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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

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Federal Communications Commission
Office of the Secretary

In the Matter of

Petition of Sprint for Declaratory Ruling
Regarding Application of CenturyLink's
Access Tariffs To VoIP Originated Traffic
Pursuant to Primary Jurisdiction Referral

File No. 12-_____

PETITION FOR DECLARATORY RULING

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I. INTRODUCTION AND SUMMARY

In 2009, the incumbent local exchange companies formerly known as “CenturyTel,” and now doing business as “CenturyLink” (referred to herein as “CenturyLink”) filed a complaint against Sprint Communications Company L.P. (“Sprint”) in Federal Court for the Western District of Louisiana seeking to enforce their state and federal access tariffs with respect to Voice-over Internet Protocol (“VoIP”) originated calls. The VoIP originated calls were delivered to Sprint in its capacity as a wholesale provider and then delivered to CenturyLink via Feature Group D facilities for termination by CenturyLink company serving the called party.¹

CenturyLink’s complaint in the Louisiana action contained four counts, each of which was predicated on Sprint’s alleged failure to pay tariffed switched access charges. Count I charged Sprint with violation of federal access tariffs by failing to pay tariffed rates for VoIP originated interstate long distance traffic.² Count II alleged that Sprint’s failure to pay charges contained in state and federal access tariffs constituted a violation of 47 U.S.C. § 251(g).³ Count

¹ A copy of CenturyLink’s Complaint is attached as Exhibit A.

² Exhibit A, Complaint ¶¶ 52-60.

³ Exhibit A, Complaint ¶¶ 62-67.

III alleged that Sprint's decision to compensate VoIP originated long distance traffic at a rate of \$0.0007 per minute, rather than at the rates in switched access tariffs, was an unreasonable and unjust practice in violation of 47 U.S.C. § 201(b).⁴ Finally, Count IV claimed that Sprint violated more than 30 separate state tariffs on file with 25 separate state public utilities commissions by failing to pay tariffed rates for VoIP originated intrastate long distance traffic.⁵ Following a Magistrate Judge's Report and Recommendation, on January 25, 2011, Federal District Court Judge Robert James issued an order dismissing Count II for failure to state a claim upon which relief could be granted, and referring the remaining counts – Counts I, III and IV – to the Commission.⁶ The Court found “the main issue in this case is whether Plaintiffs' tariffed rates are even applicable to VoIP originated calls” and decided “to stay this case and refer the remaining counts of Plaintiffs' Complaint to the FCC.”⁷

Following i) discussions among the parties and Commission Staff regarding the proper procedure through which to effectuate the referral, and ii) settlement discussions, Sprint files this Petition. Sprint acknowledges that Commission staff believes the *Referral Order* only calls for the resolution of the issue within CenturyLink's Count I. Sprint reads the *Referral Order* to refer all “remaining counts” to the Commission. It therefore includes all remaining counts within this Petition, in order to comply with the *Referral Order*, and to prevent CenturyLink from arguing to the Court that Sprint has failed to raise all of the referred issues.⁸ The Commission, of course,

⁴ Exhibit B, Complaint ¶¶ 69-71.

⁵ Exhibit B, Complaint ¶¶ 72-78.

⁶ *CenturyTel of Chatham, LLC v. Sprint Communications Company L.P.*, No. 09-1951 (W.D. La.) at 3 (“*Referral Order*”). The *Referral Order* is attached as Exhibit B. Sprint files this Petition pursuant to 47 C.F.R. § 1.2 and pursuant to the *Referral Order*.

⁷ *Referral Order* at 3.

⁸ While the *Referral Order* at 3-4 does not give the Commission a deadline for ruling, a party not satisfied that the Commission has made substantial progress towards deciding the referred issues may file a motion to vacate the stay.

has the discretion to decline decide one or more of the issues referred to it by the court. Through this Petition Sprint seeks a declaration that for periods prior to December 29, 2011, the effective date of the forward-looking rules adopted by the Commission in its recent *CAF Order*,⁹ access tariffs filed with the Commission, including CenturyLink's tariffs, did not impose compensation obligations on VoIP originated calls delivered over the public switched telephone network. In accordance with Part 69 of the Commission's Rules, a telecommunications carrier cannot tariff a non-telecommunications service absent a ruling by the Commission allowing it to do so. Such a finding would comply with Section 251(g)'s prohibition on the imposition of access charges on calls not subject to access prior to the Telecommunications Act of 1996.¹⁰ This declaration will provide guidance with respect to CenturyLink's Count I, one of the "remaining counts" referred to Commission.

