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

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| In the Matters of | ) | |
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| July 1, 2017 | ) | WC Docket No. 17-65 |
| Annual Access charge Tariff Filings | ) | |
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| Verizon Telephone Companies | ) | |
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| Tariff F.C.C. No. 1 | ) | Transmittal No. 1347 |
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| Tariff F.C.C. No. 14 | ) | Transmittal No. 1347 |
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| Tariff F.C.C. No. 16 | ) | Transmittal No. 1347 |

# PETITION OF CENTURYLINK COMMUNICATIONS, LLC TO REJECT AND TO SUSPEND AND INVESTIGATE VERIZON TARIFF FILINGS


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# PETITION OF CENTURYLINK COMMUNICATIONS, LLC TO REJECT AND TO SUSPEND AND INVESTIGATE VERIZON TARIFF FILINGS

## I. INTRODUCTION AND SUMMARY

Pursuant to Section 1.773 of the Commission's rules,[1] CenturyLink Communications, LLC ("CenturyLink")[2] hereby respectfully requests that the Commission suspend and investigate the above-captioned access charge tariff filings of -- Verizon Virginia LLC, Verizon Washington, D.C. Inc., Verizon Maryland LLC, Verizon Delaware LLC, Verizon Pennsylvania LLC and Verizon New Jersey Inc. (Tariff F.C.C. No. 1); Verizon New York Inc. and Verizon New England Inc. (Tariff F.C.C. No. 11); Verizon North LLC (Pennsylvania) and Verizon South Inc. (Virginia) (Tariff F.C.C. No. 14); and Verizon North LLC (Operating Territory of Verizon South Inc., Operating Territory of North Carolina and Operating Territory

[1] 47 C.F.R. § 1.773(a).

[2] CenturyLink Communications, LLC is a wholly owned subsidiary of CenturyLink, Inc. and operates as an interexchange carrier that purchases switched access services from Ameritech under its tariff. The ILEC affiliates of CenturyLink, Inc. do not join in this filing.

of Virginia) and Verizon South Inc. (Operating Territory of Verizon California and Operating Territory of Verizon Florida LLC) (Tariff F.C.C. No. 16) -- different Verizon operating companies or sets of operating companies (hereafter, collectively, "Verizon"),[3] and that the Commission reject these tariffs upon confirming its unlawfulness. In the tariff filings at issue, Verizon proposes tariff language that it cites as being needed to comply with the *Transformation Order*[4] and Commission Rule 51.907(g)(2),[5] that does not have a lawful basis in the rule or the *Transformation Order*. Rule 51.907(g)(2) sets forth requirements for Year 6 of the *Transformation Order*'s intercarrier compensation ("ICC") transition as it relates to tandem switching and transport rates. Rule 51.907(g)(2) specifies that a certain subset of tandem switching and transport rates are expected to move to $0.0007 in Year 6 (for "terminating traffic traversing a tandem switch that the terminating carrier *or its affiliates* owns…" (emphasis added)).[6] But, Verizon, without a lawful basis for doing so, proposes tariff language that would define the traffic subject to this new treatment solely as traffic terminating from a Price Cap ILEC-owned tandem to its own price cap ILEC end office (which the tariffs define as

[3] Verizon Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 1347; Tariff F.C.C. No. 11, Transmittal No. 1347; Tariff F.C.C. No. 14, Transmittal No. 1347; Tariff F.C.C. No. 16, Transmittal No. 1347. The relevant portions of each of these tariff filings are attached in their entirety in an appendix hereto. As the appendix demonstrates, and as is discussed more fully below, the relevant proposed tariff language and relevant Description and Justification (D&J) language of each is substantially identical.

[4] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund,* WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, 17934-35 ¶ 801 (2011), *aff'd sub nom.*, *In re: FCC 11-161*, Nos. 11-9900, *et al*., 753 F.3d 1015 (10th Cir. 2014), *petitions for rehearing en banc denied*, Orders, Aug. 27, 2014, *cert. denied,* 135 S. Ct. 2072, May 4, 2015 (Nos. 14-610, *et al*.) (*Transformation Order*).

[5] 47 C.F.R. § 51.907(g).

[6] 47 C.F.R. § 51.907(g)(2).

