Attachment A

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED MAR 23 2015
CLERK

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GREAT LAKES COMNET, INC. and WESTPHALIA TELEPHONE COMPANY Petitioners, v. FEDERAL COMMUNICATIONS COMMISSION and THE UNITED STATES OF AMERICA, Respondents.	Case No. 15-15-1064 **PETITION FOR REVIEW**

GREAT LAKES COMNET, INC. ("GLC") and WESTPHALIA TELEPHONE COMPANY ("WTC") hereby jointly petition the Court for review of the Order of the Federal Communications Commission ("FCC") in *AT&T Services, Inc. and AT&T Corp. v. Great Lakes Comnet, Inc. and Westphalia Telephone Company*, File No. EB-14-MD-013, Memorandum Opinion and Order, FCC 15-31 (released March 18, 2015) (the "Order"). The Order is attached as Exhibit A.

Jurisdiction is pursuant to 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342 and 2344, and Rule 15(a) of the Federal Rules of Appellate Procedure. Venue is proper under 28 U.S.C. § 2343.

The proceedings before the FCC were in the nature of a formal complaint by AT&T Services Inc. and AT&T Corp. (collectively, "AT&T") against GLC and WTC, alleging that the rates that GLC and WTC charged AT&T for interstate switched access telecommunications services under their respective tariffs for such services were unlawful.

GLC and WTC seek relief from the Order on the grounds that: (1) the FCC acted beyond its statutory jurisdiction, authority and limitations; (2) the Order violates of the United States

Constitution; (3) the Order is arbitrary, capricious and otherwise contrary to law; and (4) the retroactive application of the Order will cause manifest injustice.

Therefore, GLC and WTC petition the Court to hold that the Order is unlawful, find that vacatur is appropriate in light of the seriousness of its deficiencies, compel the FCC to find that the rates in GLC's Tariff F.C.C. No. 20 ("Tariff"), which were are at issue in the case, are lawful and that GLC's Tariff is not void *ab initio,* and provide such additional relief as may be appropriate.

Respectfully submitted,

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Counsel for Great Lakes Comnet, Inc, and Westphalia Telephone Company

March 23, 2015

Exhibit A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
AT&T Services Inc. and AT&T Corp.,	)	
	)	
Complainants,	)	
	)	EB Docket No. 14-222
v.	)	File No. EB-14-MD-013
	)	
Great Lakes Comnet, Inc. and	)	
Westphalia Telephone Company,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Adopted: March 17, 2015 **Released: March 18, 2015**

By the Commission:

I. INTRODUCTION

1. Complainants AT&T Services Inc. and AT&T Corp. (collectively, AT&T) allege that Great Lakes Comnet, Inc. (GLC) charged them unlawful tariffed rates for interstate access services. In this Memorandum Opinion and Order, we grant AT&T's complaint in part because we find that GLC violated the Commission's Rules for the tariffing of such services by a competitive local exchange carrier.

2. Specifically, we grant Count I of AT&T's formal complaint against GLC and Westphalia Telephone Company (WTC) (collectively, Defendants),[1] which alleges that GLC billed AT&T for interstate access services under an unlawful tariff.[2] We agree with AT&T. We find that GLC violated the Commission's Rules governing competitive local exchange carrier tariffs for interstate access services,[3] and that the tariff therefore is unlawful.[4]

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[1] Formal Complaint of AT&T Services Inc. and AT&T Corp., File No. EB-14-MD-013 (filed Oct. 22, 2014) (Complaint). *See* 47 U.S.C. § 208. AT&T previously had filed an informal complaint against Defendants. *See* Informal Complaint of AT&T against Local Exchange Carriers of Michigan, Inc., Great Lakes Comnet, Inc., and Westphalia Telephone Company, File No. EB-14-MDIC-0003 (filed Apr. 4, 2014). Defendants filed their response on May 12, 2014. Letter from Philip J. Macres, Counsel for GLC and WTC, to Sandra Gray-Fields, FCC, EB, MDRD, File No. EB-14-MDIC-0003 (filed May 12, 2014). Because AT&T converted its informal complaint into a formal complaint within six months of Defendants' response, the formal complaint "relate[s] back to the filing date of the informal complaint." *See* 47 C.F.R. § 1.718.

[2] *See* Complaint at 56-58, paras. 165-76.

[3] 47 C.F.R. § 61.26(f).

[4] The Commission enacted these rules as "a bright line . . . that permits a simple determination as to whether CLEC access charges are just and reasonable" under Section 201(b) of the Communications Act. *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further

(continued....)

3. We also grant AT&T's claim in Count III that WTC unlawfully billed for services prior to May 2013 that GLC provided.[5] Defendants admit that WTC improperly billed AT&T at WTC's rates and under WTC's operating company number (OCN) for services GLC actually provided.[6] We therefore grant Count III of the Complaint to the extent it challenges those bills. We dismiss the remainder of the Complaint.

4. In accordance with the Commission's Rules,[7] AT&T bifurcated its liability and damages claims in the Complaint.[8] As a result, AT&T is entitled to pursue an award of damages to be determined in the next phase of this proceeding.

II. BACKGROUND

A. Parties

5. Complainant AT&T Services Inc. performs centralized administrative support services, including information technology and billing, real estate, procurement, human resources, training, and finance.[9] Complainant AT&T Corp. is an interexchange carrier (IXC) that provides long-distance service, including 8YY (i.e., 1-800) toll-free service, to end users across the country.[10] AT&T Corp. is the entity involved with routing the traffic in dispute.[11]

6. Defendant WTC is a rural incumbent local exchange carrier (ILEC) that provides telephone exchange and exchange access services to business and residential customers in Michigan through its main switch in Westphalia, Michigan.[12] WTC acts as a billing agent for other carriers, including GLC.[13] Clinton County Telephone Company (CCTC) owns WTC.[14]

7. GLC is registered with the Michigan Public Service Commission as a facilities-based competitive access provider (CAP).[15] GLC provides interstate switched and special access services, including tandem switched transport, tandem switched facility, tandem switched termination, and tandem

(Continued from previous page)
Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9925, para. 4 (2001) (*CLEC Access Reform Order*); 47 U.S.C. §§ 201(b), 203.

