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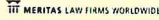
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June 28, 2012

**RECEIVED**

JUN 29 2012

**PUBLIC SERVICE COMMISSION**

Darrell Nitschke  
ND Public Service Commission  
600 E Boulevard, Dept. 408  
Bismarck, ND 58505-0480

Re: AT&T Communications of the Midwest, Inc.  
Our File No. 14048


Dear Mr. Nitschke:

Enclosed for filing please find the Formal Complaint of AT&T Communications of the Midwest, Inc. versus YMax Communication Corporation. Pursuant to N.D. Admin Code § 69-02-02-02(3), one copy of the Complaint for each respondent and seven additional copies of the Complaint are included.

I am also sending you a copy of the Formal Complaint electronically with an email.

If you have any questions, feel free to call me.

Respectfully yours,

  
Thomas D. Kelsch

TDK: jmn  
Enclosures



1 **PU-12-433** Filed: 6/29/2012 Pages: 42  
**NDCC 49-21-06 Complaint against prices**

AT&T Communications of the Midwest, Inc.  
Thomas Kelsch, KelschKelschRuff&Kranda

BEFORE  
THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

AT&T Communications of the Midwest, Inc.	)	
	)	
	)	
Complainant,	)	Case No. PU-_____
vs.	)	
	)	COMPLAINT
YMax Communication Corporation,	)	
	)	
Respondent.	)	

Complainant, AT&T Communications of the Midwest Inc., (AT&T), by its attorney, and pursuant to Section 69-02-02-02 of the Commission's rules, alleges as follows:

1. AT&T is a foreign corporation and a registered Competitive Local Exchange Carrier (“CLEC”) and a registered Interexchange Carrier (“IXC”) authorized to do business in the State of North Dakota.
2. Respondent, YMax Communication Corporation filed revisions to North Dakota Tariff No. 2 (Access Service) with the North Dakota Public Service Commission on June 8, 2012, Case No. PU-12-289.
3. AT&T is filing this complaint of the captioned tariff application and request that the Commission order its Staff to further investigate the application, and schedule a hearing on the appropriations of the filed rates.
4. Several aspects of the YMax tariff application are in direct contravention of the FCC's recent orders in its access reform docket and are, therefore, contrary to the public interest.
5. The proposed tariff amendments should not be approved. To that end, the automatic approval of the tariff application filed on June 8, 2012 should be suspended.
6. YMax is asking this Commission for authority to charge for access functions that YMax does not provide.
7. YMax has already raised similar proposals with the FCC, and the FCC has soundly rejected them. This Commission should do the same.
8. On November 8, 2011, the FCC issued its Order Reforming Inter-carrier Compensation and the Universal Service Fund (“FCC USF-ICC Order”).<sup>1</sup> As part of the inter-carrier

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<sup>1</sup> *Connect America Fund et al.*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) (“FCC's USF-ICC Order”)

compensation portion of the order, the FCC adopted a prospective transitional compensation framework for VoIP – PSTN traffic.<sup>2</sup> Although, prior to the issuance of the FCC USF-ICC Order, there was significant debate among carriers regarding the nature and appropriate compensation of VoIP-PSTN traffic, in its Order the FCC made clear that VoIP-PSTN traffic is access compensable within the framework of §251(b)(5). Specifically, the Order adopted the *interstate* access rate as the default rate to be charged for all VoIP-PSTN traffic, originating and terminating.<sup>3</sup> Consistent with the FCC's intent that its new regime for intercarrier compensation be symmetrical, 47 CFR §51.913(b) specifically provides:

“[A] local exchange carrier shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier's Interstate or intrastate tariff for access services defined in §51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of service . . . or a non-interconnected VoIP service . . . that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic.”

9. However, §51.913(b) is equally clear that:

“This rule does not permit a local exchange carrier to charge for functions not performed by the Local Exchange Carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service.”

10. In support of this provision, the FCC cited its own decision in *AT&T v. YMax*, 26 FCC Rcd at 5757, 5759-59, ¶¶41, 44 & n.120, finding that "although access services might functionally be accomplished in different ways depending upon the network technology, the right to charge does not extend to functions not performed by the LEC or its retail VoIP service provider partner."<sup>4</sup>

11. In an ex parte letter to the FCC dated February 3, 2012, YMax sought clarification regarding the FCC's symmetrical compensation scheme involving access charges among carriers. Specifically, YMax sought confirmation that under the new VoIP-PSTN symmetry rule, "a LEC is performing the functional equivalent of ILEC access service and therefore entitled to charge the full 'benchmark' rate level, whenever it is providing

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<sup>2</sup> In its Order, the FCC defined this traffic as "traffic exchanged over PSTN facilities that originates or terminates in IP format." *Id.*, at ¶ 940.

<sup>3</sup> FCC Order at ¶ 961. AT&T notes that on April 25, 2012, the FCC issued its *Second Order on Reconsideration*, FCC 12-47, released April 25, 2012 ("*Second Order*") modifying the FCC Order regarding the intercarrier compensation for *originating* VoIP-PSTN traffic. Pursuant to the new rule, carriers will be allowed to set the default rate for intraLATA *originating* VoIP-PSTN traffic at their existing intrastate rate until June 30, 2014, rather than the interstate rate required by the original FCC Order. The new rule, which is prospective only, and which will become effective forty-five (45) days after the May 29, 2012 publication of the Second Order in the Federal Register, does not modify 47 CFR §51.913(b).

<sup>4</sup> FCC Order at ¶970, note 2028.

telephone numbers and some portion of the interconnection with the PSTN, *and regardless of how or by whom the last-mile transmission is provided.*" See Attachment A (February 3, 2012 Ex Parte letter to the FCC) (emphasis added).

12. YMax acknowledges that the FCC's USF-ICC order would not support YMax's interpretation; "[J]udging from the paragraphs of the YMax Order that it references, the Commission might appear to be suggesting that if the physical transmission facilities connecting the IXC and the VoIP service customer are provided in part by one or more unrelated ISPs (as is the case with YMax or 'over-the-top' VoIP providers such as Skype or Vonage), then the LEC and its VoIP service partner are not performing the 'access' function and cannot charge for it." *Id.* Nevertheless, YMax argues that comments in support of the VoIP-PSTN symmetry rule, together with revisions to rule 61.26(f)<sup>5</sup> regarding a CLEC's ability to collect access charges for delivering interstate traffic to the called number, support its argument that a carrier can collect switched access charges regardless of whether it provides the end-office switching function required to deliver the call to the called number. *Id.*
13. On February 27, 2012, the FCC expressly rejected YMax's claim that it be permitted to charge switched access rates regardless of whether it actually provided the end-office functions in question:

“Stated differently, YMax seeks guidance from the Commission as to whether the revised rule language in Part 61, specifically, section 61.26(f) permits a competitive LEC to tariff and charge the full benchmark rate even if it includes functions that neither it nor its VoIP retail partner is actually providing. YMax assert that the purpose of the commission's revisions to section 61.26(f) was to 'defin[e] the minimum access functionality necessary in order for a CLEC to be allowed to collect access charges at the full benchmark level under the VoIP-PSTN symmetry rule.' AT&T disagrees. The Commission revised section 61.26(f) to reflect the change in the tariffing process to implement the VoIP symmetry rule, which included limitations to prevent double billing. Interpreting the rule in the manner proposed by YMax could enable double billing. The Commission made clear in adopting the VoIP-symmetry rule that it intended to prevent double billing and charging for functions not actually provided. Indeed, section 51.913(b) expressly states that '[t]his rule does *not* permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service.’”<sup>6</sup>

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<sup>5</sup> 47 C.F.R. §61.26(f).

<sup>6</sup> *YMAX Clarification Order*, DA 12-298, released on February 27, 2012, at ¶4, included as Attachment B, quoting Attachment A, and also quoting the FCC's USF-ICC order at para. 970; *see also* 47 C.F.R. §§ 51.913, 61.26(f).