"Terminating To Telephone Company End Offices"). Verizon proposes tariff language that would interpret the Rule 51.907(g)(2) affiliate language at issue as mandating that tandem switched transport rates for "Terminating To Telephone Company End Offices" traffic must be reduced to $0.0007 while tandem switched transport rates for "Terminating To Third Party" traffic remains unchanged. Verizon's tariff does not explicitly define what these terms mean – an independent basis for rejecting it. But, regardless the Description and Justification (D&J) accompanying Verizon's tariff filings at issue, in turn, states that "Terminating To Third Party" includes traffic terminating to *all* CLEC, independent telephone company, and CMRS provider networks. In other words, Verizon suggests that "Terminating To Telephone Company End Offices" refers only to traffic terminating from a Verizon price cap ILEC-owned tandem to its own or any other Verizon price cap ILEC end office. As such, the proposed tariff language is unlawful. Verizon's price cap ILECs have a variety of affiliates – including CMRS providers and CLECs. For the reasons described more fully below, the proper reading, from a plain language and policy perspective, of the Rule 51.907(g)(2) language at issue, is that it precludes tandem charges when the end office owner is affiliated to the tandem owner – with "affiliated" and "end office" defined broadly consistent with Section 3 of the Act.[7] And, as described below, accepting the proposed Verizon tariff language as permitted or required by Rules 51.907(g)(2) would be arbitrary and capricious and violate due process and the *Administrative Procedure* Act.[8] And the proposed Verizon tariff language violates the *Transformation Order* and Rules

[7] 47 U.S.C. § 153(2).

[8] *See, e.g.*, 5 U.S.C. §§ 553(b), (c), (e).

51.907(g)(2) and 51.907(h) and therefore is unlawful and in violation of Section 201(b) of the Act.[9]

Accordingly, the Commission should suspend and investigate Verizon's tariffs in order to ensure that CenturyLink and other carriers will be able to recoup charges assessed under Verizon's unjust and unlawful tandem-switched transport rates once the Commission confirms its unlawfulness.

## II. BACKGROUND

In Years 1 (2012) and 2 (2013) of the ICC transition rules adopted in the *Transformation Order*, carriers moved many terminating intrastate access and non-access rates into parity with interstate rates.

In Years 3-5 (2014-2016), terminating end office rates were reduced to $0.0007 in three steps.[10]

The Commission's rules now anticipate that, in Year 6 (2017), terminating end office rates are to be moved permanently to zero.[11]

Additionally, the rules also anticipate that a subset of tandem switching and transport rates are expected to move to $0.0007 in Year 6 (and then to zero in Year 7 (2018)).[12] Price cap carrier and rate of return carrier tandem switching and transport rates were capped immediately by the *Transformation Order* and higher intrastate rates for these services were moved to parity with interstate rates in Years 1 and 2.[13] And, the *Transformation Order* and Commission rules

[9] 47 U.S.C. § 201(b).

[10] *Transformation Order*, 26 FCC Rcd at 17934-35 ¶ 801; 47 C.F.R. §§ 51.907(d)-(f).

[11] *Transformation Order*, 26 FCC Rcd at 17934-35 ¶ 801; 47 C.F.R. § 51.907(g).

[12] *Transformation Order*, 26 FCC Rcd at 17934-35 ¶ 801; 47 C.F.R. §§ 51.907(g) and (h).

[13] *Transformation Order*, 26 FCC Rcd at 17934-35 ¶ 801; 47 C.F.R. §§ 51.907(a)-(c).

anticipated that rates for tandem switching and transport rates would not be further impacted by Years 3-5.[14] But, as noted, the rules anticipate that rates for a subset of these terminating access services, when provided by price cap carriers, move to $0.0007 in Year 6 and then to zero in Year 7.

Contemporaneous with the *Transformation Order*, the Commission issued a Further Notice of Proposed Rulemaking (*Transformation Order FNPRM*) in which it raised questions regarding the future status of tandem services more comprehensively.[15] However, five and a half years later, those issues have not been resolved.

