

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
CenturyLink Communications, LLC, as the
successor to Qwest Communications Corporation,
Level 3 Communications, LLC, WilTel
Communications, LLC, and Global Crossing
Telecommunications, Inc.,
Complainants,
v.
Peerless Network, Inc.,
Defendant.

Proceeding No. 22-172
Bureau ID No. EB-22-MD-002

MEMORANDUM OPINION AND ORDER

Adopted: March 28, 2023

Released: March 28, 2023

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. This Memorandum Opinion and Order resolves a formal complaint filed by interexchange carrier (IXC) CenturyLink Communications, LLC, as the successor to Qwest Communications Corporation (Qwest), Level 3 Communications, LLC (Level 3), WilTel Communications, LLC (WilTel), and Global Crossing Telecommunications, Inc. (Global Crossing) (collectively, CenturyLink) against Peerless Network, Inc. (Peerless), a competitive local exchange carrier (LEC).1 CenturyLink alleges that Peerless violated sections 201(b) and 203 of the Communications Act of 1934, as amended (the Act), by improperly billing access charges on over-the-top Voice over Internet Protocol (VoIP) traffic.2 Specifically, CenturyLink objects to Peerless’s imposition of end office charges, arguing that Peerless does not provide the “functional equivalent” of end office switching services and, therefore, cannot bill the charges under its Tariff FCC No. 4.3 CenturyLink similarly contends that

1 Formal Complaint of CenturyLink, LLC, as the successor to Qwest Communications Corporation, Level 3 Communications, LLC, WilTel Communications, LLC, and Global Crossing Telecommunications, Inc., Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed July 8, 2022) (Complaint). CenturyLink filed the Complaint to effectuate a primary jurisdiction referral from the United States District Court for the Northern District of Illinois. Complaint, Exh. C, CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al., Case No. 1:18-cv-03114, Memorandum Opinion and Order (N.D. Ill. Mar. 1, 2022) (Referral Order); Complaint, Exh. A, Joint Stipulations of Facts, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed July 8, 2022) (Joint Stipulations) at 2, Stipulated Fact No. 8.

2 47 U.S.C. §§ 201(b), 203. Sections 201(b) and 203(c) prohibit telecommunications carriers from engaging in unjust and unreasonable practices and from assessing charges in violation of their tariffs, respectively.

3 Complaint, Exh. D, Peerless Network, LLC FCC Tariff No. 4 (Tariff).

Peerless cannot assess tandem charges “in lieu of” end office charges, because it lacks Tariff authority to do so. In response, Peerless maintains that the Commission’s rules and its Tariff allow it to bill the disputed charges. For the reasons explained below, we agree with CenturyLink and find that Peerless billed CenturyLink for services not covered by its Tariff.

II. BACKGROUND

A. The Parties

2. The CenturyLink entities are Qwest, Level 3, WiTel, and Global Crossing, which all offer various telecommunications services nationally.⁴ For purposes of this proceeding, CenturyLink is an IXC—also known as a long-distance carrier—that purchases interstate switched access services.⁵ Peerless is a competitive LEC that provides interstate switched access services to CenturyLink for long-distance calls.⁶

B. Intercarrier Compensation for VoIP Traffic

3. VoIP-PSTN traffic is traffic that originates or terminates in Internet Protocol (IP) format, but is also exchanged over public switched telephone network (PSTN) facilities.⁷ The Commission’s “VoIP Symmetry Rule” permits a LEC to assess switched access charges for VoIP-PSTN traffic where the LEC or its VoIP partner provides services that are “functionally equivalent” to traditional access services performed in Time Division Multiplexing (TDM) format regardless of the technology used to perform the functions for which it charges.⁸ The LEC or its VoIP partner can only assess charges for services actually performed.⁹ The Commission adopted the VoIP Symmetry Rule in 2011, as part of its comprehensive intercarrier compensation reform.¹⁰ In 2015, the Commission adopted a declaratory ruling

