

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

In the Matter of )  
 ) WC Docket No. 21-191  
Core Communications, Inc., et al. )  
Tariff F.C.C. No. 3 ) Transmittal No. 17  
 )

ORDER DESIGNATING ISSUES FOR INVESTIGATION

Adopted: June 23, 2021

Released: June 23, 2021

Core Direct Case Due by: July 14, 2021

Oppositions to Direct Case Due by: July 28, 2021

I. INTRODUCTION

1. In this Order, pursuant to our authority under sections 204 and 205 of the Communications Act of 1934, as amended (Act),<sup>1</sup> we designate for investigation the lawfulness of the revisions that Core Communications, Inc., et al. (Core), made in Transmittal No. 17 to its interstate switched access service Tariff F.C.C. No. 3 on April 22, 2021.<sup>2</sup> More specifically, we designate for investigation whether the tariff revisions concerning billing disputes, obligations regarding purportedly fraudulent traffic, obligations of customers cut off from service by Core, late payment fees, and 8YY database queries are consistent with the Act, the *8YY Access Charge Reform Order*,<sup>3</sup> and the Commission’s rules. We also provide direction to Core regarding what information it must submit in its Direct Case.

II. BACKGROUND

A. Procedural History and Relevant Precedent

2. Core is a competitive local exchange carrier (LEC) and may file interstate switched access service tariffs with the Commission. Core’s Tariff F.C.C. No. 3 governs the rates, terms, and conditions for Core’s tariffed switched access charges, some of which are at issue in this investigation. In its role as a competitive LEC, Core, among other things, serves as an intermediate provider to facilitate the transmission of telecommunications traffic between originating callers and 8YY, or toll free, service providers. The record in this proceeding suggests that Core also purchases aggregated 8YY traffic from

<sup>1</sup> 47 U.S.C. §§ 204, 205.

<sup>2</sup> Letter from Carey Roesel, Inteserra Consulting Group, to Secretary, FCC, Transmittal No. 17 (Apr. 22, 2021) (available via the Commission’s Electronic Tariff Filing System or in WC Docket No. 21-191) (Core Transmittal Letter); Core Communications, Inc., et al., Transmittal No. 17, Tariff F.C.C. No. 3, 10th Rev. Page No. 28, § 2.10.4.A; 3rd Rev. Page No. 29, § 2.10.5; 3rd Rev. Page No. 33, § 2.13.3.H; 3d Rev. Page No. 40, § 2.21; 1st Rev. Page No. 43.1, § 3.3.5 (Apr. 22, 2021) (available via the Commission’s Electronic Tariff Filing System or in WC Docket No. 21-191) (Transmittal No. 17).

<sup>3</sup> *8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594 (2020) (*8YY Access Charge Reform Order*).

originating carriers and carries the calls to 8YY providers that are responsible for completing the calls to their subscribers.<sup>4</sup>

3. *USF/ICC Transformation Order*. In the 2011 *USF/ICC Transformation Order*, the Commission adopted bill-and-keep as the default methodology for all intercarrier compensation (ICC) charges, capped all terminating ICC rates, and established a transition path requiring scheduled reductions to certain terminating access charges.<sup>5</sup> The transition rules also required LECs to adjust, over a period of years, many of their terminating end office switched access charges, consistent with the Commission's ultimate goal of moving all access charges to bill-and-keep.<sup>6</sup>

4. *8YY Access Charge Reform Order*. In the 2020 *8YY Access Charge Reform Order*, the Commission found that, as terminating access charges transitioned to bill-and-keep, some providers sought to take advantage of the originating access charges that remained in effect, particularly those associated with toll free calls.<sup>7</sup> Intercarrier compensation for calls to 8YY telephone numbers differs from that for other calls carried over the public switched telephone network. In the case of calls to 8YY telephone numbers, the party receiving the call, not the party placing the call, pays the toll charges, thereby rendering the calls "toll free" from the perspective of the calling party.<sup>8</sup> To determine how to route a toll free call, the originating LEC must query the 8YY Database to determine the 8YY provider that serves the dialed number.<sup>9</sup> If a LEC is unable to conduct a database query it may pass the call to another carrier to conduct the query to determine how to route the 8YY call.<sup>10</sup> The 8YY provider also pays tandem switching and transport access charges to any intermediate carriers in the call path between the LEC and the 8YY provider.<sup>11</sup> These services are typically provided pursuant to tariffs that list the applicable rates, terms, and conditions.<sup>12</sup>

5. In the *8YY Access Charge Reform Order*, the Commission found that the intercarrier compensation regime that applied to toll free calls allowed inefficiencies<sup>13</sup> and that "[a]rbitrage and

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<sup>4</sup> Petition of Verizon and AT&T to Suspend or Reject Core's Revised Tariff, WC Docket No. 21-191 at 3 (filed Apr. 28, 2021) (Petition).

<sup>5</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17904, paras. 737-39 (2011) (*USF/ICC Transformation Order* or *USF/ICC Transformation Further Notice*), *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2050 and 135 S. Ct. 2072 (2015).

<sup>6</sup> See 47 CFR §§ 51.907, 51.909; see *USF/ICC Transformation Order*, 26 FCC Rcd at 17942, para. 817 (finding that "originating charges for all telecommunications traffic subject to our comprehensive intercarrier compensation framework should ultimately move to bill-and-keep" but the Commission declined to move originating charges to bill-and-keep at that time). "Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary." *USF/ICC Transformation Order*, 26 FCC Rcd at 17676, para. 34.

<sup>7</sup> *8YY Access Charge Reform Order*, 35 FCC Rcd at 11600-01, para. 16.

<sup>8</sup> *Id.* at 11595-96, para. 5.

<sup>9</sup> *Id.* at 11596-97, para. 7.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 11597, para. 10.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 11600-01, para. 16 ("Moreover, as the Commission observed in the *USF/ICC Transformation Further Notice* 'because the calling party chooses the access provider but does not pay for the toll call, it has no incentive to select a provider with lower originating access rates.'") (quoting *USF/ICC Transformation Further Notice*, 26 FCC Rcd at 18111, para. 1303).

fraud . . . increasingly affect and undermine the system of intercarrier compensation that currently underpins toll free calling.”<sup>14</sup> In an effort to curb this arbitrage, the Commission capped the originating access charges carriers can impose on 8YY providers pursuant to tariffs, thereby reducing the incentives for fraud and arbitrage, and promoting more efficient call routing.<sup>15</sup> The Commission also permitted only one carrier in the call path to charge the 8YY provider for a database query, regardless of whether more than one carrier in the call path conducts such a query.<sup>16</sup> This limitation became effective on November 27, 2020.<sup>17</sup> The Commission found that a single database query “could allow [a] call to be correctly routed” and that “routing information should be carried with that call until it is terminated.”<sup>18</sup> The Commission determined that limiting database query charges would eliminate an obvious source of 8YY arbitrage and encourage efficient routing.<sup>19</sup> In addition, as of July 1, 2021, only the originating carrier may conduct the database query as an initial matter, but if the originating carrier is unable to conduct the database query or transmit the results of the query, the next carrier in the call path that is able to do so may perform the database query and assess a database query charge.<sup>20</sup>

6. *Commission Efforts to Combat Illegal Robocalling.* The Commission defines a robocall as a call made using an automatic telephone dialing system or an artificial or prerecorded voice.<sup>21</sup> The Commission has taken numerous steps to stem the tide of illegal robocalls.<sup>22</sup> Despite the work of the Commission and other agencies, such as the Federal Trade Commission, illegal robocalls persist.<sup>23</sup> In 2019 Congress passed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act.<sup>24</sup> The TRACED Act “directs the Commission to encourage voice service providers to block unwanted calls by giving them safe harbors for erroneous blocking based, in whole or

<sup>14</sup> *8YY Access Charge Reform Order*, 35 FCC Rcd at 11595, para. 2.

