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June 14, 2012

**VIA OVERNIGHT MAIL**

Mr. Jeff Derouen  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

RECEIVED

JUN 15 2012

PUBLIC SERVICE  
COMMISSION

Re: YMax Communications Corp. Revision to Kentucky Tariff No. 2 (Switched Access Services)

Dear Mr. Derouen:

Enclosed for filing in the above-referenced matter are the original and ten (10) copies of AT&T's Motion for Leave to Intervene, to Suspend and Investigate Tariff Application.

Please let me know if you have any questions.

Sincerely,

  
Mary K. Keyer

Enclosures

cc: Sharon Thomas, Technologies Management, Inc., Consultant to YMax Communications Corp.

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

YMAX COMMUNICATIONS CORP.	)	
REVISION TO KENTUCKY TARIFF NO. 2	)	CASE NO. _____
SWITCHED ACCESS SERVICES	)	

**AT&T’S MOTION FOR LEAVE TO INTERVENE,  
TO SUSPEND AND INVESTIGATE TARIFF APPLICATION**

AT&T,<sup>1</sup> by counsel, pursuant to 807 KAR § 3(8), respectfully moves the Kentucky Public Service Commission (“Commission”) to grant AT&T’s motion for leave to intervene, and to suspend and investigate the Revision to Kentucky P.S.C. Tariff No. 2 (Switched Access Service Tariff) filed by YMax Communications Corp. (“YMax”) on June 1, 2012, with an effective date of July 1, 2012.<sup>2</sup>

1. AT&T Kentucky is a Georgia corporation duly authorized to conduct business in Kentucky with its principal office located at 675 West Peachtree Street, N.E., Atlanta, Georgia, 30375. AT&T Kentucky is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the Commonwealth of Kentucky pursuant to Chapter 278 of the Kentucky Revised Statutes.

2. AT&T Communications is a Delaware corporation, duly authorized to conduct business in Kentucky with its principal office located at c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, 19801. AT&T Communications

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<sup>1</sup> BellSouth Telecommunications, LLC d/b/a AT&T Kentucky (“AT&T Kentucky”), AT&T Communications of the South Central States, LLC (“AT&T Communications”), and TCG Ohio (collectively “AT&T”).

<sup>2</sup> A copy of YMax’s proposed tariff filing is attached as **Attachment A**.

is an “interexchange telecommunications company,” an “alternative local exchange telecommunications company,” and a “public utility,” and is duly authorized to provide “telecommunications service” within the Commonwealth of Kentucky pursuant to Chapter 278 of the Kentucky Revised Statutes.

3. TCG Ohio is a New York Partnership with its principal office in Staten Island, New York. TCG Ohio is an “alternative local exchange telecommunications company,” and a “public utility,” and is duly authorized to provide “telecommunications service” within the Commonwealth of Kentucky pursuant to Chapter 278 of the Kentucky Revised Statutes.

4. All correspondence, pleadings, orders, decisions and communications regarding this proceeding should be sent to:

Mary K. Keyer  
General Attorney  
601 W. Chestnut Street, Room 407  
Louisville, Kentucky 40203

5. In its transmittal letter, YMax states that the revisions to its Tariff No. 2 are to incorporate the requirements of the Federal Communications Commission’s (“FCC”) *ICC/USF Order*<sup>3</sup> regarding the treatment of Toll VoIP-PSTN traffic and other changes to align with its FCC interstate access services tariff. See Attachment A. Several aspects of the proposed YMax tariff, however, are in direct contravention of the FCC’s recent orders in its access reform docket and are, therefore, unlawful and contrary to the public interest.

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<sup>3</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) (“*ICC/USF Order*”).

6. YMax is asking this Commission for authority to charge for access functions that YMax does not provide. YMax has already raised similar proposals with the FCC, and the FCC has soundly rejected them. This Commission should do the same.

7. AT&T would be adversely affected if YMax's proposed tariff revisions are allowed to go into effect. AT&T is authorized to provide local and/or long distance service in Kentucky. As such, it must pay certain carriers' intrastate access rates, including those rates charged by Voice over Internet Protocol (VoIP) providers that interconnect with the public switched telephone network (PSTN). As carriers that exchange traffic with YMax that is subject to the provisions of YMax's access tariff, AT&T would be forced to pay access charges on traffic that has been specifically exempted from such payments by the FCC.

8. For the reasons stated herein, the Commission should suspend and investigate YMax's proposed tariff revisions.

### **THE FCC ORDERS**

On November 8, 2011, the FCC issued its *ICC/USF Order* reforming intercarrier compensation and the Universal Service Fund. As part of the intercarrier compensation portion of the order, the FCC adopted a prospective transitional compensation framework for VoIP – PSTN traffic.<sup>4</sup> Although prior to the issuance of the *ICC/USF 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

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<sup>4</sup> The FCC defined this traffic as "traffic exchanged over PSTN facilities that originates or terminates in IP format." *Id.* at ¶ 940.