⁴ Joint Stipulations at 1, Stipulated Fact Nos. 1-4. Qwest is a wholly owned subsidiary of Lumen Technologies, Inc. (Lumen), formerly known as CenturyLink, Inc. Level 3 is an indirect subsidiary of Lumen. WiTel is a wholly owned subsidiary, and Global Crossing is an indirect subsidiary, of Level 3. *Id.*

⁵ Joint Stipulations at 2, Stipulated Fact No. 5. *See also* Legal Analysis in Support of Formal Complaint, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed July 8, 2022) (Complaint Legal Analysis) at 2 (describing the Complaint as concerning charges that Peerless assessed on CenturyLink, “an IXC”).

⁶ Joint Stipulations at 2, Stipulated Fact No. 5.

⁷ *See Connect America Fund, et al., Order on Remand and Declaratory Ruling*, 34 FCC Rcd 12692, 12692, para. 2 (2019) (*2019 VoIP Symmetry Declaratory Ruling*). “PSTN,” as used in the Commission’s VoIP traffic intercarrier compensation rules, “refers to the exchange of traffic between carriers in (Time Division Multiplexing) TDM format.” *See Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 17663, 18006, n.1891 (2011) (*USF/ICC Transformation Order*), *pets. for review denied, In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2050 and 135 S. Ct. 2072 (2015).

⁸ 47 CFR § 51.913(b) (permitting a LEC to assess access charges regardless of whether the LEC delivers a call to the called party’s premises via contractual or other arrangements with an affiliated or unaffiliated VoIP service provider). *See USF/ICC Transformation Order*, 26 FCC Rcd at 18026-27, para. 970; *2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12964, para. 8.

⁹ 47 CFR § 51.913(b). *See USF/ICC Transformation Order*, 26 FCC Rcd at 18026-27, para. 970 (clarifying that “our rules do not permit a LEC to charge for functions performed neither by itself or its retail service provider partner”), n.2028 (noting that, “although access services might functionally be accomplished in different ways depending upon the network technology,” a LEC’s right to charge is limited to the functions performed by “it or its retail VoIP service provider partner”).

¹⁰ The Commission determined that the intercarrier compensation system should move to a default bill-and-keep approach, and provided a transitional path to that end state for most terminating traffic. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17676, para. 34. When extending the traditional intercarrier compensation regime to VoIP-PSTN traffic, the Commission explained that “transitional VoIP-PSTN intercarrier compensation rules focus . . . on whether the exchange of traffic between a LEC and another carrier occurs in TDM format (and

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that construed the VoIP Symmetry Rule to allow over-the-top (OTT)-VoIP – LEC partnerships to bill for the functional equivalent of end office switching regardless of whether the LEC or its OTT-VoIP partners physically connect to the last-mile facilities used to serve an end user.¹¹ After the D.C. Circuit vacated and remanded the *2015 Declaratory Ruling*,¹² the Commission issued the *2019 VoIP Symmetry Declaratory Ruling* and concluded that a LEC-VoIP partnership provides the functional equivalent of end office switched access *only if* the LEC or its VoIP provider partner provides a physical connection to last-mile facilities used to serve an end user.¹³ The Commission concluded that the *2019 VoIP Symmetry Declaratory Ruling* had retroactive effect.¹⁴

4. OTT-VoIP is a type of VoIP traffic.¹⁵ Specifically, OTT-VoIP traffic is routed to or from an end user “over the top” of a broadband connection provided by a third-party not affiliated with the LEC or its VoIP partners.¹⁶ Thus, unlike a facilities-based VoIP provider, an OTT-VoIP provider does not provide the physical connection to the last-mile facilities to serve an end user.¹⁷ The physical connection to the last-mile facilities used to serve an end user is the key characteristic of end office switching.¹⁸ Absent this physical connection, a VoIP-LEC partnership is not performing the functional equivalent of end office switching.¹⁹ Thus, LECs are not permitted to tariff or assess end office switched access charges for OTT-VoIP traffic.²⁰