[5] Complaint at 49, para. 137, 50, paras. 140-41, 51, para. 144, 52-53, paras. 151-53, 60-61, paras. 185-91.

[6] Joint Statement of Stipulated Facts, Disputed Facts, Key Legal Issues, and Discovery and Scheduling, File No. EB-14-MD-013 (filed Dec. 1, 2014) (Joint Statement) at 11-12, Stipulated Facts, Nos. 65-72.

[7] 47 C.F.R. § 1.722(d).

[8] Complaint at 8, para. 19 (citing 47 C.F.R. § 1.722(d) (setting forth the requirements a complainant must satisfy if it "wishes a determination of damages to be made in a proceeding that is separate from and subsequent to the proceeding in which the determinations of liability and prospective relief are made")).

[9] Joint Statement at 2, Stipulated Facts, No. 1.

[10] Joint Statement at 2, Stipulated Facts, No. 2. 8YY is a service in which the customer receiving the call (rather than the customer making the call) pays for the call. AT&T's 8YY customers are the businesses that receive 8YY calls. *Id.*, Stipulated Facts, No. 3.

[11] *Id.*, Stipulated Facts, No. 3.

[12] Joint Statement at 3, Stipulated Facts, No. 5.

[13] *Id.*, Stipulated Facts, No. 6.

[14] *Id.*, Stipulated Facts, Nos. 7, 8.

[15] *Id.*, Stipulated Facts, No. 10.

switching via a tandem switch located in Westphalia, Michigan.[16] GLC has facilities located in both rural and urban areas.[17] GLC owns CCTC and, therefore, WTC.[18]

B. Relevant Non-Parties[19]

8. 123.net a/k/a Local Exchange Carriers of Michigan, Inc. (LEC-MI) is a competitive local exchange carrier (CLEC) that operates an end office switch in Southfield, Michigan (a suburb of Detroit).[20] Between October 21, 2003, and September 19, 2014, LEC-MI connected its end office switch to GLC's tandem switch.[21] LEC-MI is not affiliated with GLC or WTC.[22]

9. "Traffic aggregators" in this case are intermediate service providers that carry calls from wireless carriers to the facilities of LEC-MI and/or Defendants.[23]

C. The Commission's CLEC Access Tariff Regime

10. Under the Commission's Rules governing the tariffing of competitive interstate switched exchange access services, CLECs are local exchange carriers that are not ILECs, but that provide some or all of the interstate exchange access services used to send traffic to or from an end user.[24] There are two means by which a CLEC can provide an IXC with, and charge for, interstate access services.[25] First, a CLEC may tariff interstate access charges if its rates are no higher than the rates charged for such services by the competing ILEC (the benchmark rule).[26] If a CLEC provides only a "portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC," its rate must "not exceed the rate charged by the competing ILEC for the same access services."[27] The Commission exempts a narrow class of rural CLECs from its benchmark rule,[28] however, permitting qualifying carriers to file tariffs containing rates "at the level of those in the NECA [National Exchange

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[16] Joint Statement at 4, Stipulated Facts, No. 12.

[17] *Id.*, Stipulated Facts, No. 17.

[18] Joint Statement at 3, Stipulated Facts, No. 8.

[19] Although the parties have identified a number of non-parties they believe are germane to this dispute (*see* Joint Statement at 5-6, Stipulated Facts, Nos. 22-29), we discuss only those non-parties that are relevant to our findings and conclusions.

[20] Joint Statement at 5, Stipulated Facts, No. 22.

[21] *Id.*

[22] *Id.*

[23] *See* Complaint at 13, para. 33; Answer of Great Lakes Comnet, Inc. and Westphalia Telephone Company, File No. EB-14-MD-013 (filed Nov. 12, 2014) (Answer), Declaration of John Summerset on Behalf of Great Lakes Comnet, Inc. and Westphalia Telephone Company (Summerset Declaration) at 57-58, paras. 133-35.

[24] 47 C.F.R. § 61.26(a)(1).

[25] *See Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9925, para. 3 (2001) (*CLEC Access Reform Order*).

[26] *See* 47 C.F.R. § 61.26(b).

[27] 47 C.F.R. § 61.26(f); *Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9116, para. 17 (2004) (*CLEC Access Reform Reconsideration Order*).

[28] 47 C.F.R. § 61.26(a)(6); *CLEC Access Reform Order*, 16 FCC Rcd at 9954-55, para. 76 (the rural exemption is available for "a CLEC competing with a non-rural ILEC, where no portion of the CLEC's service area falls within: (1) any incorporated place of 50,000 inhabitants or more, . . . or (2) an urbanized area, as defined by the Census Bureau").

Carrier Association] access tariff."[29] Second, as an alternative to tariffing, a CLEC may negotiate and enter into an agreement with an IXC to charge rates higher than those permitted under the benchmark rule.[30]

11. The Commission also has promulgated rules to address CLECs engaged in "access stimulation,"[31] which occurs when a LEC with high switched access rates enters into an arrangement with a provider of high call volume operations to stimulate the access minutes terminated to the LEC.[32] The LEC then shares a portion of the increased access revenues resulting from the increased demand, or some other benefit, with the service provider.[33] CLECs engaged in access stimulation may charge rates that are no greater than the interstate switched access rates of the lowest price cap LEC in the state.[34]

D. Defendants' Tariffs for Switched Access Service

12. WTC is a member of NECA,[35] and it participates in NECA Tariff No. 5.[36] GLC filed an interstate switched and special access service tariff (GLC Tariff).[37] Although GLC is not a NECA member,[38] the rates in the GLC Tariff reference the rates in NECA Tariff No. 5 for the same services.[39] The GLC Tariff has been in effect since April 2, 2002.[40]

E. 8YY Wireless Traffic Aggregation and Routing

13. Wireless carriers generally cannot file tariffs for, or collect tariffed fees relating to, switched access services.[41] Some wireless carriers direct wireless-originated 8YY traffic to traffic aggregators that send the calls to wireline LECs, which in turn charge for switched access services provided by the wireline LECs.[42] The LECs and the traffic aggregators often share the access revenues.

