terminating minutes of use switched at the tandem. Tandem locations are identified in NECA TARIFF F.C.C. NO. 4, WIRE CENTER INFORMATION.

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

## (3) Tandem Switched Transport (Cont d)

(b) The Tandem Switched Facility rate recovers a portion of the costs of transmission facilities, including intermediate transmission circuit equipment, between the end points of interoffice circuits. The Tandem Switched Facility rate specified in 17.2.2 following is applied on a per access minute per mile basis for all originating and terminating minutes of use routed over the facility.

(c) The Tandem Switched Termination rate recovers a portion of the costs of circuit equipment necessary for the termination of each end of each measured segment of the Tandem Switched Facility. The Tandem Switched Termination rate specified in 17.2.2 following is applied on a per access minute basis (for all originating and terminating minutes of use routed over the facility) at each end of each measured segment of Tandem Switched Facility (e.g., at the end office, host office and the access tandem). When the Tandem Switched Facility mileage is zero, neither the Tandem Switched Facility rate nor the Tandem Switched Termination rate will apply.

## (4) Held for Future Use

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

## (5) Multiplexing

Multiplexing provides an arrangement for converting a single, higher capacity or bandwidth circuit to several lower capacity or bandwidth circuits.

When a derived channel is itself multiplexed to derive additional channels with a lesser capacity, this is referred to as cascade multiplexing. When cascade multiplexing occurs, a charge for the additional multiplexing function applies. When cascade multiplexing is performed at different hubbing locations, Direct Trunked Transport charges also apply between the hubs.

Multiplexing is only available at wire centers identified in NECA TARIFF F.C.C. NO. 4, WIRE CENTER INFORMATION.

The following multiplexing arrangements are offered for use with Switched Access Service.

- (a) DS3 to DS1 Multiplexing charges specified in 17.2.2 following apply when a High Capacity DS3 Entrance Facility or High Capacity DS3 Direct Trunked Transport is connected with High Capacity DS1 Direct Trunked Transport. The DS3 to DS1 multiplexer will convert a 44.736 Mbps channel to 28 DS1 channels using digital time division multiplexing.
- (b) DS1 to Voice Grade Multiplexing charges specified in 17.2.2 following apply when a High Capacity DS1 Entrance Facility or High Capacity DS1 Direct Trunked Transport is connected with Voice Grade Direct Trunked Transport. However, a DS1 to Voice Grade Multiplexing Charge does not apply when a High Capacity DS1 Entrance Facility or High Capacity DS1 Direct Trunked Transport is terminated at an electronic tandem and only Switched Access Service is provided over the DS1 facility. The DS1 to Voice Grade multiplexer will convert a 1.544 Mbps channel to 24 Voice Grade channels.

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

## (6) Add/ Drop Multiplexing

Add/Drop Multiplexing provides a type of multiplexing function in connection with Synchronous Optical Channel Service that allows lower level signals to be added or dropped from a high speed optical carrier channel within a Telephone Company wire center.

The Add/Drop Multiplexing Central Office Port charge specified in 17.2.2 applies to the interface provided at a Telephone Company wire center for the purpose of adding or dropping lower capacity services from Synchronous Optical Channel Entrance Facilities or Direct Trunked Transport. Central Office Ports are available at the following speeds:

Central Office Port	Speed
OC3	155.52 Mbps
DS3	44.736 Mbps
DS1	1.544 Mbps

OC12 service may only be multiplexed to OC3 channels.

When an OC3 channel is derived from an OC12 service and is further multiplexed to obtain DS3 service, a DS3 port charge will apply in addition to the OC3 port charge.

When a DS3 channel is derived from an OC3 service and is further multiplexed to obtain DS1 service, a DS3 to DS1 Multiplexing charge will apply in addition to the DS3 port charge.

~~When a DS1 channel is directly derived from an OC3 service, a DS1 port charge will apply.~~

When a DS1 channel is further multiplexed to a lower level signal, a DS1 to Voice Grade Multiplexing charge will also apply.

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

### 6.1.3 Rate Categories (Cont d)

(A) Local Transport (Cont d)

(6) Add/Drop Multiplexing (Cont d)

Add/Drop Multiplexing is only available at wire centers identified in NECA TARIFF NO. 4, WIRE CENTER INFORMATION.

(7) Customer Node

A Customer Node charge specified in 17.2.2 applies when the Telephone Company provides terminal equipment at the customer designated premises for termination of a Synchronous Optical Channel Entrance Facility. Such equipment may be used to convert the signal from an optical to electrical format. The Customer Node charge is determined by the level of optical service (i.e., OC3 or OC12) delivered to the premises. Each Customer Node must be configured with one or more Customer Premises Ports.

Customer Premises Port charges specified in 17.2.2 apply in conjunction with the CustomerNode charge. Each Customer Premises Port provides the interface to derive a lower capacity service at the customer premises. The type and quantity of ports is determined by the customer and is based on the type of Customer Node selected and the number of DS1, DS3, STS-1 and/or OC3 channels ordered. Customer Premises Ports are available at the following speeds:

Customer Premises Port	Speed
OC3	155.52 Mbps
STS-1	51.84 Mbps
DS3	44.736 Mbps
DS1	1.544 Mbps

## (8) Interface Groups

Different Interface Groups are provided for terminating the Entrance Facility at the customer's designated premises. Technical specifications concerning the available interface groups are set forth in 15.1 following.

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

## (9) Nonchargeable Optional Features

Where transmission facilities permit, the individual transmission path between the customer's designated premises and the first point of switching, may at the option of the customer, be provided with the following optional features as set forth and described in 15.1.1( E) following.

- Supervisory Signaling
- Customer Specified Entry Switch Receive Level
- Customer Specification of Local Transport Termination

When a customer subscribes to Common Channel Signaling (SS7) Network Connection Service (CCSNC Service), the following optional features are made available and are described in 6.10.1 following.

- Signaling System 7 (SS7) Signaling
- Calling Party Number
- Carrier Selection Parameter
- Charge Number Parameter
- Carrier Identification Parameter

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

## 6.1 General (Cont d)

## 6.1.3 Rate Categories (Cont d)

## (A) Local Transport (Cont d)

## (10) Chargeable Optional Features

Common Channel Signaling, Signaling System 7 (CCS/ SS7) Network Connection (CCSNC) Service provides a signaling path between a customer's designated Signaling Point of Interface (SPOI) and a Telephone Company's Signaling Transfer Point (STP). CCSNC is provided as set forth in 6.10.3 following.

800 Data Base Access Service is provided to all customers in conjunction with FGD switched access service. A Basic or Vertical Feature Query charge, as set forth in 17.2.2 (B) following, is assessed for each completed query returned from the 800 data base whether or not the actual call is delivered to the customer. The query is considered completed when the appropriate call routing information is returned to the Service Switching Point (SSP) that launched the query. The Basic Query provides the identification of the customer to whom the call will be delivered and includes area of service routing which allows routing of 800 series calls by telephone companies to different interexchange carriers based on the Local Access Transport Area (LATA) in which the call originates. The Vertical Feature Query provides this same customer identification function in addition to vertical features which may include: (1) call validation (ensuring that calls originate from subscribed service areas); (2) POTS translation of 800 series numbers (which is generally necessary for the routing of 800 series calls); (3) alternate POTS translation (which allows subscribers to vary the routing of 800 series calls based on factors such as time of day, place of origination of the call, etc.); and (4) multiple carrier routing (which allows subscribers to route to different carriers based on factors similar to those in (3)).

In addition to the above, Shared SONET Interoffice Ring Transport (SSRIT) is available as chargeable optional feature with High Capacity DS3 or Synchronous Optical Channel Local Transport service from wire centers identified in the NECA TARIFF F.C.C. NO. 4, WIRE CENTER INFORMATION. The SSRIT feature is set forth and described in 7.10.3(E) and 7.11.3(C) following.

## (B) Held for Future Use

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6607 W. St. Joseph, Ste. 200  
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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

(B) Held for Future Use

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

(B) Held for Future Use

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

(B) Held for Future Use

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

(B) Held for Future Use

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

(C) Chargeable Optional Features

Where facilities permit, the Telephone Company will, at the option of the customer, provide the following chargeable optional features.

(1) Held for Future Use

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

(C) Chargeable Optional Features (Cont d)

(1) Held for Future Use

(2) Held for Future Use

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

(C) Chargeable Optional Features (Cont d)

(2) Held for Future Use

(3) Held for Future Use

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**ACCESS SERVICE**

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6. Switched Access Service (Cont d)

6.1 General (Cont d)

6.1.3 Rate Categories (Cont d)

(C) Chargeable Optional Features (Cont d)

(3) Held for Future Use

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**ACCESS SERVICE**

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**6. Switched Access Service (Cont d)****6.1 General (Cont d)****6.1.4 Special Facilities Routing**

Any customer may request that the facilities used to provide Switched Access Service be specially routed. The regulations for Special Facilities Routing (i.e., Avoidance, Diversity and Cable-Only) are set forth in Section 11, following.

**6.1.5 Design Layout Report**

At the request of the customer, the Telephone Company will provide to the customer the makeup of the facilities and services provided from the customer's premises to the first point of switching. This information will be provided in the form of a Design Layout Report. The Design Layout Report will be provided to the customer at no charge, and will be reissued or updated whenever these facilities are materially changed.

**6.2 Undertaking of the Telephone Company**

In addition to the obligations of the Telephone Company set forth in Section 2. preceding, the Telephone Company has certain other obligations concerning only the provision of Switched Access Service. These obligations are as follows:

**6.2.1 Network Management**

The Telephone Company will administer its network to insure the provision of acceptable service levels to all telecommunications users of the Telephone Company's network services. Generally, service levels are considered acceptable only when both end users and

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**ACCESS SERVICE**

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13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont d)

## 13.3 Miscellaneous Services

## 13.3.1 Testing Services

Testing Services offered under this section of the tariff are optional and subject to rates and charges as set forth in 17.4.4 following. A call-out of a Telephone Company employee at a time not consecutive with the employee's scheduled work period is subject to a minimum charge of four hours. Other testing services, as described in 6.2.4 and 7.1.7 preceding, are provided by the Telephone Company in association with Access Services and are furnished at no additional charge.

Testing Services are normally provided by Telephone Company personnel at Telephone Company locations; however, provisions are made in (B)(2) following for a customer to request Telephone Company personnel to perform Testing Services at the customer designated premises.

The offering of Testing Services under this section of the tariff is made subject to the availability of the necessary qualified personnel and test equipment at the various test locations mentioned in (A) and (B) following.

## (A) Switched Access Service

Testing Services for Switched Access are comprised of (a) tests which are performed during the installation of a Switched Access Service, (i.e., Acceptance Tests), (b) tests which are performed after customer acceptance of such access services and which are without charge (i.e., routine testing) and (c) additional tests which are performed during or after customer acceptance of such access services and for which additional charges apply, (i.e., Additional Cooperative Acceptance Tests and in-service tests).

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**ACCESS SERVICE**

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13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont d)

## 13.3 Miscellaneous Services (Cont d)

## 13.3.1 Testing Services (Cont d)

## (A) Switched Access Service (Cont d)

Routine tests are those tests performed by the Telephone Company on a regular basis, as set forth in 6.2.4 preceding which are required to maintain Switched Access Service. Additional in-service tests may be done on an automatic basis (no Telephone Company or customer technicians involved), on a manual basis [Telephone Company technician(s) involved at Telephone Company office(s) and Telephone Company or customer technician(s) involved at the customer designated premises].

Testing services are ordered to the end office for FG D.

## (1) Additional Cooperative Acceptance Testing

Additional Cooperative Acceptance Testing of Switched Access Service involves the Telephone Company provision of a technician at its office(s) and the customer provision of a technician at its premises, with suitable test equipment to perform the required tests.

Additional Cooperative Acceptance Tests may, for example, consist of the following tests:

- Impulse Noise
- Phase Jitter
- Signal to C-Notched Noise Ratio
- Intermodulation (Nonlinear) Distortion
- Frequency Shift (Offset)
- Envelope Delay Distortion
- Dial Pulse Percent Break

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**ACCESS SERVICE**

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13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont d)

## 13.3 Miscellaneous Services (Cont d)

## 13.3.1 Testing Services (Cont d)

## (A) Switched Access Service (Cont d)

## (2) Additional Automatic Testing

Additional Automatic Testing (AAT) of Switched Access Services (Feature Group D), is a service where the customer provides remote office test lines and 105 test lines with associated responders or their functional equivalent. The customer may order, at additional charges, gain-slope and C-notched noise testing and may order the routine tests (1004 Hz loss, C-Message Noise and Balance) on an as-needed or more than routine schedule.

The Telephone Company will provide an AAT report that lists the test results for each trunk tested. Trunk test failures requiring customer participation for trouble resolution will be provided to the customer on an as-occurs basis.

The Additional Tests, (i.e., gain slope, C-notched noise, 1004 Hz loss, C-message noise and balance) may be ordered by the customer at additional charges, 60 days prior to the start of the customer prescribed schedule. The rates for Additional Automatic Tests are as set forth in 17.4.4(B) following.

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**ACCESS SERVICE**

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13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont d)

13.3 Miscellaneous Services (Cont d)

13.3.1 Testing Services (Cont d)

(A) Switched Access Service (Cont d)

(3) Additional Manual Testing

Not Available

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**ACCESS SERVICE**

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13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont d)

13.3 Miscellaneous Services (Cont d)

13.3.1 Testing Services (Cont d)

(A) Switched Access Service (Cont d)

(4) Obligations of the Customer

(A) The customer shall provide the Remote Office Test Line priming data to the Telephone Company, as appropriate, to support routine testing as set forth in 6.2.4(B) preceding or AAT as set forth in 13.3.1(A)(2) preceding.

(B) The customer shall make the facilities to be tested available to the Telephone Company at times mutually agreed upon.

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**ACCESS SERVICE**

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13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont d)

## 13.3 Miscellaneous Services (Cont d)

## 13.3.1 Testing Services (Cont d)

## (B) Special Access Service

The Telephone Company will provide assistance in performing specific tests requested by the customer.

## (1) Additional Cooperative Acceptance Testing

When a customer provides a technician at its premises or at an end user's premises, with suitable test equipment to perform the requested tests, the Telephone Company will provide a technician at its office for the purpose of conducting Additional Cooperative Acceptance Testing on Voice Grade Services. At the customer's request, the Telephone Company will provide a technician at the customer's premises or at the end user premises. These tests may, for example, consist of the following:

- Attenuation Distortion (i.e., frequency response)
- Intermodulation Distortion (i.e., harmonic distortion)
- Phase Jitter
- Impulse Noise
- Envelope Delay Distortion
- Echo Control
- Frequency Shift

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**ACCESS SERVICE**

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13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont d)

## 13.3 Miscellaneous Services (Cont d)

## 13.3.1 Testing Services (Cont d)

## (B) Special Access Service (Cont d)

## (2) Additional Manual Testing

The Telephone Company will provide a technician at its premises, and the Telephone Company or customer will provide a technician at the customer's designated premises with suitable test equipment to perform the requested tests.

## (3) Obligation of the Customer

When the customer subscribes to Testing Service as set forth in this section, the customer shall make the facilities to be tested available to the Telephone Company at times mutually agreed upon.

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**ACCESS SERVICE**

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13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont d)

## 13.3 Miscellaneous Services (Cont d)

## 13.3.2 Maintenance of Service

- (A) When a customer reports a trouble to the Telephone Company for clearance and no trouble is found in the Telephone Company's facilities, the customer shall be responsible for payment of a Maintenance of Service charge as set forth in 17.4.4(F) following for the period of time from when Telephone Company personnel are dispatched, at the request of the customer, to the customer designated premises to when the work is completed. Failure of Telephone Company personnel to find trouble in Telephone Company facilities will result in no charge if the trouble is actually in those facilities, but not discovered at the time.
- (B) The customer shall be responsible for payment of a Maintenance of Service charge when the Telephone Company dispatches personnel to the customer designated premises, and the trouble is in equipment or communications systems provided by other than the Telephone Company or in detariffed CPE provided by the Telephone Company.

In either (A) or (B) preceding, no credit allowance will be applicable for the interruption involved if the Maintenance of Service Charge applies.

## 13.3.3 Telecommunications Service Priority -TSP

- (A) Priority installation and/or restoration of National Security Emergency Preparedness (NSEP) telecommunications services shall be provided in accordance with Part 64.401, Appendix A, of the Federal Communications Commission's (FCC's) Rules and Regulations.

