

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

In the Matter of
Core Communications, Inc. et al.
Tariff F.C.C. No. 3
WCB/Pricing File No. 21-02
Transmittal No. 22

ORDER

Adopted: December 7, 2021

Released: December 7, 2021

By the Chief, Pricing Policy Division:

I. INTRODUCTION

1. On November 23, 2021, Core Communications, Inc. (Core), a competitive local exchange carrier (LEC), filed revisions to its Tariff F.C.C. No. 3 in Transmittal No. 22, including the addition of new provisions to the "Disputed Charges" section of its tariff. These provisions treat "[t]raffic delivered by [Core] to [an interexchange carrier (IXC)] [as] compensable unless the traffic" meets certain narrow criteria that otherwise would make it "demonstrably non-compensable." In response to Core's November 23 revisions, AT&T and Verizon (collectively Petitioners) filed a petition to reject or suspend and investigate the tariff. Core filed a response to the Petition on December 6. We find Core's proposed tariff revisions violate many of the same rules that the Commission found Core's previous tariff revisions violated, as well as other Commission orders and rules. Because Core's proposed tariff revisions fail to comply with the Communications Act of 1934, as amended (Act or Communications Act), including the just and reasonable requirements of section 201(b), and Commission precedent and

1 Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Secretary, Federal Communications Commission, Transmittal Letter No. 22 for Tariff F.C.C. No. 3 (filed Nov. 23, 2021) (available via the Commission's Electronic Tariff Filing System); Core Communications, Inc., et al., Tariff F.C.C. No. 3, Transmittal No. 22, 1st Rev. Page No. 28.1, § 2.10.4.F (filed Nov. 23, 2021) (Transmittal No. 22) (available via the Commission's Electronic Tariff Filing System).

2 Transmittal No. 22. The language of Core's proposed tariff revisions is provided in the Appendix. In rejecting Core's tariff Transmittal No. 22, we address certain salient defects of the tariff filing, any one of which taken alone would justify rejection, but do not undertake a comprehensive analysis of each of its defects.

3 See generally Petition of Verizon and AT&T to Reject or Suspend and Investigate Core's Revised Tariff, WCB/Pricing File No. 21-02, Transmittal No. 22 (filed Nov. 30, 2021) (Petition) (available via the Commission's Electronic Tariff Filing System).

4 Core Communications, Inc.'s Response to Petition of Verizon and AT&T to Reject or Suspend and Investigate Core's Revised Tariff, WCB/Pricing File No. 21-02, Transmittal No. 22 (filed Dec. 6, 2021) (Core Response or Response) (available via the Commission's Electronic Tariff Filing System).

5 See Core Commc'ns, Inc. et al. Tariff F.C.C. No. 3, WC Docket No. 21-191, Transmittal No. 17, Memorandum Opinion and Order, FCC 21-109 at 16, para. 40 (2021) (Core Tariff Investigation Order), petition for review filed, CoreTel Delaware, Inc. v. FCC, No. 21-3170 (3d Cir. Nov. 22, 2021); 47 U.S.C. § 201(b). We incorporate filings from WC Docket No. 21-191, the investigation of Core's tariff Transmittal No. 17, into the record of this proceeding, and may rely on such filings in this Order.

rules, we find that the revisions are unlawful on their face, grant the Petition, and reject the proposed revisions in their entirety.

II. BACKGROUND

2. Core is a competitive LEC⁶ that serves as an intermediate carrier, primarily for toll free or 8YY calls.⁷ Core “aggregates toll-free traffic from a variety of carriers (landline, [Voice over Internet Protocol] VOIP and wireless service providers), then switches and transports that traffic via [Internet Protocol] IP to reach the appropriate IXC for each toll-free call.”⁸ Core performs two principal functions in the transmission of 8YY traffic.⁹ First, it purchases toll free traffic from originating carriers, using an affiliate, Ton 80, to effectuate its purchases.¹⁰ Second, Core routes the traffic in IP format to the IXC that serves the relevant 8YY customer.¹¹ IXCs must pay Core the applicable tariffed switched access charges for delivering traffic to the IXC.¹² The IXCs are compensated by their end-user customers for performing the necessary functions to complete routing the toll free calls to them.¹³

3. On April 22, 2021, Core filed a previous tariff revision, Transmittal No. 17,¹⁴ that included tariff revisions addressing what Core claimed to be illegal traffic, dispute requirements for such traffic, late payment fees, cancellation provisions, and other issues regarding 8YY database query charges.¹⁵ The Wireline Competition Bureau (Bureau) suspended those tariff revisions for one day and initiated an investigation into the lawfulness of Core’s proposed revisions.¹⁶

4. On October 7, 2021, the Commission adopted the *Core Tariff Investigation Order*. In the *Core Tariff Investigation Order*, the Commission rejected Core’s April 2021 tariff revisions on several grounds. The Commission held that “Core’s assumption . . . that all the traffic it carries is legal, and that it is up to the IXCs to detect . . . unlawful traffic, [was] inconsistent with the underlying premise of the Commission’s [orders combatting toll-free arbitrage.]”¹⁷ Instead, the Commission found that “Core has a

⁶ Since 1997, competitive LECs have been allowed to assess interstate switched exchange access service charges upon IXCs either by filing tariffs with the Commission or by negotiating contracts with the affected IXCs. *Hyperion Telecomm., Inc. Petition Requesting Forbearance*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 8596, 8596, para. 1 (1997) (granting “permissive detariffing for provision of interstate exchange access services by providers other than the incumbent local exchange carrier”).

