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December 19, 2018

**Ex Parte**

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

**Re: CenturyLink Petition for Declaratory Ruling, WC Docket No. 10-90, CC Docket No. 01-92; Access Arbitrage, WC Docket 18-155; 8YY Access Charge Reform, 18-156.**

Dear Ms. Dortch:

Alan Buzacott and I of Verizon and Scott Angstreich of Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., met December 17 with Lisa Hone (by phone), Gil Strobel, Victoria Goldberg, Aaron Garza, and Rhonda Lien of the Wireline Competition Bureau. In addition, I met December 18 with Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Rosenworcel. In these meetings, consistent with our previous advocacy,<sup>1</sup> we urged the Commission to deny immediately CenturyLink's Petition<sup>2</sup> and reaffirm that a LEC cannot assess tariffed end-office switching charges on over-the-top VoIP traffic. We also asked the Commission to reaffirm that a carrier-customer cannot violate the Communications Act by disputing and refusing to pay charges it contends were billed in violation of a tariff.

We explained that while Verizon generally supports the Commission's proposals in the two pending intercarrier-compensation rulemakings,<sup>3</sup> denying the Petition and confirming that the "IP equivalent of end office switching ... is the interconnection of calls with last-mile facilities"<sup>4</sup> would be an important incremental step towards curbing robocalled fueled 8YY

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<sup>1</sup> See, e.g., Letter from Curtis L. Groves, Verizon, to Marlene H. Dortch, FCC (December 3, 2018) (attached).

<sup>2</sup> *CenturyLink Inc., Petition for a Declaratory Ruling*, WC Docket No. 10-90, CC Docket No. 01-92 (May 11, 2018) ("*Petition*").

<sup>3</sup> See Comments of Verizon, WC Docket No. 18-155 (July 20, 2018); Reply Comments of Verizon, WC Docket No. 18-155 (August 3, 2018) (supporting a modified version of the Commission's proposal as an interim step to bill-and-keep); Comments of Verizon, WC Docket No. 18-156 (Sept. 4, 2018) (supporting an accelerated transition to bill-and-keep for 8YY traffic).

<sup>4</sup> *Connect America Fund*, Declaratory Ruling, 30 FCC Rcd 1587, at Pai Dissent (2015) ("*VoIP Declaratory Ruling*").

arbitrage. In the more than two years since the D.C. Circuit vacated and remanded the 2015 *VoIP Declaratory Ruling*,<sup>5</sup> disputes related to over-the-top VoIP traffic have proliferated. And because originating switched access rates remain relatively high, over-the-top VoIP traffic to 8YY numbers is fueling growth in the very arbitrage the Commission is trying to eliminate.

The Commission has a longstanding prohibition against LECs collecting access charges for functions they do not provide. And when the Commission in 2011 created the “VoIP Symmetry Rule”—a limited exception to this principle—in the *Transformation Order*, it still prohibited LECs from charging for functions that neither the LEC nor its VoIP partner provided.<sup>6</sup> The Commission intended the VoIP Symmetry Rule to resolve intercarrier-compensation disputes that arose when *fixed* VoIP retail providers, like cable companies, partnered with wholesale carrier LECs.<sup>7</sup> Because one of the *Transformation Order*’s goals was to “promote investment in and deployment of IP networks,” the Commission adopted the VoIP Symmetry Rule to avoid “disadvantage[ing] providers *that already have made these investments*” during the transition the 2011 order established.<sup>8</sup> Therefore the VoIP Symmetry Rule allowed cable companies that had made those investments in deploying IP networks to end-user customers to collect through an affiliated LEC or an unaffiliated partner LEC end-office intercarrier compensation for VoIP-PSTN traffic.<sup>9</sup> Conversely, over-the-top VoIP providers do not invest in and deploy the last-mile IP networks that actually deliver calls to end-user customers.

The absence of actual or physical interconnection with last-mile facilities is fatal to the argument that LECs partnering with over-the-top VoIP providers also should be able to assess tariffed end-office switching charges. In 2015, the Commission mistakenly attempted to expand the VoIP Symmetry Rule to cover that scenario.<sup>10</sup> The D.C. Circuit promptly vacated and remanded that 2015 ruling, finding the Commission’s treatment there of functional equivalence “muddled” and noting that Commission precedent “appear[s] to identify end-office switching as supplying actual or physical interconnection.”

The Commission therefore should deny the CenturyLink Petition and issue a declaratory ruling confirming that, to be the functional equivalent of end-office switching, a LEC and/or its VoIP provider partner must supply actual or physical interconnection. Declaratory rulings—like the 2015 order the D.C. Circuit vacated—normally apply retroactively. There is a “presumption of retroactivity for adjudications,”<sup>11</sup> which is “the norm in agency adjudications no less than in judicial adjudications.”<sup>12</sup> The Commission can prevent a declaratory ruling from applying retroactively only on a finding of “manifest injustice”—a demanding standard and one as to

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<sup>5</sup> *AT&T Corp. v. FCC*, 841 F.3d 1047 (D.C. Cir. 2016).

<sup>6</sup> See, e.g., *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 736 (2011) (“*Transformation Order*”).

