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Washington, D.C. 20554

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

In the Matter of	
Petition of Pac-West Telecomm, Inc. for Declaratory Ruling Regarding Access Charges Assessed on VoIP Traffic	EB Docket No. WCB Docket No.

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Federal Communications Commission
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PETITION OF PAC-WEST TELECOMM, INC. FOR DECLARATORY RULING REGARDING ACCESS CHARGES ASSESSED ON VOIP-INITIATED ACCESS TRAFFIC

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June 28, 2011

SUMMARY

Pac-West Telecomm, Inc. ("Pac-West") seeks a declaration that the fact that 8YY calls are initiated in Internet protocol ("IP") format has no bearing on whether Pac-West's tariffed access charges apply. Verizon Business Services ("Verizon") claims that when calls are initiated in IP format, Verizon is automatically excused from paying Pac-West's tariffed charges for the access services Pac-West provides Verizon as necessary inputs to Verizon's toll-free services. Verizon's position has no support under the Commission's rules. On the contrary, based on the Commission's existing rules and orders, Pac-West's applicable tariffed access charges apply to the VoIP-initiated 8YY calls that Pac-West delivers to Verizon.

First, the Commission's access charge rules have always mandated that the interexchange carrier providing this 8YY service to its customers – here, Verizon – pay all of the downstream carriers' access charges and related database-query charges associated with bringing the call to the ultimate retail customer. Toll-free service is, by definition, a "called-party pays" service, and Pac-West has no other recourse but to seek compensation from Verizon for the costs Pac-West incurs as a result of Verizon offering this service.

Second, the fact that a toll-free call originates in IP format is irrelevant to Verizon's duty to pay Pac-West's tariffed access charges. VoIP traffic that starts or ends on the PSTN is, under existing law, "telecommunications," and thus is subject to the Commission's access charge regime. This finding is also consistent with the Commission's general policy that intercarrier compensation must be competitively and technologically neutral. For these reasons, Pac-West respectfully requests that the Commission declare that tariffed access charges, and related database query charges, apply to interexchange IP-to-PSTN traffic that is delivered by a LEC to an IXC and ultimately to the IXC's toll-free customer.

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PETITION OF PAC-WEST TELECOMM, INC.
FOR DECLARATORY RULING REGARDING ACCESS
CHARGES ASSESSED ON VOIP-INITIATED ACCESS TRAFFIC

Pursuant to 47 C.F.R. § 1.2 and the June 17, 2011 letter from Mr. Alexander P. Starr, Division Chief, Market Disputes Resolution Division, Enforcement Bureau, to counsel for MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon") and Pac-West Telecomm, Inc. ("Pac-West"), Pac-West respectfully submits this petition for declaratory ruling in connection with the primary jurisdiction referral from the United States District Court for the Eastern District of California, Case No. 1:10-cv-01051-OWW-GSA.

I. INTRODUCTION

Through this petition, Pac-West seeks a declaration that, based on the Commission's existing rules, an interexchange carrier ("IXC") is required to pay a LEC's tariffed access charges when a LEC performs the necessary database query services, the query identifies a particular IXC as the intended recipient, and the LEC delivers a toll-free (or "8YY") call to the responsible IXC (or an intermediate LEC with which the IXC is directly interconnected), regardless of whether the call was initiated as Voice-over-IP ("VoIP") or Time Division Multiplexing ("TDM") format. Despite the fact that Verizon requires Pac-West to ensure that all Verizon-bound 8YY calls are converted into TDM format before entering Verizon's network, Verizon claims that it need not pay Pac-West's tariffed access charges for its work in handling Verizon's 8YY traffic because the calls began in VoIP format. Because the Commission's rules prohibit Verizon's no-pay-for-equal-work proposal (particularly where Verizon receives both routing and protocol conversion services), Pac-West asks the Commission to end this controversy by declaring that Pac-West's applicable tariffed access charges apply (and always have applied) to the VoIP-initiated 8YY calls that Pac-West delivers to Verizon every day.