Sprint also seeks a declaration that because the VoIP originated traffic is jurisdictionally interstate, intrastate access tariffs cannot impose compensation obligations with respect to that traffic, even if those calls originate and terminate in the same state. Such a declaration is necessary to enforce the Commission's regulatory authority over this jurisdictionally interstate service, and is required by 47 U.S.C. § 251(g). This declaration will provide guidance with respect to CenturyLink's Count IV, another of the "remaining counts" referred to Commission.

Finally, Sprint seeks a declaration that it could not violate 47 U.S.C. § 201(b) when it compensated CenturyLink at \$0.0007 per minute, rather than at rates in switched access tariffs, alleged in CenturyLink's Count III. Such a result is compelled by the Commission's decision in *All-American Tel. Co. v. AT&T Corp.*, File No. EB-10-MD-003, 26 FCC Rcd. 723, (2011) ("*All-*

⁹ *In the Matter of Connect America Fund*, WC Docket No. 10-90 et al., 26 FCC Rcd. 17663, Report & Order and Further Notice of Proposed Rulemaking (2011) ("*CAF Order*").

¹⁰ 47 U.S.C. § 251(g).

American”) that customers do not violate Section 201(b) by failing to pay for services. This declaration will provide guidance with respect to CenturyLink’s Count III, the final of the “remaining counts” referred to Commission.

II. BACKGROUND

The CenturyLink companies are incumbent local exchange carriers (“ILECs”) operating in a number of states. Sprint is a telecommunications carrier that operates both as an interexchange carrier (“IXC”) and a competitive LEC. In its capacity as a competitive LEC, Sprint offers, in conjunction with cable operators, VoIP and other Internet Protocol (“IP”)-enabled services to end user customers in competition with incumbent LECs like CenturyLink.¹¹ When VoIP calls are made, a cable telephony modem connected to the customer’s telephone originates the voice call in IP. The IP-originated call is then sent over the cable company’s facilities to the Sprint network. The Sprint network converts the call to Time Division Multiplex (“TDM”) protocol before it is delivered to the carrier that completes the call, which in this case is CenturyLink. CenturyLink terminates the calls it receives to its customers in TDM.

Sprint’s VoIP originated traffic is like other VoIP originated traffic that has been the subject of disputes presented to the Commission and various courts. It is not like traditional TDM-TDM traffic, nor is like so-called “IP in the Middle” traffic,¹² both of which involve no net protocol change.

¹¹ See *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exch. Carriers May Obtain Interconnection Under Section 251 of the Commc’ns. Act of 1934, as Amended, to Provide Wholesale Telecomms. Servs. to VoIP Providers*, 22 FCC Rcd. 3513, ¶ 2 (2007) (“*Time Warner Order*”); *Iowa Telecomms. Servs., Inc. v. Iowa Utils. Bd.*, 563 F.3d 743, 747 (8th Cir. 2009) (describing Sprint’s provision of competitive VoIP services in conjunction with cable companies).

¹² See *infra* pp. 7-8.

CenturyLink's Tariff F.C.C. No. 7 is one of the tariffs at issue and a typical interstate access tariff. It defines "Switched Access Service" as a service "available to customers for their use in furnishing their services to end users."¹³ A customer is defined as one that "subscribes to service under this tariff, including both Interexchange Carriers (ICs) and End Users."¹⁴ And, End User means "any customer of an interstate or foreign telecommunications service that is not a carrier."¹⁵ Thus, for access charges to apply, Sprint must be acting as an Interexchange Carrier as it serves an End User customer of interstate telecommunications service.