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[29] 47 C.F.R. § 61.26(e); *CLEC Access Reform Order*, 16 FCC Rcd at 9955-56, paras. 80-81.

[30] *CLEC Access Reform Order*, 16 FCC Rcd at 9925, para. 3, 9938, para. 40.

[31] 47 C.F.R. § 61.26(g).

[32] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17874, para. 656 (2011) (*USF/ICC Transformation Order*), *pets. for review denied, In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[33] *Id.*

[34] 47 C.F.R. § 61.26(g)(1); *USF/ICC Transformation Order*, 26 FCC Rcd at 17886, para. 690. For the services at issue in this proceeding, a price cap local exchange carrier is a dominant carrier that provided switched access service subject to price cap regulation pursuant to Sections 61.41 through 61.49 of the Commission's Rules, 47 C.F.R. §§ 61.41-61.49, until June 30, 2012, and thereafter provided those services pursuant to Part 51 of the Commission's Rules. 47 C.F.R. §§ 51.1-51.919.

[35] NECA administers tariffs for qualifying small carriers that are members of NECA. *See* 47 C.F.R. §§ 69.601-69.612. NECA files tariffed access rates that apply whenever an IXC uses any pool member's tariffed access services. 47 C.F.R. § 69.3(d).

[36] Joint Statement at 3, Stipulated Facts, No. 9.

[37] Joint Statement at 3-4, Stipulated Facts, No. 11. GLC filed its tariff on one-day's notice. *Id.*

[38] *See* Complaint at 14, para. 35; Answer at 14, para. 35.

[39] Joint Statement at 13, Stipulated Facts, No. 77.

[40] Joint Statement at 3, Stipulated Facts, No. 11.

[41] 47 C.F.R. § 20.15(c); Complaint at 16, para. 41; Answer at 16, para. 41.

[42] Complaint at 16, para. 41; Answer at 16, para. 41. We note that LECs cannot indirectly collect access charges for services provided by CMRS providers that the CMRS providers cannot assess directly. *See CLEC Access Reform Reconsideration Order*, 19 FCC Rcd at 9116, para. 16 & n.57.

Pursuant to agreements between the wireless carrier and the aggregator, the wireless carrier ultimately receives payment for the aggregated traffic.[43]

14. In 2010, Defendants' charges to AT&T grew substantially due to the aggregation of 8YY traffic that originated from wireless customers throughout the country.[44] The wireless carriers routed the 8YY calls to traffic aggregators that had contracts or other arrangements with the wireless carriers.[45] The parties disagree as to the exact routing and arrangements related to the 8YY traffic after it was aggregated. Nonetheless, they agree generally that, after the traffic aggregators handled the traffic, it was handed off to intermediate service providers and delivered to an end-office switch operated by LEC-MI.[46] LEC-MI established an IP point of interconnection for this traffic and sent the traffic to GLC.[47] Thereafter, the aggregated 8YY wireless traffic was transported 83 airline miles between Southfield, Michigan, and Westphalia, Michigan.[48] Finally, GLC identified AT&T as the long distance carrier providing the 8YY service, and directed the traffic to AT&T for completion.[49]

15. From 2010 to 2013, GLC had an access revenue sharing agreement with IBDC Telecom Corporation, one of the traffic aggregators.[50] GLC also had an access revenue sharing arrangement with LEC-MI, which GLC canceled as of January 1, 2012.[51] Under the agreements, GLC paid IBDC and LEC-MI a portion of the access charges GLC received from AT&T in exchange for IBDC and LEC-MI sending the traffic to GLC's tandem.[52]

F. The Disputed Access Rates

16. On March 20, 2013, AT&T disputed WTC's charges and routing practices.[53] Among other things, AT&T complained that WTC could not properly bill for 83 miles of transport because the traffic crossed LATA boundaries, and WTC's tariff provides that its access services must be provided within a single LATA.[54] In addition, AT&T complained that WTC improperly billed for tandem switching when GLC owned and operated the tandem switch.[55]

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[43] Complaint at 16, para. 41. *See* Refiled Declaration of John W. Habiak, File No. EB-14-MD-013 (Habiak Declaration) at 6, para. 14 & n.10; *see also* Joint Statement at 18-19, Stipulated Facts, Nos. 110-16; Reply to Legal Analysis in Support of AT&T Formal Complaint, File No. EB-14-MD-013 (filed Nov. 19, 2014) (Reply Legal Analysis) at 39.

[44] Joint Statement at 16, Stipulated Facts, No. 97.

[45] *See* Joint Statement at 16, 18-19, Stipulated Facts, Nos. 97, 110-13; Disputed Facts at 20-21; Summerset Declaration at 37-39, paras. 88-91.

[46] Complaint at 17-19, paras. 44-49; Answer at 18-22, paras. 44, 47, 49; *see* Joint Statement at 18-19, Stipulated Facts, Nos. 110-13.

[47] Complaint at 18, para. 47; Answer at 20-21, para. 47.

[48] Answer at 22, para. 49, Summerset Declaration at paras. 17, 24-34, 80, 84.

[49] Complaint at 20, para. 54; Answer at 25, para. 54.

[50] Joint Statement at 5, 19, Stipulated Facts, Nos. 25, 114-15.

[51] Joint Statement at 19, Stipulated Facts, Nos. 116-17.

[52] *See* Joint Statement at 18-19, Stipulated Facts, Nos. 110-16.

[53] Joint Statement at 11, Stipulated Facts, No. 66; Complaint at 22, para. 59; Answer at 27, para. 59.

[54] Complaint at 22, para. 59; Answer at 27, para. 59. A "LATA" or "Local Access and Transport Area" means a contiguous geographic area as defined in Section 31 of the Communications Act of 1934, as amended. 47 U.S.C. § 153(31).

[55] Complaint at 22, para. 59; Answer at 27, para. 59.

