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

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| **In the Matter of** | ) |
| | ) |
| **Core Communications, Inc.** | ) |
| | ) |
| **FCC Tariff No. 3, Transmittal No. 17** | ) |

**CORE COMMUNICATIONS, INC.'S RESPONSE TO PETITION OF VERIZON AND AT&T TO SUSPEND OR REJECT CORE'S REVISED TARIFF**

Core Communications, Inc. ("Core") pursuant to 47 C.F.R. § 1.773(b)(l)(iii), hereby responds to the Petition ("Joint Petition") of Verizon and AT&T ("Petitioners")[1] filed on April 28, 2021. The Joint Petition presents no credible basis to request the suspension or rejection of Core's FCC Tariff No. 3 (the "Tariff'), Transmittal No. 17 (the "Transmittal") filed April 22, 2021. Accordingly, the Commission should summarily reject the Petition.

## SUMMARY OF ARGUMENT

The Commission should reject the Petition for two reasons. First, Petitioners fatally fail to satisfy the four-part test set forth in 47 C.F.R. § 1.773(a)(ii). Petitioners made no effort to prove any of these elements. Failing to prove one element mandates rejection of the Petition. For this reason alone, the Commission is obligated to reject the Petition.

Second, each of the Petitioners' three reasons why Core's tariff filing is purportedly unlawful fails. To Petitioners' first point, Core's tariff no more grants itself the presumption that its traffic is lawful than any other tariff – particularly Petitioners' ILEC affiliates' tariffs. Of course the traffic billed under Core's tariff is presumed lawful -- and so is all the traffic billed under

[1] Here, and elsewhere in the Reply, references to "Petitioners" include the various Verizon and AT&T price cap ILECs.

Petitioners' ILEC affiliates' tariffs. To their second point, Core's tariff revises provisions to even *more closely* match Petitioners' ILEC affiliates' tariffs when it comes to disputes, and establishes a simple, straightforward mechanism by which carriers can obtain refunds where there are legitimate concerns that the traffic is fraudulent or otherwise unlawful. The proposed new late payment charges create a much-needed disincentive for IXCs to engage in blatant "self-help" by refusing to pay billed charges or make a reasonable, good faith dispute. To the third point, Core again is revising its tariff to closely mirror the discontinuance of service and 8YY query billing provisions of Petitioners' ILEC affiliates' tariffs. Oddly, it is the precise wording from Petitioners' ILEC affiliates' own tariffs that appears most distressing to the Petitioners.

Regarding Petitioners' curious rambling about withdrawn and then later refiled tariffs, it is troubling that Petitioners have chosen to so mischaracterize the tariff filing and development process. Petitioners are fully aware that FCC Staff works with parties to develop acceptable tariff provisions (whether a petition has been filed it or not), and that this process of withdrawing filed tariffs and filing revised tariffs provides more time for detailed Staff discussion and review. Such discussions are often initiated by FCC Staff and are the antithesis of "an abuse of the deemed lawful statutory provision." Such processes were - and obviously still are – necessary to create and maintain a competitive market.

## ARGUMENT

### I. THE PETITIONERS FAIL TO MEET THEIR BURDEN UNDER SECTION 1.773(a)(1)(ii)

Petitioners acknowledge their burden to satisfy the factors in § 1.773(a)(1)(ii) for tariff challenges (Petition at 1), yet they failed to do even a cursory analysis of them. Section 1.773(a)(1)(ii) requires a tariff challenger to make the following showing:[2]

> (A) That there is a high probability the tariff would be found unlawful after investigation;
>
> (B) That the harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing;
>
> (C) That irreparable injury will result if the tariff filing is not suspended; **and**
>
> (D) That the suspension would not otherwise be contrary to the public interest.

Core's tariff is "*prima facia* lawful," and the Commission "will not" suspend a tariff filing unless all four prongs are satisfied. *Id*., *see also* Ameritech Operating Companies Tariff F.C.C. #2 Transmittal No. 1666 et al. FCC 08-42 (Feb. 7, 2008) (denying petitions to reject or suspend tariff transmittals filed by AT&T Inc. and noting that a petitioner must satisfy each and every element of the four part test).

Petitioners make no effort to satisfy the applicable standards or even to suggest that "irreparable injury will result if the tariff filing is not suspended."[3] Neither "irreparable injury" nor "irreparable harm" appears in the Petition. Petitioners similarly offer nothing resembling the public interest analysis required by 47 C.F.R. § 1.773(a)(1)(ii)(D). These reasons alone require Commission rejection of the Petitioners' tariff challenge.

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[2] 47 C.F.R. § 1.773(a)(1)(ii) (emphasis added).
[3] 47 C.F.R. § 1.773(a)(1)(ii)(C).

To the extent it could be said that Petitioners have attempted to satisfy 47 C.F.R. § 1.773(a)(1)(ii)(A) and (B), Petitioners further fail to meet their burden as described in the sections that follow**.**

## II. PETITIONERS' *AD HOMINEM* ATTACKS HAVE NO BEARING ON CORE'S TRANSMITTAL NO. 17

Verizon's lengthy *ad hominem* attacks on Core speak to its motivations in challenging Core's tariff. Verizon does not seek any specific policy or regulatory result; it simply wants to thwart Core at every possible turn. Having delayed, in bad faith, provision of facilities-based interconnection with Core in multiple LATAs over many years, having suspended all intercarrier compensation payments to Core since 2011, and having misbilled Core at inflated access tariff rates for interconnection, when cost-based TELRIC rates should apply, Verizon now argues that it should be granted *carte blanche* to withhold payment on every Core switched access bill, regardless of when, how or even *if* Verizon deigns to file a dispute.

Multiple courts and administrative agencies have found that Verizon incorrectly billed Core for facilities and services, violated interconnection agreements, violated federal law, and engaged in anticompetitive activities against Core.

Verizon has displayed an unwavering hostility against Core for its entire existence. Beginning in 2004, Verizon was found on multiple occasions to have delayed interconnecting with Core *in bad faith*, delays which stunted Core's ability to expand its network.[4] Verizon has

[4] *Core Commc'ns, Inc. v. Verizon Maryland Inc.*, 95 Md. P.S.C. 13 (Feb. 26, 2004) ("Verizon refused to offer the use of the existing loop and multiplexer once Core expressed its interest and instead denied the use by its assignation to an unnamed customer of record. The fact that this customer happened to be Core itself shows lack of full disclosure by Verizon and failure to deal in good faith, so that the record shows improper delay by Verizon in this interconnection which could have been provided in a more timely manner using the existing excess capacity as proposed by Core."); *In the Matter of the Complaint of Core Commc'ns, Inc. v Verizon Maryland Inc.*, 103 Md. P.S.C. 272 (July 13, 2012) ("If facilities were not available, the ICA required that Verizon cooperate in good faith so that *both parties* could develop alternative solutions to accommodate Core's interconnection request. Verizon failed to cooperate in good faith, thereby preventing a more timely interconnection with Core.").

also been found to have withheld compensation due Core without any lawful basis.[5] Further, Verizon has a long-running history of mis-billing Core and its affiliates at relatively high access tariff rates when much lower, cost-based "TELRIC" rates should apply, as set forth in Core's interconnection agreements. Multiple courts and commissions have come to this same conclusion.[6] This mis-billing has severely limited Core's ability to forecast its true costs, obtain financing, and otherwise plan its business. Finally, Verizon violated the automatic stay with respect to an affiliate of Core in a Chapter 11 bankruptcy proceeding,[7] further underlining Verizon's irrational animus against Core and its related entities.

## III. PETITIONERS' ALLEGATIONS REGARDING CORE'S TRAFFIC ARE FALSE AND HAVE NO BEARING ON CORE'S TRANSMITTAL NO. 17

With respect to Core's switched access charges, Petitioners are patently disingenuous when they insinuate, at 6, that traffic Core handles is somehow not "legitimate."

Core, through and including its parent and affiliated companies, is an industry leader in the fight against illegal robocalls. Core's parent company, CoreTel Communications, Inc. is an

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[5] *Core Communications, Inc. v. Verizon Pennsylvania Inc. & Verizon North LLC*, P-2011-2253650, 2011 WL 5121092, at *1 (Sept. 12, 2011) ("Verizon has instituted what amounts to a 'self-help' remedy by unilaterally deciding to withhold payment to Core for the traffic at issue without providing a factual or legal basis for such unilateral action. Verizon's conduct appears to violate the spirit, if not the letter, of the Commission-approved ICAs between the Parties.").

[6] *See Core Communications, Inc. v. Verizon Pennsylvania Inc. et al.*, Pa.P.U.C. Docket No. C-2011-2253750 (Dec. 23, 2016) ("[I]n accordance with the Supreme Court's decision in *Talk America,* we believe Core should be billed at TELRIC rates for the LITG entrance facilities it leased from Verizon PA."). *See also*, *CoreTel Va., LLC v. Verizon Va., LLC*, 752 F.3d 364, 371, 2014 U.S. App. LEXIS 8902, *14, 60 Comm. Reg. (P & F) 317, 2014 WL 1891233 ("Though Verizon contends otherwise, the most natural reading of these provisions is that the TELRIC rates listed at Exhibit A § A.II.C. are the 'rates and charges, set forth in this Agreement' referred to in ICA § 4.3.3 . . . . [T]he Core/Verizon ICA entitles Core to order entrance facilities for interconnection at TELRIC."); *CoreTel Virginia, LLC v. Verizon Virginia LLC*, *et al.*, U.S.Br.Ct. (D.Md.) Adv. Proc. No. 16-00123, Unpub. Order Granting in Part and Denying in Part Cross Motions for Summary Judgment, Doc. No. 88 (May 2, 2018) ("[W]ith respect to the transport and multiplexing facilities that Verizon billed to Core at Verizon's tariffed rates, summary judgment is granted in favor of Core and against Verizon. The TELRIC rates in the ICAs, not the rates in Verizon's tariffs, apply to those transport and multiplexing facilities.").

[7] *CoreTel Virginia, LLC v. Verizon Virginia LLC*, *et al.*, U.S.Br.Ct. (D.Md.) Adv. Proc. No. 16-00123, Doc. No. 88, at 6.

active member of the Communications Fraud Control Association (CFCA),[8] participates in regularly scheduled industry calls about trends in robocall mitigation and coordinates closely with upstream and downstream carriers to isolate, mitigate and eliminate illegal robocall traffic. Core has processes in place to vet wholesale customers throughout the contracting, testing and turnup phases. Core stores large volumes of call data relating to suspect calls, responds in a timely and helpful manner to ITG and law enforcement requests for traceback information, and routinely blocks suspect traffic when it can be identified with reasonable certainty.

Core contests Petitioners' self-serving conclusion that traffic it sends is not "legitimate." Verizon's in-house analysis of Core's traffic is flawed in many respects, chiefly, in that it purposefully relies on data that was translated into billing record formats, instead of raw switch records data, which is the most accurate and helpful form of call record for identifying illegal robocalls. If one refers to the raw data, Verizon's allegations of "all-zero numbers and unassigned NPAs or NPA-NXXs" shrink to fractions of a percentage of the total volume of traffic at issue. Further, contrary to Verizon's insinuation, there are valid reasons why thousands of calls daily would originate from a specific telephone number, the most obvious being that the number is associated with a high-volume business account that places many calls in the course of its daily activities. Finally, Verizon's reference to "8YY traffic under invalid CLLI codes, including… NOWAYISOURS" is patently false and misleading because that code indicates that a carrier sent Core traffic that did not appear to be destined to a Core end office, a phenomenon Core cannot control, and appears only in Core's terminating access bills, **not** the originating access bills relating to 8YY traffic. Notably, the total amount Core billed under CLLI

[8] https://cfca.org/member-companies/.

NOWAYISOURS in the invoice about which Verizon complained is $0.66 (sixty-six cents), out of total overall amount billed of $6,101.00.

Verizon's references to these putative disputes are further misleading in that they suggest Verizon routinely reviews records relating Core bills and regularly submits disputes of those bills based on its reviews. In fact, Verizon has simply withheld 100% of switched access charges billed by Core pursuant to its tariffs since 2011. Prior to submitting expert disclosures in ongoing litigation in late 2020, in which Verizon first unveiled its allegations of illegal robocall traffic, Verizon had for years failed to provide Core with any basis to dispute Core's invoices for originating switched access charges. In fact, Verizon itself points to just two (2) written records of Verizon disputing any of Core's switched access invoices, ever:

- A letter from 2011 which raised issues of alleged "traffic pumping" in a single Philadelphia end office, for traffic that Verizon delivered to Core.
- An email, also from 2011, asking whether Core does its own tandem switching.

