

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Core Communications, Inc.
FCC Tariff No. 3

Transmittal No. 22

**PETITION OF VERIZON AND AT&T TO REJECT OR
SUSPEND AND INVESTIGATE CORE’S REVISED TARIFF**

Core is at it again. The Commission recently rejected Core’s tariff filing because it “unilaterally establishe[d] a presumption that all traffic Core sends to IXC’s . . . is ‘legal traffic’” for which Core can bill its applicable tariffed switched access charges.¹ The Commission held that “Core’s assumption . . . that all the traffic it carries is legal, and that it is up to the IXC’s to detect . . . unlawful traffic, is inconsistent with the underlying premise of the Commission’s” orders combatting toll-free arbitrage.² Instead, “Core has a primary role of detecting and preventing illegitimate traffic, given its upstream position in the call flow, direct customer relationships, and status as the point of entry to the PSTN from VoIP providers.”³ And the Commission found that Core “fail[ed] to justify its admittedly ‘novel’ approach of requiring an IXC to credit or not bill its own customers for traffic that is being disputed.”⁴ The Commission also rejected multiple provisions as ambiguous and containing improper cross-references.⁵

¹ Memorandum Opinion and Order, *Core Communications, Inc. et al. Tariff F.C.C. No. 3*, FCC 21-109, WC Docket No. 21-191, ¶ 40 (2021) (“*Core Tariff Order*”), *petition for review filed, CoreTel Delaware, Inc. v. FCC*, No. 21-3170 (3d Cir. Nov. 22, 2021).

² *Id.*

³ *Id.* ¶ 45.

⁴ *Id.* ¶ 47.

⁵ *Id.* ¶¶ 48-50, 56 (applying 47 U.S.C. §§ 61.2, 61.74(a)).

On November 23, 2021, Core filed a tariff revision that has each of these unlawful features. Core again tries to shift to IXCs its primary responsibility to ensure that the toll-free calls that it routes are legitimate calls dialed by end users that seek to communicate with the toll-free number user. Core tries to make an IXC's ability to raise a dispute regarding toll-free calls contingent on its decision not to bill its customers. And the new language is ambiguous and cross-references documents outside the tariff.

Under § 1.773,⁶ Verizon⁷ and AT&T Services, Inc. ("AT&T") request that the Commission reject Core's filing. It is well established that the "Commission may reject a tariff filed by a carrier if the filing is 'so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket.'"⁸ As the courts have explained, "the Commission has 'the power and in some cases the duty' to reject a tariff that is demonstrably unlawful on its face, or that conflicts with a statute, agency regulation or order."⁹ This is such a case. The tariff revisions conflict with the *Core Tariff Order* and the numerous authorities the Commission cited in rejecting Core's prior tariff filing. At a minimum the Commission should suspend and

⁶ 47 C.F.R. § 1.773(a)(2)(iii).

⁷ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

⁸ Order, *GS Texas Ventures, LLC Tariff F.C.C. No. 1*, 29 FCC Rcd 10541, ¶ 4 (Pricing Policy Div. 2014) ("*GS Texas Ventures Order*") (quoting *Municipal Light Bds. v. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971)); see also, e.g., *Capital Network Sys., Inc. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994); Order, *Teliax Colorado, LLC, Tariff F.C.C. No. 1*, 36 FCC Rcd 8285, ¶ 7 & n.26 (Wireline Comp. Bur. 2021) ("In deciding whether to reject proposed tariff revisions, we look at whether the revisions are unlawful on their face").

⁹ *GS Texas Ventures Order* ¶ 4 (quoting *Associated Press v. FCC*, 448 F.2d 1095, 1103 (D.C. Cir. 1971)).

investigate Core’s tariff filing, a copy of which (Tariff FCC No. 3, Transmittal No. 22) is attached to this Petition as Exhibit A.

