

EXHIBIT 15

**Letter from AT&T to Great Lakes
(ATT0000731-33), dated July 12, 2012**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 16

**Rebuttal Expert Report of
Warren Fischer, with Amended Exhibit 4
(November 5, 2014)**

**HIGHLY CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 17

**Excerpted pages of John W. Habiak's
testimony, on behalf of AT&T Corp., in the
Michigan Public Service Commission
Case No. U-17619, dated September 23, 2014
(ATT0002022-25)**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 18

**Great Lakes' Quarterly Report
filed with the Iowa Utilities Board
(January 30, 2015)**

**STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD**

**FILED WITH
Executive Secretary
January 30, 2015
IOWA UTILITIES BOARD**

| | |
|---|-------------------|
| IN RE: GREAT LAKES COMMUNICATION CORPORATION d/b/a IGL TELECONNECT | DOCKET NO. M-3798 |
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**IGL TELECONNECT'S
REPORT FOR THE PERIOD ENDING JANUARY 30, 2015**

As provided by the Board's Order Granting Motion to Substitute Reporting Requirements, As Modified, Great Lakes Communication Corporation d/b/a IGL TeleConnect ("IGL"), respectfully submits this report for the period ending January 30, 2015. *See In re: Great Lakes Communication Corporation*, Order Granting Motion to Substitute Reporting Requirements, As Modified, SPU-2011-0004 (IUB Oct. 8, 2014) ("Substitute Reporting Order").

I. PROGRESS IN PROVIDING LOCAL EXCHANGE SERVICE

IGL is a certificated local exchange carrier in three exchanges: Lake Park, Milford, and Spencer. Its progress in providing service in each of these exchanges is discussed below.

A. Lake Park

As of the submission of this report, IGL is providing local exchange service to 33 residential and local business customers in the Lake Park exchange. This represents an increase of 1 local exchange customer since IGL provided its last report to the Board on October 31, 2015.

IGL also provides Internet to 150 customers, representing an increase of 8 customers.

IGL currently has 4 individuals or businesses that have expressed interest in IGL's services in Lake Park, but for which installation has not occurred.

B. Milford

As of the submission of this report, IGL is providing local exchange service to 63 residential and local business customers in the Milford exchange. This represents a decrease of 1 local exchange customer since IGL provided its last report to the Board.

In the Milford exchange, IGL continues to experience high demand for its high-speed broadband Internet services. It currently provides Internet to 261 customers, representing an increase of 7 since its last report to the Board.

IGL has 57 individuals or businesses that have expressed interest in IGL's services in Milford, but for which installation has not occurred.

C. Spencer

The Board approved a modification of IGL's local exchange tariff on September 8, 2014 to enable IGL to begin providing competitive local exchange services in the Spencer exchange. *In re: Great Lakes Communication Corp. d/b/a IGL TeleConnect*, Order Approving Tariff, TF-2014-0317 (IUB Sep. 8, 2014). Since its last report, the following activities have occurred:

- Completed interconnection of IGL's network with the incumbent local exchange carrier, CenturyLink, and competitive carriers MediaCom and Spencer Municipal Utilities for the purpose of routing local traffic in the Spencer exchange;

- Completed testing interconnection with CenturyLink for the routing of calls;
- Obtained and tested 1000 block numbering resources from the pooling administrator for the exchange;
- Received frequency/channel plan. Equipment to be ordered, programmed, mounted and tested in the first quarter of 2015. Full deployment of service in the area to commence upon successful testing;
- Designing marketing campaign to attract new customers in Spencer;
- Began serving Webb Wireless's existing Internet customer base and communications tower, which are being used to ensure quality coverage in the exchange.

IGL currently has installed and began providing local exchange service to 1 customer in the Spencer exchange as of this report.

IGL has also added 209 Internet customers in the Spencer exchange, including those previously served by Webb Wireless.

IGL currently has 17 individuals or businesses that have expressed interest in IGL's services in Spencer, but for which installation has not occurred.

D. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

E. Other Exchanges

IGL also continues to experience high demand for its high-speed broadband Internet services from customers that live outside of its certificated exchanges. It currently provides Internet to 495 customers in exchanges other than those discussed above, representing an increase of 357 since its last report to the Board.

IGL is also maintaining a waiting list in other areas with individuals and businesses interested in IGL's Internet or telephone services. Currently, it has 77 people on that list in areas in Iowa including Arnolds Park, Okobojo, Everly, Ocheyedon, Sibley, Terril, and Royal.

II. MARKETING AND ADVERTISING

IGL continues to aggressively market its services to consumers in Lake Park and Milford and will also soon begin to undertake activities to raise awareness of consumers in Spencer as it prepares to launch its competitive telephone offerings in that exchange. Specifically, IGL has engaged in the following market and advertising activities since last reporting to the Board:

- A third-page color advertisement appeared in the Okobojo Magazine Nov/Dec and January issues;
- A third-page color advertisement appeared in the Discover Magazine newspaper supplement January 24;

- A half-page color advertisement and featured business listing appears in Vacation Okoboji, a yearly magazine publication and relocation guide distributed to area restaurants, hotels, realtors, and other participating businesses.
- A half-page color advertisement appears in the Homeowner's Resource Guide, a yearly publication that is used as a relocation guide distributed by area realtors, banks, and other participating businesses. Featured next to the ad is a full page informational article created by IGL, which provides answers to common consumer questions about internet speeds;
- 8 foot by 3 foot LED scoreboard ads remain in the Okoboji and Spencer High School gyms;
- Holiday greeting radio spots on Q102 and KUOO during the last two weeks in December;
- IGL also continues to utilize its website, Facebook page, and Google Ads to raise awareness of its services and events in the community. IGL's web presence also includes maintaining business listings on several local directories and national pages, including but not limited to: Milford Commercial Club, Okoboji Chamber, Explore Okoboji, Vacation Okoboji, City of Lake Park, City of Spirit Lake, LinkedIn, Angie's List, Yellow Book, Yellow Pages, White Pages, and Dex.

III. NOTEWORTHY RECOGNITION

The Iowa Lakes Corridor Development Corporation held its annual Business Recognition Luncheon at the Clay County Regional Events Center on November 19 to

recognize businesses and entrepreneurs in Buena Vista, Clay, Dickinson and Emmet counties. IGL TeleConnect was awarded the 2014 Small Business Excellence Award for its dedication to providing high-quality and affordable communication technologies and for connecting the rural areas and city regions in the corridor. The event and award recognition was publicized live via Twitter and also later featured through several regional media outlets including but not limited to: Spencer Daily Reporter, Dickinson County News, Estherville Daily News, KUOO/Q102/Y100, Storm Lake Radio, FM1043 and KWOA Worthington, and ExploreOkoboji.com.

IV. THIRD PARTY AGREEMENTS

Pursuant to the Board’s Substitute Reporting Order, IGL is directed to report on “significant third party agreements involved in the expansion of Great Lakes’ local exchange service offerings.” Substitute Reporting Order, 4. IGL considers the following new third party agreements to be significant to its expansion of its local service offerings:

[BEGIN CONFIDENTIAL INFORMATION]

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL INFORMATION]

V. PERSONNEL UPDATES

The following additional staff joined IGL TeleConnect:

- **Kelli Larsen** joined the staff in early November as the Director of Development for IGL TeleConnect and works in the areas of customer service, development of new markets and sales strategy. She has background in Training, Organizational Development and Customer Service. Kelli has a passion for education and holds a Master’s Degree from Drake University in Adult Learning and Organizational Performance with Emphasis in Leadership and Human Resources. She has worked in the banking, educational and retail industries in Northwest Iowa and the Des Moines area. Kelli enjoys time spent with her husband and their 10-month-old son.
- **Susan Nothwehr** joined the staff at the end of November. After a full career in the education field, Susan is enjoying learning about the many facets of telecommunications through her part-time position and assists with various office duties for GLCC and IGL TeleConnect. Susan is on the Iowa Great Lakes

Lutheran School board and also enjoys serving lunch at the school. She and her husband have lived in Spencer for almost 30 years. They have 3 grown children and 4 grandchildren.

- **Mak Kloewer** joined the staff of IGL TeleConnect in early December in the role of customer service and technical support. He has a background in excellent office management, customer service, and employee relations. Mak is a recent graduate of the University of Northern Iowa with a degree in Business Management and a focus in marketing. He is an active volunteer with the Northwest Iowa Youth Soccer Alliance where he enjoys coaching youth soccer teams. Mak also has a passion for performing music in his free time and also enjoys outdoor seasonal activities and sports.

VI. FINANCIAL DATA

The Substitute Reporting Order adopts the recommendation of IGL and the Office of Consumer Advocate that IGL provide quarterly financial data, which, to the extent possible, provides actual data rather than budgets or projections. The financial information is included in the attached **Confidential Exhibit A**.

EXHIBIT 19

**Great Lakes' Quarterly Report
filed with the Iowa Utilities Board
(October 30, 2015)**

**STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD**

**FILED WITH
Executive Secretary**

October 30, 2015

IOWA UTILITIES BOARD

| | |
|---|-------------------|
| IN RE: GREAT LAKES COMMUNICATION CORPORATION d/b/a IGL TELECONNECT | DOCKET NO. M-3798 |
|---|-------------------|

**IGL TELECONNECT'S
REPORT FOR THE PERIOD ENDING OCTOBER 30, 2015**

As provided by the Board's Order Granting Motion to Substitute Reporting Requirements, As Modified, Great Lakes Communication Corporation d/b/a IGL TeleConnect ("IGL"), respectfully submits this report for the period ending October 30, 2015. *See In re: Great Lakes Communication Corporation, Order Granting Motion to Substitute Reporting Requirements, As Modified, SPU-2011-0004 (IUB Oct. 8, 2014) ("Substitute Reporting Order").*

I. PROGRESS IN PROVIDING LOCAL EXCHANGE SERVICE

IGL is a certificated local exchange carrier in three exchanges: Lake Park, Milford, and Spencer. Its progress in providing service in each of these exchanges is discussed below.

A. Lake Park

As of the submission of this report, IGL is providing local exchange service to 39 residential and local business customers in the Lake Park exchange. This represents a consistent number of local exchange customers served by IGL since its last report to the Board on April 30, 2015.

IGL also provides Internet to 182 customers, representing an increase of 4 customers.

IGL currently has 0 individuals or businesses that have expressed interest in IGL's services in Lake Park, but for which installation has not occurred.

B. Milford

As of the submission of this report, IGL is providing local exchange service to 69 residential and local business customers in the Milford exchange. This represents an increase of 1 local exchange customers since IGL provided its last report to the Board.

In the Milford exchange, IGL continues to experience high demand for its high-speed broadband Internet services. It currently provides Internet to 295 customers, representing an increase of 18 since its last report to the Board.

IGL has 15 individuals or businesses that have expressed interest in IGL's services in Milford, but for which installation has not occurred.

C. Spencer

As of the submission of this report, IGL is providing local exchange service to 15 residential and local business customers in the Spencer exchange. This represents an increase of 9 local exchange customers since IGL provided its last report to the Board.

IGL has 276 Internet customers in the Spencer exchange, representing an increase of 33 since IGL provided its last report to the Board.

IGL currently has 46 individuals or businesses that have expressed interest in IGL's services in Spencer, but for which installation has not occurred.

D. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **[END CONFIDENTIAL]**

E. Other Exchanges

IGL continues to provide Internet to 505 customers in exchanges other than those discussed above.

IGL is also maintaining a waiting list in other areas with individuals and businesses interested in IGL's Internet or telephone services. Currently, it has 37 people on that list in areas in Iowa including Dickens, Terril, Arnolds Park, Harris, Okoboji, Marathon, Sioux Rapids, Peterson, Estherville, Wallingford, Ocheyedan, Wahpeton, and Everly.

