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

In the Matter of	**)**
	)
Teliax, Inc.	**)**
	)
FCC Tariff No. 1, Transmittal No. 7	**)**

TELIAX, INC.'S RESPONSE TO
PETITIONS OF CENTURYLINK COMMUNICATIONS, LLC AND LEVEL 3 COMMUNICATIONS, LLC, AT&T SERVICES, INC., AND BANDWIDTH.COM CLEC, LLC, TO SUSPEND OR REJECT TELIAX'S REVISED TARIFF

Teliax, Inc. ("Teliax") pursuant to 47 C.F.R. § 1.773(b)(l)(iii), hereby responds to the Petitions of CenturyLink Communications, LLC and Level 3 Communications, LLC, AT&T Services, Inc., and Bandwidth.com CLEC, LLC, ("Petitioners") filed on April 30, 2021. The Petitions present no credible basis to request the suspension or rejection of Teliax's FCC Tariff No. 1 (the "Tariff'), Transmittal No. 7 (the "Transmittal") filed April 23, 2021. Accordingly, the Commission should summarily reject the Petition.

SUMMARY OF ARGUMENT

The Commission should reject the Petition for three 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, Teliax's tariff revision was very closely modeled after three other CLEC filings that were allowed to go into effect on a 15-day, deemed lawful basis. These tariffs were not challenged by any petitioners, nor did FCC Staff raise any questions during the review period.

Third, each of the Petitioners' reasons why Teliax's tariff filing is purportedly unlawful fails. It is not unlawful for a CLEC to add new rates for functions, or functional equivalents, it is providing – particularly when the CLEC is benchmarking to the competing ILEC rates (when such rates are subject to the benchmarking requirement). The tariffed 216,000 MOU/DS1/month equivalency has a long history of use by the FCC, ILECs, and more recently, CLECs. Two of the petitioners draw conclusions from the CAF Order about the applicability of tariffed charges to "IP-to-IP" traffic which simply are not there. Two of the petitioners create, and want to apply, a fictitious CLEC benchmarking scenario that claims ILECs offer IP connectivity, like that offered by Teliax (the ILECs do not). Finally, two petitioners object to the *entirely optional* Alternate Tandem arrangement. That arrangement is easily avoided by the objecting IXCs – simply connect to Teliax's tandem.

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:[1]

> (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.

Teliax'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."[2] 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.

[1] 47 C.F.R. § 1.773(a)(1)(ii) (emphasis added).
[2] 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. TELIAX'S TRANSMITTAL NO. 7 IS SUBSTANTIVELY IDENTICAL TO MULTIPLE DEEMED LAWFUL TARIFFS

Teliax's filing was closely modeled after three previous competitive tandem provider filings.[3] All three filings were allowed to go into effect without any opposing petitions or FCC Staff inquiries. Teliax's Transmittal No. 7, therefore, is not breaking any new ground when it comes to tariffed switched access offerings and competitive tandem services.

Teliax's original transmittal with these provisions – Transmittal No. 5 – was opposed by only CenturyLink. FCC Staff also had questions about Transmittal No. 5 that were unrelated to any of the issues raised by CenturyLink. To allow time to work through Staff's questions, Teliax withdrew Transmittal No. 5, worked with FCC Staff on various edits, and then refiled under Transmittal No. 7.

The substantively identical Neutral Tandem (Inteliquent), Wide Voice, and Intrado provisions are deemed lawful. Teliax's Transmittal No. 7 should be deemed lawful as well.

III. EACH OF PETITIONERS' PROFERRED REASONS TO REJECT TELIAX'S TARIFF FAILS

(A) It is not unlawful for a CLEC to add new rates for functions, or functional equivalents, it is providing – particularly when the CLEC is benchmarking to the competing ILEC rates (when such rates are subject to the benchmarking requirement).

[3] Neutral Tandem ("Inteliquent") Tariff FCC No. 2, Transmittal No. 21, effective December 16, 2020. Wide Voice, LLC, Tariff FCC No. 3, Transmittal No. 15, effective January 5, 2021. Intrado Communications, LLC, Tariff FCC No. 1, Transmittal No. 3, effective February 17, 2021.