17. Defendants billed AT&T for tandem transport, tandem switching, tandem switched termination, and an 8YY database query charge.[56] From January 2013 through June 2014, Defendants billed AT&T at rates totaling $0.008483 exclusive of mileage for each minute of 8YY wireless traffic delivered to AT&T from the LEC-MI end-office switch in Southfield, Michigan.[57] In contrast, the aggregate rates of AT&T Michigan—an incumbent LEC operating in and around Southfield, Michigan—for the same exchange access functions provided by GLC and WTC would have been $0.001239 per-minute exclusive of mileage.[58]

III. DISCUSSION

18. As explained below, the evidence establishes that GLC is subject to and violated Section 61.26 of our Rules. Accordingly, we grant Count I of the Complaint. In light of this holding, we dismiss Count II without prejudice. We grant Count III in part. Finally, we dismiss AT&T's alternative claims in Counts III and IV in light of our holding that the GLC Tariff is unlawful. AT&T may file a supplemental complaint for damages with the Commission in accordance with Section 1.722(e) of our Rules.[59]

A. GLC Violated Section 61.26(f) of the Commission's Rules.

1. GLC Is Subject to the Requirements of Section 61.26.

19. At the heart of GLC's defense is its contention that it is not a CLEC for purposes of Section 61.26 of the Commission's Rules. We disagree. Section 61.26 states that a CLEC is a "local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of 'incumbent local exchange carrier.'"[60] The Rule defines "switched exchange access services" as including "tandem switched transport termination (fixed); tandem switched transport facility (per mile); [and] tandem switching."[61]

20. GLC—which admittedly is not an ILEC[62]—furnishes tandem switched transport termination, tandem switched transport facility, and tandem switching.[63] Thus, it provides *some* of the interstate exchange access services used to send traffic to or from an end user.[64] As a definitional matter,

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[56] Joint Statement at 12-16, Stipulated Facts, No. 73, 82, 89, 94. Prior to May 2013, AT&T was billed under WTC's OCN and rates for all of the tandem switching and tandem transport charges. Joint Statement at 11, Stipulated Facts, No. 65; Complaint at 21-22, paras. 58; Answer at 27, para. 59. Beginning in May 2013, AT&T was billed for all of the tandem switching charges and for 82.17 miles of tandem transport under GLC's OCN and rates, and for 0.83 miles of tandem transport under WTC's OCN and rates. Joint Statement at 12, Stipulated Facts, No. 70; Complaint at 22, para. 60; Answer at 27-28, para. 60.

[57] Joint Statement at 12-13, Stipulated Facts, Nos. 73, 75. These charges consisted of GLC's charges of $0.000418 for tandem switched facility (exclusive of mileage), $0.005476 for tandem switching, and $0.002171 for tandem switched termination, as well as WTC's charges of $0.000418 (exclusive of mileage) per-mile, per-minute of tandem transport. Joint Statement at 13-16, Stipulated Facts, Nos. 73(c), 82, 89, 94.

[58] Joint Statement at 13, Stipulated Facts, No. 76; Complaint at 19, para. 49; Answer at 22, para. 49. AT&T Michigan charged $0.000014 for tandem switched facility (exclusive of mileage), $0.00112 for tandem switching, and $0.000105 for tandem switched termination. Joint Statement at 14-16, Stipulated Facts, Nos. 83, 90, 95.

[59] 47 C.F.R. § 1.722(e) ("If a complainant proceeds pursuant to paragraph (d) of this section . . . the complainant may initiate a separate proceeding to obtain a determination of damages by filing a supplemental complaint . . . . ").

[60] 47 C.F.R. § 61.26(a)(1).

[61] 47 C.F. R. § 61.26(a)(3)(i).

[62] Joint Statement at 4, Stipulated Facts, No. 14.

[63] *Id.*, Stipulated Facts, No. 12.

[64] The phrase "an end user" in the definition of "CLEC" means any end user, and is not limited to end users of the CLEC. *See* 47 C.F.R. § 61.26(a)(1). There is no dispute that the interstate exchange access services in this case are associated with traffic that originates and terminates with end user customers. *See* Joint Statement at 10-11, 16,

(continued....)

then, GLC is a CLEC for purposes of Section 61.26, and it is therefore subject to the requirements of Section 61.26(f). This conclusion is warranted even though GLC is an intermediate carrier that does not directly serve end users. Indeed, Section 61.26(f) addresses this precise situation: "[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services."[65]

21. Defendants provide no meaningful support for their position that Section 61.26(f) does not apply to GLC even though it provides switched exchange access services.[66] The Commission added paragraph (f) to Section 61.26 because it had not previously addressed the appropriate rate "when a competitive LEC handles traffic that is not originated or terminated by the competitive LEC's own end-users" and "[b]ecause of the many disputes related to the rates charged by competitive LECs when they act as intermediate carriers" for interexchange traffic.[67] The Commission explained that an IXC "may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or terminating carrier and it is necessary to constrain the ability of competitive LECs to exercise monopoly power."[68] At the same time, the Commission modified Section 61.26's definition of CLEC to make clear that it applied to intermediate carriers that provided "some . . . of the interstate exchange access services used to send traffic to or from an end user."[69] The new definition tracks the language in paragraph (f).[70] Applying Section 61.26(f) to GLC thus does not, as Defendants contend, violate the "rule against surplusage."[71] Rather, it is compelled by the structure of Section 61.26 as a whole.[72]

22. We reject Defendants' argument that the *USF/ICC Transformation Order*[73] undermines our conclusion that Section 61.26(f) applies to GLC.[74] To be sure, in the *USF/ICC Transformation Order*, the Commission raised certain issues regarding the transition to a "bill and keep" framework for all telecommunications traffic exchanged with a LEC, including how the transition will occur "in situations where the tandem owner does not own the end office."[75] But those issues have no bearing on whether Section 61.26 presently applies to GLC. Contrary to GLC's assertion, there is no "longstanding

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Stipulated Facts, Nos. 57, 59, 62, 97. Thus, we disagree with the ruling of the Michigan Public Service Commission in *Westphalia Tel. Co. v. AT&T*, Case No. U-17619 (Mich. Pub. Serv. Comm. Jan. 27, 2015), available at https://efile.mpsc.state.mi.us/efile/docs/17619/0121.pdf.