MARKETING AND ADVERTISING

IGL continues to aggressively market its services to consumers in Lake Park and Milford, and surrounding communities. Specifically, IGL has engaged in the following market and advertising activities since last reporting to the Board:

- 15-second radio spots during all game broadcasts on Q102, also rotating with other sports-boosters daily during the Prime Sports reports on Q102 and KUOO;
- 30- second radio spots promoting Spirit Lake internet service, rotating between KUOO, Y100, and Q102 stations at a schedule of 10-22 ads per week;
- Radio Ads continue to run consistently on KICD-AM, KICD-FM, Q102, MORE104.9, Y100.1
- Football Booster radio ads on KILR FM Estherville radio station
- Sponsorship of an Okoboji.com webcam

- Sponsor billboards in the Spirit Lake and Lake Park ballfields;
- A billboard placed on the outside of the Clay County Fair track in Spencer on April will remain in place through April 2017;
- Billboard was placed north of Spencer on southbound Hwy 71;
- 8 foot by 3 foot LED scoreboard ads remain in the Okoboji and Spencer High School gyms;
- Ad on Special Board at the Prime Rib Restaurant in Spencer- 2 year commitment;
- Spencer Daily Reporter Ads on August 1st, September 10th and 25th
- NW IA Shopper Ad on August 1st;
- Lakes News Shopper Ads weekly ads ran Aug – Oct;
- A third-page color advertisement appeared in the Okoboji Magazine August and Sept/Oct issues;
- Discover magazine ads ran August 22nd, September 5th and 26th;
- Spencer Chamber Chill sponsorship event on September 11th
- A half-page color advertisement and featured business listing appears in Vacation Okoboji, a yearly magazine publication and relocation guide distributed to area restaurants, hotels, realtors, and other participating businesses.
- A full page color advertisement appears in the Homeowner's Resource Guide, a yearly publication that is used as a relocation guide distributed by area realtors, banks, and other participating businesses. Featured next to the ad is a full page informational article created by IGL, which provides answers to common consumer questions about internet speeds;

- IGL TeleConnect Open House in Spencer on September 25th. This included special advertisement in the Spencer Daily Reporter, Dickinson County News, and NW IA Shopper. Postcard invitations were sent out to all Spencer residents and current IGL customers. Ribbon cutting photo was done with the Spencer Chamber, grilled burgers, door prizes and goodies were given out to attendees;
- Lake Park Farmers Appreciation sponsorship and parade float on August 1st Parade in Webb on August 29th
- “Thank a Farmer” project on October 16th. IGL staff handed out over 750 sacks of goodies to area farmers;
- IGL also continues to utilize its website, Facebook page, and Google Ads to raise awareness of its services and events in the community. IGL’s web presence also includes maintaining business listings on several local directories and national pages, including but not limited to: Milford Commercial Club, Okoboji Chamber, Spirit Lake Chamber, Spencer Chamber, Explore Okoboji, Vacation Okoboji, City of Lake Park, City of Spirit Lake, LinkedIn, Angie’s List, Yellow Book, Yellow Pages, White Pages, and Dex.

II. THIRD PARTY AGREEMENTS

Pursuant to the Board’s Substitute Reporting Order, IGL is directed to report on “significant third party agreements involved in the expansion of Great Lakes’ local exchange service offerings.” IGL has no new significant third party agreements to report at this time.

III. PERSONNEL UPDATES

Diane Kiepe is a Customer Care Consultant at IGL TeleConnect. Diane excels in sales and customer service and has a strong commitment in making customers her top priority. Diane has a strong background in sales, accounting and retail management. Diane enjoys spending time with her husband and two daughters, gardening, reading cooking and entertaining.

IV. FINANCIAL DATA

The Substitute Reporting Order adopts the recommendation of IGL and the Office of Consumer Advocate that IGL provide quarterly financial data, which, to the extent possible, provides actual data rather than budgets or projections. The financial information is included in the attached **Confidential Exhibit A**.

EXHIBIT 20

**Great Lakes' Quarterly Report
filed with the Iowa Utilities Board
(April 29, 2016)**

**STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD**

**FILED WITH
Executive Secretary**

April 29, 2016

IOWA UTILITIES BOARD

IN RE:

GREAT LAKES COMMUNICATION
CORPORATION d/b/a
IGL TELECONNECT

DOCKET NO. M-3798

**IGL TELECONNECT'S
REPORT FOR THE PERIOD ENDING APRIL 29, 2016**

As provided by the Board's Order Granting Motion to Substitute Reporting Requirements, As Modified, Great Lakes Communication Corporation d/b/a IGL TeleConnect ("IGL"), respectfully submits this report for the period ending April 29, 2016. *See In re: Great Lakes Communication Corporation, Order Granting Motion to Substitute Reporting Requirements, As Modified, SPU-2011-0004 (IUB Oct. 8, 2014) ("Substitute Reporting Order").*

I. PROGRESS IN PROVIDING LOCAL EXCHANGE SERVICE

IGL is a certificated local exchange carrier in three exchanges: Lake Park, Milford, and Spencer. Its progress in providing service in each of these exchanges is discussed below.

A. Lake Park

As of the submission of this report, IGL is providing local exchange service to 42 residential and local business customers in the Lake Park exchange. This represents an increase of 3 local exchange customers served by IGL since its last report to the Board on January 29, 2016.

IGL also provides Internet to 187 customers, representing an increase of 5 customers served by IGL since its last report to the Board on January 29, 2016.

IGL currently has 1 individual or businesses that have expressed interest in IGL's services in Lake Park, but for which installation has not occurred.

B. Milford

As of the submission of this report, IGL is providing local exchange service to 71 residential and local business customers in the Milford exchange, representing an increase of 2 local exchange customers since IGL provided its last report to the Board.

In the Milford exchange, IGL continues to experience high demand for its high-speed broadband Internet services. It currently provides Internet to 326 customers, representing an increase of 13 since its last report to the Board.

IGL has 2 individuals or businesses that have expressed interest in IGL's services in Milford, but for which installation has not occurred.

C. Spencer

As of the submission of this report, IGL is providing local exchange service to 22 residential and local business customers in the Spencer exchange. This represents a consistent number of local exchange customers since IGL provided its last report to the Board.

IGL has 359 Internet customers in the Spencer exchange, representing an increase of 48 since IGL provided its last report to the Board.

IGL currently has 14 individuals or businesses that have expressed interest in IGL's services in Spencer, but for which installation has not occurred.

D. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

E. Other Exchanges

IGL continues to provide Internet to 526 customers in exchanges other than those discussed above.

IGL is also maintaining a waiting list in other areas with individuals and businesses interested in IGL's Internet or telephone services. Currently, it has 5 people on that list in areas in Iowa including Rembrandt, Arnolds Park, Okoboji, and Peterson.

II. MARKETING AND ADVERTISING

IGL continues to aggressively market its services to consumers in Spencer, Spirit Lake, Lake Park, Milford and surrounding communities. Specifically, IGL has engaged in the following market and advertising activities since last reporting to the Board:

- Driving Range Ball Sponsorship at the Spencer Country Club throughout spring-summer 2016 season;
- Lounge sponsor of the Rock' Bac'n Brew'n 2016 event at the Clay County Regional Events Center in Spencer on April 2;

- To show our appreciation to teachers for “Teacher Appreciation Month” in April, meat and cheese trays were delivered to schools in our coverage area to acknowledge their hard work on April 25-29;
- Radio ads continue to run consistently on local stations in the Spencer and Iowa Great Lakes area including KUOO, Y100.1, Q102, KICD-AM, KICD-FM, KILR-AM, KILR-FM and MORE104.9 stations, including:
 - Special promotional announcements for 2016 National Agriculture Week on KICD & CD 107.7 on March 15;
 - Killer Bee Country 95.9 FM/1070 AM – 2 radio ads that pay tribute to veterans in April & May in preparation of Memorial Day;
- Sponsorship of an Okoboji.com webcam
- A billboard on the outside of the Clay County Fair track in Spencer will remain in place through April 2017;
- Billboard north of Spencer on southbound Hwy 71;
- 8 foot by 3 foot LED scoreboard ads in the Okoboji and Spencer High School gyms;
- Ad on Special Board at The Prime Rib restaurant in Spencer;
- Ad on Special Board at J.J.’s Cutting Board restaurant in Spencer;
- Congratulatory State Boys Basketball Tournament ads appeared in the Lakes News Shopper for Okoboji Girls on March 1 and for Spirit Lake boys on March 8;
- Spring Home Improvement insert ad in the Spencer Daily Reporter, Dickinson County News and Storm Lake Pilot Tribute on March 18;
- A third-page color advertisement appeared in the Okoboji Magazine;

- A half-page color advertisement and featured business listing appears in Vacation Okoboji, a yearly magazine publication and relocation guide distributed to area restaurants, hotels, realtors, and other participating businesses.
- A full-page color advertisement appears in the Homeowner's Resource Guide, a yearly publication that is used as a relocation guide distributed by area realtors, banks, and other participating businesses. Featured next to the ad is a full page informational article created by IGL, which provides answers to common consumer questions about internet speeds;
- A quarter-page advertisement appears in the Spencer Chamber of Commerce Magazine, a yearly publication;
- IGL also continues to utilize its website, Facebook page, and Google Ads to raise awareness of its services and events in the community. IGL's web presence also includes maintaining business listings on several local directories and national pages, including but not limited to: Spencer-IA.com, Milford Commercial Club, Okoboji Chamber, Spirit Lake Chamber, Spencer Chamber, Explore Okoboji, Vacation Okoboji, City of Lake Park, City of Spirit Lake, LinkedIn, Angie's List, Yellow Book, Yellow Pages, White Pages, and Dex.

III. THIRD PARTY AGREEMENTS

Pursuant to the Board's Substitute Reporting Order, IGL is directed to report on "significant third party agreements involved in the expansion of Great Lakes' local exchange service offerings." IGL has no new significant third party agreements to report at this time.

IV. PERSONNEL UPDATES

None at this time.

V. FINANCIAL DATA

The Substitute Reporting Order adopts the recommendation of IGL and the Office of Consumer Advocate that IGL provide quarterly financial data, which, to the extent possible, provides actual data rather than budgets or projections. The financial information is included in the attached **Confidential Exhibit A**.

EXHIBIT 21

**Exhibits 15, 16 and 18
to the Deposition of John Habiak
(November 13, 2014)**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 22

**Excerpted pages from the
Deposition of John Habiak
(Tr. 161-171 and 181-183 included to
authenticate Exhibits 15, 16 and 18)
(November 13, 2014)**

UNITED STATES DISTRICT COURT

WESTERN DIVISION

| | | |
|---------------------------|---|--------------|
| GREAT LAKES COMMUNICATION | * | |
| CORP., | * | |
| | * | |
| Plaintiff, | * | Case No. |
| | * | |
| v. | * | 5:13-cv-4117 |
| | * | |
| AT&T CORP., | * | |
| | * | |
| Defendant. | * | |

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

November 13, 2014

9:25 a.m.

Deposition of JOHN HABIAK,

taken by the Defendant, pursuant to Notice and Rule 30(b)(6) notice, at the offices of AT&T Corp., One AT&T Way, Bedminster, New Jersey, before David Levy, CSR, RPR, CLR a Notary Public of the States of New York and New Jersey.

Job No: 36636

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A P P E A R A N C E S :

Attorneys for Plaintiff

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PUBLIC VERSION

JOHN HABIAK - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

3

1 Habiak - Confidential - Attorneys' Eyes Only
2 J O H N H A B I A K , having been duly sworn
3 by the Notary Public, was examined and
4 testified as follows:

5 EXAMINATION BY

6 MR. BOWSER:

7 Q. Good morning, Mr. Habiak.

8 A. Good morning.

9 Q. We've met before, but for the record,
10 my name is Joe Bowser. I represent Great Lakes
11 Communication Corp. in this case.

12 Would you please state your name and
13 business address for the record?

14 A. It's John Habiak, and it's
15 Bedminster -- One AT&T Way, Bedminster.

16 Q. And the zip here?

17 A. 07921.

18 Q. And that's where we are today,
19 correct?

20 A. Yes, um-hum.

21 Q. Despite the informal setting that
22 we're in here today, the oath that you just gave to
23 the court reporter is the same one that you would
24 give to a judge in a court of law, do you
25 understand that?

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JOHN HABIAC - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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1 Habiak - Confidential - Attorneys' Eyes Only

2 A. Yes.

3 Q. And I understand that you've had your
4 deposition taken before.

5 A. Yes.

6 Q. Have you had your deposition taken
7 before since we last met in 2012?

8 A. No.

9 Q. Okay. So I'll just walk through some
10 of the ground rules. The court reporter is taking
11 down everything that we're saying, so things will
12 flow from that.