## The YMax Tariff Application

14. Despite the fact that the FCC's February 27, 2012 Order soundly rejected YMax's proposed interpretation of the VoIP-PSTN switched access compensation scheme, YMax filed proposed revisions to its North Dakota switched access tariff with this Commission on June 8, 2012, again asserting the (now-rejected) position that local exchange carriers may charge access rates regardless of whether the carrier actually performs the end-office function of delivering the call to the called number, as evidenced by YMax's proposed revisions to its tariff.
15. AT&T objects to YMax's proposed tariff revisions. When YMax raised its theories regarding its interpretation of the VoIP-PSTN symmetrical compensation scheme with the FCC via its February 3, 2012, ex parte letter, the FCC flatly rejected YMax's position, characterizing it as an interpretation that "could enable double billing", and citing the Commission's rule that a local exchange carrier may not charge for functions not performed by the carrier itself or by an affiliated or unaffiliated VoIP provider.<sup>7</sup> Notwithstanding the FCC's unambiguous rejection of its proposal, YMax persists and proposes that this Commission permit it to implement what the FCC has disallowed.
16. The YMax tariff application includes proposed language that is inconsistent with the FCC's Orders on the appropriate compensation for VoIP-PSTN traffic. AT&T's primary concern is that YMax has included language that appears to be designed to skirt the FCC's clear policy that "over the top" VoIP providers (i.e., LECs who provide service to end user customers under a contractual arrangement with a VoIP Service Provider) can only recover for those functions provided either by the LEC or by that VoIP Service Provider. While AT&T recognizes that individual carriers may use alternative language to meet underlying tariff requirements, AT&T affiliates' experience with YMax, as well as YMax's well documented attempt to interpret the FCC's Order in a manner inconsistent with the FCC's intent, suggests that YMax's application should be suspended and investigated.
17. YMax proposes a substantial change to the tariff's definition of "End Office Switch." See Attachment C – relevant tariff pages, First Revised Sheet 7. Part of that definition provides as follows:

The "first point of connection" means there is no other Switch performing these functions between it and the End User, regardless of how the End User obtains its connection to that switch.
18. This language is contrary to the FCC's rule that a LEC is not permitted to charge for functions it does not perform. Through this language, YMax suggests that it is entitled to charge for end office switching in situations where the VoIP service provider customer obtains connectivity to the VoIP service provider (i.e., the functional equivalent of the loop) by purchasing broadband service from a third, unrelated provider. It is in exactly this situation – where the customer brings her own broadband and neither the LEC nor the

VoIP Service Provider furnishes the facilities – where the FCC rule prohibits YMax from seeking compensation.

In section 2.9.3.A.2 of its proposed tariff, YMax includes this provision:

“Switched access charges under this tariff apply to VoIP-PSTN Access Traffic whether the connection to the called or calling party's premises is provided by the Company directly or in conjunction with a Provider of VoIP Service that does not itself seek to collect switched access charges for the same traffic.”

See Attachment C. This language is also inconsistent with the FCC's orders. 47 CFR § 51.913(b)<sup>8</sup> only allows a LEC to charge full access compensation when the LEC "itself delivers the call to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service." AT&T is concerned that YMax's choice of the term "in conjunction with" is an attempt to eliminate a critical criteria for the determination of what compensation is allowable.

19. In proposed Section 2.9.3.A.2 of the tariff, YMax continues as follows:

“As long as the Company is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, then the provision by the Company of any portion of the transport or termination of VoIP-PSTN Access Traffic shall be considered the functional equivalent of the access service typically provided by an incumbent local exchange carrier, regardless of the technology or network structure employed by the Company or the VoIP Service provider to perform that function.”

See Attachment C. This is language that the FCC has specifically rejected. In its February 3, 2012 ex parte letter to the FCC, YMax sought clarification of its interpretation of the FCC's Order, arguing that it believed a carrier was entitled to charge the full "benchmark" rate level "whenever it is providing telephone numbers and some portion of the interconnection with the PSTN, and regardless of how or by whom the last mile transmission is provided." As explained above, the FCC rejected this interpretation.<sup>9</sup>

20. In a similar case that is pending in Colorado, the Public Utilities Commission has suspended YMax's tariff application and has referred the matter to an Administrative Law Judge.<sup>10</sup> This Commission should do the same.

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<sup>8</sup> 47 CFR § 51.913(b)

<sup>9</sup> YMax Clarification Order, DA 12-298, adopted February 27, 2012, at ¶ 4.

<sup>10</sup> Order Suspending Effective Date of Tariffs, etc., Public Utilities Commission of Colorado, Docket No. 12AL-461T, Decision No. C12-0521-1, May 16, 2012 (see Attachment D).


NOW WHEREFORE, AT&T prays for the following relief:

1. That the YMax Communication Corporation Tariff filed on June 8, 2012 be suspended.
2. That YMax Tariff be determined not to be in compliance with relevant FCC orders.

Respectfully submitted,

AT&T Communications of the Midwest, Inc.

Dated this 28 day of June, 2012.



Thomas D. Kelsch  
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Legal Counsel for AT&T Communications  
of the Midwest Inc.  
103 Collins Avenue, PO Box 1266  
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(701)663-9818

February 3, 2012

Via EFCS

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Ms. Dortch:

*Re: Written Ex Parte Presentation, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket 10-208*

YMax Communications Corp. (“YMax”) seeks confirmation that it is properly interpreting the Commission’s *Report and Order and Further Notice of Proposed Rulemaking* (“ICC Reform Order” or “Order”) in the above-captioned proceedings.<sup>1</sup> Specifically, YMax asks the Commission to confirm that under its new VoIP-PSTN “symmetry” rule, a LEC is performing the functional equivalent of ILEC access service, and therefore entitled to charge the full “benchmark” rate level, whenever it is providing telephone numbers and some portion of the interconnection with the PSTN, and regardless of how or by whom the last-mile transmission is provided.

In the ICC Reform Order the Commission determined that LECs providing wholesale services to retail VoIP providers should be able to collect all the same intercarrier compensation charges as LECs relying entirely on TDM networks, regardless of how the relationship with their retail VoIP service partners is structured and regardless of whether the functions performed or the technology used correspond to those used under a traditional TDM architecture.<sup>2</sup>

YMax applauds the Commission’s ruling, as well as its underlying policy finding that “a symmetric approach to VoIP-PSTN intercarrier compensation is warranted *for all LECs*.”<sup>3</sup>

<sup>1</sup> See *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (ICC Reform Order).

<sup>2</sup> ICC Reform Order at ¶¶ 968-970, and 47 CFR § 51.913.

<sup>3</sup> *Id.* at ¶ 968 (*emphasis added*).

The Commission went on to say, however, that its rules “do not permit a LEC to charge for functions performed neither by itself [n]or its retail service provider partner,” and cited *AT&T Corp. v. YMax Communications Corp.*, 26 FCC Rcd 5742 (2011) (the “*YMax Order*”) as illustrating that situation.<sup>4</sup> The Commission elaborated in a footnote that “although access services might functionally be accomplished in different ways depending upon the network technology, the right to charge does not extend to functions not performed by the LEC or its retail VoIP service provider partner,”<sup>5</sup> and codified this exception in the text of its rules.<sup>6</sup>

Judging from the paragraphs of the *YMax Order* that it references, the Commission might appear to be suggesting that if the physical transmission facilities connecting the IXC and the VoIP service customer are provided in part by one or more unrelated ISPs (as is the case with YMax or “over-the-top” VoIP providers such as Skype or Vonage), then the LEC and its VoIP service partner are not performing the “access” function and cannot charge for it.<sup>7</sup>

YMax does not believe that is what the Commission actually ruled, for the reasons outlined below. However, YMax suspects that one or more IXCs may claim that the Commission’s “functions not performed” exception permits them to refuse to compensate YMax for VoIP-PSTN traffic under the ICC Reform Order. Confirming now the proper interpretation of the Order and its implementing regulations in this respect would help prevent disputes, another key goal of the Order.<sup>8</sup>

The central question is this: under the Commission’s new VoIP-PSTN symmetry rule, what is the baseline access function or functions that a CLEC must be performing in order to be allowed to charge the equivalent of full ILEC switched access rates, and without which the “functions not performed” exception applies? YMax believes the answer lies in the industry proposals on which the Commission’s rule was based, and in the revisions to 47 CFR § 61.26 the Commission adopted in order to address this issue.

The VoIP-PSTN symmetry rule is based on proposals filed by several

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<sup>4</sup> *Id.* at ¶ 970 and nn. 2026, 2028. How the new VoIP-PSTN symmetry rule enunciated in the ICC Reform Order should be interpreted and applied prospectively – the subject of this letter -- is an entirely separate matter from the issues decided in the *YMax Order* and currently under reconsideration. YMax does not express any opinion here on the issues being litigated in the complaint proceeding (which concern the parties’ rights and obligations under YMax’s previous tariff language and the pre-Order regime), and is not asking here for any Commission attention or action on those issues outside of that proceeding.

<sup>5</sup> *Id.* at ¶ 970, n. 2028.

<sup>6</sup> See 47 CFR § 51.913(b) (“This rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service.”).

<sup>7</sup> See paragraphs 41 and 44, n. 120, of the *YMax Order*, cited in the ICC Reform Order at ¶ 970, n. 2028.