C. Peerless’s Tariff

5. Peerless billed CenturyLink under its Tariff for what it contends is “End Office Switching.”²¹ The Tariff describes “End Office Switching” as a “rate categor[y]” that applies to

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not in IP format), without specifying the technology used to perform the functions subject to the associated intercarrier compensation charges.” *Id.* at 18025, para. 969. *See also 2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12694, para. 7. Prior to doing so, the Commission had not addressed intercarrier compensation obligations, including the ability to tariff charges, for VoIP traffic. *See Connect America Fund, et al.*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4754-46, paras. 608-10 (2011).

¹¹ *Connect America Fund et al.*, Declaratory Ruling, 30 FCC Rcd 1587 (2015) (*2015 Declaratory Ruling*), vacated and remanded sub nom. *AT&T Corp. v. FCC*, 841 F.3d 1047 (D.C. Cir. 2016) (*Remand Decision*).

¹² *See Remand Decision*, 841 F.3d at 1056.

¹³ *2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12697-99, paras. 14-19.

¹⁴ *Id.* at 12702, para. 26.

¹⁵ *See id.* at 12692, para. 2, 12702, para. 24.

¹⁶ *See 2015 Declaratory Ruling*, 30 FCC Rcd at 1588, para. 2 (distinguishing between facilities-based providers and over-the-top providers), 1592, n.35 (“In 2005, the Commission . . . ‘found it useful to divide VoIP providers into two general types: (1) facilities-based VoIP providers and (2) ‘over-the-top’ VoIP providers.’ Facilities-based VoIP providers, ‘including certain cable VoIP providers,’ are providers that ‘own and control the last mile facility’ and ‘may own or lease the switching and transmission networks that are used to carry VoIP calls.’ The other type of VoIP providers, called ‘over-the-top’ VoIP providers, include ‘providers that require the end user to obtain broadband transmission from a third-party provider, and such VoIP providers can vary in terms of the extent to which they rely on their own facilities.’”) (citations omitted).

¹⁷ *2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12702, para. 24.

¹⁸ *Id.* at 12697-98, paras. 14-17.

¹⁹ *Id.*

²⁰ *See id.* at 12693, para. 4, 12702, para. 24.

²¹ *See Joint Stipulations at 2, 6, 8, Stipulated Fact Nos. 6, 25, 30-32. See also Complaint at 80, paras. 225-26; Complaint, Exh. D, Tariff.*

“Switched Access Service” and that “provides the local end office switching functions necessary to complete the transmission of Switched Access communications to and from the end users served by the local end office and the Customer.”²²

6. Peerless also billed CenturyLink under its Tariff for “Tandem Switching and Transport” access charges “in lieu of” End Office Switching charges.²³ The Tariff defines “Tandem Switching and Transport” as a “rate categor[y]” that applies to “Switched Access Service” and that “provides for the use of the Company’s tandem switches.”²⁴ In particular, “Tandem-Switched Transport provides Switched Transport that is switched through a tandem switch, between the customer’s serving wire center and the end offices subtending the tandem” and “is also available between an access tandem and end offices subtending the tandem.”²⁵

D. The Parties’ Dispute

7. On May 1, 2018, CenturyLink sued Peerless in the U.S. District Court for the Northern District of Illinois (Court), alleging that Peerless unlawfully assessed end office and tandem access charges for OTT-VoIP traffic.²⁶ CenturyLink later filed a motion requesting that, under the primary jurisdiction doctrine, the Court refer three issues to the Commission:

(1) what percentage of Peerless’s traffic is OTT-VoIP; (2) whether Peerless may assess tandem switching charges in lieu of end office charges on OTT-VoIP calls; and (3) whether Peerless’s [Tariff] can be interpreted to permit Peerless to assess tandem switching charges on OTT-VoIP calls.²⁷

On March 1, 2022, the Court granted CenturyLink’s motion,²⁸ and sought Commission guidance on those questions, which it deemed to “require the resolution of issues . . . within the [Commission’s] special competence.”²⁹

8. To effectuate the referral, and in accordance with section 1.739 of the Commission’s rules, CenturyLink filed the Complaint.³⁰ In short, the Complaint alleges that Peerless improperly billed

²² Tariff, p. 47, § 6.1.2(B). The Tariff appears to use “End Office Switching” and “End Office” interchangeably. *See id.* at pp. 47, 49, 52, §§ 6.1, 6.1.2, and 6.1.2(B).