13 It's important that you let me please
14 finish my question before you start your answer.
15 And I'll do my best to let you finish your answer
16 before I start my next question, okay?

17 A. Um-hum.

18 Q. And --

19 A. Yes.

20 Q. There we go. That's the second one.
21 We need audible verbal responses. So "uh-huhs" and
22 "uh-uhs" don't record very well in a transcript,
23 and so we need to use yesses and nos, please.

24 A. Right.

25 Q. And if you need any clarification on

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JOHN HABIAC - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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1 Habiak - Confidential - Attorneys' Eyes Only
2 any of my questions, please just let me know and
3 I'll do my best to explain the question.

4 A. Okay.

5 Q. Okay? And if I ask a question and
6 there would be documents that would help you give a
7 better or more informed answer, please let me know
8 what they are, and I may have them with me and be
9 able to share them with you here, okay?

10 A. Will do.

11 Q. And if Mr. McAleenan interposes any
12 objections, please give him a chance to do that,
13 and unless he instructs not to answer, please go
14 ahead and answer my question.

15 A. Right.

16 Q. And if you need a break at any time,
17 just let me know. The only thing that I ask is
18 that you answer any question that's on the table.

19 A. Will do.

20 Q. Okay. The court reporter has
21 premarked for us Deposition Exhibit GLCC number 1.

22 EXH (Deposition Exhibit 1, amended
23 notice of 30(b)(6) deposition of AT&T
24 Corp., marked for identification, as of
25 this date.)

PUBLIC VERSION

JOHN HABIAK - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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1 Habiak - Confidential - Attorneys' Eyes Only

2 Q. I'm going to hand that to you. It's
3 Great Lakes's amended notice of 30(b)(6) deposition
4 of AT&T Corp.

5 MR. McALEENAN: And Joe, right here, I
6 just wanted to note for the record that
7 the parties have exchanged correspondence
8 and objections regarding the notice that
9 addressed the scope of the topics as well
10 as specifically the topics that Mr. Habiak
11 would be addressing, and that this
12 deposition here today is subject to that
13 correspondence.

14 MR. BOWSER: Understood. And I'll
15 walk through with Mr. Habiak what I
16 understand him to be here today in his
17 capacity as an AT&T witness.

18 Q. And Mr. Habiak, do you understand that
19 you're also here in your capacity as an individual
20 fact witness?

21 A. Yes.

22 Q. When were you first asked to testify
23 on AT&T's behalf in connection with this deposition
24 notice?

25 A. Um -- maybe a month ago. I'm not

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JOHN HABIAK - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

[REDACTED]

PUBLIC VERSION

JOHN HABIAK - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

[REDACTED]

PUBLIC VERSION

JOHN HABIAK - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

[Redacted content]

PUBLIC VERSION

JOHN HABIAK - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

[REDACTED]

PUBLIC VERSION

JOHN HABIAK - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

[Redacted text block containing approximately 25 lines of blacked-out content]

PUBLIC VERSION

JOHN HABIAK - HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

[REDACTED]

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2 EXAMINATION (Cont'd.)

3 BY MR. BOWSER:

4 Q. Mr. Habiak, were you involved in
5 AT&T's analysis of whether it would like to
6 establish a direct connect with Great Lakes?

7 A. Um -- I -- I definitely probably
8 requested folks look into it. And folks, meaning
9 at the bottom of this, Lyn Walker, she's in our
10 network organization.

11 Q. Were you responsible for leading
12 AT&T's investigation into that issue?

13 A. Yeah, I mean, I initiated the
14 investigation, asking folks to look at it to see
15 what the feasibility was, whether there was
16 facilities there, etc.

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164

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12 Q. At this point in late 2011, the first
13 week of January 2012, had AT&T contacted Great
14 Lakes about a direct connect?

15 MR. McALEENAN: Objection, foundation.

16 A. I -- I don't know. I don't recall.

17 Q. Do you know if anyone ever did?

18 A. You mean ever, including to this day?

19 Q. Yes.

20 A. Oh, yeah, we have. Sure, absolutely.

21 Q. And who did that?

22 A. Um -- I'm not really sure if Kurt
23 reached out to them independently, but by the fall
24 of 2012, through our counsel, which was Debbie
25 Waldbaum by then, Great Lakes' counsel, we

1 Habiak - Confidential - Attorneys' Eyes Only
2 communicated to them we wanted a direct connect.

3 MR. BOWSER: Sixteen, please.

4 EXH (Deposition Exhibit 16, e-mail
5 chain Bates numbered ATT0001197 and
6 1198, marked for identification, as of
7 this date.)

8 Q. You've been handed what's been marked
9 as Exhibit 16. It's ATT 1197 and 1198. It's a

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Q. Got it.

MR. BOWSER: Eighteen, please.

EXH (Deposition Exhibit 18, e-mail chain Bates numbered ATT0001596 and 1597, marked for identification, as of this date.)

Q. Last one on this topic, we have Exhibit 18, which is an e-mail exchange that's been Bates-stamped as ATT 1596 through 1597.

(Witness perusing document.)

A. Got it.

Q. Are you familiar with this e-mail exchange?

A. Yes.

Q. Exhibits 15 and 16 presented the question of AT&T direct connect to Great Lakes in

1 Habiak - Confidential - Attorneys' Eyes Only
2 late 2011, early 2012. And here we are in October
3 2012, I'm just trying to figure out what had
4 happened in those intervening months vis-a-vis the
5 direct connect investigation at AT&T relating to
6 Great Lakes.

7 A. Well, I'm presuming, since apparently
8 there was no interest on Great Lakes' part, it
9 wasn't pursued until we got this offer.

10 Q. Why are you presuming that there was
11 no interest on Great Lakes' part? What makes you
12 say that?

13 A. I -- although I don't see anything to
14 say that -- I seem to recall that there was, that
15 Great Lakes was balking at the notion of direct
16 connect and -- but when the offer was made by Russ
17 Buntrock, we decided to bring it up again.

18 And then we started to look again at
19 the capacity issues just to make sure -- that's
20 what this is all about here, just to make sure
21 that, we're going to make an issue of this here, we
22 want to be able to get the direct connect, what do
23 we need to do.

[REDACTED]

[REDACTED]

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C E R T I F I C A T E

I, DAVID LEVY, RPR, CSR, a
Shorthand Reporter and Notary Public.
within and for the States of New York
and New Jersey, do hereby certify:

That JOHN HABIAK, the witness
whose deposition is hereinbefore set
forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 19th day of November
2014.

DAVID LEVY, CSR, RPR, CLR

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E R R A T A

I wish to make the following changes,
for the following reasons:

PAGE LINE

14:25 CHANGE: "Remote" to "Report"

REASON: Typographical error

15:22 CHANGE: "servers" to "facilities"

REASON: Typographical error

15:23 CHANGE: "servers" to "facilities"

REASON: Typographical error

27:12 CHANGE: Add "Bob Mulcahy" and "Dave Handal"

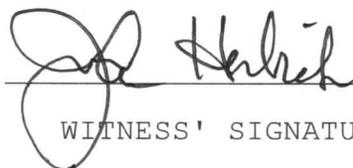
REASON: Clarify the record

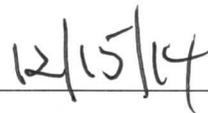
48:25 CHANGE: "No" to "Yes"

REASON: Clarify the record

60:12 CHANGE: "CBE" to "CVE"

REASON: Typographical error


WITNESS' SIGNATURE


DATE

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E R R A T A

I wish to make the following changes,
for the following reasons:

PAGE LINE

60:24 CHANGE:"CBE" to "CVE"

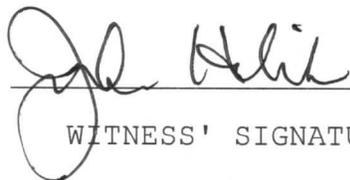
REASON:Typographical error

149:5 CHANGE:"credit" to "current"

REASON:Believed typographical error

___ ___ CHANGE: _____

REASON: _____


WITNESS' SIGNATURE

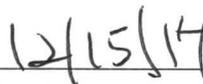

DATE

EXHIBIT 23

**Excerpted pages from
Great Lakes' F.C.C. Tariff No. 1
(September 1, 2005)**

ACCESS SERVICE

Regulations, Rates and Charges
Applying to the provision of Access Service
for connection to interstate communications facilities
for Interstate Customers within the
operating territory of
Great Lakes Communication Corp..

The title and street address of this tariff's Issuing Officer are located on the bottom of each page of this tariff. Access Services are provided by means of wire, fiber optics, radio or any other suitable technology or a combination thereof.

ACCESS SERVICE

TABLE OF CONTENTS

| | <u>SECTION-PAGE NO.</u> |
|--|-------------------------|
| Title Page | Title 1 |
| Table of Contents | 1 |
| Concurring Carriers | 9 |
| Connecting Carriers | 9 |
| Other Participating Carriers | 9 |
| Explanation of Symbols Used in Tariff | 10 |
| Explanation of Abbreviations | 10 |
| Reference to Other Tariffs | 12 |
| Use of the Tariff | 13 |
| Reference to Technical Publications | 14 |
| | |
| 1. <u>APPLICATION OF TARIFF</u> | 1-1 |
| | |
| 2. <u>GENERAL REGULATIONS</u> | SECTION 2 |
| | |
| 2.1 <u>Undertaking of the Telephone Company</u> | 2-1 |
| 2.1.1 Scope | 2-1 |
| 2.1.2 Limitations | 2-1 |
| 2.1.3 Liability | 2-2 |
| 2.1.4 Provision of Services | 2-5 |
| 2.1.5 Installation and Termination of Services | 2-5 |
| 2.1.6 Maintenance of Services | 2-5 |
| 2.1.7 Changes and Substitutions | 2-6 |
| 2.1.8 Refusal and Discontinuance of Service | 2-6 |
| 2.1.9 Reserved for Future Use | 2-9 |
| 2.1.10 Notification of Service-Affecting Activities | 2-10 |
| 2.1.11 Provision and Ownership of Telephone Numbers | 2-10 |
| 2.1.12 Coordination with Respect to Network Contingencies | 2-10 |
| 2.1.13 Non-chargeable Confirmation Services | 2-10 |

Great Lakes Communication Corp.

ACCESS SERVICE

2. GENERAL REGULATIONS (cont'd.)

| | | |
|--------|---|------|
| 2.2 | <u>Use</u> | 2-11 |
| 2.2.1 | Interference or Impairment | 2-11 |
| 2.2.2 | Unlawful Use | 2-11 |
| 2.3 | <u>Obligations of the Customer</u> | 2-12 |
| 2.3.1 | Damages | 2-12 |
| 2.3.2 | Ownership of Facilities | 2-12 |
| 2.3.3 | Equipment Space and Power | 2-13 |
| 2.3.4 | Availability for Testing | 2-13 |
| 2.3.5 | Balance | 2-14 |
| 2.3.6 | Design of Customer Services | 2-14 |
| 2.3.7 | Reference to the Telephone Company | 2-14 |
| 2.3.8 | Claims and Demands for Damages | 2-15 |
| 2.3.9 | Jurisdictional Report Requirements | 2-16 |
| 2.3.10 | Determination of Interstate Charges for Mixed Interstate and Intrastate Switched Access Service | 2-27 |
| 2.3.11 | Provision for Customer Audits | 2-28 |
| 2.3.12 | Discontinuance of Service by Customer | 2-29 |
| 2.3.13 | Discontinuance of Service by Interexchange Carriers – Procedures | 2-30 |
| 2.4 | <u>Payment Arrangements and Credit Allowance</u> | 2-32 |
| 2.4.1 | Payment of Rates, Charges and Deposits | 2-32 |
| 2.4.2 | Minimum Periods | 2-38 |
| 2.4.3 | Credit Allowance for Service Interruptions | 2-39 |
| 2.4.4 | Re-establishment of Service Following Fire, Flood, or Other Occurrence | 2-44 |
| 2.4.5 | Access Services Provided by More Than One Telephone Company | 2-45 |
| 2.5 | <u>Connections</u> | 2-55 |
| 2.5.1 | General | 2-55 |
| 2.6 | <u>Definitions</u> | 2-55 |

3. RESERVED FOR FUTURE USE

SECTION 3

Great Lakes Communication Corp.