<sup>15</sup> *Id.* at 11595, para. 4.

<sup>16</sup> *Id.* at 11629-30, para. 82.

<sup>17</sup> *Id.* (explaining that this requirement became effective “as of the effective date of this *Order*,” which occurred on November 27, 2020. *8YY Access Charge Reform*, 85 Fed. Reg. 75894 (Nov. 27, 2020)).

<sup>18</sup> *8YY Access Charge Reform Order*, 35 FCC Rcd at 11629-31, para. 82.

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

<sup>20</sup> 47 CFR 51.905(d); *8YY Access Charge Reform Order*, 35 FCC Rcd at 11629-30, para. 82.

<sup>21</sup> See 47 U.S.C. § 227(b)(1); 47 CFR § 64.1200(a); FCC Consumer Guide, “*Stop Unwanted Robocalls and Texts*,” last reviewed Nov. 12, 2020, [https://www.fcc.gov/sites/default/files/stop\\_unwanted\\_robotcalls\\_and\\_texts.pdf](https://www.fcc.gov/sites/default/files/stop_unwanted_robotcalls_and_texts.pdf).

<sup>22</sup> See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221 (2020) (*Robocalling Fourth Report and Order*) (establishing obligations for voice 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, Order on Reconsideration, and Fourth Further Notice of Proposed Rulemaking, 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 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).

<sup>23</sup> *Robocalling Fourth Report and Order*, 35 FCC Rcd at 15221-22, paras. 1-3.

<sup>24</sup> Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

in part, on caller ID authentication information and by making it easier for carriers to identify and fix erroneous blocking.”<sup>25</sup>

7. In December 2020, the Commission continued this important work by adopting several new requirements aimed at curbing illegal calls, including requiring voice service providers to meet certain obligations and to better police their networks.<sup>26</sup> All voice service providers must: (1) respond to traceback requests from the Commission, civil and criminal law enforcement, and the registered consortium for private-led traceback efforts; (2) take steps to effectively mitigate illegal traffic when they receive actual written notice of such traffic from the Commission;<sup>27</sup> and (3) implement affirmative, effective measures to prevent new and renewing customers from using their networks to originate illegal calls.<sup>28</sup> In short, originating, intermediate, and terminating voice service providers are integral to stopping illegal calls.<sup>29</sup>

### B. Tariff Revisions

8. On April 22, 2021, Core filed Transmittal No. 17 proposing revisions to its interstate switched access service Tariff F.C.C. No. 3.<sup>30</sup> In the filing Core proposes to change the terms and conditions of section 2.10.4.A, which governs “good faith” billing disputes, and section 2.10.5, which governs late payment fees.<sup>31</sup> Core also proposes to change section 2.13.3.H, to include language providing that if Core “discontinues service, it will provide, in connection with access traffic associated with the discontinued Customer, only those minimal functions necessary to identify the Customer as being the relevant carrier (i.e., 8YY database queries).”<sup>32</sup> Core also added section 2.21, regarding the blocking of “fraudulent or otherwise illegal traffic,” as well as disputes about such traffic,<sup>33</sup> and proposed changes to section 3.3.5 to allow Core to charge an interexchange carrier (IXC) for an 8YY database query “even if the underlying call is not completed.”<sup>34</sup>

9. On April 28, 2021, Verizon and AT&T Services, Inc. (Petitioners) filed a petition (Petition) requesting that the Commission suspend and investigate or reject Core’s proposed tariff

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<sup>25</sup> *Robocalling Fourth Report and Order*, 35 FCC Rcd at 15221, para. 1; see TRACED Act §§ 4(c), 7, 10(b); *Call Authentication Trust Factor*, WC Docket No. 17-97, Second Report and Order, FCC 20-136 at 2-8, paras. 3-14; at 9, para. 16 (2020) (describing the Commission’s efforts to promote implementation of the STIR/SHAKEN caller ID authentication process).

<sup>26</sup> See *Robocalling Fourth Report and Order*, 35 FCC Rcd at 15222, para. 2. “Voice service provider” means any entity originating, carrying, or terminating voice calls through time-division multiplexing (TDM), Voice over Internet Protocol (VoIP), or commercial mobile radio service (CMRS).” *Id.* at 15222 n.2.

<sup>27</sup> This requirement will become effective upon Office of Management and Budget approval of related information collection burdens. *Advanced Methods to Target and Eliminate Unlawful Robocalls*, 86 Fed. Reg. 17726 (Apr. 6, 2021).

<sup>28</sup> *Robocalling Fourth Report and Order*, 35 FCC Rcd at 15227, para. 14.

<sup>29</sup> The Commission adopted new requirements that obligate all originating voice service providers to “know their customers and exercise due diligence in ensuring that their services are not used to originate illegal traffic.” *Robocalling Fourth Report and Order*, 35 FCC Rcd at 15232, para. 32. The Commission also recommended that “voice service providers exercise caution in granting access to high-volume origination services, to ensure that bad actors do not abuse such services.” *Id.*

<sup>30</sup> Core’s tariff revisions are reproduced in the Appendix to this Order.

<sup>31</sup> Appendix at Section 2.10.4.A.

<sup>32</sup> *Id.* at Section 2.13.3.H.

<sup>33</sup> Appendix at Section 2.21.

<sup>34</sup> Appendix at Section 3.3.5.

revisions.<sup>35</sup> Petitioners argue that Core’s proposed tariff revisions are unlawful. Petitioners contend that Core is attempting to charge for “unnecessary work” and to “extract profit at IXCs’ expense”<sup>36</sup> and that the tariff revisions ultimately will “permit Core to profit from 8YY arbitrage schemes and then allow Core to avoid any accountability for doing so.”<sup>37</sup>

10. Core filed a Reply to the Petition on May 4, 2021, requesting that the Petition be denied.<sup>38</sup> Core claims that the Petitioners present no “credible basis” to support suspension or rejection and that Petitioners inadequately support their substantive challenges to the proposed tariff revisions.<sup>39</sup>