<sup>7</sup> See, e.g., *Transformation Order* ¶ 968 n.2015, citing comments from Comcast, NCTA, and Time Warner Cable.

<sup>8</sup> *Transformation Order* ¶ 968.

<sup>9</sup> *Id.*

<sup>10</sup> *Connect America Fund*, Declaratory Ruling, 30 FCC Rcd 1587 (2015) (“*VoIP Declaratory Ruling*”).

<sup>11</sup> *Qwest Servs. Corp. v. FCC*, 509 F.3d 531, 539 (D.C. Cir. 2007).

<sup>12</sup> *AT&T Co. v. FCC*, 454 F.3d 329, 332 (D.C. Cir. 2006).

which the Commission receives “little or no deference” from courts.<sup>13</sup> As the D.C. Circuit explained in reversing a prior Commission attempt to prevent a declaratory ruling from applying retroactively, manifest injustice requires the identification of “settled law contrary to the rule established in the adjudication.”<sup>14</sup> There is no settled law—the vacated 2015 declaratory ruling is a “legal nullity”<sup>15</sup>—holding that a LEC can collect terminating end-office switched access then neither it nor its VoIP provider partner supplies actual or physical interconnection. The most the LECs currently charging end-office switching rates for over-the-top VoIP traffic could point to is a “mere lack of clarity in the law,” but that “does not make it manifestly unjust to apply a subsequent clarification of that law to past conduct.”<sup>16</sup> That those LECs “relied on [their] own convenient assumption that unclear law would ultimately be resolved in [their] favor is insufficient to defeat the presumption of retroactivity when that law is finally clarified.”<sup>17</sup> Also, the Commission cannot “complete[ly] disregard” the manifest injustice that “non-retroactivity would inflict on” long-distance carriers, which could be required to pay end-office switching charges where neither the LEC nor its VoIP provider partner performed end-office switching.<sup>18</sup>

Finally, we explained that while only a common carrier can violate the provisions of the Communications Act governing switched access charges,<sup>19</sup> several recent decisions have misinterpreted the Commission’s unbroken line of precedent, dating back to 1989, in which the “Commission has never held that a failure to pay tariffed charges violates the Act itself.”<sup>20</sup> We asked the Commission to take up the invitation of several commenters to address, reaffirm its precedent, and explain those courts erred.<sup>21</sup>

Very truly yours,



Copies:      Travis Litman  
                 Lisa Hone  
                 Gil Strobel  
                 Victoria Goldberg  
                 Aaron Garza  
                 Rhonda Lien

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<sup>13</sup> *Qwest Servs.*, 509 F.3d at 539.

<sup>14</sup> *Id.* at 540.

<sup>15</sup> *Virgin Islands Tel. Corp. v. FCC*, 444 F.3d 666, 671-72 (D.C. Cir. 2006).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 47 U.S.C. §§ 201-208.

<sup>20</sup> *All Am. Tel. Co. v. AT&T Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 723, ¶ 12-13 (2011).

<sup>21</sup> *See, e.g., CenturyTel of Chatham, LLC v. Sprint Communications Co.*, 861 F.3d 566, 576 (5th Cir. 2017).



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December 3, 2018

**Ex Parte**

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

**Re: CenturyLink Petition for Declaratory Ruling, WC Docket No. 10-90, CC Docket No. 01-92; Access Arbitrage, WC Docket 18-155; 8YY Access Charge Reform, 18-156.**

Dear Ms. Dortch:

Will Johnson and I of Verizon met November 29 with Nick Degani and Nirali Patel of Chairman Pai's office. We discussed our continued support for intercarrier-compensation reform generally, including the incremental steps the Commission has proposed in the Access Arbitrage and 8YY Access Charge Reform proceedings. We also urged the Commission to deny immediately CenturyLink's Petition<sup>1</sup> and reaffirm that a LEC cannot assess tariffed end-office switching charges on over-the-top VoIP traffic it routes over the public Internet (Ms. Patel was not present for that part of the discussion). In addition, today I met with and discussed these same topics with Jamie Susskind of Commissioner Carr's office.

**A. A LEC Cannot Assess Tariffed End-Office Switching Charges on Over-the-Top VoIP Traffic It Routes Over the Public Internet.**

The Commission's two pending intercarrier-compensation rulemakings are ripe for decision. Verizon generally supports both of the Commission's proposals,<sup>2</sup> which represent incremental but important steps towards "bill-and-keep as the default methodology for all

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<sup>1</sup> *CenturyLink Inc., Petition for a Declaratory Ruling*, WC Docket No. 10-90, CC Docket No. 01-92 (May 11, 2018) ("*Petition*").

<sup>2</sup> See Comments of Verizon, WC Docket No. 18-155 (July 20, 2018); Reply Comments of Verizon, WC Docket No. 18-155 (August 3, 2018) (supporting a modified version of the Commission's proposal as an interim step to bill-and-keep); Comments of Verizon, WC Docket No. 18-156 (Sept. 4, 2018) (supporting an accelerated transition to bill-and-keep for 8YY traffic).

intercarrier compensation traffic.”<sup>3</sup> But without waiting for orders in those proceedings, the Commission can and should deny CenturyLink’s Petition immediately.