To be sure, Core contests Verizon's allegations of traffic pumping, and asserts without hesitation that it performs tandem switching (a fact which AT&T notably has conceded in correspondence to Core). Those issues will be resolved in litigation. As relevant here, Verizon's don't pay/don't dispute tactics against Core are consistent with Verizon's longstanding history of not paying competitive carriers, then waiting until after litigation commences to selectively reveal the shifting nature of its disputes.[9]

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[9] , See, e.g., Peerless Network, Inc. v. MCI Communs. Servs., 2018 U.S. Dist. LEXIS 178031, *7-9, 2018 WL 5024923 ("Verizon has had numerous opportunities to comply with the Tariff and has consistently failed to do so…. Verizon's continued attempt to delay paying Peerless for services Peerless has already provided necessitates granting Peerless's motion to enforce. [I]f Verizon chooses to dispute any portion of the invoice, it must dispute those charges in accordance with the Tariff's terms. That includes providing Peerless with a timely notice of what the disputed charges are with sufficient documentation to investigate the dispute, including account number under which the bill was rendered, the date of the bill, and the specific items on the bill being disputed. If the parties still cannot reach an agreement, Verizon may file a complaint with the FCC… [H]owever, Verizon may not

## IV. PETITIONERS' RAMPANT SELF-HELP BEHAVIOR DEMONSTRATES THE NEED FOR, AND APPROPRIATENESS OF, CORE'S REVISIONS UNDER TRANSMITTAL NO. 17

**Verizon**

In a case centered on Core's attempt to collect unpaid switched access charges going back to 2010, Verizon produced an expert report which concluded that 100 % of the originating switched access traffic Core sent Verizon was allegedly "non-compensable" because Core's traffic was "fraudulent or the product of illegal activity" and "easy for fraudsters to generate." In a subsequent motion to compel materials relating to Core's traffic, Verizon doubled-down on its fraud theory, telling the court that "Verizon believes that many, if not all, of those calls were not genuine calls dialed by a person trying to call a toll-free number, but rather were artificially generated by third-party traffic generators just to sell them to companies like Core, which then turn around and bill Verizon for delivering them. This is a widely decried and fraudulent practice known as 'traffic pumping.'"[10]

After Verizon refused to provide discovery to corroborate whether it made any attempt to credit its own customers for the same traffic it labelled as fraudulent and non-compensable, Core filed its own motion to compel. In a recent hearing about the competing motions to compel, Verizon, recognizing that its allegations of "fraud" would require a specific factual underpinning, backed down from its fraud theory, insisting only that "Verizon is using the term "fraud" and

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continue to withhold payment on a unilateral basis." The court then ordered Verizon "to follow the dispute procedures as discussed in the Tariff…. Verizon's attempt to avoid those charges altogether is not taken in good faith. If Verizon continues to evade the Tariff's terms, the Court will hold a show cause hearing to demonstrate why Verizon should not be held in contempt for continuously failing to comply with the Court order regarding Peerless's Tariff.").

[10] MCI Communs. et al. v Core Communications, Inc., U.S.Br.Ct. (D.D.C.) Case 19-10003-ELG, Verizon Motion to Compel Discovery, Doc. 62 (Jan. 5, 2021), at 1-2.

"fraudulent" here not to accuse Core of committing the actionable tort of fraud. These are colloquialisms shorthand for auto-dial calls and robocalls, and we don't really understand Core's hankering about this…."[11] Despite admitting that it received traffic from Core and delivered that traffic to its customers, Verizon continues to resist producing proof that it credited back any customer charges relating to the same traffic for which it withholds 100 % of compensation from Core.

In sum, Verizon uses terms like "fraud" to paint CLECs like Core as "fraudsters" (and therefore, presumably unworthy of compensation) but when confronted with problems of proof, slinks away undoubtedly to seek a less burdensome excuse not to pay. Verizon also seeks to hold Core to meet some unidentified, shifting standard for "compensable" traffic, even as Verizon collects compensation from its customers for that same traffic. This is the type of rampant self-help and abuse which Core's current tariff revisions is intended to curb.

**AT&T**

In contrast to Verizon, AT&T has made (extremely) limited payments and cursory attempts to identify and discuss its putative disputes of Core's originating switched access bills. Nonetheless, AT&T is clearly committed to a strategy based on self-help non-payment coupled with reluctant, drawn-out negotiations culminating in low-ball offers to settle and demands that Core walk away from its rights to collect lawfully-tariffed switched access charges. A few salient examples may suffice to illustrate AT&T's tactics:

- After paying Core's originating switched access bills for 18 months, AT&T abruptly stopped paying any amounts in August, 2018, without substantial explanation.

[11] MCI v. Core, Transcript of Motion Hearing (Apr. 21, 2021), at 47, lines 7-11. An excerpt from this transcript is attached hereto as Exhibit 1.

- Even after beginning discussions about Core's unpaid bills, AT&T goes silent for weeks and months at a time, forcing Core to repeatedly recapitulate previous discussions and provide data that was previously provided;
- AT&T premises an unidentified but presumably substantial portion of its withholdings based on "suspect" traffic, yet has never been able to identify more than a handful of tickets that relate in any way to suspect traffic Core delivered to AT&T;
- Early in discussions about Core's bills, AT&T demanded a list of all Core's customers, purportedly to satisfy its concerns about suspect traffic. When Core produced a list of its customers, on October 6, 2020, AT&T disregarded the list and continued to allege suspect traffic;[12]
- Instead, in response to Core's October 6, 2020 email, AT&T raised the specter that Core's alleged, unrelated business dealings with Free Conference Call and "Boss Revolution" (a company about which Core knows nothing) somehow "rocks in the machinery of reaching a settlement" relative to switched access charges owed by AT&T to Core, implying that Core would need to terminate those business relationships as a precondition to payment.
- After years of complete non-payment, AT&T agreed, in an email dated October 26, 2020, to pay 10% of Core's bills going forward as a "good-faith" placeholder pending negotiations, but subsequently failed to pay anything until February 2021, then paid 100% of Core's bills for a limited period; then claimed it had made a mistake and issued

[12] An email trail encapsulating the salient discussions between AT&T and Core regarding switched access bills is attached hereto as Exhibit 2.

"disputes" which simply state that the payments were made in error and were subject to clawback.

- Also in its October 26, 2020, email, AT&T stated that the suspect traffic reports Core received from AT&T were only "samples" of suspect traffic, and AT&T had additional, unidentified proof of suspect traffic, which it had not shared with Core.
- Finally, on March 15, 2021, AT&T emailed Core a list of demands which essentially ignore and/or rewrite Core's deemed-lawful switched access tariff, including a demand Core grant AT&T "the right to in initiate withholding and/or 'claw-back' any payments made previously to Core for legitimate traffic based on report of problematic traffic by AT&T customers or detected by AT&T Global Fraud."[13]

Another CLEC has submitted sworn testimony that AT&T engaged in similar delay tactics during negotiations over switched access charges billed pursuant to lawful FCC tariffs. According to O1, AT&T (1) consistently delayed resolution of negotiated issues; (2) employed multiple teams of negotiators in succession, some of whom repudiated understandings reached with O1 by previous AT&T representatives; and (3) injected new or recycled issues, such as putative "spoofing" complaints, at strategic moments in the negotiation, to extract additional concessions.[14] All of these actions are clearly premised on, and calculated to exploit, the fact that for most CLECs, there is only one way to get paid by AT&T or Verizon for switched access charges: file suit in federal court.

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[13] AT&T's list of demands is attached hereto as Exhibit 3.

[14] O1 Communs. Inc. v AT&T Corp., U.S.Dist.Ct. (N.D.Cal.) Case 3:16-cv-01452-VC, Declaration of Michel Singer Nelson, Doc. 88-3 (Aug. 25, 2017), attached hereto as Exhibit 4.

## V. EACH OF PETITIONERS' PROFERRED REASONS TO REJECT CORE'S TARIFF FAILS.

(A) Petitioners make much of the non-issue that unblocked traffic is merely presumed to be legal traffic. All of the access traffic provided by Petitioners' ILEC affiliates is also presumed to be legal traffic -- unless Petitioners are now claiming that the access traffic they carry, and the bills they submit in connection with that traffic, is not even *presumptively* legal.

(B) Core's tariff uses dispute provisions that closely match Petitioners' ILEC affiliates' tariffed dispute provisions. Petitioners quote from the Core tariff provisions they find so egregious, apparently unaware that they may as well be quoting from their own tariffs!

> (Emphasis added)
> *Third*, while section 2.21 addresses one specific ground on which IXCs can dispute Core's invoices, the more general billing dispute provision in section 2.10.4(A) is unlawful because it makes Core the sole judge of whether any dispute is in **"good faith."** That provision says that an IXC ***must submit a dispute in writing*** to Core, and that Core will investigate the dispute and ***"notiff]y] the Customer in writing of the disposition."*** In the *Northern Valley Order*, the Commission held that a similar tariff provision — in which the CLEC was "the sole judge of whether any bill dispute has merit" — was unjust and unreasonable.[17]

Exhibit 5 demonstrates that Core's proposed dispute language is identical to Petitioners' ILEC affiliates' language, so any allegations by Petitioners against these provisions are meaningless.

(C) Core's provisions for a good faith dispute in the context of fraudulent traffic allegations are *alternative* requirements, not *additional* requirements. This simplified and

straightforward opportunity for Petitioners to obtain refunds for traffic it alleges is fraudulent is met with the argument that Petitioners should not have to refund fees *they* were paid for this traffic, but that Core must refund (or be content with never being paid) *its* fees. **Either Petitioners believe their end user contracts shield them from providing refunds on this traffic, or they do not actually believe or have any evidence that the traffic is fraudulent or otherwise non-compensable.** In other words, Petitioners believe it is compensable for them – just not for Core.

Core's tariff does not "interfere" with Petitioners' customer contracts in any way. Petitioners remain, of course, free to treat their end user customers in any manner they determine in their judgment to be legal and ethical. What Petitioners cannot do, however, is force Core to accept the legitimacy of Petitioners claims about fraudulent traffic when Petitioners refuse to apply the same standards when Petitioners are selling and profiting from this traffic.

(D) Petitioners' ILEC affiliates' tariffs are crystal clear regarding application of database query charges even when the call is not completed. Petitioners' ILEC affiliates' tariffs are also crystal clear regarding the consequences of a carrier service being discontinued for nonpayment. Core has simply mirrored these provisions. Petitioners are either unaware of these provisions in their own tariffs or, again, want to demand different standards for Core than what is demanded of them. See Exhibit 6 for a comparison of Core and Petitioners' tariffs on this point.

(E) Section 2.21 imposes no "financial penalty just to raise a dispute" – it simply requires that a dispute have basic, reasonable support. Non-payment of charges combined with baseless allegations that traffic is fraudulent is nothing more than blatant self-help

and late fees will be imposed. Notably, Petitioners' ILEC affiliates' tariffs also impose late fees for such behavior. See Exhibit 3 for a comparison of Core and Petitioners' tariffs on this point.

(F) If Petitioners (or any other party) can demonstrate that Core's proposed 3% per month late fee is unlawful, the 3% will not apply ("or the highest rate permitted by applicable law, whichever is less"). Instead, Petitioners make the self-incriminating argument that even the 1.5% per month is unreasonably high – which is the near-ubiquitous rate found in Petitioners' ILEC affiliates' tariffs. It is puzzling why Petitioners would suggest a measuring rod for late fees – the IRS tax refund rate – *which is about 1/20th of Petitoners' own late payment fees*. Again, Petitioners identify standards for Core, and others, that they do not have any intention of applying to themselves.

Petitioners' behaviors, as documented earlier, demonstrate that the threat of the 1.5% late payment fee is insufficient to motivate payment. As Verizon has argued in the past:[15]

> "*There is a very straightforward reason for putting a 'price' on late payment: if there is no consequence for paying late, there would be no incentive for customers to pay on time."*

Looking beyond late fees for tariffed charges, we find that in other circumstances where payment apparently requires "strong financial incentives", late fees as high as *25%* apply for being *a single day* late.[16]

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[15] Comments of Verizon Wireless, WT Docket No. 10-42, In the Matter of Petition for Declaratory Ruling Regarding Interpretation of Section 332(c)(3)(A) of the Communications Act of 1934, as Amended, As Applied to Fees Charged for Late Payments at 15.