Core latest tariff filing proposes to add a new § 2.10.4(F). That provision states that “[t]raffic [Core] deliver[s]” to an IXC “is compensable” — that is, that the IXC must pay the applicable tariffed rate elements in Core’s tariff — “unless the traffic is demonstrably non-compensable based on” three (apparently disjunctive) criteria:

- 1) the “traffic is actionable in a court of law or at the FCC as a product or result of a fraud *by the Company*” — that is, by Core itself — “such that the calls at issue were made with the intention to deceive and secure an unlawful gain”;
- 2) the “traffic is a type formally identified by the FCC as non-compensable switched access traffic”; or
- 3) Core and the IXC “agree, in writing,” that the traffic “is non-compensable (e.g., illegal robocalls or other traffic *that the Customer agrees to refund or otherwise not bill its end users*).”¹⁰

Section 2.10.4(F) goes on to state that an IXC “may dispute, and seek credits or refunds for billing” for toll-free calls that are “non-compensable as defined herein.” But the “withholding of disputed amounts” for toll-free calls that the IXC contends are “suspect, fraudulent, illegal, or otherwise non-compensable” for reasons other than the three listed above “will not be considered good faith disputes.”

This new section is Core’s latest attempt to enshrine in its tariff its business model of profiting from 8YY arbitrage schemes while avoiding any accountability for doing so.

Core’s first “demonstrably non-compensable” criterion is limited to toll-free calls where there is “fraud by the Company” — that is, by Core itself. While Core cannot bill for toll-free calls that it fraudulently places or that it fraudulently induces others to place, Core cannot bill its tariffed rates for any artificially generated toll-free calls, not merely those where it is a

¹⁰ Transmittal No. 22, § 2.10.4(F) (emphases added).

participant in the fraud. Yet, as written, so long as Core is not actively involved in the fraud — rather than passively enabling others’ artificial call generation by purchasing toll-free calls without taking meaningful ex ante steps to police their origination — those illegitimate calls would be “compensable” under this first criterion. Core’s attempt to limit this first criterion is especially problematic because “Core purchases all of the 8YY traffic that traverses its network from other carriers.”¹¹ It is those third parties or, more likely, others further even away from Core’s position in the call flow that are “the perpetrators of illegal traffic.”¹² As the Commission recognized, even though these perpetrators may “not [be] Core’s direct customers, Core is in a better position” than the IXC’s to which it sends the calls to “take steps to mitigate the impact of that traffic.”¹³ And it is Core that has the “primary role of detecting and preventing illegitimate traffic”¹⁴ — a role that Core seeks to shirk through this first criterion.

Core’s second “demonstrably non-compensable” criterion violates the Commission’s rules requiring tariffs to be self-contained and unambiguous. It violates § 61.74(a) because it “make[s] reference to . . . an[] other document” — namely, a Commission order that formally identifies originating calls as non-compensable.¹⁵ And it also violates § 61.2 because it is not clear from the face of the tariff what it means for the Commission to “formally identif[y]” a “type” of traffic as “non-compensable switched access traffic.” Core’s tariff filing does not

¹¹ *Core Tariff Order* ¶ 2; *accord id.* ¶ 2 n.4 (“Core is 100 percent wholesale, and has no direct end user customers. . . . In all cases Core is in the middle of the call flow.”). More accurately, Core uses “an affiliate, Ton 80, to effectuate its purchases.” *Id.* ¶ 13. In defending its prior tariff filing, which the Commission rejected, Core never explained why Ton 80 performs this function instead of Core. *See id.* ¶ 13 n.54.

¹² *Id.* ¶ 44.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ 47 C.F.R. § 61.74(a).

define any of these terms. The *Core Tariff Order* found a provision unlawful because the combination of cross-referencing and ambiguity meant that “a party could not reasonably ascertain the ‘proper application’ of the tariff at the time it was filed.”¹⁶ The same is true of this second criterion.

Core’s third “demonstrably non-compensable” criterion seeks to make Core’s ability to collect its tariffed rates contingent on whether an IXC “agrees to refund or otherwise not bill its end users” for toll-free calls. But, as the Commission explained, the “purpose of a tariff is to provide the rates, terms, and conditions that govern a carrier’s (Core’s) relationship with its customers (IXCs), not to impose the carrier’s will on its customer’s end-user customer.”¹⁷ And Core is again “impos[ing] an unreasonable financial barrier to raising a dispute”: like the provision the Commission rejected, this third criterion “requires an IXC to incur a financial cost or penalty — either by issuing billing credits or declining to charge its toll free customers for completed calls — before an IXC can raise a good faith dispute with Core.”¹⁸ The Commission also previously found that Core had failed to justify its “approach of requiring an IXC to credit or not bill its own customers for traffic that is being disputed” because it did “not provid[e] the Commission . . . with any legal precedent to support its position.”¹⁹ No new legal precedent supporting this novel approach was issued in the less than seven weeks since the Commission last rejected Core’s effort to use its tariff to regulate an IXC’s relationship with its toll-free customers.