CenturyLink would have the Commission repeat the mistakes it made in the 2015 *VoIP Declaratory Ruling*<sup>4</sup> and give the Commission’s imprimatur to LECs who arbitrage tariffed end-office switching charges on robocalls to 8YY numbers.

As then-Commissioner Pai wrote in his dissent to the *VoIP Declaratory Ruling*,

a LEC may collect end office switching charges if and only if that LEC or its VoIP partner actually performs the functional equivalent of end office switching.

So what is the IP equivalent of end office switching? Our precedent makes clear that it is the interconnection of calls with last-mile facilities.”<sup>5</sup>

In that dissent, the Chairman correctly noted “a VoIP provider that interconnects a call with a customer’s last-mile facility performs the function of end office switching, *whereas a VoIP provider that transmits calls to an unaffiliated ISP for routing over the Internet does not.*”<sup>6</sup> Commissioner O’Rielly came to the same conclusions, noting it has been well-settled “that carriers do not owe end office switching charges to other providers that do not actually perform the functional equivalent of end office switching (connecting trunks to loops).”<sup>7</sup> “The defining feature of end office switching,” he wrote, “is the actual connection of subscriber lines and trunks.”<sup>8</sup> And Commissioner O’Rielly concluded that “intermediate routing, such as merely placing calls onto the public Internet, does not count.”<sup>9</sup>

“Intermediate routing”—or “transmitting calls to unaffiliated ISPs for routing over the Internet”—is exactly what companies like Teliax and O1 do. Teliax purchases 8YY calls so it can exploit arbitrage opportunities. Teliax does not connect lines and trunks. Instead, Teliax has

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<sup>3</sup> See, e.g., *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 736 (2011) (“*Transformation Order*”). The Commission in 2011 “launch[ed] long-term intercarrier compensation reform by adopting bill-and-keep as the ultimate uniform, national methodology for all telecommunications traffic exchanged with a LEC.” *Id.* ¶ 650.

<sup>4</sup> *Connect America Fund*, Declaratory Ruling, 30 FCC Rcd 1587 (2015) (“*VoIP Declaratory Ruling*”).

<sup>5</sup> *Id.* at Pai Dissent.

<sup>6</sup> *Id.* (emphasis added).

<sup>7</sup> *Id.* at O’Rielly Dissent.

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

<sup>9</sup> *Id.*

an Internet router that receives the 8YY calls it purchases in IP packets over the Internet<sup>10</sup> and sends them on in IP packets over the Internet to another LEC that converts them to TDM for delivery to the long-distance carrier — services for which that LEC bills its own tariffed switched access charges. Similarly, O1 has admitted all of its traffic comes from over-the-top VoIP providers.<sup>11</sup> But these carriers claim the right to charge end office switched access rates for inserting their IP routers in the flow of IP voice packets across the Internet.<sup>12</sup> These companies do not perform end-office switched access on these over-the-top VoIP calls, and they incur none of the actual costs that end-office switching rates were intended to cover.

In the two years since the DC Circuit vacated and remanded the 2015 *VoIP Declaratory Ruling*,<sup>13</sup> disputes related to over-the-top VoIP traffic have proliferated, generating litigation in the courts, at state regulatory commissions, and at this Commission.<sup>14</sup> And because originating switched access rates remain relatively high, over-the-top VoIP traffic to 8YY numbers is fueling growth in the very arbitrage the Commission is trying to eliminate.

The availability of high originating rates creates substantial incentives for carriers to “artificially inflate access charges billed to the interexchange carriers (IXCs) that provide 8YY services” and for them fraudulently to “flood 8YY numbers with robocalls.”<sup>15</sup> The CEO of Core Communications, Inc. (“Core”), for example, has testified under oath that “a purchase of X number of [originating switched access] minutes for \$100,000 ... generates multiples of the \$100,000 in [originating switched access charge] revenues.”<sup>16</sup> That’s why Core—which the Commission long ago identified as the “poster boy of [intercarrier] compensation

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<sup>10</sup> Excerpt of Deposition of Teliix President David Aldworth at 45:24-46:17, *Teliix, Inc. v. AT&T Corp.*, No. 1:15-cv-01472, Doc. 68-1 (D. Colo. Oct. 21, 2016), <https://bit.ly/2sOWzAx> (agreeing that “8YY traffic from Teliix’s wholesale customers comes into Teliix’s network in IP format . . . over the public Internet”) (“Teliix Deposition”).

<sup>11</sup> *O1 Commc’ns, Inc. v. AT&T Corp.*, No. 3:16-cv-01452 (N.D. Cal.) (“*O1 v. AT&T*”).

<sup>12</sup> Teliix Deposition at 54:2-4 (agreeing that traffic is “sent to the tandem provider in IP format”); *id.* at 56:21-23, 58:10-14 (stating that traffic goes to HyperCube, a tandem provider, over the public Internet).

<sup>13</sup> *AT&T Corp. v. FCC*, 841 F. 3d 1047 (D.C. Cir. 2016).