In addition, TSP System service shall be provided in accordance with the guidelines set forth in "Telecommunications Service Priority (TSP) System for ~~National Security Emergency Preparedness (NSEP) Service Vendor Handbook~~" (NCSH 3-1-2) dated July 9, 1990, and "Telecommunications Service Priority System for National Security Emergency Preparedness Service User Manual" (NCSM 3-1-1).

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**ACCESS SERVICE**

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T3. Additional Engineering, Additional L or and Miscellaneous Services (Cont d)

## 13.3 Miscellaneous Services (Cont d)

## 13.3.3 Telecommunications Service Priority -TSP (Cont d)

## (A) (Cont d)

The TSP System is a service, developed to meet the requirements of the Federal Government, as specified in the Service Vendor's Handbook and Service User's Manual which provides the regulatory, administrative and operational framework for the priority installation and/or restoration of NSEP telecommunications services. These include both Switched and Special Access Services. The TSP System applies only to NSEP telecommunications services, and requires and authorizes priority action by the Telephone Company providing such services.

For Switched Access Service, the TSP System's applicability is limited to those services which the Telephone Company can discreetly identify for priority provisioning and/or restoration.

(B) A Telecommunications Service Priority charge applies as set forth in 17.4.4 when a request to provide or change a Telecommunications Service Priority is received subsequent to the issuance of an Access Order to install the service.

Additionally, a Miscellaneous Service Order Charge as set forth in 17.4.1 will apply to Telecommunications Service Priority requests that are ordered subsequent to the initial installation of the associated access service.

A Telecommunications Service Priority charge does not apply when a Telecommunications Service Priority is discontinued or when ordered coincident with an Access Order to install or change service.

In addition, Additional Labor rates as set forth in 17.4.3 may be applicable when provisioning or restoring Switched or Special Access Services with Telecommunications Service Priority.

When the customer requests an audit or a reconciliation of the Telephone Company's Telecommunications Service Priority records, a Miscellaneous Service Order Charge as set forth in 17.4.1(D) and Additional Labor rates as set forth in 17.4.3 are applicable.

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**ACCESS SERVICE**

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13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont d)

13.3 Miscellaneous Services (Cont d)

13.3.4 Held for Future Use

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**ACCESS SERVICE**

17GLC.      Rates and Charges

Section 17GLC contains the rates and charges billable by issuing carrier Great Lakes Comnet, Inc (OCN 5164) for interstate access services whose terms and conditions are spelled on in Section 1 through Section 16 of this tariff

17GLC.1      Held for Future Use

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**ACCESS SERVICE**

17GLC.        Rates and Charges

17GLC.1        Held for Future Use

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**ACCESS SERVICE**

17GLC. Rates and Charges (Cont d)

This sheet holds sheet 17GLC-3 through 17GLC-9 for future use

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**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.2 Switched Access Service17GLC.2.1 Nonrecurring Charges(A) Local Transport -Installation  
Per Entrance Facility

<u>Rate</u>	<u>Tariff Section Reference</u>
	6.4.1(B)(1)

-High Capacity DS1	Individual Contract
-High Capacity DS3	Individual Contract
-Synchronous Optical Channel OC3	Individual Contract
-Synchronous Optical Channel OC12	Individual Contract

(C) Interim NXX Translation Per Order

Per LATA or Market Area	6.4.1(B)(2)
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The nonrecurring rate charged by GLC is the current rate at NECA Tariff F.C.C. No. 5., Section 17.2.1(C).

## (D) Held for Future Use

(E) Trunk Activation Per Order

-Per 24 Trunks Activated or Fraction thereof, on a Per Order Basis	6.4.1(B)(1)
	Individual Contract

## (F) Held for Future Use

## (G) Held for Future Use

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.2 Switched Access Service (Cont d)17GLC.2.2 Local Transport-Entrance Facility

Per Termination

6.1.3(A)(1)

-High Capacity DS1

Individual Contract\*

-High Capacity DS3

Individual Contract\*

-Synchronous Optical

Channel OC3

Individual Contract\*

-Synchronous Optical

Channel OC12

Individual Contract\*

-Direct Trunked Transport

6.1.3(A)(2)

- Direct Trunked Facility, Per Mile

-High Capacity DS1

Individual Contract\*

-High Capacity DS3

Individual Contract\*

-Synchronous Optical

Channel OC3

Individual Contract\*

-Synchronous Optical

Channel OC12

Individual Contract\*

- Direct Trunked Termination, Per Termination

-High Capacity DS1

Individual Contract\*

-High Capacity DS3

Individual Contract\*

-Synchronous Optical

Channel OC3

Individual Contract\*

-Synchronous Optical

Channel OC12

Individual Contract\*

\*For local transport services provided under individual contract, GLC will begin processing connection of the requested service before a individual contract rate has been negotiated. If the Customer and GLC have not agreed upon a individual contract rate for the request local transport service, GLC will bill a market based rate for the service. This market based rate will not be more than four times the current NECA rate for similar rate elements provided and will not be less than the current NECA rate for similar rate elements provided. For purposes of calculating the minimum period charge when an individual contract rate has not been agreed to, the minimum period charge will be based on one hundred and fifty percent (150%) of the than current NECA rate for similar rate elements requested.

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**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.2 Switched Access Service (Cont d)17GLC.2.2 Local Transport (Cont d)Tariff  
Section  
Reference-Multiplexing  
Per Arrangement6.1.3(A)(5)  
Individual Contract\*-Customer Node  
Per Node6.1.3(A)(7)  
Individual Contract\*

The recurring and nonrecurring rates charged by GLC is the applicable current rate, based on the type of Switched Access Customer Node ordered, at NECA Tariff F.C.C. No. 5, Section 17.2.2, Premium Access-Customer Node.

-Customer Premises Port  
Per Port6.1.3(A)(7)  
Individual Contract\*-Add/ Drop Multiplexing  
Central Office Port  
Per Port6.1.3(A)(6)  
Individual Contract\*

\*For local transport services provided under individual contract, GLC will begin processing connection of the requested service before a individual contract rate has been negotiated. If the Customer and GLC have not agreed upon a individual contract rate for the request local transport service, GLC will bill a market based rate for the service. This market based rate will not be more than four times the current NECA rate for similar rate elements provided and will not be less than the current NECA rate for similar rate elements provided. For purposes of calculating the minimum period charge when an individual contract rate has not been agreed to, the minimum period charge will be based on one hundred and fifty percent (150%) of the than current NECA rate for similar rate elements requested.

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.2 Switched Access Service (Cont d)17GLC.2.2 Local Transport (Cont d)Tariff  
Section  
Reference-Tandem Switched Transport

6.1.3(A)(3)

-Tandem Switched Facility

Per Access Minute Per Mile

The rate charged by GLC is the applicable current rate at NECA Tariff F.C.C. No. 5. Section 17.2.2, Premium Access-Tandem Switched Transport, Tandem Switched Facility.

-Tandem Switched TerminationPer Access Minute Per  
Termination

The rate charged by GLC is the applicable current rate at NECA Tariff F.C.C. No. 5. Section 17.2.2, Premium Access-Tandem Switched Transport, Tandem Switched Termination.

-Tandem Switching

Per Access Minute Per Tandem

The rate charged by GLC is the applicable current rate at NECA Tariff F.C.C. No. 5. Section 17.2.2, Premium Access-Tandem Switched Transport, Tandem Switching.

Network Blocking Per Blocked Call

6.8.6

The rate charged by GLC is the applicable current rate at NECA Tariff F.C.C. No. 5. Section 17.2.2, Network Blocking Per Blocked Call.

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.2 Switched Access Service (Cont d)17GLC.2.2 Local Transport (Cont d)(A) Common Channel Signaling Network Connection

	<u>Rate</u>	<u>Tariff Section Reference</u>
(1) <u>Signaling Network Access Link</u>		6.10.3
-Signaling Mileage Facility per mile	Individual Contract	
-Signaling Mileage Termination per Termination	Individual Contract	
-Signaling Entrance Facility per Facility	Individual Contract	
	<u>Nonrecurring Charge</u>	
	Individual Contract	
(2) <u>STP Port</u>		
-Per port	Individual Contract	
(B) <u>800 Data Base Access Service Queries</u>		6.10.3

The rates charged by GLC is the current rate applicable for Basic or Vertical Feature, as applicable, at NECA Tariff F.C.C. No. 5 Section 17.2.2(B), 800 Data Base Access Service Queries.

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**ACCESS SERVICE**

17GLC. Rates and Charges (Cont d)

17GLC.2 Switched Access Service (Cont d)

17GLC.2.3 End Office

(A) Local Switching  
- Per Access Minute

The rate charged by GLC is the highest current rate per access minute for Local Switching - Premium at NECA Tariff F.C.C. No. 5 Section 17.2.3(A), End Office, Local Switching - Premium

(B) Information Surcharge  
- Per 100 Access Minutes

The rate charged by GLC is the current rate for Information Surcharge - Premium at NECA Tariff F.C.C. No. 5 Section 17.2.3(B), End Office, Information Surcharge - Premium

**ACCESS SERVICE**

17GLC.        Rates and Charges (Cont d)

17GLC.2        Switched Access Service (Cont d)

17GLC.2.4        Held for Future Use

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**ACCESS SERVICE**

17GLC.        Rates and Charges (Cont d)

17GLC.2        Switched Access Service (Cont d)

17GLC.2.5        Held for Future Use

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**ACCESS SERVICE**

17GLC.        Rates and Charges (Cont d)

17GLC.2        Switched Access Service (Cont d)

17GLC.2.6        Held for Future Use

17GLC.2.7        Held for Future Use

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**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.3 Special Access Service

The rate for Special Access Service requested are per individual contract. For Special Access Services provided under individual contract, GLC will begin processing connection of the requested service before a individual contract rate has been negotiated. If the Customer and GLC have not agreed upon a individual contract rate for the request local transport service, GLC will bill a market based rate for the service. This market based rate will not be more than four times the current NECA rate for similar rate elements provided and will not be less than the current NECA rate for similar rate elements provided. For purposes of calculating the minimum period charge when an individual contract rate has not been agreed to, the minimum period charge will be based on one hundred and fifty percent (150 %) of the than current NECA rate for similar rate elements requested.

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Issued: September 25, 2003

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John Summersett Director of Carrier Services  
Great Lakes Comnet, Inc.  
6607 W. St. Joseph, Ste. 200  
Lansing, MI 48917

ATT-0000299

**ACCESS SERVICE**

17GLC. Rates and Charges (Cont d)

Sheets 17GLC-15 to Sheet 17GLC-29 Held for Future Use

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ATT-0000300

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services17GLC.4.1 Access OrderingTariff  
Section  
Reference(A) Access Order Charge

5.4.1

The nonrecurring rate charged by GLC is the current rate at NECA Tariff F.C.C. No. 5, Section 17.4.1(A), Access Order Charge.

(B) Service Date Change Charge

5.4.3

A Service Date Change Charge will apply, on a per order per occurrence basis, for each service date changed. The Access Order Charge as specified in 17.4.1(A) preceding does not apply.

The nonrecurring rate charged by GLC is the current rate at NECA Tariff F.C.C. No. 5, Section 17.4.1(B), Service Date Change Charge.

(C) Design Change Charge

5.4.3

The Design Change Charge will apply on a per order per occurrence basis, for each order requiring design change.

The nonrecurring rate charged by GLC is the current rate at NECA Tariff F.C.C. No. 5, Section 17.4.1(C), Design Change Charge.

(D) Miscellaneous Service Order Charge

5.4.2

The nonrecurring rate charged by GLC is the current rate at NECA Tariff F.C.C. No. 5, Section 17.4.1(D), Miscellaneous Service Order Charge.

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services (Cont d)17GLC.4.2 Additional Engineering

	<u>Additional Engineering Periods</u>	<u>Tariff Section Reference</u>
(A)	Basic Time per engineer normally scheduled working hours	13.1
(B)	Overtime per engineer outside of normally scheduled working hours	13.1
(C)	Premium Time outside of scheduled work day, per engineer	13.1

The rates charged by GLC for Additional Engineering, as requested by the Customer, are the current rates at NECA F.C.C. No. 5, Section 17.4.2.

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services (Cont d)17GLC.4.3 Additional Labor

	<u>Additional Labor Periods</u>	<u>Tariff Section Reference</u>
(A)	Installation or Repair	
	-Overtime, outside of normally scheduled working hours on a scheduled work day, per technician	13.2.1 & 13.2.2
	-Premium Time, outside of scheduled work day, per technician	13.2.1 & 13.2.2
(B)	Stand by	
	-Basic time, normally scheduled working hours, per technician	13.2.3
	-Overtime, outside of normally scheduled working hours on a scheduled work day, per technician	13.2.3
	-Premium Time, outside of scheduled work day, per technician	13.2.3

The rates charged by GLC for Additional Labor, as requested by the Customer, are the current rates at NECA F.C.C. No. 5, Section 17.4.3, including charges related to the call out minimum.

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services (Cont d)17GLC.4.3 Additional Labor (Cont d)

	<u>Additional Labor Periods</u>	<u>Tariff Section Reference</u>
(C)	Testing and Maintenance with other Telephone Companies, or Other Labor	
	-Basic Time per technician normally scheduled working hours	13.2.4 & 13.2.5
	-Overtime per technician outside of normally scheduled working hours on a scheduled work day,	13.2.4 & 13.2.5
	-Premium Time per technician outside of scheduled work day	13.2.4 & 13.2.5

The rates charged by GLC for Additional Labor, as requested by Customer, are the current rates at NECA F.C.C. No. 5, Section 17.4.3, including the charges related to call out minimum.

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services (Cont d)17GLC.4.4 Miscellaneous Services(A) Additional Cooperative Acceptance Testing -Switched Access

<u>Testing Periods</u>	<u>Each Half Hour or Fraction Thereof</u>	<u>Tariff Section Reference</u>
Basic Time, Overtime and Premium Time	See the rates for Additional Labor as set forth in 17GLC.4.3(C) preceding.	13.3.1(A)(1)

(B) Additional Automatic Testing -Switched AccessTo First Point  
of Switching

## Additional Tests

Gain-Slope Tests	13.3.1(A)(2)
C-Notched Noise Tests	13.3.1(A)(2)
1004 Hz Loss*	13.3.1(A)(2)
C-Message Noise*	13.3.1(A)(2)
Balance (return loss)*	13.3.1(A)(2)

The rates charged by GLC for Additional Automatic Testing - Switched Access are the Current rates at NECA Tariff F.C.C. No. 5, Section 17.4.4(B), Additional Automatic Testing - Switched Access.

\* 1004 Hz Loss, C-Message Noise and Balance are non-chargeable routine tests, however, they may be requested on an as needed or more than routine scheduled basis, in which case the charges herein apply.

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ATT-0000305



**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services (Cont d)17GLC.4.4 Miscellaneous Services (Cont d)(C) Additional Manual Testing -Switched AccessTo First Point  
of Switching

Additional Tests

Each Half Hour  
or Fraction  
ThereofTariff  
Section  
ReferenceGain-Slope,  
C-Notched Noise and  
any other agreed to  
tests, per technicianSee the rates  
for Additional  
Labor as set  
forth in 17GLC.4.3(C)  
preceding

13.3. 1(A)(3)

(D) Additional Cooperative Acceptance Testing -Special AccessEach Half  
Hour or  
Fraction  
ThereofTariff  
Section  
ReferenceTesting PeriodsBasic Time, Overtime  
and Premium TimeSee the rates  
for Additional  
Labor as set  
forth in 17GLC.4.3(C)  
preceding.

13.3.1(B)(1)

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services (Cont d)17GLC.4.4 Miscellaneous Services (Cont d)(E) Additional Manual Testing -Special Access

<u>Testing Periods</u>	Each Half Hour or Fraction Thereof	Tariff Section Reference
Basic Time, Overtime and Premium Time	See the rates for Additional Labor as set forth in 17GLC.4.3(C) preceding.	13.3.1(B)(2)

(F) Maintenance of Service

<u>Maintenance of Service Periods</u>	Each Half Hour or Fraction Thereof	Tariff Section Reference
Basic Time, Overtime and Premium Time	See the rates for Additional Labor as set forth in 17GLC.4.3(C) preceding	13.3.2

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services (Cont d)17GLC.4.4 Miscellaneous Services (Cont d)(G) Telecommunications Service PriorityTariff  
Section  
Reference

Per service arranged

13.3.3

The rate charged by GLC fo Telecommunication Service Priority are the current rates at NECA Tariff F.C.C. No. 5, Section 17.4.4(G).