<sup>8</sup> See, e.g., ICC Reform Order at ¶ 930.

commenting parties and cited in the ICC Reform Order at ¶¶ 968–970.<sup>9</sup> Under those proposals it is not necessary for either the LEC or its VoIP service partner to be using a TDM-based “end office” switch<sup>10</sup> or providing “loop facilities” or any other physical connection to the VoIP customer<sup>11</sup> in order for the LEC to collect full access charges. Even AT&T, which vehemently opposed adoption of the VoIP-PSTN symmetry rule and now seeks to overturn it on appeal,<sup>12</sup> conceded that the proposal ultimately adopted would permit CLECs to collect full benchmark switched access charges “even when those CLECs perform few, if any, of the benchmark functions identified in the Commission’s rules,” and even for “functions actually being performed by ISPs who receive PSTN-to-IP calls from those CLECs and route them over Internet backbones, middle mile facilities, and broadband Internet access connections for termination to customers of “over the top” VoIP services.”<sup>13</sup>

If “few, if any” of the traditional TDM-based ILEC access functions are required in order for a CLEC to collect full access charges on VoIP-PSTN traffic, what is the minimum functionality required? This, too, was addressed by the parties that proposed the symmetry rule, and accepted by the Commission.

In its *August 3 PN Comments*, Level 3 pointed out that “because the access charge rules differentiate between situations in which LECs provide end office functionality and ones in which they provide only transit, it is important for there to be a clear rule as to when a LEC is providing end office functionality and therefore can collect end office switching access charges, either originating or terminating.”<sup>14</sup> Level 3 therefore urged the Commission to “establish a bright-line test that defines a LEC to be eligible to receive end office switched access charges when it is identified in the NPAC database as providing the calling party or dialed number.”<sup>15</sup> In an *ex parte* filing dated September 22, Comcast put that concept into the form of a proposed text change to the existing CLEC benchmark regulation, 47 CFR § 61.26. Specifically, Comcast proposed adding language to paragraph (f) of that regulation stating that “if [a] CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may assess a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.”<sup>16</sup>

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<sup>9</sup> See, e.g., Comcast *August 3 PN Comments* at 5-8; NCTA *August 3 PN Comments* at 17-19; Time Warner Cable *August 3 PN Comments* at 9-10; Level 3 *August 3 PN Comments* at 21-14; Time Warner Cable-Cox Sept. 21, 2011 *Ex Parte Letter*; Comcast Sept. 22, 2011 *Ex Parte Letter*.

<sup>10</sup> See, e.g., Comcast *August 3 PN Comments* at 7.

<sup>11</sup> See, e.g., Level 3 *August 3 PN Comments* at 22.

<sup>12</sup> See *AT&T, Inc., v. FCC and USA*, 10<sup>th</sup> Cir. No. 11-9591.

<sup>13</sup> AT&T Oct. 21, 2011 *Ex Parte Letter* at 1-2.

<sup>14</sup> Level 3 *August 3 PN Comments* at 21.

<sup>15</sup> *Id.* at 21-24.

<sup>16</sup> Comcast Sept. 22, 2011 *Ex Parte Letter*.

Similar language was proposed in other filings.<sup>17</sup> The Commission adopted the proposed language in the final rules it promulgated with the Order, revising Section 61.26(f) as follows:

If a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may assess a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.

Although the Commission did not discuss this rule revision in paragraph 970 or anywhere else in the text of its Order, its purpose was clearly to implement the “bright line” rule urged by Level 3, Comcast and others, and to avoid future disputes by expressly defining the minimum access functionality necessary in order for a CLEC to be allowed to collect access charges at the full benchmark level under the VoIP-PSTN symmetry rule.

The Commission also revised the definition of “switched exchange access services” in the CLEC benchmark rule to include

[t]he termination of interexchange telecommunications traffic to any end user, either directly or via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. § 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. § 153(36), that does not itself seek to collect reciprocal compensation charges prescribed by this subpart for that traffic, regardless of the specific functions provided or facilities used.<sup>18</sup>

Putting all the pieces together, it seems beyond dispute that whenever a CLEC is providing “some portion” of the interconnection required to complete VoIP-PSTN calls and is listed in the NPAC database as providing the associated telephone numbers, then the CLEC is providing “switched exchange access services” and may collect the full benchmark rate level. So long as neither the VoIP service provider nor any other provider in the chain is also seeking to collect access charges on the call there is no double-billing problem, and because the CLEC’s rate is benchmarked against the competing ILEC rate the IXC is paying no more to originate or terminate

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<sup>17</sup> See, e.g., Comcast/Time Warner Cable/Cox October 5, 2011, *Ex Parte* letter.

<sup>18</sup> 47 CFR § 61.26(a)(3)(ii).

Marlene H. Dortch  
February 3, 2012  
Page 5 of 5

the VoIP-PSTN call than it would have paid in an all-TDM scenario – the central policy behind the “symmetry” rule.

In order to avoid costly and disruptive disputes, YMax requests the Commission to confirm that its reading of the Order is correct.

Respectfully submitted,

*/s/ John B. Messenger*

John B. Messenger  
VP – Legal & Regulatory  
YMax Communications Corp.  
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cc: Victoria Goldberg

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**ORDER**

**Adopted: February 27, 2012**

**Released: February 27, 2012**

By the Chief, Wireline Competition Bureau

**I. INTRODUCTION**

1. In the *USF/ICC Transformation Order*, the Commission delegated to the Wireline Competition Bureau (Bureau) the authority to revise and clarify rules as necessary to ensure that the reforms adopted in the *Order* are properly reflected in the rules.<sup>1</sup> In this Order, the Bureau acts pursuant to this delegated authority to revise and clarify certain rules, and acts pursuant to authority delegated to the Bureau in sections 0.91, 0.201(d), and 0.291 of the Commission's rules to clarify certain rules.<sup>2</sup>

<sup>1</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 at para. 1404 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

<sup>2</sup> See 47 C.F.R. §§ 0.91, 0.201(d), 0.291. The Bureau may release additional clarification orders in the future, consistent with its authority under the *USF/ICC Transformation Order*. See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 12-147 (rel. Feb. 3, 2012) (*USF/ICC Clarification Order*).

## II. DISCUSSION

### A. Intercarrier Compensation

2. In the *USF/ICC Transformation Order*, the Commission adopted a prospective transitional intercarrier compensation framework for VoIP-PSTN traffic.<sup>3</sup> This transitional framework included default compensation rates and addressed a number of implementation issues, including explaining the scope of charges that local exchange carrier (LEC) partners of affiliated or unaffiliated retail VoIP providers are able to include in tariffs. In particular, the Commission determined that it was appropriate to adopt a “symmetric” framework for VoIP-PSTN traffic. This symmetric approach means that “providers that benefit from lower VoIP-PSTN rates when their end-user customers’ traffic is terminated to other providers’ end-user customers also are restricted to charging the lower VoIP-PSTN rates when other providers’ traffic is terminated to their end-user customers.”<sup>4</sup>

3. As part of its symmetric regime, the Commission adopted rules that “permit a LEC to charge the relevant intercarrier compensation for functions performed by it and/or its retail VoIP partner, regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture.”<sup>5</sup> The Commission cautioned, however, that “although access services might functionally be accomplished in different ways depending upon the network technology, the right to charge does not extend to functions not performed by the LEC or its retail VoIP service provider partner.”<sup>6</sup> The Commission adopted this limitation to address concerns in the record regarding double billing.<sup>7</sup> This limitation was codified as part of the VoIP-PSTN framework in section 51.913(b) of the Commission’s rules.<sup>8</sup> The Commission also modified its tariffing rules in Part 61 for competitive LECs to implement the VoIP symmetry rule.<sup>9</sup>

<sup>3</sup> See *USF/ICC Transformation Order* at para. 970; see also 47 C.F.R. §§ 51.913, 61.26(f).

<sup>4</sup> *USF/ICC Transformation Order* at para. 942.

<sup>5</sup> *Id.* at 970. This is often referred to as the “VoIP symmetry rule.”

<sup>6</sup> *Id.* n.2028; see 47 C.F.R. § 51.913(b).

<sup>7</sup> *USF/ICC Transformation Order* at para. 970 (“However, our rules include measures to protect against double billing, and we also make clear that our rules do not permit a LEC to charge for functions performed neither by itself or its retail service provider partner.”).

<sup>8</sup> Section 51.913(b) states, in pertinent part, that “a local exchange carrier shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier’s interstate or intrastate tariff for the access services defined in § 51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party’s premises or delivers the call to the called party’s premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic. This rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service.” 47 C.F.R. § 51.913(b).

<sup>9</sup> Parties argued that this additional rule language was necessary to implement the VoIP symmetry rule and avoid future disputes and controversy over the tariffing of these charges. See Letter from Mary McManus, Counsel, Comcast Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GC Docket No. 09-51, WT Docket No. 10-208 (filed Sep. 22, 2011). In particular, the Commission modified 61.26(f) and added the language in italics to the existing rule: “[i]f a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, *except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may assess a rate equal to the rate that would be*

(continued...)