#### 1. Tariff Sections 2.10.4.A and 2.21—Dispute Resolution Provisions

11. Section 2.10.4.A of Core’s tariff revisions describes the procedure a customer must follow to raise a general billing dispute with Core “to permit [Core] to investigate the merits of the dispute.”<sup>40</sup> The revised provision explains that a “good faith dispute requires the Customer to provide a written claim” and specifies the details that the claim must contain.<sup>41</sup> This section also provides that “alternative requirements apply for disputes based on allegations of fraudulent or otherwise illegal traffic to be considered good faith disputes, as set forth in Section 2.21.”<sup>42</sup> Under new section 2.21, 8YY traffic that Core delivers to an IXC is “presumed to be legal traffic” unless the IXC blocks that traffic from reaching its 8YY customers.<sup>43</sup> If an IXC does not block an 8YY call and Core bills the IXC for delivering the call, the IXC may raise a “good faith dispute” seeking a refund of the charge, if the IXC claims the call was fraudulent or otherwise illegal.<sup>44</sup> Section 2.21 provides that for an IXC’s complaint “[t]o qualify as good faith, disputes alleging fraudulent or otherwise illegal traffic can be sufficiently supported with documentation demonstrating that, because such traffic was . . . illegal,” the IXC did not assess charges to its own customers for that traffic or credited otherwise applicable usage charges.<sup>45</sup>

12. Petitioners contend that “sections 2.10.4(A) and 2.21 are unlawful because they establish a presumption that all 8YY traffic that Core sends to IXCs is lawful if the IXCs do not block it in real time, and provide that an IXC cannot raise a dispute in good faith about such calls unless it first credits its 8YY customer for any charges on those calls.”<sup>46</sup> Petitioners argue that Core’s tariff revision in section 2.10.4.A is “unlawful on its face,”<sup>47</sup> because it “makes Core the sole judge of whether any dispute is in

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<sup>35</sup> See generally Petition.

<sup>36</sup> Petition at 10.

<sup>37</sup> See Petition at 4.

<sup>38</sup> Core Communications, Inc.’s Response to Petition of Verizon and AT&T to Suspend or Reject Core’s Revised Tariff, WC Docket No. 21-191 (filed May 4, 2021) (Core Reply or Reply).

<sup>39</sup> Core Reply at 1, 15.

<sup>40</sup> Appendix at Section 2.10.4.A.

<sup>41</sup> *Id.* at Section 2.10.4.A.

<sup>42</sup> *Id.* at Section 2.10.4.A.

<sup>43</sup> *Id.* at Section 2.21.

<sup>44</sup> *Id.* at Section 2.21.

<sup>45</sup> *Id.* at Section 2.21.

<sup>46</sup> Petition at 2.

<sup>47</sup> *Id.* at 8.

‘good faith,’” in contravention of the Commission’s decision in the *Northern Valley Order*.<sup>48</sup> According to Petitioners, that case held that a similar tariff provision—in which the competitive LEC was the “sole judge of whether any bill dispute has merit”—was unjust and unreasonable and in conflict with sections 206 and 208 of the Act.<sup>49</sup> In its Reply, Core does not explicitly address this argument, but rather argues that the tariff revisions in section 2.10.4.A should be shielded from any allegation of unlawfulness because the language replicates tariff provisions filed by incumbent LECs affiliated with the Petitioners and were deemed lawful.<sup>50</sup>

13. Petitioners also assert that section 2.21 is unjust and unreasonable because it “establishes an unlawful presumption that any traffic that Core sends its [IXC] customers and that its customers do not block is ‘legal traffic’”<sup>51</sup>—thereby putting “no burden on Core to ensure that the 8YY calls it purchases are legitimate calls by actual end users.”<sup>52</sup> Petitioners assert that section 2.21 is also “unlawful because it conditions an IXC’s ability to dispute Core’s billing for ‘fraudulent or otherwise illegal’ 8YY traffic that the IXC did not block on the IXC first having refunded (or not having billed) its 8YY customers for that traffic.”<sup>53</sup> Petitioners contend that this means “an IXC must incur a financial penalty just to raise a dispute,” which Petitioners contend is contrary to the Commission’s *Northern Valley Order* and interferes with the Petitioners’ contracts with their own 8YY customers.<sup>54</sup> Core disagrees with this assessment and argues that section 2.21 “simply requires that a dispute have basic, reasonable support.”<sup>55</sup>

## 2. Tariff Section 2.10.5—Late Payment Fees

14. Core also revised tariff section 2.10.5, which governs late payment fees. Core revised this section to require that if “an unpaid amount is not part of a good faith dispute as described in this tariff” the late payment fee increases to “3.0% (rather than 1.5%) per month, or the highest rate permitted by applicable law, whichever is less.”<sup>56</sup> Petitioners argue that the late payment rate of 3% per month is “usurious.”<sup>57</sup> They also complain that Core proposes to require high late payment fees “on any amounts withheld based on a dispute that Core decides was not raised in ‘good faith.’”<sup>58</sup> According to Petitioners, “Core’s proposed tariff thus pairs sole-decider power with a strong financial incentive to misuse it.”<sup>59</sup> In its Reply, Core explains that “[i]f Petitioners (or any other party) can demonstrate that Core’s proposed 3% per month late fee is unlawful, the 3% will not apply (‘or the highest rate permitted by applicable law, whichever is less’).”<sup>60</sup> Core does not otherwise specifically address the 3% late fee, but it notes that a per

<sup>48</sup> Petition at 8; *Sprint Commc’ns Co. v. N. Valley Commc’ns, LLC*, Memorandum Opinion & Order, 26 FCC Rcd 10780, 10787, para. 14 (2011) (*Northern Valley Order*), review denied, *N. Valley Commc’ns, LLC v. FCC*, 717 F.3d 1017 (D.C. Cir. 2013).

<sup>49</sup> Petition at 8 (citing *Northern Valley Order*, 26 FCC Rcd at 10787, para. 14).

<sup>50</sup> Core Reply at 12, 15, Exh. 5-7.

<sup>51</sup> Petition at 6.

<sup>52</sup> *Id.* at 6.

<sup>53</sup> *Id.* at 7.

<sup>54</sup> *Id.* at 7.

<sup>55</sup> Core Reply at 14.

<sup>56</sup> Appendix at Section 2.10.5.

<sup>57</sup> Petition at 8.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 8-9.

<sup>60</sup> Core Reply at 14 (emphasis in original).

month late fee of 1.5% is “the near-ubiquitous rate found in Petitioners’ ILEC affiliates’ tariffs”<sup>61</sup> and that “Petitioners’ behaviors . . . demonstrate that the threat of the 1.5% late payment fee is insufficient to motivate payment.”<sup>62</sup>

### 3. Tariff Section 2.13.3.H—Cancellation by Company

15. In its revision to section 2.13.3.H, Core announces that “[i]f the Company discontinues service to a Customer, it will provide, in connection with access traffic associated with the discontinued Customer, only those minimal functions necessary to identify the Customer as being the relevant carrier (i.e., 8YY database queries).”<sup>63</sup> Petitioners contend that the revisions in section 2.13.3.H “are unlawful because they purport to allow Core to continue to profit from its 8YY arbitrage schemes via database query charges even after it has terminated service to a customer for nonpayment.”<sup>64</sup> Petitioners assert that “Core is *never* ‘the carrier that originates the call’”<sup>65</sup> because “Core has no end user customers of its own, . . . it purchases all its 8YY traffic in bulk from other carriers or 8YY aggregators.”<sup>66</sup> As a result, Petitioners argue, “Core’s 8YY queries are never ‘necessary to identify the relevant Customer in advance of routing’ because the entities from which it bought the traffic could perform those queries.”<sup>67</sup> Core argues that the tariff revisions in section 2.13.3.H should be shielded from any allegations of unlawfulness because the language replicates tariff provisions that were filed by incumbent LECs affiliated with the Petitioners and were deemed lawful.<sup>68</sup>