Moreover, as the industry has gone to try and implement the Years 6/7 language in the *Transformation Order* regarding tandem-switched transport, it has become clear that some in the industry plan to take an approach that is simply not supported in the rules[16] – and that it is, indeed, now clear in a way that it was not knowable at the time of the issuance of the *Transformation Order* that the Commission has not adequately considered the full impact of a transition of even a subset of price cap tandem transport services to bill and keep in Years 6 and

[14] *Transformation Order*, 26 FCC Rcd at 17934-35 ¶ 801; 47 C.F.R. §§ 51.907(d) through (e).

[15] *Transformation Order*, 26 FCC Rcd at 17934 ¶ 801 (describing intent to provide rate-of-return carriers "additional time to transition as appropriate[]" their tandem transport and termination charges), 17943 ¶¶ 819-20 (discussing need to address further reform for rate of return tandem transport rates and tandem transport rates more broadly via the *Transformation Order FNPRM*), 18112-15 ¶¶ 1306-13 (raising issues in *Transformation Order FNPRM* re: tandem transport and termination not "fully address[ed]" by *Transformation Order* as well as future status of intermediate network services more broadly).

[16] As the stay petition filed by CenturyLink's Holding company made clear, this position appears to be based, at least in part, on informal guidance by Commission staff that this is the correct approach – a conclusion that, as the record in that proceeding demonstrates, is not supported by the relevant facts or law. Petition for Limited Stay of Transformation Order Years 6 and 7 ICC Transition – As It Impacts a Subset of Tandem Switching and Transport Charges, *Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al*. (Apr. 11, 2017); Public Notice, WC Docket No. 10-90, DA 17-388 (rel. Apr. 24, 2017).

7. Most importantly, for the purposes of this petition, there is not a lawful basis for the approach to these issues taken in the Verizon tariff filings at issue.

To begin with, the *Transformation Order* and the rules are not, themselves, consistent on the question of the reach of the Years 6/7 transition for tandem-switched transport. The *Transformation Order* states the following about where the Years 6/7 bill and keep transition for tandem-switched transport applies: "(1) for transport and termination within the tandem serving area where the terminating carrier owns the tandem serving switch; and (2) for termination at the end office where the terminating carrier does not own the tandem serving switch."[17] In other words, the order itself makes no mention of affiliates and states merely that traffic flows traversing tandem and end office combinations owned by the terminating carrier will be impacted. But, the Commission's rules then, without any explanation, define a different scope of services. Specifically, Rule 51.907(g)(2) states that the Year 6 transition step to $0.0007 applies to "terminating traffic traversing a tandem switch that the terminating carrier *or its affiliates* owns…" (emphasis added).[18] And, similarly, Rule 51.907(h) specifies that the Year 7 transition step to zero applies to "charges applicable to terminating tandem-switched access service traversing a tandem switch that the terminating carrier *or its affiliate* owns." (emphasis added).[19]

Verizon, however, proposes tariff language that interprets this Rule 51.907(g)(2) affiliate language in a way that has no basis in the rule or the *Transformation Order*. The currently

[17] *Transformation Order*, 26 FCC Rcd at 18112 ¶ 1306 and n. 2358 (internal reference omitted).

[18] 47 C.F.R. § 51.907(g)(2).

[19] 47 C.F.R. § 51.907(h).

effective tariff language in each of Verizon's access tariffs defines "Tandem Switched Transport" as follows:[20]

6.9.1 Switched Transport (Cont'd)
(B) Tandem Switched Transport

| | USOC | Monthly Rates | Usage Rate Fixed | Usage Rate Per Mile |
|---|---|---|---|---|
| Tandem Transport | | | | |
| Rate Zone 1 | | | $.000000 | $.000002 |
| Rate Zone 2 | | | $.000000 | $.000002 |
| Rate Zone 3 | | | $.000000 | $.000002 |
| Tandem Switching | | | | |
| - per MOU | | | | |
| Rate Zone 1 | | $ .001574 | | |
| Rate Zone 2 | | $ .001574 | | |
| Rate Zone 3 | | $ .001574 | | |
| -Dedicated Tandem Trunk Port Charge | | | | |
| -per Trunk | PT8NX | 12.50 | | |
| -Host/Remote-Fixed-Per MOU | | .000000 | | |
| -Host/Remote-Per Mile-Per MOU | | .000000 | | |
| Transport Multiplexing (DS3 to DS1) | | | | |
| -Per MOU | | .000000 | | |

In the transmittals at issue, Verizon proposes the following new tariff language:[21]

[20] *See*, Tariff F.C.C. No. 1, Section 6.9.1(B), Appendix 1 p. 1 of 14. *See also*, substantially the same approach as reflected in F.C.C. Tariff No. 11, Section 31.6.1(B), Appendix 1 pp. 2-5 of 14; F.C.C. Tariff No. 14, Section 4.6.2, Appendix 1 pp. 6-11 of 14; F.C.C. Tariff No. 16, Sections 6.6.6, 6.6.7, 6.6.10, Appendix 1 pp. 12-14 of 14.