Verizon's self-help campaign is not a principled effort to treat VoIP traffic differently across-the-board. Rather, it is a calculated cost-savings effort to treat the same phone calls as non-compensable, non-access calls when they travel on CLEC networks, but fully compensable access calls when they ring the access register at Verizon. Verizon has found it profitable to continue selling its high-priced 8YY access services to its end users, while exerting pressure on smaller carriers, such as Pac-West, that provide the critical inputs necessary to Verizon's delivery of its service. By refusing to pay and dispute as required by longstanding Commission precedent precluding this very behavior,[1] Verizon has made a lucrative business of collecting access revenue from its customers while deferring and diluting the cost of delivering its services.

Importantly, however, this petition does not require the Commission to classify VoIP

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1 *Business WATS, Inc. v. AT&T Co.*, Memorandum Opinion and Order, 7 FCC Rcd. 7942, ¶ 2 (Com. Car. Bur. 1992) ("a customer, even a competitor, is not entitled to the self-help measure of withholding payment for tariffed services duly performed but should first pay, under protest, the amount allegedly due and then seek redress if such amount was not proper under the carrier's applicable tariffed charges and regulations."); *Carpenter Radio Company*, Memorandum Opinion and Order, 70 FCC. 2d 1756 ¶ 6 (1979) ("a customer has a legal obligation to pay all tariffed rates for telecommunications services . . . until such time as these rates are found unlawful by the Commission or a court of competent jurisdiction.").

services generally, but only to address the particular LEC access services that Pac-West provides to Verizon and similarly situated IXCs. The calls at issue in this petition all follow the same pattern. They are toll-free interexchange calls[2] initiated in IP format, carried to an appropriate Pac-West switch, at which point Pac-West performs the necessary SMS/8YY database query to identify the responsible IXC that sold that particular 8YY service. Having incurred that expense, Pac-West then learns that Verizon is the responsible IXC, and Pac-West then switches and carries the call to the appropriate destination in accordance with Verizon's instructions supplied in the Local Exchange Routing Guide (LERG), which, in Pac-West's case with Verizon, requires Pac-West to route the call to an incumbent LEC with which Verizon has interconnected. If Pac-West does not receive any of the Verizon-bound 8YY calls in TDM, it converts those calls into TDM format, per Verizon's and/or the ILECs' requirements, such that the calls are all in TDM format when they leave Pac-West's network.

Pac-West therefore seeks a declaration confirming that its tariffed access-service charges, including its necessary 800-database-query charges, apply to the parties' interexchange IP-to-PSTN[3] 8YY traffic, as they would to any other 8YY call invoiced as an interexchange call by Verizon to its end users.

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2 There can be no dispute here that the calls at issue are exchanged between a LEC and an IXC, and thus subject to section 251(g), and not LEC-to-LEC traffic exchanges subject to sections 251(b)(5) and 252(d)(2).

3 As used in this petition, the term "IP-to-PSTN" traffic refers to traffic from any IP-originated service that is delivered by a LEC for termination on the PSTN.

II. 8YY TRAFFIC HAS ALWAYS BEEN ACCESS TRAFFIC

As a threshold matter, Pac-West's VoIP-initiated traffic is compensable under its access tariff because it is 8YY traffic destined to Verizon's toll-free subscribers. The technical format in which these calls began is irrelevant to Verizon's duty to honor the called-party-pays nature of all 8YY traffic, for which the interexchange carrier has always been responsible for all downstream charges, including access charges. The relationship between Verizon and Pac-West exists only because *Verizon* sells its toll-free, 8YY service to *Verizon's* interexchange customers, who pay Verizon a premium over traditional interexchange service in exchange for Verizon's carriage of toll-free interexchange calls to the called party, with Verizon paying (in theory) all of the associated toll charges from the revenue it receives from its 8YY subscriber. This case arises because Verizon has simply refused to pay downstream networks for carrying its calls, all the while pocketing premium revenue from Verizon's customers.