[16] FCC 20-120, MD Docket No. 20-105, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2020, paragraph 101. Section 9A(c)(1) of the Act requires the Commission to impose a late payment penalty of 25% of unpaid regulatory fee debt, to be assessed on the first day following the deadline for payment of the fees.

## CONCLUSION

The Commission should reject the Petition for two reasons. Petitioners fail to attempt to satisfy the four-part test set forth in 47 C.F.R. § 1.773(a)(ii). Failing to prove any one of the elements mandates rejection of the Petition. For this reason alone, the Commission is obligated to reject the Petition.

Second, each of the Petitioners' reasons why Core's tariff filing is purportedly unlawful fails. The AT&T-Verizon petition is part of an ongoing competitive campaign by these parties to deny Core the ability to tariff what Petitioners' ILECs have tariffed. They make demands of the Core tariff that demonstrate ignorance of their own ILEC tariffs.

Transmittal No. 17 revises Core's access tariff to establish a straightforward mechanism whereby refunds can be granted by Core where there are legitimate concerns that the traffic is fraudulent or otherwise unlawful. The revisions also include adding provisions found in ILEC access tariffs (specifically Petitioners' ILEC affiliates' tariffs) regarding disputes, discontinuance of service, and 8YY query billing. Finally, the provisions attempt to mitigate damaging and ongoing self-help activity.

The petition should be denied.

Respectfully submitted,

/s/ Carey Roesel

Carey Roesel
Inteserra Consulting Group, Inc.
151 Southhall Lane, Suite 450
Maitland, FL 32751
(407) 740-3006

*Consultant to Core Communications, Inc.*

May 4, 2021

**CERTIFICATE OF SERVICE**

I, Carey Roesel, do hereby certify that, on this 4th Day of May 2021, the foregoing **RESPONSE OF CORE COMMUNICATIONS, INC. TO PETITION OF VERIZON AND AT&T TO SUSPEND OR REJECT CORE'S REVISED TARIFF** was served on the following parties via email:

Scott H. Angstreich
Derek Reinbold
KELLOGG, HANSEN, TODD, FIGEL
& FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
sangstreich@kellogghansen.com
dreinbold@kellogghansen.com
Counsel for Verizon

Michael J. Hunseder
SIDLEY AUSTIN, LLP
1501 k Street, N.W.
Washington D.C. 20005
(202) 736-8000
mhunseder@sidley.com
Counsel for AT&T Services, Inc.

William H. Johnson
Tamara L. Preiss
VERIZON
1300 I Street, N.W., Suite 500 East
Washington, D.C. 20005
(202) 515-2540
tamara.preiss@verizon.com
Counsel for Verizon

Brett Farley
AT&T SERVICES, INC.
1120 20th Street, NW, Suite 1100
Washington, D.C. 20036
(202) 457-2253
bf4773@att.com
Counsel for AT&T Services, Inc.

Robin Cohn
Gill Strobel
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554
Robin.Cohn@fcc.gov
Gil.Strobel@fcc.gov

*/s/ Carey Roesel*
Carey Roesel

# EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA

- - - - - - - - - - - - - - - - - - x
VERIZON SELECT SERVICES, INC., et al.,

Plaintiffs,

vs.

CORE COMMUNICATIONS, et al.,

Defendants.
- - - - - - - - - - - - - - - - - - x

Case No: 19-ap-10003-ELG

Washington, D.C.
Wednesday, April 21, 2021
11:01 a.m.

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TRANSCRIPT OF MOTION HEARING
HELD BEFORE THE HONORABLE ELIZABETH L. GUNN
UNITED STATES BANKRUPTCY JUDGE

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APPEARANCES:

For Verizon:

**ANDREW HETHERINGTON, ESQ.**
**Kellogg, Hansen, Todd, Figel & Frederick PLLC**
1615 M Street NW, Suite 400
Washington, DC 20036
202-326-7900

For Core Communications:

**MICHAEL A. GRUIN, ESQ.**
**Stevens & Lee**
17 North Second Street
Harrisburg, PA 17101
(717) 255-7365
mag@stevenslee.com

**ALEXANDER MCDONALD LAUGHLIN, ESQ.**
**Odin, Feldman & Pittleman, P.C.**
1775 Wiehle Avenue, Suite 400
Reston, VA 20190
703-218-2134
alex.laughlin@ofplaw.com

Court Reporter:

Lisa A. Moreira, RDR, CRR
Official Court Reporter
U.S. Courthouse, Room 6718
333 Constitution Avenue, NW
Washington, DC 20001
202-354-3187

THE COURTROOM DEPUTY: Okay. This Court stands in a brief recess.

(Recess taken)

THE COURTROOM DEPUTY: This Court is again in session.

THE COURT: All right. Mr. Hetherington, before the break, you heard the argument of Mr. Gruin in favor of his motions. Your response, please.

MR. HETHERINGTON: Thank you, Your Honor. I'll begin by saying that I agree to one thing Mr. Gruin said, which is that based on their requests of the number of hours, but the problem is that Core and Verizon are completely differently situated in this case. The Core is about -- the case is about whether Core is entitled to bill us, not what Verizon did with the traffic after Core sent it to us.

I'll expand on that in a moment, but it is quite common in litigation, as I'm sure Your Honor's aware, that what's relevant for one party's side of the case there is just no sort of correlation. It's not the fact that one party is entitled to one class of information given the pleadings doesn't mean that everybody's entitled to it from parties who are differently situated.

Your Honor, we believe that Core's motion should be denied because it seeks information that's not relevant

to any claim or defense of the case, and it independently should be denied, and I'd like to make sure that -- I'm going to try to keep these two issues separate because I think Mr. Gruin blurred them some.

It should be denied independently because even if there was some marginal relevance to the information, the burden of gathering and producing it would outweigh that relevance, so our view is that the motion should be denied because the information is irrelevant. But even if the Court were to find that some of it is relevant, it should then be denied separately because of the burden.

Your Honor, the law is clear that a party is not entitled to discovery just because it's curious about the other side. It's not entitled to discovery that it might be interested in because the parties have other disputes, as Core and Verizon often do. The parties are only entitled to discovery that is relevant to the actual issues in dispute in a case.

Here Verizon complied quite fully with Core's requests that are relevant to its counterclaims, but the fact is there just isn't that much information from Verizon that is relevant to those counterclaims because Core's claims and Verizon's defenses turn on what Core did and whether what it did matches its tariffs and the applicable FCC regulations. That's all.

So Core sought discovery of any disputes we had served on Core, any payments that Verizon had made or nonpayments, and in communications with Core about disputes in the traffic, we produced them.

These requests are very different. They seek information about what happened to Core's traffic after Core delivered it to Verizon even though Core's counterclaims all turn on what happened before that. That is Core's end. What happened at Verizon's end is not relevant.

Now, to Core's credit, and again today in its brief, Core basically conceded that it says this isn't about -- this information is all about Verizon. It says on Page 4 of its reply brief that its discovery shouldn't be cabined to its affirmative case. Well, there really is nothing in Verizon's defenses that makes any of this information relevant.

So first, it comes to basically two arguments why this information should be shoehorned into the case.

First, Core argues that Verizon's use of the word "fraudulent" in an interrogatory response and its expert disclosures somehow creates some sort of belated cross-claim that would be subject to Rule of Civil Procedure 9(b). This is primarily the focus of our opening brief.

So in the reply brief, under Rule 9(b) Core is entitled to discovery into Verizon's state of mind. This

argument makes no sense as a matter of law. As the cases we cite make clear that Core doesn't address or test the sufficiency of pleadings. It doesn't test the boundaries of interrogatories or interrogatory responses. It just has no connection that we can see.

But it also makes no sense on the facts because, you know, we explained in our opposition, Verizon is using the term "fraud" and "fraudulent" here not to accuse Core of committing the actionable tort of fraud. These are colloquialisms shorthand for auto-dial calls and robocalls, and we don't really understand Core's hankering about this because Core uses the same terms to mean exactly the same things. So I'm going to briefly put a couple of exhibits on the screen just to illustrate this.

First is an email produced in the case, and as you can see I highlight here Core's email address, when people want to report suspicious traffic like fraud traffic is report@CoreTel.net. And in the body of the email CoreTel employee Glenn Dagliesh says, "This data backs up ATT's claim of fraudulent calls."

Now, on Core's theory here that would be a concession by Core that it committed actionable fraud against AT&T. Clearly it isn't. It's a colloquialism just like Verizon uses.

Here's a page from Core's rebuttal expert report.

It talks about -- refers to auto dial. The robocall traffic is fraudulent traffic. It talks about fraud investigations. Again, fraudulent traffic. The use of the term "fraud" here, Your Honor, we think is really just a distraction. It does not have any significance that could allow discovery that otherwise would not have any relevance to the case.

Now, the second argument Core makes is they're setting aside the use of the term "fraud." The mere fact that Verizon disputes whether this call is compensable means that Verizon's state of mind and what Verizon really believed is somehow relevant. And to be clear, Verizon has never claimed that this traffic didn't exist. Indeed, the fact that it does exist is a problem for Verizon because Verizon had to deliver it.

The question is whether Core's entitled to go for it, and Core is effectively saying here if Verizon really believed that this traffic wasn't billable, it wouldn't have delivered it to its customers, or if it did, it wouldn't have billed those customers. This is basically an equitable argument that Judge Teel quite rightly found has no place in this case when he dismissed Core's equitable claims, including unjust enrichment.

Core gets many benefits from relying on tariffs. Tariffs are hard to challenge after a very short period of time. They give Core a lot of production that it wouldn't

otherwise have. The downside is if you operate in a tariff regime, the only question in a case like this is whether the tariff permits calls. So the only relevant question here is whether Core was entitled to bill the calls. Whether Verizon believes the calls were compensable or not has no bearing on that issue or this case. As the Seventh Circuit noted in the *Western Transport* case we cite at Page 3 in our opposition, in a case like this Courts must apply the terms of the carrier's tariffs as they are written without regard for, quote, the facts, equities, and economic realities of that particular case. That's just the flip side of the benefits of the tariffs that Core otherwise enjoys.

This argument is also wrong on the facts. Core just seems unwilling to believe this, but Verizon generally can't detect noncompensable traffic. In real time it comes in in a way that it would allow Verizon to block it or market it nonbillable because calls don't arrive with free standing indicia of being auto-dialed. This is -- in Mr. Gruin's analogy, the question is not whether the produce is obviously rotten. The question is more whether the person buying it or reselling it only found out later that the original supplier had failed to comply with some FCC regulation that meant that it couldn't -- or FDA regulation that meant that it wasn't allowed to charge for it. The way that Core and Verizon can detect noncompensable traffic, all

auto-dial, robocall, et cetera, is by doing the painstaking months of analysis that Verizon's expert had to do to look for patterns in the call date.

I mentioned earlier that a lot of these calls appear to be coming from a legitimate phone number. There's no way for Verizon to block that call or refuse to deliver it to the airline. It's only when you look at the dates that you can see that that same number made a thousand calls that minute that lasted an eighth of a second that you can say, ah, that's not real traffic. The patterns only emerges after the fact.

And, you know, as I say, what really seems to be going on here is that Core is trying to resurrect its equitable and fairness arguments that Judge Teel threw out. It's tried to say that Verizon had some sort of unfair windfall here, which even if it were true -- and it isn't -- they still have to deliver these calls. It has no bearing on any of the claims or defenses in this case, and it should not be open to discovery.

Even if Your Honor were to allow Core to make these fairness arguments about whether Verizon got paid or whether Verizon paid other people, these requests should be denied because they are unduly burdensome. And they're unduly burdensome in three ways. Our affidavits, which Core did not provide for its own claims and burdens, lay all this

out. I won't go back through it.

In a nutshell, Interrogatories 11, 12, 13, and 16 basically require Verizon to identify all of the toll-free calls that Core sent to Verizon intermingled with the billions of calls that Verizon receives every month, so Verizon has to pull out the ones that Core sent and then determine, for those calls since 2011, how many of the calls were sent to each of its toll-free customers and also to each of the 260 entities listed in Core's exhibit and then calculate how much Verizon was paid for each of those entities for those calls and whether we paid third parties for delivering any of them.

Now, I hope that sounds complicated, because it is. Even if Verizon were able to isolate these calls, which our declarations make clear would be very difficult at times -- and, you know, Core has had three goes now at telling us how we might be able to do it -- it really isn't easy.