[21] *See*, proposed Tariff F.C.C. No. 1, Section 6.9.1(B), Appendix 2 p. 12 of 71. *See also*, substantially the same approach as reflected in proposed F.C.C. Tariff No. 11, Section 31.6.1(B), Appendix 2 pp. 27-29 of 71; proposed F.C.C. Tariff No. 14, Section 4.6.2, Appendix 2 p. 38 of 71; proposed F.C.C. Tariff No. 16, Sections 6.6.6, 6.6.7, 6.6.10, Appendix 2 pp. 66, 68, 70 of 71.

6.9.1 Switched Transport (Cont'd)
(B) Tandem Switched Transport

| | Originating | Terminating To Telephone Company End Offices | Terminating to Third Party |
|---|---|---|---|
| All Rate Zones -Per MOU | | | |
| Tandem Transport -Fixed | $ .000000 | $ .000000 | $ .000000 |
| Tandem Transport -Per Mile | $ .000002 | $ .000000 (R) | $ .000002 |
| Tandem Switching | $. 001574 | $ .000700 (R) | $ .001574 |
| Transport Multiplexing (DS3 to DS1) | $ .000000 | $ .000000 | $ .000000 |
| Host/Remote-Fixed -Per MOU | $ .000000 | $ .000000 | |
| -Host/Remote-Per Mile -Per MOU | .000000 | .000000 | |

Dedicated Tandem Trunk Port Charge

| | USOC | Monthly Rate |
|---|---|---|
| -per Trunk | PT8NX | $12.50 |

In other words, Verizon proposes tariff language that would interpret the Rule 51.907(g)(2) affiliate language at issue as mandating that tandem switched transport rates for "Terminating To Telephone Company End Offices" traffic must be reduced to $0.0007 while tandem switched transport rates for "Terminating To Third Party" traffic remains unchanged. Unfortunately, Verizon does not make clear in its actual tariff language how it defines "Terminating To Telephone Company End Offices" versus Terminating To Third Party – an independent basis for rejecting it. However, in the D&J accompanying these tariff filings, Verizon states the following:

> Section 51.907(g)(2) of the Commission's rules requires that effective July 1, 2017, price cap carriers must reduce the terminating tandem-switched transport (TST) per minute of use (MOU) rate elements associated with calls terminating to Verizon LEC end offices to a composite rate level of $0.0007 per minute of use from current rate levels. In order to determine terminating TST rate element demand that was subject to rate this reduction, rate element demand was obtained via CABS billing records for the base period October 2010 through September 2011. *Since total demand quantities had been previously reported, demand quantities for calls terminating to third-party networks was identified and removed from total quantities, in order to provide demand quantities that were targeted for rate reduction. Third party networks included all Competitive Local Exchange Carrier (CLEC), Independent Telephone Company (ITC), and Wireless Service Provider networks.*
>
> *As mentioned above, only terminating TST rates for calls terminating to Verizon LEC end offices are subject to a rate reduction from current rate levels, therefore no rate changes were made TST rate elements for calls terminating to third party networks.* Since the terminating TST composite rate cannot exceed $0.0007 per MOU, the current terminating tandem switching usage rate of $0.001574 per MOU was reduced to $0.0007 per MOU and all other terminating TST per MOU rates currently above $0.0000 per MOU were lowered $0.0000 per MOU for calls terminating to Verizon LEC end offices. (emphasis added)[22]

The proposed Verizon tariff language is unlawful for the reasons described below.

## III. VERIZON's PROPOSED TARIFF LANGUAGE IS UNLAWFUL.

The Commission must reject Verizon's attempt to comply with the Rules 51.907(g)(2) and 51.907(h) language described above by adopting tariff language that requires solely traffic flows traversing a price cap tandem to an end office owned by the price cap carrier or by another price cap ILEC owned by the same Holding Company to transition to $0.0007 and then $0.0 in Years 6 and 7, respectively.