²³ *See* Complaint at 5, paras. 11-12; 56-57, paras. 141-43. *See also* Peerless Network, Inc.’s Legal Analysis in Support of Its Request for Relief on the Court’s Referral Order, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed Aug. 8, 2022) (Answer Legal Analysis) at 54-60.

²⁴ Tariff, p. 52, § 6.1.2(C); Joint Stipulations at 6, Stipulated Fact No. 26.

²⁵ Tariff, p. 53, § 6.1.2(C)(1); Joint Stipulations at 6, Stipulated Fact No. 26.

²⁶ Joint Stipulations at 2, Stipulated Fact No. 7. *See* Complaint Exh. B, *CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al.*, Case No. 1:18-cv-03114 (N.D. Ill. May 1, 2018) (Court Complaint).

²⁷ *See Referral Order* at 4. A court invokes the primary jurisdiction doctrine when the court has jurisdiction over a case, but the court determines that the case requires the resolution of issues that, under a regulatory scheme, an administrative agency is “best suited” to resolve. *E.g., Allnet Commc’n Serv., Inc. v. Nat’l Exch. Carrier Ass’n*, 965 F.2d 1118, 1120 (D.C. Cir. 1992).

²⁸ *See* Joint Stipulations at 2-3, Stipulated Fact No. 8. *See also Referral Order* at 8. The Court did not dismiss the Court Complaint and scheduled further proceedings on various claims that it had not referred to the Commission. *See* Minute Entry, *CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al.*, Case No. 1:18-cv-03114 (N.D. Ill. Apr. 13, 2022) (ECF No. 252).

²⁹ *Referral Order* at 7 (alteration omitted); *see also id.* at 4-6; Joint Stipulations at 2-3, Stipulated Fact No. 8.

³⁰ 47 CFR § 1.739. *See* Letter from Lisa B. Griffin, Deputy Chief, Market Disputes Resolution Division, FCC Enforcement Bureau, to Charles W. Steese, Counsel for CenturyLink, and Henry T. Kelly, Counsel for Peerless, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (dated Apr. 26, 2022) (*April 26th Letter Ruling*) (setting

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CenturyLink access charges on OTT-VoIP traffic, in contravention of the Commission's rules and orders and Peerless's Tariff.³¹ CenturyLink contends that Peerless's assessment of end office charges on OTT-VoIP traffic violates the *2019 VoIP Symmetry Declaratory Ruling* and the plain language of the Tariff, because Peerless does not provide the physical interconnection with the last-mile facilities connecting to the end user.³² CenturyLink similarly argues that it is unlawful for Peerless to bill tandem switching charges "in lieu" of end office charges for VoIP-PSTN traffic, because the Tariff permits Peerless to assess tandem switching charges only on calls routed through a traditional tandem switch, and not as a replacement for end office charges that it previously assessed but that the *2019 VoIP Symmetry Declaratory Ruling* now precludes.³³