Even if we could do that, there's no way that Verizon can link incoming calls with where they went at the other end because Verizon has no need to cross-reference that information the traffic provides Verizon and creates an ingress record.

Now, that sometimes will show, generally will show, which carrier handed the call to Verizon so the first

carrier -- that's what Core's exhibit that Mr. Gruin refers to showed -- it shows that Verizon could tell that a lot of this traffic was being handed to it by a company named HyperCube. It does show who gave the traffic to HyperCube.

So Verizon's ingress record is rarely, if ever, at Core because Core, as Mr. Gruin says, sends its traffic to Verizon by another nexus. So if we have an incoming record where the traffic isn't delivered or we use our network and create a billing record, but those two records are not linked to the system, they can't be cross-referenced unless we created some entire system that would do that, which would be incredibly burdensome.

To go back to Mr. Gruin's analogy, let's say a wholesaler of produce buys apples from 500 different farms, and it sells apples to 500 different grocery stores. Well, the wholesaler may well be able to say how many apples it got from each farm, and it may be able to say how many apples it sold to Wegmans, but that doesn't mean that it can tell what Core is asking here, which is how many apples from Mr. Brown's farm went to Wegmans. The wholesaler may well not know that, and Verizon would have.

Interrogatories 21 and 23 are burdensome in a different way. They're the ones that seek information about Verizon's efforts to view this suspicious traffic. Those are the way -- the things that interrogatories -- what did

you do to stop us sending you legitimate traffic. Those would be, again, in a declaration. This is primarily the declaration of Mr. Lin but also Stephanie Astor. Answering those interrogatories would be extremely laborious, and it may not even be possible because it's very difficult except on very rare occasions to time any complaints about specific traffic to the company that sent Verizon to Core.

Usually a customer that sends a complaint to Verizon will give at most a telephone number it's concerned about and when the call came in. That number is never going to be a Core number because, again, Core buys all of its calls from other companies. They're not from Core customers. A call won't show up as a carrier that handed the call to Verizon, like HyperCube, because it sends its calls through other people.

So basically this would require some sort of cross-referencing of telephone numbers in a complaint ticket with the calling numbers listed in calls called call detail records, which are incredibly voluminous and, as our affidavit attests, that's just not something that we ever do. We basically have to figure out how to do it, and the business people at Verizon say under oath that that would be incredibly time-consuming and really has no response and, we think, no relevance at all to what efforts Verizon made to stop Core sending it unbillable traffic, if that's simply

what Core was doing. And if, from Core's perspective, they've only been sending Verizon traffic that's billable, it equally doesn't matter what Core was trying to -- what Verizon was trying to do to detect whether it was fraudulent at all.

Lastly were the Requests for Production 1 and 6 that Mr. Gruin concluded with. Core asked for what it called traffic studies of its traffic. As we have explained to Core, we conferred that there are no responsive documents. Core presumably has references to traffic studies in Verizon documents. Those are engineering studies. They don't concern the legitimacy of traffic or the volume of Core's traffic. Traffic studies basically are more like a plumber running water through a faucet to see if there's a leak in the pipe. They're not at all what Core seems to be asking for here.

As Mr. Gruin said, Core is not asking us to give back to Core the call details from Core to Verizon. So the issue here is calls going from Verizon to Core. That's a very small fraction of the amount in dispute because almost all of the money at issue is this toll-free traffic that is all going in one direction that Core provides, so it's minimally relevant, but also, any records from Verizon's records of calls that had been sent to Core can't be relevant to the case because Core billed Verizon for

delivery of its calls. It doesn't dispute that they exist. It doesn't dispute anything about that that Core -- Verizon's records would show.

Core knows how many minutes there were. It knows what it did when it billed them. Whether it billed correctly is a question, and nothing on Verizon's end would tell us whether Core did the switching or somebody else did. They just don't have any relevance at all to the issues in dispute.

Now, where our motion -- our opposition was open-ended was to at least try to get one of these issues off the table. We made a good faith effort to determine what would be required to pull these records, which is very difficult because they're intermingled with records of every call Verizon sent to every carrier, not just Core.

Now, I could go into detail, if the Court requests. I have it in front of me. But the short answer is is that to produce those records for the last five years would take approximately three years of 24/7 work. It's a function of the fact that there are back-up tapes that are off-site. There's only so much data that can be handled at a given time, and, again, we have to deal with all the data first to pull the Core data and isolate it and require code to be written, and that's how long it would take. Even for the 15 months Core's proposing as a last-minute compromise,

that would be about 5,000 hours, about 200 days working around the clock. Given the complete lack of relevancy here, there's no reason to put Verizon to that task.

Finally, with regards to the privilege log, I suppose I would defer to the Court on how much you want me to say about that because Core did not brief it in its reply brief despite having the privilege log for two weeks before it filed that brief, so it's sort of injecting a new issue here. That may be something that Core would prefer we meet and confer more on with Core and come back in, if necessary.

I'm willing -- if the Court would like, though, I can show you our privilege log. I can show you the model privilege log that we used as a template, and I can show you why Core's privilege log is essentially the same as ours. But I also -- we could also defer that, if Your Honor would prefer.

THE COURT: At this point it seems like there may be an ability of the parties to meet and confer, and I hesitate mostly to wade myself into a privilege log dispute; however, I also don't want to -- I'm not going to prejudice any party with respect to that.

But I do think I heard the same thing you did, Mr. Hetherington, from Mr. Gruin, which is let's see if we can figure this one out before we make the judge call balls and strikes on it, to join the analogy parade, I suppose.

And so we'll -- I mean, I'm happy to hear from Mr. Gruin in reply, but maybe we'll table that for the moment unless he specifically wants to press forward on the issue today.

MR. HETHERINGTON: I will conclude, then, Your Honor, if Mr. Gruin doesn't want to litigate the privilege log more, then I'd like the opportunity to show the exhibits that I have. But if not, I am quite happy to talk about this off-line with Core, and that concludes my presentation.

THE COURT: Thank you. I understood, and obviously this is without prejudice to you presenting any other arguments or exhibits on the screen, if we would need to if we were going forward on the issue. Absolutely.

MR. HETHERINGTON: Thank you, Your Honor.

THE COURT: Mr. Gruin.

MR. GRUIN: Yes, thank you, Your Honor.

And just to pick up where we left off, Core is certainly amenable to continuing the discussions on the privilege log. Mr. Hetherington is correct that a log did come in kind of late in the briefing schedule, and we did send a letter recently about a meet and confer on that, so I think that's an issue the parties should continue discussing and that we can revisit it, if necessary, if no agreement can be reached.

THE COURT: All right. So one thing I can decide on today is that I'm not going to rule on the privilege log

# EXHIBIT 2

## bret@coretel.net

**From:** bret@coretel.net
**Sent:** Wednesday, March 24, 2021 5:13 PM
**To:** 'JOHN, CRAIG R'
**Subject:** RE: DISCUSS SETTLEMENT WITH CORETEL
**Attachments:** FCC TRF Access Revision 2021 0408 Filing Copy.pdf; ATT-Tandem and Queries.xlsx

Craig –

We reject your counteroffer. As your counteroffer was itself a rejection of our offer, that offer is withdrawn.

CoreTel and its family of CLEC's have been sending AT&T traffic in compliance with our deemed lawful tariffs. It is our position that all amounts invoiced to AT&T pursuant to those deemed lawful tariffs are past due and owing, and that AT&T is engaged in unlawful self-help. As the FCC recently noted in FCC 20-143, In the Matter of 8YY Access Charge Reform, at para. 48: ""With respect to issues of self-help that some commenters have raised, we reiterate our previous statements cautioning parties to ***be mindful of "their payment obligations under the tariffs and contracts to which they are a party."*** We continue to ***discourage providers from engaging in self-help*** except to the extent that such self-help is consistent with the Communications Act of 1934, as amended (the Act), our regulations, and applicable tariffs."

I understand that you believe you have disputed some or all of these charges. For your reference, here is the dispute and late payment charges clauses from our tariff.

> 2.10.4 Disputed Charges
> A. In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, the Customer must submit a documented claim for the disputed amount. The Customer will submit all documentation as may reasonably be required to support the claim, including but not limited to the specific invoices and amounts disputed, and all reasons therefor. All claims should be submitted to the Company within sixty (60) days of the invoice date of the bill for the disputed services. The Company shall review Customer disputes in a reasonably timely fashion, and the Company shall resolve each dispute based on the terms of this tariff.
> B. Customer shall pay any undisputed charges in full by the due date of the disputed invoice(s) and in any event, prior to or at the time of submitting a good faith dispute. Failure to tender payment for undisputed invoices, or portions of disputed invoices that are undisputed, is sufficient evidence for the Company to deny a dispute due to the Customer's failure to demonstrate that the dispute was made in good faith.
> C. If the dispute is resolved in favor of the Company and the Customer has withheld the disputed amount, any payments withheld pending resolution of the disputed amount shall be subject to the late payment penalty as set forth in 2.10.5.
> D. If the dispute is resolved in favor of the Company and the Customer has paid the disputed amount on or before the payment due date, no interest credit or penalties will apply.
> E. In the event that the Company pursues a claim in Court or before any regulatory body arising out of a Customer's refusal to make payment pursuant to this Tariff, including refusal to pay for services originating from or terminating to any Company End User, and the Company prevails on all or a substantial part of its claim, Customer shall be liable for the payment of the Company's reasonable attorneys' fees expended in collecting those unpaid amounts.
> 2.10.5 Late Payment Fees
> A late payment charge of 1.5% per month, or the highest rate permitted by applicable law, whichever is less, shall be due to the Company for any billed amount for which payment has not been received by the Company within thirty (30) days of the invoice date of the Company's invoice for service, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment. If the payment due

date falls on a Saturday, Sunday, legal holiday or other day when the offices of the Company are closed, the date for acceptance of payments prior to assessment of any late payment fees shall be extended through to the next business day.

None of your purported blanket disputes meet even these minimal standards and have been and are rejected. Specifically, your statement that AT&T has not passed on all customer complaints to CoreTel is especially troubling, if true. Every expert in the industry agrees that passing on dispute information timely is a minimum requirement of good network management and policing bad traffic. I believe that your fraud department has in fact passed on all such complaints, and that such complaints comprise a vanishingly small portion of our traffic. I believe this dispute to be in bad faith and will continue to believe that until evidence of such bad traffic is presented.

We have worked with AT&T's on combatting the industry wide issue of robo-dialed traffic over the last few years, including adding partner specific markers into the signaling information so your global fraud team could not just know to discuss the issue with us, but also know which one of our partners the traffic came from. We even gave you the list of our partners. At this point, it is perfectly clear we are completely engaged in combatting robocalls. We are already passing some STIR/SHAKEN certificates and will be ready network wide well ahead of the June 30th deadline.

In order to further the fight against robo-dialed traffic, we have filed today industry first financial trace-back tariffs permitting explicit refunding of customer complaint robocalls. It mirrors FCC guidance on blocking. If an IXC protects the consumer by refunding the consumer, we will honor that assessment and refund the IXC. We filed it under the 15-day deemed lawful process, and we invite your participation at the FCC.

In a prior email to me, you made it clear that, at the very least, AT&T agrees that we are providing queries and tandem switching. We hereby demand you remit payment for those elements immediately and pay those going forward. This continued self-help must stop, and ATT's minor payments are not nearly enough to be considered good faith. The amounts invoiced to you for queries and tandem switching, including LPC's, up to invoices due 3/1/21 is:
**$ 2,626,593.95 (See the attached Spreadsheet synopsizing the billing detail for this amount).**

If this payment is not made, I will turn the matter over to the attorneys and litigation to enforce the deemed lawful tariff will ensue.

Once those amounts are paid, and you demonstrate good faith by paying those amounts going forward, we will discuss with AT&T whether a settlement in lieu of litigation with regard to the other elements of our tariff is appropriate, and whether a direct interconnection, implementing STIR/SHAKEN, should go forward. As CoreTel's CLEC subsidiary in Pennsylvania and Maryland, Core Communications, Inc., is operating as a debtor-in-possession under chapter 11 of the United States Bankruptcy Code, any settlement addressing and finally resolving these issues will require approval by the United States Bankruptcy Court for the District of Columbia.

Assuming we are able to reach an agreement as to these terms, they will be subject to Bankruptcy Court approval which will require a motion seeking approval and notice to all of Core's creditors. Core Communication's bankruptcy counsel will process through the Bankruptcy Court.