Order adopted the *interstate* access rate as the default rate to be charged for all VoIP-PSTN traffic, originating and terminating.<sup>5</sup> Consistent with the FCC's intent that its new regime for intercarrier compensation be symmetrical, 47 C.F.R. § 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 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 . . . or a non-interconnected VoIP service . . . that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic.

Section 51.913(b), however, 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 or non-interconnected VoIP service.

In support of this provision, the FCC cited its 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>6</sup>

In an *ex parte* letter to the FCC dated February 3, 2012, attached hereto as

**Attachment B**, YMax sought clarification regarding the FCC's symmetrical

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<sup>5</sup> *Id.* 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 *ICC/USF 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 *ICC/USF Order*. The new rule, which is *prospective only* and 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 C.F.R. § 51.913(b).

<sup>6</sup> *Id.* at ¶ 970, n. 2028.

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 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>7</sup>

YMax acknowledges that the FCC's *ICC/USF Order* would not support YMax's interpretation: "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>8</sup> Nevertheless, YMax argues that comments in support of the VoIP-PSTN symmetry rule, together with revisions to 47 C.F.R. ¶ 61.26(f) 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.<sup>9</sup>

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:

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<sup>7</sup> See Attachment B at 1 (emphasis added).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 2..

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." 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. 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>10</sup>

### THE YMAX TARIFF APPLICATION

Despite the fact that the FCC's *YMax Clarification Order* soundly rejected YMax's proposed interpretation of the VoIP-PSTN switched access compensation scheme, YMax filed proposed revisions to its Kentucky switched access tariff with this Commission on June 1, 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.

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

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<sup>10</sup> See *YMAX Clarification Order*, DA 12-298, released on February 27, 2012, at ¶ 4 (citations omitted) ("*YMax Clarification Order*"), attached hereto as **Attachment C**. See also 47 C.F.R. §§ 51.913, 61.26(f).

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>11</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.

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. Although AT&T recognizes that individual carriers may use alternative language to meet underlying tariff requirements, AT&T's 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.

YMax proposes a substantial change to the tariff's definition of "End Office Switch." See Attachment A, First Revised Page 6. 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.

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

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<sup>11</sup> *YMax Clarification Order* at ¶ 4.



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 its 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 A, Original Page 23.1. This language is also inconsistent with the FCC's Orders and rules. 47 C.F.R. § 51.913(b) only allows a LEC to charge full access compensation when the LEC "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 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 criterion for the determination of what compensation is allowable.

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

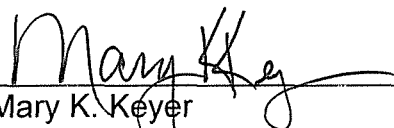
As long as the Company is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, then the provision by the Company of any portion of the transport or termination of VoIP-PSTN Access Traffic shall be considered the functional equivalent 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 A, Original Page 23.1. 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."<sup>12</sup> As explained above, the FCC rejected this interpretation.<sup>13</sup>

### **CONCLUSION**

For the foregoing reasons, AT&T respectfully requests that YMax's Revision to Kentucky P.S.C. Tariff No. 2 (Switched Access Service Tariff) filed on June 1, 2012, be suspended and investigated.

Respectfully submitted,



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COUSNEL FOR BELL SOUTH  
TELECOMMUNICATIONS, LLC,  
D/B/A AT&T KENTUCKY, AT&T  
COMMUNICATIONS OF THE SOUTH CENTRAL  
STATES, LLC, AND TCG OHIO

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<sup>12</sup> See Attachment B at 1.

<sup>13</sup> YMax Clarification Order at ¶ 4.

# **ATTACHMENT A**



May 31, 2012  
Via Overnight Delivery

Mr. Brent Kirtley, Tariff Branch Manager  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602-0615

**RE: YMax Communications Corp. Revision to Kentucky Tariff No. 2 (Switched Access Services)**

Dear Mr. Kirtley:

Enclosed for filing please find the original and three (3) copies of the above referenced tariff filing submitted on behalf of YMax Communications Corp. This filing makes revisions to incorporate the requirements of the Federal Communications Commission Report and Order in WC Docket No. 10-90, etc., FCC No. 11-161 (released Nov 18, 2011) ("FCC Order") regarding the treatment of Toll VoIP-PSTN traffic and incorporates other changes to bring the tariff in alignment with the Company's FCC interstate access services tariff. With this filing, the Company proposes to mirror its intrastate switched access usage rates, as set forth in its FCC Access Tariff No. 2. The Company respectfully requests an effective date for this filing of July 1, 2012. No supporting calculations are required.

