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

In the Matter of	)	
	)	
Standard Tandem LLC	)	WCB/Pricing File No. 19-02
October 3, 2019	)	
Access Charge Tariff Filing,	)	Transmittal No. 1
Tariff F.C.C. No. 1	)	

ORDER

Adopted: October 17, 2019 **Released: October 17, 2019**

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. On October 3, 2019, Standard Tandem LLC filed Tariff Transmittal No. 1 (the proposed Tariff) to undertake "to furnish switched or dedicated access communications service pursuant to the terms of this tariff."[1] The proposed Tariff is scheduled to become effective October 18, 2019.[2] Among other defects, the proposed Tariff includes pricing provisions that violate the Commission's *USF/ICC Transformation Order* and related benchmarking rules, and dispute resolution provisions that would impose unjust and unreasonable terms on Standard Tandem's customers.[3] Because the proposed Tariff fails to comply with the Communications Act of 1934, as amended (Act), including the just and reasonable requirements under section 201(b), and Commission precedent and rules, we reject it in its entirety.

II. DISCUSSION

2. The Communications Act grants the Commission authority to review tariff filings to ensure they comply with the Act and with the Commission's rules and orders.[4] The United States Court of Appeals for the District of Columbia Circuit has explained that the Commission has "the power and in some cases the duty" to reject a tariff that is demonstrably unlawful on its face, or that conflicts with a statute or with an agency regulation or order.[5] We rely on this authority to reject the proposed Tariff in its entirety.

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[1] Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Marlene Dortch, Secretary, Federal Communications Commission, Transmittal Letter for Tariff F.C.C. No. 1, Transmittal No. 1 (filed Oct. 3, 2019); *see also* Standard Tandem LLC Tariff F.C.C. No. 1 (filed Oct. 3, 2019) (Transmittal), Section 2.1.1.

[2] *Id.*

[3] *See Connect America Fund et al*., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *aff'd sub nom, In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2050, and 135 S. Ct. 2072 (2015) (*USF/ICC Transformation Order*); 47 U.S.C. § 201(b).

[4] 47 U.S.C. § 204.

[5] *Associated Press v. FCC*, 448 F.2d 1095, 1103 (D.C. Cir. 1971); *see also Municipal Light Bds. v. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1972) (finding that the Commission may reject a tariff filing if the filing is "so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket."); *Capital Network Sys., Inc.*

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3. *Violations of the benchmarking rules.* As a competitive LEC, Standard Tandem must benchmark its switched access services, including its tandem-switched transport rates, to those of a competing incumbent local exchange carrier (incumbent LEC) pursuant to section 61.26(b) of the Commission's rules.[6] The incumbent LEC is required by section 51.907 of the Commission's rules to reduce—or "step down"—a subset of its terminating tandem switching and transport charges in year six of the transition plan and to further reduce those same charges to zero (i.e., bill-and-keep) in year seven.[7] The year six step down, codified in section 51.907(g)(2) of the Commission's rules, provides that, "[b]eginning July 1, 2017," price cap carriers "shall establish, for interstate and intrastate terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns, Tandem-Switched Transport Access Service rates no greater than $0.0007 per minute."[8] Under the year-seven step down, codified in section 51.907(h), price cap carriers were required to further reduce such rates to zero by July 1, 2018.[9]

4. In section 3.6.4 of the proposed Tariff, Standard Tandem proposes to apply the step down, bill-and-keep (zero) rate only to calls routed through a Standard Tandem tandem switch that terminate at the end offices of price cap carriers affiliated with Standard Tandem.[10] In so doing, Standard Tandem's proposed Tariff fails to properly implement the step down in rates applicable to tandem-switched transport traffic that terminates to a Standard Tandem end office or to the end office of any Standard Tandem affiliate that is not a price cap carrier when Standard Tandem also owns the tandem. In those situations, the benchmark rules dictate that the rate should be zero. The Commission's rules require any price cap LEC to which Standard Tandem benchmarks its rates to step down its rates for terminating tandem-switched transport service when the price cap LEC owns the tandem and terminates the call; and therefore, Standard Tandem must step down its rates whenever it owns the tandem and terminates the call. Accordingly, we find that the proposed Tariff fails to comply with the Commission's *USF/ICC Transformation Order* and related benchmarking rules.[11]

5. *Unjust and unreasonable dispute resolution provisions.* Sections 2.10.4(A)[12] and 2.10.4(B)[13] of the proposed Tariff are dispute resolution provisions.[14] Section 2.10.4(A) provides that

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v. FCC, 28 F.3d 201, 204 (D.C. Cir. 1994); *American Broadcasting Cos. v. FCC*, 663 F.2d 133, 138 (D.C. Cir. 1980).

[6] 47 CFR § 61.26 (b); *see also id*., § 61.26 (d).

[7] *See Level 3 Communications, LLC v. AT&T Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 2388, 2389, para. 2 n.4 (2018) (*Level 3 Order*) (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801, Figure 9).

[8] *See* 47 CFR § 51.907(g)(2). *See also id*., § 61.3(bb) (definition of "Price Cap Local Exchange Carrier").