### 4. Tariff Section 3.3.5—Toll Free Interexchange Delivery Service

16. The revisions to section 3.3.5 of Core’s tariff provide it with the right to charge an IXC for 8YY database queries “even if the underlying call is not completed.”<sup>69</sup> Petitioners argue that section 3.3.5 is unlawful because “[i]t is unjust and unreasonable to let Core profit from calls that it refuses to complete.”<sup>70</sup> In response to this challenge, Core again relies on its argument that its tariff language “simply mirrored” tariff provisions that were filed by incumbent LECs affiliated with the Petitioners and that were deemed lawful, and thus should be shielded from any allegations of unlawfulness.<sup>71</sup>

### C. Commission Authority and Duty to Investigate Tariffs

17. On our own motion, we adopted a *Suspension Order* on May 6, 2021, finding that substantial questions exist regarding the lawfulness of Core’s proposed tariff revisions that require further

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Appendix at Section 2.13.3.H.

<sup>64</sup> Petition at 2.

<sup>65</sup> Petition at 9 (emphasis in original) (citing *8YY Access Charge Reform Order*, 35 FCC Rcd at 11626, 11629-30, paras. 72, 82).

<sup>66</sup> *Id.* at 9-10.

<sup>67</sup> *Id.* at 10.

<sup>68</sup> Core Reply at 12, 15, Exh. 5-7.

<sup>69</sup> Appendix at Section 3.3.5.

<sup>70</sup> Petition at 10.

<sup>71</sup> Core Reply at 13, 15, Exh. 6.

investigation.<sup>72</sup> Pursuant to section 204 of the Act, we advanced the tariff revisions' effective date for one day to May 6, 2021 and suspended the revisions for one day, allowing the revisions to become effective on May 7, 2021, imposed an accounting order, and instituted an investigation into the lawfulness of Core's proposed tariff modifications.<sup>73</sup> On May 13, 2021, Core submitted a supplemental tariff filing reflecting the suspension.<sup>74</sup> We subsequently released a *Protective Order* in this docket to govern any confidential filings that may be submitted during the investigation.<sup>75</sup>

18. Section 204 of the Act provides that once a tariff filing has been suspended, the tariffing carrier bears the burden of proving that the filing is just and reasonable.<sup>76</sup> Accordingly, in its Direct Case, Core must provide the information requested in this Order pursuant to section 204(a)(1) of the Act so the Commission can determine whether Core's tariff revisions are just and reasonable.<sup>77</sup> At the conclusion of an investigation under section 204, the Commission may, pursuant to section 205, "determine and prescribe what will be the just and reasonable charge or the maximum or minimum charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed."<sup>78</sup>

### III. ISSUES DESIGNATED FOR INVESTIGATION

19. We designate for investigation under sections 204 and 205 of the Act whether Core's revisions in sections 2.10.4.A, 2.10.5, 2.13.3.H, 2.21 and 3.3.5 of its tariff are unlawful under sections 201 of the Act or the Commission's tariffing rules.<sup>79</sup> Section 201(b) of the Act provides that "[a]ll

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<sup>72</sup> *Core Communications, Inc., et al. Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Order, DA 21-528 at 1-2, paras. 1, 5 (WCB May 6, 2021) (*Suspension Order*). The existence of a substantial question of lawfulness regarding a proposed tariff revision forms the basis of a Commission determination of need to suspend a tariff. The Commission may initiate tariff investigations on its own initiative. See 47 U.S.C. § 204(a)(1) ("Whenever there is filed with the Commission any new or revised charge, classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof."). See also e.g., *July 1, 2018 Annual Access Charge Tariff Filings*; *South Dakota Network, LLC Tariff F.C.C. No. 1*, WC Docket No. 18-100, Transmittal No. 13, Order, DA 18-1004 (WCB rel. Oct. 1, 2018); *Northern Valley Communications, LLC Tariff F.C.C. No. 3*, WC Docket No. 20-11, Transmittal No. 12, Order, 35 FCC Rcd 402 (WCB 2020).

<sup>73</sup> *Suspension Order* at 3, paras. 6-8. When proposed tariff revisions are advanced for a day, the effective date listed in the proposed revisions is moved to one day earlier so that suspension of the proposed revision can occur on that day, thereby allowing the proposed revisions to become effective on the original effective date but not to be deemed lawful. 47 U.S.C. § 204(a)(3).

<sup>74</sup> Letter from Carey Roesel, Inteserra Consulting Group, to Secretary, FCC, Transmittal No. 18 (May 13, 2021) (available via the Commission's Electronic Tariff Filing System). See 47 CFR § 61.191.

<sup>75</sup> *Core Communications, Inc., et al., Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Protective Order, DA 21-602 (WCB May 21, 2021) (*Protective Order*).

<sup>76</sup> See 47 U.S.C. § 204(a)(1) ("At any hearing involving a new or revised charge, or a proposed new or revised charge, the burden of proof to show that the new or revised charge, or proposed charge, is just and reasonable shall be upon the carrier . . .").

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* § 205(a).

<sup>79</sup> 47 U.S.C. § 201(b); 47 CFR part 61. "We will identify the specific issues that are the subject of the investigation in an upcoming designation order. Those issues may include, but not be limited to, the issues identified in this Order. We may also, by order, identify other discrete issues that warrant further investigation." *Suspension Order*, at 3, para. 8. To the extent information from or about Core's parent company or any affiliated company is necessary to answer, and relevant to, the questions posed in this Order we require Core to provide that information in its Direct Case. See Core Reply at 5 (referencing "Core, through and including its parent and affiliated companies").



charges, practices, classifications, and regulations for and in connection with . . . communication service, shall be just and reasonable” and that any unjust or unreasonable charges or practices shall be “declared . . . unlawful.”<sup>80</sup> We designate for investigation whether Core’s tariff revisions comply with other portions of the Act including, sections 206,<sup>81</sup> concerning the liability of carriers, and 208,<sup>82</sup> granting the Commission authority to adjudicate complaints. We also designate for investigation whether Core’s tariff revisions comply with the *8YY Access Charge Reform Order* and the limitations and rules adopted therein.<sup>83</sup>

20. The Commission’s rules require all tariff language to be clear and unambiguous.<sup>84</sup> 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.”<sup>85</sup> 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.”<sup>86</sup> This rule explicitly states that “[c]omplex or ambiguous terminology may not be used.”<sup>87</sup> We designate for investigation whether any of Core’s tariff revisions are unclear or ambiguous in violation of these rules.

**A. Background Questions Related to the Tariff Investigation**

21. To allow the Commission to determine the lawfulness of Core’s tariff revisions, including whether the revisions comply with the Act, the *8YY Access Charge Reform Order*, and the Commission’s rules, we must first understand the role and function that Core plays in the transmission of 8YY traffic to IXCs. We also need to understand the marketplace for the purchase and sale of 8YY traffic and the process for routing that traffic to IXCs. We must better understand the extent to which Core’s tariff revisions are aimed at addressing the transmission of illegal 8YY traffic, such as unlawful robocalls,<sup>88</sup> and whether Core’s attempts to place the responsibility on IXCs to detect and block such illegal calls are just and reasonable. Do Core’s tariff revisions apply to non-8YY traffic? If so, Core must indicate such in its Direct Case. Core must confirm, deny, or correct each of the statements below and provide detailed and complete answers to each of the questions below. We invite Core to offer other information relevant to this tariff investigation. We further direct Core to identify the individual(s) in the company most knowledgeable about each of the issues designated below and any additional issues that Core raises in response to this Designation Order.