[22] *See*, Transmittal No. 1347 for proposed Tariff F.C.C. No. 1 language, Appendix 3 p. 18 of 25. *See also*, this same Transmittal No. 1347 for proposed F.C.C. Tariff No. 11, Appendix 3 p. 18 of 25; this same Transmittal No. 1347 for proposed F.C.C. Tariff No. 14, Appendix 3 p. 18 of 25; this same Transmittal No. 1347 for proposed F.C.C. Tariff No. 16, Appendix 3 p. 18 of 25.

Nowhere in the *Transformation Order* or rules does the Commission define what "affiliates" are referred to in this language. Nor is "affiliate" defined in Part 51 of the Commission's rules.

However, "affiliate" is defined in Section 3 of the Telecommunications Act (47 U.S.C. §153(2)) as:

> a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.

In light of the above, the proper reading, from a plain language and policy perspective, is that the Rule 51.907(g)(2) and 51.907(h) language described above precludes tandem charges when the end office owner is affiliated to the tandem owner – with "affiliated" defined broadly consistent with Section 3 of the Act. In other words, for Verizon, whose price cap ILECs have a variety of affiliates – including CMRS providers and CLECs, the rule language precludes tandem charges when the end office owner is any of these entities.

To begin with, following customary rules of interpretation, this reading is most consistent with the rule language itself. The full Rule 51.907(g)(2) language states (including related subsections) as follows:

> (g) *Step 6.* Beginning July 1, 2017, notwithstanding any other provision of the Commission's rules:
>
> (1) Each Price Cap Carrier shall, in accordance with a bill-and-keep methodology, refile its interstate access tariffs and any state tariffs, in accordance with § 51.905(b)(2), removing any intercarrier charges for terminating End Office Access Service.
>
> (2) Each 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.
>
> (3) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any

intrastate tariff filing or intrastate tariff revisions raising such rates. (emphasis added)

And, the full Rule 51.907(h) language states as follows:

> (h) *Step 7*. Beginning July 1, 2018, notwithstanding any other provision of the Commission's rules, each Price Cap carrier shall, in accordance with bill-and-keep, as defined in §51.713, revise and refile its interstate switched access tariffs and any state tariffs to remove any intercarrier charges applicable to *terminating tandem-switched access service traversing a tandem switch that the terminating carrier or its affiliate owns*. (emphasis added)

Read in context, the text of these rules itself makes clear that the rule is expressly addressing the Price Cap Carrier's tandem charges and is specifying the circumstances where those charges are to be reduced to $0.0007 in Year 6 and to $0 in Year 7. And, read most plainly in both contexts, the "affiliates" language at issue is best read as intending that the $0.0007 Year 6 rate and the $0 Year 7 rate, respectively, apply whenever the terminating carrier or *its* (i.e. the terminating carrier's) "affiliate" owns the tandem. Clearly, the better reading of this language is that the language precludes tandem charges when the end office owner is affiliated to the tandem owner – with "affiliated" and end office defined broadly. Conversely, there is not a lawful basis within the text of the rules to conclude that the rule language somehow intends that only the subset of tandem charges identified in Verizon's tariff language is to be impacted.

Moreover, as between this reading and an alternative reading that would require solely traffic flows traversing a price cap tandem to an end office owned by another price cap ILEC owned by the same Holding Company, the former is also more consistent with the overall reforms adopted by the *Transformation Order*.[23] The *Transformation Order* sought to eliminate

[23] To be clear, as CenturyLink's holding company has made clear in its prior filings, a stay of the Years 6 and 7 transitions for the industry's tandem switching and transport charges is *the best* approach at this point. A stay is the only approach that will prevent a confusing morass as carriers take a variety of different approaches to the Section 51.907(g) requirements in the Year 6 annual tariff filing process that begins June 16, 2017. Additionally, this is the approach that is

the prospect of an end office owner (defined broadly – e.g. ILEC, CLEC, CMRS provider) recovering for its terminating functions and nowhere did it indicate that it sought to impose reforms that impacted ICC rates for the same service differently depending on the type of carrier that owned the facilities.