[9] *See* 47 CFR § 51.907(h) ("[E]ach Price Cap carrier shall, in accordance with bill-and-keep, as defined in § 51.713, revise and refile its interstate switched access tariffs and any state tariffs to remove any intercarrier charges applicable to terminating tandem-switched access service traversing a tandem switch that the terminating carrier or its affiliate owns.").

[10] Section 3.6.4 of the proposed Tariff states that "In order to comply with the FCC's benchmarking rule, Standard Tandem ... has tariffed two separate sets of rates for tandem-switched transport. One rate schedule applies for traffic terminating to a Company-affiliated price cap ILEC end office, and the other applies for traffic terminating to any other terminating carrier/provider. The terminating Tandem-Switched Transport rate schedules are bifurcated into "Standard" and "Affil PCL" (where "Affil PCL" stands for Affiliated Price Cap LEC) rates. The Affil PCL terminating Tandem-Switched Transport rates apply to terminating traffic traversing a Company Access Tandem switch when the terminating carrier is a Company-affiliated price cap carrier. All other terminating Tandem-Switched Transport traffic is subject to the Standard terminating Tandem-Switched Transport rates."

[11] *See, e.g., USF/ICC Transformation Order*, 26 FCC at 17937-38, paras. 807-08.

[12] Section 2.10.4(A) provides:

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invoiced charges are "binding" unless a customer wishing to dispute a bill submits written "notice of a good faith dispute" to Standard Tandem "within a reasonable period of time."[15] Section 2.10.4(B) prohibits a customer from withholding payment of disputed charges pending a resolution of the parties' dispute.[16]

6. We find that sections 2.10.4(A) and (B) of the proposed Tariff are unjust and unreasonable provisions that violate section 201(b) of the Act.[17] First, section 2.10.4(A) of the proposed Tariff does not define what constitutes "a reasonable period of time" after an invoice has been issued. As a result, customers taking service under the proposed Tariff cannot determine with certainty how to submit a timely notice of a dispute. Section 61.2(a) of the Commission's rules requires all tariffs to contain "clear and explicit explanatory statements regarding the rates and regulations" to "remove all doubt as to their proper application."[18] The word "reasonable" is vague and would be subject to numerous interpretations, in violation of section 61.2 of the Commission's rules and section 201(b) of the Act. Further, section 2.10.4(A) of the proposed Tariff contravenes section 201(b) of the Act because the provision can be interpreted as unilaterally shortening the two-year statute of limitations set forth in section 415(b) of the Act.[19]

7. Similarly, section 2.10.4(B) of the proposed Tariff violates section 201(b) of the Act because it is an unjust and unreasonable term. In *Sprint v. Northern Valley*, the Commission found a tariff provision requiring "all disputed charges to be paid 'in full prior to or at the time of submitting a good faith dispute'" to be unreasonable.[20] Such a provision, the Commission said, would require every customer that receives a bill for access services to pay it, "no matter what the circumstances … in order to dispute a charge."[21] Here, the proposed tariff language is nominally different, requiring payment prior to disputing charges if such charges relate to transmission of interstate telecommunications to Standard Tandem's network. But all the traffic subject to the proposed Tariff is interstate telecommunications.

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> All bills are presumed accurate and shall be binding on the Customer unless written notice of a good faith dispute is received by the Company. For the purposes of this Section, "notice of a good faith dispute" is defined as written notice to the Company's contact within a reasonable period of time after the invoice has been issued, containing sufficient documentation for the Company to investigate the merits of the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed. A separate letter of dispute must be submitted for each and every individual bill that the Customer wishes to dispute.

[13] Section 2.10.4(B) provides:

> Prior to or at the time of submitting a good faith dispute, Customer shall tender payment for any undisputed amounts, as well as payment for any disputed charges relating to traffic in which the Customer transmitted an interstate telecommunication to the Company's network.

[14] Transmittal § 2.10.4(A).

[15] Transmittal § 2.10.4(A).

[16] Transmittal § 2.10.4(B).

[17] 47 U.S.C. § 201(b).

[18] 47 CFR § 61.2(a).

[19] *See* 47 U.S.C. § 415(b).

[20] *Sprint Commc'ns Co. v. N. Valley Commc'ns, LLC*, Memorandum Opinion & Order, 26 FCC Rcd 10780, 10787 (2011) (*Sprint v. Northern Valley*), *review denied*, *N. Valley Commc'ns, LLC v. FCC*, 717 F.3d 1017 (D.C. Cir. 2013) (*Northern Valley v. FCC*)).

[21] *Id.*

The proposed Tariff, therefore, broadly and impermissibly requires customers to pay Standard Tandem for all interstate traffic to dispute a charge.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201(b), 202, and 204 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201(b), 202, and 204; and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that the proposed Standard Tandem LLC Tariff F.C.C. No. 1, Transmittal No. 1, IS HEREBY REJECTED.

9. IT IS FURTHER ORDERED that, pursuant to section 61.69 of the Commission's rules, 47 CFR § 61.69, Standard Tandem LLC SHALL FILE a supplement within five business days from the release date of this order noting that this proposed transmittal was rejected in its entirety by the Federal Communications Commission.

FEDERAL COMMUNICATIONS COMMISSION

Gil M. Strobel
Chief, Pricing Policy Division
Wireline Competition Bureau