4. On February 3, 2012, YMax Communications Corp. (YMax) filed an *ex parte* letter seeking confirmation of its interpretation that “under [the Commission’s] new VoIP-PSTN ‘symmetry’ rule, a LEC is performing the functional equivalent of ILEC access service, and therefore entitled to charge the full ‘benchmark’ rate level, whenever it is providing telephone numbers and some portion of the interconnection with the PSTN, and regardless of how or by whom the last-mile transmission is provided.”<sup>10</sup> Stated differently, YMax seeks guidance from the Commission as to whether the revised rule language in Part 61, specifically, section 61.26(f) permits a competitive LEC to tariff and charge the full benchmark rate even if it includes functions that neither it nor its VoIP retail partner are actually providing. YMax asserts that the purpose of the Commission’s revisions to section 61.26(f) was to “defin[e] the minimum access functionality necessary in order for a CLEC to be allowed to collect access charges at the full benchmark level under the VoIP-PSTN symmetry rule.”<sup>11</sup> We disagree. The Commission revised section 61.26(f) to reflect the change in the tariffing process to implement the VoIP symmetry rule, which included limitations to prevent double billing. Interpreting the rule in the manner proposed by YMax could enable double billing. The Commission made clear in adopting the VoIP-symmetry rule that it intended to prevent double billing and charging for functions not actually provided.<sup>12</sup> Indeed, section 51.913(b) expressly states that “[t]his rule does *not* permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service.”<sup>13</sup>

5. YMax’s letter does, however, highlight a potential ambiguity because the amended rule 61.26(f), which is the tariffing provision intended to implement the VoIP symmetry rule, did not include an express cross reference to section 51.913(b). Although section 51.913(b) makes clear that its terms apply notwithstanding any other Commission rule,<sup>14</sup> to remove any ambiguity regarding the scope of what competitive LECs are permitted to assess in their tariffs, we amend section 61.26(f) to make clear that the ability to charge under the tariff is limited by section 51.913(b). In so doing, we address and reject YMax’s interpretation of section 61.26(f).<sup>15</sup>

## B. Universal Service

6. *Verizon Petition for Clarification or, in the Alternative, for Reconsideration*. In the *USF/ICC Transformation Order*, the Commission adopted rules to phase down existing high-cost support for competitive eligible telecommunications carriers (ETCs), and addressed the phase down of existing

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(...continued from previous page)

*charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.”* 47 C.F.R. § 61.26(f) (emphasis added).

<sup>10</sup> Letter from John B. Messenger, VP – Legal & Regulatory, YMax Communications Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GC Docket No. 09- 51, WT Docket No. 10-208 (filed Feb. 3, 2012) (YMax Letter).

<sup>11</sup> *Id.*

<sup>12</sup> *USF/ICC Transformation Order* at para. 970 (“However, our rules include measures to protect against double billing, and we also make clear that our rules do not permit a LEC to charge for functions performed neither by itself or its retail service provider partner.”).

<sup>13</sup> 47 C.F.R. § 51.913(b) (emphasis added).

<sup>14</sup> 47 C.F.R. § 51.913(b) (noting that this section applies “[n]otwithstanding any other provision of the Commission’s rules”).

<sup>15</sup> *USF/ICC Transformation Order* at para. 970; *see also* 47 C.F.R. §§ 51.913, 61.26(f). Thus, we make clear it is not sufficient merely for the competitive LEC to be listed in the Number Portability Administration Center (NPAC) database as providing the associated telephone numbers to enable a competitive LEC to assess the full benchmark rate.

high-cost support to Verizon Wireless and Sprint pursuant to those carriers' prior merger commitments, as clarified by the *Corr Wireless Order*.<sup>16</sup> On December 29, 2011, Verizon Wireless filed a petition for clarification or, in the alternative, for reconsideration of this aspect of the *Order* as it applies to Verizon Wireless.<sup>17</sup> Verizon Wireless argues that there are two permissible interpretations of the *USF/ICC Order* as it bears on the phase down of support for Verizon Wireless: that the general phase down of the competitive ETC support applies but Verizon Wireless's merger commitment no longer does, or that Verizon Wireless's merger commitment remains in effect but general phase down of competitive ETC support does not.<sup>18</sup> Verizon Wireless states that a Bureau-level clarification is the appropriate means of resolving this ambiguity.<sup>19</sup>

7. The Bureau clarifies that, pursuant to paragraph 520 of the *USF/ICC Transformation Order*, only Verizon Wireless's merger commitment applies.<sup>20</sup> Specifically, the Bureau clarifies that Verizon Wireless will receive support in 2012 based on its merger commitments, as clarified by the *Corr Wireless Order*,<sup>21</sup> not based on the general phase down of competitive ETC support described in the *USF/ICC Transformation Order*.<sup>22</sup> Verizon Wireless will not receive high-cost competitive ETC support after 2012. The Universal Service Administrative Company (USAC) shall disburse to Verizon Wireless in 2012 20 percent of the support it would have received for each ETC service area in the absence of its merger commitment and the *USF/ICC Transformation Order*. As a proxy for the amount Verizon Wireless would have received in 2012 in the absence of its merger commitment and the *USF/ICC Transformation Order*, USAC shall use the amount of support it calculated for Verizon Wireless in 2011 pursuant to the identical support rule and the interim cap, including any support not actually disbursed to Verizon Wireless as a result of the merger commitment.<sup>23</sup>

8. Accordingly, the Bureau grants Verizon's Petition to the extent it requests clarification of

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<sup>16</sup> See *USF/ICC Transformation Order* at paras. 519-20.

<sup>17</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Petition for Clarification or, in the Alternative, for Reconsideration of Verizon, at 3-8 (filed Dec. 29, 2011). The petition also addressed the Commission's rules governing phantom traffic, but the Bureau does not act on that aspect of the petition in this Order.

<sup>18</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Reply to Oppositions to Petition for Clarification or, in the Alternative, For Reconsideration of Verizon, at 2-3 (filed Feb. 21, 2012) (as corrected in Letter from Christopher Miller, Verizon, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 10-90 et al., filed Feb. 22, 2012); see also Letter from Tamara Preiss, Verizon, to Austin Schlick, Federal Communications Commission, WC Docket No. 10-90 et al., filed Feb. 24, 2012 (clarifying previous filings and *ex parte* letters).

<sup>19</sup> *Id.*

<sup>20</sup> Nex-Tech and other small wireless carriers support this interpretation of the *USF/ICC Transformation Order*. See *Connect America Fund et al.*, WC Docket No. 10-90 et al, Nex-Tech et al. Opposition to Petition for Clarification or, in the Alternative, For Reconsideration of Verizon (filed Feb. 9, 2012).

<sup>21</sup> *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, 25 FCC Rcd 12854, 12859-63, paras. 14-22 (2010) (*Corr Wireless Order*).

<sup>22</sup> The clarification in this Order applies only to Verizon Wireless service areas subject to the merger commitments. Other service areas, including those for which Verizon Wireless does not possess controlling ownership, are subject to the general applicable phase down of support for competitive ETCs described in the *USF/ICC Transformation Order* and continue to remain outside the scope of the merger commitment.

<sup>23</sup> Similarly, Sprint will receive support in 2012 based on its merger commitment, as clarified by the *Corr Wireless Order*, and will not be subject to the general phase down. Sprint's total 2012 support will be the lesser of 20 percent of its 2008 support or the amount it would have received in 2012 for each ETC service area in the absence of its merger commitment and the *USF/ICC Transformation Order*. As a proxy for the amount Sprint would have received, USAC shall use the amount of support Sprint received in each ETC service area in 2011.

the phase down of competitive ETC support and dismisses Verizon's Petition to the extent it alternatively requests reconsideration of the same issue.

9. *Other Matters.* First, the Bureau amends the definition of "rate-of-return carrier" in section 54.5 of our rules to correct an erroneous cross-reference to the definition of price cap regulation.

10. Second, the Bureau dismisses in part the petition for reconsideration filed by the United States Telecom Association (US Telecom), which, among other things, asked the Commission to clarify that reductions in legacy support resulting from a failure to meet the urban rate floor will, at most, extend only to high-cost loop support and high-cost model support.<sup>24</sup>

11. In the *USF/ICC Clarification Order*, the Bureaus addressed this issue by amending section 54.318(d) to clarify that support reductions associated with the rate floor will offset frozen CAF Phase I support only to the extent that the recipient's frozen CAF Phase I support replaced HCLS and HCMS. The Bureaus further stated that the offset does not apply to frozen CAF Phase I support to the extent that it replaced IAS and ICLS.<sup>25</sup> Because the *USF/ICC Clarification Order* addressed this issue, the Bureau dismisses as moot that portion of the US Telecom petition for reconsideration.