CenturyLink, however, makes this extreme claim:

> "Until it proposed the tariff revisions at issue here, Teliax's tariff did not allow tariff charges for "dedicated access services"; thus, the effective rate for such "services" was $0."

Teliax's tariff already included the Dedicated Tandem Trunk Port (DTTP), and it identified charges under "direct trunked transport" as "Offered on an individual case basis." But even if it did not, it is a strange argument that the effective rate for *any* service not already in the tariff is effectively $0 into perpetuity. As clearly stated in the *CAF Order*,[4] paragraph 807:

> *Application of our access reforms will generally apply to competitive LECs via the CLEC benchmarking rule. For interstate switched access rates, competitive LECs are permitted to tariff interstate access charges at a level no higher than the tariffed rate for such services offered by the incumbent LEC serving the same geographic area (the benchmarking rule).*

Although the dedicated services included under Transmittal No. 7 are not formally required to be benchmarked to the ILEC rates for these services (see 47 CFR § 61.26(a)(3)(i)), Teliax has chosen to benchmark these rates to those of the competing ILEC.

(B) The tariffed 216,000 MOU/DS1/month equivalency has a long history of use by the FCC, ILECs, and more recently, CLECs. The 216,000 MOU per DS1 (or 9,000 MOU per DS0) per month factor was used by the FCC to determine the reasonableness of tandem switched transport rates. It was initially based on 1983 data submitted in the original MTS and WATS Market Structure proceeding. Later, in the First Report and Order, the FCC decided to move away from this factor for its original purpose because the record indicated it was *too high.*[5]

[4] *Connect Am. Fund*, et al., WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (subsequent history omitted) (*Transformation Order or CAF Order*).
[5] First Report and Order, paragraph 206 - "Many commenters state that their actual traffic levels are substantially lower than 9000 minutes of use per month. Some incumbent LECs, particularly smaller LECs in rural areas, indicate that their actual traffic levels may be as low as 4000 minutes of use per month per voice-grade circuit."

More interesting than that, however, is that ILEC tariffs, including Petitioners', continue to use this traffic assumption in their tariffs on file with the FCC for calculating credit allowances:[6]

> **VERIZON**
> When a Switched Access direct trunked facility experiences an interruption of service, a credit will be applied for the facility itself. When a customer who has both Direct Trunked and Tandem Access facilities experiences an interruption of service, the customer will receive a credit based on the traffic on the out-of-service facility that is diverted to the tandem and charged at tandem rates.
>
> The MOU credit will be derived by *assuming* ***9000 MOU per trunk per month.*** Therefore, *the* ***daily credit would be limited to 300 MOU per trunk.***
>
> **AT&T**
> When a service outage occurs on a Direct- Trunked Transport facility and traffic is alternately routed to a Tandem-Switched Transport facility to avoid the service outage, the Telephone Company may allow additional out-of-service credits as follows: For Switched Access Service and DA Access Service, the Telephone Company will first determine the length of time for which the customer is entitled to an adjustment on the Direct-Trunked Transport facility as set forth in (1), preceding.
>
> Because actual alternate tandem traffic cannot be captured during the service outage period, surrogate ***tandem usage factors have been developed based on an assumed 9,000 minutes of use per channel per month*** and a DA holding time of .633962 minutes.

[6] The Verizon Telephone Companies Tariff FCC No.1, 1st Revised Page 2-83.3. Southwestern Bell Tariff FCC No. 73, 4th Revised Page 2-76.4

(C) Two of the petitioners draw conclusions from the *CAF Order* about the applicability of tariffed charges to "IP-to-IP" traffic which simply are not there.[7] Their argument references two main paragraphs from the *CAF Order* – 1010 and 1034. The paragraph below from CenturyLink's Petition at 3 has the words and concepts Petitioner is *inserting itself* bolded and italicized. These are not found in the referenced paragraphs from the *CAF Order*:

> In accommodating for the increasing role that VoIP facilities play in the transmission of PSTN traffic, the Commission has ***declined to envelop IP-to-IP traffic within its tariffing regime***. In fact, the Commission has described the industry transition to "all IP networks" as ***corresponding to*** the "intercarrier compensation phase down," and while IP-to-IP interconnection and the inter-carrier compensation regime may coexist for a short time, ***the latter will ultimately displace the former***. *Transformation Order* ¶ 1010. During this transitional phase, for tariff charges to apply, it is not only ***necessary that the ultimate carrier-to-carrier exchange of traffic occur in TDM***; in addition, IP traffic ***must connect to the TDM-based PSTN at one end of the call or the other***. That is, the traffic must be PSTN-PSTN or at least PSTN-IP, but not IP-to-IP. Otherwise, ***tariff charges are inappropriate***; the Commission has ***instructed carriers*** "to negotiate appropriate compensation as part of an arrangement for IP-to-IP interconnection under our transitional framework." *Transformation Order* ¶ 1340.

Paragraph 1010 *actually* says:

> We anticipate that the reforms we adopt herein will further promote the deployment and use of IP networks. However, IP interconnection between providers also is critical. As such, we agree with commenters that, as the industry transitions to all IP networks, carriers should begin planning for the transition to IP-to-IP interconnection, and that such a transition will likely be appropriate before the completion of the intercarrier compensation phase down. We seek comment in the accompanying FNPRM regarding specific elements of the policy framework for IP-to-IP interconnection. We make clear, however, that our decision to address certain issues related to IP-to-IP interconnection in the FNPRM should not be misinterpreted to suggest any deviation from the Commission's longstanding view regarding the essential importance of interconnection of voice networks.

[7] Teliax is also not willing to grant that there is a consistent, unambiguous understanding among the parties about the classification of Teliax's traffic as "IP-to-IP", "VoIP-PSTN", or some other variation. As AT&T indicated in its post *CAF Order* comments, February 24, 2012 at 9 "The term "IP-to-IP interconnection" means different things in different contexts."

More striking is the misrepresentation of Paragraph 1340 (emphasis added):

> The comprehensive reforms we adopt today takes initial steps to eliminate barriers to IP-to-IP interconnection. In this regard, we note that the intercarrier compensation transition we adopt in the Order ***specifies default rates but leaves carriers free to negotiate alternative arrangements.*** We conclude that the preexisting intercarrier compensation regime did not advance technology neutral interconnection policies because it provided LECs a more certain ability to collect intercarrier compensation under TDM-based interconnection, with less certain compensation for IP-to-IP interconnection. Under our new framework, even if a carrier historically has relied on intercarrier compensation revenue streams, it need not wait until intercarrier compensation reform is complete to enter IP-to-IP interconnection arrangements. Rather, to the extent that certainty regarding intercarrier compensation is important to a particular carrier during the transition, ***it is free to negotiate appropriate compensation*** as part of an arrangement for IP-to-IP interconnection under our transitional framework.

Simply put, the *CAF Order* does not say what Petitioners wished it said. The associated regulations demonstrate the FCC's commitment to "functional equivalency" as the governing principle for Access Reciprocal Compensation, not the Petitioners' notions of what they are able to read *into* a handful of sentences from the *CAF Order*:

§ 51.701 Scope of transport and termination pricing rules
(Non-Access Reciprocal Compensation)

(b) Non-Access Telecommunications Traffic. For purposes of this subpart, Non-Access Telecommunications Traffic means:

(3) This definition includes telecommunications traffic exchanged between a LEC and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format and that otherwise meets the definitions in paragraphs (b)(1) or (b)(2) of this section. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.

(e) Non-Access Reciprocal Compensation. For purposes of this subpart, a Non-Access Reciprocal Compensation arrangement between two carriers is either a bill-and-keep arrangement, per §51.713, or an arrangement in which each carrier receives intercarrier compensation for the transport and termination of Non-Access Telecommunications Traffic.