⁷ *Core Tariff Investigation Order* at 2, para. 2 (citing Direct Case of Core Communications, Inc., et al., WC Docket 21-191, Transmittal No. 17, at 6 (filed July 14, 2021) (Direct Case) (“Core is 100 percent wholesale, and has no direct end user customers. . . . In all cases Core is in the middle of the call flow.”)).

⁸ *Core Tariff Investigation Order* at 7, para. 13 (citing Direct Case Exh. 6 at 2).

⁹ *Core Tariff Investigation Order* at 7, para. 13.

¹⁰ *Id.* (citing Direct Case at 9 and Verizon Opposition at 11 (“As Core acknowledges, while ‘Core purchases 100% of the 8YY traffic that it routes,’ it is Ton 80 that ‘obtains [the] 8YY traffic.’ Core does not explain why Ton 80 performs this function instead of Core. Indeed, Ton 80 appears to serve no useful purpose, other than perhaps to place Core one step further from whoever is dialing the toll-free calls it sends to Verizon and others. Core’s bankruptcy filings reveal that Core pays Ton 80 for the toll-free calls that Ton 80 purchases on Core’s behalf.”) (internal citations omitted)).

¹¹ *Core Tariff Investigation Order* at 7, para. 13.

¹² *Id.*

¹³ *Id.* at 8, para. 13.

¹⁴ *Id.* at 5, para. 9.

¹⁵ *Id.* at 2, para. 2.

¹⁶ *Core Commc’ns, Inc., et al. Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Order, 36 FCC Rcd 8198, 8198, 8200, paras. 1, 6 (WCB 2021).

¹⁷ *Core Tariff Investigation Order* at 16-17, para. 40.

primary role of detecting and preventing illegitimate traffic, given its upstream position in the call flow, direct customer relationships, and status as the point of entry to the [Public Switched Telephone Network] from VoIP providers.”¹⁸ The Commission found that Core “fail[ed] to justify its admittedly ‘novel’ approach of requiring an IXC to credit or not bill its own customers for traffic that is being disputed.”¹⁹ Additionally, the Commission rejected certain of Core’s tariff revisions as ambiguous and containing improper cross-references.²⁰ As a result, the Commission directed Core to delete the revised language that the Commission found unlawful.²¹ Core complied with the *Core Tariff Investigation Order* and refiled its tariff on October 15, 2021 per the Commission’s directive, and the refiled tariff provisions took effect on October 30, 2021.²²

5. On November 23, 2021, Core filed new revisions to the Disputed Charges section of its tariff, defining all of Core’s traffic as “compensable” unless the traffic is “demonstrably non-compensable.”²³ The proposed tariff revisions were filed on 15-days’ notice and, as such, absent Commission action, the proposed tariff revisions would become effective on December 8, 2021.²⁴ Core’s proposed revisions include three narrow exceptions that can form the basis of a “good faith dispute” over whether Core’s traffic is non-compensable, and thus appropriate for dispute resolution under the provisions of the tariff: traffic that (1) is actionable in a court or at the Commission as a result of intentional fraud by Core, (2) is formally identified by the Commission as non-compensable, or (3) both Core and its customer agree is non-compensable and for which the customer agrees to refund or otherwise not bill its end-users.²⁵ Disputes over charges based on other types of claims “will not be considered good faith disputes.”²⁶ On November 30, 2021, the Petitioners filed a petition to reject or suspend and investigate, asserting that the proposed tariff revisions represent an attempt to circumvent the Commission’s recent *Core Tariff Investigation Order* and effectively raise the same issues that the Commission found unlawful in that order.²⁷

6. On December 6, 2021, Core filed a response to the Petition, defending its proposed tariff revisions and addressing the claims raised in the Petition.²⁸

III. DISCUSSION

7. 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.²⁹ The United States Court

¹⁸ *Id.* at 20, para. 45.

¹⁹ *Id.* at 21, para. 47.

²⁰ *Id.* (applying 47 CFR §§ 61.2, 61.74(a)).

²¹ *Core Tariff Investigation Order* at 30, paras. 69-70.

²² Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Secretary, FCC, Transmittal No. 21 (filed Oct. 15, 2021) (available via the Commission’s Electronic Tariff Filing System); Core Communications, Inc., et al., Tariff F.C.C. No. 3, Transmittal No. 21, 20th Rev. Page No. 3, 11th Rev. Page No. 28, § 2.10.4.A, 4th Rev. Page No. 29, § 2.10.5, 4th Rev. Page No. 33, § 2.13.3.G, 4th Rev. Page No. 40, § 2.20.1, 2nd Rev. Page No. 43.1, § 3.3.5 (filed Oct. 15, 2021) (Core Oct. 15 Tariff Filing) (available via the Commission’s Electronic Tariff Filing System).

²³ Appx. § 2.10.4.F.

²⁴ 47 CFR § 61.58(a)(2)(i).

²⁵ Appx. § 2.10.4.F.

²⁶ *Id.*

²⁷ *See generally* Petition.

²⁸ *See generally* Core Response.

²⁹ 47 U.S.C. § 204.

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.³⁰ We rely on this authority to reject Core’s proposed tariff revisions in their entirety.³¹

8. The Bureau finds Core’s proposed tariff revisions to be unlawful in a number of respects, and that they would circumvent the requirements of the *Core Tariff Investigation Order* if they were to go into effect. Core’s proposed tariff language closely parallels the revisions previously rejected by the Commission in the *Core Tariff Investigation Order*. Among their many legal infirmities, we find that the proposed tariff revisions create an improper presumption that, with only a few narrowly defined exceptions, all of Core’s traffic is compensable and not subject to a “good faith dispute” by Core’s customers. Core’s revisions also unreasonably shift the responsibility for detecting and blocking fraudulent traffic onto its IXC customers in violation of the Commission’s rules and orders. The revisions also unreasonably require IXCs under certain circumstances either not to assess their own customers for any traffic subject to dispute with Core or to credit their customers for such traffic, also in violation of section 201(b). Furthermore, the proposed tariff revisions continue to incorporate unclear and ambiguous terms and statements that make it impossible for customers to understand under what conditions they will be charged in violation of section 61.2 and 61.54(j) of the Commission’s rules. Finally, the revisions violate the prohibition on cross-referencing external documents in tariffs in sections 61.25 and 61.74 of the Commission’s rules.³² The Commission cited each of these same reasons for rejecting similar revisions in Core’s tariff Transmittal No. 17.³³

9. *Improper Presumption that Core’s Traffic Is Compensable.* Section 2.10.4.F of Core’s proposed tariff revisions states that “[t]raffic delivered by the Company to the Customer is compensable unless the traffic is demonstrably non-compensable”³⁴ The new tariff language then permits only three narrow “non-compensable” exceptions to the general presumption of compensability.³⁵ This presumption is strikingly similar to the presumption included in section 2.21 of Core’s tariff revisions in Transmittal No. 17, which stated that the traffic Core delivers to an IXC customer is “presumed to be legal traffic.”³⁶ The Commission rejected that presumption, citing Core’s own concession that intermediate carriers like Core “may be unwittingly carrying [fraudulent] traffic . . . that neither the intermediate carrier’s algorithms nor an IXCs [sic] algorithms can stop.”³⁷ The petitioners in that

³⁰ *Associated Press v. FCC*, 448 F.2d 1095, 1103 (D.C. Cir. 1971); *see also Mun. 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. v. FCC*, 28 F.3d 201, 204 (D.C. Cir. 1994); *Am. Broad. Cos. v. FCC*, 663 F.2d 133, 138 (D.C. Cir. 1980).

³¹ In deciding whether to reject proposed tariff revisions, we look at whether the revisions are unlawful on their face. *Ameritech Operating Cos. Tariff F.C.C. No. 2 et al.*, Transmittal No. 1847 et al., Order, 31 FCC Rcd 7673 (WCB 2016); *LTE Wireless Inc. June 12, 2020 Access Charge Tariff Filing, Tariff F.C.C. No. 1*, WCB/Pricing File No. 20-01, Transmittal No. 1, Order, 35 FCC Rcd 6511 (PPD 2020); *Standard Tandem LLC October 3, 2019 Access Charge Tariff Filing, Tariff F.C.C. No. 1*, WCB/Pricing File No. 19-02, Transmittal No. 1, Order, 34 FCC Rcd 9479 (PPD 2019).

³² 47 CFR §§ 61.25, 61.74.

³³ *See generally Core Tariff Investigation Order.*

³⁴ Appx. § 2.10.4.F.

³⁵ *Id.*

³⁶ *Core Tariff Investigation Order* at 8, para. 16.