<sup>14</sup> See, e.g., *Peerless Network, Inc. v. MCI Communications Servs., Inc.*, No. 1:14-cv-07417 (N.D. Ill.) (“*Peerless v MCF*”) (primary jurisdiction referral to the Commission); *Peerless Network, Inc. v. AT&T Corp.*, No. 1:15-cv-00870 (S.D.N.Y.); *Teliix, Inc. v. AT&T Corp.*, No. 1:15-cv-01472 (D. Colo.) (primary jurisdiction referral to the Commission); *Teliix, Inc. v. Verizon Servs. Corp.*, No. 1:18-cv-01266 (D. Colo.); *O1 v. AT&T*; *O1 Communications, Inc. v. MCI Communications Servs., Inc.*, Cal. PUC Case 17-12-014; *O1 Communications, Inc. v. MCI Communications Servs., Inc.*, No. 2:17-cv-01950 (E.D. Cal.).

<sup>15</sup> *8YY Access Charge Reform*, Further Notice of Proposed Rulemaking, 33 FCC Rcd 5723, ¶ 1 (2018).

<sup>16</sup> Debtor’s Post-Hearing Mem. at 9, *In re CoreTel Virginia, LLC*, No. 15-16717, Doc. 238 (Bankr. D. Md. June 6, 2018) (emphasis added), <https://bit.ly/2xRaFam>.

gamesmanship”<sup>17</sup>—is “shedding any backwards-looking lines of business” as terminating switched access rates transition to bill-and-keep and why it is “expanding ... operations under tariffs.... The vast majority of [Core’s] operations will be collections ... for example, terminating 800 number traffic on behalf of the carriers.”<sup>18</sup> Like Teliax, Core buys 8YY traffic that it can arbitrage. Why? Because, as the same CEO testified on behalf of Core’s sister company CoreTel Virginia (“CoreTel”), “[W]e’re in a very efficient market because it’s all computerized. As soon as those minutes are identified you can buy and sell them. *There’s a big market for it. Billions and billions of minutes of market.*”<sup>19</sup> And whereas CoreTel’s revenues had been declining, after CoreTel began to focus on 8YY arbitrage, its bills to Verizon alone increased by more than 800% between March 2018 and May 2018.<sup>20</sup>

The Commission has a longstanding prohibition against LECs collecting access charges for functions they do not provide. And when the Commission created the “VoIP Symmetry Rule”—a limited exception to this principle—in the *Transformation Order*, it still prohibited LECs from charging for functions that neither the LEC nor its VoIP partner provided. Just months earlier, the Commission had observed that, “[i]f this exchange of packets over the Internet is a ‘virtual loop,’ then so too is the entire public switched telephone network—and the term ‘loop’ has lost all meaning.”<sup>21</sup> And when the D.C. Circuit vacated and remanded the *VoIP Declaratory Ruling*, it found the Commission’s treatment of functional equivalence “muddled” and noted that Commission precedent “appear[s] to identify end-office switching as supplying actual or physical interconnection.”

It’s past time for the Commission to act on the remand. It should take the wind out of the sails of so many robocall-driven 8YY arbitrage schemes by reaffirming that, because actual or physical interconnection is a critical component of end-office switching, a LEC cannot charge tariffed end-office switching when it routes traffic over the public Internet in conjunction with an over-the-top VoIP provider.

**B. A Carrier-Customer Cannot Violate the Communications Act By Disputing and Refusing to Pay Charges It Contends Were Billed in Violation of a Tariff.**

The same companies running over-the-top VoIP arbitrage schemes are also asking the Commission to turn 180 degrees away from its unbroken line of cases holding that a carrier-customer cannot violate the Communications Act by disputing and refusing to pay charges it contends were billed in violation of a tariff. Teliax, O1, and Peerless all have asked the Commission to endorse two recent federal court decisions that are inconsistent with the

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<sup>17</sup> Resp. of FCC to Emergency Mot. For Stay at 14, *WorldCom, Inc. v. FCC*, Nos. 01-1218 *et al.* (D.C. Cir. June 12, 2001).

<sup>18</sup> See Attachment 1, 341 Meeting of Creditors Transcript at 16:4-5, 19:7-11, *In re CoreTel Virginia, LLC*, No. 17-258 (Bankr. D.C. June 7, 2017).

<sup>19</sup> See Attachment 2, Excerpt of Deposition of CoreTel President Bret L. Mingo at 64:17-21, *In re CoreTel Virginia, LLC*, No. 15-16717 (Bankr. D. Md. May 14, 2018).

<sup>20</sup> *Id.* at 65:6-66:3.

<sup>21</sup> See *AT&T Corp. v. YMax Communications Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 5742, ¶ 44 (2011) (“*AT&T v. YMax*”).

Commission’s decades of precedent.<sup>22</sup> The Commission should take up their invitation to address those cases and should explain those courts got it wrong.