I. DISCUSSION

A. **The Commission's New Rules Adopted In The *CAF Order* Do Not Resolve The Questions Presented In This Petition.**

On November 18, 2011, the Commission released its *CAF Order*, in which it fundamentally reformed the intercarrier compensation regime. One significant reform made by the Commission established a "prospective intercarrier compensation framework for VoIP traffic."¹⁶ "Ultimately," all VoIP-PSTN traffic "will be subject to a bill-and-keep framework." However, the Commission established a "transition to that end point" under which (1) "all VoIP-PSTN traffic [is brought] within the section 251(b) framework"; (2) "[d]efault intercarrier compensation rates for toll VoIP-PSTN traffic are equal to interstate access rates,"; (3) "[d]efault intercarrier compensation rates for non-toll VoIP-PSTN traffic are the otherwise applicable reciprocal compensation rates"; and (4) "[c]arriers may tariff these default charges for toll VoIP-PSTN traffic in the absence of an agreement for different intercarrier compensation."¹⁷

¹³ Exhibit C, CenturyLink Tariff No. 7, § 6.1, Original Page 6-1 (emphasis added).

¹⁴ Exhibit C, CenturyLink Tariff No. 7, § 2.6, Original Page 2-50.

¹⁵ Exhibit C, CenturyLink Tariff No. 7, § 2.6, Original Page 2-53.

¹⁶ *CAF Order*, ¶ 933.

¹⁷ *CAF Order*, ¶¶ 933, 958.

In adopting these reforms the Commission explicitly stated “our action clarifying the prospective intercarrier compensation treatment of VoIP-PSTN traffic does not resolve the numerous existing industry disputes” regarding compensation for prior periods.¹⁸ As a result, regardless of the treatment of VoIP originated calls delivered by Sprint to CenturyLink on and after December 29, 2011 (an issue beyond the scope of this Petition), the Commission must still resolve the treatment of that traffic for prior periods.

B. The Commission Should Declare That Until December 29, 2011, CenturyLink’s Federal Access Tariffs Did Not Impose Access Charges With Respect To VoIP- Originated Calls (CenturyLink’s COUNT I)

1. Part 69 applies to telecommunications services.

The federal access tariffs at issue in CenturyLink’s Count I were, according to CenturyLink, filed pursuant to 47 C.F.R. Part 69, which regulates the provision of interstate access services by telephone companies. Section 69.1 “establishes rules for access charges for interstate or foreign access services provided by telephone companies” and provides that “charges for such access service shall be computed, assessed, and collected and revenues from such charges shall be distributed as provided in this part.”¹⁹ Rule 69.2(b) defines “access service” as “services and facilities provided for the origination or termination of any interstate or foreign telecommunication.”²⁰ Rule 69.5(b) provides that a filing carrier’s charges shall be assessed “upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.”²¹

The term “telecommunications” is defined by federal law as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in

¹⁸ *CAF Order*, ¶ 935.

¹⁹ 47 C.F.R. § 69.1(a) and (b) (2011).

²⁰ 47 C.F.R. § 69.2(b) (2011) (emphasis added).

²¹ 47 C.F.R. § 69.5(b) (2011) (emphasis added).

the form or content of the information as sent and received.”²² Because VoIP-PSTN traffic clearly involves a “change in form,” it simply cannot be a telecommunication service subject to Title II of the Act and the tariff obligations under 47 U.S.C. § 203.

2. VoIP-originated traffic undergoes a change in form

As noted above, the traffic that is the subject of this Petition is originated in IP, converted to TDM, and then delivered in and terminated in TDM. As such, this traffic unquestionably undergoes a net change in form.

VoIP-originated traffic is fundamentally different than “IP in the middle traffic” which the Commission has previously found to be subject to the access charge regime.²³ The *IP in the Middle* case addressed traffic that began and ended in TDM protocol on the public switched telephone network. When the calls entered AT&T’s network – in the middle – they were converted into IP and transported over AT&T’s Internet backbone before being converted back to the original format when entering the PSTN for termination at the called party’s location. The Commission concluded this service did not involve a net change in form, and so qualifies as a telecommunications service, and was therefore subject to access charges.²⁴ The Commission noted that that “AT&T does not offer these customers a ‘capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information ...’.”²⁵

The Commission limited its decision to IP in the middle traffic, and did so in a way that highlights the differences between IP in the middle traffic and the VoIP originated traffic at issue in Sprint’s Petition:

²² 47 U.S.C. § 153(50) (emphasis added).