(H) Held for Future Use

(I) Held for Future Use

(J) Held for Future Use

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ATT-0000308

**ACCESS SERVICE**

17GLC.        Rates and Charges (Cont d)

17GLC.4        Other Services (Cont d)

17GLC.4.4        Miscellaneous Services (Cont d)

(K)        Held for Future Use

(L)        Held for Future Use

(M)        Held for Future Use

(N)        Held for Future Use

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John Summersett    Director of Carrier Services  
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Lansing, MI 48917

ATT-0000309

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services (Cont d)Tariff  
Section  
Reference17GLC.4.4 Miscellaneous Services (Cont d)

(O) Held for Future Use

(P) Local Number Portability (LNP) End User Service  
Not currently offered at any GLC end offices or tandems(Q) Returned Check Charge 2.4.1(H)Per Returned Check All charges billed the Company for handling the  
returned check plus twenty dollars per check returned.

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ATT-0000310

**ACCESS SERVICE**

17GLC.        Rates and Charges (Cont d)

17GLC.4        Other Services (Cont d)

17GLC.4.5        Held for Future Use

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John Summersett   Director of Carrier Services  
Great Lakes Comnet, Inc.  
6607 W. St. Joseph, Ste. 200  
Lansing, MI 48917

ATT-0000311

**ACCESS SERVICE**17GLC. Rates and Charges (Cont d)17GLC.4 Other Services (Cont d)17GLC.4.6 Special Facilities Routing of Access Services(A) Diversity

For each service provided in accordance with 11.1.1 preceding, the rates and charges will be developed on an individual case basis.

(Reserved for Future Use.)

(B) Avoidance

For each service provided in accordance with 11.1.2 preceding, the rates and charges will be developed on an individual case basis.

(Reserved for Future Use.)

(C) Diversity and Avoidance Combined

For each service provided in accordance with 11.1.1 and 11.1.2 preceding, combined, the rates and charges will be developed on an individual case basis.

(Reserved for Future Use.)

(D) Cable-Only Facilities

For each service provided in accordance with 11.1.4 preceding, the rates and charges will be developed on an individual case basis.

(Reserved for Future Use.)

**ACCESS SERVICE**

17GLC.        Rates and Charges (Cont d)

17GLC.4        Other Services (Cont d)

17GLC.4.7        Held for Future Use

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John Summersett   Director of Carrier Services  
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Lansing, MI 48917

ATT-0000313



**ACCESS SERVICE**

17LECMI.     Rates and Charges

Section 17LECMI contains the rates and charges billable by issuing carrier Local Exchange Carriers of Michigan, Inc (OCN 2550) for interstate access services whose terms and conditions are spelled on in Section 1 through Section 16 of this tariff.

17LECMI.1     Held for Future Use

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John Summersett   Director of Carrier Services  
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6607 W. St. Joseph, Ste. 200  
Lansing, MI 48917

ATT-0000314

**ACCESS SERVICE**17LECMI. Rates and Charges (Cont d)17LECMI.2 Switched Access Service (Cont d)17LECMI.2.3 End Office(A) Local Switching

- Per Access Minute \$0.012

The rate charged by LEC Michigan includes information surcharge, tandem switch facility charges and tandem switched termination charges for the portion of those services directly provided by LEC Michigan.

(B) Information Surcharge  
- Per 100 Access Minutes

The Local Switching Rate charged by LEC Michigan includes all charges for Information Surcharge directly provided by LEC Michigan.

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Great Lakes Comnet, Inc.  
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Lansing, MI 48917

ATT-0000315

# **Exhibit 16**

**AT&Ts Reply to Answer, Response to Affirmative  
Defenses, and Information Designation (Nov. 19 2014)  
("AT&T GLC Answer")**

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

**In the Matter of  
AT&T SERVICES, INC.  
AT&T CORP.**

*Complainants,*

**v.**

**GREAT LAKES COMNET, INC.  
WESTPHALIA TELEPHONE  
COMPANY**

*Defendants.*

**File No. EB-14-MD-013**

**AT&T'S REPLY TO THE ANSWER, RESPONSE TO AFFIRMATIVE DEFENSES,  
AND INFORMATION DESIGNATION**

Set forth below are AT&T's specific replies to the numbered paragraphs set forth in the Defendants' Answer. Any claims that are not specifically addressed are denied.

1. Paragraph 1 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

**OVERVIEW AND REQUEST FOR RELIEF**

2. AT&T admits that Defendants have raised an affirmative defense that the Formal Complaint fails to comply with Section 1.721(a)(5) of the Commission's rules. As explained in more detail below, however, AT&T denies that this affirmative defense is meritorious. *See infra* AT&T's Response to Affirmative Defenses. Otherwise, paragraph 2 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

3. Paragraph 3 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

4. Paragraph 4 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

5. Paragraph 5 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

6. Paragraph 6 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

7. Paragraph 7 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

8. Paragraph 8 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

9. Paragraph 9 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

10. Paragraph 10 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

11. Paragraph 11 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

12. AT&T denies that the Commission's access stimulation rules do not apply in this case. As explained in Section IV of the Formal Complaint, and Part II of the Reply Legal Analysis, Defendants satisfy the Commission's two-part test for establishing that access stimulation has occurred. AT&T further denies that a presumption of access stimulation (which Defendants admittedly have failed to rebut) did not arise in this case. Indeed, a presumption of

access stimulation arose in this case when the volume of traffic billed to AT&T by Defendants grew by more than 100 percent from May 2011 to May 2012 (and again from June 2011 to June 2012). *See* Reply Legal Analysis Part II; Habiak Decl. ¶ 39 & Ex. 2 (compilation of traffic to AT&T).

AT&T denies that the Defendants have not entered into revenue sharing agreements as defined in the Commission's rules. As explained in greater detail in AT&T's reply to paragraph 42, *infra*, Defendants have entered into revenue sharing agreements as defined in the Commission's access stimulation rules because (i) GLC, by its own admission, entered into two revenue sharing agreements and (ii) prior to May, 2013, WTC billed and collected all of the access revenues for WTC and GLC, and it is logical to conclude that WTC paid a share of those funds to an affiliate (likely either GLC or Comlink), and that WTC access revenues were then shared under the two revenue sharing agreements GLC had admitted exist. *See also* Compl. ¶ 122 (citing 47 C.F.R. § 61.3(bbb)(1)(i)); Reply Legal Analysis Part II. AT&T admits that Defendants' witness, Mr. Summersett, has certified that two of GLC's revenue sharing agreements are no longer in effect. *See* Summersett Decl. ¶¶ 93-94. But AT&T is without sufficient information to admit or deny that other revenue sharing agreements are currently in effect, and notes that one explanation for the Peerless Network ("Peerless") traffic discussed in the Formal Complaint, *see* Compl. ¶¶ 32, 56, 70-71, 94, 116, is the existence of such an agreement. *See id.* ¶ 41 & n.27 ("It is common for the LECs to agree to share a portion of the access revenues with traffic aggregators.") (citing Habiak Decl. ¶ 14; *Hypercube Telecom v. Level 3 Commc'ns*, No. 09-05-009, 2011 WL 2907304 (Cal. PUC July 14, 2011); *Hypercube v. Comtel Telecom Assets*, No. 3:08-cv-2298, 2009 WL 3075208 (N.D. Tex. Sept. 25, 2009)). To

the extent paragraph 12 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

13. Paragraph 13 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

14. Defendants' response to paragraph 14 purports to "admit" to a fact that not only misrepresents AT&T's statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, AT&T denies that Defendants "charged AT&T properly under the FCC's rules." *See, e.g.*, Reply Legal Analysis Parts I-IV. To the extent paragraph 14 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

15. Paragraph 15 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

16. AT&T admits that Defendants have raised an affirmative defense that the Formal Complaint fails to allege facts that constitute a violation of the Communications Act. As explained below, in AT&T's Formal Complaint and in its Reply Legal Analysis, however, AT&T denies that this affirmative defense is meritorious. *See* Compl. ¶¶ 1-198; Reply Legal Analysis, Parts I-V. Otherwise, paragraph 16 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

## **JURISDICTION**

17. Paragraph 17 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

18. AT&T denies that its Formal Complaint does not relate back to its Informal Complaint. Defendants do not deny that both complaints addressed the “8YY” traffic circuitously routed, in part, through Defendants’ facilities in central Michigan. Claims relating to that traffic clearly relate back to the Informal Complaint. *See infra* AT&T’s Response to Affirmative Defenses. Further, Counts I, II, III, and IV of AT&T’s Formal Complaint are based on the same allegations AT&T raised in its Informal Complaint. Defendants’ claims relating to two other issues—the Peerless traffic and transport services provided by LECMI—simply miss the point. Because those issues arose in 2014, *see* Habiak Decl. ¶¶ 41-42 (Peerless traffic at issue began in March or April 2014); *id.* ¶¶ 18-19 (AT&T learned of LECMI involvement as a result of discovery in Michigan Public Service Commission (“MPSC”) proceeding), any related claims are well within the two-year limitations period set forth in 47 U.S.C. § 415 and thus do not need to relate back to the Informal Complaint. AT&T notes that it did not learn about the LECMI issue until 2014 because Defendants’ bills misrepresented which entities were transporting the traffic at issue. *See* Habiak Decl. ¶ 19.

19. For the reasons stated in the Complaint, which set forth facts and that establishing that the Defendants have violated the Act and Commission rules, Compl. ¶¶ 35-198, AT&T denies that it is not entitled the damages (including, but not limited to, refunds) or any other relief requested in paragraph 19. *See also* Reply Legal Analysis Parts I-V. Otherwise, paragraph 19 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

#### **STATEMENT REGARDING SUPPORTING MATERIAL**

20. AT&T admits that Defendants have raised an affirmative defense that the Formal Complaint fails to establish a violation of the Communications Act or the Commission’s rules.



As explained below, in its Formal Complaint, and its Reply Legal Analysis, however, AT&T denies that this affirmative defense is meritorious. *See* Compl. ¶¶ 35-198, Reply Legal Analysis Parts I-V. Otherwise, paragraph 20 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

21. Paragraph 21 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

22. AT&T reaffirms its position that the MPSC proceeding should be held in abeyance until after the Commission decides the Formal Complaint. As AT&T explained in that proceeding, the same questions of federal law will likely ultimately determine some of the outcomes of both cases. *See* Post-Hearing Reply Brief of AT&T Corp. at 1, *In the Matter of the Formal Complaint of Westphalia Telephone Company and Great Lakes Comnet, Inc. against AT&T Corp.*, Case No. U-17619. That is because The Michigan Telecommunications Act provides that the Commission's rules relating to *interstate traffic* (which is the subject of this case) shall also govern *intrastate traffic* within Michigan (which is the subject of the MPSC proceeding). *See id.* Ultimately, however, whether the MPSC proceeding is held in abeyance is an issue for the MPSC to decide. Otherwise, paragraph 22 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

23. Paragraph 23 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

24. Paragraph 24 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

25. AT&T denies that it did not attempt, in good faith, to discuss the possibility of settlement with Defendants prior to filing its Formal Complaint. As explained in paragraph 25 of the Formal Complaint, AT&T, prior to filing, attempted to resolve this dispute through the Commission's informal complaint process, other alternative dispute resolution mechanisms, and additional settlement discussions. *See* Compl. ¶ 25. However, the parties' efforts to reach a settlement proved unsuccessful. *See id.* Otherwise, paragraph 25 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

### **THE PARTIES**

26. Paragraph 26 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

27. Paragraph 27 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

28. AT&T denies any implication that, prior to May 2013, WTC billed AT&T for only 0.83 miles of transport on certain calls. AT&T further denies that Defendants submitted "joint bills" to AT&T prior to that date. Rather, Defendants' bills prior to that date charged AT&T for 83 miles of transport, plus tandem switching, exclusively under WTC's Operating Company Number ("OCN"). *See* Habiak Decl. ¶ 31. Accordingly, AT&T also denies Defendants' statement that "WTC [did not] bill[ ] for a service it did not provide," which cannot possibly be true given their *admission* that WTC billed for 83 miles of transport when it actually provided only 0.83 miles of transport. AT&T admits that (i) WTC's bills prior to May 2013 were erroneous and (ii) since that date Defendants' bills have reflected services provided by WTC and GLC. Habiak Decl. ¶¶ 31-34. But AT&T notes that other aspects of the bills—such

as the billing rates and transport distance—remain erroneous. *Id.* ¶¶ 18-19. Otherwise, paragraph 28 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

29. AT&T admits that GLC is registered with the MPSC as a Competitive Access Provider (“CAP”), but denies Defendants’ claim that GLC thus is not a Competitive Local Exchange Carrier (“CLEC”) for purposes of 47 C.F.R. § 61.26. As explained in greater detail in AT&T’s Complaint Part III, AT&T’s Reply Legal Analysis Part I, GLC is a CLEC. Further, as described in AT&T’s reply to paragraph 84, *infra*, Defendants’ admission that GLC “provides some exchange access services on calls that originate from or terminate to ends users of other carriers” places GLC squarely within the definition of CLEC set forth in 47 C.F.R. § 61.26. *See also* Compl. ¶ 3. For the reasons stated by the Commission, AT&T also denies that GLC’s tandem services “competitive,” in that GLC has a bottleneck monopoly as to its access services, and AT&T has no choice whether to use GLC’s services.<sup>1</sup> For the reasons stated in its Formal Complaint (¶ 111) and in Exhibit 17, AT&T denies that GLC’s tandem services are provided only within WTC’s service territory. Otherwise, paragraph 29 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

30. AT&T denies that Defendants, which are commonly-owned and commonly-controlled entities that together perpetrated the schemes at issue in this case, have not “acted in concert” in an effort to inflate the charges to AT&T for data transport and tandem-switching services. AT&T further denies that Defendants, as a result of their coordinated efforts, are not jointly liable to AT&T for its damages resulting from Defendants’ scheme. *See, e.g., NOS*

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<sup>1</sup> Seventh Report and Order and FNPRM, *In the Matter of Access Charge Reform*, 16 FCC Rcd. 9923, ¶ 30 (2001) (“*Seventh Report and Order*”); Eighth Report and Order and Fifth Order on Reconsideration, *In the Matter of Access Charge Reform, et al.*, 19 FCC Rcd. 9108, ¶ 17 (2004) (“*Eighth Report and Order*”).

*Commc'ns*, 18 FCC Rcd 6952, ¶ 3 & n.4 (2003); *see generally e.g., Geinosky v. City of Chicago*, 675 F.3d 743, 750 (7th Cir. 2012) (“parties to a civil conspiracy are jointly and severally liable for injuries to plaintiff”) (citing cases). Otherwise, paragraph 30 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

31. AT&T admits that Defendants have raised an affirmative defense that the Formal Complaint is deficient and subject to dismissal. As explained below, in its Formal Complaint, and Reply Legal Analysis, however, AT&T denies that this affirmative defense is meritorious. *See* Compl. ¶¶ 35-198, Reply Legal Analysis Parts I-V. AT&T further denies that Cricket Communications was an AT&T affiliate prior to AT&T’s acquisition of Cricket in March 2014. AT&T admits that some of the calls for which the Defendants billed AT&T originated from LECMI end users, but, as to the aggregated wireless 8YY traffic at issue, if any such calls were originated by LECMI end users, such calls were *de minimis*, and AT&T denies any suggestion that such facts are relevant to determining Defendants’ liability in this case. Otherwise, paragraph 31 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

32. Paragraph 32 of AT&T’s Complaint explains, in a general fashion, AT&T’s belief that “some or all” of the increase in traffic volumes billed to AT&T in 2014 is associated with Peerless traffic. In response to Defendants’ denial that traffic volumes billed in 2014 have been “large,” AT&T notes that the traffic volumes, based on the data reasonably available to AT&T, are set forth in Exhibit 2 to the Formal Complaint. AT&T further notes that to the extent it cannot be stipulated that Peerless traffic is responsible for some or all of the increase in overall traffic in 2014, AT&T may seek additional discovery on this issue. Otherwise, paragraph 32

does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

33. AT&T admits that Defendants have raised an affirmative defense that the Formal Complaint is deficient and subject to dismissal. As explained below, in its Formal Complaint, and its Reply Legal Analysis, however, AT&T denies that this affirmative defense is meritorious. *See* Compl. ¶¶ 35-198, Reply Legal Analysis Parts I-V. AT&T further denies that Cricket Communications was an AT&T affiliate prior to AT&T's acquisition of Cricket in March 2014. Otherwise, paragraph 33 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

34. Paragraph 34 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

## **I. FACTS IN SUPPORT OF FORMAL COMPLAINT**

### **A. Defendants' Tariffs For Switched Access Service.**

35. Paragraph 35 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

36. Paragraph 36 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

37. AT&T denies Defendants' claim that GLC is not a CLEC for purposes of 47 C.F.R. § 61.26(a)(1). 47 C.F.R. § 61.26(a)(1) defines a CLEC as "a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user." GLC meets this definition as explained in AT&T's Reply Legal Analysis Part I and Formal Complaint Part III.A. In fact, Defendants admit as much in their Answer. Answer ¶ 84 ("GLC and WTC admit that GLC provides some exchange access services on calls that originate from or terminate to end-users.").