Concerned,
Bret

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**From:** JOHN, CRAIG R <cj3296@att.com>
**Sent:** Monday, March 15, 2021 5:38 PM
**To:** bret <bret@coretel.net>
**Subject:** RE: DISCUSS SETTLEMENT WITH CORETEL

Bret,

Attached is a written version of the term sheet that we discussed on our call this afternoon that I committed to sending to you that addresses settlement of the dispute and how AT&T will compensate Coretel, going forward.

I am also attaching the letter I sent you dated December 4, 2020 regarding terminating traffic and my email dated October 26, 2020 where I address elements that Coretel improperly billed AT&T as well as the matter of Canadian originated traffic. All of these issues will be addressed in any settlement that we reach, per the attached term sheet.

In particular, I want to point out to you that Coretel's billing practice that I addressed in my October 26 email substantially reduces the compensation that Coretel is entitled to in any settlement, even before further reducing the amount for any "spoofed" or otherwise "fraudulent" traffic.

Please note that these terms are not binding until a final Settlement Agreement has been executed by both parties.

Let me know if you have any questions.

Craig John
AT&T

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**From:** bret <bret@coretel.net>
**Sent:** Monday, March 15, 2021 4:01 PM
**To:** JOHN, CRAIG R <cj3296@att.com>
**Subject:** RE: DISCUSS SETTLEMENT WITH CORETEL

My phone has me confused.  Its it 4 or 5pm EST?  The time change and that Im Barbados has me cross upped

Sent from my Galaxy

-------- Original message --------
From: "JOHN, CRAIG R" <cj3296@att.com>
Date: 3/2/21 1:56 PM (GMT-04:00)
To: Bret Mingo <bret@coretel.net>
Subject: DISCUSS SETTLEMENT WITH CORETEL

Bret,

I will be prepared to present you with a settlement offer on this date.

What I will do is present the offer to you verbally during this time and give you the opportunity to ask questions.

As a follow-up to this discussion, I will send you an email outlining the offer term sheet that we discussed during this time.

Of course all of your questions may not get answered until you have seen the email. We can schedule a follow-up to answer those.

Craig John

AT&T

-- Do not delete or change any of the following text. --

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Meeting number (access code): 160 866 2882 Meeting password: afM5mekv$93

**Join from a video system or application**
Dial 1608662882@attcorp.webex.com
You can also dial 173.243.2.68 and enter your meeting number. **Tap to join from a mobile device (attendees only)**
1-844-517-1415,,1608662882## United States Toll Free
+1-618-230-6039,,1608662882## United States Toll

**Join by phone**
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## bret@coretel.net

**From:** JOHN, CRAIG R <cj3296@att.com>
**Sent:** Monday, October 26, 2020 4:43 PM
**To:** bret
**Subject:** RE: The back invoices were sent to your payables dept, and have been sent monthly since the catch up.

Bret,

Thank you for the list of customers. I will let you know if we have any questions regarding the list.

As to payment of some portion of your invoices as a show of good faith, even if AT&T agreed that 100% of your traffic was legitimate, which we do not, we would not pay your invoices as rendered.

In looking at the detail that you *recently* supplied regarding how you came up with the amounts that you billed AT&T, it looks like you are billing us for functions that you do not perform. In fact, it looks like you are billing AT&T for *every* originating element in your switched access tariff, as follows:

- Carrier Common Line
- Local Switching
- Common End Office Trunk Port
- Tandem Facility
- Tandem Termination
- Tandem Mux
- Tandem Switching
- 8YY Query

For example, Coretel billed AT&T for end office switching AND tandem switching even though you did not even bother to designate any of your switches as tandem switches in the LERG. In addition, Coretel billed Carrier Common Line when Coretel does NOT provide the local loop to your customers who are primarily "Over the Top" VoIP providers.

AT&T believes that, at best, Coretel provides an intermediate or transiting function in the call flow, as you do not provide the local loop and do not have any "end users." Per the recent ruling(s) by the FCC, as Coretel does not provide the local loop to your customers, Coretel is not entitled to collect end office switching elements, including end office switching and the common trunk port. Rather, we believe that Coretel is entitled to collect the tandem switching element as that element best reflects the function that Coretel performs.

Therefore, any payment that AT&T may render for legitimate traffic will consist of payment of the tandem switching element in addition to any applicable transport. As End Office switching elements makes up 73% of Coretel's Minute of Use ("MOU") billing, you can expect that they payment will be substantially less than 80% of Coretel invoiced amounts that you asked for as a "good faith" payment. Thus, even if 100% of Coretel's traffic was legitimate (which it is not), AT&T would only pay roughly 27% of Coretel's MOU invoices (excludes 8YY DBQ), going forward. The 27% will be further reduced for bad traffic that is the subject of dozens of complaints from AT&T toll free customers. Thus, as of August 2020, AT&T disputes $2,062,000 over the past two years for rates that Coretel charged that were not applicable.

In addition, AT&T has determined that Coretel is sending traffic to AT&T that originates outside of the US, primarily in Canada. As Canadian traffic is not eligible to be billed as domestic US originated traffic, AT&T will not pay for this traffic no matter if the traffic is determined to be legitimate or not. Thus, based on the volume of originating Canadian traffic sent to AT&T Toll Free customers and the rate charged by Coretel, AT&T disputes $39,000.00 over the past two years.

As far as the illegitimate traffic issue is concerned, you seem to believe that the emails that Coretel has received from AT&T represents a 100% “quantification” of the issue. These emails were provided as “samples” of illegitimate or fraudulent traffic to facilitate identification of the problem and to get the traffic shut down in order to protect AT&T Toll Free customers.

Nevertheless, and accounting for the issues enumerated herein and without acknowledging that any Coretel traffic sent to AT&T’s Toll Free customers is legitimate, AT&T will pay 10% of Coretel’s invoices on a going forward basis as a “good faith” payment.

AT&T is willing to discuss settlement with Coretel. However, a condition of any settlement will be that Coretel must stop the illegitimate traffic from coming into AT&T. The current reactionary process will not work as it puts the burden on AT&T personnel to police Coretel’s customers and identify illegitimate traffic. It will be also difficult to settle if Coretel chooses to “run out the clock” in terms of originating rates transitioning to Bill and Keep.

You can now consider the “rate” issue and the “Canadian Traffic” issue under dispute.

Craig John
AT&T

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**From:** bret <bret@coretel.net>
**Sent:** Tuesday, October 06, 2020 3:39 PM
**To:** JOHN, CRAIG R <cj3296@att.com>
**Subject:** RE: The back invoices were sent to your payables dept, and have been sent monthly since the catch up.

Greetings Craig -

None of the 8YY minutes we send you are Free Conference Call or its affliates minutes nor have ever been.

Many many years ago we did bill ATT tariff minutes to Free Conference Call but that was terminating access and ATT/Coretel setttled that many years ago. We bill no terminating access now at all so it should be all moot. Is there another concern you have?

I have no idea who Boss Revolution is at all.

I hope that helps. If you want to discuss any more about this Im happy to jump on a call. Im an economist by education and i appreciate value driven relationships and seek to drive win-win arrangements.

My personal cell phone is 2024375219.

Cheers,
Bret

Sent from my Sprint Samsung Galaxy S20 Ultra 5G.

-------- Original message --------
From: "JOHN, CRAIG R" <cj3296@att.com>
Date: 10/6/20 3:21 PM (GMT-05:00)
To: Bret Mingo <bret@coretel.net>
Subject: RE: The back invoices were sent to your payables dept, and have been sent monthly since the catch up.

Bret,

Have you started doing business with Free Conference? Boss Revolution?

And I thought we were finally going to make some headway in our discussions.

This type of stuff can only rocks in the machinery of reaching a settlement.

Craig John

AT&T

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**From:** Bret Mingo <bret@coretel.net>
**Sent:** Tuesday, October 06, 2020 1:17 PM
**To:** JOHN, CRAIG R <cj3296@att.com>
**Subject:** FW: The back invoices were sent to your payables dept, and have been sent monthly since the catch up.

Greetings Craig –

Ok, we have internally discussed a non-solicitation agreement and we decided that it is not really necessary. We have given you all the traceback information for any concerns you have raised anyways and you already have a lot of information on our customers and you have not tried to solicit nor do we think ATT competes nor is likely to compete in this market segment so I've attached the complete list of active charge numbers to customer account. That is the "Active_ATT_ChargeNumbers.xls" spreadsheet attached.

I would like to point out the good faith we are showing by giving you our customer list.

It is and always has been our desire to resolve this in a way that works well for both ATT and CoreTel, both in the past and in the future. A direct connection would reduce network elements used, and therefore costs. A commercial agreement would reduce rates for ATT. I also note that the vast majority of this traffic goes to ATT's own resporg, which means that ATT is billing retail 8XX rates, and not wholesale rates.

Notice that some of the accounts have been permanently disconnected – the first was Endstream who's reluctance to fully participate in thwarting untoward traffic lead to not only disconnecting Endstream, but also to CoreTel not billing in some instances and also crediting ATT in other instances, for Endstream's traffic in the summer of 2018. We took similar action against Voxon, and will always engage in efforts to eliminate bad traffic.

I also re-sent the offer from early August, so you can review again. As we discussed yesterday, the roughly 20 percent discount I applied was based on the factors that ATT payables used in the last invoice paid – I do not know how ATT arrived at those percentages in the past, but I respect that it was ATT's calculation. Also in good faith, we have not applied LPCs, and with some progress towards resolution, will continue to not assess them.

Given the timing and that usually it takes for a large company like ATT to get a settlement approved, I would like to ask that ATT show similar good faith and pay that percentage of the oldest 3 months of invoices while we continue discussions.

I look forward to your response.

Thank you for your consideration.

Cheers,

Bret

---

**From:** Bret Mingo <bret@coretel.net>
**Sent:** Wednesday, August 12, 2020 5:16 PM
**To:** 'JOHN, CRAIG R' <cj3296@att.com>
**Subject:** RE: The back invoices were sent to your payables dept, and have been sent monthly since the catch up.

Greetings Craig –

Please see attached offer and supporting documentation.

Cheers,

Bret

---

**From:** JOHN, CRAIG R <cj3296@att.com>
**Sent:** Tuesday, May 5, 2020 10:43 AM
**To:** Bret Mingo <bret@coretel.net>
**Subject:** RE: The back invoices were sent to your payables dept, and have been sent monthly since the catch up.

Bret,

You intend to make me an offer to settle?

Craig John

AT&T

---

**From:** Bret Mingo <bret@coretel.net>
**Sent:** Thursday, April 30, 2020 12:00 PM
**To:** JOHN, CRAIG R <cj3296@att.com>
**Subject:** RE: The back invoices were sent to your payables dept, and have been sent monthly since the catch up.

Greetings –

I believe this is what you are looking for;  let me know if you need anything else.

Cheers,

Bret

---

**From:** JOHN, CRAIG R <cj3296@att.com>
**Sent:** Thursday, April 30, 2020 10:51 AM
**To:** Bret Mingo <bret@coretel.net>
**Subject:** RE: The back invoices were sent to your payables dept, and have been sent monthly since the catch up.

Bret,

Thanks for the invoices. Do you have the detail behind these as to how the amount due was calculated?

I will need these so we can have further discussions going forward.

If you or someone would please forward those to me I would appreciate it.

Craig John

---

**From:** Bret Mingo <bret@coretel.net>
**Sent:** Tuesday, April 28, 2020 2:26 PM
**To:** JOHN, CRAIG R <cj3296@att.com>
**Subject:** The back invoices were sent to your payables dept, and have been sent monthly since the catch up.

Greetings Craig –

Closing that loop, I've gotten word that the invoices went out.  I've attached copies for your review nonetheless.