ACCESS SERVICE

| | | |
|-----|---|-----------|
| 4. | <u>END USER ACCESS SERVICE AND THE FEDERAL UNIVERSAL CHARGE</u> | SECTION 4 |
| 4.1 | <u>End User Access Service</u> | 4-1 |
| | 4.1.1 General Description | 4-1 |
| | 4.1.2 Limitations | 4-1 |
| | 4.1.3 Undertaking of the Telephone Company | 4-1 |
| | 4.1.4 Payment Arrangements and Credit Allowance | 4-2 |
| | 4.1.5 Rate Regulations | 4-3 |
| 4.2 | <u>Federal Universal Service Charge</u> | 4-4 |
| | 4.2.1 General Description | 4-4 |
| | 4.2.2 Rate Regulation | 4-4 |
| 5. | <u>ACCESS ORDERING</u> | SECTION 5 |
| 5.1 | <u>General</u> | 5-1 |
| | 5.1.1 Ordering Conditions | 5-1 |
| | 5.1.2 Provision of Other Services | 5-2 |
| 5.2 | <u>Access Order</u> | 5-2 |
| 5.3 | <u>Traffic Engineering Responsibilities</u> | 5-8 |
| 5.4 | <u>Access Order Service Intervals</u> | 5-9 |
| 5.5 | <u>Access Order Modification</u> | 5-10 |
| 5.6 | <u>Cancellation of an Access Order</u> | 5-11 |
| 5.7 | <u>Selection of Facilities for Access Orders</u> | 5-13 |
| 5.8 | <u>Minimum Period</u> | 5-13 |
| 5.9 | <u>Access Orders for Services Provided by More Than One Telephone Company</u> | 5-14 |

Great Lakes Communication Corp.

ACCESS SERVICE

| | | |
|-------|--|-----------|
| 6. | <u>SWITCHED ACCESS SERVICE</u> | SECTION 6 |
| 6.1 | <u>General</u> | 6-1 |
| 6.2 | <u>Rate Categories</u> | 6-2 |
| 6.3 | <u>Provision and Description of Switched Access Service Feature Groups</u> | 6-18 |
| 6.3.1 | Feature Group A (FGA) | 6-18 |
| 6.3.2 | Feature Group B (FGB) | 6-24 |
| 6.3.3 | Feature Group D (FGD) | 6-28 |
| 6.3.4 | Manner of Provision | 6-37 |
| 6.3.5 | Common Switching Transport Termination and Translation Optional Features | 6-39 |
| 6.4 | <u>Transmission Specifications</u> | 6-73 |
| 6.5 | <u>Obligation of the Telephone Company</u> | 6-75 |
| 6.5.1 | Network Management | 6-75 |
| 6.5.2 | Design and Traffic Routing of Switched Access Service | 6-75 |
| 6.5.3 | Provision of Service Performance Data | 6-77 |
| 6.5.4 | Trunk Group Measurement Reports | 6-77 |
| 6.5.5 | Determination of Number of Transmission Paths | 6-78 |
| 6.5.6 | Design Blocking Measurement | 6-78 |
| 6.6 | <u>Obligations of the Customer</u> | 6-82 |
| 6.6.1 | Supervisory Signaling | 6-82 |
| 6.6.2 | Trunk Group Measurement Reports | 6-82 |
| 6.7 | <u>Rate Regulations</u> | 6-83 |
| 6.7.1 | Application of Rates and Charges | 6-83 |
| 6.7.2 | Minimum Periods | 6-92 |
| 6.7.3 | Minimum Monthly Charge | 6-92 |
| 6.7.4 | Measuring Access Minutes | 6-93 |
| 7. | <u>SPECIAL ACCESS SERVICE</u> | SECTION 7 |
| 7.1 | <u>General</u> | 7-1 |
| 7.1.1 | Rate Elements | 7-1 |
| 7.1.2 | Design Layout Report | 7-5 |
| 7.1.3 | Acceptance Testing | 7-5 |
| 7.1.4 | Service Descriptions | 7-6 |
| 7.1.5 | Ordering Options and Conditions | 7-9 |
| 7.1.6 | Facility Hubs | 7-9 |

Issued: September 1, 2005

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Great Lakes Communication Corp.

ACCESS SERVICE

7. SPECIAL ACCESS SERVICE (Cont'd)

| | | |
|-------|---|------|
| 7.2 | <u>Channel Types and Service Descriptions</u> | 7-10 |
| 7.2.1 | Voice Grade Service Channel Description | 7-10 |
| 7.2.2 | Digital Data Service | 7-15 |
| 7.2.3 | High Capacity Service | 7-18 |
| 7.3 | <u>Service Configurations</u> | 7-23 |
| 7.3.1 | Two-Point Service | 7-23 |
| 7.3.2 | Multipoint Service | 7-25 |
| 7.4 | <u>Rate Regulations</u> | 7-27 |
| 7.4.1 | Application of Rates and Charges | 7-27 |
| 7.4.2 | Minimum Periods | 7-27 |
| 7.4.3 | Mileage Measurement | 7-28 |
| 7.4.4 | Surcharge for Special Access Service | 7-29 |
| 7.4.5 | Mixed Use Analog and Digital High Capacity Services | 7-32 |
| 7.4.6 | High Capacity Optional Rate Plans | 7-35 |

8. ADVANCED COMMUNICATIONS SERVICES

SECTION 8

| | | |
|-------|---------------------------------|-----|
| 8.1 | <u>Frame Relay Service</u> | 8-1 |
| 8.1.1 | General | 8-1 |
| 8.1.2 | Service Description | 8-1 |
| 8.1.3 | Ordering Options and Conditions | 8-3 |
| 8.1.4 | Acceptance Testing | 8-3 |
| 8.1.5 | Rate Regulations | 8-4 |

Great Lakes Communication Corp.

ACCESS SERVICE

| | | |
|------|--|------------|
| 9. | <u>ADDITIONAL ENGINEERING, ADDITIONAL LABOR AND MISCELLANEOUS SERVICES</u> | SECTION 9 |
| 9.1 | <u>Additional Engineering</u> | 9-1 |
| | 9.1.1 Charges for Additional Engineering | 9-1 |
| 9.2 | <u>Additional Labor</u> | 9-1 |
| | 9.2.1 Overtime Installation | 9-1 |
| | 9.2.2 Overtime Repair | 9-2 |
| | 9.2.3 Standby | 9-2 |
| | 9.2.4 Testing and Maintenance with Other Telephone Companies | 9-2 |
| | 9.2.5 Testing Services | 9-2 |
| | 9.2.6 Other Labor | 9-2 |
| | 9.2.7 Charges for Additional Labor | 9-3 |
| 9.3 | <u>Miscellaneous Services</u> | 9-3 |
| | 9.3.1 Maintenance of Service | 9-3 |
| | 9.3.2 Programming Services | 9-3 |
| | 9.3.3 Presubscription | 9-4 |
| | 9.3.4 Blocking Services | 9-7 |
| | 9.3.5 Bill Name and Address Information | 9-9 |
| | 9.3.6 Central Office (CO) Implemented Coin Line | 9-9 |
| | 9.3.7 Special Construction | 9-11 |
| 10. | <u>SPECIAL FEDERAL GOVERNMENT ACCESS SERVICES</u> | SECTION 10 |
| 10.1 | <u>General</u> | 10-1 |
| 10.2 | <u>Emergency Conditions</u> | 10-1 |
| 10.3 | <u>Intervals to Provide Service</u> | 10-2 |
| 10.4 | <u>Safeguarding of Service</u> | 10-2 |
| | 10.4.1 Facility Availability | 10-2 |
| 10.5 | <u>Federal Government Regulations</u> | 10-3 |
| 10.6 | <u>Mileage Application</u> | 10-3 |
| 10.7 | <u>Move Charges</u> | 10-3 |
| 10.8 | <u>Service Offerings to the Federal Government</u> | 10-3 |
| | 10.8.1 Type and Description | 10-4 |

Issued: September 1, 2005

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ACCESS SERVICE

11. INTERFACE GROUPS, TRANSMISSION SPECIFICATIONS
AND CHANNEL INTERFACES

SECTION 11

| | | |
|---------|---|-------|
| 11.1 | <u>Local Transport Interface Groups</u> | 11-1 |
| 11.1.1 | Interface Group 1 | 11-1 |
| 11.1.2 | Interface Group 2 | 11-3 |
| 11.1.3 | Interface Group 3 | 11-3 |
| 11.1.4 | Interface Group 4 | 11-4 |
| 11.1.5 | Interface Group 5 | 11-4 |
| 11.1.6 | Interface Group 6 | 11-5 |
| 11.1.7 | Interface Group 7 | 11-6 |
| 11.1.8 | Interface Group 8 | 11-6 |
| 11.1.9 | Interface Group 9 | 11-7 |
| 11.1.10 | Interface Group 10 | 11-7 |
| 11.1.11 | Available Premises Interface Codes | 11-9 |
| 11.1.12 | Supervisory Signaling | 11-12 |
| 11.2 | <u>Transmission Specifications Switched Access Service</u> | 11-13 |
| 11.2.1 | Standard Transmission Specifications | 11-13 |
| 11.2.2 | Data Transmission Parameters | 11-21 |
| 11.3 | <u>Special Access Channel Interface and Network Channel Codes</u> | 11-24 |
| 11.3.1 | Glossary of Channel Interface Codes and Options | 11-26 |
| 11.3.2 | Impedance | 11-31 |
| 11.3.3 | Digital Hierarchy Channel Interface Codes (4DS) | 11-32 |
| 11.3.4 | Service Designator/Network Channel Code Conversion Table | 11-32 |
| 11.3.5 | Compatible Channel Interfaces | 11-34 |

Great Lakes Communication Corp.

ACCESS SERVICE

| | | |
|---------|---|------------|
| 11. | <u>INTERFACE GROUPS, TRANSMISSION SPECIFICATIONS AND CHANNEL INTERFACES (Cont'd)</u> | |
| 11.4 | <u>WATS Access Line Standard Transmission Specifications</u> | 11-48 |
| 11.4.1 | Standard Two-Wire Voice Transmission Specifications | 11-48 |
| 11.4.2 | Standard Four-Wire Voice Transmission Specifications | 11-49 |
| 11.5 | <u>WATS Access Line Data Transmission Parameters</u> | 11-50 |
| 11.5.1 | Signal to C-Notched Noise Ratio | 11-50 |
| 11.5.2 | Envelope Delay Distortion | 11-50 |
| 11.5.3 | Impulse Noise Count | 11-50 |
| 11.5.4 | Intermodulation Distortion | 11-50 |
| 11.5.5 | Phase Jitter | 11-50 |
| 11.5.6 | Frequency Shift | 11-50 |
| 11.6 | <u>WATS Access Line Transmission Specifications</u> | 11-51 |
| 11.6.1 | Improved Two-Wire Voice Transmission Specifications | 11-51 |
| 12. | <u>RATES AND CHARGES</u> | SECTION 12 |
| 12.1 | <u>Common Line Access Services and Federal Universal Service Charge</u> | 12-1 |
| 12.1.1. | General | 12-1 |
| 12.1.2 | End User Access Service | 12-1 |
| 12.1.3 | Federal Universal Service Charge (FUSC) | 12-1 |
| 12.2 | <u>Switched Access Service</u> | 12-2 |
| 12.3 | <u>Special Access Service</u> | 12-5 |
| 12.4 | <u>Advanced Communication Services</u> | 12-8 |
| 12.4.1 | Frame Relay Service | 12-8 |
| 12.5 | <u>Miscellaneous Services</u> | 12-9 |
| 12.6 | <u>Special Federal Government Access Services Offerings</u> | 12-12 |
| 13. | <u>RECIPROCAL COMPENSATION PURSUANT TO SECTION 251(B) OF THE TELECOMMUNICATIONS ACT OF 1996</u> | SECTION 13 |

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5. Access Ordering (Cont'd)

5.1 General (Cont'd)

5.1.2 Provision of Other Services

Other services as described in Sections 9.1 and 9.2, following, may be ordered in conjunction with the order for Access Service. All rates and charges set forth in Sections 12.5(A) and (B), following, will apply in addition to the rates and charges for the Access Service with which they are associated.

International blocking service is provided to end users and Feature Group A customers as described in Section 9.3.5, following. The nonrecurring charge set forth in Section 12.5(F), following, is applicable as described in Section 9.3.5, following.