AT&T also notes that Defendants in paragraph 37 admit that “GLC’s transport network reaches into certain urban areas.” By that admission, Defendants also admit that GLC does not qualify for the rural exemption from the CLEC access charge rules. *See* Reply Legal Analysis Part I; Compl. Part III.B. Despite Defendants’ suggestion to the contrary, it is irrelevant that GLC’s “heart and soul” may be in rural Westphalia, Michigan because the Commission has made clear that the exemption is inapplicable “if *any portion* of the competitive LEC’s service area falls within a non-rural area.” *Eighth Report and Order* ¶ 33 (emphasis added).

AT&T further denies GLC’s assertion that its tariff does not limit its ability to provide services, including any supposedly “ancillary” services like “transport,” to exclusively rural areas. *See* Compl. ¶ 99.

38. Paragraph 38 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

39. Paragraph 39 does not contain any factual allegation or legal argument to which a response is required. If it does, however, those allegations or arguments are denied.

**B. Defendants’ Improper Charges On 8YY Calls.**

**1. The Routing of 8YY Wireless Aggregation Traffic.**

40. AT&T denies that, prior to the middle of 2013, it knew, or should have known, that the Defendants were involved in aggregating wireless 8YY traffic or, *a fortiori*, the identity of the wireless carriers. Because of WTC’s admitted billing error, in which it misbilled all of the access services in its own name rather than that of GLC, it appeared that all of the access services were being provided by an ILEC, rather than a CLEC (which are more typically involved in wireless aggregation, *see, e.g.*, Compl. ¶ 41; *Eighth Report and Order* ¶¶ 15-17). Further, because WTC misbilled end office switching charges on behalf of LECMI – which are not appropriately billed on aggregated wireless traffic (*id.*) – the bills on their face gave no

indication that the traffic being billed was largely related to aggregated 8YY wireless services. When AT&T disputed certain charges of LECMI and WTC in March, 2013, it did not mention 8YY wireless traffic; to the contrary, it discussed billing for calls “originating/terminating with *end users of LECMI*.” See Ex. 11 at 1. Further, in subsequent correspondence, such as WTC’s letter to AT&T dated July 8, 2013, WTC failed to discuss that it was billing for aggregated wireless traffic – to the contrary, it falsely implied that the traffic at issue was “originating or terminating with LECMI” and that the nature of the traffic had not changed “since LECMI began operations in 2004.” AT&T Reply Ex. 1, Letter of David Fox, WTC, to S. D’Amico, AT&T (July 8, 2013). However, at AT&T’s request, see AT&T Reply Ex. 2, Letter of J. Habiak, AT&T, to WTC, LECMI, and GLC (June 6, 2013), WTC provided some call detail records to AT&T in July, 2013, and it was after AT&T reviewed those records in mid-2013 that it determined that the Defendants were handling substantial volumes of aggregated wireless traffic. In these circumstances, AT&T denies the allegations in paragraph 40 of the Answer that AT&T knew or should have known that Defendants were involved in wireless aggregation or the identity of the wireless carriers. In any event, more detailed facts regarding AT&T’s knowledge are not necessary, given that the identity of the originating wireless carrier or carriers is irrelevant to the ultimate question of whether Defendants billed AT&T unlawful access charges. AT&T admits, however, that for purposes of the MPSC proceeding it stipulated that the disputed 8YY traffic originated with Cricket Communications; AT&T cannot definitively say that all of the traffic at issue originated with Cricket, but it is willing to stipulate to that fact for the purpose of this proceeding. Paragraph 40 does not contain any other factual allegation or legal argument to which a response is required. If it does, however, those allegations are denied.

41. Paragraph 41 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

42. Defendants have identified two agreements entered into by GLC that they admit are revenue sharing agreements. *See* Compl. Part IV. Based on the certifications provided, AT&T does not contest at this juncture that these two revenue sharing agreements have been terminated. AT&T denies, however, that Defendants have not entered other revenue sharing agreements, some or all which may remain in effect. In fact, as discussed in the Formal Complaint at Part I.B.3., the volume of traffic billed to AT&T by Defendants increased in April 2014 apparently as the result of traffic coming from a Chicago switch assigned to a CLEC called Peerless Networks. *See also* Answer ¶ 32 (admitting that GLC has billed AT&T on traffic associated with Peerless). Additional discovery is necessary to determine the source and precise routing of this traffic and if, like the Cricket traffic before, it is being flowed through GLC's switch in rural Michigan as the result of revenue sharing.

AT&T further denies the claim that WTC has not entered into any revenue sharing agreements. Prior to May, 2013, WTC billed and collected all of the access revenues for WTC and GLC, and it is logical to conclude that WTC paid a share of those funds to an affiliate (likely either GLC or Comlink), and that WTC access revenues were then shared under the two revenue sharing agreements GLC has admitted exist. *See* Reply Legal Analysis Part II. Further discovery may be required to determine whether, in fact, WTC has entered any such arrangements.

AT&T denies that it or its wireless affiliates had "control over the decisions of how or whether traffic was routed to GLC." As explained in the Reply Legal Analysis Part V and the Formal Complaint ¶¶ 44-55, AT&T as an IXC has no role in choosing access providers and, in



fact, no choice but to accept any call destined for its end users regardless of the source. Furthermore, AT&T did not become affiliated with Cricket until March 2014 at which point the flow of aggregated wireless 8YY traffic from Cricket to Defendants stopped. *See* Compl. Part I.B.3. As a result, there is absolutely no merit to the suggestion that AT&T had any control over the routing of Cricket's traffic when it was flowing through GLC's switch. Instead, the evidence shows that other entities drove wireless 8YY traffic onto GLC's network because GLC paid them a share of its access revenues pursuant to revenue sharing agreements. *See* Compl. Part IV. In fact, Defendants admit in paragraph 42 that GLC "paid millions of dollars of access charges it received as commissions/compensation." Not only does this show that it was GLC that was responsible for the routing of the 8YY traffic onto its network, it also reinforces that the access rates Defendants charged AT&T were inflated. *See Connect America Order*, 26 FCC Rcd. 17663, ¶ 666 (2011) ("excess revenues that are shared in access stimulation schemes provide additional proof that the LEC's rates are above cost"), *petitions for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) ("*Connect America Order*").

43. For the reasons discussed in paragraph 40 above, AT&T denies that (1) it knows all of the details of how the calls at issue were routed, (2) had information to determine which wireless carriers the 8YY traffic originated from, or (3) could have easily determined the identity of the originating wireless providers. AT&T admits that it conducted extensive discovery in the MPSC proceeding but denies that, as a result, no further discovery is required. There continue to be factual disputes regarding the traffic and charges at issue, including for example in regard to the more recent traffic coming from the Peerless switch (Answer ¶ 32). If the parties cannot stipulate to these facts, further discovery may indeed be necessary.

44. AT&T denies that Cricket was an affiliate of AT&T during the period when Cricket's traffic was being routed through the Defendants' network. AT&T cannot definitively say that all of the traffic at issue originated with Cricket, but it is willing to stipulate to that fact for the purpose of this proceeding.

In paragraph 44 of its Formal Complaint and the following paragraphs through paragraph 54, AT&T provides its general and current understanding of how the traffic at issue was routed, based primarily on what it learned during discovery in the MPSC proceeding. Defendants quibble with AT&T's explanation, but as a general matter, do not provide an alternative routing scenario in paragraph 44 of their Answer. In paragraph 44, Defendants admit that the wireless customers originating the 8YY traffic "could *theoretically* be located anywhere in the country." The Commission should treat this as an admission that the customers were *in fact* located throughout the country given that Defendants have provided no evidence to the contrary. In a complaint proceeding, the Commission is concerned with the facts of the matter at hand, not with what the facts theoretically could be. Here the parties have stipulated that the calls at issue originated with Cricket Communications, a nationwide wireless provider. It is reasonable to assume, therefore, that the originating customers were located in different places across the country, including in urban areas, and Defendants have provided no evidence to call this assumption into question. Paragraph 44 does not contain any other factual allegation or legal argument to which a response is required. If it does, however, those allegations are denied.

45. In paragraph 45, Defendants again take issue with AT&T's explanation of the call routing and deny that "intermediate service providers" handled the 8YY traffic in this case. Again, they provide no alternative explanation nor do they cite any evidence to show why AT&T's explanation is inaccurate. In fact, taking Defendants at their word, GLC does not serve

any end-users and therefore is itself an intermediate service provider. *See, e.g.*, Answer ¶ 84. Furthermore, Defendants' witness Mr. Summersett explicitly stated that an intermediate service provider was involved: "IBDC, an intermediate carrier, routed some or all of the 8YY traffic that is at issue in this case to LECMI." Summersett Decl. ¶ 135. Paragraph 45 does not contain any other factual allegation or legal argument to which a response is required. If it does, however, those allegations are denied.

46. In paragraph 46 of the Formal Complaint, AT&T provided a general explanation of how the routing agreements came about based on public information available to it. While Defendants raise procedural objections to the evidence cited by AT&T, they cite no evidence to contradict the substance of AT&T's explanation, nor do they provide an alternative facts in paragraph 46 of their Answer. As a result, it would be proper for the Commission to rely on the facts alleged in paragraph 46 of AT&T's Complaint.

AT&T denies that the statements referenced in paragraph 46 of the Formal Complaint are not credible or not accurate. Again, Defendants provide no support for their denials of these factual allegations, *see* 47 C.F.R. § 1.724(b) (the answer "shall respond specifically to all material allegations"). Paragraph 46 contains factual allegations, (*e.g.* "GLC was interested in sending the traffic through LEC MI's network because GLC's network was not equipped to handled the traffic properly," etc.), and Defendants have the knowledge to admit or deny the substance of these factual allegations. Paragraph 46 does not contain any other factual allegation or legal argument to which a response is required. If it does, however, those allegations are denied.

47. For the reasons discussed in paragraph 46 above, AT&T denies that the statements by LEC-MI representatives referenced in the Formal Complaint are not credible or

not accurate or that reliance on them is improper for any other reason. AT&T relied in paragraph 47 of its Formal Complaint on public evidence available to it regarding the agreement between LEC-MI and Defendants. To the extent Defendants' allegations are inconsistent with the statements AT&T cites from the LEC-MI representative, AT&T denies these allegations on the basis that Defendants have not proven their evidence to be more reliable and reserves its right to seek discovery on these issues.

Even though Defendants quibble with AT&T's precise characterization of the arrangement between Defendants and LEC-MI and raise procedural objections to the evidence on which it is based, they do not dispute, and in fact have admitted, that the agreements between them constitute a revenue sharing agreement for purposes of the Commission's rules. *See* Compl. Part IV; Reply Legal Analysis Part II. Paragraph 47 does not contain any other factual allegation or legal argument to which a response is required. If it does, however, those allegations are denied.

As to the specific denials by the Defendants, AT&T does not contest that "GLC and MNS jointly decided" to establish Trunk Group 331, for the point here is that Defendants took affirmative steps and other action (including but not limited to the establishment of trunk groups) to ensure that long distance traffic, including the aggregated 8YY traffic at issue, would be routed through their facilities in Central Michigan, so that the Defendants could impose access charges on those services. Such admissions belie the Defendants' contentions that they had no control over the traffic flowing over their network.

AT&T further denies that Michigan Network Services assigned the IP addresses, *see* Vol. 3, Hearing Tr. 531 (Irwin)<sup>2</sup> ("we only allow traffic to come to our VoIP switch that's, where we

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<sup>2</sup> Transcript of Hearing, Public Version, Vol. 3, *In the Matter of the Formal Complaint of Westphalia Telephone Company and Great Lakes Commnet, Inc. against AT&T Corp.*, Case No. U-17619 (Sept. 23, 2014, MPSC).

know the IP address, so *we were given a couple of IP addresses where this traffic would be flowing from*, and we programmed our switch to allow that traffic and, you know, that's how it got started.”), but in any event resolution of this dispute is not necessary because other facts establish that the Defendants took affirmative steps so that the aggregated wireless agreement would be routed over its facilities, such as the revenue sharing agreement with IBDC.<sup>3</sup>

AT&T further states that GLC admits in paragraph 47 that “GLC compensated LECMI for utilizing GLC’s services,” and regardless of the precise terms used to describe that compensation (i.e., lease payment, commission, etc.), the admission provides further confirmation that GLC took affirmative steps so that aggregated 8YY traffic would be handled over its network, and that it would use access revenues it billed and collected from AT&T to pay this compensation. *See generally* Compl. ¶¶ 42, 127.

48. AT&T admits that the arrangement that Cricket Communications had with InComm involved aggregation of Cricket’s traffic, in return for payments to Cricket, but AT&T denies that this arrangement directly “prompted” routing of traffic to LECMI, or, more importantly, “prompted” the Defendants to overcharge AT&T Corp. for access services, at rates well above the Commission-prescribed benchmarks for such services. As AT&T has alleged, for the wireless aggregated traffic initially originating from Cricket end users, the Defendants should be billing no more than about 0.128 cents per minute (Compl. ¶ 4; Habiak Decl. ¶ 49); instead, their charges are about 4.2 cents per minute (Compl. ¶ 3). Nothing that Cricket or Incomm did “prompted” the Defendants unlawfully to overcharge AT&T. AT&T further denies that

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<sup>3</sup> In this regard, the declaration of Mr. Summersett’s contains significant detail regarding Trunk Group 331, and how, in his view, GLC was approached by IBDC to “handle 8YY toll-free traffic.” Summersett Decl. ¶ 88. Mr. Summersett claims that GLC referred IBDC to a company called Michigan Network Services. *Id.* Notably, however, nothing in Mr. Summersett’s testimony addresses how it came to be that Comlink, and affiliate of GLC, came to execute with IBDC what GLC has admitted is a revenue sharing agreement. In short, GLC’s testimony appears to be designed to include plentiful details regarding the conduct of third parties, but is rather evasive regarding GLC/WTC’s own actions.

arrangements between LEC-MI and GLC did not “prompt” the routing of traffic to the Defendants. Instead, as explained, Compl. ¶ 42, the 8YY traffic was routed to LEC-MI and then to the Defendants as a result of Defendants providing payments to IBDC (which in turn compensated other service providers). This point is not refuted by the evidence Defendants’ cite – and indeed, cannot seriously be disputed. Paragraph 48 does not contain any other factual allegation or legal argument to which a response is required. If it does, however, those allegations are denied.

49. Defendants’ response to paragraph 49 purports to “admit” to a fact that not only misrepresents AT&T’s statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, AT&T denies that it “affirmatively sought to exchange traffic with LECMI via the GLC tandem.” As set forth in paragraph 42 above, as explained in Part V of AT&T’s Reply Legal Analysis, and as the Commission has already concluded (*Eighth Report and Order* ¶ 17), AT&T does not control how it receives traffic from intermediate competitive LECs. Similarly, for the reasons stated in Part V of AT&T’s Reply Legal Analysis, AT&T denies that it could have made other arrangements for exchanging traffic with LEC-MI. Taking its admissions together, Defendants admit that the 8YY wireless traffic was carried over 80 airline miles even though there was no technical reason to prevent the traffic from being exchanged more directly. While it was Defendants’ prerogative to route the traffic as such, it impermissibly charged AT&T for the full distance traveled despite there being a more efficient route. *See* Answer ¶ 49; Reply Legal Analysis Part IV. To the extent paragraph 49 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

50. As to the Defendants' response to the allegation in paragraph 50 in the Complaint, Defendants' admissions establish that they have been billing AT&T for 83 miles of transport. Further, the admissions establish that the Defendants, by billing this mileage, were representing to AT&T and other long distance carriers receiving such bills that they were in fact providing the entire 83 miles of transport. As explained in Part III.B of its Reply Legal Analysis and paragraphs 51-52 of the Complaint, the Defendants did not provide the entire route. Paragraph 50 does not contain any other factual allegation or legal argument to which a response is required. If it does, however, those allegations are denied.

