

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
July 1, 2014 Annual Access Charge Tariff Filings)	WC Docket No. 14-48
)	
Iowa Network Access Division Tariff F.C.C. No. 1)	

To: Pricing Policy Division
Wireline Competition Bureau

**REPLY OF IOWA NETWORK SERVICES, INC.
TO CENTURYLINK’S PETITION TO REJECT AND TO SUSPEND AND
INVESTIGATE**

Iowa Network Services, Inc. ("INS"), pursuant to Section 1.773(b) of the Commission's rules and the Commission's March 25, 2014 *Procedures Order*,¹ hereby submits its Reply to the petition to reject and to suspend and investigate ("Petition") filed by CenturyLink Communications, LLC ("CenturyLink"). For the reasons set forth below, the Petition should be denied.

I. Introduction.

The Commission and the Iowa Utilities Board authorized INS to construct and operate a Centralized Equal Access ("CEA") network to aggregate rural traffic, centralize the provisioning of expensive features and functionalities, and help bring the benefits of advanced

¹ 47 C.F.R. § 1.773(b); *In the Matter of July 1, 2014, Annual Access Charge Tariff Filings*, Order, WC Docket No. 14-48, DA 14-404 (rel. Mar. 2, 2014) ("*Procedures Order*").

communications services and competition to rural areas of Iowa.² CenturyLink suggests that INS is a consortium of rural local exchange carriers (“LECs”), and as such, it falls under the regulatory regime applicable to LECs. Petition at 2-3. Contrary to the Petition’s mischaracterization, INS is not a consortium of separate companies, but is instead a separately incorporated legal entity that connects with numerous wireline and wireless carriers, many of which have no ownership in INS.³ As a separate legal entity, INS’ mission is to provide regulated CEA services that are discrete and distinct from the services provided by the LECs that subtend INS’ tandem.⁴ Just as CenturyLink’s long distance subsidiary is not subject to the regulations applicable to CenturyLink’s LEC subsidiaries, INS is also not subject to the regulations applicable to INS’ LEC shareholders that hold a minor ownership interest in the company. INS is not a LEC, there are no end user customers of CEA, as the CEA network lies between the networks of other carriers (i.e. between LECs and interexchange carriers (“IXCs”)), and INS does not provide local service.

² *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission’s Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd. 1468, 1471 ¶¶ 21, 23 (1988), *aff’d on recon.*, 4 FCC Rcd 2201 (1989); *Iowa Network Access Division, Division of Iowa Network Services*, Iowa Utilities Board Docket No. RPU-88-2, 1988 Iowa PUC LEXIS 1 (1988), *aff’d on appeal*, *Northwestern Bell Tel. Co. v. Iowa Utilities Board*, 477 N.W.2d 678, 681 (Iowa 1991).

³ CenturyLink makes several other inaccurate statements in its Petition, including the self-serving representation that “it is current as to all CEA charges assessed by INS to-date – though it has paid under protest.” Petition at 4, n.20. CenturyLink has exercised unlawful self-help by short paying its fourth quarter 2013 CEA invoices, just as it said it would in the letter attached to its Petition. See Petition, Exhibit A (“Until these issues are resolved, payment will be withheld on this invoice. . . . Until this issue is resolved, CenturyLink will partially short pay this [sic] issue.”)

⁴ CenturyLink avers that INS provides CEA “on behalf of rural LECs,” and that allowing INS to be regulated differently than a LEC would allow improper cost-shifting between INS and the LECs. Petition at 10 (citing *AT&T Corp. v. Alpine Communs., LLC*, Memorandum Opinion and Order, 27 FCC Rcd 11511, 11513 (2012)). However, in *AT&T v. Alpine*, the FCC found that while INS properly billed its tariff rates for CEA service, the LECs involved in that case, which are separate and distinct from INS, did not properly bill AT&T for service in accordance with the LECs’ tariffs. This further demonstrates that CenturyLink’s argument that INS should be accorded the same regulatory treatment as the LECs is wrong.

Section 61.38 of the Commission’s rules requires INS to file a tariff with the Commission containing the rates, terms, and conditions applicable to CEA service because the Commission has classified INS as a dominant carrier.⁵ Section 61.38 states in pertinent part: “This section applies to dominant carriers whose gross annual revenues exceed \$500,000 for the most recent 12 month period of operations or are estimated to exceed \$500,000 for a representative 12 month period.” Therefore, the scope of section 61.38 is not limited to incumbent local exchange carriers (“ILECs”), but instead applies to all dominant carriers, including CEA providers like INS that are not ILECs.