²³ *In the Matter of Petition for Declaratory Ruling that AT&T’s Phone-To-Phone IP Telephony Servs. Are Exempt From Access Charges*, WC Docket No. 02-361, 19 FCC Rcd. 7457 (2004) (“*IP in the Middle Order*”).

²⁴ *Id.* ¶¶ 12-15.

²⁵ *Id.* ¶ 12.

We emphasize that our decision is limited to the type of service described by AT&T in this proceeding, *i.e.*, an interexchange service that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology.²⁶

The Commission went on: “generally, services that result in a protocol conversion are enhanced services, while services that result in no net protocol conversion to the end user are basic services.”²⁷

3. The former access charge rules do not apply to VoIP-originated traffic.

There are two fundamental reasons why access charges do not, and cannot, apply to VoIP-originated traffic under existing Commission Rules. First, as discussed above, and in accordance with 47 C.F.R. Part 69, access charges do not apply to non-telecommunications services. VoIP-PSTN traffic undergoes a change in form and is not a telecommunications service.

Second, because there was no pre-1996 intercarrier compensation obligation that applied to VoIP originated traffic, such charges were not preserved by Section 251(g)'s carve-out for the legacy access charge regime. In 1996 Congress adopted Section 251(g), which mandated that federal and state access charges could apply only to traffic subject to the then-existing access charge regime. 47 U.S.C. § 251(g) (on and after February 8, 2006, each local exchange carrier shall provide access services as it did on that date, unless superseded by Commission rule or

²⁶ *Id.* ¶ 1. *See also id.* ¶ 10 (“This order represents our analysis of one specific type of service under existing law based on the record compiled in this proceeding. It in no way precludes the Commission from adopting a fundamentally different approach when it resolves the IP services rulemaking, or when it resolves the *Inter-carrier Compensation* proceeding.”).

²⁷ *Id.* ¶ 4 (emphasis added).

order). Except as specifically provided in Section 251(g), Section 251(b)(5) reciprocal compensation applies to all telecommunications. As the D.C. Circuit stated in *Worldcom v.*

FCC:

On its face, § 251(g) appears to provide simply for the “continued enforcement” of certain pre-Act regulatory “interconnection restrictions and obligations,” including the ones contained in the consent decree that broke up the Bell System, until they are explicitly superseded by Commission action implementing the Act.²⁸

At no time has the Commission or CenturyLink identified a pre-1996 per-minute access charge compensation obligation imposed on net protocol exchange traffic exchanged between a LEC and an IXC.²⁹ In the absence of a per-minute access charge compensation obligation, there is no compensation obligation to be “preserved” by Section 251(g), and access charges cannot apply. Compensation, if any, would be governed by Section 251(b)(5).

Courts that have examined this issue have determined, as a matter of law, that interstate and intrastate access charges do not and cannot apply to VoIP originated traffic. In *Southwestern Bell Telephone, L.P. v. Missouri Public Service Commission*, a federal court in Missouri rejected the argument that VoIP-originated traffic is subject to access charges because – based on existing law – “federal access charges are inapplicable to IP-PSTN traffic because such traffic is an ‘information service’ or an ‘enhanced service’ to which access charges do not apply.”³⁰ The court continued:

Because IP-PSTN is a new service developed after the Act, there is no pre-Act compensation regime which could have governed it, and therefore § 251(g) is inapplicable.³¹

²⁸ *Worldcom, Inc. v. FCC*, 288 F.3d 429, 432 (D.C. Cir. 2002).

²⁹ See *CAF Order*, ¶ 956 n.1952.

³⁰ *Sw. Bell Tel., L.P. v. Mo. Pub. Serv. Comm’n*, 461 F. Supp. 2d 1055, 1079 (E.D. Mo. 2006).

³¹ *Id.* at 1080.