### III. PROCEDURAL MATTERS

#### A. Paperwork Reduction Act

12. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

#### B. Final Regulatory Flexibility Act Certification

13. Final Regulatory Flexibility Certification. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>26</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."<sup>27</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>28</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>29</sup> A small business concern is one which: (1) is independently owned and operated; (2) is

<sup>24</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Petition for Reconsideration of US Telecom, at 14 (filed Dec. 29, 2011).

<sup>25</sup> *USF/ICC Clarification Order* at para. 3.

<sup>26</sup> The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>27</sup> 5 U.S.C. § 605(b).

<sup>28</sup> 5 U.S.C. § 601(6).

<sup>29</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>30</sup>

14. This Order clarifies, but does not otherwise modify, the *USF/ICC Transformation Order*. These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order*. Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A). In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register. *See* 5 U.S.C. § 605(b).

#### C. Congressional Review Act

15. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>31</sup>

#### IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and pursuant to sections 0.91, 0.201(d), 0.291, 1.3, and 1.427 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), 0.291, 1.3, 1.427 and pursuant to the delegation of authority in paragraph 1404 of FCC 11-161 (rel. Nov. 18, 2011), that this Order IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval.

17. IT IS FURTHER ORDERED, that Parts 54 and 61 of the Commission's rules, 47 C.F.R. Parts 54, 61 are AMENDED as set forth in the Appendix A, and such rule amendments shall be effective 30 days after the date of publication of the rule amendments in the Federal Register.

18. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254, and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the Petition for Clarification or, in the Alternative, for Reconsideration of Verizon IS GRANTED IN PART AND DISMISSED IN PART and the Petition for Reconsideration of United States Telecom Association IS DISMISSED IN PART.

19. IT IS FURTHER ORDERED, that the Commission SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

20. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

<sup>30</sup> Small Business Act, 15 U.S.C. § 632.

<sup>31</sup> *See* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

**APPENDIX  
Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 61 to read as follows:

**PART 54—UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

**Subpart A—General Information**

2. Amend § 54.5 by revising the definition of “rate-of-return carrier” to read as follows.

\* \* \* \* \*

Rate-of-return carrier. “Rate-of-return carrier” shall refer to any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(ee) of this chapter.

\* \* \* \* \*

**PART 61—TARIFFS**

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

2. Revise § 61.26(f) to read as follows:

**§ 61.26 Tariffing of competitive interstate switched exchange access services.**

\* \* \* \* \*

(f) If a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may, to the extent permitted by § 51.913(b), assess a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.

\* \* \* \* \*

YMax Communications Corp.

North Dakota Tariff No. 2  
First Revised Page 2  
Cancels Original Page 2

## ACCESS SERVICES TARIFF

## CHECK SHEET

Pages of this tariff, as indicated below, are effective as of the date shown at the bottom of the respective pages. Original and revised pages, as named below, comprise all changes from the original tariff and are currently in effect as of the date on the bottom of this page.

PAGE	REVISION		PAGE	REVISION		PAGE	REVISION
Title	Original		24	Original		50	Original
1	1 <sup>st</sup> Revised	*	25	Original		51	Original
2	Original		26	Original		52	Original
3	Original		27	Original		53	Original
4	Original		28	Original		54	Original
5	1 <sup>st</sup> Revised	*	29	Original		55	Original
6	1 <sup>st</sup> Revised	*	30	Original		56	Original
7	1 <sup>st</sup> Revised	*	31	Original		57	Original
8	Original		32	Original		58	Original
9	Original		33	Original		59	1 <sup>st</sup> Revised *
10	1 <sup>st</sup> Revised	*	34	Original		60	1 <sup>st</sup> Revised *
11	1 <sup>st</sup> Revised	*	35	Original		61	Original
12	Original		36	Original		62	Original
13	Original		37	Original		63	Original
14	Original		38	Original		64	Original
15	Original		39	Original		65	Original
16	Original		40	Original		66	Original
17	Original		41	Original		67	Original
18	Original		42	Original		68	Original
19	Original		43	Original		69	Original
20	Original		44	Original			
21	Original		45	Original			
22	Original		46	1 <sup>st</sup> Revised	*		
23	Original		47	1 <sup>st</sup> Revised	*		
23.1	Original	*	48	1 <sup>st</sup> Revised	*		
23.2	Original	*	49	Original			
23.3	Original	*	50	Original			
23.4	Original	*	49	Original			

\* - indicates those pages included with this filing

Issued: June 8, 2012

Effective: July 1, 2012

Issued by: Daniel Borislow, CEO and President  
5700 Georgia Avenue  
West Palm Beach, Florida 33405

NDa1201

ACCESS SERVICES TARIFF

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SECTION 1 - DEFINITIONS AND ABBREVIATIONS

Access Code - Denotes a uniform code assigned by the Company to an individual End User. The code has the form 101XXXX or 950-XXXX.

Access Line - An arrangement which connects an End User's local exchange line to a Company-designated switching center or point of presence.

Access Minutes - The increment for measuring usage of exchange facilities for the purpose of calculating chargeable usage.

Access Service Request (ASR) - The service order form used by access service Customers and the Company to establish, move, or rearrange access services provided by the Company.

Access Tandem - A switching system that provides a traffic concentration and distribution function for originating or terminating traffic between End Office Switches and Switched Access Customers. An Access Tandem may be operated by the Company, or by another Carrier with which the Company is interconnected..

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Answer Supervision - The transmission of the switch trunk equipment supervisory signal (off-hook or on-hook) to a carrier's Point of Presence or Customer's or End User's terminal equipment as an indication that the called party has answered or disconnected.

Automatic Number Identification (ANI) - The automatic transmission of a caller's billing account telephone number to a local exchange company, interexchange carrier or a third party Customer. The primary purpose of ANI is for billing toll calls.

Bit - The smallest unit of information in a binary system of notation.

Bps - Bits per second. The number of bits transmitted in a one second interval.

Call - A Customer or End User attempt for which the complete address code (e.g., 0-, 911, or 10 digits) is provided to the Serving Wire Center, End Office or Access Tandem Switch.

Casual Calling - Where access to the Company's network and the subsequent use of service by the Customer is initiated through the dialing of a toll-free number or Access Code. Casual Calling allows non-Pre subscribed End Users to utilize the services of the Company.

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Issued: June 8, 2012

Effective: July 1, 2012

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NDa1201

ACCESS SERVICES TARIFF

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SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Central Office - See End Office. (T)

Channel - An electrical or photonic, in the case of fiber optic-based transmission systems, communications path between two or more points of termination, which may include a virtual or derived path. (T)

CIC - An interexchange carrier identification code.

Commission - The North Dakota Public Service Commission.

Company or Carrier - Used throughout this tariff to indicate YMax Communications Corp.

Constructive Order - Delivery of calls to or acceptance of calls from the Customer's End Users over Company-switched local exchange services constitutes a Constructive Order by the Customer to purchase switched access services as described herein. Similarly, the selection of the Customer by an End User as the End User's PIC constitutes a Constructive Order for switched access by the Customer.

CPE - Customer Premises Equipment. All Terminal Equipment or other communications equipment and/or systems provided by the Customer for use with the Company's facilities and services.

Customer - Any individual, partnership, association, joint-stock company, trust, corporation, or governmental entity or other entity which uses and/or subscribes to the services offered under this tariff, including End Users, Interexchange Carriers (ICs) and other telecommunications carriers and/or providers using VoIP-PSTN Traffic. (T)  
|  
(T)

Customer Premises - The premises specified by the Customer for termination of access services. Typically an Interexchange Carrier's Point of Presence.

Dedicated Access - Where originating or terminating access between an End User and an Interexchange Carrier are provided via dedicated facilities, circuits or channels. A method of reaching the Customer's communication and switching systems whereby the End User is connected directly to the Customer's Point of Presence without utilizing the services of the local switched network.

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Issued: June 8, 2012

Effective: July 1, 2012

Issued by: Daniel Borislow, CEO and President  
5700 Georgia Avenue  
West Palm Beach, Florida 33405

NDa1201

ACCESS SERVICES TARIFF

SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

DS0 - Digital Signal Level 0; a dedicated, full-duplex digital channel with line speeds of 2.4, 4.8, 9.6, 19.2, 56 or 64 Kbps.

DS1 - Digital Signal Level 1; a dedicated, high-capacity, full-duplex channel with a line speed of 1.544 Mbps isochronous serial data having a line signal format of either Alternate Mark Inversion (AMI) or Bipolar with 8 Zero Substitution (B8ZS) and either Superframe (D4) or Extended Superframe (ESF) formats. DS1 Service has the equivalent capacity of 24 Voice Grade or DS0 services.