[65] 47 C.F.R. § 61.26(f).

[66] *See* Answer, Legal Analysis in Opposition to Formal Complaint (Answer Legal Analysis) at 13-17.

[67] *See CLEC Access Reform Reconsideration Order*, 19 FCC Rcd at 9115-17, paras. 15, 17. When adding paragraph (f), the Commission also clarified that "the benchmark established in the *CLEC Access Reform Order* is available only when a competitive LEC provides an IXC with access to the competitive LEC's own end-users." *Id.*, 19 FCC Rcd at 9115, para. 15.

[68] *See CLEC Access Reform Reconsideration Order*, 19 FCC Rcd at 9116-17, para. 17.

[69] 47 C.F.R. § 61.26(a)(1) ("CLEC shall mean a local exchange carrier that provides *some* or all of the interstate exchange access services used to send traffic to or from an end user . . .") (emphasis added).

[70] 47 C.F.R. §§ 61.26(a)(1), (f).

[71] *See* Answer Legal Analysis at 10-11.

[72] *See* AT&T Reply Legal Analysis at 9-10. There is nothing in the text or structure of Section 61.26, or in the *CLEC Access Reform Reconsideration Order*, supporting Defendants' contention that paragraph (f) is somehow limited to situations "when a carrier both serves its own end user customers through its end office and routes third-party traffic through the same end office." Answer Legal Analysis at 27, n.87.

[73] *USF/ICC Transformation Order*, 26 FCC Rcd 17663.

[74] *See* Answer Legal Analysis at 18-22.

[75] *USF/ICC Transformation Order*, 26 FCC Rcd at 18115, para. 1312.

[Commission] policy of not imposing rate caps on carriers that do not serve end-users,"[76] and GLC must comply with existing rules during the transition to "bill and keep."[77]

23. Similarly unavailing is Defendants' reliance on Commission statements that competitive access providers are non-dominant, lack market power, and do not control bottleneck facilities.[78] These statements either predate the 1996 Act or reflect the Commission's preliminary efforts to address CLEC access charges in order to establish a "pro-competitive, deregulatory national policy framework following the 1996 Act."[79] The Commission's views regarding carriers' market power with respect to switched access have evolved over time.[80] More recently, the Commission has concluded that otherwise non-dominant carriers, including intermediate carriers that do not serve end users,[81] sometimes engage in practices resulting in unreasonably high access rates.[82] Defendants are unable to offer any recent authority squaring their arguments with the Commission's current benchmarking rule.

24. Finally, GLC states in its tariff that it is "a rural CLEC under Section 61.26(a)(6) of the [Commission's] rules."[83] GLC argues that this language "is merely intended to explain that GLC's rates were set as if GLC were a 'rural CLEC' under 47 C.F.R. § 61.26(a)(6)."[84] Of course, only *CLECs* that meet the narrow eligibility criteria for the rural exemption are entitled to claim it,[85] so GLC's argument has little force. Similarly unpersuasive is GLC's contention that the tariff language was a remnant from a time when it had state authority to operate as a CLEC, which it relinquished in May 2003.[86] GLC made

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[76] Answer Legal Analysis at 18.

[77] *USF/ICC Transformation Order*, 26 FCC Rcd at 17887, para. 694 ("We maintain the benchmarking approach to the regulation of rates of competitive LECs.").

[78] Answer Legal Analysis at 9, 10, 13-17.

[79] *See CLEC Access Reform Order*, 16 FCC Rcd 9923, para. 1. The term "CLEC" did not exist prior to the 1996 Act. The only decision Defendants cite that was released after 1996 used the pre-Act term "competitive access provider" as interchangeable with "non-ILEC provider," which is consistent with the post-Act term "CLEC" defined in the Commission's benchmarking rule. *See Hyperion Telecommunications, Inc. Petition for Forbearance*, Memorandum Opinion and Order, 12 FCC Rcd 8596, 8611, para. 29 (1997) (*Hyperion Order*) (concluding, in response to Hyperion's request that the Commission forbear from imposing tariff filing requirements for competitive access providers, that "the statutory criteria for forbearance have been met with respect to those non-ILEC providers of interstate exchange access services"). *See also* 47 C.F.R. § 61.26(a)(1) (defining a CLEC to be any carrier other than an ILEC that provides some or all of the interstate access services used to send traffic to or from an end user).

[80] *See CLEC Access Reform Order*, 16 FCC Rcd at 9933, para. 25 ("It now appears that the best means of proceeding is to restructure and partially deregulate the environment in which CLECs provide access service, providing a bright-line rule that will facilitate effective enforcement."); at 9933-6, paras. 26-32 ("We now acknowledge that the market for access services does not appear to be structured in a manner that allows competition to discipline rates."); *CLEC Access Reform Reconsideration Order*, 19 FCC Rcd at 9117, para. 17 (recognizing the need to adopt a new rule to constrain potential monopoly power relating to intermediate carrier services).

[81] *CLEC Access Reform Reconsideration Order*, 19 FCC Rcd at 9117, para. 17 ("[A]n IXC may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or terminating carrier.").

[82] *See CLEC Access Reform Order*, 16 FCC Rcd at 9936, para. 34 ("[T]here is ample evidence that the combination of the market's failure to constrain CLEC access rates, our geographic rate averaging rules for IXCs, the absence of effective limits on CLEC rates and the tariff system create an arbitrage opportunity for CLECs to charge unreasonable access rates.").

[83] Answer Exhibit 6, GLC Tariff F.C.C. No. 20, Original Page 6-27, Section 6.4; Complaint at 14, para. 36, 37, para. 102; Answer at 14, para. 36, 47, para. 102.

[84] Answer Legal Analysis at 12, n.36.

[85] *See supra* note 28.