Only a common carrier can violate the provisions of the Communications Act governing switched access charges.<sup>23</sup> And a company “shall be treated as a common carrier ... only to the extent that it is engaged in providing telecommunications services.”<sup>24</sup> Consistent with the Act, the Commission has held that, when a carrier-customer purchases tariffed services from another carrier, the carrier-customer is acting “in its role as a customer”—and *not* as a carrier.<sup>25</sup> This is why, in an unbroken line of precedent dating back to 1989, the “Commission has never held that a failure to pay tariffed charges violates the Act itself.”<sup>26</sup>

So when the *CenturyTel* court found that Sprint violated section 201(b) of the Act by withholding payment for tariffed services because it disputed CenturyTel’s right to bill those charges under its tariffs, the court misstated and misinterpreted Commission precedent.<sup>27</sup> That court also did not address 47 U.S.C. § 153(51) or the Commission’s holding that a long-distance carrier purchasing tariffed services acts “in its role as a customer” and, therefore, cannot violate the Act.

The *Peerless* court, meanwhile, went beyond *CenturyTel* and suggested the filed-rate doctrine means a customer has no right to dispute and withhold currently billed amounts where it claims that a carrier has violated its tariff.<sup>28</sup> There is no support for that position. As a threshold matter, tariffs normally allow customers to withhold disputed amounts in exactly that situation,<sup>29</sup> and the filed-rate doctrine enforces tariff provisions that authorize the disputing and withholding of tariffed charges. And while the Commission in *All American* suggested that it did not endorse “withholding . . . *outside* the context of any applicable tariffed dispute resolution provisions,” it never has suggested that even such withholding violates the Communications Act.<sup>30</sup>

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<sup>22</sup> *CenturyTel of Chatham, LLC v. Sprint Communications Co.*, 861 F.3d 566 (5<sup>th</sup> Cir. 2017); *Peerless v. MCI*.

<sup>23</sup> 47 U.S.C. §§ 201-208.

<sup>24</sup> *Id.* § 153(51).

<sup>25</sup> *All Am. Tel. Co. v. AT&T Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 723, ¶ 12 (2011) (“*All American*”).

<sup>26</sup> *Id.* ¶ 13.

<sup>27</sup> *CenturyTel*, 861 F.3d at 576.

<sup>28</sup> *Peerless*, No. 1:14-cv-07417, Doc. 243, at 35-37; 2018 WL 1378347, at \*16-17.

<sup>29</sup> See *AT&T v. YMax* ¶ 48 n.134 (“YMax’s Tariff expressly contemplates that a customer may withhold payment of disputed charges while YMax pursues resolution.”); see also *Peerless Network, Inc.*, Access Service Tariff, FCC Tariff No. 4, § 3.6.3(C)(1) (authorizing customer to “withh[o]ld payment of the disputed amount pending resolution of the disputed bill”); *Teliax Colorado, LLC*, Interstate Access Service, Tariff FCC No. 1, § 2.10.1 (similar); *O1 Communications*, Access Services Tariff, FCC Tariff No. 4, § 2.10.4 (similar).

<sup>30</sup> *All American* ¶ 13 (emphasis added).

Marlene H. Dortch

December 3, 2018

Page 6

Whether in response to the Petition or in one of the pending rulemakings, the Commission should promptly reaffirm its longstanding precedent and explain that the *CenturyTel* and *Peerless* courts erred.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Curtis Beery".

Copies:      Nick Degani  
                 Nirali Patel  
                 Jamie Susskind

# **ATTACHMENT 1**

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U.S. Bankruptcy Court for the District of Columbia

341 Meeting of Creditors

In the Matter of: Core Communications, Inc.

Case No. 17-258

TONY PIKA, Office of the U.S. Trustee, presiding

June 7, 2017

[Transcript prepared from digital audio recording.]

1   PRESENT:

2   BRET MINGO, Debtor Representative,

3       President of Core Communications, Inc.

4   CHRIS VAN de VERG, ESQ., General Counsel,

5       Core Communications, Inc.

6   EDWARD J. TOLCHIN, ESQ., Offit Kurman, PA

7       Counsel for the Debtor

8   DARRELL W. CLARK, ESQ., Stinson Leonard Street LLP,

9       Counsel for Verizon

10   STEVEN HARTMANN, ESQ., General Counsel, Verizon

11   PAUL S. THALER, ESQ.,

12       Cohen Seglias Pallas Greenhall & Furman PC,

13       Counsel for Landlord, AE-Pennsylvania Place Associates

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1           A     We are dramatically reengineering the network to  
2     accommodate the terms of the Pennsylvania Commission order,  
3     and we are growing certain lines of business that are  
4     future-looking. And we are shedding any backwards-looking  
5     lines of business.

6           Q     What reengineering has been done to adhere to the  
7     order?

8           A     We have already migrated out of five physical  
9     points of presence.

10          Q     So five footprints?

11          A     Five--five--well, we were actually able to  
12     contract with another carrier to keep the footprint for  
13     most purposes and transitioned users to--to another network  
14     while we still maintained the operations of it.

15          Q     So are you subleasing that network?

16          A     Yes.

17          Q     When was that done?

18          A     The actual transition steps happened last week.  
19     It was under a contract signed months--a year ago, so it  
20     was a plan, anyway.

21          Q     Who was the contract entered with?

22          A     Peerless Networks.

23                 TRUSTEE PIKA: Counsel, were you aware of that?

24                 COUNSEL: It was a Peerless--it was an existing  
25     Peerless Networks contract? No, I was not.

1 TRUSTEE PIKA: Okay.

2 I'd like to get a copy of that contract.

3 BY TRUSTEE PIKA:

4 Q Are there any--do you know if there in existence  
5 any non-compete agreements to enter into any other  
6 contracts like that?