5.2 Access Order

An Access Order is used by the Telephone Company to provide a customer Access Service as follows:

- Switched Access Service as set forth in Section 6., following.
- Special Access Service as set forth in Section 7., following.
- Other Services as set forth in Section 9., following.

An Access Order Charge, as set forth in Section 12.5(J) following, is applied to all customer requests for new access service. The charge is also applicable to customer requests for additions, changes or rearrangements to existing access service, except in certain cases, such as for a service date or design change.

When ordering Switched Access service, the customer must specify the directionality of the service and whether the service is to be provided as (1) Direct Trunked Transport to the end office, (2) Direct Trunked Transport to a tandem which connects with Tandem Switched Transport from the tandem to the end office, or (3) Tandem Switched Transport to the end office. When all or a portion of service is ordered as Direct Trunked Transport, the customer must specify the type and quantity of Direct Trunked Transport facility (e.g., Voice Grade or High Capacity DS1).

ACCESS SERVICE

5. **Access Ordering** (Cont'd)

5.2 **Access Order** (Cont'd)

The customer must also specify the type of Entrance Facility (e.g., Voice Grade or High Capacity) to be used for Switched Access. High Capacity Facilities are available only in certain end offices where technologically feasible. For High Capacity Entrance Facilities, the customer must specify the facility assignment and the channel assignment for each trunk.

When ordering Switched Access Service to be combined with High Capacity Special Access Service, the customer must specify the facility assignment and the channel assignment.

Direct Trunked Transport is available at all tandems and at all end offices except those identified in NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. TARIFF F.C.C. No. 4. as not having the capability to provide Direct Trunked Transport. Direct Trunked Transport is not available: (1) from end offices that provide equal access through a Centralized Equal Access arrangement, (2) from end offices that lack recording or measurement capability, and (3) from Non-Service Switching Point (SSP) equipped end offices that can not accommodate direct trunking of originating 800 calls.

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.

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 Section 6.3.5(A)(1)(i), following.

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ACCESS SERVICE

5. **Access Ordering** (Cont'd)

5.2 Access Order (Cont'd)

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Steve Oleson, CEO
Great Lakes Communication Corp.
1713 McNaughton Way
Spencer, Iowa 51301

Great Lakes Communication Corp.

ACCESS SERVICE

5. **Access Ordering** (Cont'd)

5.2 Access Order (Cont'd)

When ordering Switched Access the customer must specify:

- (1) The Telephone Company end office where service is requested or the access tandem switch for non-MTS/WATS providers.
- (2) The customer premises where service is requested.

ACCESS SERVICE

5. **Access Ordering** (Cont'd)

5.2 **Access Order** (Cont'd)

- (3) The number of trunks desired between customer premises and an entry switch. When ordering by trunk quantities to an access tandem, the customer must also provide the Telephone Company an estimate of the amount of traffic it will generate to and/or from each end office subtending the access tandem to assist the Telephone Company in its own efforts to project future facility requirements.
- (4) For Toll Free Number Data Base Access Service, as described in Section 6.3.5(A)(3)(a), following, the customer must order switched access to those access tandems or end offices designated as Service Switching Points (SSP) for Toll Free Number Data Base Access Service in NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. TARIFF F.C.C No. 4, WIRE CENTER INFORMATION. Direct trunk routes can only be provided from end offices equipped to query centralized databases. All traffic originating from end offices not equipped to provide SS7 signaling and routing require routing via an access tandem where SSP functionality is available.

ACCESS SERVICE

5. Access Ordering (Cont'd)

5.2 Access Order (Cont'd)

(D) For Switched Access with SS7 Signaling, in addition to the information listed in (C), preceding, the customer shall specify: *

- (1) A reference to existing signaling connections or reference to a related signaling connection order.
- (2) SS7 Signaling Local Switching options, if any.
- (3) The number of trunks required for or to be converted to an SS7 Signaling capability.
- (4) Optional features as specified in Section 6.

(E) Special Access Services

- (1) The type of service requested (Voice Grade, High Capacity, etc.)
- (2) The customer premises or hubs involved.
- (3) The channel interface, technical specification package and options desired.
- (4) When requesting Special Access Service, the customer must certify that the traffic consists of more than ten- percent interstate traffic.
- (5) Where the Special Access Service is exempt from the Special Access Surcharge as set forth in Section 7.4.4(B), following, the customer shall furnish with the order the certification as set forth in Section 7.4.4(C), following.

* SS7 Signaling is available only where technically feasible.

ACCESS SERVICE

5. Access Ordering (Cont'd)

5.2 Access Order (Cont'd)

(E) Special Access and Direct Trunked Transport Services (Cont'd)

- (6) Special Access or Direct Trunked Transport Service may be ordered for connection with FGA, FGB or FGD Switched Access Service at Telephone Company designated WATS Serving Offices (WSOs) for the provision of WATS or WATS-type Services and may be ordered separately by a customer other than the customer which orders the FGA, FGB or FGD Switched Access Service. For the Special Access Service the customer shall specify the customer premises at which the Special Access Service terminates, the type of line (i.e., two-wire or four-wire), the type of calling (i.e., originating, terminating, or two way) and the type of Supervisory Signaling.

When the optional screening, switching and/or recording functions are not provided at the customer serving wire center, Channel Mileage, as set forth in Section 7.1.1, following, must be ordered between that wire center and the nearest WSO where the screening, switching and/or recording functions can be provided.

ACCESS SERVICE

12. Rates and Charges12.1 Common Line Access Services and Federal Universal Service Charge12.1.1 General

The rates and charges for the service offered in this tariff are shown separately for each element.

12.1.2 End User Access Service

| | <u>Monthly Rates</u> |
|--|----------------------|
| (A) End User Common Line (EUCL) Residence - individual line or trunk | \$3.50 each |
| (B) End User Common Line (EUCL) Single Line Business - individual line or trunk | \$3.50 each |
| (C) End User Common Line (EUCL) Non-Primary Residential - Individual line or trunk | \$3.50 each |
| (D) End User Common Line (EUCL) Multiline Business including Centrex CO and CO-like ordered on or after July 28, 1983 - Individual line or trunk | \$6.00 each |

12.1.3 Federal Universal Service Charge (FUSC)

Regulations concerning the FUSC are set forth in Section 4.2 preceding.

FUSC Surcharge Factor – Mirrors FUSC Surcharge Factor in NECA Tariff F.C.C. No. 5, Section 17.1.3(A).

Great Lakes Communication Corp.

ACCESS SERVICE

12. Rates and Charges (Cont'd)

12.2 Switched Access Service

The rates and charges for the switched access service offered in this tariff are the same as those set forth in the NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. TARIFF F.C.C. No. 5 for the rate elements listed below, assuming the highest rate band for local switching.

- (A) Nonrecurring Charges
 - (1) Local Transport-Installation
Per Entrance Facility
 - (a) Voice Grade Two Wire
 - (b) Voice Grade Four Wire
 - (c) High Capacity DS1
 - (d) High Capacity DS3
- (B) Interim NXX Translation
- (C) FGC and FGD Conversion of Multifrequency Address Signaling to SS7 Signaling or SS7 Signaling to Multifrequency Address Signaling

Great Lakes Communication Corp.

ACCESS SERVICE

12. Rates and Charges (Cont'd)

12.2 Switched Access Service (Cont'd)

(D) Trunk Activation

(E) Flexible ANI

(F) Local Transport
Premium Access

(1) Entrance Facility

Per Termination

-Voice Grade Two-Wire

-Voice Grade Four-Wire

-High Capacity DS1

-High Capacity DS3

(2) Direct Trunked Transport

(a) Direct Trunked Facility

Per Mile

- Voice Grade6.2

- High Capacity DS1

-High Capacity DS3

(b) Direct Trunked Termination

Per Termination

-Voice Grade

- High Capacity DS1

- High Capacity DS3

(3) Multiplexing

Great Lakes Communication Corp.

ACCESS SERVICE

12. Rates and Charges (Cont'd)

12.2 Switched Access Service (Cont'd)

- (F) Local Transport (Cont'd)
Premium Access (Cont'd)
 - (4) Customer Node
 - (5) Customer Premises Port
 - (6) Add/Drop Multiplexing Central Office Port
 - (7) Tandem Switched Transport
 - (8) Tandem Switched Facility
 - (9) Tandem Switched Termination
 - (10) Tandem Switching
 - (11) Network Blocking Per Blocked Call
- (G) End Office
 - (1) Local Switching
Premium
 - Rate Band 8
 - (2) Information Surcharge

Great Lakes Communication Corp.

ACCESS SERVICE

12. Rates and Charges (Cont'd)12.2 Switched Access Service (Cont'd)(H) Toll Free Number Data
Base Access Service

1. Base Rate
per query
2. Vertical Features Rate
Per query (replaces basic rate)

12.3 Special Access Service

| | <u>Monthly Rates</u> | <u>Non Recurring Charges</u> | <u>Tariff Section Reference</u> |
|--|--------------------------|--------------------------------------|---|
| (A) <u>Voice Grade Channel</u> | | | |
| (1) <u>Channel Termination</u> per termination* | | | |
| Two-Wire | \$41.29 | \$230.00 | 7.1.1(A) |
| Four-Wire | \$66.07 | \$230.00 | 7.1.1(A) |
| (2) <u>Channel Mileage Facility</u> | | | |
| per mile | \$2.94 | None | 7.1.1(B)(1) |
| (3) <u>Channel Mileage Termination</u> | | | |
| per termination | \$29.56 | None | 7.1.1(B)(2) |
| (4) <u>Optional Features and Functions</u> | | | |
| (a) <u>Conditioning per termination</u> | | | 7.2.1(C)(1) |
| - C-Type | \$ 7.20 | None | |
| - Data Capability | \$ 4.95 | None | |
| - Voice Bridging | \$ 6.50 | None | |
| - Data Bridging | \$ 6.50 | None | |

* The Channel Termination rate includes non-chargeable Channel Interfaces as set forth in Section 7.1.4, preceding.

 Issued: September 1, 2005

Effective: September 2, 2005

Steve Oleson, CEO
Great Lakes Communication Corp.
1713 McNaughton Way
Spencer, Iowa 51301

ACCESS SERVICE

12. Rates and Charges (Cont'd)12.3 Special Access Service (Cont'd)

| | Monthly Rates | Non Recurring Charges | Tariff Section Reference |
|---|------------------|-----------------------------|--------------------------------|
| (B) <u>Digital Data</u> | | | |
| (1) <u>Channel Termination</u> per termination* | | | |
| 2.4-19.2 Kbps | \$76.20 | \$240.00 | |
| 56-64 Kbps | \$76.20 | \$240.00 | 7.1.1(A) |
| (2) <u>Channel Mileage Facility</u> per mile | | | |
| 2.4-19.2 Kbps | \$2.80 | None | |
| 56-64 Kbps | \$3.96 | None | 7.1.1(B)(1) |
| (3) <u>Channel Mileage Termination</u> per termination | | | |
| 2.4-19.2 Kbps | \$28.08 | None | |
| 56-64 Kbps | \$39.79 | None | 7.1.1(B)(2) |
| (4) <u>Optional Features and Functions</u> | | | |
| Bridging | \$ 7.85 | | 7.1.1(C) |
| Transfer Arr'ment | \$ 6.21 | | 7.1.1(C) |
| (C) <u>High Capacity</u> | | | |
| (1) <u>Channel Termination</u> per termination* | | | |
| 128 Kbps | N/A | | |
| 256 Kbps | N/A | | |
| 384 Kbps | N/A | | |
| 512 Kbps | N/A | | |
| 1.544 Mbps | \$176.82 | \$251.00 | 7.1.1(A) |
| 44.736 Mbps | \$2051.19 | \$251.00 | 7.1.1(A) |

* The Channel Termination rate includes non-chargeable Channel Interfaces as set forth in Section 7.1.4, preceding.

Great Lakes Communication Corp.