9. Based on these allegations, the Complaint asserts four claimed violations of the Act.³⁴ Only one of those counts (Count I) turns on the proper application of the Commission's *2019 VoIP Symmetry Declaratory Ruling*: CenturyLink alleges that, under a proper understanding of the *2019 VoIP Symmetry Declaratory Ruling*, Peerless violated section 201(b) of the Act by charging end office switched access charges when Peerless and its VoIP partners do not physically interconnect to the last-mile facilities used to serve end users.³⁵ The remaining counts turn on an interpretation of Peerless's Tariff and what charges it describes. CenturyLink alleges in Count II that the "plain language of Peerless's Tariff . . . does not permit Peerless to assess end office charges when it does not provide the physical interconnection with the last-mile facilities connecting to the end user," and that "assessing charges in contradiction to the language in [the] Tariff" violated section 203 of the Act.³⁶ CenturyLink similarly alleges, in Count IV, that Peerless violated section 203 by charging tandem switching charges "in lieu" of end office charges when the Tariff "did not permit [Peerless] to assess Tandem Switching charges on calls not routed through a tandem switch."³⁷ And Count III provides that, because Peerless charged tandem switching charges that did not meet the Tariff's definitions of tandem switching, Peerless violated the prohibition in section 201(b) of the Act against unjust and unreasonable practices.³⁸ Peerless filed an Answer on August 8, 2022, denying CenturyLink's allegations,³⁹ and CenturyLink filed a Reply on August 24, 2022.⁴⁰

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forth the process to be followed to effectuate the Court's referral).

³¹ See Complaint at 10-56, paras. 27-139; Complaint Legal Analysis at 4-48; Reply at 4-36. CenturyLink's dispute relates to charges billed on Peerless's End Office Billing Account Numbers (E BANS) for services provided between January 2016 through February 2020. See Reply at 37, n.109; Complaint at 80, paras. 223-227. See also Peerless Network, Inc.'s Answer, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed Aug. 8, 2022) (Answer) at 22, para. 40, Answer Exh. BBB, Declaration of James Brewer at 8, para. 23.

³² See Complaint at 79-81, paras. 218-27 (Counts I and II); Complaint Legal Analysis at 16, n.41; Reply in Support of Formal Complaint, Proceeding No. 22-172, Bureau ID No. EB-22-MD-002 (filed Aug. 24, 2022) (Reply) at 35-36.

³³ Complaint at 81-82, paras. 228-35. See *id.* at 3-4, paras. 5-7; 6, paras. 14-15; Complaint Legal Analysis at 2, 38, 48, 53; Answer Legal Analysis at 8, 51, 54, 60; Reply at 2-4, 36-39.

³⁴ See Complaint at 79-82, paras. 218-35. Although the Complaint names Peerless Network, Inc. as the sole defendant, the parties have stipulated that the Commission's decision in this proceeding will bind all of Peerless's subsidiaries named in the Court Complaint as if they were named parties in this proceeding. Joint Stipulations at 2, Stipulated Fact No. 6.

³⁵ See Complaint at 79-80, paras. 218-23.

³⁶ *Id.* at 80, paras. 224-27.

³⁷ *Id.* at 81-82, paras. 231-35.

³⁸ 47 U.S.C. § 201(b); see Complaint at 81, paras. 228-30.

³⁹ Answer; Answer Legal Analysis.

III. DISCUSSION

A. Peerless’s Assessment of the Disputed End Office and Tandem Switching Access Charges Violates Sections 203 and 201(b)

10. Although the parties argue extensively about the percentage of Peerless’s VoIP-PSTN traffic that is OTT-VoIP,⁴¹ that issue is relevant to whether Peerless may bill for such traffic only if Peerless has a valid mechanism in place to bill IXCs for any VoIP-PSTN traffic (whether through end office charges or tandem switching charges “in lieu” of end office charges). Because it does not, answering that question is dispositive as to Counts II through IV of the Complaint and renders moot Count I. As explained below, we find that Peerless cannot bill CenturyLink under the Tariff for end office access charges—or tandem switching charges “in lieu” of end office charges—for any of the VoIP-PSTN traffic at issue.

