

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
CenturyLink Communications, LLC f/k/a Qwest
Communications Company, LLC,
Complainant,
v.
Verizon Services Corp.; Verizon Virginia LLC;
Verizon Washington, D.C., Inc.; Verizon Maryland
LLC; Verizon Delaware LLC; Verizon
Pennsylvania LLC; Verizon New Jersey Inc.;
Verizon New York Inc.; Verizon New England
Inc.; Verizon North LLC; Verizon South Inc.,
Defendants.

Proceeding No. 18-33
Bureau ID No. EB-18-MD-001

MEMORANDUM OPINION AND ORDER

Adopted: July 25, 2019

Released: July 25, 2019

By the Chief, Enforcement Bureau:

1. This Memorandum Opinion and Order denies a formal complaint¹ filed by CenturyLink Communications, LLC (CenturyLink) against Verizon Services Corp. and certain affiliates (Verizon) pursuant to section 208 of the Communications Act of 1934, as amended (Act).² CenturyLink is a telecommunications carrier that purchases special access and other services from Verizon. In its Complaint, CenturyLink alleges that Verizon undercalculated the value of certain credits to which CenturyLink was entitled under two Verizon contract tariffs, and that Verizon acted unreasonably in administering these tariffs. CenturyLink also alleges that Verizon violated the terms of its tariffed "Facilities Management Service" by failing to configure CenturyLink's special access network in an efficient manner. CenturyLink maintains that Verizon's conduct violated section 201(b) of the Act, which prohibits carriers from engaging in "unjust and unreasonable practices," and section 203(c) of the Act, which states that no carrier may assess charges or "employ... practices affecting such charges" except as specified in its tariff.³ As discussed below, we find that CenturyLink's challenge to the credits

¹ Formal Complaint of CenturyLink Communications, LLC, Docket No. 18-33, File No. EB-18-MD-001 (filed Feb. 26, 2018) (Complaint).

² 47 U.S.C. § 208.

³ Section 201(b) states, "All charges [and] practices . . . in connection with [interstate or foreign] communication service, shall be just and reasonable . . ." 47 CFR § 201(b). Section 203(c) states, "no carrier shall (1) charge . . . or receive a greater or less or different compensation . . . than the charges specified in the [tariff] then in effect, . . . or (3) . . . employ or enforce any . . . practices affecting such charges, except as specified in such [tariff]." Id. § 203(c)(1), (3).

is barred by the express terms of the contract tariffs. We also find that Verizon did not violate sections 201(b) or 203(c) in administering the contract tariffs or the Facilities Management Service.

I. BACKGROUND

2. In 2009, CenturyLink and Verizon entered into an agreement, memorialized in a tariff filed with the Commission (the 2009 Contract Tariff), under which Verizon applied quarterly credits to the bills for the special access services CenturyLink purchased from Verizon.⁴ The 2009 Contract Tariff expired in February 2014 and was replaced by a virtually identical three-year agreement, again memorialized in an FCC tariff (the 2014 Contract Tariff).⁵

3. The Contract Tariffs detail the manner in which Verizon was to calculate the credits, and also contain provisions addressing disputes of those calculations (Dispute Provisions). The 2009 Contract Tariff Dispute Provision states, “The Billing Credits as determined by Verizon are not subject to dispute.”⁶ The 2014 Contract Tariff Dispute Provision states:

The Billing Credits as determined by Verizon are not subject to dispute For the avoidance of any doubt, Verizon will not issue any Billing Credits until the applicable credit amount is agreed by [CenturyLink].⁷

4. In practice, before issuing a credit under either Contract Tariff, Verizon informed CenturyLink of the proposed credit and obtained CenturyLink’s agreement to the amount.⁸ CenturyLink expressly agreed to, and Verizon then issued, all 16 credits at issue in this proceeding – four under the 2009 Contract Tariff and 12 under the 2014 Contract Tariff.⁹ CenturyLink initially agreed to, but later disputed, 11 of the credits.¹⁰ It initially disputed, but later agreed to, the remaining five credits.¹¹

⁴ CenturyLink Exhs. 3 (2009 Agreement), 14 (Verizon Tariff FCC No.1, Contract Tariff Option 57).