Toll-free service is, by definition, a "called party pays" service, whereby the interexchange carrier – here, Verizon – announces to all other carriers (and their customers) that it will pay all of the access charges associated with bringing those calls to the retail customer, here, Verizon's customers.[4] Common carriers, such as Pac-West, are obligated to carry this traffic and are precluded from recovering charges from the person making the toll-free call – that is exactly what makes the call "toll free." By suggesting that Verizon is excused from paying Pac-West's tariffed access charges for this undisputed interexchange traffic because the call

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[4] The FCC's rules state that, with respect to toll-free numbers, "the toll charges for completed calls are paid by the toll free subscriber." 47 C.F.R. § 52.101(f). *See also Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923 at ¶ 11 n.17 (2001) ("*Seventh Report and Order*") ("The Commission noted that, in some case, such as 800 and 888 service, the called party, which pays for the call, is unable to influence the calling party's choice of provider for originating access services.") (citation omitted).

begins in IP format, Verizon is therefore trying to turn the toll-free calling regime on its head by refusing to pay Pac-West for the use of its network for the benefit of Verizon's 8YY customers, knowing full well that Pac-West is obligated to route the traffic to Verizon and has no means of cost recovery other than Verizon, who is the cost-causer by virtue of its provision of toll-free service.[5] The fact that a call begins in IP format, however, is immaterial to the service Pac-West provides to Verizon. Because Verizon refuses to accept any calls in IP format, Pac-West is required to take additional steps to convert any IP call to TDM so that Verizon can continue profiting from its antiquated network. Thus, Pac-West provides the same service to Verizon irrespective of the format in which a particular call was initiated, and only seeks through this petition to be paid accordingly.[6]

In providing its toll-free offering, Verizon constructively and actually ordered tariffed access service from Pac-West, irrespective of the particular technological format in which any given Verizon-bound 8YY call began, and is subject to a LEC's tariffed access charges for such traffic. As the toll-free service provider, and responsible organization, or RESPORG, Verizon has effectively announced to all carriers that it is soliciting them to carry 8YY traffic to Verizon for ultimate delivery to Verizon's 8YY customers, who pay Verizon a premium for that interexchange service. Indeed, LECs like Pac-West have no way of avoiding the expenses

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5 47 C.F.R. § 69.5(b) ("Carrier's carrier charges shall be computed and assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services."); 47 C.F.R. § 69.2(b) ("Access service includes services and facilities provided for the origination and termination of any interstate or foreign telecommunication."). These definitions make clear that the technology in which a particular user begins a call is irrelevant to whether an "access service" is provided and the applicable "carrier's carrier charges *shall* be … assessed upon" the applicable interexchange carrier that used Pac-West's facilities for the provision of *the IXC's* "telecommunications services," and no one denies that Verizon's toll-free service is a telecommunications service.

6 To be clear, although calls are converted to TDM from IP protocol, Pac-West has never charged Verizon for protocol conversion services.

associated with Verizon's 8YY traffic, for it is not until Pac-West has Verizon's 8YY traffic in its switch and performs the necessary SMS/8YY database query service that it even learns that it is carrying a call for which Verizon is the "responsible" organization.

The Commission has always treated 8YY traffic as access traffic subject to LECs' access tariffs.[7] The *only* issue the Commission indicated it might need to revisit vis-à-vis the application of CLECs' access tariffs to IXCs' 8YY traffic were any instances of "illegitimate levels of 8YY traffic coming from a particular end-user," which the Commission said it would address on "a case-by-case basis" via complaints filed by IXCs.[8] To be sure, Verizon has never complained that any of the 8YY traffic it has received from Pac-West is "illegitimate." Verizon's 8YY customers undeniably solicited and received each of the millions of bona fide 8YY calls at issue here. Verizon, which has a monopoly on its 8YY customers just as a LEC does when terminating 1+ traffic to its customers, simply wants to take the downstream LECs' access services for free and reap higher margins as a result.[9]