§ 51.903 Definitions
(Access Reciprocal Compensation)

(emphasis added)

(d) End Office Access Service. End Office Access Service means: (1) The switching of access traffic at the carrier's end office switch and the delivery to or from of such traffic to the called party's premises;

(2) The routing of interexchange telecommunications traffic to or from the called party's premises, either directly or via contractual or other arrangements with an affiliated or unaffiliated entity, ***regardless of the specific functions provided or facilities used***; or

(3) ***Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier***. End Office Access Service rate elements for an incumbent local exchange carrier include the local switching rate elements specified in §69.106 of this chapter, the carrier common line rate elements specified in §69.154 of this chapter, and the intrastate rate elements for functionally equivalent access services. End Office Access Service rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the information surcharge and residual rate elements. ***End office Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.***

(h) Access Reciprocal Compensation. For the purposes of this subpart, ***Access Reciprocal Compensation means telecommunications traffic exchanged between telecommunications service providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.***

(i) Tandem-Switched Transport Access Service. Tandem-Switched Transport Access Service means:

(1) Tandem switching and common transport between the tandem switch and end office; or

(2) ***Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier via other facilities.*** Tandem-Switched Transport rate elements for an incumbent local exchange carrier include the rate elements specified in §69.111 of this chapter, except for the dedicated transport rate elements specified in that section, and intrastate rate elements for functionally equivalent service. ***Tandem Switched Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.***

(D) Two of the Petitioners create, and want to apply, a fictitious CLEC benchmarking scenario that claims ILECs offer IP connectivity, like that offered by Teliax (the ILECs do not).

First, as indicated earlier, these dedicated access services are not formally subject to the benchmarking rule.

More importantly, Petitioners makes two strange statements that warrant further examination:

> *"Thus, even when the traffic is SIP rather than TDM, Teliax violates the benchmark because it is charging for a service for which its competing ILECs never assess tariffed charges. Where the competing ILEC does not include these rates in its tariff, under the benchmark rules, neither can Teliax."*

And

> *"Thus, Teliax violates the benchmark because it is charging for a service that its competing ILECs never assess a tariffed charge for."*

Teliax is not aware that the competing ILECs *ever* offer SIP connections that replace their traditional TDM dedicated access services (DTTP, EF, DTT, and DMUX). Hopefully, Petitioners are not suggesting that a tandem provider, like Teliax, that offers SIP connectivity (in *support of* the FCC's goal to encourage the IP transition) is unable to benchmark that offering to the ILECs' functionally equivalent TDM offering since the ILEC does not offer SIP connectivity (*in spite of* the FCC's goal).

(E) Finally, two petitioners object to the *entirely optional* Alternate Tandem arrangement. That arrangement is easily avoided by the objecting IXCs – simply connect to Teliax's tandem. Again, Teliax is not breaking any new ground here. Alternative Tandem provisions have a long history in the competitive tandem market and go back about ten years. Alternative tandem arrangements are put in place to provide the necessary connectivity for call completion when IXCs *choose* not to connect directly to the competitive tandem. The charges are for precisely what is provided -- the functional equivalent of competing ILEC DTTP, EF, DTT, and DMUX.

CONCLUSION

The Commission should reject the Petition for three 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, the Teliax transmittal does not materially differ from three previous CLEC filings addressing the same issues – all of which are now deemed lawful.

Third, each of the Petitioners' reasons why Teliax's tariff filing is purportedly unlawful fails. It is not unlawful for a CLEC to add new rates for functions, or functional equivalents, it is providing – particularly when the CLEC is benchmarking to the competing ILEC rates (when such rates are subject to the benchmarking requirement). The tariffed 216,000 MOU/DS1/month equivalency has a long history of use by the FCC, ILECs, and more recently, CLECs. Petitioners draw conclusions from the CAF Order about the applicability of tariffed charges to "IP-to-IP" traffic which simply are not there. Petitioners create, and want to apply, a fictitious CLEC benchmarking scenario that claims ILECs offer IP connectivity the way Teliax does. Finally, two petitioners object to the optional Alternate Tandem arrangement. That arrangement is easily avoided by the objecting IXCs – simply connect to Teliax's tandem.

The petitions should be denied.

Respectfully submitted,

/s/ Carey Roesel

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May 6, 2021

CERTIFICATE OF SERVICE

I, Carey Roesel, do hereby certify that, on this 4th Day of May 2021, the foregoing **RESPONSE OF TELIAX COMMUNICATIONS, INC. TO PETITIONS OF CENTURYLINK COMMUNICATIONS, LLC AND LEVEL 3 COMMUNICATIONS, LLC, AT&T SERVICES, INC., AND BANDWIDTH.COM CLEC, LLC, TO SUSPEND OR REJECT TELIAX'S REVISED TARIFF** was served on the following parties via email:

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