Cheers,

Bret

# EXHIBIT 3

# *Coretel Settlement Term Sheet*

- AT&T will pay Coretel $200,000 as settlement of the disputed amounts, subject to the overpayment that AT&T addressed in its March 11, 2021 letter
- Coretel actively polices customers before they are brought on-board and stops sending problematic traffic to AT&T Toll Free Customers
- Coretel gives AT&T the right to in initiate withholding and/or “claw-back” any payments made previously to Coretel for legitimate traffic based on report of problematic traffic by AT&T customers or detected by AT&T Global Fraud
- Coretel pays all transport costs for access stimulated terminating traffic to whoever the owner of the egress tandem is per the recent FCC order; includes any affiliate or IPES like TON80. This matter was addressed in my December 4, 2020 letter to you
- Bill AT&T prospectively only for elements that Coretel actually performs. Specifically:
  - Coretel will not bill and AT&T will not pay for any originating access rate elements for traffic originated outside of the US
  - Coretel will not bill and AT&T will not pay for Carrier Common Line
  - Coretel will bill tandem switching in lieu of local switching on 100% of Coretel originated 8YY traffic except for 8YY calls originating outside of the US. This is what Coretel characterizes as what AT&T “conceded” was the appropriate compensation for this traffic
  - Coretel will only bill AT&T for one tandem switching charge on the originating leg of an 8YY call as Coretel does not have any “traditional” tandem switches. AT&T did NOT concede that Coretel is entitled to more than one tandem switching charge on any call
  - Coretel will not bill and AT&T will not pay for an End Office Common Trunk Port
  - Coretel will not bill and AT&T will not pay for any Common Multiplexing charges
  - Coretel will only bill for one mile of transport and one transport termination charge on 8YY traffic except on 8YY traffic originating outside of the US
  - These terms are not full and final and binding until a settlement Agreement has been executed by both parties



AT&T

# EXHIBIT 4

**Flaster/Greenberg, P.C.**
By: Donna T. Urban (*pro hac vice*)
Darren H. Goldstein (*pro hac vice*)
1810 Chapel Avenue West
Cherry Hill, NJ 08002-4609
(856) 661-1900 phone
(856) 661-1919 fax
donna.urban@flastergreenberg.com
darren.goldstein@flastergreenberg.com

**iCommLaw**
By: Anita Taff-Rice (SBN 186039)
1547 Palos Verdes, #298
Walnut Creek, CA 94597
(415) 699-7885 phone
anita@icommlaw.com

*Attorneys for Plaintiff O1 Communications, Inc.*

**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**(SAN FRANCISCO DIVISION)**

| | |
|---|---|
| O1 COMMUNICATIONS, INC.,<br><br>Plaintiff,<br><br>v.<br><br>AT&T CORPORATION,<br><br>Defendant. | No. 3:16-cv-01452-VC<br><br>Civil Action |

**DECLARATION OF MICHEL SINGER NELSON IN FURTHER SUPPORT OF PLAINTIFF O1 COMMUNICATIONS, INC.'S MOTION FOR SUMMARY JUDGMENT**

I, Michel Singer Nelson, declare:

1. I am Counsel and Vice President of Regulatory and Public Policy for O1 Communications, Inc. ("O1"). I was actively involved in the settlement negotiations with

AT&T Corp. ("AT&T") regarding outstanding amounts owed by AT&T for access services O1 provided to AT&T.

2. Attached hereto as Exhibit 1 is a redacted true and correct copy of a September 30, 2015 e-mail chain from Pam Britt to Richard Drummond, et al, employees of AT&T. This email chain also includes AT&T's September 4, 2015 email, O1's September 11, 2015 response email, AT&T's September 28, 2015 email, and O1's September 29, 2015 response email. Pursuant to the agreement between counsel for O1 and AT&T, documents regarding settlement attached to this Declaration, including this e-mail chain, have been redacted to remove the settlement offers and terms. This email chain was also identified at the June 27, 2017 deposition of John Habiak, Carrier Relations Manager at AT&T, as deposition exhibit Habiak-5 and previously attached to the July 26, 2017 Declaration of James Mertz, Vice President of Industry Affairs at O1, as Exhibit 5.

3. Attached hereto as Exhibit 2 is a redacted true and correct copy of my October 8, 2015, letter to Debbi Waldbaum, in-house counsel for AT&T. Pursuant to the agreement between counsel for O1 and AT&T, the letter has been redacted to remove the amount AT&T agreed to compensate O1 for the amounts due prior to and including O1's November 2013 invoices. This letter was also identified at the June 27, 2017 deposition of John Habiak as deposition exhibit Habiak-6 and previously attached to the July 26, 2017 Declaration of James Mertz as Exhibit 6.

4. Attached hereto as Exhibit 3 is a true and correct copy of a December 6, 2016 email chain between Jack Habiak and Pam Britt, produced by AT&T in discovery, ATT0001828. This email was also identified at the June 27, 2017 deposition of John

Habiak as deposition exhibit Habiak-7. In this email, AT&T includes an analysis of the dollar amounts of the disputes relating the period prior to the time AT&T alleges is covered by the statute of limitations, including total billed, total paid, total withheld, and total accrued (not including late payment charges). Mr. Habiak instructed Ms. Britt to include in her analysis disputes within and not within the statute of limitations period. According to Mr. Habiak, the accrual amount of $6,051,904.06 represents an amount that AT&T includes in its accounting system as a potential payment. Habiak Dep at 201:1-9 attached to the Declaration of Donna T. Urban as Exh. 4.

5. In early 2011, O1 and AT&T began to negotiate a potential resolution of AT&T's disputes of O1's bills, which started with the December 2010 invoice. AT&T and O1 met regularly in attempt to resolve their disagreements. Over the course of the negotiations, AT&T repeatedly represented that a settlement was forthcoming, consistently representing that the settlement would include a retroactive lump sum payment to O1 to resolve all past due amounts dating back to December 2010, promised O1 that it would not raise the statute of limitations defense with regard to the time period dating back to December 2010, and paid an average of 78% of O1's access charges after the parties initially resolved the disputes in late 2013 through August 2015.

6. In November 2013, after lengthy discussions, the parties resolved all of their disagreements both retroactively and prospectively. With regard to the retroactive terms, AT&T agreed to compensate O1 a lump sum amount for all unpaid balances going back in time to the disputes of the O1's December 2010 invoice through November 2013 invoice. Details of the communications leading up to the November 2013 agreement are as follows.

7. On September 4, 2013, AT&T sent O1 an email setting forth terms for its proposed settlement. The proposal included both payment of a lump sum amount toward past invoices and terms to address amount to be paid prospectively. Attached hereto as Exhibit 4 (O1-00324-O1-00326) is a true and correct copy of a redacted email string which includes the September 4, 2013 email, O1-00326.

8. On September 18, 2013, AT&T forwarded a copy of the Release and Settlement Agreement to O1. *See* Exhibit 4 at O1-00326.

9. On October 3, 2013, O1 wrote to AT&T that the "retro proposal is resolved if we can come to terms on the going forward issues." Attached hereto as Exhibit 5 is a redacted true and correct copy of O1-01352.

10. O1 responded to the September 4, 2013 settlement proposal on October 17, 2013, stating that while the Release and Settlement Agreement can be customized to resolve all switched access disputes, both retroactively and prospectively, O1 "is willing to accept AT&T's Settlement offer for past amounts due to avoid litigation to resolve the past due amount." *See* Exhibit 4 at O1-00325.

11. AT&T responded on November 11, 2013 agreeing to pay a lump sum to O1 for any invoices from 10/2013 and prior. *See* Exhibit 4 at O1-00324-00325.

12. On November 15, 2013, O1 responded, accepting most terms of AT&T's offer but proposing a higher retroactive payment. *See* Exhibit 4 at O1-00324.

13. AT&T revised its proposal on November 25, 2013, raising the proposed retroactive payment amount and extending the time period covered by the retroactive

payment to include 11/2013 invoices and prior. Attached hereto as Exhibit 6 is a redacted true and correct copy of O1-01614.

14. O1 accepted AT&T's offer. Therefore, in November 2013, after months and months of discussion, the parties resolved their disputes both retroactively and prospectively.

15. After settlement was reached in November 2013, AT&T repeatedly promised to provide O1 with a draft of the paperwork memorializing the settlement. *See* February 18, 2014, March 10, 2014, March 17, 2014, and March 28, 2014 emails attached as Exhibit 7, O1-01335 and O1-01623-01624.

16. Also, after the 2013 settlement and continuing through August 2015, AT&T paid an average of 78% of O1's invoices, disputing only an average of 22%.

17. In April 2014, AT&T finally provided O1 with a written Release and Settlement Agreement and Switched Access Service Agreement to memorialize the November 2013 agreement. The parties met to discuss the paperwork and O1 reviewed and sent back its edits to the Switched Access Service Agreement in early June 2014. The paperwork was in AT&T's possession for the remainder of 2014. During this time (June 2014-December 2014), AT&T's payments to O1 averaged 82% of O1's invoices. At no time in this period did AT&T inform O1 that settlement had not been reached or that it in any way was changing its position regarding its agreement.

18. In January 2015, O1 contacted AT&T to inquire as to the status of finalizing the paperwork to memorialize the settlement. AT&T and O1 exchanged emails to set up calls to discuss the status.

19. On January 21, 2015, AT&T informed O1 that due to organizational changes, a new negotiator (Geri Sadowski) would assume the lead in working with O1.

20. O1 attempted to schedule calls with Ms. Sadowski to discuss the status of the settlement to no avail. I also contacted AT&T's counsel, Ms. Waldbaum, several times to ask her to help move the discussions along, since Ms. Waldbaum was involved throughout the negotiations.

21. AT&T experienced difficulties in transitioning its discussions with O1 from Mr. Cammarota to Ms. Sadowski. To help speed the transition, O1 forwarded to Ms. Sadowski the 2013 and 2014 emails between O1 and AT&T including the written Release and Settlement Agreement and Switched Access Agreement with O1's proposed edits.

22. O1 did not receive a response right away from AT&T regarding its latest proposal. Therefore I contacted Ms. Waldbaum to inquire about when we would expect to receive a response. On April 7, 2015, Ms. Waldbaum sent me an email explaining that during the transition of O1's account to Ms. Sadowski, Ms. Sadowski did not receive all of the materials that would allow her to compare the November 2013 settlement terms to O1's updated settlement proposal. Ms. Waldbaum stated, "My hope is that once Geri is fully familiar with the issues and where Mark left off with James, we'll be able to move things along much more quickly. I'll keep you posted, but I'm hopeful we'll be able to be back on track in the near term." Attached is a true and correct copy of Exhibit 8, my email chain with Ms. Waldbaum from March 31, 2015 to April 7, 2015, O1-02183-O1-02186.

23. On April 9, 2015, I wrote to Ms. Waldbaum again regarding AT&T's delay in the negotiations. O1 stated that it "may have to file a complaint to preserve [its] claims.

At a minimum, in any event, [O1 and AT&T] will have to enter into a tolling agreement." Attached hereto as Exhibit 9 is a redacted true and correct copy of O1-00321.

24. In response, on April 9, 2015, Ms. Waldbaum responded that she was trying to expedite the process but that AT&T was "really backed up." She proposed that O1 send a tolling agreement. *Id.* I sent a tolling agreement to AT&T and contacted Ms. Waldbaum weekly to inquire as to the status of AT&T's signing the agreement. *Id.*

25. On Monday, May 4, 2015, Ms. Waldbaum asked me to forward to her documentation indicating the time period covered by the parties' November 2013 settlement. In response, I forwarded to Ms. Waldbaum Mr. Cammarota's November 25, 2013 email to J. Mertz stating that the parties' settlement "includes 11/2013 invoice and prior." Attached hereto is Exhibit 10, a redacted true and correct copy of my email to Ms. Waldbaum, O1-02215. Later that day, during a phone conversation with Ms. Waldbaum, when I inquired about the tolling agreement, Ms. Waldbaum stated that she had spoken with her clients about the tolling agreement and other issues that morning. She explained that it was AT&T's position that tolling agreements were not enforceable, but assured me not to worry, and committed to me that AT&T would not raise the statute of limitations as a bar to O1's recovery of unpaid amounts dating back to December 2010, the time period covered by the parties' initial settlement agreement.

26. On May 5, 2015, Ms. Sadowski sent an email to O1 clarifying that the retroactive settlement amount included invoices "from the beginning of time through the November 2013 invoice," acknowledging that the parties had reached an agreement on past

invoices. Attached hereto as Exhibit 11 is a redacted true and correct copy of O1-00882-O1-00883.

27. On May 21, 2015, AT&T responded to O1's latest proposal to update the November 2013 agreement, including a lump sum payment for past due amounts dating back to December 2010. Attached hereto as Exhibit 12 is a redacted true and correct copy of O1-00318 - O1-00320.