ACCESS SERVICE

12. Rates and Charges (Cont'd)

12.3 Special Access Service (Cont'd)

| | Monthly <u>DS1</u> | Monthly <u>DS3</u> | Tariff Section <u>Reference</u> |
|--|-----------------------|-----------------------|---------------------------------------|
| (C) <u>High Capacity</u> Cont'd) | | | |
| <u>(2) Channel Mileage Facility</u> | | | 7.1.1 (B)(1) |
| per mile | | | |
| 0 miles | No Charge | No Charge | |
| Over 0-8 miles | \$19.14 | \$131.77 | |
| Over 8-25 miles | \$19.14 | \$131.77 | |
| Over 25-50 miles | \$19.14 | \$131.77 | |
| Over 50 miles | \$19.14 | \$131.77 | |
| <u>(3) Channel Mileage Termination</u> | | | 7.1.1 (B)(2) |
| per termination | | | |
| 0 miles | No Charge | No Charge | |
| Over 0-8 miles | \$ 94.38 | \$525.64 | |
| Over 8-25 miles | \$ 94.38 | \$525.64 | |
| Over 25-50 miles | \$ 94.38 | \$525.64 | |
| Over 50 miles | \$ 94.38 | \$525.64 | |
| <u>(4) Optional Features and Functions</u> | | | |
| Auto Loop Transfer | Monthly \$158.00 | Nonrecurring | |
| Transfer Arr'ment. | \$172.20 | | |
| Multiplexing | | | |
| DS1 to Voice or | | | |
| DS0 | \$183.12 | | |
| DS3 to DS1 | \$474.31 | | |
| (D) <u>Special Access Surcharge</u> | | | |
| Per Voice Grade | | | |
| Equivalent | \$25.00 | None | 7.4.4 |

ACCESS SERVICE

12. Rates and Charges (Cont'd)12.4 Advanced Communications Services12.4.1 Frame Relay Service

| | <u>Monthly Rates</u> | <u>Non Recurring Charges</u> | <u>Tariff Section Reference</u> |
|---|--------------------------|--------------------------------------|---|
| (A) <u>Access Link</u> | | | |
| -per 56 or 64 Kbps link | \$135.00 | \$240.00 | 8.1.5(A) |
| -per 1.544 Mbps link | \$340.00 | \$450.00 | |
| (B) <u>Permanent Virtual Connection (PVC)</u> | | | |
| (1) Standard per port | | | 8.1.5(B) |
| <u>CIR</u> | <u>1st</u> | <u>Ea. Add'l</u> | |
| 56-64 Kbps | \$ 35.00 | \$ 5.00 | \$50.00 |
| 128 Kbps | \$120.00 | \$ 5.00 | \$50.00 |
| 192 Kbps | \$140.00 | \$ 5.00 | \$50.00 |
| 256 Kbps | \$160.00 | \$10.00 | \$50.00 |
| 384 Kbps | \$200.00 | \$10.00 | \$50.00 |
| 512 Kbps | \$230.00 | \$15.00 | \$50.00 |
| 768 Kbps | \$300.00 | \$15.00 | \$50.00 |
| 1.5 Mbps | \$210.00 | \$30.00 | \$50.00 |
| (2) Extended per port | | | 8.1.5(B) |
| <u>CIR</u> | <u>1st</u> | <u>Ea. Add'l</u> | |
| 56-64 Kbps | \$ 40.00 | \$ 5.00 | \$50.00 |
| 128 Kbps | \$125.00 | \$ 5.00 | \$50.00 |
| 192 Kbps | \$145.00 | \$ 5.00 | \$50.00 |
| 256 Kbps | \$165.00 | \$10.00 | \$50.00 |
| 384 Kbps | \$205.00 | \$10.00 | \$50.00 |
| 512 Kbps | \$235.00 | \$15.00 | \$50.00 |
| 768 Kbps | \$305.00 | \$15.00 | \$50.00 |
| 1.5 Mbps | \$215.00 | \$30.00 | \$50.00 |
| (C) <u>PVC Rearrangement</u> | | | |
| Per rearranged port | | \$25.00 | 8.1.5(C)(2) |

EXHIBIT 24

**Spreadsheet of Great Lakes
(and Northern Valley) AMOUs
from January 2007 to August 2013
(ATT0000750)**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 25

Spreadsheet summary of charged access and billed minutes for ANC and AVOICS customers (ATT0002081), attached as Deposition Exhibit 21 to the Deposition of Duane MacAnaspie (December 3, 2014)

**HIGHLY CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 26

**Excerpted pages from the Deposition of
Duane MacAnaspie authenticating Exhibit 21
(Spreadsheet summary of charged access and
billed minutes for ANC and AVOICS
customers (ATT0002081))
(December 3, 2014)**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

| | |
|---------------------------|--------------|
| GREAT LAKES COMMUNICATION |) |
| CORPORATION, |) |
| |) |
| Plaintiff |) |
| |) |
| vs. |) Case No. |
| |) 5:13cv4117 |
| AT&T CORP., |) |
| |) |
| Defendant |) |
| |) |

DEPOSITION OF DUANE MacANASPIE

Wyoming, Michigan

Wednesday, December 3, 2014

10:00 a.m.

Reported by:
QUENTINA R. SNOWDEN, CSR
JOB NO. 36891

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Wednesday, December 3, 2014

10:00 a.m.

Deposition of DUANE MacANASPIE,
held at the offices of AT&T, 3566 Michael
Avenue S.W., Wyoming, Michigan, pursuant to
Notice, before Quentina R. Snowden, a
Certified Shorthand Reporter and Notary
Public within and for the State of Michigan.

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A P P E A R A N C E S :

Attorneys for Plaintiff

INNOVISTA LAW, PLLC

1200 18th Street, N.W., Suite 700

Washington, D.C. 20036

(202) 750-3502

BY: JOSEPH P BOWSER, ESQ.

joseph.bowser@innovistalaw.com

(Appeared telephonically)

Attorneys for Defendant

SIDLEY AUSTIN, LLP

One South Dearborn

Chicago, Illinois 60603

(312) 853-7000

BY: BRIAN A. McALEENAN, ESQ.

bmcaleenan@sidley.com

(Appeared telephonically)

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DUANE MacANASPIE

D U A N E M A C A N A S P I E,
called as a witness, having been duly sworn by
a Notary Public, was examined and testified as
follows:

MR. BOWSER: Good morning. This is
Joe Bowser. I'm Counsel for Great Lakes
Communication Corp in this case. This is a
telephonic deposition, and I appreciate your
participation today.

EXAMINATION

BY MR. BOWSER:

Q. Would you please state your name and
business address for the record, please.

A. My name is Duane MacAnaspie. The
business address is 3566 Michael Avenue
Southwest, Wyoming, Michigan 49509.

Q. And is that the office where you
ordinarily work?

A. No. I normally work -- virtual office
out of my house.

Q. Okay. And what address is that?

A. 7500 Treeline Drive Southeast, Grand
Rapids, Michigan 49546.

Q. Have you had your deposition taken

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DUANE MacANASPIE

before?

A. No.

Q. I'm sure you went over this with your Counsel yesterday, but I'm just going to walk through some of the ground rules to make sure that today's deposition goes as smoothly as possible.

Despite the informal setting that we're in today, the oath that you just gave to the Court Reporter has the same force and effect as the oath that you would give in a court of law; do you understand that?

A. Yes.

Q. The Court Reporter can only take down words. She cannot write down nods or shakes of the head. So we need audible answers and clear "yases" and "nos." Is that okay?

A. Yes, it is.

Q. If you don't understand any of my questions or you can't hear me, please just say so and I'll do my best to repeat and rephrase the question as needed, okay?

A. Thank you.

Q. And if your attorney, who's also on

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DUANE MacANASPIE

the phone today, objects to any of my questions, please give him time to state his objection, but then answer my question once he's done stating his objection, assuming he hasn't instructed you not to answer; is that fair?

A. Okay.

Q. If you need a break at any time, please just let me know. The only request that I would have is that you answer any question that is pending, okay?

A. Yes.

Q. Who is your employer?

A. AT&T.

Q. Is it AT&T Corp or some other entity affiliated with AT&T?

A. You know what, I'm not sure.

Q. Do you know who issues your paychecks?

A. I should probably know, but I'm not sure.

Q. Okay. How long have you been in the telecommunications industry?

A. 16 years.

Q. Did you say 16?

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DUANE MacANASPIE

A. That's what we went over.

Q. Okay. And if you would look at topic 11 on page 8. Do you understand that you've also been designated to testify in connection with topic 11, insofar as it relates to topic 9(d)?

A. Yes.

Q. What did you do to prepare to testify about topic 9(d)?

A. I created the data that was provided.

Q. You created the data that --

A. Or, I'm sorry --

Q. -- about the volume of calls that AT&T carried as wholesale traffic and total revenue derived therefrom?

A. Yes, I created a report showing that.

MR. BOWSER: Ms. Snowden, can you please mark and show him what we'll mark as GLCC Exhibit Number 21, please.

THE COURT REPORTER: Sure.

MR. BOWSER: Please let me know when he has that up.

THE COURT REPORTER: Do you have a number that's associated with that, ATT --

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DUANE MacANASPIE

MR. BOWSER: 2081.

THE COURT REPORTER: 2081. Okay.

MR. BOWSER: 2081 is the Bates number.

Does that help?

THE COURT REPORTER: Yes, thank you.

Okay. He has it.

BY MR. BOWSER:

Q. Mr. MacAnaspie, would you let me know when you've had a chance to review that document, please.

A. Yes.

Q. Is that the data that you prepared that you just testified to a few moments ago?

A. Yes.

Q. And what did you do to prepare to testify in connection with topic number 11, insofar as it relates to topic 9(d)?

MR. McALEENAN: And, Mr. MacAnaspie, I would just advise you that you can mention that you discussed this with counsel, but not to reveal the content of any -- any of those conversations.

THE WITNESS: Okay. Well, since I work with this day-to-day, I didn't really need

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DUANE MacANASPIE

to review anything for that, but I did review the sources with Counsel.

BY MR. BOWSER:

Q. I'm sorry, what do you mean by the "sources"?

A. Where the data comes from, and to be responsive to number 11.

Q. Okay. Turning back to Exhibit Number 21, what is this document you prepared?

A. It says, "Summary of charged access and billed minutes for ANC and AVOICS customers." And then row 14 and 15 shows the total of the two. 14 is terminating charges and 15 is billed minutes.

Q. Is it fair to assume that the associated charges and minutes are particular to Great Lakes?

A. Yes, they are. That's referenced in cell A1.

Q. Did anyone else help you prepare this document?

A. No.

Q. What were you asked to create in connection with this document?

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DUANE MacANASPIE

A. Terminating access charges for Great Lakes.

Q. With respect to wholesale or all charges?

A. For wholesale.

Q. When we -- when I say "wholesale", what does that term mean to you?

A. The products; ANC and AVOICS.

Q. Does AT&T offer any other product that you would characterize as a wholesale product?

A. In general, or specific to long distance?

Q. Long distance.

A. Yes, I think they do have some Legacy T products.

Q. I'm sorry, what did you call it, "Legacy T"?

A. Yes.

Q. I'm sorry, sir, did you say "Legacy T"?

A. Yes, I did.

Q. What does "Legacy" mean?

A. That means AT&T prior to the acquisition by SBC.

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C E R T I F I C A T I O N

STATE OF MICHIGAN)

: ss

COUNTY OF GENESEE)

I, QUENTINA R. SNOWDEN, a Certified Shorthand Reporter and Notary Public, within and for the State of Michigan, do hereby certify:

That DUANE MacANASPIE, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

In witness whereof, I have hereunto set my hand this 5th day of December, 2014.

QUENTINA R. SNOWDEN, CSR-5519

EXHIBIT 27

**Emails between D. Carter and M. Hunseder
regarding settlement offers
(August 2016)**

**CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 28

**AT&T's Brief in Support of Referral to FCC
Under Primary Jurisdiction Doctrine,
(*Great Lakes Commc'n Corp. v. AT&T Corp.*,
ECF No. 154, dated June 16, 2015)**

PUBLIC VERSION

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

GREAT LAKES COMMUNICATION CORP.,

Plaintiff,

v.

AT&T CORP.,

Defendant.

Case No.: 5:13-cv-4117

**AT&T’S BRIEF IN SUPPORT OF REFERRAL TO
FCC UNDER PRIMARY JURISDICTION DOCTRINE**

AT&T Corp. submits this brief pursuant to Judge O’Brien’s June 8, 2015 *Order on Motions for Summary Judgment* [Dkt. No. 149] (the “*Summary Judgment Order*”), which invited the Parties to “brief whether they believe referral [to the Federal Communications Commission (“FCC”) of the issues in this case] is appropriate in light [of] the Court’s decisions.” *Id.* at 5. AT&T is ready and willing to proceed to trial. AT&T believes, however, that the better course is to refer the four principal issues remaining in this case to the FCC pursuant to the primary jurisdiction doctrine. Because these issues implicate technical and policy issues within the FCC’s expertise, it is sensible to obtain the FCC’s guidance in the first instance.