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<sup>80</sup> 47 U.S.C. § 201(b).

<sup>81</sup> 47 U.S.C. § 206.

<sup>82</sup> 47 U.S.C. § 208.

<sup>83</sup> See generally *8YY Access Charge Reform Order*.

<sup>84</sup> See 47 CFR § 61.2; *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”).

<sup>85</sup> 47 CFR § 61.2.

<sup>86</sup> § 61.54(j).

<sup>87</sup> *Id.*

<sup>88</sup> See Core Transmittal Letter (explaining that its tariff revisions add “provisions to address fraudulent or otherwise illegal traffic by adding specific refund/credit provisions for Customers [and] acknowledging the parties’ ability to block illegal traffic as permitted by law . . .”).

22. Core must provide a clear description of its business model with respect to 8YY traffic.<sup>89</sup> Does Core purchase its 8YY traffic and have no calling or called party customers?<sup>90</sup> If this is not accurate, does Core purchase any portion of its 8YY traffic? If so, what percentage of its 8YY traffic does Core purchase? If Core does purchase some or all of its 8YY traffic, Core must explain the marketplace for the purchase and sale of such traffic, including how it operates and who the sellers and purchasers of 8YY traffic are (besides Core). For example, Core must identify the types of entities from which it buys 8YY traffic (e.g., wireless/CMRS carriers, cable providers, 8YY traffic aggregators, VoIP providers, and/or others). Why do entities sell 8YY traffic to intermediate providers, such as Core, instead of transmitting these calls to IXCs directly? Finally, Core must provide copies of its current, largest (by traffic volume) agreements, not to exceed five contracts, for its purchase of 8YY traffic.

23. Core must identify all entities that it works with to obtain and/or transmit 8YY traffic to an IXC and indicate whether each entity it identifies is affiliated with Core. Core must also explain what functions and services each of those companies provides and whether its business relationship with each company is governed by tariff or contractual agreement. If Core has discontinued service to any customers pursuant to its tariff in the last 12 months from the date of this Order, including pursuant to section 2.13.3.H of its tariff revisions, Core must include those carriers in its response.

24. Petitioners allege that Core makes no effort to ensure that it purchases only legitimate 8YY traffic.<sup>91</sup> In its Reply, Core disputes this allegation.<sup>92</sup> To assess whether the tariff revisions create an unreasonable presumption that all of the 8YY traffic Core sends to IXCs is legitimate, we must assess the extent to which Core screens traffic before handing it off to IXCs. When Core purchases 8YY traffic, what are its legal obligations to ensure the traffic it purchases, carries, or transports is legitimate? To the extent that Core purchases 8YY traffic, it must detail the steps it took, prior to the tariff revisions at issue in this investigation, to ensure that the 8YY traffic it obtained was legitimate. Core must also explain how—if at all—that process has, or will, change due to the tariff revisions that are the subject of this investigation. To the extent that Core purchases 8YY traffic, it must explain whether the terms under which it acquires the traffic address whether Core or the selling party must bear the financial risk for any purchased 8YY traffic that turns out to be illegitimate. Should Core be permitted to charge IXCs tariffed rates for carrying traffic that Core has purchased from other parties that is illegal or illegitimate?

25. Core must also explain how it and entities from which it acquires 8YY traffic divide or share responsibilities for determining the legitimacy of the traffic being purchased or sold. Exactly what identifying information does Core obtain when it purchases 8YY traffic? Is Core best situated to determine the legitimacy of the 8YY traffic it purchases?<sup>93</sup> Does Core make any effort to determine or confirm the legitimacy of the 8YY calls it purchases before it routes the traffic to IXCs? Or does Core assume a certain amount of the traffic it routes is illegal or illegitimate and then calculates the actual amounts of legitimate or illegitimate 8YY traffic before it issues a final bill to its customers? If Core does not evaluate the legitimacy or legality of the traffic it routes in real time, how long does it usually take to

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<sup>89</sup> We use the term “8YY traffic” or “toll free traffic” to refer to calls that are made to 8YY or toll free telephone numbers. 47 CFR § 51.903(o) (“Toll Free Calls means a call to a Toll Free Number, as defined in § 52.101(f) of this subchapter.”).

<sup>90</sup> Petition at 9-10.

<sup>91</sup> *Id.* at 6-7. For purposes of this investigation, we consider “illegitimate” calls to be those that “involve[] the generation of 8YY traffic that has no legitimate purpose and exist[] solely for the purpose of obtaining intercarrier compensation.” *8YY Access Charge Reform Order*, 35 FCC Rcd at 11601-02, para. 17. These include robocalls (as provided in 47 U.S.C. § 227(b)(1) and 47 CFR § 61.1200(a)); calls with no identifying calling party information, such as all zero telephone numbers; and calls that are the result of traffic pumping. *Id.*

<sup>92</sup> Core Reply at 5-6.

<sup>93</sup> Petition at 6.

make that determination? Is the process Core uses to determine the legitimacy of the traffic it carries detailed in individual contracts? If not, is there a common industry practice that Core follows? Core must provide a detailed explanation of the process it uses to determine the legitimacy of the 8YY traffic it carries and whether that process is governed by contracts or follows industry practice.

26. What effect, if any, do the Commission's rules addressing illegal robocalling have on Core's proposed tariff revisions? Are Core's tariff revisions intended to ensure that Core complies with the Commission's robocalling rules?<sup>94</sup> If so, Core must provide a detailed explanation of how the revisions allow better compliance with those rules.

27. Core must explain why, as an intermediate provider, it would conduct database queries for 8YY calls it receives, as provided for in sections 2.13.3.H and 3.3.5 of its tariff revisions, and why it should be allowed to charge IXCs for those queries. How does Core's conducting a database query and assessment of a database query charge comply with the requirements of the *8YY Access Charge Reform Order*, which places the responsibility for the database query on the originating provider and allows only one database query charge per 8YY call?<sup>95</sup> How does Core ensure that the IXC is not being charged another database query charge by the originating carrier or any other carrier in the call flow? How does Core determine whether it or the originating carrier should bill for database query charges? Is there a reason that a carrier from which Core purchases 8YY traffic would not have performed a database query? Is it correct that once a database query is conducted, the information produced as a result of that query travels with the call to its termination point, thus allowing each carrier in the call path to access that information for call routing and completion purposes?<sup>96</sup> If not, what actions, other than conducting a database query, does Core need to perform in order to know how to route a call? In its response, Core must identify all of the "minimal functions," beyond a database query, that are necessary for it to identify the relevant 8YY provider for any particular toll free call.<sup>97</sup>

28. What steps, if any, does Core take to determine whether the 8YY traffic it purchases already contains the information necessary to route and complete a call that would make a second query, and charge, by Core unnecessary? What percentage of the 8YY traffic that Core purchases contains the routing identifiers that associate 8YY traffic with a specific IXC? Petitioners assert that it is common industry practice for a carrier that purchases 8YY traffic to specify which IXC's traffic it wishes to acquire.<sup>98</sup> Is this accurate? Does Core specify which IXC's traffic it wants to buy? If not, why not? If yes, why does that not obviate the need to query the database to determine where Core needs to route the traffic?