In February 2010, a federal court in the District of Columbia held access charges do not, and cannot, apply to VoIP originated traffic like that in this case.³² That court interpreted Section 251(g) to limit the application of access charges only to traffic for which there was a pre-1996 Act access payment obligation.³³ VoIP originated calls do not fall within this category because there was no pre-Act obligation relating to intercarrier compensation for VoIP-PSTN traffic.”³⁴ The Court also held “that CommPartners’ transmission and net conversion of the calls is properly labeled an information service.”³⁵ Access charges did not apply to this non-telecommunications service, and judgment was entered against the plaintiff seeking to collect them.³⁶

In March of 2010, a federal district court in New York issued a post-trial memorandum rejecting the application of access tariffs to VoIP originated calls, despite the fact that the calls were delivered to the plaintiff in TDM format.³⁷ That court held: “the filed [state and federal] tariff rates cannot be applied to the facts of this dispute.”³⁸

Consistent with these decisions and the underlying law, the Commission should grant Sprint’s Petition.

4. CenturyLink’s access tariffs compel the same result.

a. The Commission has confirmed that the terms of an access tariff must be strictly met for access charges to apply.

CenturyLink has argued that it is entitled to bill and collect access charges simply because the calls were delivered in TDM and completed by Centurylink. Yet the Commission

³² *PAETEC Commc’ns, Inc. v. CommPartners LLC*, No. 08-0397, 2010 WL 1767193 (D.D.C. Feb. 18, 2010).

³³ *Id.* at *3.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Manhattan Telecomms. Corp. v. Global Naps, Inc.*, No. 08 CIV. 3829, 2010 WL 1326095 (S.D.N.Y. Mar. 31, 2010).

³⁸ *Id.* at *3.

has made abundantly clear that for access charges to apply, the strict terms of a tariff must apply. For example, the Commission recently explained that: “Consistent with [47 U.S.C. § 203], a carrier may lawfully assess tariffed charges only for those services specifically described in its applicable tariff.”³⁹ There the Commission found YMax did not provide service as described in its tariff for several reasons, including that the recipients of the calls did not meet the definition of “End User” based on the service they were receiving.⁴⁰ This was true even though the calls were received in TDM and completed by YMax.

b. CenturyLink’s Tariff Require Analysis of a call on an end-to-end basis.

Under CenturyLink’s FCC Tariff No. 7, and its other tariffs, access service is defined with reference to the service being purchased by the individual making the call. Under CenturyLink’s tariff, Switched Access Service is available to Sprint as it furnishes service to a customer of an interstate telecommunications service.⁴¹ Under the business model employed by VoIP based cable providers, the “customer” is the person or entity making the call in IP format. Because CenturyLink’s tariff – like other federal tariffs – point back to the nature of the service received by he who makes the call, the Commission should confirm that the access tariff does not apply to VoIP originated information service calls.

5. Sprint’s status as a telecommunications carrier does not make access charges applicable to VoIP-originated calls.

CenturyLink has argued that VoIP- originated traffic Sprint receives from cable companies is “telecommunications” because the Commission determined in the *Time Warner Order* that Sprint is providing “telecommunications” when it acts as a wholesale provider with

³⁹ *AT&T Corp. v. YMax Commc’ns Corp.*, File No. EB-10-MD-005, 26 FCC Rcd. 5742, Memorandum Opinion & Order, ¶ 12 (“YMax Order”).

⁴⁰ *Id.* ¶¶ 15-20.

⁴¹ *Supra* pp. 6-7.

respect to this traffic. This argument ignores the context of the order and the order itself. There, the Wireline Competition Bureau (“WCB”) determined Sprint met the definition of a “telecommunications carrier” with respect to the combined suite of services offered to its cable company customers, and was thus entitled to interconnection from incumbent LECs under the 1996 Act. In so doing, the WCB stated explicitly:

[T]he statutory classification of a third-party provider’s VoIP services as an information service or a telecommunications service is irrelevant to the issue [being decided in this Order].⁴²

The WCB went on to declare that this Order did not purport to decide or “prejudge the [FCC’s] determination of what compensation is appropriate” for the termination of VoIP originated traffic, or to prejudge “any other issues pending in the Intercarrier Compensation docket.”⁴³ Thus, the fact that Sprint provides “telecommunications” to cable companies on a wholesale basis has no impact on how VoIP originated traffic is treated for intercarrier compensation purposes.