28. On June 2, 2015, O1 sent AT&T its response to AT&T's proposal.

29. Throughout June 2015, O1 and AT&T continued to communicate regarding O1's latest proposal and Ms. Waldbaum advised me that AT&T was reviewing O1's proposal and AT&T's negotiators were encouraged that the parties were moving in the right direction. In mid-July 2015, with only a few issues remaining, AT&T changed negotiators for the third time and delayed meetings and negotiations again. Attached hereto as Exhibit 13 is a true and correct copy of O1-00903. In July and August 2015, AT&T repeatedly promised that negotiations would resume and that a proposal would be forthcoming. Attached hereto as Exhibit 14 are redacted true and correct copies of O1-02293, O1-02294, O1-02300, O1-02303, and O1-02306. AT&T also was still paying an average of 79% of O1's invoices during this particular time period.

30. As these emails show, AT&T's new negotiators, Pam Britt and John Habiak, periodically sent emails requesting information but did not schedule calls to discuss matters with O1 or provide O1 with a response to its June 2015 settlement offer until September 2015.

31. On September 4, 2015, Ms. Britt sent O1 an email, which unraveled all of the progress that had been made by making multiple, unsubstantiated accusations against O1. *See* Exhibit 1, Habiak 5, ATT0001613. Also attached as Exhibit 1 is O1's September 11, 2015 response email, AT&T's September 28, 2015 email, and O1's September 29, 2015 response email. *Id.* at 1609-1612.

32. O1 promptly rebuffed AT&T's attempt to backslide on the previous agreements and unravel all the progress that had been made over four years of discussions. *See* Exh. 1 at ATT001610-1612.

33. Thus, it was not until September 2015 that AT&T (through its third team of negotiators who, with the exception of Ms. Waldbaum who since 2012 was always involved in the settlement discussions, were not privy to the earlier discussions) for the first time attempted to renege on its promise not to raise the statute of limitations. *See* Exh. 1. However, in AT&T's September 28, 2015 email, AT&T still promised to continue to negotiate a settlement of past due amounts: ***Sorry for the delayed response … I appreciate the list of all the events and can certainly understand O1's frustration. I plan on moving this as quickly as I can to reach a settlement going back as well as one going forward.*** …First, I want to clarify that while I do not have specific information regarding why our firms' negotiations appear to have stalled in the past, ***AT&T is still willing to reach a negotiated settlement that acknowledges the long standing nature of the claim date that was used to establish a settlement in the Spring of 2014.*** *Id.* (emphasis added).

34. In response, O1 refuted AT&T's latest allegations and reiterated that AT&T had agreed not to raise the statute of limitations to bar O1's retroactive claims. *See* Exh. 1 at

ATT001609. In its response on October 1, 2017, AT&T did not refute O1's statement that AT&T agreed not to raise the statute of limitations. Attached hereto as Exhibit 15 is a true and correct copy of O1-00248.

35. Also, in response to AT&T's September 28, 2015 email, on October 8, 2015, O1 wrote a detailed letter to Ms. Waldbaum, advising, among other things, that "AT&T's conduct is particularly unreasonable because the parties are in the midst of settlement negotiations that until now have been productive, including previously reaching a settlement both retroactively and prospectively. In addition, despite reasonable progress in negotiating an update to the settlement, AT&T changed negotiators, added further delay, reneged on all previously agreements and inserted new unfounded claims into the negotiations." Moreover, O1 advised AT&T that "During this process [referring to the settlement negotiations], AT&T also committed to honor its existing agreement to pay O1 a lump sum for amounts due from AT&T *prior to and including the November 2013 invoices*. ***AT&T promised not to raise the statute of limitations*** for the time period covered by the parties' settlement." (emphasis added). *See* Exh. 2.

36. AT&T did not respond to this October 8, 2015 letter.

37. On October 28, 2015, O1 again asked AT&T when it could expect to receive AT&T's response to O1's June settlement proposal. Attached hereto as Exhibit 16 is a redacted true and correct copy of O1-00237.

38. On January 25, 2016, O1 wrote to AT&T in depth regarding each of AT&T's "concerns," again stating that O1 was negotiating in good faith and that it expected AT&T was too, since O1 had "received an indication from AT&T that it was willing to attempt to

continue to engage in fruitful settlement negotiations." O1 expressed a concern that it had not "witnessed positive changes in AT&T's negotiation tactics[,]" especially since the withholding of payments by AT&T had "steadily increased with ever changing and unsubstantiated justifications." Attached hereto as Exhibit 17 is a true and correct copy of O1-00944 - O1-00945.

39. On February 26, 2016, I again wrote to AT&T asking that overall settlement negotiations re-start again, explaining that the "delay in our negotiations resulting from AT&T's latest self-help tactic of accusing O1 of nefarious behavior is causing O1's damages to climb quickly by more than $150,000 per month." Attached hereto as Exhibit 18 is a redacted true and correct copy of O1-00204.

40. AT&T responded on March 2, 2016 by suggesting that the parties re-start negotiations, asking O1 to provide AT&T with a comprehensive proposal for resolution of the disputes and a specific framework for compensation going forward. Attached hereto as Exhibit 19 is a redacted true and correct copy of O1-00196-O1-00198. AT&T stated the following: "Finally, I think you would agree that it is unlikely that our clients are going to come to a consensus on many of the facts and law that underlie our dispute. And, as you are well aware, we have never entered in to a binding agreement resolving any of the outstanding disputes. Therefore, at this point, my best recommendation for re-starting negotiations is for O1 to provide AT&T a comprehensive proposal for the resolution of all outstanding disputes and a specific framework for compensation going forward. This would allow AT&T to provide meaningful feedback, and possibly create an opportunity to close out the ongoing disputes without the need for formal process."

41. As requested, two days later, on Friday, March 4, 2016, O1 provided AT&T with a comprehensive offer to update the parties' previous settlement agreement and resolve all disputes retroactively and prospectively. *See* Exhibit 19 at O1-00196 (stating "ATT led O1 to believe that the issues were resolved, delayed processing of the paperwork, switched ATT personnel working with O1 and now is attempting to renege on all of the settled issues.").

42. O1 filed this lawsuit on March 23, 2016.

43. While the parties negotiated, AT&T continued to pay approximately 80% of O1's invoices. However, in September 2015, AT&T drastically reduced payment to approximately 20%. Then in January 2016, AT&T began withholding 100% of originating access charges based on unsubstantiated spoofing allegations that it first raised in December 2015.

44. O1 trusted and relied upon AT&T's representations and believed AT&T was negotiating in good faith to resolve all of O1's outstanding claims, and had no indication whatsoever that AT&T would go back on its word. Further, all negotiations included discussions that provided O1 with recovery of amounts dating back to December 2010.

45. The negotiations also always contemplated AT&T paying O1, not the other way around (other than a demand for payment from AT&T's wireless affiliate for unrelated charges). Throughout the course of negotiations, it was never understood by either party that AT&T's long distance affiliate was asserting a claim for any alleged overpayments, and AT&T never raised such a claim. If AT&T intended to assert a claim for overpayments, it concealed that from O1.

46. Attached as Exhibit 20 is a copy of AT&T's October 21, 2011 ex parte submission to the FCC in the Connect America Fund docket, in which the FCC adopted the VoIP Symmetry Rule, 47 C.F.R. §51.913. This ex parte is referenced in the FCC's discussion of the VoIP Symmetry Rule, in the CAF Order, paragraphs 969 and 970, notes 2024 through 2028.

47. As the Ex Parte Letter argues, the proposed VoIP Symmetry Rule (which was substantively the rule adopted by the FCC), would allow the rule to apply to Over the Top VoIP call scenarios, involving LECs partnering with VoIP providers like Vonage and Skype, which do not provide the loop or last mile connection to the called or calling party premises.

48. In paragraph 970 of the CAF Order and the footnotes referenced in that paragraph, the FCC expressly rejected AT&T's arguments against assessing access charges in an Over the Top VoIP scenario for functions performed by a local exchange carrier and its VoIP partner to receive and send VoIP – PSTN calls. See CAF Order at ¶¶970 and notes 2024, 2025 and 2028.

I declare under penalty of perjury under the laws of the State of California that the above declaration is true and correct to the best of my belief and knowledge.

Dated: August 25, 2017

Michel Singer Nelson

# EXHIBIT 5

2. General Regulations (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.1 Payment of Rates, Charges and Deposits (Cont'd)

(B) (Cont'd)

(3) (Cont'd)

(b) (Cont'd)

(ii) 0.000493 per day, (annual percentage rate of 18.0% applied on a simple interest basis for the number of days from the payment date to and including the date that the customer actually makes the payment to the Telephone Company.

(c) In the event that a billing dispute occurs concerning any charges billed to the customer by the Telephone Company the following regulations will apply.

(T)
(T)
(D)

(1) A good faith dispute requires the customer to provide a written claim to the Telephone Company. Instructions for submitting a dispute can be obtained by calling the billing inquiry number shown on the customer's bill. Such claim must identify in detail the basis for the dispute, the account number under which the bill has been rendered, the date of the bill and the specific items on the bill being disputed, to permit the Telephone Company to investigate the merits of the dispute.

(D)
(N)

(2) The date of the dispute shall be the date on which the customer furnishes the Telephone Company the account information required by Section 2.4.1(B)(3)(c)(1) above.

(3) The date of resolution shall be the date on which the Telephone Company completes its investigation of the dispute, notifies the customer in writing of the disposition and, if the billing dispute is resolved in favor of the customer, applies the credit for the amount of the dispute resolved in the customer's favor to the customer's bill.

(4) If the dispute is decided to be in favor of the Telephone company, then the resolution date will be the date upon which a written decision on this dispute is sent to the customer.

(N)
(D)
(D)
(D)

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.10 Billing and Payment For Service (Cont'd.)

2.10.3 Payment for Service (Cont'd.)

I. The Company will endeavor to bill usage charges monthly for the preceding billing period; however, the Company's failure to do so shall not affect the Customer's liability for such charges irrespective of the length of delay between the date of usage and the Company's billing for such usage. Company is permitted to backbill for usage within two (2) years of the date upon which service was provided.

2.10.4 Disputed Charges

A. In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, the Customer must submit a documented claim for the disputed amount. A good faith dispute requires the Customer to provide a written claim to the Company. Instructions for submitting a dispute can be obtained by calling the billing inquiry number shown on the Customer's bill. Such claim must identify in detail the basis for the dispute, the account number under which the bill has been rendered, the date of the bill and the specific items on the bill being disputed, to permit the Company to investigate the merits of the dispute (alternative requirements apply for disputes based on allegations of fraudulent or otherwise illegal traffic to be considered good faith disputes, as set forth in Section 2.21 herein). **(C)**

The date of the dispute shall be the date on which the Customer furnishes the Company the information required by this Section. **(N)**

The date of resolution shall be the date on which the Company completes its investigation of the dispute, notifies the Customer in writing of the disposition and, if the billing dispute is resolved in favor of the Customer, applies the credit for the amount of the dispute resolved in the Customer's favor to the Customer's bill. **(C)**

B. Customer shall pay any undisputed charges in full by the due date of the disputed invoice(s) and in any event, prior to or at the time of submitting a good faith dispute. Failure to tender payment for undisputed invoices, or portions of disputed invoices that are undisputed, is sufficient evidence for the Company to deny a dispute due to the Customer's failure to demonstrate that the dispute was made in good faith.

*Some material previously found on this page is now found on Original Page No. 28.1.*

ACCESS SERVICE

2. General Regulations (Cont'd)

2.4 Payment Arrangements (Cont'd) (T)

2.4.1 Payment of Rates, Charges and Deposits (Cont'd)

(B) (Cont'd)

(3) (Cont'd)

(c) In event that a billing dispute occurs concerning any charges billed to the customer by the Telephone Company the following regulations will apply.

- A good faith dispute requires the customer to provide a written claim to the Telephone Company. Instructions for submitting a dispute can be obtained by calling the billing inquiry number shown on the customer's bill, or, by accessing the Telephone Company website also shown on the customer's bill. Such claim must identify in detail the basis for the dispute, and if the customer withholds disputed amounts, it must identify the account number under which the bill has been rendered, the date of the bill and the specific items on the bill being disputed, to permit the Telephone Company to investigate the merits of the dispute.

- The day of the dispute shall be the date on which the customer furnishes the Telephone Company the account information required by Section 2.4.1(B)(3)(c)(1) above.

- The date of resolution shall be the date on which the Telephone Company completes its investigation of the dispute, notifies the customer of the disposition and, in the billing dispute is resolved in favor of the customer, applies the credit for the amount of the dispute resolved in the customer's favor to the customer's bill, including the disputed amount penalty credit and/or the late payment penalty credit, as appropriate.

- If a billing dispute is resolved in favor of the Telephone Company, any payments withheld pending resolution of the dispute shall be subject to the late payment penalty as set forth in (b) preceding. Further, the customer will not receive a disputed amount penalty credit and/or a late payment penalty credit.