⁵ CenturyLink Exhs. 4 (2014 Agreement), 17 (Verizon Tariff FCC No. 1, Contract Tariff Option 65). Specifically, Verizon billed CenturyLink each month for special access services at Verizon’s base tariff rates. Then, at the end of each quarter, CenturyLink received a Billing Credit that, when applied to CenturyLink’s special access service charges, reduced CenturyLink’s effective access service rates to the lower rates specified in the 2009 and 2014 Contract Tariffs. Thus, the Billing Credits were equal to the difference between the base tariff rates and the Contract Tariffs’ discounted rates. *See* Complaint at 11, para. 25; Verizon’s Answer to CenturyLink’s Formal Complaint, Docket No. 18-33, File No. EB-18-MD-001 (filed Apr. 12, 2018) (Answer), Legal Analysis at 1.

⁶ CenturyLink Exhs. 3 (2009 Agreement) at 16, § 7.e.vii, 14 (Verizon Tariff FCC No.1, Contract Tariff Option 57) at 21-752 § 21.58(H)(5)(g).

⁷ CenturyLink Exh. 5 (2014 Agreement) at 15, §§ 8.f, Exh. 17 (Verizon Tariff FCC No. 1, Contract Tariff Option 65) at 21-937, 8, § 21.66(H)(6).

⁸ *See* Answer, Legal Analysis at 1-2, Tab C (Declaration of Patricia A. Mason) (Mason Decl.) ¶¶ 24-41.

⁹ These are the four credits for the last four quarters of the 2009 Contract Tariff and all 12 credits for the 12 quarters of the 2014 Contract Tariff. *See* Verizon Exh. 1 (Billing Credit History); Answer, Legal Analysis at 1-2, Mason Dec’1 ¶ 30; CenturyLink Communications, LLC’s Reply to Verizon’s Answer, Docket No. 18-33, File No. EB-18-MD-001 (filed Apr. 23, 2018) (Reply) at 6, para. 3, Legal Analysis at 2.

¹⁰ *Compare* Verizon Exh. 1 (Billing Credit History) and CenturyLink August 6, 2018 Letter (Dispute Table) at 1-8.

¹¹ CenturyLink initially disputed the credit for the 6th quarter of the 2014 Contract Tariff on October 19, 2015, then approved it on November 17, 2015. CenturyLink likewise initially disputed, but subsequently agreed to, the final four 2014 Contract Tariff credits in the amounts initially proposed by Verizon, and Verizon applied the credits. *Compare* Verizon Exh. 1 (Billing Credit History) and CenturyLink August 6, 2018 Letter (Dispute Table) at 1-8.

5. On June 27, 2016, CenturyLink filed an informal complaint with the Commission alleging that Verizon miscalculated the 16 credits, which Verizon answered on the merits.¹² On February 26, 2018, CenturyLink filed the instant Complaint, alleging that Verizon undercalculated the 16 credits at issue in an amount equal to approximately 6% of their value.¹³ Verizon denies that it committed most of the mistakes alleged by CenturyLink but admits to certain calculation errors.¹⁴

II. DISCUSSION

A. CenturyLink may not claim that Verizon’s credit calculations violated section 203(c) of the Act.

6. We agree with Verizon that, because CenturyLink approved each of the 16 credits at issue before Verizon remitted them, the Dispute Provisions in the Contract Tariffs bar CenturyLink’s claim that Verizon violated section 203(c) of the Act by undercalculating these credits.¹⁵ Both Contract Tariffs state, “The Billing Credits as determined by Verizon are not subject to dispute.” The 2014 Agreement also states, “For the avoidance of any doubt, Verizon will not issue any Billing Credits until the applicable credit amount is agreed by [CenturyLink].” Thus, under the Dispute Provisions, once CenturyLink concurred in a credit, that credit was no longer “subject to dispute.” Because CenturyLink agreed to the credits at issue, it may not “dispute” those credits by asserting here that they were improperly calculated.¹⁶

7. CenturyLink disagrees with this analysis. Though it disavows any claim that the Contract Tariffs are unlawful,¹⁷ CenturyLink maintains that the Dispute Provisions may not be construed to permit Verizon to miscalculate the credits. First, CenturyLink invokes the filed rate doctrine, stressing that Verizon admits to errors in calculating the credits, and protesting that Verizon may not “violate[] the filed rate doctrine through billing errors that *alter* the filed rates, and then . . . preclude disputes that would restore the filed rate.”¹⁸ We disagree. Under the filed rate doctrine—or more aptly, the filed *tariff*

¹² See *Informal Complaint: CenturyLink Commc’ns, LLC v. Verizon Services Corp.*, File No. EB-16-MDIC-0015 (filed June 27, 2016) (Informal Complaint) and *Response to Notice of Informal Complaint*, File No. EB-16-MDIC-0015 (filed Aug. 3, 2016).