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[7] *See, e.g.*, *Seventh Report & Order*, 16 FCC Rcd. 9923, ¶ 56 ("We will apply the benchmark for both originating and terminating access charges. That is, it will apply to tariffs for both categories of service, including to toll-free, 8YY traffic, and will decline toward the rate of the competing ILEC for each category of service... [W]e decline to do as AT&T suggests and immediately detariff this category of CLEC services above the rate of the competing ILEC."); *id.* at ¶ 104 ("A CLEC provides a closely similar service and uses similar or identical facilities, regardless of whether it provides originating 8YY service, or terminating or originating access service for conventional 1+ calls."); *see also Eighth Report and Order and Fifth Order on Reconsideration*, 19 FCC Rcd. 9108, ¶¶ 64-72 & n.230 (2004) ("*Eighth Report and Order*") (treating all 8YY traffic as access traffic); *id.* at ¶ 72 (rejecting "AT&T's request that we adopt a separate competitive LEC access rate for outbound 8YY access traffic carried over dedicated local access facilities," reasoning that "[w]hen there are no intermediate carriers between the competitive LEC and the end-user, the fact that the end-user may provide some portion of the facilities would seem to be irrelevant.").

[8] *Eighth Report & Order*, 19 FCC Rcd. ¶ 71 & n.259.

[9] *See, e.g., In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Comments of Paetec Holding Corp., MPower Commc'ns Corp., U.S. Telepacific Corp. & RCN Telecom Servs., LLC, at 19-20 (filed Apr. 1, 2011).

If Verizon does not want to receive these calls, Verizon's only proper recourse is to cease its provision of 8YY service, in which case it will no longer have an obligation to compensate Pac-West, or anyone else, for delivering toll-free calls to Verizon for its customers. But it is perverse indeed for Verizon to act as an interexchange traffic magnet and then claim that it is entitled to free access services from Pac-West because of the technical format in which the customer's call to Verizon's 8YY customer began, a format that must be converted back to TDM in any event because Verizon and the interconnected ILEC refuse to accept the traffic in any other format. Having priced and sold its for-profit 8YY service on the premise that it would be paying all of the tolls associated with the calling parties' calls to these 8YY numbers, Verizon cannot now be heard to claim that it is excused from paying the applicable access charges, regardless of whether the calling party's call began on a copper or fiber pipe (or any other medium).

III. UNDER THE COMMISSION'S RULES, THE FACT THAT AN 8YY CALL BEGINS IN IP FORMAT DOES NOT RELIEVE AN IXC FROM PAYING TARIFFED ACCESS CHARGES

No justification exists for Verizon to refuse to pay tariffed access charges, and related charges for database query services, because a particular 8YY call happens to begin in IP format. To remove any uncertainty on this point, the Commission need only declare that its rules and orders have always meant what they say.

The Communications Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[10] The Commission's rules define the term "Access Service" as "services and facilities provided for the origination or termination of

10 47 U.S.C. § 153(43).

any interstate or foreign ***telecommunication***."[11] "[C]harges for such access service ***shall be*** computed, ***assessed, and collected*** and revenues from such charges shall be distributed as provided in this part."[12] Rule 69.106 further provides that "charges that are expressed in dollars and cents per access minute of use ***shall be assessed by local exchange carriers*** that are not subject to price cap regulation ***upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services***."[13] Further, Rule 69.118 states that "all customers that use basic 800 database service *shall be* assessed a charge that is expressed in dollars and cents per query."[14] Thus, a LEC is required to "assess" local switching and database query charges and "collect[]" those charges from the applicable IXC when the LEC carries a *telecommunication* and delivers it to the responsible IXC providing interstate or foreign services, such as Verizon's 8YY service at issue here.