51. AT&T denies that it "is mistaken in its understanding of how transport is billed verses how calls are transported." For the reasons explained in paragraphs 51-52 of its Complaint, paragraphs 18-19 of the Habiak Declaration, and Part III.B of the Reply Legal Analysis, the 8YY traffic at issue was carried over LEC-MI's facilities from Southfield to Flint, Michigan and handed off to GLC there. AT&T denies any allegations by Defendants to the contrary. AT&T's position is supported by testimony in the MPSC proceeding by LEC-MI's President Mr. Irvin, who has run LEC-MI for 17 years and is familiar with LEC-MI's financial relationships with other companies. AT&T denies that Mr. Irvin equivocated or was unsure about the traffic LEC-MI handed off to GLC in Flint. To the contrary, his testimony about the transport of 8YY traffic to Flint was clear, consistent and confident, and included detail that manifested real knowledge (Vol. 3, Hearing Tr. 531-33):

A: So transport for this traffic I've since learned since our previous deposition that it indeed goes to Flint, so we own the transport from our Southfield POP to Flint, and there in Flint we hand it off to GLC with, over an OC circuit.

Q. So at your deposition you testified that you were 99-percent sure that the traffic was transported over LECMI facilities from Southfield to Flint.

A. Right.

Q. And so are you clarifying that testimony today?

A. Yeah. Now I'm a hundred-percent sure, yep.

Q. And this is, you said it was a LECMI fiber transport facility between Southfield and Flint?

A. Correct.

Q. And you thought it was an OC and/or an optical carrier network level of capacity?

A. It is.

Q. Do you know where in Flint that you have a meet point with Great Lakes?

A. It's within a few hundred yards of the CO [Central Office] there.

Q. Would that be in downtown Flint?

A. Yes, downtown Flint.

Q. Do you know when LECMI established this transport facility to Flint?

A. It would have been right around the start of the 8YY traffic.

Q. So in the 2010 timeframe?

A. Yes.

Q. So would you say that a hundred percent of this 8YY traffic traveled between Southfield and Flint to Great Lakes over LECMI fiber facilities to Flint?

A. Yeah. When you say a hundred percent, you know, there was some redundancy, there was some other circuits that it could have potentially traveled, but I think like 99.9 percent of the traffic would have flowed through Flint.

Q. From the beginning?

A. Yes.

Q. O.K. And that, just for sake of clarity, that trunk group had its different designation, did it not?

A. That trunk group was the 331.

Q. So before you talked about a trunk group 313 –



A. Yep.

Q. That was established, and now this 2010 trunk group is 331?

A. Yes.

52. AT&T incorporates its response in paragraphs 50-51 above and denies all the factual allegations and legal arguments in paragraph 52.

53. Paragraph 53 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

54. Paragraph 54 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied. As to footnote 34, AT&T admits that its Complaint does not directly challenge the database dip charges, but denies that allegations regarding such dips are entirely irrelevant, for they relate to the overall amounts AT&T is charged by Defendants on the traffic at issue.

55. For the reasons stated in Section I.B. of its Formal Complaint and in paragraphs 40-54 above, AT&T has accurately described and set forth in Exhibit 10 how the 8YY traffic was routed and the parties involved. AT&T denies the allegations that the Defendants provided the entire 83 miles of transport they billed. *See* Compl. ¶ 51-52, Habiak Decl. ¶¶ 18-19; Reply Legal Analysis Part III.B. As to the identity of the wireless carriers involved in traffic routed to the Defendants, AT&T does not know with certainty whether all traffic originated with Cricket; however, it is willing to stipulate to such facts, because whether or not that it is true, the Defendants are not justified in overcharging AT&T for access services; as stated in the Complaint, ¶¶ 3-4, they billed AT&T over 4.2 cents per minute when at most (and regardless of the identity of the wireless carrier(s) involved), the charges should not have exceeded 0.128 cents per minute. Any allegations in this paragraph contrary to AT&T's description and the chart in Exhibit 10 are therefore denied.

**2. The Access Service Rate Elements Billed To AT&T On The 8YY Wireless Calls.**

56. Paragraph 56 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

57. As set forth in paragraph 50 below, Defendants have unlawfully billed AT&T contrary to their denial in footnote 92 associated with paragraph 57. Defendants also deny that the rates they billed prior to July 2012 and after July 2014 varied somewhat from the rates discussed in AT&T's Formal Complaint, but the rates Defendants reference in footnote 92 prove that they did vary. As to the specific rates in footnote 92 and GLC Ex. 1, AT&T states that the rates in the tariff speak for themselves, and AT&T believes that the parties should be able to stipulate to the tariff rates that were billed. AT&T, however, denies that Defendants' tariff entitled them to charge AT&T the highest NECA rates. *See* Reply Legal Analysis Parts I-II; Compl. Part III.A.

AT&T also notes that the precise rates charged are not relevant to the liability phase of this proceeding, in that GLC's tariff is unlawful on its face because it benchmarks to NECA, rather than the appropriate LEC set forth in 47 C.F.R. § 61.26, and the Commission need not in the liability phase be aware of every change in rate in order to establish GLC's liability. AT&T will provide detailed charges it has been billed, and for which it is owed refunds or credits, in a supplemental damages phase. As shown in AT&T's Formal Complaint and in this Reply, Defendants are liable to AT&T, and AT&T has been damaged despite Defendants statement to the contrary.

AT&T also denies that it "insiste[d]" that WTC assess it LEC-MI's end office switching charges, as Defendants claim in footnote 93 associated with paragraph 57. The Defendants provide no documents to support that claim. However, in any event, even if AT&T had

requested those charges, that would merely reflect the facts that the Defendants in this period were concededly misbilling AT&T (using WTC's OCN, rather than GLC's OCN), and that they failed to disclose to AT&T in 2012 that they were handling significant volumes of aggregated 8YY traffic, as described above in paragraph 40 and AT&T's Reply Exhibits. Paragraph 57 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

58. Defendants' admit to a billing error by which WTC billed for services it did not provide, but then surprisingly deny having unlawfully billed AT&T. As explained in Part III.A of AT&T's Reply Legal Analysis, the concession that there was a "billing error" means that WTC unlawfully billed AT&T under WTC's tariff and Commission precedent, *Eighth Report and Order* ¶ 21. AT&T reasserts that Defendants did in fact unlawfully bill AT&T. Paragraph 57 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

59. AT&T denies the implication that the fact that AT&T first disputed the charges billed in March 2013 has any relevance to determining Defendants' liability in this case. *See* ¶ 18, *supra*; Reply Legal Analysis Part V; *infra* Response to Affirmative Defenses. Paragraph 59 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

60. Paragraph 60 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

61. Paragraph 61 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

62. Defendants' response to paragraph 62 purports to "admit" to a fact that not only misrepresents AT&T's statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, AT&T denies that Defendants "properly billed AT&T for 83 miles of transport pursuant to the Defendants' tariffs." *See, e.g.*, Reply Legal Analysis Parts III.B, IV. AT&T further denies that any orders of service from Defendants were "voluntary," *see* Reply Legal Analysis Part V. As discussed in paragraph 42 above, AT&T has no control over the LEC from which it receives traffic. AT&T incorporates its response in paragraph 51 above in dispute of Defendants' denials that LEC-MI provided the service from Southfield to Flint and that Defendants therefore billed AT&T for services LEC-MI provided. AT&T also incorporates its response in paragraph 50 above in dispute of Defendants' denial that they unlawfully charged AT&T. Paragraph 62 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

63. AT&T denies that AT&T voluntarily ordered service from Defendants for the same reasons set forth in paragraph 62 above. As it did in paragraph 57 above, AT&T also denies that the LEC-MI charges were assessed at its insistence, and certainly AT&T did not knowingly request to be billed end office switching charges on wireless originated traffic. Paragraph 63 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

64. Contrary to the denial in paragraph 64, AT&T Michigan is the "Competing ILEC," as that term is used in 47 C.F.R. § 61.26, for GLC's services at issue in this case. *See* Compl. Part I.B.2; Habiak Decl. ¶¶ 46-48. As to footnote 53 of the Defendants' Legal Analysis, given that GLC is required to bill for access services at rates no higher than the "competing

ILEC,” and that, as a general matter, “responsibility for correct billings remains with the carriers” providing service, *Tele-Valuation, Inc. v. AT&T Corp.*, 73 F.C.C.2d 450, ¶ 8 (1979), it is initially GLC’s responsibility to determine and bill at the correct and appropriate competing ILEC rate, and thus AT&T denies that it must “demonstrate” those facts, particularly in light of the fact that it may not possess all of the relevant knowledge as to how the calls are routed. Regardless of the burden issues, the Commission’s rules define the “competing ILEC” as the “incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC.” 47 C.F.R. § 61.26(a)(2). Here, the routing of the 8YY wireless traffic is complex, *see* Compl. ¶¶ 44-55 & Ex. 10, and involves at least two CLECs, LECMI and GLC. Given that this dispute concerns the services provided and billed by GLC rather than LECMI, AT&T’s position is that under Section 61.26(a)(2), it is reasonable to conclude on the facts of this case that, for purposes of Section 61.26(a)(2), “the CLEC” is GLC, and not LECMI. As AT&T explained, if GLC were not providing services at issue (but LECMI were), then it is clear that AT&T Michigan would be the “competing ILEC.” Habiak Decl. ¶¶ 46-48. Given that GLC’s tariff benchmarks to NECA rates rather than those of the “competing ILEC,” GLC would be liable under Counts I or II of AT&T’s Complaint regardless of the identity of the competing ILEC on any particular call route. Paragraph 64 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

65. AT&T’s Complaint and Reply Legal Analysis prove that Defendants’ charges are inflated and unlawful, contrary to Defendants’ denial in paragraph 65. *See* Reply Legal Analysis Parts I-V; Compl. Parts III-VI. Defendants’ affirmative defense that AT&T did not follow the

proper procedures for disputing Defendants' bill has no merit as explained below. Paragraph 65 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

### **3. The Volumes of Traffic Billed to AT&T.**

66. AT&T denies that facts are not relevant or admissible because they are related to periods beyond the statute of limitations. For one thing, they may be relevant to the adjudication of claims not barred by the statute of limitations. AT&T responds to Defendants' affirmative defense regarding the statute of limitations below. Paragraph 66 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

67. AT&T incorporates its response in paragraph 66 above regarding the statute of limitations. Paragraph 67 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

68. AT&T denies that its affiliate "sent" any traffic to GLC's tandem switch for the reasons explained in paragraph 42 above. AT&T incorporates its response in paragraph 66 above regarding the statute of limitations. AT&T disagrees with Defendants' claim in footnote 105 that Defendants did not manipulate or try to manipulate traffic volumes. The testimony by Mr. Irvin suggests otherwise; however, in light of the fact that the Defendants do not dispute they meet the growth triggers, the Commission may not need to address the issue. Vol. 3, Hearing Tr. 541-42. Paragraph 68 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

69. AT&T admits that it stipulated in the MPSC proceeding that the 8YY traffic at issue in this case originated with Cricket Communications and that it is willing, for purposes of this proceeding, to stipulate to the same, as described further in paragraph 65, above. AT&T is

without knowledge or information sufficient to form a belief as to the truth of the exact time in which the flow of traffic from Cricket to Defendants stopped, but based on AT&T's current understanding of the facts, that occurred in approximately March, 2014, not January, 2014. *See* Habiak Decl. ¶ 40. Paragraph 69 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

70. AT&T admits to the traffic volumes for June and July 2014 as cited by Defendants, which are the same as those set forth in Exhibit 2 to AT&T's Formal Complaint. Exhibit 2 shows that the average traffic volume billed to AT&T by Defendants in the months of April through July 2014 is 15.5 million minutes. Contrary to Defendants' contentions in paragraph 70, AT&T had no obligation to conduct all of the discovery necessary to resolve the issues at dispute in this proceeding through discovery in the MPSC proceeding. To the extent facts remain in dispute and are not addressed by stipulations, AT&T reserves the right to pursue discovery on them, including on the issue of the source and precise routing of the traffic coming from the Peerless switch in Chicago. Paragraph 70 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

71. Defendants are wrong when they deny that AT&T Michigan is the "competing ILEC" for GLC's service as explained in paragraph 64 above. Paragraph 71 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

## **II. ARGUMENT AND LEGAL ANALYSIS IN SUPPORT OF FORMAL COMPLAINT**

72. Paragraph 72 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

73. Paragraph 73 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

74. Paragraph 74 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

75. Paragraph 75 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

76. Paragraph 76 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

**III. DEFENDANT GLC'S ACCESS SERVICE TARIFFS AND THE RATES IT CHARGED TO AT&T VIOLATE THE ACT AND THE COMMISSION'S CLEC BENCHMARKING RULES BECAUSE GLC'S RATES EXCEED THE RATES OF THE COMPETING ILEC.**

**A. Defendant GLC's Tariffs And Charges For Switched Access Services Violate The Act And 47 C.F.R. § 61.26.**

77. Paragraph 77 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

78. Paragraph 78 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

79. Paragraph 79 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

80. Paragraph 80 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

81. Paragraph 81 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

82. Paragraph 82 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.



83. AT&T incorporates its response in paragraph 37 above and reasserts that GLC is a CLEC subject to the requirements of Section 61.26. Paragraph 83 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

84. For purposes of this proceeding, AT&T does not contest that GLC does not directly serve its own end users, i.e., it has no contracted or tariffed arrangements with called or calling parties to provide telecommunications services. But, this is irrelevant to the question of whether GLC qualifies as a CLEC. Defendants admit the relevant point that “GLC provides some exchange access services on calls that originate from or terminate to end-users,” i.e., called or calling parties. This makes GLC a CLEC pursuant to the Commission’s definition set forth in Section 61.26(a) as AT&T explains in paragraph 37 above and the Reply Legal Analysis Part I. Paragraph 84 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

85. Paragraph 85 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

86. Paragraph 86 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

87. Paragraph 87 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

88. AT&T admits that GLC’s tariff states the “Tandem Switched Transport rates consist of a Tandem Switching rate, a Tandem Switched Facility rate, and a Tandem Switched Termination rate.” AT&T also admits that pursuant to the tariff the Tandem Switched Facility rate, what AT&T referred to in its complaint in paragraph 88 as the Tandem Switched Transport

rate, is applied on a per access minute per mile basis. Paragraphs 88-91 of AT&T's Formal Complaint relate to the per-mile element, the Tandem Switched Facility rate, or what the tariff refers to as the Tandem Switched Transport rate. Paragraph 88 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

89. AT&T denies the implication that its having paid GLC the rate in Rate Band 2 without dispute for many years has any relevance to the Defendants' liability in this case.<sup>4</sup> As AT&T alleged in Paragraph 89 of the Complaint, GLC's tariff is unlawfully ambiguous because it does not specify which rate band applies, and, in light of the well-established principle that ambiguities in tariffs are construed against the carrier, then it is clear that GLC's tariff (assuming, *arguendo*, it is valid at all, *but see* Reply Legal Analysis Parts I-II) does not allow GLC to bill and collect for anything more than the *lowest* applicable rate band. *See* Compl. ¶ 89. GLC's billing and collection of the highest NECA rate band is therefore a breach of its tariff, in violation of Section 203 (even if the tariff were valid and did not violate 47 C.F.R. § 61.26). Notably, on November 7, 2014, four days prior to filing its Answer in this case, GLC filed on one days' notice a revision to its access tariff that purported to remove this ambiguity. Ltr. of M. Holmes, GLC, to Marlene Dortch, FCC, dated Nov. 7, 2014, Transmittal No. 8 to Tariff F.C.C. No. 20. The fact that it did so simply confirms AT&T's point that the tariff had been ambiguous on this point. While the new filing purports to address the ambiguity, the filing is unlawful and

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<sup>4</sup> Prior to embarking on their arrangements to overcharge AT&T for wireless 8YY traffic, GLC primarily provided tandem related services on calls to and from LECs (such as WTC) operating in small towns (GLC Legal Analysis at 2). Because the appropriate benchmark for GLC's services is the "competing ILEC," 47 C.F.R. § 61.26(f), on calls to end users in these small towns, the competing ILEC could be a small ILEC like WTC that may charge NECA based rates. Accordingly, prior to 2010, it was reasonable to expect that GLC's charges might include rates at NECA-based rates. However, once GLC began its arrangements with IBDC and began handling aggregated wireless 8YY traffic, then, for the reasons explained by AT&T, GLC could not lawfully charge any NECA-based rates—as it knew, or should have known. For these reasons, the fact that AT&T paid some NECA-based rates to GLC prior to 2010 plainly does not represent any implicit agreement that such rates are appropriate under the Defendants' aggregation/access stimulation arrangements.

void *ab initio*. Because GLC is not a rural CLEC for the reasons set forth in Part III of AT&T's Complaint, it may not benchmark to NECA rates, and its attempt to file a tariff with rates above the lawful benchmark is improper. 47 C.F.R. § 61.26. Paragraph 89 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

90. Paragraph 90 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

91. AT&T admits that GLC does not charge AT&T for 83 miles of transport but only for 82.17 miles. WTC charges for the other 0.83 miles. As shown in Exhibit 12 of AT&T's Formal Complaint, the total per-mile charge by GLC for its portion of the transport (approximately 82 miles) is 3.4347 cents per-minute. The total per-mile charge that AT&T would be assessed if traffic were handed off to AT&T Michigan from LEC-MI's end office switch in Southfield would be 0.0098 cents per minute. AT&T mistakenly referred to this charge as 0.0091 cents in its Formal Complaint, but the correct amount is set forth in its Exhibit 12. AT&T admits that GLC's charge is not 380 times higher than the alternative, but as a matter of simple mathematics, the charge is 350 times higher using when the correct number is used.