¹³ *Compare* Complaint at 72, para.147 (damages request) and Verizon Exh. 1 (Billing Credit History) at Step 5, “Agreed-upon Credit Amount.”

¹⁴ See Answer, Legal Analysis at 49-60, Mason Decl. ¶¶ 77, 89.

¹⁵ Answer, Legal Analysis at 20-23.

¹⁶ Verizon argues that CenturyLink’s claims with respect to the final four quarters of the 2009 Contract Tariff are time-barred because they are not for “overcharges” within section 415(b) of the Act, 47 CFR § 415(b). See Answer, Legal Analysis at 66-68. Because we deny CenturyLink’s claims on the merits, we need not address Verizon’s argument.

¹⁷ See, e.g., Complaint, Legal Analysis at 27 (“CenturyLink is not seeking to modify the agreements or contract tariffs, but rather requests that the Commission *enforce* the Parties’ agreements and the tariffs. . . .”) (emphasis in original); Reply, Legal Analysis at 41. Proving that the Dispute Provisions are unlawful would be difficult. “Under the principles of the *Sierra-Mobile* doctrine, the Commission may effectively alter the terms of a contract tariff at the behest of one of the original negotiating parties...only if there exists a compelling public interest in doing so, or convincing evidence of unfairness in the contract formation process.” *Ryder Commc’ns v. AT&T Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 13603, 13614, para. 24 (2003) (citing *Federal Power Comm’n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956)). See *IDB Mobile Commc’ns, Inc. v. COMSAT Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 1147 (2001) (“the *Sierra-Mobile* standard for contract [tariff] reformation is high . . . [because] preserving the integrity of contracts is vital to the proper functioning of the carrier-to-carrier communications market.”).

¹⁸ Reply, Legal Analysis at 11 (emphasis in original). See Complaint, Legal Analysis at 13.

doctrine—all terms and conditions of a tariff, not just the rates, must be enforced.¹⁹ Therefore, the Contract Tariff Dispute Provisions, as well as the provisions explaining how the credits are calculated, must be given effect. The Contract Tariffs express this very principle, stating that the credit calculations are subject to the Dispute Provisions. The 2009 Contract Tariff states, “In calculating the Billing Credits . . . [the Dispute Provisions] shall apply,” and the 2014 Agreement provides that “Verizon’s calculation of the Billing Credits . . . is subject to [the Dispute Provisions].” Thus, enforcing the Dispute Provisions to prevent challenges to the credits will not alter the filed rates because the Dispute Provisions are, like the tariffed limitation of liability clause construed by the Supreme Court in *Western Union Telegraph*, “an inherent part of the rate.”²⁰

8. CenturyLink next argues that, under principles of contract construction, the Dispute Provisions may not be read to bar CenturyLink’s claim. According to CenturyLink, reading the Contract Tariff provisions detailing how the credits are calculated together with the Dispute Provisions creates “ambiguities” which may not be resolved in a way that allows Verizon to undercalculate the credits. CenturyLink notes that “a contract which confers certain rights or benefits in one clause will not be construed in other provisions completely to undermine those rights or benefits.”²¹ We are not persuaded. The Dispute Provisions do not “completely . . . undermine” the credit calculation provisions but are readily reconciled with them: Verizon was bound by the Contract Tariff credit calculation provisions, and CenturyLink was entitled to challenge the credits as violating the terms of the Contract Tariffs unless and until it approved those credits.

9. Taking a different tack, CenturyLink argues that the Dispute Provisions must be read in light of the parties’ Master Service Agreement, a non-tariffed private contract under which CenturyLink purchased packet-based data products from Verizon.²² CenturyLink cites a provision of the agreement that states, “The parties recognize that . . . the interrelationship between the [2009 and 2014 Contract Tariffs] and this [Master Service Agreement] is such that resolving any disputes that may arise under the [2009 or 2014 Contract Tariffs] should be coordinated with the process to resolve disputes hereunder.”²³ CenturyLink’s argument fails because private contracts, such as the Master Service Agreement, may not modify the terms of a tariff.²⁴ Therefore, the language of the Master Service Agreement is irrelevant to the construction of the Contract Tariff Dispute Provisions.