And the Commission has already determined that interconnected VoIP traffic and communications that originate or terminate on the PSTN are "telecommunications" traffic:

> ***[W]e determine that interconnected VoIP providers provide "telecommunications."*** As the Commission has recognized, "the heart of 'telecommunications' is transmission." The Commission has previously concluded that interconnected VoIP services involve "transmission of [voice] by aid of wire, cable, or other like connection" and/or "transmission by radio" of voice. Indeed, by definition, interconnected VoIP services are those "permitting users to receive calls from and terminate calls to the PSTN." To provide this capability, interconnected VoIP providers may rely on their own facilities or provide access to the PSTN through others. "Over the top" interconnected VoIP providers generally purchase access to the PSTN from a telecommunications carrier who accepts

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11 47 C.F.R. § 69.2(b) (emphasis added).

12 47 C.F.R. § 69.1(b) (emphasis added).

13 47 C.F.R. § 69.106(a) (emphasis added).

14 47 C.F.R. § 69.118 (emphasis added).

> outgoing traffic from and delivers incoming traffic to the interconnected VoIP provider's media gateway. The telecommunications carrier supplies transmission to or from the PSTN user, or transmits the communication to another carrier that can transmit the communication to the PSTN user.... ***The telecommunications carriers involved in originating or terminating a communication via the PSTN are by definition offering "telecommunications."***[15]

Similarly, the Commission has recently noted that "interconnected VoIP traffic is 'telecommunications' traffic, regardless of whether interconnected VoIP traffic were to be classified as a telecommunications service or information service."[16] Thus, a LEC provides access services when it provides services and facilities "for the origination or termination of *any* interstate or foreign *telecommunication*," which, "by definition," includes 8YY-bound VoIP traffic carried on the PSTN to IXCs like Verizon.[17]

Indeed, the Commission has always allowed LECs to collect their tariffed access charges for the access services they perform for calls that originate in a host of formats. For example, wireless-originated calls, which begin in numerous non-TDM, packet-based formats and then enter the PSTN through LEC networks, are still subject to the LECs' tariffed charges for the

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[15] *Universal Service Contribution Methodology*, WC Docket Nos. 06-122, 04-36, CC Docket Nos. 96-45 *et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd. 7518, ¶ 41 (2006) ("*Universal Service Contribution Methodology Order*") (emphasis added, internal citations omitted).

[16] In re *Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing an Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link-Up*, WC Docket No. 03-109, NPRM & FNPRM, FCC 11-13, ¶ 615 (rel. Feb. 9, 2011) ("NPRM").

[17] 47 C.F.R. § 69.2(b) (emphasis added); *Universal Service Contribution Methodology Order*, ¶ 41. It necessarily follows, therefore, that pursuant to the Commission's rules discussed above, a LEC is not only allowed, but required, to charge an IXC for the LEC's service of carrying a VoIP-initiated 8YY call to an 8YY number onto the PSTN and performing the necessary database query, just as it would for a TDM-based 8YY call. Any other conclusion would constitute a change in existing law, and could only apply prospectively.

services they perform, regardless of the variety of technical formats used when the wireless-originated calls are dialed.[18] "Equal pay for equal work" is already the Commission's standard, and the Commission has never singled out, nor should it single out, the VoIP format for discriminatory treatment. Verizon's effort to get free service relies upon a technical difference without a legal distinction and should be rejected.

Not only is requiring IXCs to pay for the access services they take from LECs in the course of an IP-to-PSTN call flow mandated by the Commission's current rules, it's also good policy. To the extent that VoIP calls use the PSTN, these calls should be treated identically to any other type of traffic. This position follows logically from the Commission's general principle that intercarrier compensation must be "competitively and technologically neutral" so that the rules "accommodate continuing change in the marketplace and do not distort the opportunity for carriers using different and novel technologies to compete for customers."[19] To achieve this goal, the Commission has previously acknowledged that,

> Similar types of traffic should be subject to similar rules. Similar types of functions should be subject to similar cost recovery mechanisms.... To the extent a proposed regime would preserve distinctions between types of carrier or types of traffic, such distinctions should be based on legitimate economic or technical differences, not artificial regulatory distinctions."[20]

With respect to VoIP traffic, there is no basis for the Commission to depart from this policy, and indeed, several state regulatory agencies have ruled that LECs' intrastate switched access tariffs

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18 *See Eighth Report & Order*, 19 FCC Rcd. at 9115-17 ¶¶ 16-17.