29. Core must provide a clear call-flow diagram showing the path that a typical 8YY call, in which Core acts as an intermediate carrier, follows from the originating caller to the 8YY subscriber. The diagram, or an accompanying written document referring to the call-flow diagram, must clearly indicate Core's position in the call flow, including an explanation of whether Core's involvement stems from its purchase of the call from an originating carrier, 8YY call aggregator, or another carrier, as applicable.

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<sup>94</sup> Core Reply at 5-6 (listing Core's efforts to combat illegal robocalls); see 47 CFR § 64.1200.

<sup>95</sup> The next carrier in the call path may conduct the database query only if the originating carrier is unable to do so. See *8YY Access Charge Reform Order*, 35 FCC Rcd at 11629, para. 82.

<sup>96</sup> *8YY Access Charge Reform Order*, 35 FCC Rcd at 11630, para. 83 ("Conducting the database query at the point of initiation of the call, allows the originating carrier and all subsequent carriers in the call path to use the correct call routing information to transmit the call.").

<sup>97</sup> Appendix at Section 2.13.3.H (tariffing the ability to charge discontinued Customers the "minimal functions necessary to identify the Customer as being the relevant carrier").

<sup>98</sup> "It is common in the market to specify which IXCs' traffic—by [Customer Identification Codes]—the purchaser wishes to acquire." Petition at 10.

Core must provide a detailed explanation of each step of the call flow; the services and functions that Core provides; identify any charges that are assessed for service provided along the call path; and identify the type of company assessing each charge and the type of companies to which such charges are assessed. Core must provide information about whether each function or service is governed by tariff or contractual agreement or if that varies by customer. If there is a tariffed charge, Core must describe what the charge is, and where it is set forth in the tariff (whether Core's tariff or the tariff of another carrier). Core must also list the Commission rules that govern the functions and services it provides, as depicted in the call diagram.

**B. Questions Related to Lawfulness of the Tariff Revisions and New Tariff Language**

30. Below we seek information regarding specific sections of Core's revised tariffs. Core should also address whether we should determine the legality of its tariff revisions in isolation, or whether in our investigation we should consider the effect of the tariff revisions taken as a whole. Core should provide support for whichever view it takes on this question.

**1. Tariff Sections 2.10.4.A and 2.21—Dispute Resolution Provisions**

31. Section 2.10.4.A of Core's tariff revisions establishes the procedure a customer must follow to raise a general billing dispute with Core in order for Core "to investigate the merits of the dispute."<sup>99</sup> Petitioners argue that section 2.10.4.A "is unlawful because it makes Core the sole judge of whether an IXC's dispute is in good faith" in contradiction with Commission precedent.<sup>100</sup> Petitioners also argue that section 2.10.4.A is unreasonable, just as the tariff language at issue in the *Northern Valley Order* was found to be, "'because it conflicts with sections 206 and 208 of the Act, which allow a customer to complain to the Commission or bring suit in federal district court for the recovery of damages regarding a carrier's alleged violation of the Act.'"<sup>101</sup> Core must explain why the precedent established in the *Northern Valley Order* does not render the challenged language unlawful. In its analysis on this point, Core must cite any precedent supporting the legality of the dispute resolution provision in section 2.10.4.A and explain how such cases support Core's position.

32. We next turn to Core's dispute resolution language in new tariff section 2.21. As a matter of tariff construction, we designate for investigation the question of whether this provision is ambiguous, in violation of the Commission's rules requiring tariff language to be clear and explicit.<sup>102</sup> The second sentence of section 2.21, describing how a billing dispute "can be sufficiently supported," is permissive in nature because it does not set forth a mandatory condition. The language in the last sentence of the same paragraph, however, provides that "[b]illing disputes, and associated withholding of disputed amounts, based on allegations that the traffic sent to the Customer is suspect, fraudulent, or otherwise illegal which are not supported as described in this Section will not be considered good faith disputes."<sup>103</sup> Core must explain how it reconciles these two parts—the permissive and mandatory language—in the new tariff section. Core must also explain how section 2.21 of its tariff does not violate the Commission's rules requiring that tariff language be clear and unambiguous.

33. Beyond the potential ambiguity of the dispute resolution provisions, we also designate for investigation the legality of Core's presumption in section 2.21 that all 8YY traffic not blocked by an IXC

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<sup>99</sup> Appendix at Section 2.10.4.A.

<sup>100</sup> Petition at 2.

<sup>101</sup> *Id.* at 8 (citing *Northern Valley Order*, 26 FCC Rcd at 10787, para. 14).

<sup>102</sup> See 47 CFR §§ 61.2, 61.54(j).

<sup>103</sup> Appendix at Section 2.21.

in real time is legitimate.<sup>104</sup> Why does Core think an IXC has the capability to determine, detect, and then block—in real time—illegitimate 8YY calls? Core must explain whether it, an IXC, or another carrier in the call path is in the best position to determine if an 8YY call is illegitimate and what factors make that carrier the best one able to determine the legitimacy of such calls. Is Core, through its tariff revisions, attempting to make IXCs responsible for detecting, blocking, or otherwise preventing illegitimate calls? Core must cite the legal authority it relies on to do so. Does Core bear any responsibility for detecting, blocking, or otherwise preventing illegitimate calls here? If so, how does it discharge its responsibility?

34. Do Core's tariff revisions give it financial incentives to send all calls to IXCs, regardless of whether they are legitimate?<sup>105</sup> Core must explain any incentive it has to prevent the transmission of illegitimate traffic. Furthermore, it must provide: the number of illegitimate 8YY calls it received monthly in 2020 and 2021 and the length of each call (or, if Core does not know the length of each 8YY call it transported, then it must provide the average length of the 8YY calls that it sends to IXCs); the percentage of these illegitimate calls for which Core billed an IXC or other carrier; and the percentage of calls Core itself rejected or blocked without charging an IXC or other carrier for the call.

35. In the *Northern Valley Order*, 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.<sup>106</sup> Such a provision, the Commission explained, 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.”<sup>107</sup> Here, section 2.21 conditions Core's determination of whether a dispute is made in good faith on whether an IXC has either credited or not billed its own customers for the traffic in dispute.<sup>108</sup> As a result, Petitioners contend that “an IXC must incur a financial penalty just to raise a dispute.”<sup>109</sup> Petitioners assert that the *Northern Valley Order* supports their position that Core's tariff provision is unreasonable.<sup>110</sup> Core must explain how its revisions to section 2.21 are consistent with the *Northern Valley Order*. Core should also provide any applicable legal precedent that supports its position that these revisions are reasonable.