DS3 - Digital Signal Level 3; a dedicated, high-capacity, full-duplex channel with a line speed of 44.736 Mbps isochronous serial data having a line code of bipolar with three zero substitution (B3ZS). Equivalent capacity of 28 DS1 services.

Dual Tone Multifrequency (DTMF) - Tone signaling, also known as touch tone signaling.

End Office - The Central Office from which the End User's Premises would normally obtain local exchange service and dial tone from the Company or another local exchange company.

End Office Switch - A Switch that provides the first point of connection between an End User and the Public Switched Telephone Network (PSTN), that sets up and takes down voice-grade communications paths between an End User and other parties on the PSTN, and that exchanges SS7-compatible signaling with other switches on the PSTN. The "first point of connection" means there is no other Switch performing these functions between it and the End User, regardless of how the End User obtains its connection to that switch.

End User - Any customer of an interstate or foreign telecommunications service and/or VoIP provider that is not a carrier, except that a carrier other than a telephone company shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes, and a person or entity that offers telecommunications service exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller.

End User Premises - The premises specified by the Customer or End User for termination of access services at the End User's physical location.

Equal Access - Where the local exchange company Central Office provides interconnection to Interexchange Carriers with Feature Group D circuits. In such End Offices, End Users can presubscribe their telephone line(s) to their preferred Interexchange Carrier. A form of dialed access provided by local exchange companies whereby telephone calls dialed by the End User are automatically routed to the Company's network. End Users may also route calls to the Company's network by dialing an access code provided by the Company.

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## ACCESS SERVICES TARIFF

## SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Point of Termination - The point of demarcation within a Customer or End User Premises at which the Company's responsibility for the provision of access service ends. The point of demarcation is the point of interconnection between Company communications facilities and Customer-provided or End User-provided facilities as defined in Part 68 of the Federal Communications Commission's Rules and Regulations.

Premises - A building, portion of a building in a multi-tenant building, or buildings on continuous property not separated by a highway. May also denote a Customer-owned enclosure or utility vault located above or below ground on private property or on Customer acquired right-of-way.

Presubscription - An arrangement whereby an End User selects and designates to the Company or other LEC, a carrier the End User wishes to access, without an access code, for completing interLATA and/or intraLATA toll calls. The selected carrier is referred to as the Primary Interexchange Carrier.

Primary Interexchange Carrier - The IXC designated by an End User as its first routing choice and primary overflow carrier for routing of 1+ direct dialed and operator assisted non-local calls.

Private Line - A service which provides dedicated path between one or more End User or Customer Premises.

Public Switched Telephone Network (or PSTN) - The interconnected network of networks providing voice-grade switched communications service to end users with station addressing based upon the North American Numbering Plan, regardless of the technology or facilities used to provide this service, and regardless of the dialing plan or pattern actually used by a particular caller.

(N)  
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(N)

Query - The inquiry to a Company data base to obtain information, processing instructions or service data.

Recurring Charge - The charges to the Customer for services, facilities or equipment, which continue for the agreed upon duration of the service. Recurring charges do not vary based on Customer usage of the services, facilities or equipment provided.

Remote Switching Modules or Remote Switching Systems (RSM/RSS) - Small remotely controlled electronic End Office Switching equipment which obtains its call processing capability from a Host Office. An RSM/RSS cannot accommodate direct trunks to an End User or Customer.

Service Commencement Date - The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards in the service order or this tariff, in which case the service commencement date is the date of the Customer's acceptance, such acceptance not to be reasonably withheld or denied. The Company and Customer may mutually agree on a substitute Service Commencement Date.

Issued: June 8, 2012

Effective: July 1, 2012

Issued by: Daniel Borislow, CEO and President  
5700 Georgia Avenue  
West Palm Beach, Florida 33405

NDa1201

ACCESS SERVICES TARIFF

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SECTION 1 - DEFINITIONS AND ABBREVIATIONS, (CONT'D)

Service Order - A written request for network services executed by the Customer and the Company.

Serving Wire Center - A geographic location designated by the Company where Switched Access trunks or other access facilities are terminated for purposes of interconnection to other elements or Switched Access Service provided by the Company.

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Special Access - See Dedicated Access.

Station - Refers to telephone equipment or an exchange access line from or to which calls are placed.

Switched Access - Refers to the services described in Section 3 of this Tariff, including but not limited to Tandem Connect Access, Direct Connect Access and Tandem Switching Access.

(T)  
(T)

Tandem Switch - See Access Tandem.

Terminal Equipment - Telecommunications devices, apparatus and associated wiring on the Customer-designated premises.

Terminating Direction - The use of Switched Access Service for the completion of calls from a Customer's Point of Presence to an End User Premises.

Trunk - A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

Trunk Group - A set of trunks which are traffic engineered as a unit for the establishment of connections between switching systems in which all of the communications paths are interchangeable.

V & H Coordinates - Geographic points which define the originating and terminating points of a call in mathematical terms so that the airline mileage of the call may be determined. Call mileage may be used for the purpose of rating calls.

VOIP-PSTN Traffic - Traffic exchanged over PSTN facilities that originates and/or terminates in IP format. See FCC 11-161, ¶ 940.

(T)  
(T)

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ACCESS SERVICES TARIFF

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

## 2.9 Obligations of the Customer, (Cont'd.)

## 2.9.3 Identification and Rating of VoIP-PSTN Traffic

## A. Scope

1. VoIP-PSTN Traffic is defined as traffic exchanged between the Company and the Customer in time division multiplexing ("TDM") format that originates and/or terminates in Internet protocol ("IP") format. This section governs the identification of VoIP-PSTN Traffic that is required to be compensated at interstate access rates (unless the parties have agreed otherwise) by the Federal Communications Commission in its Report and Order in WC Docket Nos. 10-90 etc., FCC Release No. 11-161 (November 18, 2011) ("FCC Order"). Specifically, this section establishes the method of separating such traffic (referred to in this tariff as "Relevant VoIP-PSTN Traffic") from the Customer's traditional intrastate access traffic, so that such Relevant VoIP-PSTN Traffic can be billed in accordance with the FCC Order.
2. Switched access charges under this tariff apply to VoIP-PSTN Access Traffic whether the connection to the called or calling party's premises is provided by the Company directly or in conjunction with a provider of VoIP Service that does not itself seek to collect switched access charges for the same traffic. As long as the Company is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, then the provision by the Company of any portion of the transport or termination of VoIP-PSTN Access Traffic shall be considered the functional equivalent of the access service typically provided by an incumbent local exchange carrier, regardless of the technology or network structure employed by the Company or the VoIP Service provider to perform that function.
3. This section will be applied to the billing of switched access charges to a customer that is a local exchange carrier only to the extent that the customer has also implemented billing of interstate access charges for Relevant VoIP-PSTN Traffic in accordance with the FCC Order.

(N)

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Issued: June 8, 2012

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## ACCESS SERVICES TARIFF

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

## 2.9 Obligations of the Customer, (Cont'd.)

## 2.9.3 Identification and Rating of VoIP-PSTN Traffic, (Cont'd.)

## B. Rating of VoIP-PSTN Traffic

The Relevant VoIP-PSTN Traffic identified in accordance with this tariff section will be billed at rates equal to the Company's applicable interstate switched access rates as specified in Tariff FCC No. 2.

## C. Calculation and Application of Percent-VoIP-Usage Factor

The Company will determine the number of Relevant VoIP-PSTN Traffic minutes of use ("MOU") to which interstate rates will be applied under subsection B., above, by applying a Percent VoIP Usage ("PVU") factor to the total intrastate access MOU exchanged between the Company and the Customer. The PVU will be derived and applied as follows:

1. The Customer will calculate and furnish to the Company a factor (the "PVU-A") representing the percentage of the total intrastate and interstate access MOU that the Customer exchanges with the Company in the State, that (a) is sent to the Company and that originated in IP format; or (b) is received from the Company and terminated in IP format. This PVU-A shall be based on information such as the number of the Customer's retail VoIP subscriptions in the state (e.g., as reported on FCC Form 477), traffic studies, actual call detail, or other relevant and verifiable information.
2. The Company will, likewise, calculate a factor (the "PVU-B") representing the percentage of the Company's total intrastate and interstate access MOU in the State that the Company originates or terminates in IP format. This PVU-B shall be based on information such as the number of the Company's retail VoIP subscriptions in the state (e.g., as reported on FCC Form 477), traffic studies, actual call detail, or other relevant and verifiable information.