The following tariff pages are included with this filing:

1 <sup>st</sup> Revised Page 1	Updates Check Sheet;
1 <sup>st</sup> Revised Page 4	Revises Definitions;
1 <sup>st</sup> Revised Page 5	Revises Definitions;
1 <sup>st</sup> Revised Page 6	Revises Definitions;
1 <sup>st</sup> Revised Page 9	Revises Definitions;
1 <sup>st</sup> Revised Page 10	Revises Definitions;
1 <sup>st</sup> Revised Page 11	Revises Definitions;
1 <sup>st</sup> Revised Page 23	Indicates text moved to Page 23.1
Original Pages 23.1-23.4	Introduces Identification and Rating of VoIP-PSTN Traffic;
Original Page 23.5	Relocates text moved from Page 23;
1 <sup>st</sup> Revised Page 46	Revises Switched Access Service general description;
1 <sup>st</sup> Revised Page 47	Revises Manner of Provision description;
1 <sup>st</sup> Revised Page 48	Revises Rate Categories description;
1 <sup>st</sup> Revised Page 49	Renumbers Sections;
1 <sup>st</sup> Revised Page 59	Makes reference to interstate switched access usage charges;
1 <sup>st</sup> Revised Page 60	Deletes text;
1 <sup>st</sup> Revised Page 61	Deletes text.

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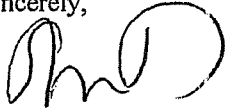
Please acknowledge receipt of this filing by date-stamping the extra copy of this cover letter and returning it to me in the self-addressed, stamped envelope provided for that purpose. Any questions you may have regarding this filing should be directed to my attention at 407-740-3031 or via email to [stthomas@tminc.com](mailto:stthomas@tminc.com).

Mr. Brent Kirtley, Tariff Branch Manager  
Kentucky Public Service Commission  
Page 2

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Thank you for your assistance in this matter.

Sincerely,



Sharon Thomas  
Consultant to YMax Communications Corp

file: YMax - Kentucky - Access  
tms: KYa1201

Enclosures  
ST/im

YMax Communications Corp.  
 5700 Georgia Avenue  
 West Palm Beach, Florida 33405

Kentucky Tariff No. 2  
 First Revised Page 1  
 Cancels Original Page 1

Issued: June 1, 2012

Effective: July 1, 2012

ACCESS SERVICES TARIFF

CHECK SHEET

The pages listed below of this tariff are effective as of the date shown. Revised pages contain all changes from the original tariff that are in effect as of the date indicated.

PAGE	REVISION		PAGE	REVISION		PAGE	REVISION	
Title	Original		23.5	Original	*	51	Original	
1	1 <sup>st</sup> Revised	*	24	Original		52	Original	
2	Original		25	Original		53	Original	
3	Original		26	Original		54	Original	
4	1 <sup>st</sup> Revised	*	27	Original		55	Original	
5	1 <sup>st</sup> Revised	*	28	Original		56	Original	
6	1 <sup>st</sup> Revised	*	29	Original		57	Original	
7	Original		30	Original		58	Original	
8	Original		31	Original		59	1 <sup>st</sup> Revised	*
9	1 <sup>st</sup> Revised	*	32	Original		60	1 <sup>st</sup> Revised	*
10	1 <sup>st</sup> Revised	*	33	Original		61	1 <sup>st</sup> Revised	*
11	1 <sup>st</sup> Revised	*	34	Original		62	Original	
12	Original		35	Original		63	Original	
13	Original		36	Original		64	Original	
14	Original		37	Original		65	Original	
15	Original		38	Original		66	Original	
16	Original		39	Original		67	Original	
17	Original		40	Original				
18	Original		41	Original				
19	Original		42	Original				
20	Original		43	Original				
21	Original		44	Original				
22	Original		45	Original				
23	1 <sup>st</sup> Revised	*	46	1 <sup>st</sup> Revised	*			
23.1	Original	*	47	1 <sup>st</sup> Revised	*			
23.2	Original	*	48	1 <sup>st</sup> Revised	*			
23.3	Original	*	49	1 <sup>st</sup> Revised	*			
23.4	Original	*	50	Original				

\* - Indicates pages included with this filing.

YMax Communications Corp.  
5700 Georgia Avenue  
West Palm Beach, Florida 33405

Kentucky Tariff No. 2  
First Revised Page 4  
Cancels Original Page 4

Issued: June 1, 2012

Effective: July 1, 2012

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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 Customer. The code has the form 101XXXXX or 950-XXXX.

**Access Line** - An arrangement which connects the Customer'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 the process of establishing, moving or rearranging 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 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 customers to utilize the services of the Company.