¹⁶ *Core Tariff Order* ¶ 56; see also *id.* ¶ 50 (finding tariff language ambiguous in violation of § 61.2 where Core’s tariff filing similarly did “not define the[] [material] terms”).

¹⁷ *Id.* ¶ 28.

¹⁸ *Id.* ¶ 46.

¹⁹ *Id.* ¶ 47.

These three provisions, in combination, attempt to achieve the same unlawful effect as the earlier Core tariff the Commission rejected. Core’s tariff language again assumes “that all the traffic it carries is legal” and then leaves it “up to the IXCs to detect” Core’s participation in the fraudulent generation of the toll-free calls it purchased.²⁰ Otherwise, calls can be demonstrably non-compensable — and the IXC can raise a good faith dispute — if “the IXC . . . refund[s] the charges, or [does] not charge,” its toll-free customer.²¹ The remaining language in § 2.10.4(F) confirms this. Core deems a dispute “not [in] good faith” if an IXC “withhold[s] . . . disputed amounts” based on the IXC’s conclusion that the toll-free calls Core purchased and sent to that IXC is “suspect, fraudulent, illegal, or otherwise noncompensable” for reasons other than Core’s three “demonstrably non-compensable” criteria. But the Commission previously found that Core had “not provided any legal justification for its position that . . . withholding payment[] is categorically unlawful” and noted that “Core’s tariff allows for disputed charges to be withheld.”²² Section 2.10.C of Core’s tariff — which this latest filing does not alter — continues to state that an IXC may “with[o]ld” payments “pending resolution of the dispute[.]” Core’s effort to cabin the grounds on which IXCs may dispute its charges is unlawful.

Finally, the Commission should sanction Core for flouting the clear rulings in the *Core Tariff Order*.²³ In that order, the Commission directed the “Wireline Competition Bureau to

²⁰ *Id.* ¶ 40.

²¹ *Id.* ¶ 47. The possibility of obtaining a Commission ruling that some “traffic is . . . formally identified . . . as non-compensable switched access traffic” — a ruling that would be issued, presumably, in response to a petition by IXCs — also shifts to IXCs Core’s obligation to ensure that it only purchases legitimate toll-free traffic.

²² *Id.* ¶ 26 & n.98.

²³ See 47 U.S.C. § 501 *et seq.*; *id.* ¶ 416(c).

ensure that the Commission’s findings are properly reflected in Core’s new revised tariff.”²⁴ But Core did not include this new provision in the October 15, 2021 tariff filing it made following the *Core Tariff Order*, when the Bureau was directed to be particularly alert to ensuring Core’s compliance with the Commission’s rulings. Instead, Core waited a few weeks — until shortly before the Thanksgiving holiday — to attempt to reinstate the same unlawful approach the Commission rejected. If there are no penalties for such a flagrant attempt to evade a recently issued Commission order, unscrupulous carriers will be emboldened to continue to file substantively identical — but slightly modified — tariffs until one sneaks through that they then will claim is deemed lawful.

CONCLUSION

The Commission should reject Core’s November 23, 2021 tariff filing because it is unlawful for the same reasons the Commission identified in the *Core Tariff Order*. In the alternative, the Commission should suspend and investigate the tariff because Core’s unlawful provisions imperil the completion of customers’ 8YY calls and raise “substantial questions of law and fact” that present “substantial risk that ratepayers or competitors would be harmed if the proposed tariff revisions were allowed to take effect.”²⁵ Core’s tariff filing thus meets the factors for suspension of a new tariff filing laid out in 47 C.F.R. § 1.773(a)(1)(ii).

²⁴ *Core Tariff Order* ¶ 70.

²⁵ See Notice of Proposed Rulemaking, *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, 11 FCC Rcd 11233, ¶ 13 (1996) (“Pursuant to Section 204(a) of the Act, the Commission may suspend and investigate proposed tariffs if they raise substantial questions of law and fact and there is substantial risk that ratepayers or competitors would be harmed if the proposed tariff revisions were allowed to take effect.”) (footnote omitted).

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CERTIFICATE OF SERVICE

I, Scott H. Angstreich, do hereby certify that, on this 30th day of November 2021, the foregoing **PETITION OF VERIZON AND AT&T TO REJECT OR SUSPEND AND INVESTIGATE CORE'S REVISED TARIFF** was served on the following via email and fax:

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