¹⁹ See *Richman Bros. Records, Inc. Sprint Commc’ns. Co.*, Memorandum Opinion and Order, 10 FCC Red 13639, 13641 (Comm. Carr. Bur. 1995) (noting that “the filed tariff doctrine [is] also known as the filed rate doctrine,” and disagreeing with the proposition that “the filed tariff doctrine does not apply to tariffed limitations on a carrier’s liability, but only to tariffed rates” because “the filed tariff doctrine requires the enforcement of tariff terms and conditions other than rates . . .”); 47 U.S.C. § 203(c)(3) (no carrier may “employ . . . any practices affecting [the carrier’s tariffed] charges, except as specified in such [tariff]”); *AT&T Co. v. Central Office Tele.*, 524 U.S. 214, 222 (1998) (noting that the services provided under a tariff are as binding as the rates because “[tariffed] rates . . . do not exist in isolation”).

²⁰ *Western Union Telegraph Co. v. Esteve Bros. & Co.*, 256 U.S. 566, 571 (1921). CenturyLink contends that enforcing the Dispute Provisions to bar its claims will result in “discriminatory pricing,” which the filed rate doctrine is aimed at preventing. Reply, Legal Analysis at 2. CenturyLink is incorrect. Any carrier opting into the Contract Tariffs is, like CenturyLink, subject to all its provisions, including the Dispute Provisions.

²¹ See *id.* (citing *Ronnen v. Ajax Elec. Motor Corp.*, 88 N.Y.2d 582, 590 (C.A. 1996)).

²² See Complaint, Legal Analysis at 19-24.

²³ Complaint at 59, para. 11 (citing CenturyLink Exhs. 2, 4 (Master Service Agreements) at Attachment 11 § 15 and Attachment 13 § 9.4).

²⁴ See 47 U.S.C. § 203(c)(3) (no carrier may “employ . . . any practices affecting [the carrier’s tariffed] charges, except as specified in such [tariff]”); *AT&T Co. v. Central Office Telephone, Inc.*, 524 U.S. 214, 227 (1998) (“rights as defined by the tariff cannot be varied or enlarged by either contract or tort . . .”) (citing *Keogh v. Chicago & Northwestern Railway Co.*, 260 U.S. 156, 163 (1922)).

10. Finally, CenturyLink posits that language in the 2009 Contract Tariff allows it to challenge the credits issued under that tariff. CenturyLink cites the following provision:

Upon resolution of any Disputed Charges, or disputes raised after the determination of the Billing Credits, amounts may be credited to [CenturyLink] if [CenturyLink] prevails, however, notwithstanding anything to the contrary herein, there shall be no adjustment to the Billing Credits²⁵

CenturyLink interprets this provision to mean CenturyLink could be compensated for incorrect credits even though it had already concurred.²⁶ To avoid the clause that “notwithstanding anything to the contrary herein, there shall be no adjustment to the Billing Credits,” CenturyLink argues that it “could receive *amounts* for [Billing Credit] disputes, if they were not characterized as Billing Credits.”²⁷ CenturyLink’s argument is unsuccessful. The provision does not say that, when CenturyLink prevails in a dispute, CenturyLink receives “*amounts*,” the provision says that, when CenturyLink prevails, it receives a *credit*: “[A]mounts may be *credited* to [CenturyLink] if [CenturyLink] prevails.” Yet a credit issued to CenturyLink because it prevailed in a credit dispute would be an “adjustment to the Billing Credits,” which is precisely what the provision forbids: “[T]here shall be no adjustment to the Billing Credits.”²⁸ Therefore, CenturyLink’s reliance on this provision is misplaced.²⁹

B. CenturyLink has not shown that Verizon’s administration of the Contract Tariffs violated section 201(b) of the Act.

11. We find that Verizon’s administration of the Contract Tariffs did not violate section 201(b)’s prohibition against unjust and reasonable practices. CenturyLink’s principal allegation is that Verizon made it so difficult to challenge the credits that CenturyLink was effectively forced to approve them.³⁰ Specifically, CenturyLink contends that Verizon did not provide CenturyLink enough information to determine whether the credits were calculated properly;³¹ that Verizon incorrectly informed CenturyLink that it had only 30 days after the end of the quarter to dispute that quarter’s credit, though it now agrees that no such deadline applies;³² and that Verizon’s electronic claims form, used to submit credit disputes, created a “Catch-22”—requiring CenturyLink to input information that was not available until CenturyLink had concurred in the credit and Verizon had posted it to CenturyLink’s

²⁵ See Reply, Legal Analysis at 17-18 (citing CenturyLink Exh. 3 (2009 Contract Tariff) at 17, § 7(e)(v)).