In footnote 116 that is associated with paragraph 91, Defendants purport to "admit" to a fact that not only misrepresents AT&T's statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, AT&T denies that "it was proper for GLC to bill 82.17 miles of transport." *See, e.g.*, Reply Legal Analysis Part III.B, IV. To the extent paragraph 91 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

92. GLC has no basis for denying the facts set forth in paragraph 92 in which AT&T accurately describes and quotes from the GLC and NECA tariffs. AT&T admits that GLC's tariff explains what the Tandem Switching rate, which "is applied on a per access minute per tandem basis," is designed to recover. Paragraph 92 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

93. AT&T denies the implication that its having paid GLC the Tandem Switching rate in Rate Band 2 without dispute for many years has any relevance to the Defendants' liability in this case, and AT&T incorporates its response to paragraph 89, above. Paragraph 93 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

94. Paragraph 94 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

95. Paragraph 95 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

96. GLC has no basis for denying the facts set forth in paragraph 96 in which AT&T accurately describes and quotes from the GLC and NECA tariffs. AT&T admits that GLC's tariff explains what the Tandem Switched Termination rate, which is applied on a per access minute per tandem basis, is intended to recover. Paragraph 96 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

97. AT&T denies the implication that its having paid GLC the Tandem Switched Termination rate in Rate Band 2 without dispute for many years has any relevance to the

Defendants' liability in this case, and AT&T incorporates its response to paragraph 89, above. Paragraph 97 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

98. Paragraph 98 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

99. Paragraph 99 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

**B. GLC's Contrary Arguments Are Without Merit.**

100. Paragraph 100 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

101. Paragraph 101 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

102. Paragraph 102 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

103. Paragraph 103 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

104. Paragraph 104 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

105. Paragraph 105 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

106. Paragraph 106 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

107. Paragraph 107 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

108. Paragraph 108 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

109. Paragraph 109 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

110. Paragraph 110 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

111. As discussed in paragraph 84 above, AT&T does not dispute, for purposes of this proceeding, that GLC does not directly serve its own end users. AT&T denies that GLC does not provide service to any end users. In fact, it provides “some exchange access services on calls that originate from or terminate to end-users,” as GLC admits in paragraph 84. Regardless, whether GLC serves end users is irrelevant to AT&T’s point in paragraph 111 that GLC does not qualify for the rural exemption from the Commission’s access charge rules. GLC admits in this paragraph that its service territories include urban areas and therefore by definition also admits that the rural exemption does not apply. *See* ¶ 37, *supra*; Reply Legal Analysis Part I. Furthermore, even if GLC does not “serve” end-users, as it contends, that would not exempt GLC from charging the competing ILEC rate, because it would trigger the requirement in Section 61.26(f) of the Commission’s rules. *See Eighth Report and Order*, ¶¶ 14-21; Reply Legal Analysis Part I.

In footnote 121, which is associated with paragraph 111, Defendants claim to be unable to form a belief as to the truth of the allegation that the end users originating the calls at issue in this case were located nationwide, including in urban areas. Defendants have essentially admitted this point, however, as described in paragraph 44 above. Paragraph 111 does not

contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

112. Defendants' response to paragraph 112 purports to "admit" to a fact that not only misrepresents AT&T's statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, as discussed in paragraph 111 above, AT&T denies that GLC does not serve any end users. To the extent paragraph 112 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

113. Paragraph 113 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

114. Paragraph 114 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

115. Paragraph 115 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

116. Defendants' response to paragraph 116 purports to "admit" to a fact that not only misrepresents AT&T's statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, as discussed in paragraph 111 above, AT&T denies that GLC does not serve any end users. To the extent paragraph 112 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

117. Paragraph 117 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

118. Defendants' response to paragraph 118 purports to "admit" to a fact that not only misrepresents AT&T's statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, AT&T denies that "the location of the wireless callers and

GLC's own service territory are irrelevant." But, in any event, AT&T's point here is that GLC, which indisputably is engaged in the provision of access services, cannot simultaneously (1) maintain that it does not serve its own end users and (2) deny that subsection (f) of Rule 61.26, which applies to access services "used to send traffic to or from an end user not served by that CLEC" is not applicable to GLC. To the extent paragraph 118 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

**IV. BOTH DEFENDANTS HAVE VIOLATED THE COMMISSION'S "ACCESS STIMULATION" RULES.**

119. Paragraph 119 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

120. AT&T incorporates its response to paragraph 42 above and denies all of the factual allegations in this paragraph except AT&T admits that some combination of Defendants billed AT&T tens of millions of dollars in access services and paid several million dollars to other entities pursuant to revenue sharing agreements. Compl. ¶¶ 42; Habiak Decl. ¶¶ 21-27.

121. Paragraph 121 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

122. Paragraph 122 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

123. Paragraph 123 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

124. Paragraph 124 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

125. Paragraph 125 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.



126. Paragraph 126 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

127. Paragraph 127 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

128. Paragraph 128 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

129. AT&T denies the factual allegations in footnote 81, which is associated with paragraph 129. Defendants have provided no documentary evidence to substantiate Mr. Fox's claims that WTC has never compensated anyone for any switched access traffic and that WTC has never had an access revenue sharing agreement. AT&T incorporates its response to paragraph 42 above and reserves the right to seek discovery on these issues. Paragraph 129 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

130. Paragraph 130 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

131. Paragraph 131 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

132. Paragraph 132 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

133. Paragraph 133 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

134. Paragraph 134 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

135. Paragraph 135 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

136. Paragraph 136 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

**V. DEFENDANTS' TRANSPORT AND SWITCHING CHARGES ARE UNLAWFUL BECAUSE (A) WESTPHALIA MAY NOT CHARGE FOR INTERLATA SERVICES AND (B) DEFENDANTS IMPROPERLY BILLED FOR SERVICES THAT THEY HAVE NOT PROVIDED.**

137. AT&T denies that Defendants have lawfully filed tariffs and notes that CLECs are prohibited from filing tariffs with rates above the Commission-prescribed benchmarks. 47 C.F.R. § 61.26. AT&T further denies that Defendants have complied with the Commission's rules relating to CLEC access charges, particularly 47 C.F.R. § 61.26. As explained in greater detail in the Reply Legal Analysis, that is manifestly untrue. *See* Reply Legal Analysis Parts I-II. Finally, as explained in greater detail in AT&T's reply to paragraph 12, *supra*, AT&T denies that the Commission's access stimulation rules do not apply in this case. Otherwise, paragraph 137 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

138. Paragraph 138 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

139. Paragraph 139 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

140. As explained in greater detail in AT&T's reply to paragraph 28, *supra*, AT&T admits that WTC's bills prior to May 2013 were erroneous but denies Defendants' characterization of those bills. Otherwise, paragraph 140 does not contain factual allegations or

legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

141. Paragraph 141 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

142. As explained in greater detail in AT&T's reply to paragraph 51, *supra*, AT&T denies that Defendants provided 83 miles of transport for the route in question. Otherwise, paragraph 142 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

143. Paragraph 143 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

144. Paragraph 144 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

145. Paragraph 145 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

146. AT&T notes that paragraph 146 of the Formal Complaint contains a factually-accurate description of, and quote from, the NECA tariff. Accordingly, Defendants should have admitted to this statement consistent with 47 C.F.R. § 1.724(b) ("Every effort shall be made to narrow the issues in the answer" by admitting, denying, or noting lack of sufficient information to admit or deny each averment in the complaint.). Otherwise, paragraph 146 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

147. AT&T notes that paragraph 146 of the Formal Complaint contains a factually-accurate quote from the NECA tariff. Accordingly, Defendants should have admitted to this

statement consistent with 47 C.F.R. § 1.724(b) (“Every effort shall be made to narrow the issues in the answer” by admitting, denying, or noting lack of sufficient information to admit or deny each averment in the complaint.). Otherwise, paragraph 147 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

148. Paragraph 148 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

149. As explained in greater detail in AT&T’s reply to paragraph 28, *supra*, AT&T admits that WTC’s bills prior to May 2013 were erroneous but denies Defendants’ characterization of those bills. Otherwise, paragraph 149 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

150. Paragraph 150 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

151. Paragraph 151 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

152. Paragraph 152 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

153. Paragraph 153 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

**VI. DEFENDANTS’ CHARGES ARE PART OF AN UNLAWFUL ARRANGEMENT, IN VIOLATION OF SECTION 201(b), THAT RAISES CUSTOMERS’ COSTS WITHOUT PROVIDING ANY OFFSETTING BENEFITS.**

154. Defendants’ response to paragraph 154 purports to “admit” to facts that not only misrepresent AT&T’s statements in its Formal Complaint, but which facts AT&T actively

contest in this case. Specifically, AT&T denies that Defendants had lawfully filed tariffs, complied with the access stimulation rules, or billed only for services they provided. *See, e.g.,* Reply Legal Analysis Parts I-IV. As addressed in paragraph 12 above, AT&T has also proven that the access stimulation rules apply to GLC. AT&T denies that it has benefited “from GLC’s independent tandem switch and the associated routing.” To the contrary, neither Defendant appears to perform any valid or necessary function on the aggregated 8YY wireless traffic, which is the only traffic at issue in this Part of AT&T’s Complaint. And, as explained in Part IV of AT&T’s Reply Legal Analysis, the Defendants bill and AT&T pays a significantly higher access charge because GLC’s charges for its transport are far higher than the prevailing market rate. *See* Reply Legal Analysis Part IV; Compl. Part VI. To the extent paragraph 154 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

155. Paragraph 155 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

156. Paragraph 156 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

157. Paragraph 157 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

158. As demonstrated in the Reply Legal Analysis Part IV and Formal Complaint Part VI, Defendants have engaged in “mileage pumping” because the additional mileage-based transport charges they bill on the 8YY aggregated wireless traffic serve no valid purpose and only drive up costs for AT&T and its customers.

159. AT&T admits that the 8YY calls at issue were not necessarily “aggregated” at LEC-MI’s switch and may have been “aggregated” before they were ultimately handed off to LEC-MI’s end office switch, although the point at which the calls were aggregated does not affect any liability issues in AT&T Complaint. *See* Compl. Part I.B.1, Exh. 10. As the Commission itself has determined, in a truly competitive market, competitive tandem providers, such as GLC, would not ordinarily charge higher prices than an incumbent unless they were offering differentiated services, which Defendants are not. *See* Reply Legal Analysis Part IV. Paragraph 159 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

160. Paragraph 160 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

161. AT&T incorporates its response in paragraph 154 above and denies again that AT& has benefited from GLC’s independent tandem switch and the associated routing to it. AT&T incorporates its response in paragraph 42 in response to the claims in footnote 137, which is associated with paragraph 161, that the decision to route traffic to GLC. As explained in the Reply Legal Analysis Part IV and Compl. Parts III-VI, AT&T should not pay more than 0.128 cents per minute for tandem access charges (the amount the competing ILEC charges for end office and seven miles of transport) plus a reasonable dip charge. Paragraph 161 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

162. Paragraph 162 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

163. Defendants' response to paragraph 163 purports to "admit" to a fact that not only misrepresents AT&T's statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, AT&T denies that Defendants "rates were tariffed at the levels permitted by Commission rules." *See, e.g.*, Reply Legal Analysis Parts I-II; Compl. Parts III-IV. To the extent paragraph 163 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

164. Defendants' response to paragraph 164 purports to "admit" to a fact that not only misrepresents AT&T's statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, AT&T denies that Defendants "charges were consistent with the FCC's rules." *See, e.g.*, Reply Legal Analysis Parts I-IV; Compl. Parts III-VI. To the extent paragraph 164 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

**COUNT I**  
**(Violations of C.F.R. § 61.26 and Sections 201(b) and 203)**

165. Paragraph 165 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

166. Paragraph 166 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

167. Paragraph 167 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

168. Paragraph 168 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

169. AT&T incorporates its response in paragraph 37 and reasserts that GLC is a CLEC for purposes of 47 C.F.R. § 61.26. *See, e.g.*, Reply Legal Analysis Part I.

170. As explained in the Formal Complaint Part III and Reply Legal Analysis Part I, Defendants' rates do exceed the rates of the competing ILEC.

171. AT&T incorporates its response in paragraph 111 and AT&T denies again that GLC does not serve any end users.

172. AT&T admits for purposes of this proceeding that GLC does not serve any of its own end users. As fully discussed in the Formal Complaint Part III and Reply Legal Analysis Part I, Defendants' rates do exceed the rates of the competing ILEC.

173. Paragraph 173 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

174. Paragraph 174 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

175. Paragraph 175 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

176. Paragraph 176 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

**COUNT II**  
**(Violations of 47 C.F.R. §§ 61.3(bbb), 61.26(g), 61.39(g), 69.3(e)(12)**  
**and Sections 201 and 203 of the Act)**

177. Paragraph 177 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

178. AT&T incorporates its response to paragraph 42 and denies that WTC has had no revenue sharing agreements.

179. Paragraph 179 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.



180. Paragraph 180 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

181. Paragraph 181 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

182. Paragraph 182 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

183. Paragraph 183 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

184. Paragraph 184 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

**COUNT III**  
**(Violations of Sections §§ 203, 201(b) of the Communications Act)**

185. Paragraph 185 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

186. Paragraph 186 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

187. As fully discussed in the Reply Legal Analysis Part III, WTC did bill for services it did not provide.

188. AT&T incorporates its response to paragraph 51 above and denies again that GLC provided 82.17 miles of transport during the relevant time periods. AT&T also denies that “WTC never handled the traffic on the route outside of its LATA and was only compensated for providing 0.83 miles of transport on the route” during all relevant time periods. *See, e.g.*, ¶ 50, *supra*. Paragraph 188 does not contain other factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

189. AT&T incorporates its response in paragraph 51 above and denies that GLC provided 82.17 miles of transport for AT&T's traffic at issue for the relevant time periods. As the evidence shows, LEC-MI provided about 44% of the transport services and therefore GLC billed for services it did not provide. *See* Reply Legal Analysis Part III.B. Paragraph 189 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

190. Defendants' response to paragraph 190 purports to "admit" to a fact that not only misrepresents AT&T's statements in its Formal Complaint, but which fact AT&T actively contests in this case. Specifically, AT&T denies that Defendants "could properly bill AT&T for more than seven miles of transport on calls routed through LECMI." *See, e.g.,* Reply Legal Analysis Part IV; Compl. §§ VI. To the extent paragraph 190 contains other factual allegations or legal arguments to which a response is required, those allegations or arguments are denied.

191. Paragraph 191 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

**COUNT IV**  
**(Violations of § 201(b) of the Communications Act)**

192. Paragraph 192 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

193. Paragraph 193 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

194. Paragraph 194 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

195. As fully explained in the Reply Legal Analysis Part IV, Defendants have engaged in mileage pumping.

196. As fully explained in the Reply Legal Analysis Part IV, Defendants' routing arrangements are convoluted, costly, and otherwise unreasonable.

197. Paragraph 197 does not contain factual allegations or legal arguments to which a response is required. If it does, however, those allegations or arguments are denied.

### **PRAYER FOR RELIEF**

198. AT&T denies that it is not entitled to the rulings and relief requested for all of the reasons set forth in AT&T's Formal Complaint and this Reply.