³⁷ *Id.* at 17, para. 40 (“Core’s assumption . . . that all the traffic it carries is legal, and that it is up to the IXCs to detect . . . unlawful traffic, is inconsistent with the underlying premise of the Commission’s 8YY Access Charge Reform Order--that 8YY arbitrage is sufficiently pervasive to ‘increasingly affect and undermine the system of

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investigation also asserted that Core’s presumption was unfounded.³⁸ Here, Petitioners assert that “Core’s tariff language again assumes ‘that all the traffic it carries is legal.’”³⁹ Petitioners interpret the term “compensable” as functionally equivalent to “legal,” effectively foreclosing any option by an IXC customer to dispute charges.⁴⁰ Core denies it is creating such a presumption, but only defends its tariff by stating the Petitioners “unilaterally, and unlawfully, establish a presumption of non-compensability.”⁴¹ This cursory denial misses the point and fails to address the substance of the Petitioners’ criticism. The language of the tariff creates such a presumption, and we find that Core fails to make any substantive response to this characterization. We therefore find the presumption of compensability in section 2.10.4.F of Core’s tariff to be indistinguishable, in practice, from the presumption of legality that the Commission rejected in the *Core Tariff Investigation Order* as unreasonable in violation of section 201(b) of the Act and appears effectively to circumvent the reasoning and conclusions of that order.⁴²

10. *The Tariff’s “Non-Compensable” Exceptions.* Under Core’s proposed tariff revisions, IXCs can only dispute charges for “demonstrably non-compensable” traffic, narrowly defined by three criteria. We find the first and third of these criteria to be unreasonable and the second to be unclear.

11. The first criterion unreasonably restricts non-compensable traffic to “traffic [that] is actionable in a court of law or at the FCC as a product or result of a fraud *by the Company*” — that is, by Core itself — “such that the calls at issue were made with the intention to deceive and secure an unlawful gain.”⁴³ This provision establishes the obvious – Core is not permitted to bill for toll free calls that it fraudulently places or that it fraudulently induces others to place. But under this provision, as Petitioners point out, Core would still be permitted to bill IXCs for other kinds of illegal calls, such as artificially generated robocalls or for illegal calls generated by other carriers.⁴⁴ Petitioners argue that under this provision, “so long as Core is not actively involved in the fraud — rather than passively enabling others’ artificial call generation by purchasing toll-free calls without taking meaningful ex ante steps to police their origination — those illegitimate calls would be ‘compensable.’”⁴⁵ We agree and therefore find this tariff language is inconsistent with the Commission’s rules and orders governing robocalling.⁴⁶

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intercarrier compensation that currently underpins toll free call’ and to warrant a comprehensive response.”) (referencing *8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594, 11595, para. 2 (2020)).

³⁸ Verizon’s Opposition to the Direct Case of Core Communications, Inc., WC Docket No. 21-191, Transmittal No. 17 at 16 (filed July 28, 2021) (“at least 62.7% of the minutes Core sent to Verizon were the likely product of arbitrage schemes. The unlawful traffic was so prevalent that Verizon could not conclude that *any* of Core’s toll-free traffic was legitimate.”); *see also id.*, Exh. A at 9-10, 36; *but see* Direct Case Ex. 6 (disputing aspects of Verizon’s analysis).

³⁹ Petition at 6.

⁴⁰ *Id.* at 3 (the “[t]raffic [Core] delivers[s]” to an IXC “is compensable” – that is, that the IXC must pay the applicable tariffed rate elements in Core’s tariff”).

⁴¹ Core Response at 3-4 (“With their false narrative, the IXCs have switched the burden of ‘compensability.’”). We note, however, that it is the carrier that files a tariff that bears the burden of substantiating the tariff when it is challenged.

⁴² *Core Tariff Investigation Order* at 16-17, paras. 39-40; Petition at 6 (“These three provisions, in combination, attempt to achieve the same unlawful effect as the earlier Core tariff the Commission rejected.”).

⁴³ Appx. § 2.10.4.F.1 (emphasis added).

⁴⁴ Petition at 3-4.

⁴⁵ *Id.* at 4.

⁴⁶ *E.g.*, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221 (2020) (*Call Blocking Fourth Report and Order*) (establishing obligations for voice

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12. The language of the first criterion also appears to be an attempt to limit Core’s responsibility for detecting illegitimate calls, which is especially problematic because, as the Commission previously found, it is Core that “purchases all of the 8YY traffic that traverses its network from other carriers.”⁴⁷ As the Petitioners point out, it is those third parties or, more likely, others even further away from Core’s position in the call flow that may be “the perpetrators of illegal traffic.”⁴⁸ In rejecting Core’s prior attempt to limit such responsibility, the Commission explained in the *Core Tariff Investigation Order* that even though these entities “are not Core’s direct customers, Core is in a better position” than the IXCs to which it sends the calls to “identify the sources of and take steps to mitigate the impact of that traffic on downstream voice service providers.”⁴⁹ The proposed tariff revisions represent another apparent try by Core to improperly shirk its “primary role of detecting and preventing illegitimate traffic” and to unreasonably shift this responsibility to IXCs.⁵⁰ Core denies that it is “shifting fraud filtering responsibility to the IXCs” but provides no substantive argument to support its denial.⁵¹ We thus find that Core’s proposed tariff revision is inconsistent with the *Core Tariff Investigation Order* and is unjust and unreasonable in violation of section 201(b) of the Act.