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**YMax Communications Corp.**  
5700 Georgia Avenue  
West Palm Beach, Florida 33405

Kentucky Tariff No. 2  
First Revised Page 5  
Cancels Original Page 5

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ACCESS SERVICES TARIFF

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

**Central Office** - See End Office.

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**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.

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**CIC** - An interexchange carrier identification code.

**Commission** - Refers to the Kentucky Corporation Commission, unless otherwise indicated.

**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.

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

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YMax Communications Corp.  
5700 Georgia Avenue  
West Palm Beach, Florida 33405

Kentucky Tariff No. 2  
First Revised Page 6  
Cancels Original Page 6

Issued: June 1, 2012

Effective: July 1, 2012

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ACCESS SERVICES TARIFF

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

**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 or designate without utilizing the services of the local switched network.

**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 other local exchange carrier.

**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.

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**YMax Communications Corp.**  
5700 Georgia Avenue  
West Palm Beach, Florida 33405

Kentucky Tariff No. 2  
First Revised Page 9  
Cancels Original Page 9

Issued: June 1, 2012

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ACCESS SERVICES TARIFF

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

**Off-Hook** - The active condition of Switched Access service or a telephone exchange line.

**On-Hook** - The idle condition of Switched Access service or a telephone exchange line.

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

**PIC Authorization** - A Customer's or End User's selection of a PIC that meets the requirements of federal and state law.

**PIC** - Primary Interexchange Carrier.

**Point of Presence or POP** - The physical location associated with an Interexchange Carrier's communication and switching systems.

**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 a Customer selects and designate to the Company or other LEC a carrier he or she 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 the Customer 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 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.

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

**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 a 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. The Company and Customer may mutually agree on a substitute service commencement date.

**Service Order** - A written request for network services executed by the Customer and the Company. The signing of a Service Order by the Customer and acceptance by the Company begins the respective obligations of the parties in that order services offered under this tariff.

**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.

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(T)

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

**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.

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**YMAX** - Refers to YMax Communications Corp., issuer of this tariff.

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

**2.9 Obligations of the Customer (Continued)**

**2.9.2 (continued)**

**D. Jurisdictional Audits (continued)**

4. Should an audit reveal that the misreported percentage(s) of use has resulted in an underpayment of access charges to the Company of five percent or more of the total Switched Access Services bill, the customer shall reimburse the Company for the cost of the audit. Proof of cost shall be the bills, in reasonable detail submitted to the Company by the auditor.
5. Within 15 days of completion of the auditor's report, the Company will furnish a copy of the audit results to the person designated by the customer to receive such results.

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Certain material previously found on this page is now located on Page 23.5.

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

2.9 Obligations of the Customer (Continued)

2.9.3 Identification and Rating of VoIP-PSTN Traffic

(N)

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

2.9 Obligations of the Customer (Continued)

2.9.3 Identification and Rating of VoIP-PSTN Traffic (Continued)

(N)

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

2.9 Obligations of the Customer (Continued)

2.9.3 Identification and Rating of VoIP-PSTN Traffic (Continued)

(N)

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..

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

2.9 Obligations of the Customer (Continued)

2.9.3 Identification and Rating of VoIP-PSTN Traffic (Continued)

(N)

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.

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

2.10 Billing and Payment For Service

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2.10.1 Responsibility for Charges

The Customer is responsible for payment of all charges for services and equipment furnished to the Customer for transmission of calls via the Company. In particular and without limitation to the foregoing, the Customer is responsible for any and all cost(s) incurred as the result of:

- A. any delegation of authority resulting in the use of Customer's communications equipment and/or network services which result in the placement of calls via the Company;
- B. any and all use of the service arrangement provided by the Company, including calls which the Customer did not individually authorize;
- C. any calls placed by or through the Customer's equipment via any remote access feature(s).

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Material now found on this page was previously located on Page 23.

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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 3.2.4.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.

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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.

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3.1.2 When 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.

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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.

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3.2.2 [Reserved for Future Use]

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3.2.3 [Reserved for Future Use]

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3.2.4 Three types of Switched Access Services are available:

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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.

3.2.5 Switched Access service will be provide with SS7 signaling or a compatible form of signaling.

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**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**

Tandem Switching includes the following: (N)

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

**3.3 Rate Categories (Continued)**

**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.

**3.3.4 Switched Access Optional Features**

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Various optional features may be available and will be priced on an individual case basis.

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

**3.9 Rates and Charges**

**3.9.1 Switched Access Usage Charges**

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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>.

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

**3.9 Rates and Charges (Continued)**

**3.9.2 [Reserved for Future Use]**

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

**3.9 Rates and Charges (Continued)**

**3.9.3 [Reserved for Future Use]**

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# **ATTACHMENT B**

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  
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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

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cc: Victoria Goldberg

# **ATTACHMENT C**



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>

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<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 Red 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.

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<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(cc) 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.

\* \* \* \* \*