²⁶ See Reply, Legal Analysis at 17-18.

²⁷ *Id.* (emphasis added).

²⁸ CenturyLink also cites a provision in the 2014 Contract Tariff stating that the Dispute Provisions do not apply “where Verizon applies a Billing Credit that does not match the mutually agreed upon credit amount.” Complaint, Legal Analysis at 18 (citing CenturyLink Exh. 5 (2014 Contract Tariff) at 10, section 8(f)(ii)). But this language does not apply to the present facts, because CenturyLink does not argue that, after it concurred in a billing credit of a specific amount, Verizon issued a credit in a different amount.

²⁹ Because we deny CenturyLink’s claim that Verizon’s billing credit calculations violated section 203(c) of the Act, we also deny CenturyLink’s claim, *see* Complaint at 70, para. 139, that Verizon therefore also violated section 201(b) of the Act.

³⁰ See Complaint at 71, para. 142.

³¹ See Complaint at 69, para. 133.

³² See Complaint at 37, para. 73. *See also* Reply, Legal Analysis at 28 (Verizon’s assertion that credit disputes had to be submitted within thirty days was based on an incorrect reading of the Contract Tariffs); Answer, Legal Analysis at 33-34 (Verizon agrees that the Contract Tariffs did not require CenturyLink to submit credit disputes within thirty days).

account.³³ CenturyLink alleges further that, when it did manage to submit a dispute, Verizon would not investigate it,³⁴ and that Verizon refused to remit the undisputed credit amount while the parties resolved the dispute.³⁵

12. CenturyLink overstates its case. Verizon provided detailed information regarding its credit calculations, and, in any event, CenturyLink does not explain why it did not simply ask Verizon to provide the information it argues it lacked.³⁶ Further, CenturyLink knew or should have known that it did not have to dispute the credits within the thirty-day deadline posited by Verizon.³⁷ CenturyLink has not established that Verizon's electronic claim form could be completed only after CenturyLink had approved the credit and the credit had been remitted; instead, it shows only that the form could not be completed without Verizon's help. CenturyLink does not allege that Verizon ever refused CenturyLink's request for assistance with the form.³⁸ Moreover, we are not persuaded that Verizon's alleged failure to investigate CenturyLink's disputes was a significant factor in CenturyLink's decision to approve the credits. CenturyLink approved 11 of the 16 billing credits at issue *before* it disputed them.³⁹ It approved another

³³ See Complaint at 64, para. 120, Legal Analysis at 34-35; Reply at 6, para.3.

³⁴ See Complaint at 3, para. 4, 46, para. 88, 53-4, paras. 99-102, 61, para. 114.

³⁵ See Complaint at 66, para. 124, 69, para. 133

³⁶ See Answer, Legal Analysis at 31-32, Mason Decl. ¶¶ 35-39 (Verizon provided monthly tracking reports, which gave a running tally of Verizon's proposed credit amount, monthly invoices containing circuit-level detail for each special-access circuit for which Verizon billed, and quarterly reports showing the circuit-level detail underpinning its credit calculations). CenturyLink concedes that Verizon's reports provided the information needed to file its claims here, *see* Brown Compl. Decl. ¶ 14, and shows only that it needed, but did not possess, circuit-level detail as to DSIs. *See id.* ¶ 12; Reply Exh. C (Brown Decl.) (Brown Reply Decl.) ¶ 98. Verizon denies that CenturyLink needed this information. *See* Mason Decl. ¶ 18. In any event, CenturyLink states that it asked for this DSI information only once (in August 2014). Although Verizon responded by providing only a portion of the requested data, CenturyLink does not contend that it made a follow-up request. *See* Brown Reply Decl. ¶ 98.