Section 69.3(a) of the Commission’s rules requires INS to file a Tariff Review Plan and other cost support with the Commission every two years, even though there are no rate changes.⁶ On June 16, 2014, INS made the filing required by Section 69.3(a) and the *Procedures Order*. In that filing, INS did not make any changes to its already effective tariff rates. Indeed, INS made no changes at all to its tariff, and all of its rates, terms, and conditions remain exactly the same as those currently in effect. INS estimates that it will experience a negative rate of return during the projected twelve month period ending June 30, 2015 because it did not file any revisions to its tariff rates.⁷ By not increasing the tariff rates that are currently effective, INS will make CEA service more affordable, which benefits all customers and the public interest.

II. CenturyLink’s Petition is Untimely.

As a threshold matter, CenturyLink’s Petition is an untimely attack on a tariff rate that has been in effect since July 2, 2013. A tariff cannot be rejected or suspended after it has

⁵ 47 C.F.R. § 61.38.

⁶ 47 C.F.R. § 69.3(a).

⁷ INS Description and Justification at 1.

become effective.⁸ Section 204 of the Communications Act authorizes the Commission to suspend and investigate a tariff “[w]henver there is filed with the Commission any new or revised charge.”⁹ INS has not filed any new or revised charge with the Commission. Furthermore, section 204 grants the Commission authority to “enter upon a hearing concerning the lawfulness [of a tariff]” and suspend a tariff rate “not for a longer period than five months beyond the time when it would otherwise go into effect.” As INS’ current tariff rate for CEA service went into effect nearly a year ago, there are no rates to reject or suspend that have yet to “go into effect.” Therefore, any challenges to INS’ effective tariff rate must be via a section 208 complaint.¹⁰

On June 17, 2013, INS filed a small increase to its tariff rate for CEA service to \$0.00896 per minute. In compliance with Section 61.38 of the Commission’s rules, INS also filed with the Commission on June 17, 2013, cost and usage data supporting that small increase in the CEA tariff rate. That detailed cost support demonstrated that the CEA tariff rate increase was reasonable in light of the increase in INS’ transport costs, due to the additional mileage that INS is transmitting calls for long distance telephone companies (like CenturyLink), and the historical trend in declining traffic volumes. CenturyLink did not file a petition or complaint at the Commission regarding the increase in the CEA tariff rate. As the CEA tariff rate increase was electronically filed with the Commission on June 17, 2013, CenturyLink had ample opportunity to review the tariff filing on the Commission’s website before it became effective on July 2, 2013. The Commission also issued a Public Notice regarding the CEA price increase. Public

⁸ *In the Matter of Annual 1988 Access Tariff Filings, Memorandum Opinion and Order*, 4 FCC Rcd 534, 535 ¶ 11 (1989).

⁹ 47 U.S.C. § 204.

¹⁰ 47 U.S.C. § 208; *see also*, 47 C.F.R.1.773(a)(1) (“Any formal complaint shall be filed as a separate pleading as provided in § 1.721”).

Notice, 2013 FCC LEXIS 2905. During the 15 day statutory period, the Commission did not initiate a Section 204(a)(1) hearing concerning the lawfulness of the CEA tariff rate, and the new CEA tariff rate became effective July 2, 2013. Therefore, CenturyLink's instant Petition should be denied as egregiously untimely and fatally defective as a matter of statutory law.

III. The CEA Tariff Rate In Effect Fully Complies With The Commission's Rules.

CenturyLink's Petition argues that the tariff rate for CEA service does not comply with the ratemaking rules adopted by the Commission in its *USF/ICC Order*.¹¹ However, only a brief examination of those rules is needed to recognize that they do not apply to CEA service. The *USF/ICC Order* only addressed access tariff price reductions for LECs that provide local exchange service to end user consumers and businesses, who the LECs can charge higher rates, to offset the lower access tariff prices charged carriers, such as CenturyLink. The LECs' ability to earn additional revenue from end users was critical to the Commission's analysis of whether LECs would continue to earn the constitutionally-required return on regulated investment after reducing the prices they charged carriers like CenturyLink. *USF/ICC Order*, 26 FCC Rcd at 17997 ¶ 924. By contrast, CEA service cannot earn additional revenue from end users because CEA service is not provided to end users. The 5th Amendment of the Constitution requires an agency to conduct a hearing and apply the "end result" standard to ensure that an agency-prescribed price for regulated service does not have unjust and unreasonable consequences. *Jersey Central Power & Light Co. v. Federal Energy Regulatory Commission*, 810 F.2d 1168, 177-1178 (D.C. Cir. 1987). Moreover, rate-regulated carriers must be allowed to earn the authorized rate of return, *see Virgin Islands. Tel. Corp. v. FCC*, 989 F.2d 1231, 1234 (D.C. Cir. 1993), which the tariff review plan process is designed to ensure. The *USF/ICC Order* not only

¹¹ *Connect America Fund*, 26 FCC Rcd 17663 (2011) ("*USF/ICC Order*").

did not consider whether a reduction in CEA tariff rates would violate the 5th Amendment, the *USF/ICC Order* made no findings about CEA rates whatsoever.