13. The third criterion for non-compensable traffic requires that, at least in certain instances, in order for Core to consider a dispute to be in good faith, an IXC customer must agree with Core in writing to refund or otherwise not bill the IXC’s end users for traffic the IXC disputes as non-compensable.⁵² In the *Core Tariff Investigation Order*, the Commission found that a similar provision in those proposed tariff revisions imposed an unreasonable financial barrier to raising a dispute because it required an IXC to incur a financial cost or penalty—either by issuing billing credits or declining to charge its toll free customers for completed calls—before it could raise a good faith dispute with Core.⁵³ The Commission concluded that “Core also [failed] to justify its admittedly ‘novel’ approach of requiring an IXC to credit or not bill its own customers for traffic that is being disputed by not providing the Commission, as requested, with any legal precedent to support its position” and thus found that those tariff revisions were unjust and unreasonable.⁵⁴

14. Petitioners challenge Core’s proposed revisions in section 2.10.4.F.3, which require that, in certain circumstances, IXCs must agree in writing not to bill or instead credit their customers as a

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 service providers to limit illegal calls on their networks); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order et al., 35 FCC Rcd 7614 (2020) (establishing safe harbors from liability for the unintended or inadvertent blocking of wanted calls); *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 35 FCC Rcd 7886 (EB 2020) (selecting a single consortium, USTelecom’s Industry Traceback Group, to conduct private-led traceback efforts); FCC Consumer and Governmental Affairs Bureau, Report on Robocalls at 10-11 (2019), <https://docs.fcc.gov/public/attachments/DOC-356196A1.pdf> (describing Commission enforcement actions against robocallers).

⁴⁷ *Core Tariff Investigation Order* at 2, para. 2.

⁴⁸ Petition at 4 (citing *Core Tariff Investigation Order* at 20, para. 44).

⁴⁹ *Core Tariff Investigation Order* at 20, para. 44.

⁵⁰ *Id.* at 18, 20, paras. 42, 44 (internal citations omitted).

⁵¹ Core Response at 4. Core argues that it is the IXCs that are “acting as the sole judge of what traffic is non-compensable.” *Id.* But Core’s argument regarding which carrier effectively decides what traffic is non-compensable fails to address the issue of which carrier has the obligation of filtering fraudulent traffic.

⁵² Appx. § 2.10.4.F.3.

⁵³ *Core Tariff Investigation Order* at 20-21, paras. 45-47 (discussing section 2.21 of Core’s April 2021 tariff revisions). See also *Sprint Commc’ns Co. v. Northern Valley Commc’ns, LLC*, File No. EB-11-MD-003, Memorandum Opinion and Order, 26 FCC Rcd 10780, 10786-87, para. 14 & n.48 (2011) (*Northern Valley Order*).

⁵⁴ *Core Tariff Investigation Order* at 21, para. 47.

precondition to disputing a charge.⁵⁵ In its Response, Core denies that it is imposing a financial barrier to raising a dispute.⁵⁶ Instead, it characterizes the language as “allow[ing] Core and the IXCs to work together to agree on types of traffic that may be non-compensable and includes *an example of* traffic both parties may agree is non-compensable to either of them.”⁵⁷ Core insists that “[n]on-compensable is defined in the tariff and there is a provision that allows for Core and its customers to agree to *additional* categories of traffic that are non-compensable.”⁵⁸ We find that the new modifications do not change the fact that the proposed tariff revisions in Transmittal No. 22 have the same unlawful effect as the similar tariff revisions the Commission recently rejected in the *Core Tariff Investigation Order*.⁵⁹ As Petitioners assert, “[n]o new legal precedent supporting this novel approach was issued in the less than seven weeks since the Commission last rejected Core’s effort to use its tariff to regulate an IXC’s relationship with its toll-free customers.”⁶⁰ We agree, and Core offers none in its Response. As with its earlier unlawful tariff revisions, this section of Core’s revised tariff requires an IXC, in certain circumstances, to agree to not bill or to credit its customers “before it can even *raise* the dispute.”⁶¹ As the Commission found in the *Core Tariff Investigation Order*, such a provision “poses a major disincentive to raising disputes and thus makes it more likely Core will get to keep payments stemming from illegitimate traffic.”⁶² We find this proposed revision to be unreasonable in violation of section 201(b) of the Act and therefore reject it.

15. *Section 2.10.4.F. Is Not Clear and Unambiguous.* The Commission’s rules require all tariff language to be clear and unambiguous.⁶³ Pursuant to section 61.2 of the Commission’s rules, all tariff publications must contain “clear and explicit explanatory statements” regarding rates and regulations to “remove all doubt as to their proper application.”⁶⁴ Under section 61.2, a tariff must be clear and explicit on its face when it applies in order to give fair notice to carriers or other customers about the terms under which they might be taking service and incurring charges.⁶⁵ Section 61.54(j) of the Commission’s rules further provides that regulations, exceptions, and conditions which govern a tariff must be “specified” and stated “clearly and definitely.”⁶⁶

16. In the *Core Tariff Investigation Order*, the Commission directed Core to delete certain tariff provisions that violated these rules.⁶⁷ The Commission found that the language of section 2.21 of

⁵⁵ Appx. § 2.10.4.F.3.