7 A No, I can't--there would be no non-compete  
8 contracts on that form. This was--we never signed a  
9 specific agreement.

10 Q Specific agreements?

11 A We feel as a carrier, we can't--we can't do that.

12 Q So what are the terms of the new agreement?  
13 What's the revenue stream for you?

14 A I still bill my customers pursuant to our  
15 agreements. I just no--I now pay a much lower incremental  
16 cost or any aggregate cost of [inaudible]. So we figured  
17 the net savings of approximately 15-, 20-, \$30,000 a month.

18 Q Now, that executory agreement--you said you  
19 had--or had been in one prior to signing a new one with  
20 Peerless? Is that correct?

21 A Yes, yes.

22 Q Did you list that on your schedules?

23 A I'm not sure.

24 Q We'll take a look at that.

25 A We've never--this was the first time we've used

1 it, but it was a relationship that was in discussion as to  
2 how [inaudible].

3 Q Do you have any other executory contracts or any  
4 other contracts out there like this?

5 A I'm not sure in part because, generally, any kind  
6 of future-looking thing is signed with the parent rather  
7 than the subsidiary directly because it involves more  
8 operations than just--

9 Q But did you list any of the parent contracts in  
10 your statements?

11 A I don't believe we did.

12 TRUSTEE PIKA: If counsel would make a note of  
13 that, just take a look into it. See if that schedule needs  
14 to be amended for any executory contracts.

15 COUNSEL: We're not aware of it.

16 BY TRUSTEE PIKA:

17 Q Who else would you have contracts like that,  
18 [inaudible] contract?

19 A Most--many carriers, Level 3,  
20 Inteliquent--Inteliquent or Onvoy. I'm not sure what  
21 they're calling themselves now. Carriers like that.

22 Q So you had this other revenue base, which you  
23 entered into with Peerless. How much do you expect to get  
24 out of it, generally the Peerless Networks?

25 A Oh, as a customer, I didn't--misunderstood your

1 question. I thought they were a vendor. So, as a  
2 customer, we're not--Core will not be going to Peerless  
3 directly.

4 Q These are customers I'm looking for. What  
5 contracts have you entered into that you are going to  
6 generate revenue?

7 A We will be expanding our--our operations under  
8 tariffs in particular. The vast majority of our operations  
9 will be collections--be our tariffs that are already filed,  
10 and we'll include the lines of services. So, for example,  
11 terminating 800 number traffic on behalf of the carriers.

12 Q Do you have any idea what your revenues were for  
13 May?

14 A We are presently working on that right now. I'm  
15 not sure.

16 TRUSTEE PIKA: And when do you think you'll have  
17 the claim filed?

18 COUNSEL: By the--a projection would be the end  
19 of September, but it may slide a bit.

20 TRUSTEE PIKA: And it would be a claim now for  
21 [inaudible] or--

22 COUNSEL: Yes.

23 BY TRUSTEE PIKA:

24 Q Let's see. Taking a look at your--let's start  
25 with your statement of financial affairs that were filed on

# **ATTACHMENT 2**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND

\* \* \* \* \*

\*

IN RE:

\*

CORETEL VIRGINIA, LLC,  
Debtor.

\* Case 15-16717-RAG  
\* Chapter 11

\*

\* \* \* \* \*

The deposition of BRET L. MINGO took  
place on Monday, May 14, 2018, commencing at  
1:00 p.m. at 101 West Lombard Street, Suite 2625,  
Baltimore, Maryland 21201, before Alfred A. Betz,  
Court Reporter and Notary Public.

\* \* \* \* \*

Reported by:

Alfred A. Betz, Court Reporter

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 On behalf of Trustee:</p> <p>4 HUGH M. BERNSTEIN, Esquire</p> <p>5 United States Department of Justice</p> <p>6 101 W. Lombard Street, Suite 2625</p> <p>7 Baltimore, Maryland 21201</p> <p>8 410-962-4300</p> <p>9 hugh.m.bernstein@usdoj.gov</p> <p>10</p> <p>11 On behalf of Debtor:</p> <p>12 EDWARD J. TOLCHIN, Esquire</p> <p>13 Offit Kurman, P.A.</p> <p>14 4800 Montgomery Lane, 8th Floor</p> <p>15 Bethesda, Maryland 20814</p> <p>16 240-507-1700</p> <p>17 etolchin@offitkurman.com</p> <p>18</p> <p>19 Also Present:</p> <p>20 Scott H. Angstreich, Esquire</p> <p>21 Stephen Hartmann, Esquire</p>	<p style="text-align: right;">Page 4</p> <p>1 Q. What's your position with CoreTel</p> <p>2 Virginia, LLC?</p> <p>3 A. President.</p> <p>4 Q. And have you always been the President</p> <p>5 of that company since it was formed?</p> <p>6 A. Yes.</p> <p>7 Q. When did you form that company or when</p> <p>8 was the company formed?</p> <p>9 A. I'm not sure.</p> <p>10 Q. Okay. It is my understanding that the</p> <p>11 ownership of CoreTel Virginia, LLC, it's owned by</p> <p>12 a company called Core Communications, Inc.; is</p> <p>13 that correct?</p> <p>14 A. It's owned by CoreTel Communications,</p> <p>15 Inc.</p> <p>16 Q. CoreTel Communications, Inc. And that</p> <p>17 company is essentially owned by yourself and one</p> <p>18 other individual?</p> <p>19 A. It is now just myself.</p> <p>20 Q. Okay.</p> <p>21 (Exhibit A, responses to document requests,</p>
<p style="text-align: right;">Page 3</p> <p>1 PROCEEDINGS</p> <p>2</p> <p>3 Whereupon --</p> <p>4 BRET L. MINGO</p> <p>5 called for examination, having been first duly</p> <p>6 sworn to tell the truth, the whole truth, and</p> <p>7 nothing but the truth, testified as follows:</p> <p>8 EXAMINATION BY MR. BERNSTEIN:</p> <p>9 Q. Good afternoon, Mr. Mingo. We just met</p> <p>10 but again my name is Hugh Bernstein. I'm an</p> <p>11 attorney for the United States Trustee. I know</p> <p>12 there's been a lot of proceedings in the case,</p> <p>13 you've been deposed before. I don't want to waste</p> <p>14 a lot of time running through that unless you have</p> <p>15 any questions about the procedure. I assume</p> <p>16 you've done this before?</p> <p>17 A. Yes.</p> <p>18 Q. You kind of know what's going on. So</p> <p>19 let me kind of just jump right in. Then. What is</p> <p>20 your -- so your full name is Bret Mingo?</p> <p>21 A. Correct.</p>	<p style="text-align: right;">Page 5</p> <p>1 marked for identification.)</p> <p>2 Q. If you could just take a look at what's</p> <p>3 just been marked as Exhibit A, do you recognize</p> <p>4 those as the responses, the original responses to</p> <p>5 document requests that the United States Trustee</p> <p>6 served on CoreTel Virginia, LLC?</p> <p>7 A. Yes.</p> <p>8 Q. I will point out one difference between</p> <p>9 the exact thing you produced and what we have. In</p> <p>10 the lower right-hand corner there's some page</p> <p>11 numbers that I inserted, just so that we can speak</p> <p>12 about them. What I'd like to do is actually kind</p> <p>13 of quickly originally just run through so I can</p> <p>14 figure out what some of these documents are. So</p> <p>15 if you can flip to page 16 of Exhibit A?</p> <p>16 A. Okay.</p> <p>17 Q. They may be 2-sided, so that's why --</p> <p>18 A. Yes. Okay.</p> <p>19 Q. Okay. So 16 I think may be on the back</p> <p>20 side of 1. What is that document?</p> <p>21 A. This is the tabulation as of I guess</p>

Page 62	Page 64
<p>1 deck and the rate deck will tell you if it comes 2 from this carrier we'll charge you this much for 3 this minute, et cetera, et cetera, et cetera. And 4 all that happens on a, there's an industry-wide 5 database called SOMOS. SOMOS runs into a database 6 called SMS/800 database. And my God, is it 7 complicated. When you're originating carrier, 8 right, you have a phone call going to an 800 9 number you DIP this database and translate what 10 could be a massive table into figuring out what 11 CIC Code to send it to. You then mark the call 12 with that CIC Code and you route accordingly.</p> <p>13 <b>Q. Okay.</b></p> <p>14 A. Verizon's two primary CICs are 0222 and 15 0555, both from acquisitions years ago. I'm not 16 sure which one's which at this point. This goes 17 back to the WorldCom days, or pre-WorldCom days. 18 I don't know the history of that.</p> <p>19 But basically they'll charge, let's say, 20 a penny a minute for American Airlines to receive 21 a phone call. Well, they, like other forms in</p>	<p>1 those minutes under our tariff and they charge 2 their customer a higher rate and make a margin. 3 And so there's a wholesale business out there in 4 the sense there are lots of carriers who don't 5 want to charge or can't charge or who don't 6 directly charge for it and so they will sell their 7 minutes to another carrier to complete the calls 8 for them. There is some special rules out there. 9 For example, we're not chasing wireless companies. 10 Wireless companies can't charge tariffs, as I 11 explained. So their minutes will be compensated 12 significantly less than -- so we aren't trying to 13 sign up a Sprint, an incentive. Right? And we're 14 not trying to charge for minutes that couldn't be 15 charged for. We're just going after carriers that 16 are too small or aggregated. And there's 17 intermediaries now because we're in a very 18 efficient market because it's all computerized. 19 As soon as those minutes are identified you can 20 buy and sell them. There's a big market for it. 21 Billions and billions of minutes and minutes of</p>
Page 63	Page 65
<p>1 carrier compensation, need to share that with all 2 the other carriers who are part of the call flow. 3 So we as the originating carrier get a slice of 4 that according to our originating switched access, 5 hence OSA. It's the reverse flow of the 6 terminating switch access which they've charged a 7 massive amount for.</p> <p>8 <b>Q. Okay.</b></p> <p>9 A. Now, unlike returning switched access 10 originating switch access is not going through. 11 The FCC may do something about it in the future 12 but they have done nothing about it. And then 13 another part of this, and we as a competitive 14 carrier must match the incumbent carrier in a 15 service area's rates. So the same rates, same 16 switching elements that Verizon charges as a LEC 17 charges to AT&amp;T.</p> <p>18 We charge to AT&amp;T Level 3, CenturyLink 19 and themselves, the smaller players, too, but 20 those are the, you know, those three comprise over 21 90 percent of the market. And so we charge for</p>	<p>1 market.</p> <p>2 <b>Q. So you're currently increasing your --</b></p> <p>3 A. Yes.</p> <p>4 <b>Q. -- your work in that area?</b></p> <p>5 A. Yes.</p> <p>6 <b>Q. Okay. So in looking at paragraph 1,</b> 7 <b>that last on page 4 of Exhibit D here, in the last</b> 8 <b>sentence it says on March 1st for February</b> 9 <b>transactions, for example, CoreTel VA billed</b> 10 <b>Verizon a total of \$6,382.49 and that amount will</b> 11 <b>grow to approximately 35,000 per month by the</b> 12 <b>May 1 invoice period.</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. So right now we're in the middle of May.</b> 15 <b>Is the May 1 invoice period --</b></p> <p>16 A. Done.</p> <p>17 <b>Q. -- already done?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. How much was that invoice?</b></p> <p>20 A. It was either 53 thousand or 59 21 thousand. I forget. I should have memorized --</p>