Because INS does not provide local exchange service to end users, INS is not a LEC for which the *USF/ICC Order* required tariff rate reductions. CenturyLink does not dispute the fact that INS does not provide local exchange service or local telephone service. Local exchange service is defined as “telephone service furnished between customers or users located within an exchange area.” 199 Iowa Admin. Code 22.1(3). INS does not provide CEA service to end users. INS also does not provide local telephone service between INS end users located within the same local exchange area. Therefore, INS does not provide local exchange service. Instead, INS serves as an intermediary carrier transmitting calls between CenturyLink’s network and exchanges served by third party LECs. *Iowa Network Services Inc. v. Qwest Corp.*, 363 F.3d 683, 694 n.3 (8th Cir. 2004) (distinguishing between a LEC that provides “local telephone service” to “local telephone customers” and “an intermediary carrying the traffic on its route to INS’ member companies’ local telephone customers”). Furthermore, CEA service is provided and billed to carriers, such as CenturyLink (not end users).

The *USF/ICC Order* also does not apply to the functions performed by CEA service. The focus of the *USF/ICC Order* is the originating access service and terminating access service provided by LECs to the LECs’ end office switches. CEA service does not originate or terminate calls. Instead, CEA service is an intermediate service carrying the traffic on the route between LECs and long distance telephone companies. As CEA service does not originate or terminate traffic to end offices, it does not provide the originating and terminating access services subject to the *USF/ICC Order*.

The *USF/ICC Order* adopted Sections 51.907, 51.909, and 51.911 of the Commission's rules, which prescribed ratemaking rules for only three types of LECs: "Price Cap Carrier," "Rate-of-Return Carrier," and "Competitive Local Exchange Carrier." 47 C.F.R. §§ 51.907, 51.909, and 51.911. As INS is not classified under any of these LEC types, these rules do not apply to the rates for CEA service.

INS is not a "Price Cap Carrier" because INS is not a LEC subject to price cap regulation pursuant to 47 C.F.R. §§ 61.41 through 61.49. Therefore, the tariff rate regulations for "Price Cap Carriers" described in section 51.907 of the Commission's rules are inapplicable to CEA service.

Because INS is not an incumbent local exchange carrier, INS is also not a "Rate-of-Return Carrier." The Commission's rules define a "Rate-of-Return Carrier" as "any incumbent local exchange carrier not subject to price cap regulation." 47 C.F.R. § 51.903(g). The Communications Act defines an "incumbent local exchange carrier" with respect to an area as "the local exchange carrier that--(A) on the date of enactment of the Telecommunications Act of 1996 [enacted Feb. 8, 1996], provided telephone exchange service in such area; and (B) (i) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission's regulations (47 C.F.R. 69.601(b)); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)." INS has never provided telephone exchange service nor been a member of the National Exchange Carrier Association. Therefore, INS is not an incumbent local exchange carrier and is also not a "Rate-of-Return Carrier" subject to the rate regulations in section 51.909 of the Commission's rules.¹²

¹² See also, *Iowa Network Services, Inc.*, Docket No. SPU-06-12, 2006 Iowa PUC LEXIS 420 *5 (2006) (holding that INS is not an incumbent local exchange carrier).

Furthermore, to ensure that “Rate-of-Return Carriers” would be able to earn the constitutionally-required minimum return on regulated investment, the FCC permitted “Rate-of-Return Carriers” to bill a new Access Recovery Charge to end users. Only incumbent local exchange carriers were allowed to bill an Access Recovery Charge to recover revenues lost from reducing their access rates. *USF/ICC Order*, 26 FCC Rcd at 17956 ¶ 847. INS has no end users it could bill an Access Recovery Charge, and because INS is not an incumbent local exchange carrier, the *USF/ICC Order* does not authorize INS to bill an Access Recovery Charge in any event. *USF/ICC Order*, 26 FCC Rcd at 17957 ¶ 849. Without any cost recovery mechanism to offset a reduction in the price of CEA service, it is implausible that the *USF/ICC Order* was intended to subject CEA service to ratemaking designed for incumbent “Rate-of-Return Carriers.”