⁵⁶ Core Response at 5.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Core Tariff Investigation Order* at 20-21, paras. 45-47.

⁶⁰ Petition at 5.

⁶¹ *Core Tariff Investigation Order* at 21, para. 47.

⁶² *Id.* (citing Verizon’s Opposition to the Direct Case of Core Communications, Inc., WC Docket No. 21-191, Transmittal No. 17 at 18-19 (filed July 28, 2021); AT&T Services, Inc.’s Opposition to Direct Case of Core Communications, Inc., et al., WC Docket No. 21-191, Transmittal No. 17 at 17 (filed July 28, 2021)).

⁶³ See 47 CFR §§ 61.2, 61.54(j); *Bell Atlantic-Delaware, Inc., et al. v. Global NAPs, Inc.*, File No. E-99-22, Memorandum Opinion and Order, 15 FCC Rcd 12946, 12959, para. 22 (1999) (“section 201(b) of the Act [is] reflected in section 61.2 of our rules. Those authorities require that the applicability of the tariff rate, and its terms, be clear and explicit.”) (internal citations omitted).

⁶⁴ 47 CFR § 61.2.

⁶⁵ See *id.* See also *Halprin, Temple, Goodman & Sugrue v. MCI Telecomm. Corp.*, File No. E-98-40, Memorandum Opinion and Order, 13 FCC Rcd 22568, 22574-76, paras. 8, 13 (1998) (*Halprin Order*).

⁶⁶ 47 CFR § 61.54(j).

⁶⁷ *Core Tariff Investigation Order* at 30, para. 72; see also *id.* at 21-23, paras. 48-51 (finding that Core’s Tariff Revisions violated section 61.2 of the Commission’s rules because they included several undefined terms and

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the prior proposed tariff revisions suffered from several fatal ambiguities, including both the use of several terms that were not defined in Core's tariff, and that the tariff contained unclear statements.⁶⁸

17. Core's new proposed tariff revisions exhibit the same flaws as the revisions the Commission rejected just weeks ago. We cite two examples of unclear and ambiguous language in Core's current tariff revisions that violate sections 61.2 and 61.54(j) of the Commission's rules. First, Core states that all "traffic delivered by the Company to the Customer is compensable unless the tariff is demonstrably non-compensable" based on three criteria.⁶⁹ One of these criteria is that "traffic is a type formally identified by the FCC as non-compensable switched access traffic."⁷⁰ Core does not explain how the Commission could identify such traffic, beyond vague assertions that the Commission could "initiate a rulemaking proceeding," without acknowledging that no such rulemaking proceeding currently exists.⁷¹ Nor do the revisions define the "type" of traffic that would be identified. As AT&T and Verizon argue in their Petition, it is unclear on the face of the proposed tariff revisions what traffic Core is referring to or how such traffic would be deemed "non-compensable" by the Commission.⁷² Nor do the proposed revisions identify what would constitute a "formal identification" such that a customer would have fair notice that certain traffic met the criteria set out in proposed section 2.10.4.F.2. In its Response, Core denies that its proposed tariff revisions are ambiguous, claiming instead that the language is "common sense" and "straightforward."⁷³ We disagree and find that such assertions fail to make any substantive argument that the tariff language is clear and unambiguous and therefore complies with the Commission's rules.

18. In addition, the tariff provides that traffic would not be compensable if Core and the IXC customer "agree, in writing" that the traffic "is non-compensable, (e.g., illegal robocalls or other traffic that the [IXC] agrees to refund or otherwise not bill its end-users)."⁷⁴ Apart from the two non-compensable examples referenced in the tariff, this language fails to provide customers with any guidance as to other terms of agreement that Core would accept as sufficient to result in non-compensable treatment of disputed charges. Because "[f]ailure to comply with [the Part 61] rules has always been recognized as grounds for rejection,"⁷⁵ we find this language to be unclear and ambiguous in violation of sections 61.2 and 61.54(j) of the Commission's rules.⁷⁶

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unclear statements). The Commission has previously rejected tariffs for failing to meet this standard. *See, e.g., Northern Valley Order*, 26 FCC Rcd at 10784-85, paras. 8-10; *Halprin Order*, 13 FCC Rcd at 22574, para. 9 ("Section 201(b) of the Act requires that all of MCI's charges, practices, classifications and regulations for the provision of communications services be just and reasonable. To further this statutory obligation, Part 61.2 of the Commission's rules requires that all tariff publications shall contain clear and explicit explanatory statements regarding rates and regulations. In addition, we must construe any ambiguities in tariffs against the filing carrier.") (internal citations omitted).

