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

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| In the Matter of | ) | |
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| Ameritech Operating Companies<br>Tariff F.C.C. No. 2 | )<br>) | Transmittal No. 1859 |
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| BellSouth Telecommunications, LLC<br>Tariff F.C.C. No. 1 | )<br>) | Transmittal No. 129 |
| | ) | |
| Nevada Bell Telephone Company<br>Tariff F.C.C. No. 1 | )<br>) | Transmittal No. 300 |
| | ) | |
| Pacific Bell Telephone Company<br>Tariff F.C.C. No. 1 | )<br>) | Transmittal No. 552 |
| | ) | |
| Southwestern Bell Telephone Company<br>Tariff F.C.C. No. 73 | )<br>) | Transmittal No. 3443 |

**AT&T'S OPPOSITION TO CENTURYLINK'S PETITION TO REJECT AND TO SUSPEND AND INVESTIGATE AT&T TARIFF FILINGS**

Pursuant to Section 1.773(b) of the Commission's Rules,[1] Ameritech Operating Companies, BellSouth Telecommunications, LLC, Nevada Bell Telephone Company, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company (collectively, "AT&T") file this reply in opposition to CenturyLink Communications LLC's ("CenturyLink") petitions to reject and to suspend and investigate[2] AT&T's June 7 tariff filings implementing aspects of the Commission's transition of tandem switching charges to bill-and-keep.[3]

CenturyLink's principal contention is that AT&T's tariffs do not properly implement Rule 51.907(g)(2), which requires a certain subset of tandem switching and transport rates to transition

[1] 47 C.F.R. § 1.773(b).

[2] Petition of CenturyLink Communications, LLC to Reject and to Suspend and Investigate AT&T Tariff Filings (filed June 14, 2017) ("Petition").

[3] Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd. 17663, ¶¶ 800-01 (2011) ("*USF/ICC Transformation Order*").

to $0.0007 by July 1, 2017. AT&T's tariff changes in fact fully comply with that rule by adopting that rate for traffic where the Price Cap local exchange carrier owns both the tandem and the end office (referred to in the tariff as "Terminating to Telephone Company's own end office"). CenturyLink argues that the rule also requires AT&T to apply that rate to tandem services where price cap LEC hands the traffic off to an affiliated wireless carrier or CLEC. CenturyLink's argument, however, has been vetted in the industry and before the Commission staff, and as CenturyLink acknowledges (at 5 n.16), AT&T's tariff filing simply follows the Commission's informal guidance. As explained below, the Commission's guidance represents the most reasonable interpretation of the rules, and the Commission should therefore deny the Petition.

CenturyLink's Petition concerns Rule 51.907(g) and its companion, Rule 51.907(h), which governs next year's filing.[4] Those two rules apply to "Price Cap Carriers" that are also "the terminating carrier" – *i.e.*, the carrier that is actually terminating the call to the end user and thus owns the end office switch. From the Commission's perspective in 2011, Price Cap Carriers in this situation presented the simplest and most straightforward scenario for the initial transition to bill-and-keep as the default compensation system, because such carriers have end user customers that take services pursuant to tariffs and from whom they can recover the costs of both tandem and end office switching via the tariffs. Rule 51.907 thus established a gradual transition in which a Price Cap Carrier's switching charges are slowly phased out, beginning with the end office charges and ending, in Years 6 and 7, with such a carrier's tandem charges. Consistent with the notion of bill-and-keep as the default mechanism, such a carrier would be in a position to "bill" its end user

[4] 47 C.F.R. § 51.907(g)-(h); *USF/ICC Transformation Order* ¶ 1312. Rule 51.907(g)(2) (which governs this tariff filing) provides that "[e]ach Price Cap Carrier shall establish, for interstate and intrastate terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns, Tandem-Switched Transport Access Service rates no greater than $0.0007 per minute." 47 C.F.R. § 51.907(g)(2). These transitions also apply to CLECs that benchmark their rates to price cap carriers. *USF/ICC Transformation Order* ¶¶ 801, 807, 866; 47 C.F.R. § 61.26.

customers via tariffs to recover the tandem costs and "keep" that recovery without charging the IXC.[5]

The Commission issued a further notice of proposed rulemaking, however, to establish a separate bill-and-keep transition for all *other* price cap LEC tandem charges, including, *inter alia*, situations in which the price cap LEC performs tandem functions for a CMRS carrier that terminates the call over a wireless network, and that offers services via contracts, not tariffs. In 2011, the Commission reasonably concluded that the transition for tandem charges when the price cap LEC does *not* own the end office switch, and thus has no end user customers, presented very different issues. Indeed, the *FNPRM* specifically noted that commenters had "express[ed] concern with the end state for tandem switching and transport for price cap carriers when the tandem owner does not own the end office. . . ." *USF/ICC Transformation Order* ¶ 1312. The Commission explained that Rule 51.907 "includes the transition for transport and termination within the tandem serving area where the terminating carrier owns the serving tandem switch," but it "does *not* address the transition in situations where the tandem owner does not own the end office." *Id.* (emphasis added). The Commission thus sought comment on both the transition and "the appropriate end state" for such intermediate tandem switching services. *Id.* ¶¶ 1306-10, 1312-13. Moreover, as the Commission noted, many of those issues are "closely related" to the issue of how to establish the "network edge" for purposes of a bill-and-keep default rule applicable to such