CenturyLink states that it is also implausible that INS could be regulated as a competitive local exchange carrier (“CLEC”). Petition n.33. A CLEC is defined as “a utility, other than an incumbent local exchange carrier, that provides local exchange service pursuant to an authorized certificate of public convenience and necessity.” 199 Iowa Admin. Code 22.1(3). As INS does not provide local exchange service and has not been granted a certificate of public convenience and necessity to do so, INS is not a “Competitive Local Exchange Carrier.” Furthermore, to ensure they continue to earn the constitutionally-required minimum level of compensation, the Commission permitted Competitive Local Exchange Carriers to increase end user charges to offset reductions in access rates charged to carriers, such as CenturyLink. *USF/ICC Order*, 26 FCC Rcd at 17965 ¶ 864. By contrast, as CEA service is provided only to carriers (and not end users), it is impossible for INS to increase CEA rates for end users in order to reduce them for

CenturyLink. Therefore, the ratemaking rules for “Competitive Local Exchange Carriers” described in section 51.911 of the Commission’s rules are inapplicable to CEA service.

CEA providers, such as INS, are not the only type of intermediate providers not subject to the ratemaking rules adopted in the *USF/ICC Order*. For example, it is common for long distance telephone companies, like CenturyLink, to purchase least cost routing services from intermediate providers in order to transmit calls to the LECs’ networks. *Rural Call Completion*, 28 FCC Rcd 16154, 16163 (2013). Those intermediate providers of least cost routing services were not required by the *USF/ICC Order* to reduce the prices they charge CenturyLink. Like INS, intermediate providers of least cost routing services are not LECs that provide local exchange service to end users. CenturyLink pays inter-carrier compensation to such intermediate providers to transmit CenturyLink’s calls to the same LECs connected to INS’ CEA network. Wireless carriers and VoIP providers are other examples of service providers not subject to the price reductions in the *USF/ICC Order*.

As demonstrated by this review of the Commission’s rules, it is clear that the ratemaking rules adopted by the *USF/ICC Order* are inapplicable to CEA service. The CEA tariff rate currently in effect was calculated and filed last year in full compliance with the Commission’s rules. The significant negative rate of return that will result from maintaining the existing tariff rate further demonstrates that the currently effective tariff rate remains just and reasonable.¹³ Moreover, even if it was possible to reject or suspend a tariff rate that is already effective,

¹³ The cap on the LECs’ rates, when combined with the limitations on INS’ regulated rate of return (particularly when that return is negative), eliminates any possibility of the cost-shifting described on pages 10 and 11 of the CenturyLink Petition.

CenturyLink has failed to demonstrate that the current CEA tariff rate is so patently unlawful as to warrant rejection or an investigation.¹⁴

IV. Conclusion.

For the foregoing reasons, the Commission should deny CenturyLink's Petition. The Petition is untimely, procedurally defective, and contravenes section 204 of the Communications Act. The law is clear: a tariff rate that has already gone into effect cannot be rejected or suspended. Moreover, even if such rejection or suspension was possible, CenturyLink has presented no arguments that satisfy the standards for rejection or warrant an investigation. According to their terms, the ratemaking rules set forth in sections 51.907, 51.909, and 51.911 (as adopted in *USF/ICC Order*) do not apply to CEA providers, such as INS. Furthermore, the currently effective tariff rate keeps CEA service affordable, and (as it will produce a negative rate of return), is clearly not unreasonable nor excessive.

Respectfully submitted,

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¹⁴ The Commission employs the patently unlawful standard for the summary rejection of a tariff rate that has not yet become effective. *In re Bell Atl. Tel. Cos., Memorandum Opinion and Order*, 8 FCC Rcd 2732, 2733 ¶ 7 (1993). *See also, In re Mountain States Tel. and Tel.*, Memorandum Opinion and Order, 60 F.C.C.2d 460, 462 (1976) (attacks against rates already in effect are improper in a proceeding to reject or suspend a tariff).

CERTIFICATE OF SERVICE

I, Monica Gibson-Moore, a legal assistant in the law firm of Fletcher, Heald & Hildreth, PLC, do hereby certify that on this 26th day of June, 2014, copies of the foregoing Reply of Iowa Network Service, Inc. to Petition to Reject and to Suspend and Investigate were served on the following parties:

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