[86] Answer Legal Analysis at 12, n.36.

numerous modifications to its tariff in the almost 12 years since then, but only deleted the "rural CLEC" statement four days before filing its Answer to AT&T's Complaint.[87] As the issuer of the tariff, GLC is responsible for its content.[88]

2. The GLC Tariff Violates Section 61.26(f).

25. When GLC acts as an intermediate carrier not serving the end user, "the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services."[89] A "competing ILEC" is the "incumbent local exchange carrier, as defined by 47 U.S.C. § 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC."[90] Defendants argue that, had GLC not provided the services, WTC would have provided them.[91] WTC could not have provided the services, however, because doing so would have required it to provide and bill for services outside its LATA boundaries in violation of its tariff.[92] Accordingly, we find that AT&T Michigan is the competing ILEC and that GLC therefore was required to benchmark its rates against those of AT&T Michigan.[93]

26. GLC's tandem charges (exclusive of mileage) totaled $0.008065 per-minute[94] compared to AT&T Michigan's aggregate charges of $0.001239 per-minute.[95] GLC violated the benchmarking rule by charging rates that were considerably higher than the rates AT&T Michigan charged for the same services.

3. GLC is Not Entitled to the Rural Exemption.

27. Section 61.26 defines a "rural CLEC" as a CLEC "that does not serve any end users located within [two types of urban areas]."[96] Rural CLECs may file tariffs containing rates above the benchmark rate.[97] GLC asserts that, even assuming it is subject to Section 61.26, it is entitled to the rural

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[87] Joint Statement at 3-4, Stipulated Facts, No. 11; Answer Legal Analysis at 12, n.36; Reply Legal Analysis at 19, n.14.

[88] *See Halprin, Temple, Goodman & Sugrue v. MCI Telecommunications Corporation*, Order on Reconsideration, 14 FCC Rcd 21092, 21100, n.50 (1999) ("[I]t is well established that any ambiguity in a tariff is interpreted against the party filing the tariff.").

[89] 47 C.F.R. § 61.26(f).

[90] 47 C.F.R. § 61.26(a)(2).

[91] Answer Legal Analysis at 27, n.88; Joint Statement at 22, Disputed GLC and WTC Facts.

[92] Complaint Exhibit 6, NECA Tariff F.C.C. No. 5 (4th Revised Title Page 1).

[93] Joint Statement at 22, Disputed AT&T Facts.

[94] Joint Statement at 14-16, Stipulated Facts, Nos. 82, 89, 94.

[95] Joint Statement at 13, Stipulated Facts, No. 76.

[96] 47 C.F.R. § 61.26(a)(6) ("Rural CLEC shall mean a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any end users located within either … (i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or (ii) An urbanized area, as defined by the Census Bureau."). GLC argues that, although it serves no end users directly, it nonetheless qualifies for the rural exemption. Answer Legal Analysis at 24-26. But the rural exemption does not apply to carriers that serve no end users whatsoever. It applies to carriers that serve no end users in urban areas. In other words, carriers entitled to the exemption must serve rural end users, and only rural end users. *See* 47 C.F.R. § 61.26(a)(6); *CLEC Access Reform Order*, 16 FCC Rcd at 9951, para. 67 ("It is true that an exemption scheme will permit rural CLECs to charge IXCs more for access to their end-user customers than was charged by the non-rural ILECs from whom the CLECs captured their customers . . . .").

[97] *See* 47 C.F.R. § 61.26(e).

exemption.[98] The exemption is not available, however, "if any portion of the competitive LECs' service area falls within a non-rural area."[99] Because GLC stipulates that its service area falls within urban areas, it is undisputed that GLC operates beyond the "rural areas of a Non-rural ILEC."[100] Accordingly, GLC is not entitled to the rural exemption.

4. The GLC Tariff is Void *Ab Initio.*

28. Although GLC's tariff was presumed lawful when it was filed, the presumption of lawfulness applies only to the filing of the tariff and not to any subsequent challenge to the tariff's lawfulness.[101] In other words, presumed lawful tariffs may subsequently be found to be unlawful.[102] A CLEC tariff for interstate switched access services that includes rates in excess of the applicable benchmark in Section 61.26 is subject to mandatory detariffing.[103] Under the Commission's benchmark regime, a carrier is prohibited from filing a tariff with rates above the benchmark; doing so violates the Commission's Rules and renders the prohibited tariff void *ab initio*.[104]

29. In this case, for reasons discussed above, the applicable benchmark is specified in Section 61.26(f). Because GLC's aggregate tariff charges for its tandem services exceed the aggregate charged by AT&T Michigan for the same functions, the GLC Tariff exceeds the required benchmark and therefore violates Section 61.26(f).[105] The GLC Tariff did not comply with Section 61.26(f) when GLC filed it;[106] accordingly, the tariff is void *ab initio*.

B. We Dismiss Count II Without Prejudice.

30. In Count II, AT&T alleges that Defendants' access charges are unlawful because they engaged in access stimulation as defined by the Commission's Rules and failed to file revised access tariffs as required by those rules.[107] Specifically, AT&T contends that Defendants met the "growth"

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[98] Answer Legal Analysis at 24-28.

[99] *See CLEC Access Reform Reconsideration Order*, 19 FCC Rcd at 9124, para. 33 ("The [rural] exemption is not available . . . if any portion of the competitive LEC's service area falls within a non-rural area.").

[100] GLC stipulates that it has transport facilities in urban areas, including Chicago, Illinois. Joint Statement at 4, Stipulated Fact Nos. 17-18; Complaint at 40, para. 111; Answer at 52, para. 111. *See* Answer Exhibit 6, GLC Tariff, FCC No. 20, § 6.4. Moreover, the 8YY wireless traffic, by its very nature, originates from locations throughout the country, including locations that are "urban" under the Rule.

[101] *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, First Report and Order, 85 FCC 2d 1, 33, para. 94 (1980).