Page 66

1 **Q. That's okay.**

2 A. -- taken a look before I came to this  
3 meeting. But it was north of 50 and short of 60.  
4 So I was wrong. It grew faster.

5 **Q. So you've exceeded that number, though?**

6 A. Yes. And we're already on pace to  
7 almost double that again.

8 **Q. And is that something that you can**  
9 **sustain over time or is this something that's**  
10 **finite?**

11 A. Well, we are just entering the market  
12 and part of our discovery questions there are --  
13 we did about in the aggregate across all of our  
14 companies to all XEs a little north of 20 million  
15 minutes for the April period. I don't know off  
16 the top of my head what was Virginia's slice of  
17 it. There are carriers that do over a billion  
18 minutes a month. It's not just sustainable.  
19 We've just cracked the surface.

20 **Q. And just so I'm clear, that 53 to 59**  
21 **thousand that's from CoreTel Virginia only, right?**

Page 68

1 is going to an 800 number what are the factors  
2 that should be jurisdictionally applied. And  
3 there is a special category for voiceover IP that  
4 implies some of the intrastate minutes should go  
5 into the FCC under federal rates.

6 So when you get to look at, you look at  
7 the originating switched access bill there's a  
8 component for intrastate and there's a component  
9 for interstate and that's what the factors are  
10 about.

11 **Q. Gotcha. This is going to be a little**  
12 **unfair because you specifically asked me not to**  
13 **ask you about what it means but I'm going to**  
14 **anyway, at least a little bit. The next paragraph**  
15 **talks about bill and keep and I spoke with these**  
16 **guys about it and tried to learn it. I still am**  
17 **confused. Can you explain sort of your**  
18 **understanding of it?**

19 A. Yeah. Unfortunately, as an economist  
20 rates of zero bother the hell out of me. Excuse  
21 my French. We fought bill and keep for 15 years

Page 67

1 **Not some other CoreTel?**

2 A. Yes. Yes. Yes. I knew that number  
3 mattered to you so yes, it was -- and importantly,  
4 on April 23rd Verizon for the first time after  
5 some begging sent us a letter in regards to this  
6 and that was to apply the jurisdictional factors.

7 **Q. Okay.**

8 A. And so the jurisdictional factors were  
9 applied for the entire month of April and so those  
10 are correct according to their factors for  
11 voiceover IP factors and the implication of the  
12 interstate/intrastate components.

13 **Q. When you say jurisdictional factors I'm**  
14 **not really sure what that term means.**

15 A. Okay. The FCC has done a number --  
16 traditionally the world is split up between  
17 intrastate components and interstate components,  
18 i.e., does your state tariff apply or Federal  
19 tariff apply. So there's not only not just, you  
20 know, so if a call to an 800 number, if a call  
21 from a Maryland 800 number, a Maryland phone line

Page 69

1 maybe. That's part of the reason why I love it so  
2 much. But the FCC in their wisdom decided that  
3 they would switch from a calling party pays  
4 network to one where both sides charge the  
5 customers and the idea being intercarrier  
6 compensation go to zero.

7 **Q. So in theory the customers are going to**  
8 **pay the same, they're just going to pay it to two**  
9 **different people or -- no.**

10 A. Don't ask me to -- I can proffer what  
11 they've said but it still doesn't make sense to  
12 me.

13 **Q. Okay. Fair enough.**

14 A. But part of the whole politics of all  
15 this is -- there's no politics, but how we got  
16 there was because of a special quirk of wireless  
17 carriers being sort of a network on top of the  
18 public switch off the network they were never able  
19 to tariff. And they were really left in the  
20 unenviable spot of having to pay other people's  
21 tariffs while not collecting for themselves, i.e.