³⁷ See Complaint at 57, para. 108 ("Verizon's thirty-day deadline "rested on an untenable reading of the parties' agreements..."), Legal Analysis at 17 ("the contracts and tariffs do not impose a strict 30-day time bar, as Verizon has asserted."). Further, under the filed-rate doctrine, CenturyLink is charged with knowledge of the Agreements' terms. *See Fax Telecommunicaciones Inc. v. AT&T*, 138 F.3d 479, 489 (2d Cir. 1997) ("All customers are 'conclusively presumed' to have constructive knowledge of the filed tariff under which they receive service") (citing *Kansas City Southern Ry. Co. v. Carl*, 227 U.S. 639, 653, 33 S.Ct. 391, 395 (1913)); *accord Marco Supply Co. v. AT&T*, 875 F.2d 434, 436 (4th Cir. 1989); *Halprin, Temple, Goodman & Sugrue v. MCI Telecomm. Co.*, Memorandum Opinion and Order, 13 FCC Rcd 22568, 22579, para. 23 (1998). CenturyLink's assertion that the credit calculation reports were untimely because they were provided more than thirty days after the end of the quarter, *see* Complaint at 69, para. 133, rests on the the incorrect assumption that CenturyLink only had thirty days to dispute the credits, not on any obligation imposed by the Contract Tariffs.

³⁸ CenturyLink does not point to any field in the claim form requiring it to input the date the credit was remitted. Instead, CenturyLink shows only that it was unable to populate the claim form's "Circuit ID" field because the credits were not issued at the circuit level. *See* Brown Compl. Decl. ¶ 83. Yet CenturyLink also states that Verizon could -- and on at least one occasion did -- input the Circuit ID data into the claim form at CenturyLink's request. *Id.*

³⁹ In fact, CenturyLink's decision to approve the first four credits could not have been prompted by Verizon's alleged failure to investigate, because CenturyLink had never submitted a dispute before. Further, Verizon promptly investigated this dispute and discussed it with CenturyLink. Therefore, CenturyLink's subsequent approval of the next five credits also necessarily was not caused by Verizon's alleged failure to investigate, because CenturyLink did not file a second dispute until it after approved these five credits. *See* CenturyLink Exh. 42.03 (email from Joseph G. Aguilar, Verizon, to Patrick Lowell, CenturyLink (Sept. 15, 2014 at 12:24pm)) (discussing the merits of CenturyLink's dispute of the first five Billing Credits); Brown Compl. Decl. ¶¶ 33, 38, 41 (Verizon and CenturyLink discussed the dispute). *Compare* Verizon Exh. 1 (Billing Credit History) and CenturyLink August 6, 2018 Letter (Dispute Table) at 1-8; Answer, Legal Analysis at 16-17.

four of the 16 credits after Verizon had, in fact, investigated CenturyLink's disputes and responded to them on the merits in its answer to CenturyLink's Informal Complaint.

13. We also reject CenturyLink's assertion that Verizon violated section 201(b) by refusing to remit undisputed credit amounts. In each of the last four quarters of the 2014 Contract Tariff, after Verizon informed CenturyLink of the proposed credit, CenturyLink sent Verizon an email stating that it agreed with the credit but adding that it was entitled to an additional credit amount and asking Verizon to pay the undisputed amount while the parties resolved CenturyLink's claim.⁴⁰ CenturyLink contends that Verizon's refusal to comply with its request forced CenturyLink to concur because the credits were large, and the contested amounts were relatively small – less than two percent of the value of the credits. According to Century Link, "Verizon withheld [REDACTED] dollars in undisputed amounts from CenturyLink until CenturyLink was forced to express 'concurrence' with Verizon's calculations in order to obtain those significantly larger undisputed amounts."⁴¹ CenturyLink's claim fails because Verizon's conduct comported with the 2014 Contract Tariff's Dispute Provision, which states that "Verizon will not issue any Billing Credits until the applicable credit amount is agreed to by [CenturyLink]."⁴² This language makes clear that Verizon was not obligated to issue "any" credit amount until CenturyLink agreed that "the applicable credit amount" was correct. CenturyLink's assertion that it was entitled to undisputed credit amounts would render this provision meaningless and destroy the very finality it was intended to create since CenturyLink could always "agree" that a proposed credit was correct while also maintaining that it was entitled to a greater amount.⁴³

14. Finally, we deny CenturyLink's claim that, regardless of whether it played a role in CenturyLink's approval of the credits, Verizon's alleged failure to investigate CenturyLink's disputes violated section 201(b) of the Act. CenturyLink maintains that, because Verizon did not properly review CenturyLink's disputes, Verizon repeated the same errors in subsequent quarters: "Verizon also had knowledge that CenturyLink was disputing Verizon's treatment or inclusion of specific circuits [in calculating the Billing Credits.] but failed to remedy this in future calculations for subsequent quarters."⁴⁴ CenturyLink's argument is precluded by the Dispute Provisions. As discussed, under these provisions, once CenturyLink concurred in Verizon's calculation of a credit, the credit was "not subject to dispute."