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Issued: June 8, 2012

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## ACCESS SERVICES TARIFF

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

## 2.9 Obligations of the Customer, (Cont'd.)

## 2.9.3 Identification and Rating of VoIP-PSTN Traffic, (Cont'd.)

## C. Calculation and Application of Percent-VoIP-Usage Factor, (Cont'd.)

3. The Company will use the PVU-A and PVU-B factors to calculate a PVU factor that represents the percentage of total intrastate and interstate access MOU exchanged between the Company and the Customer that is originated or terminated in IP format, whether at the Company's end, at the Customer's end, or at both ends. The PVU factor will be calculated as the sum of: (A) the PVU-A factor and (B) the PVU-B factor times (1.0 minus the PVU-A factor).
4. The Company will apply the PVU factor to the total intrastate access MOU exchanged with the Customer to determine the number of Relevant VoIP-PSTN Traffic MOUs.

Example 1: The PVU-B is 10% and the PVU-A is 40%. The effective PVU factor is equal to  $40\% + (10\% \times 60\%) = 46\%$ . The Company will bill 46% of the Customer's intrastate access MOU at its applicable tariffed interstate switched access rates.

Example 2: The PVU-B is 10% and the PVU-A is 0%. The PVU factor is  $0\% + (100\% \times 10\%) = 10\%$ . The Company will bill 10% of the Customer's intrastate access MOU at the Company's applicable tariffed interstate switched access rates.

Example 3: The PVU-A is 100%. No matter what the PVU-B factor is, the PVU is 100%. The Company will bill 100% of the Customer's intrastate access MOU at the Company's applicable tariffed interstate switched access rates.

(N)

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Issued: June 8, 2012

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ACCESS SERVICES TARIFF

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

2.9 Obligations of the Customer, (Cont'd.)

2.9.3 Identification and Rating of VoIP-PSTN Traffic, (Cont'd.)

C. Calculation and Application of Percent-VoIP-Usage Factor, (Cont'd.)

5. If the Customer does not furnish the Company with a PVU-A pursuant to the preceding paragraph 1, the Company will utilize a PVU equal to the PVU-B.

D. PVU Factor Updates

The Customer may update the PVU-A factor or the Company may update the PVU-B factor quarterly using the method set forth in subsection C.1., above. If the Customer chooses to submit such updates, it shall forward to the Company, no later than 15 days after the first day of January, April, July and/or October of each year, a revised PVU-A factor based on data for the prior three months, ending the last day of December, March, June and September, respectively. The Company will use the revised PVU-A to calculate a revised PVU. The revised PVU factor will apply prospectively and serve as the basis for billing until superseded by a new PVU.

E. PVU Factor Verification

Not more than twice in any year, the Company may ask the Customer to verify the PVU-A factor furnished to the Company and Customer may ask the Company to verify the PVU-B factor and the calculation of the PVU factor. The party so requested shall comply, and shall reasonably provide the records and other information used to determine the respective PVU-A and PVU-B factors.

(N)  
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(N)

Issued: June 8, 2012

Effective: July 1, 2012

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ACCESS SERVICES TARIFF

SECTION 3 - SWITCHED ACCESS SERVICE

3.1 General

3.1.1 Switched Access Service provides a switched, two-point voice-grade communications path (including PSTN or VoIP-PSTN Traffic) between a Customer's Point of Presence and a point of demarcation with an End User, which may be used to originate calls from such End User to the Customer's network and to terminate calls from the Customer's Network to such End User. In the case of Tandem Connect Access, described in 3.2.5.A below, this communications path may be provided jointly by the Company and another Carrier(s), in which case the Company will bill only for the functions it provides pursuant to this Tariff, and each other Carrier will provide the remaining functions under the terms and conditions of any applicable contract or tariff to which it is a party. (T)

A. The completion of an intrastate originating call from an End User's Terminal Equipment to a Customer's POP or an intrastate terminating call from a Customer's POP to an End User's Terminal Equipment using any Facilities provided by the Company shall constitute the provision of Switched Access Service to the Customer, regardless of whether such call was intended or authorized by the End User regardless of whether the End User or the Company, or either of them, is in compliance with any terms or conditions of any contract, tariff, or other arrangement between the End User and the Company; and regardless of whether the making of such call was authorized under or otherwise in compliance with the terms or conditions of any service provided by the Customer to its subscriber. (N)

3.1.2 If a rate as set forth in this tariff is shown to more than two decimal places, the charges will be determined using the rate shown. The resulting amount will then be rounded to the nearest penny (i.e., rounded to two decimal places).

3.1.3 In the absence of an ASR as described in Section 3.4, delivery of calls to, or acceptance of calls from, the Customer's End User location(s) via Company-provided Switched Access services shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's Switched Access services as described and priced herein.

Issued: June 8, 2012

Effective: July 1, 2012

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## ACCESS SERVICES TARIFF

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

## 3.2 Manner of Provision

- 3.2.1 Switched Access is furnished for the Customer's use in originating calls from and terminating calls to End Users. (T)
- 3.2.2 [Reserved for Future Use.] (D)
- 3.2.3 [Reserved for Future Use.] (D)
- 3.2.4 Three types of Switched Access Services are available: (T)
- A. Tandem Connect Access: This option applies when the Customer has no direct facilities to the Company's Serving Wire Center or POI. Traffic is routed to and from the Company's Facilities via the Access Tandem. Delivery of calls to, or acceptance of calls from, End User(s) via Company-provided Tandem Connect Access services shall constitute a Constructive Order and an agreement by the Customer to purchase the Company's switched access services as described and priced herein. The Customer must order a connection to the Access Tandem from the Carrier operating that tandem, in accordance with that Carrier's applicable terms and conditions of service.
- B. Direct Connect Access: This option applies when the Customer connects to the Company's Serving Wire Center or POI by means of dedicated facilities. This transmission path is dedicated to the use of a single Customer. The Customer is responsible for providing such facilities itself or for negotiating such arrangements with possible suppliers. To the extent that the Company is able to provide such arrangements, the dedicated portion of Direct Connect Access would be provided on an Individual Case Basis as Special Service Arrangements pursuant to Section 6 of this tariff.
- C. Tandem Switching Access Service  
Tandem Switching is an access service providing transmission and tandem switching between the Customer designated premises and the Company switch(es) where the Customer's traffic is switched from or to an entity other than an End User for purposes of originating or terminating the Customer's communications. (T)
- 3.2.5 Switched Access service will be provide with SS7 signaling or a compatible form of signaling (N)

Issued: June 8, 2012

Effective: July 1, 2012

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ACCESS SERVICES TARIFF

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

3.3 Rate Categories

There are three rate categories which apply to Switched Access Service:

- End Office Switching (T)
- Tandem Switching (N)
- Toll-Free 8XX Data Base Access Service

3.3.1 End Office Switching

End Office Switching includes the following: (T)

- A. The switching of access traffic at the Company's end office switch and the delivery of such traffic to or from the called party's premises; (T)
- B. 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
- C. Any functional equivalent of the incumbent local exchange carrier access service provided by the Company. (T)

3.3.2 Tandem Switching (N)

Tandem Switching includes the following:

- A. Tandem switching and common transport between the tandem switch and end office; or
- B. Any functional equivalent of the incumbent local exchange carrier access service provided by the Company. (N)

3.3.3 Toll-Free 8XX Data Base Query (T)

The Toll-Free 8XX Data Base Query Charge, will apply for each Toll-Free 8XX call query received at the Company's (or its provider's) Toll-Free 8XX data base.

ACCESS SERVICES TARIFF

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

3.9 Rates and Charges

3.9.1 Switched Access Usage Charges

Switched Access Services will be assessed applicable switched access usage charges at the rates set forth in the Company's Federal Access Tariff, FCC No. 2, posted at <http://svartifoss2.fcc.gov/cgi-bin/ws.exe/prod/ccb/etfs/mainmenu.hts>.

(C)(R)

(C)(R)

3.9.2 [Reserved for Future Use.]

(D)

(D)  
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(D)

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Issued: June 8, 2012

Effective: July 1, 2012

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ACCESS SERVICES TARIFF

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

3.9 Rates and Charges, (Cont'd.)

3.9.3 [Reserved for Future Use.]

(D)

3.9.4 Toll-Free 8XX Data Base Access Service

Per Query

\$0.0075

(D)  
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(D)

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Issued: June 8, 2012

Effective: July 1, 2012

Issued by: Daniel Borislow, CEO and President  
5700 Georgia Avenue  
West Palm Beach, Florida 33405

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Decision No. C12-0521-I

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 12AL-461T

---

IN THE MATTER OF ADVICE LETTER NO. 15 FILED BY YMAX COMMUNICATIONS CORP. TO MAKE REVISIONS TO INCORPORATE THE REQUIREMENTS REGARDING THE TREATMENT TO TOLL VOIP-PSTN TRAFFIC TO BE EFFECTIVE MAY 13, 2012.