[5] *Cf.* 47 C.F.R. § 51.713. Another aspect of the Commission's initial, partial transition was its adoption of the Access Recovery Charge (ARC), which is a "transitional recovery mechanism" from certain end users (or the CAF Fund) that helped offset the loss of revenues "reduced as part of this Order." *USF/ICC Transformation Order* ¶ 847. The Commission allowed "incumbent LECs" – either price cap LECs or rate of return LECs – to recover the ARC from specified end users, but not CMRS carriers. *Id.* ¶ 864 n.1668. Although the ARC was never intended to be revenue neutral, the fact that the Commission provided for a partial transitional recovery mechanism for price cap LECs and rate of return LECs, but not CMRS carriers, undercuts the view that Section 51.907(g) or (h) apply when the terminating carrier is a CMRS provider.

tariffed tandem services, another issue on which it sought comment in the *FNPRM*.[6] In 2011, the Commission thus concluded that the rules for how bill-and-keep will work for such intermediate tandem charges, and where the network edge is established, would have a substantial and perhaps far-reaching impact on how those services are purchased and provided, and the Commission was not ready to resolve those issues based on the record it had accumulated at that time.[7]

In light of the discussion of these considerations in the *USF/ICC Transformation Order* and the *FNPRM*, the Commission's informal guidance represents the most reasonable interpretation of Rule 51.907.[8] The phrase "the terminating carrier" in subsections (g) and (h) is necessarily a reference back to the "Price Cap Carrier" – *i.e.*, a Price Cap Carrier must phase out its tandem charges when it is "the terminating carrier" and, as such, owns both the end office and tandem switches.[9] If the "terminating carrier" could be a carrier *other* than the Price Cap Carrier (such as a CMRS carrier), then the rule would already address many of the more difficult

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[6] *USF/ICC Transformation Order* ¶ 1310 ("As we move to a new intercarrier compensation system governed by a section 251(b)(5) bill-and-keep methodology, we invite parties to comment on the existing and future payment and market structures for dedicated transport, tandem switching, and tandem switched transport."); *id.* ¶¶ 1315-21 (seeking comment on points of interconnection and the "network edge" in a full bill-and-keep system).

[7] Consistent with the discussion in the *FNPRM*, the *USF/ICC Transformation Order* makes clear that the initial transition applies to CMRS services only insofar as the CMRS carrier itself provides reciprocal compensation, and affects CLEC charges via the pre-existing CLEC benchmark rule, which requires CLECs to conform their own tandem and end office switching charges to their benchmark price cap LEC. *USF/ICC Transformation Order* ¶ 806 ("[a]lthough CMRS providers are subject to mandatory detariffing, these providers are included [in the *USF/ICC Transformation Order* transition] to the extent their reciprocal compensation rates are inconsistent with the reforms we adopt here"); *id.* ¶¶ 807-08, 866 ("[a]pplication of our access reforms will generally apply to competitive LECs via the CLEC benchmarking rule.").

[8] *See, e.g.*, *Verizon Cal., Inc. v. FCC*, 555 F.3d 270, 273 (D.C. Cir. 2009) ("The context is key," and the Commission "[u]nderstandably . . . looked to the context. . . ."); *Bell Atl. Tel. Cos. v. FCC*, 131 F. 3d 1044, 1047 (D.C. Cir. 1997) ("textual analysis is a language game played on a field known as 'context.'"); *Ctr. For Commc'ns Mgmt. Info., EconoBill Corp., and On Line Mktg., Inc. v. AT&T Corp.*, 23 FCC Rcd. 12249, ¶ 11 (2008) ("To ascertain how best to interpret [a Commission rule], we must examine the rule's text, history, purpose, and structure.").

[9] *USF/ICC Transformation Order* ¶ 1312 (Rule 51.907 "includes the transition for transport and termination within the tandem serving area where the *terminating carrier* owns the serving tandem switch," but not "where the tandem owner does not own the end office" (emphasis added)).

intermediate situations about which the Commission sought comment in the *FNPRM*.[10] Indeed, applying the plain-vanilla Rule 51.907 transition to these very different scenarios in which the Price Cap Carrier has no tariffed end user would effectively prejudge the *FNPRM* and impose *de facto* bill-and-keep and network edge rules on such traffic, which could distort competition with no real opportunity for the Commission to consider the possible consequences.[11]

The approach adopted by AT&T also eliminates any ambiguity with respect to the term "affiliate" in the two rules.[12] The rule requires the Price Cap Carrier to phase out its tandem charges when the "terminating carrier or *its* affiliate" – *i.e.*, the terminating carrier's affiliate – owns the tandem. As discussed above, however, the "terminating carrier" can only be a Price Cap Carrier that owns the end office. Accordingly, the term "affiliate" comes into play only when the "*terminating*" price cap carrier that owns the end office has an affiliate that owns the tandem. The *USF/ICC Transformation Order* does not address why the phrase "or its affiliates" was added to the text of the two rules,[13] but it was most likely designed either (1) to prevent a LEC from trying