⁴⁰ See Brown Compl. Decl. ¶¶ 105, 116, 121; CenturyLink Exh. 52.15 (email from Anne A. Grimm, CenturyLink, to Bradley A. Rhotenberry, Verizon (Feb. 16, 2018, 9:44 EST)).

⁴¹ Complaint at 66, para. 124.

⁴² CenturyLink Exh. 5 (2014 Agreement) at 15, § 8.f. CenturyLink argues that a carrier may not withhold credits merely because a customer disputes its bill, but the cases it cites are unavailing. See Complaint, Legal Analysis at 3 n.9 (citing *Great Lakes Commc'ns Corp. v. AT&T*, NO.C13-4117-DEO, 2014 WL 2864474 at *25 (N.D. Iowa 2014)), *id.* at 29 n.83 (citing *NOS Commc'ns, Inc.*, Apparent Liability for Forfeiture, 16 FCC Rcd 8133, 8135 (2001) (Comm'r Ross, dissenting)). In *NOS Communications*, the Commission merely noted that complainants alleged that, when they challenged the defendant carriers' charges, the carriers "promis[ed] credits ... that never materialized;" the Commission drew no legal conclusions from its observation. Moreover, Verizon's "promises" are those expressed in the Contract Tariffs, and CenturyLink does not show that Verizon violated those agreements. In *Great Lakes*, the court found unreasonable a tariff's requirement that customers pay all charges as a condition of contesting them. But CenturyLink does not argue that the Contract Tariffs are unlawful and, in any event, *Great Lakes* involved a unilaterally-imposed tariff, while, as discussed, the Dispute Provisions are found in contract tariffs, so that a challenge to their lawfulness is governed by a different standard. See n.17 *supra*.

⁴³ CenturyLink offers no support for its allegation that Verizon released undisputed Billing Credit amounts on four occasions. See Reply, Legal Analysis at 27 & n.79 (so asserting and citing Brown Compl. Decl. ¶¶ 79-100 (describing the Billing Credit disputes, but never stating that Verizon issued an undisputed portion of a Billing Credit)). Verizon denies CenturyLink's allegation. See Answer at 43, para. 97, Legal Analysis at 18.

⁴⁴ Complaint, Legal Analysis at 16. See Complaint at 3, para. 4, Legal Analysis at 16-17.

CenturyLink concurred in, and Verizon issued, all the credits; therefore, CenturyLink may no longer challenge them as improperly calculated, and may not allege, as it does in support of this section 201(b) claim, that any of the credits contained errors that Verizon should have corrected.

C. Verizon’s administration of the Facilities Management Service did not violate sections 201(b) or 203(c) of the Act.

15. We also deny CenturyLink’s final claim, which pertains to Verizon’s Facilities Management Service, a Verizon tariff offering to which CenturyLink subscribed from 2006 to July 2014. Under this offering, Verizon was responsible for configuring CenturyLink’s special access network and could charge CenturyLink only for the circuits used, regardless of how those circuits were configured. As a result, CenturyLink did not pay more if Verizon spread CenturyLink’s DS0 and DS1 circuits across numerous DS3 facilities rather than using as few DS3s as possible.⁴⁵ After Facilities Management Service expired in July 2014, CenturyLink transitioned to a standard Verizon special access service under which CenturyLink, rather than Verizon, was responsible for configuring CenturyLink’s network, and CenturyLink would have to pay Verizon for a full DS3 circuit even if, for example, the circuit carried only a single DS0.⁴⁶