LEGAL STANDARD

As this Court recently explained, the Eighth Circuit has described the primary jurisdiction doctrine as:

. . . specifically applicable to claims properly cognizable in court that contain some issues within the special competence of an administrative agency. It requires the court to enable a ‘referral’ to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling.

PUBLIC VERSION

United States v. Rice, 605 F.3d 473, 475 (8th Cir. 2010) (quoting *Reiter v. Cooper*, 507 U.S. 258, 268 (1993)) (quoted in *Sprint Commc'ns Co., L.P. v. Butler-Bremer Mutual Tel. Co.*, No. C 14-3028-MWB, 2014 WL 4980539, at * 3 (N.D. Iowa Oct. 6, 2014) (“*Sprint*”). Although “[t]he doctrine is to be ‘invoked sparingly,’” *Sprint*, 2014 WL 498539, at *3 (quoting *Alpharma, Inc. v. Pennfield Oil Co.*, 411 F.3d 934, 938 (8th Cir. 2005) (quotations omitted)), in appropriate circumstances it “promotes uniformity, consistency, and the optimal use of the agency’s expertise and experience.” *Rice*, 605 F.3d at 475 (quoting *United States v. Henderson*, 416 F.3d 686, 691 (8th Cir. 2005)).

The primary jurisdiction doctrine “‘targets issues.’” *Sprint*, 2014 WL 498539, at *3 (quoting *Rice*, 605 F.3d at 476 (emphasis in original)). “Thus, there must be an issue that the district court could ‘refer’ to the administrative agency[.]” *Id.* (citing *Reiter*, 507 U.S. at 268 & n.3). “The question is whether the case would require the court to “decide any issues on which an administrative ruling would be appropriate, and, more specifically still, an issue suited to the expert and specialized knowledge of the [agency].” *Id.* (quoting *Reiter*, 507 U.S. at 476 (quotations omitted)). For example, “determination of the scope and application of agency regulations requires agency expertise,” in which case “referral pursuant to the primary jurisdiction doctrine is appropriate.” *Id.* (citing *Alpharma*, 411 F.3d at 939). In addition, “policy considerations” should be referred. *Id.* (quoting *Atlantis Express, Inc. v. Standard Transp. Servs., Inc.*, 955 F.2d 529, 532-33 (8th Cir. 1992)). Such instances are in comparison to “[d]isputed factual issues[.]” which “properly fall within the function of a jury,” *id.* (citing *Henderson*, 416 F.3d at 691), and issues which “merely turn[] on the meaning of published agency regulations,” which are “well within the conventional experience of judges.” *Id.* (quoting *Alpharma*, 411 F.3d at 939 (quotations omitted)).

ARGUMENT

Judge O'Brien's *Summary Judgment Order* disposed of Great Lakes' claims regarding the Parties' settlement agreement (Count I), the transport charges Great Lakes had assessed on AT&T (part of Count II), and Great Lakes' state-law theories (Counts III and IV), leaving only Great Lakes' claim for payment under its revised tariff (the remainder of Count II). *See Summary Judgment Order* at 74-75. Similarly, AT&T's counterclaim seeking a refund of payments mistakenly made under Great Lakes' revised tariff (Counterclaim Count IV) remains in this case. *See id.* For its part, AT&T contends that Great Lakes cannot collect its tariffed charges because such charges violated the Communications Act, the FCC's rules, and the terms of Great Lakes' revised tariff itself.

As such, there are at least four issues remaining in this case that, under the above standard, warrant referral to the FCC.¹

First, the FCC is better positioned to determine whether Judge O'Brien's ruling that Great Lakes' revised tariff is "deemed lawful," *id.* at 36-39, 74, somehow shields the revised tariff from challenge even if it violates the Communications Act and the FCC's rules. AT&T contends that that cannot possibly be the case under the case law.² Further, such an interpretation cannot be reconciled with Judge O'Brien's statement that he was "strongly inclined" to find that the revised tariff's dispute resolution provision is "unreasonable" despite its

¹ AT&T has also moved to preclude Great Lakes from introducing testimony that it can recover on a "function-by-function" basis. *See* Dkt. No. 136. If such evidence is not excluded, then the FCC is also better-positioned than the jury to determine whether a "function-by-function" recovery is consistent with the FCC's rules and, if it were, what that recovery should be.

² *See, e.g., Qwest Commc'ns v. Northern Valley Commc'ns*, 26 FCC Rcd. 8332, ¶ 12 (2011) (LEC tariffs that violate "the [Communications] Act and the Commission's rules and orders" can be subject to "suspension, mandatory withdrawal, revision, or challenge"); *PaeTec v. Commpartners*, 2010 WL 1767193, **4-5 (D.D.C. 2010) (a "filed tariff cannot be inconsistent with the statutory framework to which it is promulgated."); *Global NAPS, Inc. v. FCC*, 247 F.3d 252, 259-60 (D.C. Cir. 2001) ("tariffs still must comply with the applicable statutory and regulatory requirements" and "[t]hose that do not may be declared invalid.").

deemed-lawful status, *see Summary Judgment Order* at 35 n.19, or the fact that he reserved for decision by the jury the issue of Great Lakes' alleged noncompliance with the FCC's functional equivalence requirement—which also bears on the validity of Great Lakes' revised tariff. *Id.* at 51.

Nevertheless, to the extent Great Lakes is contending that its deemed-lawful tariff essentially is exempt from challenge, that is an issue that the FCC, not this Court, should address in the first instance. *See Allnet Commc'ns Serv. v. NECA*, 965 F.2d 1118, 1120 (D.C. Cir. 1992) (“courts have frequently invoked primary jurisdiction in cases involving tariff interpretations” as well as “compliance of a tariff with regulatory standards and the consequences of imperfect compliance”). In this case, the questions involve not merely interpreting terms of Great Lakes' revised tariff, or the FCC's technical rules on access stimulation (issues that could, on their own, warrant referral³), but rather what happens when a “deemed lawful” tariff conflicts with existing law. *Cf. Sprint*, 2014 WL 498539, at *5 (referral necessary for a “determination of the scope and applicability of FCC rulings, which requires agency expertise”). In particular, the FCC has promulgated specific rules that *prohibit* competitive local carriers like Great Lakes from filing tariffs with rates above FCC-benchmarks,⁴ and the FCC has the expertise and policy judgment

³ *See id.*; *Charvat v. Echostar Satellite*, 630 F.3d 459, 467 (6th Cir. 2010) (the “agency, no surprise, is familiar with the regulations it prescribed” and possesses expertise on those regulations) (emphasis in original); *see also, e.g., Ricci v. Chicago Mercantile Exchange*, 409 U.S. 289, 305-06 (1973) (“questions about the scope, meaning, and significance of [agency] rules” are “matters that should be dealt with in the first instance” by the agency, which is “especially familiar with the customs and practices of the industry and the unique market-place involved”); *Davel Commc'ns v. Qwest Corp.*, 460 F.3d 1075, 1089 (9th Cir. 2006) (“the interpretation of an agency order issued pursuant to the agency’s congressionally granted regulatory authority falls within the agency’s primary jurisdiction where the order reflects policy concerns or issues requiring uniform resolution”); *In re StarNet*, 355 F.3d 634, 639 (7th Cir. 2004) (“[i]nstead of trying to divine how the FCC would resolve the ambiguity” in the Communications Act and the FCC’s rules, “we think it best to send this matter to the [FCC] under the doctrine of primary jurisdiction” because the Act and “its implementing regulations [are] the bailiwick of the FCC”).

⁴ *See* 47 C.F.R. § 61.26; *CLEC Access Charge Order*, 16 FCC Rcd. 9923, ¶¶ 3, 40, 82-87 (2001).

necessary to determine what happens when a tariff violates existing rules, and is not suspended before it becomes effective.⁵

Second, if, as AT&T believes is the case, Great Lakes' revised tariff can be challenged, there then must also be a determination of the scope of the FCC's benchmarking and functional equivalence requirements for access-stimulating LECs. For example, AT&T contends that Great Lakes violated the FCC's decision in *In the Matter of Connect Am. Fund*, 26 FCC Rcd. 17663, 17886 (2011) (the "Connect America Order"), by failing to offer rates that mirrored the rates of the lowest-priced LEC in Iowa, which is a company called CenturyLink. Specifically, AT&T claims that Great Lakes impermissibly revised its tariff to eliminate the least-costly option (which CenturyLink offers under its tariff) of direct transport at a flat monthly rate. AT&T Brief on Mtn. for Summ. J. at 8-10 (Dec. 17, 2014) [Dkt. No. 79] ("AT&T Summ. J. Br."). Great Lakes took this step even though the FCC's rules provide that "tariffed [competitive local carrier charges for 'interstate switched exchange access services' [must] be for services that are 'the functional equivalent' of [the appropriate incumbent local carrier's] interstate switched exchange access services."⁶

In other words, there is a question as to whether Great Lakes had to match CenturyLink's rates for the services Great Lakes was then providing (including a direct connection), or whether

⁵ In a case that presented a similar issue, the Third Circuit invited the FCC to file an *amicus* brief that addressed the following question: "Whether a CLEC's switched access tariff, filed on a 'streamlined' basis pursuant to 47 U.S.C. § 204(a)(3) but subsequently found to violate the FCC's benchmark, can enjoy 'deemed lawful' status? Or, is that tariff subject to the mandatory detariffing rule announced in the Seventh Report and Order, 16 FCC Rcd. 9923 (2001)?" The FCC answered that "the answer is no to the first question, and yes to the second question." Brief for *Amicus Curiae* Federal Communications Commission at 2, *PaeTec Commc'ns, Inc. v. MCI Commc'ns Servs., Inc.*, No. 11-2268 (3d Cir. 2012). To the extent this Court does not find this FCC *amicus* brief, or the other authorities cited by AT&T, to be dispositive of the issue, then this Court, like the Third Circuit, should seek the FCC's views.

⁶ *Qwest Commc'ns v. Northern Valley Commc'ns*, 26 FCC Rcd. 8332, ¶ 8 (2011).

Great Lakes could skirt the requirement to benchmark against the rates and services of the lowest-priced carrier in Iowa by eliminating its most efficient and economical services. *See id.*⁷

Here, referral is warranted because the FCC's benchmarking and "functional equivalence" rules are part of a complex regulatory scheme that governs the rates for access services that competitive carriers like Great Lakes may properly tariff and bill (especially when, as here, such carriers are engaged in access stimulation).⁸ As to such charges, the FCC has determined that rules are necessary to ensure that the charges are consistent with the statutory standard in the Communications Act. 47 U.S.C. § 201(b) (charges shall be "just" and "reasonable"). In particular, the FCC has found that, in light of competitive local exchange carriers' "bottleneck monopolies" and their resulting ability to "impose excessive access charges on IXCs" (or "interexchange carriers"), the competitive local exchange carriers' access charges need to be regulated.⁹ To address those concerns, the FCC implemented its benchmarking and functional equivalence standards, and as noted above (*infra* note 3), the FCC has expertise on the proper scope of its own regulations. Additionally, how broadly those rules apply to constrain

⁷ While Judge Strand did observe in June 2014 that "there is no dispute that [Great Lakes] complied with the [Connect America] Order's 'benchmark' requirement," *Report and Recommendation* at 27 [Dkt. No. 32], as Great Lakes has acknowledged, he had not been asked to consider—and did not consider—the issue presented here regarding Great Lakes' elimination of the direct connection option. *See Motion in Limine to Exclude Evidence Relating to Direct Connection Services*, at 2-4 [Dkt. No. 145] (acknowledging that AT&T's direct connection argument was not considered by Judge Strand). In fact, before Judge Strand, AT&T took the position that Great Lakes' motion should be denied even "assuming, *arguendo*, that Great Lakes' tariff is actually deemed lawful," AT&T Opp. at 10. The pleadings likewise establish that there has always been a dispute about whether GLCC complies with the *Connect America Order*'s benchmark rule. *Compare* Compl. ¶ 34 (alleging that "Great Lakes' tariffed interstate access rates are fully consistent with the requirements of the *Connect America Fund Order*") with Ans. ¶ 34 (denying those allegations).