[102] *See Global NAPS, Inc. v. FCC*, 247 F.3d 252, 259-60 (D.C. Cir. 2001) ("Merely because a tariff is presumed lawful upon filing does not mean that it is lawful"; rather, "[s]uch tariffs still must comply with the applicable statutory and regulatory requirements" and "[t]hose that do not may be declared invalid."); *In the Matter of GS Texas Ventures, LLC Tariff F.C.C. No. 1*, Order, 29 FCC Rcd 10541, 10543 (WCB/PPD rel. Sept. 8, 2014) (*Texas Ventures Tariff Order*) at 10543, n.19 ("Tariffs that are lawful at the time they are filed may subsequently become unlawful based on particular circumstances").

[103] *CLEC Access Reform Order*, 16 FCC Rcd at 9956, para. 82 ("[A] CLEC must negotiate with an IXC to reach a contractual agreement before it can charge that IXC access rates above the benchmark. . . . we adopt mandatory detariffing for access rates in excess of the benchmark." 47 C.F.R. § 61.26(b)(1) ("a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services . . . higher [than t]he rate charged for such services by the competing ILEC").

[104] *See supra* note 102.

[105] This applies to all of GLC's charges to AT&T, including but not limited to the 8YY and non-8YY traffic.

[106] That "GLC's rates in its tariff cross-reference the deemed lawful NECA tariff rates" (Answer Legal Analysis at 75) is immaterial, because GLC violated the benchmark rule by not benchmarking to AT&T Michigan.

[107] Complaint at 43-49, paras. 119-36, 59-60, paras. 177-84.

triggers necessary for "access stimulation" by having more than a 100 percent growth in interstate originating switched access minutes of use in a month compared to the same month in the preceding year.[108] AT&T further maintains that GLC has admitted that it has entered into at least two "access revenue sharing agreements" as defined in the Commission's Rules.[109] Although AT&T does not allege that WTC entered into its own revenue sharing agreement, AT&T contends WTC and GLC are commonly owned, have acted in concert, and therefore are jointly liable.[110]

31. We dismiss Count II without prejudice. By granting Count I and declaring the GLC Tariff void *ab initio* because GLC failed to benchmark its rates to those of AT&T Michigan,[111] we have afforded AT&T all of the relief against GLC to which it would be entitled under Count II.[112]

C. WTC Improperly Billed AT&T for Services that GLC Provided.

32. Count III alleges that, even assuming Defendants had lawfully filed tariffs that complied with the Commission's access charge rules, they billed for services that they did not provide. Specifically, the Complaint avers that (1) WTC billed for services prior to May 2013 as if it, rather than GLC, was providing them; and (2) GLC billed for approximately 83 miles of transport even though LEC-MI provided roughly 37 miles of that transport.[113] Count IV alleges that Defendants' billing and routing practices with regard to the 8YY aggregated traffic are unlawful and unreasonable under Section 201(b) because they serve no valid purpose and only increase the costs to AT&T and its customers without providing any benefit.[114]

33. With respect to Count III, Defendants admit that, prior to May 2013, WTC improperly billed AT&T at WTC's rates under WTC's OCN for services that GLC actually provided.[115] In light of this admission, we grant Count III to the extent it challenges those amounts.

34. We dismiss the remainder of Count III, as well as Count IV. As explained above, we find that the GLC Tariff is unlawful and void *ab initio* because it violates the Commission's access charge rules.[116] In light of that holding, we need not reach those portions of Count III and Count IV that pertain to the GLC Tariff.

D. Defendants' Affirmative Defenses Are Unpersuasive.

35. The affirmative defenses in the Defendants' Answer have no merit. AT&T has alleged sufficient facts within the statute of limitations to state a claim upon which relief can be granted,[117] and it was not required to join other parties when it challenged Defendants' tariffed rates.[118] In addition,

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[108] Complaint at 45-46, paras. 121, 124-26. *See* 47 C.F.R. § 61.3(bbb)(1)(ii).

[109] Complaint at 44-47, paras. 122-23, 127- 29 & n.81; Joint Statement at 19, Stipulated Facts, No. 114-17. See 47 C.F.R. § 61.3(bbb)(1)(i).

[110] Complaint at 12, para. 30. *See* Response of AT&T Services Inc. and AT&T Corp. to Defendants' Motion for Third Party Discovery, File No. EB-14-MD-013 (filed Nov. 1, 2014) at 2-4, paras. 5, 8 (characterizing as "unnecessary" Defendants' request for third-party discovery aimed at establishing that WTC never entered into its own revenue sharing agreement).

[111] *See supra* paragraph 29.

[112] Accordingly, there is no basis to find against WTC on a theory of joint liability.

[113] Complaint at 49, para. 137, 60-61, paras. 185-91.

[114] Complaint at 53, para. 154, 62, paras. 192-97.

[115] Joint Statement at 11-12, Stipulated Facts, Nos. 65-72.

[116] *See supra* paragraph 29.

[117] Answer at 90, Affirmative Defenses Nos. 1, 3, 5; Answer Legal Analysis at 54, 57-59, 64-65.

[118] Answer at 90, Affirmative Defense No. 6; Answer Legal Analysis at 65-68.

because we find the GLC Tariff to be void *ab initio*, AT&T's claims are not barred by the filed tariff doctrine or any provision in Defendants' tariffs.[119] The filed rate doctrine also does not protect WTC from any refunds because the NECA tariff applies to "Issuing Carriers," and GLC is not an Issuing Carrier in the NECA tariff.[120] Tariffed rates are deemed lawful only to the extent the tariff at issue actually applies.[121]

36. We also are unpersuaded by Defendants' numerous equitable defenses.[122] Even if equitable defenses were available in a Section 208 formal complaint proceeding,[123] the record does not support their application in this case. To begin, Defendants' "unclean hands" defense fails because we have found above that GLC's tariffed rates are unjust and unreasonable and that its tariff is unlawful and void *ab initio*. The source of the traffic (i.e., that it may have originated from customers of Cricket Wireless, which AT&T recently acquired) has no bearing on that finding. Similarly, the doctrines of waiver, estoppel, laches, and ratification do not preclude AT&T from challenging GLC's and WTC's rates, terms, and practices under Sections 208 and 415 of the Act.[124] AT&T is entitled to receive Defendants' services at rates no higher than what the Commission has determined to be just and reasonable. That AT&T ordered and paid for Defendants' services for a period of time, therefore, is of no consequence. Moreover, AT&T properly disputed Defendants' charges and filed its complaint within the applicable statute of limitations, and it has not waived any of its claims to relief. Any delay by AT&T in challenging Defendants' rates was the result of Defendants' conduct and, therefore, is excusable.[125] Defendants also have not demonstrated that they relied upon AT&T's conduct in any way in setting their access rates or that, because of AT&T's actions, they changed their behavior in a manner that caused them harm.[126]

37. Finally, under the facts and our conclusions above, AT&T's claims are not barred by Michigan's voluntary payment doctrine,[127] which is inapplicable to interstate services governed by the Communications Act and Commission Rules.[128] Even assuming that the doctrine applies here, it would

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[119] Answer at 90, Affirmative Defenses Nos. 7, 8; Answer Legal Analysis at 69-75.