16. For approximately 18 months after the Facilities Management Service ended, CenturyLink’s network was not configured to minimize its DS3 circuits, so that CenturyLink’s costs increased.⁴⁷ CenturyLink blames Verizon for this problem, alleging that Verizon violated sections 201(b) and 203(c) of the Act. CenturyLink contends that Verizon was obligated to configure CenturyLink’s network while CenturyLink subscribed to Facilities Management Service so that CenturyLink’s costs would be minimized when CenturyLink no longer subscribed to the service.⁴⁸ CenturyLink cites the statement in the Facilities Management Service tariff that “[Verizon] assumes responsibility for the routing of the customer’s dedicated circuits over [Verizon’s] Special Access Network in order to maximize network efficiencies and to optimize economic efficiencies.”⁴⁹

17. CenturyLink’s argument is unconvincing. The provision on which CenturyLink relies describes Verizon’s obligations under the Facilities Management Service tariff, and therefore merely obligates Verizon to “maximize network [and economic] efficiencies” for the period while the customer is subscribed to the service. Nothing in this language refers to the period after the service ends and the customer subscribes to another plan. Moreover, CenturyLink’s construction is unworkable. Verizon could not have known its customers’ network needs once they transitioned away from the service, particularly if the customer subsequently subscribed to special access services from a carrier other than Verizon. Thus, as Verizon explains with respect to CenturyLink, “The only party with full information about CenturyLink’s own post-[Facilities Management Service] network objectives—and thus the only

⁴⁵ See Complaint at 31-34, paras. 64-68, Brown Compl. Decl. ¶¶ 123, 128; Answer, Legal Analysis at 60-63. A DS0 circuit has a transmission capacity of 64 Kbps; a DS1 circuit is equivalent to 24 DS0s, and a DS3 is equivalent to 28 DS1s. See *SBC Commc’ns and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 1832, para. 57 n.163 (2005).

⁴⁶ See Complaint at 31-34, paras. 64-68; Brown Compl. Decl. ¶¶ 123, 128; Answer, Legal Analysis at 60-63. CenturyLink’s assertions to the contrary, Reply, Legal Analysis at 61, it knew or should have known by 2009 that it would have to transition off Facilities Management Service in 2014. See *Application of Verizon Delaware LLC to Discontinue Domestic Telecomm’ns Services*, Public Notice, 23 FCC Rcd 18108 (2008) (applying to discontinue the service); CenturyLink Exh. 22 (Verizon FCC Tariff No. 1 § 7.2(a)) (effective May 1, 2009) (Verizon will not provide Facilities Management Service after customers’ current plans expire).

⁴⁷ See CenturyLink Exh. 26 (showing the amounts by which CenturyLink maintains it overpaid because its network was not configured to minimize costs).

⁴⁸ See Complaint at 33, para. 67; Reply, Legal Analysis at 57-59.

⁴⁹ Complaint at 31, para. 65 (citing CenturyLink Exh. 22 (Verizon FCC Tariff No. 1)).

party with the ability to configure the network to maximize CenturyLink's own economic efficiencies—was CenturyLink. It would not have been feasible . . . for Verizon to attempt to perform such a practice on CenturyLink's behalf."⁵⁰ Finally, CenturyLink does not allege that Verizon ever failed to cooperate with CenturyLink in its efforts to manage the transition from Facilities Management Service. Therefore, Verizon is not responsible for the inefficiencies in CenturyLink's network after it no longer subscribed to the Facilities Management Service, and we deny CenturyLink's claim.⁵¹

III. ORDERING CLAUSE

18. Accordingly, **IT IS HEREBY ORDERED**, pursuant to sections 1, 4(i), 4(j), 201, 203 and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 202, 203 and 208, that the Complaint **IS DENIED** as described herein and **THIS PROCEEDING IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

⁵⁰ Answer Exh. F (Declaration of Susan Fox and Marian Howell), ¶ 8.

⁵¹ CenturyLink contends that Verizon assured it that its DS3 count would not increase significantly after Facilities Management Service expired, citing a Verizon email stating, "There will be little to no impact on CenturyLink's special access billing [after the service expires] . . . because of their [discounted] DS1 and DS3 pricing." Brown Compl. Decl. ¶ 125 (citing CenturyLink Exh. 53.05 (email from Anna G. McDermott, Verizon, to Anne A. Grimm, CenturyLink (Apr. 23, 2014, 9:59 EST))). We do not understand Verizon's statement to mean that CenturyLink's costs would not increase even if its network were poorly configured, and, in any event, CenturyLink does not attempt to establish that it reasonably relied on the statement in failing to optimize its network.