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[10] Although CenturyLink claims it has the "plain language" reading of the rule, it effectively concedes the rule is ambiguous when it repeatedly claims that the end office owner must be "defined broadly" to include non-Price Cap Carriers like CMRS providers, even though CMRS providers, strictly speaking, do not have "end offices." *See, e.g.*, Petition at 9 ("with 'affiliated' and end office defined broadly"), 10 ("an end office owner (defined broadly – e.g. ILEC, CLEC, CMRS provider)"). Choosing the "broad" understanding of an end office owner, however, has the effect of interfering with, and pre-judging, the *FNPRM* – which provides a powerful argument for choosing the narrower interpretation of limiting the end office owner to a "Price Cap Carrier."

[11] For example, if (as CenturyLink seems to suggest) Rule 51.907(g) or (h) were read to apply to a situation in which a CMRS carrier was the "terminating carrier" and its "affiliate," a Price Cap Carrier, owned the tandem, such a reading could have substantial unintended consequences. Applying Rule 51.907 to this scenario would be destabilizing, because price cap LECs would have no means of recovering tandem costs through a CMRS affiliate's end user customer charges, and fierce price competition from CMRS carriers that do *not* have price cap LEC affiliates, such as T-Mobile and Sprint, would preclude them from doing so in all events. *See, e.g.*, Ryan Knutson and Joshua Jamerson, *Verizon Customers Defect As Competition Ramps Up*, The Wall Street Journal (Apr. 20, 2017), https://www.wsj.com/articles/verizon-for-first-time-loses-core-wireless-customers-1492691308 (reintroduction of unlimited data plans has set off a "bruising price war"). These are precisely the sorts of issues that the Commission must carefully consider and resolve in the *FNPRM*.

[12] *Cf.* Petition at 8-9.

[13] *Cf. USF/ICC Transformation Order* ¶ 801 & Figure 9 (omitting the phrase "or its affiliates"). CenturyLink acknowledges (at 5-6, 10-11) there is a conflict between the *USF/ICC Transformation Order* and the text of the rule, insofar as the *Order* "only discusses the Years 6/7 bill and keep transition as applying to traffic flows handled by tandem and end office facility combinations where the terminating carrier owns the tandem switch" with no mention

to evade the tandem transition by transferring its tandem assets to an affiliate, or (2) to cover situations where a price cap LEC's end user is served by the tandem of a neighboring affiliate. As explained above, however, the Commission cannot reasonably read the rule to treat the Price Cap Carrier as the "affiliate" of a *non*-price-cap carrier that terminates the call to the end user.

Finally, CenturyLink notes (at 7) that the language in AT&T's tariffs applies the $0.0007 rate when the same Price Cap Carrier owns the tandem and end office, whereas the Description and Justification ("D&J") is worded more broadly, suggesting that the rate will apply when the traffic is terminated "to its own or any other Price Cap ILEC End Office owned by the same Holding Company." The discrepancy is immaterial. AT&T does not have any situations in which one of its operating companies would be terminating a call to an end office owned by a different operating company owned by the same holding company. Accordingly, the tariffed language is adequate and complies with the rule. The fact that AT&T inadvertently included broader language in its D&J that encompasses scenarios that are not applicable to AT&T does not constitute grounds for rejecting or suspending the tariff.

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of affiliates. AT&T's reading of the rule, however, *minimizes* that conflict, whereas CenturyLink's more expansive reading of the rule creates a concomitantly broader conflict with the order.

## CONCLUSION

For the foregoing reasons, the Commission should allow the tariff changes to take effect as scheduled and reject the Petition to reject or suspend and investigate AT&Ts tariff submissions.

Respectfully submitted,

/s/ James P. Young
James P. Young

James P. Young
Michael J. Hunseder
Sidley Austin LLP
1501 K Street, NW
Washington, D.C. 20005
(202) 736-8000 - telephone
(202) 736-8711 - facsimile

Christi Shewman
Gary L. Phillips
David L. Lawson
AT&T Services, Inc.
1120 20th Street, NW
Suite 1000
Washington, D.C. 20036
(202) 457-3090 - telephone
(202) 463-8066 - facsimile

Dated: June 20, 2017

*Counsel for AT&T*

**CERTIFICATE OF SERVICE**

I, James P. Young, do hereby certify that on this 20th day of June 2017, the foregoing OPPOSITION TO CENTURYLINK'S PETITION TO REJECT AND TO SUSPEND AND INVESTIGATE AT&T TARIFF FILINGS was served on the following parties by e-mail:

Kris Monteith
Chief, Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
Kris.monteith@fcc.gov

Pamela Arluk
Chief, Pricing Policy Division
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
Pamela.arluk@fcc.gov

Best Copy & Printing, Inc.
445 12th Street SW
Washington, DC 20554
fcc@bcpiweb.com

Timothy M. Boucher
CenturyLink
Suite 1230
931 14th Street
Denver, CO 80202
Timothy.Boucher@CenturyLink.com

/s/ James P. Young