19 *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd. 4685, 4702, ¶ 33 (2005).

20 *Id.*

do in fact apply to interexchange VoIP traffic.[21] While there may be policy arguments to eventually lower the access rates that apply to 8YY traffic, those reductions should only be implemented across all 8YY traffic simultaneously, not picking favorites between IP, TDM, wireless, or other categories of traffic.

Moreover, as between Pac-West and Verizon, the service Pac-West provides to Verizon is *exactly* the same service, from Verizon's perspective, regardless of whether the call originates in VoIP or TDM. This is because Verizon does not accept its 8YY calls – either directly or indirectly – from Pac-West except in TDM format, thus requiring Pac-West to convert all VoIP calls to TDM before either handing it off directly to Verizon or via an ILEC's tandem switch. Verizon's position, therefore, essentially boils down to denying that it owes *anything* to Pac-West because Pac-West performs *additional* work to convert a call into TDM format for Verizon's benefit.

When IP-based voice applications are combined with the connectivity that telecommunications carriers like Pac-West offer, the combined offering is essentially identical to other forms of telecommunications traffic and the obligations related thereto:

- Calls using VoIP service use North American Numbering Plan (NANP) telephone numbers to facilitate voice calls throughout the PSTN;
- The traffic generated through VoIP offerings utilizes the PSTN and imposes costs on the underlying LEC network in the same way as other telecommunications providers;
- Interconnected VoIP providers are required to contribute to the Universal Service Fund and are eligible to receive USF support as Eligible Telecommunications

[21] *See*, *e.g.*, *Sprint Commc'ns Co. v. Iowa Telcomms. Servs., Inc.*, No. FCU-2010-0001 (Iowa Utils. Bd. Feb. 4, 2011); *Palmerton Tel. Co. v. Global NAPS South, Inc.*, Docket No. C-2009-2093336 (Pa. Pub. Util. Comm'n Feb. 11, 2010); *In re Sw. Bell Tel Co.*, 10-SWBT-419-ARB (Kansas State Corp. Comm'n Aug. 13, 2010); *In re Hollis Tel., Inc.*, Order 25,043 (New Hampshire Pub. Utils. Comm'n Nov. 10, 2009).

Carriers;[22]

- Interconnected VoIP providers are subject to CALEA obligations;[23] and
- Interconnected VoIP providers are subject to 911 obligations.[24]

Indeed, in almost every other area where the FCC regulates telecommunications services, the Commission has chosen to treat the provision of VoIP service identically to traditional telecommunications service. There is no reason to deviate from this policy with respect to access charges.

Any other course would simply invite IXCs like Verizon to continue their high-margin self-help campaign. As the Commission has acknowledged, the costs of handling traffic do not vary based on the nature of the traffic; an IP-originated call costs no more or less to originate or terminate than a TDM-originated call.[25] If the Commission were to exempt IXCs from paying access charges on VoIP traffic, they would be motivated to reclassify or reconfigure their networks to make their traffic appear IP-originated and thereby avoid access charges, while LECs, perversely, would have every incentive not to upgrade their networks. We would have a regulatory environment in which competitive LECs, by virtue of investing in modern networks

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22 *Universal Service Contribution Methodology*, Report & Order & NPRM, 21 FCC Rcd 7518, 7538-43, ¶¶ 38-49 (2006) ("*2006 Interim Contribution Methodology Order*"), *aff'd sub nom., in relevant part, Vonage Holdings Corp. v. FCC*, 489 F.3d 1232 (D.C. Cir. 2007) (establishing universal service contribution obligations for interconnected VoIP service providers).

23 *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report & Order & FNPRM, 20 FCC Rcd. 14989, 14991-92, ¶ 8 (2005) (*CALEA First Report and Order*), *aff'd sub nom. American Council on Educ. v. FCC*, 451 F.3d 226 (D.C. Cir. 2006).