# EXHIBIT 6

ACCESS SERVICE

6. Switched Access Service (Cont'd)

6.1 General (Cont'd)

6.1.2 Rate Categories (Cont'd)

(A) Switched Transport (Cont'd)

(7) Nonchargeable Optional Features (Cont'd)

(e) Out of Band Signaling (Cont'd)

(7) 64 Clear Channel Capability (64CCC) will be provided in connection with Trunkside BSA-101XXXX Option and FGD with out of band signaling digital trunk facilities provisioned at Interface Group 6 or 9, where appropriate Telephone Company equipment and other facilities exist.

(8) 64CCC is provided through the use of Bipolar with Eight-Zeros Substitution line code which must be provided in both directions of transmission. 64CCC will be provisioned on T1 facilities whose digital transmission signaling is framed in the Extended Superframe Format. The same framing format must be used in both directions of transmission. Technical Reference GR-334-CORE, Issue 1, provides the technical specifications for 64CCC. (C)(x)

(9) 64CCC requires the establishment of CCSAS as specified in section 6.4.3(A) following. The CCS/SS7 protocol requirements for 64CCC are specified in Technical Reference GR-905-CORE, Issue 11. (C)(x) When 64CCC is ordered, the Telephone Company will schedule additional network compatibility and other operational tests as specified in section 6.4.3(A) following. (C)(x)

(8) Chargeable Optional Features

(a) Toll Free Data Base Access Service

(1) Toll Free Basic Query Charge

The basic query charge is assessed the customer based on the query of the Toll Free number delivered to the customer. The query is completed when the appropriate call routing information is returned, as described in 6.4.3(C) following. The query charge is assessed for all completed queries whether or not the actual Toll Free call is delivered to the customer.

(x) GR-334-CORE, Issue 1, replaces TR-NWT-000938, Issue 1, in its entirety.
GR-905-CORE, Issue 11, replaces TR-TSV-000962, Issue 1, in its entirety.

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.13 Cancellation by Company (Cont'd.)

2.13.3 The Company may refuse or discontinue service to Customer upon five (5) days written notice to comply with any of the following:

A. For nonpayment: The Company, by written notice to the Customer and in accordance with applicable law, may refuse, suspend or cancel service without incurring any liability when there is an unpaid balance for service that is past due.

B. For returned checks: The Customer whose check or draft is returned unpaid for any reason, after two attempts at collection, may, at the Company's discretion, be subject to refusal, suspension or cancellation of service in the same manner as provided for nonpayment of overdue charges.

C. For neglect or refusal to provide reasonable access to the Company or its agents for the purpose of inspection and maintenance of equipment owned by the Company or its agents.

D. For Customer use or Customer's permitting use of obscene, profane or grossly abusive language over the Company's facilities, and who, after five (5) days notice, fails, neglects or refuses to cease and refrain from such practice or to prevent the same, and to remove its property from the premises of such person.

E. For use of telephone service for any property or purpose other than that described in the application.

F. For Customer's breach of any contract for service between the Company and the Customer.

G. For periods of inactivity in excess of sixty (60) days.

H. If the Company discontinues service, it will provide, in connection with access traffic associated with the discontinued Customer, only those minimal functions necessary to identify the Customer as being the relevant carrier (i.e., 8YY database queries). The Company will no longer route any traffic that uses the Customer's Carrier Identification Code (CIC), Local Routing Number (LRN), carrier owned NPA-NXX or any other element used to route traffic. In the case of such discontinuance, all applicable charges, including termination charges, if any, shall become due. If the Company does not discontinue the provision of the services involved on the date specified in the five (5) days' notice, and the Customer's noncompliance continues, nothing contained herein shall preclude the Company's right to discontinue the provision of the services to the non-complying Customer without further notice. **(N)** **(N)**

SECTION 3 - SWITCHED ACCESS SERVICE, (CONT'D)

3.3 Switched Access Service (Cont'd.)

3.3.4 Toll-Free 8YY Data Base Access Service

Toll-Free 8YY Data Base Access Service, which is available to all Customers, provides trunk-side equivalent access to the Company's Network in the originating direction only, for the Customer's use in originating calls dialed by an end user to toll free telephone numbers beginning with prefixes, 800, 888, 877, 866, 855, and/or subsequent toll-free codes.

3.3.5 Toll Free Interexchange Delivery Service

Toll Free Interexchange Delivery Service is a switched access service in which the Company switches toll-free traffic originated by any third party, including CLECs, ILECs, CMRS providers, and VoIP providers**.** Switched Transport, End Office, and Query elements shall apply based on the elements, or functional equivalents thereof, provided.

The IXC will be assessed a charge only for a completed data base query. A data base query consists of a signaling query and answer. The call is held at the SSP while the data base query is performed. When the database returns the signaling information to the SSP, enabling the call to be directed to the appropriate carrier, the 8YY data base query is deemed completed. Billing for the signaling will commence at the time the data base query is completed. The IXC will be assessed a charge for a completed data base query even if the underlying call is not completed (i.e., the call for which the data base query was made). **(N)** | | | | | **(N)**

3.3.6 Disallowance of one switched access rate category or element shall in no way limit Company's ability to collect switched access charges for any other rate category or element.

3.3.7 Where the Company contracts or otherwise arranges with another entity to provide some or all of the facilities provisioned in the course of furnishing any Switched Access Service rate category or element hereunder, the Company shall be fully entitled to charge the applicable rate category or element.



Issued By:
Chris Van de Verg, Chief Regulatory Counsel
213 South Main Street
Anderson, South Carolina 29624

ACCESS SERVICE

2. General Regulations (Cont'd)

2.1 Undertaking of the Telephone Company (Cont'd)

2.1.8 Refusal and Discontinuance of Service (Cont'd)

(A) (Cont'd)

(2) Discontinue the provision of the services to the noncomplying customer. If the Telephone Company discontinues service, it will no longer route any switched access traffic that uses the customer's Carrier Identification Code(s) (CIC). In the case of such discontinuance, all applicable charges, including termination charges, shall become due. If the Telephone Company does not discontinue the provision of the services involved on the date specified in the notice, and the customer's noncompliance continues, nothing contained herein shall preclude the Telephone Company's right to discontinue the provision of the services to the noncomplying customer without further notice. (N) (C) (N) (N) (C) (C) (M) (C) (M) (M) (M) (M) (N)

The Telephone Company will not initiate any of the actions described in paragraphs (1) and (2) above as to disputed bill amounts where the customer does not pay disputed bill amounts by the bill due date as specified in Section 2.4.1(B)(1), (2), (3)(a) and (b), and the Telephone Company has not rendered a decision on the dispute. The dispute process is outlined in 2.4.1(B)(3)(c), (d) and (e).

(B) When access service is provided by more than one telephone company, the companies involved in providing the joint service may individually or collectively deny service to a customer for nonpayment. Where the telephone companies affected by the nonpayment are incapable of effecting discontinuance of service without cooperation from the other joint providers of Switched Access Service, such other telephone companies will, if technically feasible, assist in denying the joint service to the customer. Service denial for such joint service will only include calls which originate or terminate within, or transit, the operating territory of the telephone companies initiating the service denial for nonpayment. When more than one of the joint providers must deny service to effectuate termination for nonpayment, in cases where a conflict exists in the applicable tariff provisions, the tariff regulations of the telephone company where the customer end office is located shall prevail for joint service discontinuance provisions. (N)

Revised material appearing on this page previously appeared on 4th Revised Page 2-17.

(This page filed under Transmittal No. 207 )

ACCESS SERVICE

6. Switched Access Service (Cont'd)

6.2 Provision and Description of Switched Access Service (Cont'd)

6.2.13 Toll Free Access Service

Toll Free Access Service (8yy) is an originating offering utilizing FGD Switched Access Service and/or the SS7 Signaling Network. The basic service provides a customer identification function with Area of Service (AOS) routing, based on the dialed toll free number, at Telephone Company Toll Free Access Service Switching Points (SSPs) and the Toll Free Access Service Control Point (SCP). AOS routing is based on originating LATA, NPA, or NPA-NXX. (T)

When a toll free call is originated by an end user, the toll free call is held at the SSP while a query is launched to the SCP. The customer identification with AOS, in the form of SS7 signaling information, is passed back from the SCP to the SSP from which the query originated and the call can then be routed to the correct customer location.

The IXC will be assessed a charge only for a completed data base query. A data base query consists of a signaling query and answer. The call is held at the SSP while the data base query is performed. When the database returns the signaling information to the SSP, enabling the call to be directed to the appropriate carrier, the 8yy data base query is deemed completed. Billing for the signaling will commence at the time the data base query is completed. The IXC will be assessed a charge for a completed data base query even if the underlying call is not completed (e.g., the call for which the data base query was made). (T)

Calls originating from a service area in which the customer has not ordered Toll Free Access Service will be routed to intercept.

Customer identification for Canadian and Caribbean toll free numbers will be performed by Six Digit Master Number List Turnaround.

(This page filed under Transmittal No. 371 )

# EXHIBIT 7

SECTION 2 - RULES AND REGULATIONS, (CONT'D)

2.10 Billing and Payment For Service (Cont'd.)

2.10.4 Disputed Charges (Cont'd.)

C. If the dispute is resolved in favor of the Company and the Customer has withheld the disputed amount, any payments withheld pending resolution of the disputed amount shall be subject to the late payment penalty as set forth in 2.10.5. **(M)**

D. If the dispute is resolved in favor of the Company and the Customer has paid the disputed amount on or before the payment due date, no interest credit or penalties will apply.

E. In the event that the Company pursues a claim in Court or before any regulatory body arising out of a Customer's refusal to make payment pursuant to this Tariff, including refusal to pay for services originating from or terminating to any Company End User, and the Company prevails on all or a substantial part of its claim, Customer shall be liable for the payment of the Company's reasonable attorneys' fees expended in collecting those unpaid amounts. **(M)**

*Material now found on this page was previously found on 9th Revised Page No. 28.*



Issued By:
Chris Van de Verg, Chief Regulatory Counsel
213 South Main Street
Anderson, South Carolina 29624

ACCESS SERVICE
2 - General Regulations (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.1 Payment of Rates, Charges and Deposits (Cont'd)

(B) (Cont'd)

(3) (Cont'd)

(c) Payment of Rates, Charges and Deposits

In the event of a billing dispute, the customer must submit a documented claim for the disputed amount. If the dispute is submitted on or before the payment due date or within 90 days after the payment due date and the disputed amount is paid prior to resolution of the dispute, any interest credits due the customer upon resolution of the dispute shall be calculated from the date of the overpayment to the resolution date. If the dispute is submitted more than 90 days after the payment due date and the disputed amount is paid prior to resolution of the dispute, any interest credits due the customer upon resolution of the dispute shall be calculated from the dispute date or the date the payment is made, whichever occurs later, to the resolution date. The Telephone Company will resolve the dispute and assess interest credits or late payment penalties to the customer as follows.

If the dispute is resolved in favor of the Telephone Company and the customer has paid the disputed amount on or before the payment due date, no credits or late payment penalties will happly to the disputed amount.

If the dispute is resolved in favor of the Telephone Company and the customer has withheld the disputed amount, any payments withheld pending settlement of the dispute shall be subject to the late payment penalty as set forth in (b) preceding.

If the dispute is resolved in favor of the customer and the customer has withheld the disputed amount, no credits or late payment penalties will apply to the disputed amount.

If the dispute is resolved in favor of the customer and the customer has paid the disputed amount, the customer will receive a credit from the Telephone Company for the disputed amount times a penalty factor as set forth preceding. The penalty factor shall be simple interest (I)
at the rate of 1.5% per month (.0004931 per day) or 18% (I)
annually.

If a customer's traffic terminates to an end office via an alternative tandem service provider (TSP), any terminating

ACCESS SERVICE

2. General Regulations (Cont'd)

2.4 Payment Arrangements (Cont'd) (T)

2.4.1 Payment of Rates, Charges and Deposits (Cont'd)

(B) (Cont'd)

(3) (Cont'd)

(c) Billing Disputes (Cont'd)

(3) The date of resolution is the date the Telephone Company completes the investigation and credits the customer's account.

(4) In the event that a billing dispute concerning any charges billed to the customer by the Telephone Company is resolved in favor of the Telephone Company, any payments withheld pending settlement of the dispute shall be subject to the late payment penalty set forth in (b) preceding.