36. Core also denies Petitioners' allegations that section 2.21 impermissibly interferes with IXC customer contracts that contain separate terms and conditions under which an IXC may credit its customers.<sup>111</sup> Core argues that IXCs should not be allowed to withhold payment through self-help for 8YY traffic that IXCs claim is illegitimate, when the IXC “collects compensation from its customers for that same traffic.”<sup>112</sup> Core argues that its tariff revisions are “intended to curb” this “type of rampant self-help and abuse.”<sup>113</sup> Core must explain why section 2.21 is reasonable. Core's filing must include any arguments it has for why requiring an IXC to provide credits to its own customers before it can raise a

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<sup>104</sup> Petitioners assert that Core's tariff revisions shift to IXCs the burden to identify and prevent 8YY illegitimate calls in real time—“something that [Core] knows IXCs cannot reliably do given the sophistication of 8YY robocallers.” Petition at 6.

<sup>105</sup> Petition at 7.

<sup>106</sup> *Northern Valley Order*, 26 FCC Rcd at 10787, para. 14.

<sup>107</sup> *Id.*

<sup>108</sup> Appendix at Section 2.21; Petition at 7-8.

<sup>109</sup> *Id.* at 7.

<sup>110</sup> *Id.*

<sup>111</sup> Core Reply at 13.

<sup>112</sup> *Id.* at 9.

<sup>113</sup> *Id.* at 9, 13.

dispute with Core would not materially affect the terms and conditions for refunds or credits in the IXCs' contracts with their own customers. Core also must clarify whether section 2.21 is intended to prevent or deter IXCs from engaging in lawful self-help remedies. Core must cite Commission and other legal precedent on whether the IXC's actions that Core complains about constitute unlawful self-help.

37. Core must also explain whether an IXC's decision to provide bundled or flat-rated service to its own customers would diminish that IXC's ability to provide the information required pursuant to Core's tariff provision for a good faith dispute—namely, “documentation demonstrating that, because such traffic was fraudulent or otherwise illegal, the [IXC's] customer either (1) was not assessed otherwise applicable usage-based charges, or (2) the otherwise applicable usage charges were credited.”<sup>114</sup> How would Core propose an IXC demonstrate that it did not assess usage-based charges on, or credited such charges back to, a customer that receives bundled or flat-rated services from the IXC?

### 2. Tariff Section 2.10.5—Late Payment Fees

38. Core must provide any evidence supporting a finding that a 3% per month late fee is just and reasonable, as required by section 201(b) of the Act. As part of its response, Core must provide examples of late-payment fees other LECs charge their customers and explain the basis for charging any higher late fees. Core must also explain how this tariff provision, which purports to charge customers the lesser of a listed rate or another rate that is not listed in its tariff—“the highest rate permitted by applicable law”—is consistent 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.”<sup>115</sup>

### 3. Tariff Section 2.13.3.H—Cancellation by Company

39. The revisions to section 2.13.3.H apply to customers to which Core has discontinued service.<sup>116</sup> As a threshold issue, Core must provide justification for its attempt to impose tariffed charges on carrier customers to which it has discontinued service, including any legal authority. Is Core providing a service to an IXC if it conducts a database query that allows Core to determine that it will not deliver traffic to that IXC? Core is also directed to list any services, other than 8YY database queries, that it purports to continue to provide to a discontinued customer. How and when does Core determine that service to a customer is or will be discontinued? Core must also explain how its use of the undefined term “minimal functions” is clear and unambiguous, as required by the Commission's rules.<sup>117</sup> What is Core's definition of “minimal functions” as used in section 2.13.3.H of its tariff? Should Core include a definition of “minimal functions” in its tariff?

40. In addition, Core must explain how its tariff changes will conform to the database query limitations adopted in the *8YY Access Charge Reform Order* and the accompanying rules. How does Core ensure that the revised tariff will not lead to duplicative database queries (impermissible “double dipping”) in contravention of the *8YY Access Charge Reform Order*?<sup>118</sup> To the extent that Core is trying

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<sup>114</sup> Appendix at Section 2.21.

<sup>115</sup> 47 CFR §§ 61.2(a), 61.45(j); *see also* 47 CFR § 61.54(j) (Composition of Tariffs) (“The general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitely. All general rules, regulations, exceptions or conditions which in any way affect the rates named in the tariff must be specified. A special rule, regulation, exception or condition affecting a particular item or rate must be specifically referred to in connection with such item or rate.”).

<sup>116</sup> Appendix at Section 2.13.3.H.

<sup>117</sup> 47 CFR §§ 61.2, 61.54(j).

<sup>118</sup> *8YY Access Charge Reform Order*, 33 FCC Rcd at 11629-31, para. 82.

to tariff charges that will be prohibited once the new 8YY rules take effect in July,<sup>119</sup> it must explain why it is just and reasonable for it to adopt new tariff provisions that contravene the requirements the Commission explicitly adopted in the *8YY Access Charge Reform Order*.<sup>120</sup> Core must provide any justification it has for imposing database query charges, as provided in its revised tariff, even though it is not the originating carrier. At the conclusion of this tariff investigation, how will Core ensure future compliance with rule 51.905(d), which limits the imposition of database query charges?<sup>121</sup>

#### 4. Tariff Section 3.3.5—Toll Free Interexchange Delivery Service

41. The revisions to section 3.3.5 of Core's tariff provide it with the right to charge an IXC for 8YY database queries "even if the underlying call is not completed."<sup>122</sup> Core must explain the rationale for this provision and why it is just and reasonable.<sup>123</sup> What legal authority does Core rely on for charging an IXC a database query even if the call is not completed? Core is directed to explain how section 3.3.5 is consistent with the Commission's express policy and goals of decreasing inefficiencies in 8YY call routing and compensation and reducing or eliminating carriers' incentives to engage in 8YY arbitration.<sup>124</sup>

#### 5. Comparison to Incumbent Local Exchange Carrier Tariffs

42. Core must provide the language it claims it duplicated from other carriers' tariffs and include citations to the language in those carriers' tariffs. According to Core, the duplication of tariffed language renders "any allegations by Petitioners against these provisions . . . meaningless."<sup>125</sup> Core must explain the legal basis for its claim that any duplication of language used in other tariffs provides it with a defense to challenges to its own tariff revisions. In evaluating Core's reliance on language from other carriers' tariffs, should the Commission take into consideration the totality of the language in Core's tariff—and not just the revisions—to determine the lawfulness of Core's tariff revisions? Core must provide any relevant Commission precedent addressing these issues.

### IV. PROCEDURAL MATTERS

43. *Filing Schedule.* This investigation is designated WC Docket No. 21-191. Core Communications, Inc. et al. (Core) is designated as a party to this investigation of the listed tariff filing.

44. Core shall file its Direct Case no later than July 14, 2021. The Direct Case must present Core's answers to the questions posed in this Order and be organized in a manner that follows the sequence of the questions and requests for information contained in each paragraph of this Order. For instance, in providing answers to questions in each paragraph, Core should identify the paragraph the question is in, restate the question or questions, and state the response. Core should follow this procedure for its responses throughout its Direct Case. Pleadings responding to the Direct Case may be filed no later than July 28, 2021, and must be captioned "Oppositions to Direct Case" or "Comments on Direct Case." Oppositions must also be organized in a manner that follows the order of the questions and requests for information contained in each paragraph of this Order. Additional pleadings will not be

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<sup>119</sup> 47 CFR § 51.905(d).