11. The “filed-rate” doctrine requires that, to charge for services under a tariff, a carrier “must provide its services in exactly the way the carrier describes them in that tariff.”⁴² The Act embodies this principle. Specifically, section 203(a) requires common carriers to file schedules showing “all charges” and the “classifications, practices, and regulations affecting such charges,”⁴³ and section 203(c) further bars a carrier from “enforc[ing] any classifications, regulations, or practices affecting” its tariffed charges, “except as specified” in the tariff.⁴⁴ A carrier’s tariff must be complete and comprehensive, and deviation from the tariff’s terms is impermissible. Thus, the Commission has held that a LEC “may lawfully assess tariffed charges only for those services specifically described in its applicable tariff.”⁴⁵ Similarly, the Commission has refused to expand definitions in a LEC’s tariff to render them consistent with the provisions of the Act and Commission’s rules.⁴⁶ In short, LECs that offer access services pursuant to a tariff are bound by the rates, terms, and conditions of those tariffs.⁴⁷

12. Competitive LECs, such as Peerless, can provide and charge IXCs for interstate access

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⁴⁰ Reply.

⁴¹ See Complaint at 10-56, paras. 10-139; Complaint Legal Analysis at 4-48; Answer at 7-85, paras. 10-139; Answer Legal Analysis at 8-51; Reply at 4-36.

⁴² *CoreTel Va., LLC v. Verizon Va., LLC*, 752 F.3d 364, 374 (4th Cir. 2014) (*CoreTel v. Verizon*) (noting that the filed-rate doctrine is not a “mere technicality” and holding that, because CoreTel had not deployed its own physical facilities to connect it to its customers, it did not provide “terminations in the end office of end user lines” as required by its tariffs).

⁴³ 47 U.S.C. § 203(a).

⁴⁴ *Id.* § 203(c).

⁴⁵ *AT&T Corp. v. YMax Communications Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 5742, 5748, paras. 12-14 (2011) (*AT&T v. YMax*) (finding a violation of sections 203(c) and 201(b) of the Act when a carrier charged under a tariff that failed to “unambiguously describe the kinds of services and functions” that the carrier performed with regard to the traffic at issue).

⁴⁶ *Qwest Communications Corp. v. Farmers and Merchants Mut’l Telephone Co.*, Second Order on Reconsideration, 24 FCC Rcd 14801, 14812, para. 25 (2009) (*Qwest v. Farmers*) (reconsidering an earlier order and granting a complaint against an incumbent LEC because its individualized contracts involved an “exchange of services and business relationship” that was “quite distinct” from the LEC’s tariffed switched access service).

⁴⁷ See *MCI WorldCom Network Servs. v. PaeTec Commc’ns, Inc.*, 204 Fed. Appx. 271, 272 n.2 (4th Cir. 2006) (*MCI v. PaeTec*) (“[A] carrier is expressly prohibited from collecting charges for services that are not described in its tariff.”); *Access Charge Reform*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9117, para. 18 (2004) (*Eighth Report and Order*) (“As a rule, . . . access tariffs . . . must clearly identify each of the services offered and the associated rates, terms, and conditions.”), 9118-19, para. 21 (extending to competitive LECs the Commission’s long-standing policy that LECs should charge only for those services that they provide).

services in two ways: through a tariff that complies with the Commission’s rules or through a negotiated agreement.⁴⁸ Thus, absent either a lawful tariff or an agreement, a competitive LEC “lacks authority under the Communications Act to bill for those services.”⁴⁹ This requirement extends to VoIP-PSTN traffic through the VoIP Symmetry Rule.⁵⁰ And again, “to the extent these [VoIP-PSTN] charges are imposed via tariff, a carrier may not impose charges other than those provided for under the terms of its tariff.”⁵¹ Peerless and CenturyLink do not have a negotiated agreement governing the end office and tandem charges challenged in the Complaint. And Peerless does not dispute that it may impose only charges set forth in its Tariff. Rather, Peerless maintains that the Tariff entitles it to bill access charges relating to VoIP-PSTN traffic exchanged with CenturyLink.⁵² But the Tariff’s language does not bear the weight Peerless attaches to it.⁵³