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**ORDER SUSPENDING EFFECTIVE DATE  
OF TARIFFS, REFERRING THE MATTER TO AN  
ADMINISTRATIVE LAW JUDGE, AND SETTING  
FORTH PROCEDURAL GUIDELINES**

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Mailed Date: May 16, 2012

Adopted Date: May 16, 2012

IMPORTANT NOTICE: ANY PERSON DESIRING TO PARTICIPATE ONLY BY MAKING A STATEMENT MAY DO SO BY APPEARING AT THE HEARING. IF YOU DESIRE TO ASK QUESTIONS OF A WITNESS OR OTHERWISE PARTICIPATE AS A PARTY IN THIS RATE MATTER, YOU MUST REQUEST PERMISSION FROM THE COMMISSION TO BE AN INTERVENOR (EVEN IF YOU HAVE ALREADY FILED AN OBJECTION). ANYONE DESIRING TO INTERVENE MUST CAREFULLY FOLLOW THE LAW AND COMMISSION RULES FOR BECOMING AN INTERVENOR. FOR FURTHER INFORMATION ON HOW TO INTERVENE CALL (303) 894-2070 (PUC EXTERNAL AFFAIRS OFFICE).

**I. BY THE COMMISSION**

**A. Statement**

1. On May 8, 2012, YMax Communications Corp. (YMax) filed Third Advice Letter No. 15 to Colorado Tariff No. 2 (attached as Exhibit 1). The proposed effective date of the tariff is May 18, 2012.

2. YMax's Third Amended Advice Letter No. 15 was preceded by earlier advice letters in the series. Specifically, by its Advice Letter No. 15, filed on April 26, 2012, YMax requested an effective date of May 13, 2012. YMax's First Amended Advice Letter No. 15 and

Second Amended Advice Letter No. 15 modified various aspects of the tariff sheets, but not the requested effective date.

3. YMax states that the purpose of this filing is to incorporate the requirements of the Federal Communications Commission's (FCC) November 18, 2011 Report and Order and Further Notice of Proposed Rulemaking in WC Docket Nos. 10-90, *et al.*, FCC 11-161 (the FCC Order), which order mandates the intercarrier compensation regime for certain intrastate Voice over Internet Protocol-Public Switched Network (VoIP-PSTN) traffic. The FCC mandates state tariffs that comply with the FCC Order be filed by affected telecommunications service providers.

4. On May 8, 2012, AT&T Communications of Mountain States and TCG Colorado (collectively, AT&T) filed AT&T's Protest Regarding YMax Communications Corp.'s Revisions to Its Competitive Access Service Tariff and Intervention as of Right. AT&T alleges that YMax is asking the Commission for authority to charge for access functions that YMax does not provide. AT&T asserts that YMax has already sought clarification for this proposal with the FCC, and the FCC rejected it. The FCC stated that it is attempting to remove the possibility of double billing by VoIP providers for services, such as end office switching, that they do not provide. AT&T requests that the Commission should also reject this tariff. AT&T also presents notice that it intends to intervene in this docket as of right.

5. Staff, on May 11, 2012, filed a protest letter asking the Commission to suspend the effective date of the tariff associated with YMax's Third Amended Advice Letter No. 15.

Staff notes that YMax does not have any customers, but merely serves to provide transport services to its affiliate, Magic Jack. Staff points out that YMax does not provision any end-office switching or loops. Magic Jack provides its services via internet broadband connections. Staff believes that this filing violates the FCC Order and should be further investigated.

6. Pursuant to § 40-6-111(1), C.R.S., the Commission may, in its discretion, set the tariff page(s) for hearing which will suspend the effective date for 120 days from the proposed effective date. If the Commission does not establish new rates before the expiration of the suspension period of 120 days, or September 15, 2012, the tariff page(s) filed by YMax may become effective.

7. Section 40-6-111(1), C.R.S., also provides that the Commission may, in its discretion, by separate order, suspend the effective date of the tariff page(s) for an additional 90 days. Thus, the Commission has the power and authority to suspend the effective date of the tariff page(s) for a maximum of 210 days or, in this docket, until December 14, 2012. If the Commission further suspends, by separate order, the effective date of the tariff page(s) for an additional 90 days, and if no new rates are established by the Commission before December 14, 2012, the tariff page(s) filed by YMax may become effective.

**B. Findings of Fact**

8. The Commission finds good cause to suspend the tariff page(s) and set this matter for hearing. AT&T, in its Protest, raises numerous issues of whether YMax's Third Amended Advice Letter No. 15 complies with the FCC Order. The issues raised by Staff also warrant further investigation. We would be interested to see if the parties can come together and resolve these issues during the suspension period.

9. We will refer the matter to an Administrative Law Judge (ALJ) for a Recommended Decision.

10. A pleading to intervene may be filed by any person, firm, or corporation desiring to be a party and fully participate in this proceeding, as ordered below. The filing of any other document protesting the tariff page(s) shall not allow participation as an intervenor in this matter.

11. The ALJ will rule on all petitions to intervene.

12. We direct the ALJ to set a hearing date and establish other procedures by separate order.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The proposed effective date, May 18, 2012, of the tariff page(s) filed by YMax Communications Corp. (YMax) with Third Amended Advice Letter No. 15 is suspended for 120 days until September 15, 2012, or until further order of the Commission.

2. This matter is referred to an Administrative Law Judge. The Administrative Law Judge shall set this matter for hearing, rule upon interventions, and establish other procedures by separate order(s).

3. Any person, firm, or corporation including any who have previously filed a document protesting the proposed tariff pages, who desire to intervene and participate as a party in this proceeding shall file a motion to intervene with the Commission within 30 days after the mailing date of this Order and shall serve a copy of the motion on YMax.

4. This Order is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
May 16, 2012.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOSHUA B. EPEL

---

JAMES K. TARPEY

---

Commissioners

COMMISSIONER MATT BAKER  
RESIGNED EFFECTIVE MAY 11, 2012.

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 22<sup>nd</sup> day of June 2012.

CASE NO. 12-0720-T-T

YMAX COMMUNICATIONS CORP.

Tariff filing for revision of current tariff.

**COMMISSION SUSPENSION ORDER**

On May 25, 2012, YMax Communications Corp. (YMax) filed revisions to its Access Services Tariff, P.S.C. WV No. 2, Check Sheet, Third Revised Page 2 cancels Second Revised Page 2; Section 1, First Revised Page 7 cancels Original Page 7, First Revised Page 8 cancels Original Page 8, First Revised Page 9 cancels Original Page 9, First Revised Page 11 cancels Original Page 11, First Revised Page 12 cancels Original Page 12; Section 2, First Revised Page 24 cancels Original Page 24, Original Pages 24.1, 24.2, 24.3, 24.4, and 24.5; Section 3, First Revised Page 46 cancels Original Page 46, First Revised Page 47 cancels Original Page 47, First Revised Page 48 cancels Original Page 48, First Revised Page 49 cancels Original Page 49, First Revised Page 59 cancels Original Page 59, First Revised Page 60 cancels Original Page 60, and First Revised Page 61 cancels Original Page 61, to become effective June 25, 2012.

The purpose of this filing is to reduce switched access rates in compliance with Commission Order in Case No. 08-0656-T-PC, and in compliance with the requirements of the Federal Communications Commission's (FCC) November 18, 2011 Order. This filing also incorporates other revisions in accordance with the FCC ICC Reform Order.

The tariff filing was submitted to Staff for review and comment.

On June 11, 2012, AT&T Communications of West Virginia, Inc. (AT&T) filed Petition to Intervene and Protest to Tariff. AT&T asserts the YMax's tariff revisions are in direct contradiction of the FCC's recent orders and are contrary to the public interest.

By Initial Staff Memorandum received on June 21, 2012, Staff recommends that the tariff revisions be suspended to allow sufficient time to complete a thorough investigation and provide YMax additional time to respond to AT&T's Petition to Intervene.

On June 21, 2012, Verizon Communications Inc. filed a request to reject YMax's tariff filing, or in the alternative, suspend the tariff and initiate an investigation of the proposed revisions.

**ORDER**

IT IS, THEREFORE, ORDERED that the YMax Communications Corp.'s tariff filing received on May 25, 2012, and as listed elsewhere in this order be, and hereby is, suspended for a period of 120 days until 12:01a.m., October 23, 2012.

IT IS FURTHER ORDERED that this proceeding be referred to the Division of Administrative Law Judges (ALJ).

IT IS FURTHER ORDERED that the ALJ Division shall render its decision in this matter on or before September 21, 2012.

IT IS FURTHER ORDERED that if the participants desire an extension of the foregoing decision due date, they may seek an extension only upon formal application to the Commission.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and Commission Staff by hand delivery.

FOR THE COMMISSION:

A True Copy - Text:

  
Sandra Squire  
Executive Secretary

SS/kc  
120720s.doc