<sup>120</sup> *8YY Access Charge Reform Order*, 33 FCC Rcd at 11629-31, paras. 82-84.

<sup>121</sup> 47 CFR § 51.905(d).

<sup>122</sup> Appendix at Section 3.3.5.

<sup>123</sup> Core Reply at 13.

<sup>124</sup> See, e.g., *8YY Access Charge Reform Order*, 35 FCC Rcd at 11595, paras. 3-4.

<sup>125</sup> Core Reply at 12.

permitted or considered,<sup>126</sup> but *ex parte* presentations will be accepted until September 7, 2021.<sup>127</sup> Filing parties must number each page of their submissions.

- Electronic Filers: Comments may be filed electronically using the Commission’s online Electronic Comment Filing System (ECFS): <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority) must be sent to 9050 Junction Drive, Annapolis MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington DC 20554.
  - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

45. *Requirements for Filing of Spreadsheets.* All spreadsheets filed in this proceeding must be fully operational and manipulatable and must be submitted in native Microsoft Excel electronic format. All spreadsheet cells that contain entries that are references to or calculations based on other spreadsheet cells must include the formula for such reference or calculation. This includes references and calculations based on entries in different worksheets within the same workbook file.

46. *Ex Parte Requirements.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>128</sup> Persons making *ex parte* presentations must file, in WC Docket No. 21-191, a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.

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<sup>126</sup> 47 CFR § 1.1200(a).

<sup>127</sup> This date is necessary to give the Commission adequate time to evaluate the complete record prior to the statutory deadline of October 7, 2021.

<sup>128</sup> 47 CFR §§ 1.1200 *et seq.*



Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

47. *Paperwork Reduction Act.* This Order designating issues for investigation does not contain proposed information collection(s) 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).

48. *Contact Person.* For further information about this proceeding, please contact Lynne Engledow, Wireline Competition Bureau, Pricing Policy Division, 45 L Street, NE, Washington, D.C. 20554, (202) 418-2350, [lynne.engledow@fcc.gov](mailto:lynne.engledow@fcc.gov).

#### V. ORDERING CLAUSES

49. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 4(i), 4(j), 201(b), 203(c), 204(a), 205, and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203(c), 204(a), 205, and 403, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291, the issues set forth in this Order ARE DESIGNATED FOR INVESTIGATION.

50. IT IS FURTHER ORDERED that Core Communications, Inc., et al. IS a party to this proceeding.

51. IT IS FURTHER ORDERED that Core Communications, Inc., et al. SHALL INCLUDE, in its Direct Case, a response to each request for information that it is required to answer by this Order.

FEDERAL COMMUNICATIONS COMMISSION

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

## APPENDIX

**Revised Tariff Language Reproduced from Core Transmittal No. 17  
(revised language in bold typeface)**

## 2.10 Billing and Payment For Service

## 2.10.4 Disputed Charges

- A. In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, the Customer must submit a documented claim for the disputed amount. **A good faith dispute requires the Customer to provide a written claim to the Company. Instructions for submitting a dispute can be obtained by calling the billing inquiry number shown on the Customer's bill. Such claim must identify in detail the basis for the dispute, the account number under which the bill has been rendered, the date of the bill and the specific items on the bill being disputed, to permit the Company to investigate the merits of the dispute (alternative requirements apply for disputes based on allegations of fraudulent or otherwise illegal traffic to be considered good faith disputes, as set forth in Section 2.21 herein).**

**The date of the dispute shall be the date on which the Customer furnishes the Company the information required by this Section.**

**The date of resolution shall be the date on which the Company completes its investigation of the dispute, notifies the Customer in writing of the disposition and, if the billing dispute is resolved in favor of the Customer, applies the credit for the amount of the dispute resolved in the Customer's favor to the Customer's bill.**

## 2.10 Billing and Payment For Service

### 2.10.5 Late Payment Fees

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 for any billed amount for which payment has not been received by the Company within thirty (30) days of the invoice date of the Company's invoice for service, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment, **if such unpaid amount is part of a good faith dispute. If an unpaid amount is not part of a good faith dispute as described in this tariff, a late payment charge of 3.0% (rather than 1.5%) per month, or the highest rate permitted by applicable law, whichever is less, will apply.** If the payment due date falls on a Saturday, Sunday, legal holiday or other day when the offices of the Company are closed, the date for acceptance of payments prior to assessment of any late payment fees shall be extended through to the next business day.

### 2.13 Cancellation by Company

2.13.3 The Company may refuse or discontinue service to Customer upon five (5) days written notice to comply with any of the following:

**If the Company discontinues service, it will provide, in connection with access traffic associated with the discontinued Customer, only those minimal functions necessary to identify the Customer as being the relevant carrier (i.e., 8YY database queries). The Company will no longer route any traffic that uses the Customer's Carrier Identification Code (CIC), Local Routing Number (LRN), carrier owned NPA-NXX or any other element used to route traffic. In the case of such discontinuance, all applicable charges, including termination charges, if any, shall become due. If the Company does not discontinue the provision of the services involved on the date specified in the five (5) days' notice, and the Customer's noncompliance continues, nothing contained herein shall preclude the Company's right to discontinue the provision of the services to the non-complying Customer without further notice.**

**2.21 Fraudulent or Otherwise Illegal Traffic (“Financial Traceback”)**

**The Company and the Customer will work together to identify and mitigate fraudulent or otherwise illegal traffic.**

**The Company or the Customer may block fraudulent or otherwise illegal traffic to the full extent permitted by law. Any traffic delivered by the Company to the Customer that is not blocked by the Customer will be presumed to be legal traffic unless the Customer submits a good faith dispute as described in this Section 2.21.**

**Customers may dispute, and seek credits or refunds for, billing in connection with unblocked traffic, based on a good faith dispute that the identified traffic is fraudulent or otherwise illegal. To qualify as good faith, disputes alleging fraudulent or otherwise illegal traffic can be sufficiently supported with documentation demonstrating that, because such traffic was fraudulent or otherwise illegal, the Customer’s customer either (1) was not assessed otherwise applicable usage-based charges, or (2) the otherwise applicable usage charges were credited. Billing disputes, and associated withholding of disputed amounts, based on allegations that the traffic sent to the Customer is suspect, fraudulent, or otherwise illegal which are not supported as described in this Section will not be considered good faith disputes.**

### 3.3 Switched Access Service

#### 3.3.5 Toll Free Interexchange Delivery Service

Toll Free Interexchange Delivery Service is a switched access service in which the Company switches toll-free traffic originated by any third party, including CLECs, ILECs, CMRS providers, and VoIP providers. Switched Transport, End Office, and Query elements shall apply based on the elements, or functional equivalents thereof, provided.

**The IXC will be assessed a charge only for a completed data base query. A data base query consists of a signaling query and answer. The call is held at the SSP while the data base query is performed. When the database returns the signaling information to the SSP, enabling the call to be directed to the appropriate carrier, the 8YY data base query is deemed completed. Billing for the signaling will commence at the time the data base query is completed. The IXC will be assessed a charge for a completed data base query even if the underlying call is not completed (i.e., the call for which the data base query was made).**