13. The Tariff governs Peerless’s provision of traditional, regulated TDM-based access services.⁵⁴ Nothing in the Tariff indicates that it applies to any functionally equivalent VoIP-PSTN service provided by Peerless or its VoIP partners.⁵⁵ It does not authorize Peerless to assess access charges for IP-based service—furnished by it or its VoIP partners—that is the functional equivalent of TDM-based access service. Specifically, the Tariff defines “end office switch” as “[a] local telephone switching system established to provide local exchange service and/or exchange access service.”⁵⁶ “Switched

⁴⁸ See 47 CFR § 61.26; *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9925, para. 3 (2001). See also *AT&T Corp. v. Adventure Commc’n Tech., LLC*, 207 F. Supp. 3d 962, 1028-29 (S.D. Iowa 2016) (“the only ways a [competitive LEC] can charge an IXC . . . are under the express terms of its tariff . . . or through an express, negotiated contract”); *Sprint Commc’ns Co. L.P. v. Northern Valley Commc’ns, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10780, 10782, para. 4 (2011) (competitive LECs “have been allowed to assess interstate switched exchange access service charges upon IXCs by either filing tariffs with the Commission or by negotiating contracts with the affected IXCs”).

⁴⁹ *CallerID4u, Inc. v. MCI Commc’ns Servs. Inc.*, 880 F.3d 1048, 1060 (9th Cir. 2018). See also *AT&T Corp. v. All Am. Tel. Co.*, Memorandum Opinion and Order, 28 FCC Rcd 3477, 3494, para. 37 (2013) (*AT&T v. All American*) (“[U]ntil a [competitive LEC] files valid interstate tariffs under Section 203 of the Act or enters into contracts with IXCs for the access services it intends to provide, it lacks authority to bill for those services”), Order on Reconsideration, 29 FCC Rcd 6393 (2014), *pet. for review granted in part and denied in part, All American Tel. Co., Inc. v. FCC*, 867 F.3d 81 (D.C. Cir. 2017).

⁵⁰ See *USF/ICC Transformation Order*, 26 FCC Rcd at 18026-27, para. 970, n.2026 (stating that a carrier may not impose charges for functionally equivalent services that are not provided for in its tariff). See also *id.* at 18019-18022, paras. 961-63 (discussing the role of tariffs during the transition of the intercarrier compensation reform); *2019 VoIP Symmetry Declaratory Ruling*, 34 FCC Rcd at 12701, n.65 (“We leave carriers to determine the appropriate compensation for such services in accordance with their agreements and applicable tariffs.”); 47 CFR §§ 51.905(b); 51.913(b) (referencing a carrier’s entitlement to assess and collect transitional access rates set forth in a carrier’s tariff).

⁵¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 18026-27, para. 970, n.2026; see *supra* paragraph 11.

⁵² See Answer Legal Analysis at 67 (“Peerless is seeking compensation from CenturyLink for Switched Access Services that CenturyLink received pursuant to the terms of Peerless’s tariff.”). See also Joint Statement at 2, Stipulated Fact No. 6 (stipulating that Peerless’s Tariff “applies to the interstate access services provided by Peerless Network and its subsidiaries affiliates”).

⁵³ See Answer Legal Analysis at 56-59. See also Reply at 35-36.

⁵⁴ See, e.g., Tariff, Section 2 – Definitions, pp. 5-9, Section 5 – Access Service Order, pp. 38-46, §§ 5.1-5.7, and Section 6 – Switched Access Service, pp. 47-68, §§ 6.1-6.7.

⁵⁵ The Tariff “applies to interstate access services provided by Peerless Network and its subsidiaries affiliates, connecting, concurring and/or participating carriers, or other telecommunications service providers engaged in the exchange, transit, origination or termination of access service traffic.” Tariff, p. 4, Section 1. See Reply at 35-36.