[120] Complaint Exhibit 6, NECA Tariff F.C.C. No. 5 (4th Revised Title Page 1) (the tariff has the "regulations, rates, and charges" for "the provision of" access services of "the Issuing Carriers").

[121] *Qwest Commc'ns v. Farmers*, Second Order on Reconsideration, 24 FCC Rcd 14801, 14813, n.98 (2009).

[122] Answer at 90, Affirmative Defenses Nos. 2, 9, 10; Answer Legal Analysis at 54-57, 76-83.

[123] *See Marzec v. Power*, Order, 15 FCC Rcd 4475, 4480, n.35 (2000) (stating that "the Commission has expressed doubts that the unclean hands defense is available in section 208 proceedings") (citing *AT&T Corp. v. Bell Atlantic-Pennsylvania*, Memorandum Opinion and Order, 14 FCC Rcd 556, 598 & n.233 (1998)); *Air Touch Cellular v. Pacific Bell*, Memorandum Opinion and Order, 16 FCC Rcd 13502, 13509 (2001) (declining to invoke equitable doctrines of estoppel, laches and waiver did not bar formal complaint); *Paetec Communications, Inc. v. MCI Communications, Inc. d/b/a Verizon Business Services, et al.*, 712 F.Supp.2d 405, 417 (E.D. Pa. 2010) ("the filed rate doctrine bars equitable relief") (citing *MCI WorldCom Network Services, Inc. v. Paetec Communications, Inc.*, 2005 WL 2145499 at *5 (E.D. Va. 2005)).

[124] Answer at 90, Affirmative Defenses No. 10; Answer Legal Analysis at 77-82.

[125] AT&T did not know that (1) Defendants billed for CLEC access services in a manner that reflected incorrectly that an ILEC was providing them, and (2) WTC billed on behalf of LEC-MI end office switching on wireless calls, which had the effect of disguising the nature of the Defendants' arrangements and charges. *See* Joint Statement at 11-13, Stipulated Facts Nos. 63, 68-73.

[126] *See AT&T Corp. v. Business Telecom, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd. 12312, 12336 (2001) (rejecting estoppel defense as unsupported in a case where Commission found that defendant had been charging unjust and unreasonable access rates).

[127] Answer at 90, Affirmative Defense No. 11; Answer Legal Analysis at 82-83.

[128] *See* 47 U.S.C. § 208. The Commission has never applied the voluntary payment doctrine in a Section 208 complaint proceeding. Section 415 of the Communications Act also provides customers with the ability to seek

(continued....)

still fail because a payment is not considered voluntary unless it is "made with a full knowledge of all circumstances upon which it is demanded, and without artifice, fraud or deception."[129] AT&T did not make voluntary payments. It did not know that (1) GLC was not a rural CLEC, as represented in its tariff; (2) the GLC Tariff violated Commission Rules and was unlawful; (3) GLC's rates exceeded the Commission's benchmark rates; and (4) GLC's rates were unjust and unreasonable. Moreover, the voluntary payment doctrine cannot be harmonized with the Commission's obligations under Sections 205-209 of the Act, which permit investigations into the reasonableness of charges and claims against carriers for damages relating to violations of the Act,[130] nor with Defendants' tariffs, which permit refunds within two years of issuing bills.[131]

38. Because AT&T elected to bifurcate its claims for damages pursuant to Section 1.722(d) of the Commission's Rules, we do not address in this Order the Defendants' affirmative defenses relating to the extent of any damages AT&T allegedly incurred.[132] We will address those defenses in the damages phase of this case.

IV. ORDERING CLAUSES

39. Accordingly, IT IS HEREBY ORDERED, pursuant to Sections 1, 4(i), 4(j), 201, 203, and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 203, 208, and Sections 1.720-1.736 of the Commission's Rules, 47 C.F.R. §§ 1.720-1.736, that Count I is GRANTED.

40. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 4(j), 201, 203, and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 203, 208, and Sections 1.720-1.736 of the Commission's Rules, 47 C.F.R. §§ 1.720-1.736, that Count II is DISMISSED WITHOUT PREJUDICE.

41. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 4(j), 201, 203, and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 203, 208, and Sections 1.720-1.736 of the Commission's Rules, 47 C.F.R. §§ 1.720-1.736, that Count III is GRANTED IN PART and DISMISSED IN PART WITHOUT PREJUDICE as described herein.

42. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 4(j), 201, 203, and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 203, 208, and Sections 1.720-1.736 of the Commission's Rules, 47 C.F.R. §§ 1.720-1.736, that Count IV is DISMISSED WITHOUT PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

(Continued from previous page)
relief against common carriers for violations of the Act and for overcharges for approximately two years from the date the cause of action accrues. 47 U.S.C. § 415.

[129] *See, e.g.*, *Allstate Ins. Co. v. Broe*, 2008 WL 3876188 (Mich. App. Aug. 21, 2008).

[130] 47 U.S.C. §§ 205-209.

[131] *See* Answer Exhibit 6, GLC Tariff F.C.C. No. 20, Revised Page 2-32, Section 2.4.1(E).

[132] Answer at 90, Affirmative Defenses Nos. 2, 4, 9, 11; Answer Legal Analysis at 54-57, 59-64, 76-7, 82-83.