In all events, it is not lawful to read the Rules 51.907(g)(2) and 51.907(h) affiliate language described above as permitting or requiring solely traffic flows traversing a price cap tandem to an end office owned by another price cap ILEC owned by the same Holding Company to transition to $0.0007 and then $0 in Years 6 and 7, respectively. Without any lawful basis in the rules or adopting order and contrary to the plain meaning of the rule language, this interpretation would adopt a view that "affiliates" means just one type of affiliate. Indeed, as described above, there is a conflict between the *Transformation Order*, itself, and the rules above. The *Transformation Order* contained no discussion of an impact to traffic flows handled by affiliate-owned tandem and end office facility combinations, and 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. But, the Rules 51.907(g)(2)

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*most consistent* with the overall reforms adopted by the *Transformation Order*. As CenturyLink's stay petition explained, there will be irreversible competitive harm in Years 6/7 and beyond and arbitrage schemes that have already been launched in anticipation of this transition will only expand. A stay by the Commission will, at least temporarily, stave off many of these problems and permit the Commission to more carefully consider the best ICC approach to appropriately deal with the entire suite of tandem services at this point in time. Clearly, the full impact of a transition of even a subset of price cap tandem transport services to bill and keep in Years 6 and 7 was not adequately considered by the Commission in the *Transformation Order*. Indeed, the Commission could not have anticipated the market changes and arbitrage schemes that have emerged since 2011. Given this, the best approach at this point in time is to suspend any further transition for those tandem services until those impacts can be weighed. Grant of CenturyLink, Inc.'s stay request will merely preserve the status quo while the Commission addresses these fundamental concerns. But, in the event a stay is not granted, CenturyLink's IXC challenges the Verizon tariff filings on the grounds stated herein.

and 51.907(h) affiliate, etc. language addresses traffic flows handled by affiliate-owned tandem and end office facility combinations.

Assuming *arguendo* that is it possible to resolve this conflict between the order and the rules, it is not lawful to resolve that conflict in a way that interprets the rules as somehow putting carriers on notice that the Commission expected that solely traffic flows traversing a price cap tandem to an end office owned by another price cap ILEC owned by the same Holding Company would transition.[24] Particularly given that the only definition of affiliate contained in the Commission's rules or the Act is the broad definition contained in Section 3 as described above.

In this light, accepting the proposed Verizon tariff language as permitted or required by Rules 51.907(g)(2) and 51.907(h) affiliate language would be arbitrary and capricious and violate due process and the *Administrative Procedure Act*.[25] Without a lawful basis in the rules or adopting order and contrary to the plain meaning of the rule language, this interpretation would adopt a view that "affiliates" means just one type of affiliate.

Finally, any potential arguments Verizon may make in response to this petition, as indicated by AT&T's arguments in response to a similar petition challenging a similar approach,[26] cannot hold water. For example, AT&T argued that "[t]he 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

[24] *See, e.g., FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012)( regulation must be invalidated where it "fails to provide a person of ordinary intelligence fair notice of" its meaning); *see also Timpinaro v. SEC*, 2 F.3d 453, 460 (D.C. Cir. 1993).

[25] *See, e.g.*, 5 U.S.C. §§ 553(b), (c), (e) and 5 U.S.C. § 553, *et seq*., generally.

[26] AT&T's Opposition to CenturyLink's Petition to Reject and to Suspend and Investigate AT&T Tariff Filings, Ameritech Operating Companies Tariff F.C.C. No. 2, *et al*., Transmittal Nos. 1859, *et al*., filed June 20, 2017.

such, owns both the end office and tandem switches."[27] But, looking at the plain language of the rule ("Each 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. "),[28] it is clear that Price Cap Carrier is actually a reference to the tandem owner. And, it is also clear that the rule applies whenever that Price Cap Carrier (which is by definition the tandem owner) is also either the terminating carrier or is affiliated to the terminating carrier. AT&T also argued that "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." [29] And, it argues that "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. "[30] But, the same economic result can also be accomplished, simply, in a scenario where price cap ILEC is providing tandem services for a CMRS affiliate "end office." There, price cap ILEC can simply charge the CMRS affiliate for the services and the CMRS affiliate can, in turn, pass it on to its end user. Moreover, the lack of an ARC for anyone but ILECs is not evidence that the Commission, in the *Transformation Order*, intended to limit the scope of its reform to ILECs. It simply reflects the fact that other types of carriers (i.e. CLECs and CMRS providers) are already able to charge their end users

[27] *Id.*, at p. 4.