24 *E911 Requirements for IP-Enabled Service Providers*, First Report & Order & NPRM, 20 FCC Rcd. 10245, 10246, ¶ 1 (2005) "(*VoIP 911 Order*"), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006) (requiring interconnected VoIP service providers to supply 911 emergency-calling capabilities).

25 *See, e.g.,* NPRM ¶ 495 (noting that one of the "fundamental problems with the current system … [was that] rates vary based on the type of provider and where the call originated, even though the function of originating or terminating a call does not change").

that can carry all forms of traffic, would be denied tariffed access charges, while the Bells, whose legacy networks have already been paid for many times over by government-sanctioned monopolies, would continue to receive tariffed access charges for doing the same work as the competitive carriers.

Ultimately, the net effect of blessing an IXC's refusal to pay access charges on IP-traffic is to force LECs and their current customers to subsidize the businesses and customers of the IXCs. As the Commission has emphasized, "competitively neutral rules will ensure that … disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers."[26] Verizon certainly does not refund its 8YY customers the toll charges it is saving by its unlawful refusal to compensate LECs like Pac-West. Rather, Verizon is able to unfairly compete for 8YY customers by lowering its price or retaining more profit (or both) because of its self-help tactics with respect to VoIP-originated traffic.

Unfortunately, however, Verizon's self-help is not limited to VoIP calls. Once it suspects that a portion of the calls originated on a LEC's network are VoIP-originated, it will refuse to pay access charges on *any* traffic until the LEC identifies which calls were originated in IP and which calls were originated in TDM, while also claiming the right to claw back whatever charges it paid in the past for IP traffic.[27] Placing the shoe on the other foot and requiring the billing party to prove that its traffic is Verizon-certified traffic is itself a very dangerous precedent. Verizon in fact has admitted to the Commission:

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[26] *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, ¶¶ 48, 49 (1997).

[27] *See also In re Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Comments of Paetec Holding Corp., MPower Commc'ns Corp., U.S. Telepacific Corp. & RCN Telecom Servs., LLC, at 19-20 (filed Apr. 1, 2011).

> Providers devote substantial resources ***to the often impossible task*** of trying to measure and categorize the traffic they exchange in order to apply different rates to different types of traffic – a task that has become increasingly difficult in the age of IP services…. ***Nor can providers always determine whether incoming calls were IP-originated – or whether outgoing calls are IP-bound….*** It simply no longer makes sense to maintain a system that requires or permits terminating providers to apply different rates to different traffic based on arbitrary and anachronistic distinctions.[28]

Verizon's business and litigation position, however, is entirely predicated on "arbitrary and anachronistic distinctions" between various modes of traffic. And by Verizon's own admission, it demands that LECs devote "substantial resources to the often impossible task of trying to measure and categorize" traffic. Ultimately, the simplest, fairest, and most cost-effective option for the Commission is simply to enforce the current law, consistent with sound policy, and declare that, based on the Commission's current rules and orders, IP-based 8YY traffic is to be treated identically to any other type of traffic for purposes of a LEC's access tariff.

IV. CONCLUSION

For all these reasons, the Commission should declare that tariffed access charges, and related database query charges, apply to interexchange IP-to-PSTN 8YY traffic that is delivered by a LEC for termination on the PSTN to an IXC's 8YY customer.

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[28] Verizon and Verizon Wireless Comments – NBP Public Notice #19 at 17-18, GN Docket No. 09-51, *et al*, filed Dec. 7, 2009, (emphasis added).

Dated: June 28, 2011

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Edilma Carr, hereby certify that on this 28th day of June 2011, a true and correct copy of the foregoing **PETITION OF PAC-WEST TELECOMM, INC. FOR DECLARATORY RULING REGARDING ACCESS CHARGES ASSESSED ON VOIP-INITIATED ACCESS TRAFFIC** was filed via hand delivery and/or electronic mail, as indicated below, to the following persons:

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