⁶⁸ *Core Tariff Investigation Order* at 21-23, paras. 48-51.

⁶⁹ Appx. § 2.10.4.F.

⁷⁰ *Id.* § 2.10.4.F.2.

⁷¹ Core Response at 6.

⁷² Petition at 4-5.

⁷³ Core Response at 4 (Core states that the proposed tariff revision "simply says traffic is non-compensable if the FCC has made a determination (or makes one in the future) that that traffic is non-compensable.").

⁷⁴ Appx. § 2.10.4.F.3.

⁷⁵ *Amendment of Part 61 of the Commission's Rules Relating to Tariffs and Part 1 of the Commission's Rules Relating To Evidence*, Docket No. 18703, Memorandum Opinion and Order, 40 FCC 2d 149, 150, para. 5 (1973).

⁷⁶ 47 CFR §§ 61.2, 61.54(j).

19. *Section 2.10.4.F Improperly Contains a Prohibited External Cross-Reference.* In the *Core Tariff Investigation Order*, the Commission found that Core’s proposed tariff revisions violated the Commission’s rules prohibiting cross-referencing in tariffs.⁷⁷ Tariff language violates sections 61.25 and 61.74(a) of the Commission’s rules when “a party could not reasonably ascertain the ‘proper application’ of the tariff at the time it was filed” because it cross-referenced other documents.⁷⁸

20. Core complied with the *Core Tariff Investigation Order* on October 15, 2021 by removing the offending tariff language containing cross-references.⁷⁹ Yet mere weeks later, Core has filed new tariff revisions that again violate the same rules prohibiting cross-references,⁸⁰ this time by defining one instance of non-compensable traffic as limited to “a type [of traffic] formally identified by the FCC as non-compensable switched access traffic.”⁸¹ Although Core fails to make clear what “formally identified” means or how the Commission would make such a formal identification, any such identification would necessarily be contained in a document not contained in Core’s Tariff, namely a “crossed-referenced other document.”⁸² We therefore find that Core’s reference to “traffic [of] a type formally identified by the FCC as non-compensable switched access traffic” represents an improper external cross-reference that violates sections 61.25 and 61.74(a) of the Commission’s rules and is reason for rejecting Transmittal No. 22.⁸³ This language likewise incorporates unclear and ambiguous terms and statements that are not “specified” and stated “clearly and definitely,” in violation of sections 61.2 and 61.54(j) of the Commission’s rules.

21. Core defends the proposed tariff language, stating in its Response that “ILEC tariffs – including the IXCs’ – make numerous references to Commission orders and rules. These references include the specifics of existing orders and rules, as well as potential future orders.”⁸⁴ The Commission rejected an identical argument made by Core in the *Core Tariff Investigation Order*.⁸⁵ There, Core

⁷⁷ *Core Tariff Investigation Order* at 24-25, para. 56.

⁷⁸ *Global NAPS, Inc. v. FCC*, 247 F.3d 252, 258 (D.C. Cir. 2001); *see also* 47 CFR § 61.2(a) (“In order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations”); *id.* § 61.25 (“[A] nondominant carrier may cross-reference in its tariff publication only the rate provisions of another carrier’s FCC tariff publication”); *id.* § 61.74(a) (“Except as otherwise provided in this and other sections of this part, no tariff publication filed with the Commission may make reference to any other tariff publication or to any other document or instrument.”).

⁷⁹ *See* Core Oct. 15 Tariff Filing at § 2.10.5 (Core had proposed “A late payment charge of 1.5% per month, or the highest rate permitted by applicable law, whichever is less, shall be due to the Company.” The Commission found that such language was inconsistent “with the requirement that all tariffs must contain ‘clear and explicit explanatory statements regarding the rates and regulations’ to ‘remove all doubt as to their proper application.’” *Core Tariff Investigation Order* at 24-25, para. 56).

⁸⁰ *See* Petition at 4 (“Core’s second ‘demonstrably non-compensable’ criterion violates the Commission’s rules requiring tariffs to be self-contained and unambiguous. It violates § 61.74(a) because it ‘make[s] reference to . . . an[] other document’— namely, a Commission order that formally identifies originating calls as non-compensable.”).

⁸¹ Appx. § 2.10.4.F.2.

⁸² *Id.*

⁸³ Appx. § 2.10.4.F.2. *Core Tariff Investigation Order* at 25, para. 56.