[28] 47 CFR 51.907(g)(2).

[29] *Id.* at n. 5.

[30] *Id.* at n. 5.

whatever they want and don't need an ARC. AT&T also argued that applying the "affiliate" rule language at issue more broadly would effectively prejudge the edge and intermediate carrier functionality questions teed-up in the Commission pending ICC FNPRM.[31] But, this argument ignores the fact that even the more narrow definition of the rule language has this same effect – it just creates greater asymmetry because, without any supporting discussion in the *Transformation Order* and contrary to the expressly stated fundamental goal of *Transformation Order* of establishing *more* uniform ICC rules, prejudges these issues solely for a more narrow subset of call flows/network configurations. For all these reasons, the proposed Verizon tariff language violates the *Transformation Order* and Rules 51.907(g)(2) and 51.907(h) and therefore is unlawful and in violation of Section 201(b) of the Act.[32]

## IV. THE COMMISSION SHOULD PRESERVE INTERCONNECTING CARRIERS' RIGHTS BY SUSPENDING VERIZON'S ACCESS CHARGE TARIFF FILINGS FOR INVESTIGATION.

In light of the high probability that the Commission will find Verizon's tariff language discussed above unlawful upon investigation, the Commission should suspend Verizon's annual access tariff filings. If the filings are not suspended, Verizon's tariff filing will be "deemed lawful," and the ability of interconnecting carriers such as CenturyLink to recover excess switched transport charges assessed prior to the Commission's determination that the charges are unlawful will be compromised.[33] At a minimum, suspension of Verizon's filings is justified because Verizon's non-compliance with Rules 51.907(g)(2) and 51.907(h) affiliate language

[31] *Id.* at n. 5.

[32] 47 U.S.C. § 201(b).

[33] *See* 47 U.S.C. § 204(a)(3); *see also AT&T Corp., Complainant, v. Alpine Communications, LLC, et al., Defendants*, File No. EB-12-MD-003, Memorandum Opinion and Order, 27 FCC Rcd 11511, 11528 ¶ 43 (2012) ("[A]lthough tariffs that are 'deemed' lawful are not subject to refunds, if a 'later reexamination shows them to be unreasonable,' the Commission may afford prospective relief.") (citation omitted).

raises "substantial questions of law and fact" and presents a "substantial risk that ratepayers or competitors would be harmed if the proposed tariff revisions were allowed to take effect."[34] Thus, the factors set forth in Rule 1.773(a) (i.e. high probability tariff would be found unlawful, harm to competition more substantial than any potential injury from the unavailability of the service pursuant to the proposed terms, irreparable harm if tariff not suspended, and suspension would serve the public interest) are all demonstrated.[35] Accordingly, the Commission should suspend Verizon's tariff filings and, after investigation, confirm that its proposed tariff language to comply with the Rules 51.907(g)(2) and 51.907(h) language is unlawful.

## V. CONCLUSION

For the reasons described herein, the Commission accordingly must reject Verizon's access charge filings and require Verizon to file new tariffs that comply with the *Transformation Order* and Rules 51.907(g)(2) and 51.907(h). In the meantime, the Commission should suspend

[34] *See Implementation of Section 402(b)(1)(A) of the Telecommunications Act of* 1996, CC Docket No. 96-187, Notice of Proposed Rulemaking, 11 FCC Rcd 11233, 11239-40 ¶ 13 (1996) (citations omitted).

[35] 47 C.F.R. § 1.773(a).

Verizon's tariff filings for investigation to ensure that CenturyLink and other carriers will be able to recoup any unjust and unreasonable charges they pay for Verizon's service.

Respectfully submitted,

**CENTURYLINK COMMUNICATIONS, LLC**

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June 23, 2017

## CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify that on this 23rd day of June 2017, the foregoing PETITION OF CENTURYLINK COMMUNICATIONS, LLC TO REJECT AND TO SUSPEND AND INVESTIGATE VERIZON TARIFF FILINGS was served on the following parties in the following manner:

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