In fact, this issue was squarely addressed and resolved in *Southwestern Bell Tel.*⁴⁴ That court affirmed a Missouri Commission decision, and held that while VoIP-originated traffic is an “information service” not subject to access charges, it does involve “telecommunications.”⁴⁵ The court recognized “when a CLEC acts as a VoIP provider it uses ‘telecommunications’ to transmit IP-PSTN traffic to the network of the carrier that provides service to the called party.”⁴⁶ The court noted that information services are, by definition, “provided ‘*via telecommunications.*’”⁴⁷

⁴² *Time Warner Order*, ¶ 15.

⁴³ *Id.* ¶ 17 (emphasis added).

⁴⁴ 461 F. Supp. 2d 1055.

⁴⁵ *Id.* at 1079.

⁴⁶ *Id.*

U.S.C. § 153(20).”⁴⁷ In no way did this undermine the court’s holding that the call itself, on an end-to-end basis, was an information service exempt from access charges as a matter of federal law.⁴⁸

Moreover, the Commission has already decided implicitly that an IXC’s status as a telecommunications carrier is not definitive with respect to the application of access charges. If the IXC’s status as a telecommunications carrier was determinative, the Commission’s *IP in the Middle Order* would have been decided on the single undisputed fact that AT&T was operating as a telecommunications carrier. Instead, the Commission’s decision focused on the nature of the transmission on an end-to-end basis, and whether AT&T was providing a service that provided the enhanced capabilities to the end user.⁴⁹ Consistent with this, the Commission should grant Sprint’s Petition.

C. The Commission Should Declare That State Access Tariffs Do Not Apply To VoIP-Originated Calls That Meet The Definition Of An Information Service (CenturyLink’s COUNT IV).

The Commission should also declare that under no circumstances could intrastate access charges apply to VoIP-originated traffic that is jurisdictionally interstate. The FCC has determined that one type of VoIP originated traffic is jurisdictionally interstate, and made the following statements:

Indeed, the practical inseverability of other types of IP-enabled services having basic characteristics similar to

⁴⁷ *Id.* at 1081 n.19 (emphasis in original).

⁴⁸ *Id.* at 1082. *See also Report to Congress*, ¶ 41 (“When an entity offers subscribers the ‘capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications’, it does not provide telecommunications; it is using telecommunications.”). Nothing in the *CAF Order* takes away from this analysis. To the contrary, the Commission found it had authority to impose the forward looking rules under Section 251(b)(5) regardless of whether the underlying service on an end-to-end basis is an information service. *CAF Order*, ¶ 954.

⁴⁹ *IP in the Middle Order*, ¶ 12.

DigitalVoice would likewise preclude state regulation to the same extent as described herein.... Accordingly, to the extent other entities, such as cable companies, provide VoIP services, we would preempt state regulation to an extent comparable to what we have done in this Order.⁵⁰

In that same order, the Commission noted that it had determined cable *modem* service to be jurisdictionally interstate:

The Commission similarly determined that cable modem service is an interstate service because the points among which cable modem communications travel are often in different states and countries. *See Cable Modem Declaratory Ruling*, 17 FCC Rcd at 4832, para. 59.⁵¹

Because VoIP originated traffic and cable modem service are jurisdictionally interstate services, the CenturyLink Plaintiffs' intrastate access charges do not apply, and cannot apply to the VoIP originated traffic delivered by Sprint to CenturyLink.⁵²

Finally, the discussion above with respect to the application of Section 251(g) applies equally to both interstate and intrastate traffic. Section 251(g) prohibits LECs from imposing per-minute access charges on traffic that was not subject to per-minute access charges before 1996. Nothing in the text of Section 251(g) limits its application to interstate traffic.⁵³ As such, in order to properly implement Congress's directive in Section 251(g), the Commission should declare that intrastate access tariffs do not impose compensation obligations on VoIP originated traffic.

⁵⁰ *Vonage Order*, ¶ 32.

⁵¹ *Id.* ¶ 22 n.80.

⁵² Again, nothing in the *CAF Order* takes away from this analysis. This was simply another issue not reached by the Commission. *CAF Order*, ¶ 959.

⁵³ *CAF Order*, ¶¶ 765-66 (“We also reject arguments that sections 251(g) and 251(d)(3) somehow limit the scope of the ‘telecommunications’ covered by section 251(b)(5). Whatever protections these provisions provide to state access regulations, it is clear that those protections are not absolute.”).