### **AT&T'S RESPONSE TO AFFIRMATIVE DEFENSES**

#### **1. AT&T's Complaint States A Valid Claim For Relief.**

AT&T's Complaint states a valid claim for relief. Under Section 208 of the Communications Act, any person may bring a complaint at the Commission for a common carrier's violation of the Act. 47 U.S.C. § 208. The Defendants are common carriers, Answer ¶ 16. AT&T's Complaint alleges that Defendants violated Sections 201(b) and 203 of the Act. Counts I-IV. In particular, AT&T alleges facts that, if true, establish that the Defendants violated various rules and orders of the Commission, and these rules and orders lawfully implement Sections 201(b) and 203. Therefore, the Defendants violations of the Commission regulations is to violate the Act. Compl. ¶ 78 & n.46. Accordingly, AT&T's Complaint states a valid claim for relief.

#### **2. AT&T's Claims Are Not Barred By The Equitable Doctrine of Unclean Hands.**

Defendants argue that AT&T's claims and requested relief are barred under the equitable doctrine of unclean hands. *See* Defendants' Legal Analysis Part VI.2. As an initial matter, it is not clear that this defense is even available to Defendants. The Commission has generally shown

resistance to applying the doctrine in the context of a Section 208 formal complaint case.<sup>5</sup> Specifically, the Commission has found that complainants’ alleged misconduct is “irrelevant” to the determination of whether a defendant has committed a violation of the Commission’s rules.<sup>6</sup> Therefore, even if the unclean hands defense were available, it is not relevant to Defendants’ liability and so should be deferred until a subsequent proceeding on AT&T’s damages, if not dismissed outright.

This affirmative defense is more appropriately rejected, however, because it has no factual basis as discussed in Part V.A.3 of the Reply Legal Analysis. The bulk of the conduct Defendants claim was “unclean” was Cricket’s participation in an 8YY traffic aggregation arrangement, which GLC joined several steps downstream. Defendants’ Legal Analysis at 54-57. But, this action was taken by Cricket before it became affiliated with AT&T. *See* ¶ 42, *supra*. Furthermore, AT&T has never contended that it is impermissible or improper for wireless carriers to aggregate traffic. *See* Reply Legal Analysis Part V.A.3. Instead, the violations here relate purely to Defendants’ decision to overcharge AT&T. *See id.*

Defendants’ other unclean hands argument – the bare assertion that AT&T “turns around and charges its 8YY customers a default rate of \$0.99” per minute (Defendants’ Legal Analysis at 56, n.232) – is also baseless on multiple levels. Legally, AT&T’s 8YY prices are irrelevant. Defendants’ switched access rates are unlawful because they do not comply with the FCC’s pricing rules for switched access service. Those rules are based entirely on the rates LEC’s charge, without regard to the retail price charged by the IXC. In all events, there is no dispute

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<sup>5</sup> *Qwest Communications Co. v. Sancom, Inc.*, Memorandum Opinion and Order, 28 FCC Rcd. 1982, 1993-94 (2013); *AT&T Corp. v. Bell Atlantic-Pennsylvania*, Memorandum Opinion and Order, 14 FCC Rcd 556, 59, n.233 (1998).

<sup>6</sup> *Franya Marzec v. Randy Power*, Order, 15 FCC Rcd. 4475, 4480 (2000)

that AT&T's 8YY prices comply with the law. AT&T's prices for 8YY service are irrelevant to the Commission's evaluation of Defendants' conduct.

On a policy level, Defendants' argument boils down to the anti-consumer view that Defendants should be allowed to violate the law with impunity, and that AT&T and its 8YY customers should bear the burden of their excessive rates by paying higher prices for 8YY service. The Commission has regulated switched access charges precisely to prevent downstream retail customers from bearing the brunt of them. *CLEC Access Reform Order* ¶ 6 ("Finally, by ensuring that CLECs do not shift an unjust portion of their costs to interexchange carriers, our actions should help continue the downward trend in long-distance rates for end users."). The Commission should reject Defendants' reliance on the unclean hands doctrine.

### **3. AT&T's Claims Are Not Barred By The Statute of Limitations.**

Defendants contend, in their Third Affirmative Defense, that AT&T's claims in this proceeding are barred by the applicable statute of limitations. *See* Defendants' Legal Analysis Part IV(3). However, Defendants' own analysis shows there is no way AT&T would be *completely precluded* from recovering damages. Indeed, Defendants all but concede that AT&T's claims for damages arising from invoices received by AT&T on or after April 4, 2012 (*i.e.*, two years prior to the filing of the informal Complaint), are not time barred under 47 U.S.C. § 415(b), *id.*, which is consistent with case law holding that installment payments under a services agreement give rise to separate causes of action.<sup>7</sup> Given that AT&T clearly has

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<sup>7</sup> *See, e.g., Sprint Commc'ns v. NTELOS Tel.*, No. 5:11cv00082, 2012 WL 3255592, at \*5 (W.D. Va. Aug. 7, 2012); *Tele-Valuation, Inc., v. Am. Tel. & Tel. Co.*, 73 F.C.C.2d 450, 452 (1979) (explaining that in cases involving alleged overcharges, "the point of accrual should be fixed as the time the customer receives a bill for services") (emphasis removed).

substantial rights to relief under Section 415, a more exact determination of the applicable limitations period should be deferred to the damages phase of this proceeding.<sup>8</sup>

Defendants further contend that some of AT&T's claims for damages do not relate back to the Informal Complaint. *See* Defendants' Legal Analysis Part IV(3). AT&T denies that its Formal Complaint does not relate back to its Informal Complaint, and the claims in the two pleadings are essentially identical. AT&T's informal complaint did not include allegations regarding Peerless, because AT&T filed its informal complaint on April 4, 2014, and AT&T learned about the Peerless traffic just after that time. In any event, AT&T's claims regarding Peerless traffic claims are clearly within the limitations period even if they do not relate back to the filing of AT&T's informal complaint. *See also* ¶ 18, *supra*. Likewise, AT&T's Informal Complaint did not address the Defendants' improper billing of transport actually provided by LECMI because it did not learn about LECMI's provision of this transport until discovery in the related MPSC proceeding. Habiak Decl. ¶ 18. Accordingly, AT&T's claims as to this violation are timely.

#### **4. The Defendants' Mitigation Of Damages Defense Is Premature.**

The Defendants, in their Fourth Affirmative Defense, contend that AT&T's Complaint should be dismissed because Defendants claim that AT&T failed to mitigate damages. Defendants' Legal Analysis at 59-64. Because AT&T has elected to bifurcate its damages claim, Compl. ¶ 19, this affirmative defense is premature and should be deferred until any supplemental complaint for damages.

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<sup>8</sup> A cause of action does not "accrue" until the customer "discovers, or in the exercise of due diligence should have discovered, the injury which forms the basis for his claim. *Beattie v. CenturyTel, Inc.*, 673 F. Supp. 2d 553, 557 (E.D. Mich. 2009). The fact that Defendants admittedly submitted erroneous invoices to AT&T, which had the effect of obscuring the nature of the traffic routing at issue, means that AT&T may very well have viable damages claims relating to invoices received before April 4, 2012. The Commission, however, need not address this issue in this phase.

In any event, the Defendants’ assertions that AT&T could have taken reasonable steps to limit its damages are wrong and should be rejected. *See* Reply Legal Analysis, Part V. Reply Legal Analysis, in Part V, contains a detailed discussion of arguments that are similar to this Defense, and AT&T incorporates that Part of its Reply Legal Analysis here.

As to the specific “options” set forth in the Defendants’ Legal Analysis, at 61-63, AT&T denies that these options are “reasonably” available as a way to mitigate damages.

First, Defendants posit that AT&T could have established a direct connection with LECMI rather than accepting traffic via GLC’s tandem. Defendants’ Legal Analysis at 61-62. However, establishing such a connection between two networks can be expensive, and it requires time and the cooperation of both parties. Habiak MPSC Rebuttal Testimony, at 5, 3 Vol. Hearing Tr. 465-66. In general, a competitive LEC does not always have the obligation to provide direct connections, and in this case, AT&T did approach LECMI in early 2014 about establishing a direct connection, and LECMI never even responded. *Id.* Indeed, given the amounts that the Defendants had been paying LECMI pursuant to the revenue sharing agreement, this is not at all surprising (*see id.*) – the bulk of the revenue that was shared came from the excessive rates that the Defendants were billing and collecting.

Second, as AT&T has explained, Reply Legal Analysis Part V, it is inaccurate to say that AT&T “could have avoided use of the [Defendants’] services at issue by changing the way in which *its wireless affiliates* routed their 8YY traffic.” Defendants’ Legal Analysis at 62 (emphasis added). Prior to March, 2014, Cricket was *not* an affiliate of AT&T, and prior to that time AT&T had no ability to dictate to Cricket how to route its traffic.

Third, the Defendants’ suggestion that AT&T Corp. would arrange for its ILEC affiliate (AT&T Michigan) to “request” LECMI to send AT&T Corp.’s long distance traffic over trunks

LECMI has with AT&T Michigan is not well-founded. It is far from clear that AT&T Michigan could give an affiliate IXC (AT&T Corp.) a preference that AT&T Michigan was not willing to extend to other similarly situated long distance carriers, and it is clear that many other IXCs (Verizon, Sprint, Century Link, and Level 3 are all in litigation with the Defendants) are being harmed by the Defendants' overcharges and thus could want the same arrangements that the Defendants are proposing that AT&T Corp. obtain. Accordingly, in essence, under the Defendants' proposal, AT&T Michigan could need to shoulder the traffic of many major long distance carriers, which is simply not realistic. Further, for the reasons described above as to a direct connection, even if AT&T Corp. could arrange for its ILEC affiliate (AT&T Michigan) to make the request to LECMI, Defendants fail to explain why LECMI would agree to this request.

Fourth, the Defendant suggest that AT&T could have "simply cancelled" GLC's services (at 63), but as AT&T explains in its Reply Legal Analysis Part V, the Commission itself does not agree that this is a reasonable way to proceed. Nor was AT&T required to take "steps to address the increasing volume of traffic with GLC" (at 63) – because the Commission itself *already did so*, by implementing access stimulation rules, which the Defendants have ignored. *See* Compl. Part IV.

#### **5. AT&T Has Complied With 47 U.S.C. § 1.721(a)(5).**

The Commission should reject Defendants' Fifth Affirmative defense alleging that AT&T failed to comply with Section 1.721(a)(5) of the Commission's rules. Pursuant to the rule, AT&T has included a statement of the facts relevant to proving its claims both in its Formal Complaint at Section I and in the accompanying Proposed Findings of Fact and Conclusions of Law. The material facts are properly supported by the Declaration of John W. Habiak and the documentary evidence attached as exhibits to the Formal Complaint. GLC's tariff, which is



attached as Exhibit 7, violates the Commission's rules on its face and is therefore sufficient evidence, standing alone, to support a number of AT&T's allegations.

Defendants claim not to be able to follow the allegations in the Formal Complaint, but this is belied by their Answer, which responds to AT&T's allegations. In fact, the Commission has found that a complaint does not violate the Commission's rules when, based on an evaluation of the Answer, the defendant was able to identify and comprehend the allegations. *See AT&T Corp. v. YMax Communications Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 5742, 5760 (2011). Defendants fully understand AT&T's claims against them for violating the Commission's access service rules. In any event, Defendants fail to explain how a violation of Section 1.725(a)(5), even if it were established, would excuse Defendants' violations of the Act, the Commission's rules and their own tariffs.

**6. AT&T's Complaint Should Not Be Dismissed For Failure To Join Indispensible Parties.**

Defendants, in their Sixth Affirmative Defense, contend that AT&T's Complaint should be dismissed under Federal Rules of Civil Procedure 19 and 12(b)(7) because AT&T allegedly failed to join "indispensible party." Defendants' Legal Analysis at 65-66. Defendants argue both that Count Four should be dismissed because AT&T should have joined LECMI as a party, *id.* at 67, and that all of AT&T's claims should be dismissed because inclusion of "LECMI, Peerless, IBDC, NuLeef, InComm, and AT&T wireless affiliate Cricket, would be necessary parties for resolving any of AT&T's claims." *Id.* at 68. Defendants' argument is meritless on multiple grounds.

First, even if it were appropriate to use Rule 19 as procedural guidance in formal complaint proceedings,<sup>9</sup> the entities identified by Defendants are not indispensable parties to this proceeding between AT&T and Defendants. AT&T has sought a determination of liability and recovery of damages only against Defendants GLC and WTC. Compl. ¶¶ 15, 198. By contrast, AT&T has not sought any relief against any of the entities identified by Defendants. *Id.* That is because GLC and WTC – and not Peerless, IBDC, NuLeef, InComm or Cricket – billed and collected from AT&T the access charges that are the subject of AT&T’s Complaint.<sup>10</sup> As a result, the entities identified by the Defendants are not “required parties” because their joinder to this proceeding is not needed to “accord complete relief among *the existing parties.*” Fed. R. Civ. P. 19(a)(1)(A) (emphasis added).<sup>11</sup>

Second, and again assuming Rule 19 provides appropriate procedural guidance to the Commission’s formal complaint proceedings, the Defendants ignore the remainder of Rule 19. In particular, Rule 19(a)(2) explains that “[i]f a person has not been joined as required, the court must order that the person be made a party.” Fed. R. Civ. P. 19(a)(2). Accordingly, even if the entities identified by Defendants were in fact “parties in interest” – and they are not – then the appropriate course would not be to dismiss AT&T’s Complaint (or any of its counts). Rather, the Commission should use its discretion in how to conduct its proceedings, *see, e.g. AT&T*

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<sup>9</sup> AT&T notes, however, that the Commission’s formal complaint rules have somewhat different standards for joinder of causes of action, and for filings against multiple defendants, than those in the Federal Rules of Civil Procedure. *See* 47 C.F.R. §§ 1.723, 1.735.

<sup>10</sup> LEC-MI also improperly billed (via WTC, LEC-MI’s billing agent) AT&T end office switching charges, but it has admitted that those charges were improperly billed. There is no need for AT&T to add LEC-MI as a party to obtain a liability determination that LEC-MI has conceded.

<sup>11</sup> Defendants’ true argument appears to be that entities such as LECMI might have evidence that is relevant to this proceeding between AT&T and Defendants GLC and WTC. *E.g.*, Defendants’ Legal Analysis at 67 (“LECMI is the gatekeeper in determining how traffic from its end office is routed”). Defendants have made no showing that this evidence cannot be presented to the Commission without making these entities parties to the proceeding. Indeed, LECMI has provided significant evidence in this proceeding.

*Corp. v. All American Tel. Co.*, 28 FCC Rcd 3477, ¶ 43 (2013), and issue an order allowing AT&T to add any such indispensable parties.<sup>12</sup>

**7. AT&T's Claims Are Not Barred By The Notice And Dispute Provisions Of WTC's Interstate Tariff.**

Defendants contend, in their Seventh Affirmative Defense, that AT&T's claims "are barred, in whole or in part, by its failure to satisfy the notice and dispute provisions of WTC's interstate tariff."<sup>13</sup> Defendants are mistaken, because AT&T's communications with Defendants provided all the information they needed to "permit the Telephone Company to investigate the merits of the dispute," as WTC's tariff requires.<sup>14</sup> In particular, AT&T's March 20, 2013 dispute letter to WTC described in detail the rate elements it was contesting and the unreasonable practices that yielded the incorrect rates in WTC's bills. Ex. 11. In addition, AT&T and the Defendants exchanged additional correspondence regarding the dispute, and there simply is no basis on the record here to conclude that the Defendants were unaware of the nature of AT&T's claims. *See* AT&T Reply Exhibits.

Further, even if it were true that AT&T did not submit good-faith disputes in the manner prescribed by WTC's tariff, Defendants have failed to establish that submission of a good-faith dispute in the manner prescribed by WTC's tariff is a prerequisite to AT&T's assertion of its claims in this case. In other words, Defendants point to nothing, either in the tariff or in the law, that provides that a party that does not submit a good-faith dispute as defined in the tariff thereby

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<sup>12</sup> Rule 19(b) describes the appropriate response when a "required party" "cannot be joined." Fed. R. Civ. P. 19(b). Defendants have made no argument that the parties that it claims are "required parties" could not be joined. Accordingly, even if Rule 19(b) were applicable to Commission proceedings, Defendants have offered no argument under Rule 19(b) that would support dismissal of AT&T's Complaint.

<sup>13</sup> Defendants Legal Analysis Part IV(7).