⁸ 47 C.F.R. § 61.26; *CLEC Access Charge Order*, 16 FCC Rcd. 9923, ¶¶ 3, 40, 82-87 (2001), *on recon.* *CLEC Access Charge Recon Order*, 19 FCC Rcd. 1908 (2004); *Connect America Order*, ¶¶ 656-700 (revising rules for those carriers engaged in access stimulation).

⁹ *CLEC Access Charge Order*, 16 FCC Rcd. 9923, ¶¶ 2, 30 (2001); 47 C.F.R. § 61.26; *Connect America Order*, ¶ 662 ("The record confirms the need for prompt Commission action to address the adverse effects of access stimulation and to help ensure that interstate switched access rates remain just and reasonable, as required by section 201(b) of the Act."). *See also Northern Valley* (applying functional equivalence rules to the tariff of a LEC engaged in access stimulation).

competitive LEC access charges is a question that is “fraught with policy considerations” (*Sprint*, 2014 WL 498539, at *5) regarding the compensation that carriers like Great Lakes can obtain under their tariffs.¹⁰ Such questions that relate to ratemaking and rate reasonableness are better suited to administrative agencies like the FCC, not courts or juries.¹¹

Third, as numerous courts have already determined, the FCC is better situated than courts to determine whether carriers are properly charging “end-user” fees to their supposed customers, which is required under the FCC’s rules and Great Lakes’ tariff.¹² AT&T contends that Great Lakes has violated the Communications Act, the FCC’s rules, and its revised tariff because its Free Calling Party (“FCP”) partners that provide conference and chat services are not “end users” that pay “fees” for “telecommunications service.” AT&T Summ. J. Br. at 13-17. Great Lakes’ revised tariff expressly provides that an “End User must pay a fee to [Great Lakes] for telecommunications service,” and adopts the definition of “telecommunications” from the Communications Act. *Id.* at 13 (“[T]he term ‘telecommunications’ is defined in [Great Lakes’] tariff – as it is in the Communications Act – as the ‘transmission between or among points specified by the user, of information of the user’s choosing, without change in the form

¹⁰ This is especially true in light of the fact that the FCC has issued numerous orders addressing CLEC access charges, and the FCC’s benchmarking and functional equivalence rules. *See infra* notes 8-9; *Mical Commc’ns v. Sprint Telemedia*, 1 F.3d 1031, 139-40 (10th Cir. 1993) (in a case that involves questions of interpretation in which courts “regularly engage,” referral was still necessary because the issue “has already been the subject of a number of orders and rulings by the FCC, none of which appears to address the *precise* issue”); *Charvat*, 630 F.3d at 467.

¹¹ *See, e.g., Marcus v. AT&T Corp.*, 138 F.3d 46, 61 (2d Cir. 1998) (FCC’s primary jurisdiction “prevents more than judicial rate-setting; it precludes any judicial action which undermines agency rate-making authority”); *Niehaus v. AT&T Corp.*, 218 F. Supp. 2d 531, 537 (S.D.N.Y. 2002) (“the ‘reasonableness’ determination required by § 201(b) is inherently a discretionary question within the agency’s purview”); *see also Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908) (“the establishment of a rate” has never been considered a “judicial” act in which courts can properly engage) (Brandeis, J.).

¹² *See, e.g., Northern Valley Commc’ns v. Qwest Commc’ns Co.*, No. 11-4052, 2012 WL 996999, *3 (D.S.D. Mar. 23, 2012); *Qwest Commc’ns v. Tekstar Commc’ns*, No. 10-490, 2010 WL 2772442, *3 (D. Minn. July 12, 2010) (both collecting numerous cases referring such issues to the FCC); *see also Farmers v. FCC*, 668 F.3d 714, 719-20 (D.C. Cir. 2011) (whether companies involved in access stimulation scheme were entities that “subscrib[e]” to a carrier’s service determined whether they were “end users” under a tariff, and whether they had done so, and the general “nature of the [the carrier’s] relationship with the companies [was] a subject demonstrably within the [FCC’s] expertise.”).

or content of the information as sent and received.”). As Judge O’Brien explained, “Great Lakes [thus] may not assess access charges under its tariff [to long-distance carriers] unless it routes a call to an ‘End User’ that ‘must pay a fee to [Great Lakes] for telecommunications service.” *Summary Judgment Order* at 40. AT&T contends, however, that the services Great Lakes provides to its FCP partners do not, as a matter of law, involve “telecommunications.” AT&T Summ. J. Br. at 13-17 (Great Lakes’ services include “Collocation and Rack Space Allocation,” “Electrical Power,” and “Direct Inward Dialing” Numbers). Thus, this case presents a question as to the meaning and scope of the term “telecommunications” under the tariff, the Communications Act, and the FCC’s rules, and how that should be applied to the services billed by Great Lakes. The question of how to classify particular services under the definition of “telecommunications” in the Communications Act and Great Lakes’ tariff is better suited for the FCC than a jury.¹³

Finally, AT&T contends that, even if Great Lakes’ fees are for telecommunications service, Great Lakes nevertheless has violated the Communications Act and the FCC’s rules because those fees are not set forth in Great Lakes’ revised tariff. AT&T Summ. J. Br. at 13-15; AT&T Opp. to Mtn. for Summ. J. at 8-11 (Apr. 2, 2014) [Dkt. No. 20-1] (“AT&T Opp.”). Rather, Great Lakes’ fees to its FCP partners are set forth in its private contractual agreements

¹³ *Nat’l Cable & Telecomms. Assn. v. Brand X Internet Servs.*, 545 U.S. 967 (2005) (granting FCC deference on question of how to classify services). AT&T’s position is that the services that Great Lakes billed are plainly not “telecommunications,” but to the extent there is a dispute about that issue, the FCC would be in a better position than a jury to decide that issue. Further, Judge O’Brien’s conclusion that this is a factual issue, *see* Summary Judgment Order at 46, does not preclude referral to the FCC. Courts commonly refer technical fact issues to the FCC under the primary jurisdiction doctrine. *Ricci*, 409 U.S. 305. For example, in one leading case, the Supreme Court determined that a court should refer to an agency the question of whether a particular device (“steel casings filled with napalm”) was an “incendiary bomb.” *U.S. v. Western Pacific R.R. Co.*, 352 U.S. 59, 66 (1952). The Court concluded that deciding the issue was “more than simply a question of reading the tariff language or applying abstract ‘rules’ of construction. For the basic issue is how far the reasons justifying a high rate for the carriage of extra-hazardous objects were applicable to the instant shipment To answer that question there must be close familiarity with the[] factors [which make for high costs]. . . . Such familiarity is possessed not by the courts but by the agency [T]o decide the question of the scope of the tariff without consideration of the factors and purposes underlying the terminology imposed would make the process of adjudication little more than an exercise in semantics.” *Id.* at 66-67.

with those partners. AT&T Summ. J. Br. at 15. AT&T argues that, under Section 203 of the Communications Act, Great Lakes must specify “all [of its] charges” in its tariff. *See* 47 U.S.C. § 203 (“[e]very” common carrier must file tariffs showing “all charges”). For its part, Great Lakes responds that it is permissible to charge end-user fees pursuant to contract because the FCC has forborne in part from Section 203 and allowed permissive “de-tariffing” for the services in question. *See* Great Lakes Opp. to Mtn. for Summ. J. at 7-14 (Jan. 12, 2015) [Dkt. No. 89]. While this is true (in part) for access services that competitive carriers may provide to long-distance carriers, AT&T’s position is that the FCC has never made the factual findings necessary to allow the de-tariffing of services that competitive carriers provide to end users. AT&T Opp. at 8 (discussing authorities).¹⁴ Resolving this issue will require, among other things, determining whether the filed tariff doctrine requires that telecommunications service be provided pursuant to a tariff or whether a contract is sufficient, and interpreting the FCC’s various orders addressing “de-tariffing” and the access charges that may be—or must be—assessed by competitive carriers via a filed tariff.

The common thread between these four issues is that they all concern “the scope and application of [FCC] regulations,” implicate policy issues, and fall squarely within the FCC’s experience and expertise. *See Sprint*, 2014 WL 498539, at *3. As such, the FCC is best positioned to decide these matters and referral under the primary jurisdiction doctrine would ensure that it is able to do so. *See id.* In addition, referral would further the Eighth Circuit’s interest in “promot[ing] uniformity, consistency, and the optimal use of the [FCC]’s expertise and experience.” *See Rice*, 605 F.3d at 475 (quoting *Henderson*, 416 F.3d at 691)).

¹⁴ Notably, Great Lakes’ initial tariff, filed in 2005, provided for end-user services, as the FCC’s rules require. *See* Great Lakes Tariff F.C.C. No. 1, §§ 4, 12 (Sept. 1, 2005). CenturyLink’s tariff also provides for such services. *See* AT&T Summ. J. Br., Ex. A (comparing Great Lakes’ original and revised tariffs to CenturyLink’s tariff).

CONCLUSION

AT&T believes that the FCC is best positioned to resolve these issues, which fall squarely within its expertise. AT&T therefore respectfully requests that this Court refer these issues to the FCC pursuant to the primary jurisdiction doctrine, stay the proceedings regarding any remaining issues, and direct the parties to institute expeditiously proceedings at the FCC to implement the referral.

Dated: June 16, 2015

Respectfully submitted,

/s/ Richard W. Lozier, Jr.

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EXHIBIT 29

**Expert Report of Warren Fischer,
with Exhibits 1-5 (August 18, 2014)**

**HIGHLY CONFIDENTIAL
MATERIALS OMITTED**

EXHIBIT 30

**District Court Order
following telephonic hearing
(*Great Lakes Commc'n Corp. v. AT&T Corp.*,
ECF No. 74, dated December 11, 2014)**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

GREAT LAKES COMMUNICATION
CORPORATION,

Plaintiff,

vs.

AT&T CORP.,

Defendant.

No. C13-4117-DEO

ORDER

I conducted a telephonic hearing with counsel for both parties today to discuss certain discovery issues that have been brought to my attention. For the most part, the discussion was informal and no ruling is necessary. However, one issue does require attention. Great Lakes previously requested, through a Rule 30(b)(6) deposition notice, that AT&T produce witnesses on various topics, including the costs AT&T incurs in providing long distance service to its customers (Topic 16). AT&T objected to Topic 16 on several grounds. Among other things, AT&T asserted that the issue of costs is complex and is not an appropriate topic for discovery.

On December 4, 2014, AT&T alerted Great Lakes to a change of position. It offered to produce a witness, Dan Rhinehart, to address various topics, including Topic 16. It further indicated that it had located information relating to costs and would be producing that additional data. That data was produced on December 10, 2014. AT&T has offered to make Mr. Rhinehart available to testify by telephone on December 12, 2014, which is the deadline for the completion of Rule 30(b)(6) witness depositions. *See* Doc. No. 70.

Great Lakes is concerned about that fact that AT&T changed its position concerning Topic 16, and produced new data, shortly before the deadline. Great Lakes

contends that this last-minute development puts it in an unfair position. As I advised the parties during today's conference, I agree, at least to some extent. Given AT&T's longstanding position that it would not produce a witness concerning Topic 16, Great Lakes should not be expected to analyze new information and conduct a deposition of Mr. Rhinehart on such short notice.

The parties indicate that summary judgment motions are imminent. AT&T states that if its arguments prevail, Topic 16 will no longer be relevant. AT&T also provided an explanation that could, when fully developed, justify its production of new information at this late date. At this time, then, I am not making a final ruling as to whether AT&T will be precluded from relying on testimony and/or information relating to Topic 16 at trial. That issue will have to be resolved later, if necessary. I do, however, find that Great Lakes should not be deemed to have waived any rights or arguments by declining the opportunity to depose Mr. Rhinehart on December 12, 2014. If it is later determined that AT&T is entitled to use testimony and/or information concerning Topic 16 at trial, discovery can be reopened for the limited purpose of allowing Great Lakes to take Mr. Rhinehart's deposition.

IT IS SO ORDERED.

DATED this 11th day of December, 2014.



LEONARD T. STRAND
UNITED STATES MAGISTRATE JUDGE