⁸⁴ Core Response at 4 (emphasis omitted); *see also Id.*, Exhs. A-D. These include excerpts from the following tariffs: Ameritech Operating Cos., Tariff F.C.C. No. 2, Transmittal No. 1735, 11th Rev. Page No. 173.1, § 6.8 (filed Mar. 21, 2011) (Exh. A); Ameritech Operating Cos., Tariff F.C.C. No. 2, Transmittal No. 1893, 9th Rev. Page No. 211.1, § 6.9 (filed June 16, 2021) (Exh. B); Pacific Bell Telephone Co., Tariff F.C.C. No. 1, Transmittal No. 215, 6th Rev. Page No. 2-128, § 2.6 n.1 (filed Mar. 30, 2005) (Exh. C); Southwestern Bell Telephone Co., Tariff F.C.C. No. 73, Transmittal No. 2705, 10th Rev. Page No. 2-52.7, § 2.4 (filed June 16, 1998) (Exh. D).

⁸⁵ *Core Tariff Investigation Order* at 12-13, paras. 29-30.

attempted to support its proposed tariff language by arguing that “the language in its Revised Tariff is commonly found in other carriers’ tariffs, and for that reason should be found lawful.”⁸⁶ The Commission found that it had “previously determined that tariff provisions must be assessed based on ‘compliance with our rules, not on a comparison with the tariff of another carrier that is not before us in this proceeding.’ This is a well-recognized principle: ‘[t]he fact that other tariffs that were never challenged contain a similar provision has no bearing on whether [a carrier’s] tariff rate provisions are consistent with our rules.’”⁸⁷ Just as the Commission found in the *Core Tariff Investigation Order*, we reject Core’s argument and find that “Core may not rely on the existence of similar language in other tariffs to justify provisions in its Revised Tariff. Rather, Core must establish the lawfulness of its tariff revisions on their own terms.”⁸⁸

22. Finally, Core defends its tariff revisions as an attempt to “combat [the IXCs’] destructive conduct,” which “seek to perpetuate their ‘self-help’ measures indefinitely.”⁸⁹ Core raised a similar defense of its previous tariff revisions, which the Commission rejected in the *Core Tariff Investigation Order*.⁹⁰ We reiterate the Commission’s statement from the *Core Tariff Investigation Order* that “we decline to make any pronouncements about self-help here.”⁹¹ Core, like all carriers, retains the option of seeking redress from carriers with which it has a dispute through the Commission’s enforcement procedures, if it is unable to resolve the dispute through direct negotiation.

23. We reject the proposed tariff revisions as unlawful and do not reach the other issues raised in the Petition. The Petition is granted to the extent consistent with this Order and is otherwise dismissed.

IV. ORDERING CLAUSES

24. Accordingly, IT IS ORDERED, 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 Core Communications, Inc. Tariff F.C.C. No. 3, Transmittal No. 22, IS HEREBY REJECTED.

25. IT IS FURTHER ORDERED that the Petition of Verizon and AT&T to Reject or Suspend and Investigate Core’s Revised Tariff, WCB/Pricing File No. 21-02, IS GRANTED to the extent indicated herein and IS otherwise DISMISSED.

⁸⁶ *Id.* at 12, para. 29 (citing Direct Case at 41).

⁸⁷ *Core Tariff Investigation Order* at 13, para. 30 (citing *Southwestern Bell Telephone Co. Tariff F.C.C. No. 73*, Transmittal Nos. 2297 and 2312, Memorandum Opinion and Order, 11 FCC Rcd 3613, 3615-16, para. 14 (1996); *American Telephone Co., Inc. Tariff F.C.C. No.3*, WCB/Pricing File No. 10-07, Transmittal No. 4, 25 FCC Rcd 5661, 5662, para. 5 n.12 (WCB 2010)).

⁸⁸ *Core Tariff Investigation Order* at 13, para. 30.

⁸⁹ Core Response at 2-3.

⁹⁰ *Core Tariff Investigation Order* at 11-12, para. 26.

⁹¹ *Id.* at 12, para. 26.

26. IT IS FURTHER ORDERED that, pursuant to section 61.69 of the Commission's rules, 47 CFR § 61.69, Core Communications, Inc. SHALL FILE a supplement within five business days of 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

APPENDIX

**Revised Tariff Language Reproduced from Core Transmittal No. 22
(Revised language in bold typeface)**

2.10 Billing and Payment For Service

2.10.4 Disputed Charges

F. Traffic delivered by the Company to the Customer is compensable unless the traffic is demonstrably non-compensable based on the following criteria:

1) The traffic is actionable in a court of law or at the FCC as a product or result of a fraud by the Company such that the calls at issue were made with the intention to deceive and secure an unlawful gain;

2) The traffic is a type formally identified by the FCC as non-compensable switched access traffic;

3) The traffic is not covered by 1) or 2) above, but the Customer and Company agree, in writing, is non-compensable (e.g., illegal robocalls or other traffic that the Customer agrees to refund or otherwise not bill its end-users).

Customers may dispute, and seek credits or refunds for billing based on a good faith dispute that the identified traffic is non-compensable as defined herein. Billing disputes, and associated withholding of disputed amounts, based on mere allegations that the traffic sent to the Customer is suspect, fraudulent, illegal, or otherwise non-compensable which are not supported as described in this Section will not be considered good faith disputes.