<sup>14</sup> *See* 3 Vol, Hearing Tr. 379 lines 289-298.

waives its statutory right to challenge a common carrier's conduct under the Communications Act or the Commission's rules.<sup>15</sup>

The proper purpose of bill dispute resolution provisions in tariffs is generally to provide the carrier with the opportunity to investigate and address any billing disputes, and thereby to promote efficient use of parties' resources and those of the courts. *Great Lakes Commc'ns v. AT&T Corp.*, 2014 WL 2866474, (N.D. Iowa, June 24, 2014) (noting the "legitimate purpose of the notice requirements" is "advising [the carrier] of the dispute and giving it the opportunity to investigate and resolve that dispute"). In contrast, as the Commission and the courts have found, billing dispute provisions cannot be unilaterally imposed in tariffs to "contravene[] the two-year statute of limitations in the Communications Act" or "unilaterally to bar a customer from exercising its statutory right to file a complaint within that limitations period." *Sprint Commc'ns v. Northern Valley*, 26 FCC Rcd. 10780, ¶ 14 (2011) (citing cases). Accordingly, even if AT&T had not submitted notices that were consistent with the Defendants' tariffs, AT&T still has the right to seek redress under Sections 206 to 208, as Congress provided.

The sole case that Defendants cite on good faith disputes is inapposite. In that case, a carrier, Fairpoint, had a tariff that allowed it to impose an embargo—*i.e.*, to refuse to provide new services and to discontinue existing services—if a carrier that was buying services out of the tariff withheld payment and failed to submit a good faith dispute. If the non-paying carrier did submit a good faith dispute, the tariff did not allow Fairpoint to impose an embargo.<sup>16</sup> A carrier called Level 3 withheld payment of bills for services provided under Fairpoint's tariff. Fairpoint

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<sup>15</sup> The pertinent part of the tariff on which Defendants rely simply states what a good-faith dispute requires. The provision then explains how the date of the dispute is determined and how the date of resolution is determined. Nowhere in the tariff language is there anything that remotely suggests that a dispute is waived if a good-faith dispute is not submitted, or that the only way in which a bill can be disputed is by lodging a "good-faith dispute."

<sup>16</sup> *Level 3 Commc'ns, LLC v. Tel. Operating Co.*, No. 5:11-cv-280, 2011 WL 6291959, at \*2 (D. Vt. Dec. 15, 2011).

imposed an embargo, and the question then arose whether Level 3 had submitted a good faith dispute in accordance with the tariff. *Id.* at \*2-3. In that context, the court held that Level 3 had failed to submit a good faith dispute, from which it followed that Fairpoint's imposition of the embargo was proper under the tariff. *Id.* at \*14.

That ruling does not assist Defendants here. In *Level 3*, the party with the tariff sought to enforce the consequence that its tariff expressly specified for a failure to submit a good faith dispute. Further, that consequence does not run afoul of any right customers have been granted in the Act, because while customers are entitled to services in response to reasonable requests, 47 U.S.C. § 201(a), a request for additional services after failure to pay for existing services is, as a general matter, not reasonable. In contrast, Defendants do not assert that the tariff says anything about what happens if a party fails to submit a good faith dispute. Instead, they want the Commission to read a consequence into the tariff. The Commission cannot properly do that, particularly in light of the black letter rule that tariffs are construed against the tariffing carrier.<sup>17</sup>

#### **8. AT&T's Complaint Is Not Barred By The Filed Tariff Doctrine.**

Defendants, in their Eighth Affirmative Defense, contend that AT&T's Complaint should be dismissed "in whole or in part, by the filed-rate doctrine." This defense should be rejected. AT&T's claims arise under Section 201(b) and 203, and it is well-established that the filed tariff doctrine does not apply to claims and defenses specifically accorded by the Act itself.<sup>18</sup> Thus, the fact that GLC charged its tariffed rates cannot erase GLC's liability, because AT&T's claims are that GLC's tariffed rates violate the "just and reasonable" requirements of Section 201(b) of the Act, as lawfully implemented in the Commission's CLEC access charge orders, 47 C.F.R.

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<sup>17</sup> See *id.* at \*13 ("[A]ny ambiguity in the tariff must be construed against Fairpoint as its drafter.").

<sup>18</sup> See, e.g., *Reiter v. Cooper*, 507 U.S. 258, 266 (1993); *ICC v. Transcon Lines*, 513, U.S. 138, 143 (1995); *Davel Commc'ns v. Qwest Corp.*, 460 F.3d 1075, 1085 (9<sup>th</sup> Cir. 2006).

§ 61.26. The rate provisions in the GLC tariff were *not* filed on a streamlined basis pursuant to Section 204(a)(3),<sup>19</sup> and AT&T can obtain refunds a CLEC's charges of unjust and unreasonable rates. *AT&T Corp. v. BTI*, 16 FCC Rcd 12312, ¶¶ 9-12 (2001).

In any event, even if GLC had filed on a streamlined basis, the Commission has explained in an authoritative legal brief that a “CLEC tariff for interstate switched access services that includes rates in excess of the benchmark in Rule 61.26 is subject to mandatory detariffing. Under that regime, a carrier is prohibited from filing a tariff; any attempt to do so would violate the FCC's rules and render the prohibited tariff void *ab initio*.”<sup>20</sup> Here, GLC's tariff plainly includes rates in excess of the benchmark, and thus it could never have been “deemed lawful” and immune from refunds.

As to WTC, AT&T's claim in Count II is that, having engaged in access stimulation, WTC was obligated to file revised tariffs under the Commission's rules (which, again, lawfully implement the just and reasonable requirements of Section 201(b), *see Connect America Order* ¶ 657). As the Commission has explained, even if WTC has filed a tariff that has become “deemed lawful” under Section 204(a)(3), once it is engaged in “access stimulation” under the rules,” then it is obligated to file a revised tariff as provided in the Commission's rules, and it can be liable for its failure to do so. *See PaeTec Amicus Brief*; *see also Transcon*, 513 U.S. at 147 (“Carriers must comply with the comprehensive scheme provided by the statute and regulations promulgated under it, and their failure to do so may justify departure from the filed rate”).

As to Counts III and IV, WTC has admitted that it made what it calls a “billing error” by billing AT&T for services that GLC provided. In addition to a violation of the Commission's

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<sup>19</sup> See Ex. 7. The GLC rate provisions at issue were filed on six days notice, Original Page 17GLC-10.3, rather than in the times specified in 47 U.S.C. § 204(a)(3) and the Commission's rules.

<sup>20</sup> See Ex. 13, Brief For Amicus Curiae Federal Communications Commission, at 25-28, filed in *PaeTec Commc'ns v. MCI Commc'ns Servs.*, No. 11-2268, et al. (3d Cir., filed Mar. 14, 2012) (“*PaeTec Amicus Brief*”).

rules, *Eighth Report and Order*, ¶ 21, billing for services that a carrier did not provide violates WTC's tariff (the NECA tariff), for the tariff only applies to "Issuing Carriers," and GLC is not an Issuing Carrier in the NECA tariff. *See, e.g.,* Ex. 6, NECA Tariff Title Page (the tariff has the "regulations, rates, and charges" for "the *provision* of" access services of "the Issuing Carriers") (emphasis added). In short, by billing for services provided by GLC, WTC violated the terms of its tariff, and carriers are liable for damages caused by breaches of their tariff, even "deemed lawful" tariffs. *See Qwest Commc'ns v. Farmers*, 24 FCC Rcd. 14801, n.98 (2009) ("The tariffed rates are deemed lawful only to the extent that the tariff actually applies, and we have now determined that the tariff does not apply to the services . . ."); 47 U.S.C. § 203(c).

**9. AT&T's Requested Relief Is Not Barred By The Equitable Doctrine Of Unjust Enrichment.**

Defendants, in their Ninth Affirmative Defense, contend that AT&T's requested relief is barred by the equitable doctrine of unjust enrichment. As an initial matter, equitable doctrines may not be available because this is a Section 208 formal complaint proceeding. *See* AT&T's Response to Affirmative Defenses 2 and 10. Further, under the equitable principles that apply, unjust enrichment is certainly not available to parties that act inequitably. AT&T also incorporate Part V.A of its Reply Legal Analysis in response to the Ninth Affirmative Defense.

**10. The Affirmative Defenses Of Waiver, Estoppel, Laches And Ratification Are Inapplicable In This Case.**

As their Tenth Affirmative Defense, Defendants argue that AT&T's claims are barred by the doctrines of waiver, estoppel, laches, and ratification. As to all of these, AT&T notes that their availability in a Section 208 formal complaint case is uncertain. The Commission has not only questioned the application of the "unclean hands" doctrine, as discussed above, but equitable doctrines more broadly. *See Air Touch Cellular v Pacific Bell*, 16 FCC Rcd. 13502,

13509 (2001) (declining to invoke equitable doctrines of estoppel, laches and waiver as a defense to defendant's compensating complainant pursuant to the Commission's rules). Even if the defenses are available, Defendants have provided no basis for applying them here.

As a general matter, Defendants claim that AT&T has waited too long to dispute the arrangement it "chose" to have with Defendants. But, AT&T had no control over the arrangement as described in Section V.A of the Reply Legal Analysis. Under the Commission's rules, AT&T had to accept the traffic from Defendants. To the extent all of the equitable defenses discussed below rely on the argument that AT&T acted voluntarily in either initiating or failing to terminate its relationship with Defendants, they should be rejected. Equity is not properly invoked to hold AT&T to agreement it never made.

**Waiver.** AT&T has not waived any of its claims to relief. As discussed in response to Affirmative Defense 7, Defendants' tariffs do not require AT&T immediately to dispute charges, but instead, under 47 U.S.C. § 415, AT&T may dispute a bill anytime within two years of its being issued. Having disputed Defendants' charges in a letter on March 20, 2013, AT&T cannot, pursuant to the terms of the tariff, be said to have waived any claim arising during the two years prior to that letter.

Furthermore, and as to disputed charges prior to the two-year window, Defendants' own conduct made it far more difficult for AT&T to investigate and uncover the lawfulness of the amounts billed. First, as Defendants concede, they billed AT&T for CLEC access services in a manner that reflected, incorrectly, that an ILEC were providing them. *See Answer ¶ 58.* That alone has significant implications for how a customer would evaluate the appropriateness of those charges. Second, as to access stimulation, Defendants had an affirmative obligation once they met the access stimulation triggers to file revised tariffs. Under the facts shown by AT&T,



Defendants had revenue sharing agreements in place and first met the 100% growth trigger in May 2011 and so should have filed lower rates then. Compl. Part IV. Third, at all relevant times, AT&T and other carriers were billed on behalf of LEC-MI end office switching on wireless calls. Compl. ¶ 31. The fact that this service was billed in this manner had the effect of disguising the nature of the Defendants' arrangements and charges so as to avoid the Commission's rules prohibiting such charges for wireless calls. *Eighth Report & Order* ¶¶ 14-17. AT&T has not waived its right to relief on any of its claims.

**Estoppel.** Defendants seem to base their estoppel defense on the assertion that they provided service to AT&T in reliance on AT&T's history of submitting ASRs and then paying Defendants' invoices in full. They further assert that AT&T, despite having since learned of Defendants' unlawful charges, must be estopped from challenging their conduct because Defendants will be financially injured otherwise. It is absurd to suggest that AT&T must continue paying unlawful rates after it discovered that Defendants were violating the Communications Act and the Commission's rules. Furthermore, as explained in Section V.A.2 of the Reply Legal Analysis, Defendants could not reasonably rely on AT&T's submission of ASRs as a license to overcharge AT&T in violation of the Communications Act and the Commission's rules.

Defendants have failed to establish the elements of an estoppel defense required by the Commission. The Commission should reject this defense for failure to provide evidence that Defendants justifiably relied on AT&T's conduct and changed their behavior in a manner that caused them harm. *See AT&T Corp. v. Business Telecom, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd. 12312, 12336 (2001) (rejecting estoppel defense as unsupported in a case

where Commission found that defendant had been charging AT&T unjust and unreasonable service access rates).

If any party is barred by estoppel, it is Defendants, as a result of their admitted errors with respect to the company listed on their bills and the types of charges (end office switching) they imposed. Further, Defendant GLC represented in its filed tariff for over twelve years that it was a CLEC and undoubtedly overcharged for many years based on that representation. Any attempt by GLC to assert in this proceeding that GLC is not a CLEC should be barred.

**Laches.** For the reasons discussed above in response to waiver and estoppel, there is no basis to invoke the equitable doctrine of laches given that any delay by AT&T was the result of Defendants' conduct and any such delay was neither lengthy nor inexcusable.

**Ratification.** As explained in Section V.A.2 of the Reply Legal Analysis, the fact that AT&T submitted ASRs is not evidence that AT&T ever agreed to pay Defendants access charges that violate the Commission's rules. Further, Defendants' assertion that AT&T paid its bills for a decade before the parties' dispute arose is irrelevant. This case concerns Defendants' charges from 2010 onward. During the years before that, Defendants had not inflated their access bills by (i) using revenue sharing agreements to lure 8YY traffic onto their networks, when that traffic otherwise had no connection to them, (ii) imposing their high rates on transport that was really provided by LEC-MI and (iii) charging for switching that no one provided.

#### **11. AT&T's Claims Are Not Barred By The Voluntary Payment Doctrine.**

Defendants contend, in their Eleventh Affirmative Defense, that AT&T's claims are barred by the "voluntary payment doctrine" because AT&T previously paid certain of Defendants' invoices "with full understanding of the charges . . . [and] tariffs on record." Defendants' Legal Analysis Part IV(11). Defendants' contention fails for three reasons. First, to

AT&T's knowledge, the Commission has *never* applied the voluntary payment doctrine in a Section 208 case. As described above in response to the Seventh Affirmative Defense, Congress provided customers with the ability to seek relief against common carriers for violations of the Act and for overcharges for approximately two years from the date the cause of action accrues. 47 U.S.C § 415. As such, the voluntary payment doctrine does not appear to be consistent with the statutory scheme enacted by Congress. In any event, in light of the facts here, the voluntary payment doctrine is inapplicable even if it were not precluded by Congress.

Second, Defendants' claim fails because AT&T's payments were not voluntary. Even where the voluntary payment doctrine applies, a payment is not considered voluntary unless it is "made with a full knowledge of all circumstances upon which it is demanded, and without artifice, fraud or deception."<sup>21</sup> Indeed, AT&T did not have any knowledge at the time of its payments that 44% of the transport service Defendants billed on 8YY traffic was not provided by Defendants but rather LECMI, or that Defendants were billing for end office switching where no such switching had been performed. To the contrary, Defendants affirmatively engaged in "artifice" and "deception" by affirmatively stating (i) that they provided 100% of the transport on the 8YY traffic, (ii) that LECMI had provided end office switching on that traffic; and (iii) that GLC was a "rural" CLEC. Moreover, GLC engaged in "furtive concealment" by continuing to assess high "rural" rates and not revising its tariff despite engaging in access stimulation.<sup>22</sup>

Finally, Defendants cannot invoke the doctrine because it is fundamentally inconsistent with their tariffs, which *permit* refunds of any amounts paid so long as the payor made a written

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<sup>21</sup> See, e.g., *Allstate Ins. Co. v. Broe*, 2008 WL 3876188 (Mich. App. Aug. 21, 2008) (quoting *Pingree v. Mutual Gas Co.*, 107 Mich. 156, 157 (1895)).

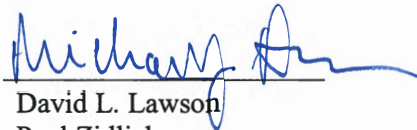
<sup>22</sup> *In re Connect America Fund*, 27 FCC Rcd. 4040, ¶ 697 (2011).

demand within two years of the related bill. To the extent AT&T's refund claims comply with that provision, Defendants cannot use the voluntary payment doctrine to avoid liability.

**AT&T'S INFORMATION DESIGNATION**

With respect to the Section 1.726(d) of the Commission's Rules, 47 C.F.R. § 1.726(d), AT&T states that it does not have anything to add to the information designation it provided with its Formal Complaint.

Respectfully submitted,



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Dated: November 19, 2014

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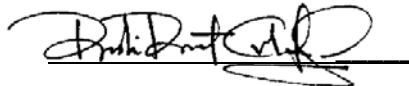
## **CERTIFICATE OF SERVICE**

I hereby certify that on November 19, 2014, I caused a copy of the foregoing  
AT&T's Reply To The Answer, Response To Affirmative Defenses, And Information  
Designation to be served as indicated below:

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