⁵⁶ Tariff at Section 2 – 2nd Revised Page 6.

access service provides . . . for the use of [Peerless’s] common switching, and transport facilities and for the use of common subscriber plant.”⁵⁷ The end office rate category is described as “provid[ing] the local end office switching functions necessary to complete the transmission of Switched Access communications to and from the end users served by the local end office and the Customer.”⁵⁸ The Tariff further states that the “Tandem Switching and Transport” rate category “provides for the use of the Company’s tandem switches.”⁵⁹ Neither these nor any other Tariff provisions define the covered services to include the functional equivalent of access services permitted by the VoIP Symmetry Rule for VoIP-PSTN traffic.⁶⁰ This lack of express language is fatal to Peerless’s position.⁶¹ Without it, Peerless cannot charge for the functional equivalent of end office and tandem access service provided by it or its VoIP partner.⁶²

14. Nevertheless, Peerless contends that its Tariff “does permit it to charge ‘tandem rate categories’ when an end office switch is providing tandem functions (i.e. connecting [CenturyLink] to one of Peerless’s VoIP providers or end user customers).”⁶³ This is so, Peerless argues, because:

[w]hen, by virtue of the OTT VoIP Order, a Peerless end office is processing a telephone call associated with an OTT VoIP call (i.e. on that call the VoIP provider does not interconnect to the enterprise VoIP customer), then that switch is, by definition *according to the OTT Order and the VoIP Symmetry Rule*, performing tandem functions. Under Peerless’s tariff, Peerless can assess the “tandem rate categories” for the tandem functions being performed on that call.⁶⁴

In other words, Peerless maintains that it can bill “in lieu” tandem charges because the Tariff must be read in conjunction with the Commission’s rules and orders regarding OTT-VoIP. Inclusion of “functional equivalent” language is unnecessary, Peerless says, “because the VoIP Symmetry Rule already makes this the case.”⁶⁵ But this analysis ignores the Commission’s rules and ample precedent requiring carriers to

⁵⁷ *Id.* at 47, § 6.1.

⁵⁸ *Id.* at 52, § 6.1.2(B).

⁵⁹ *Id.* at 52-53, § 6.1.2(C); Joint Stipulations at 6, Stipulated Fact No. 26.

⁵⁹ *Id.* at 52, § 6.1.2(B).

⁶⁰ *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 18006, n.1891.

⁶¹ Peerless correctly notes that the wording of a CLEC’s tariff does not have to be identical to that of an incumbent LEC’s tariff. Answer Legal Analysis at 58-59. Yet, a CLEC’s tariff still must clearly and explicitly permit the carrier to assess the charges it imposes. *See* 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.”). Other carriers have amended their tariffs to contain the term “functional equivalent” or similar language that clearly implements the charges authorized by the VoIP Symmetry Rule. For example, Level 3 describes its tariffed services to include “services and functions that are the *functional equivalent* of access services provided by an incumbent [LEC].” It also describes its “switching system[s]” to include “*functionally equivalent* or analogous facilities,” and other access services to include the “*functional equivalent* to facilities and/or services” provided by an incumbent LEC. *See* Complaint at 62-64, para. 157; Complaint Legal Analysis at 60-61; Reply at 35 (emphasis added).

⁶² 47 U.S.C. § 203(a), (c). *See AT&T v. YMax*, 26 FCC Rcd at 5748, para. 12. *See also MCI v. PaeTec*, 204 Fed. Appx. at 272, n.2; *CoreTel v. Verizon*, 752 F.3d at 374; *Eighth Report and Order*, 19 FCC Rcd at 9117, para. 18.

⁶³ Answer Legal Analysis at 56-57.

⁶⁴ *Id.* at 57 (emphasis added).

⁶⁵ *Id.* at 59. Still, Peerless acknowledges that its Tariff must specify the services for which it assesses access charges. *See id.* at 52 (arguing that Peerless’s services are covered by the Commission’s rules and “the terms of

(continued....)

make their tariff charges clear and to bill strictly in accordance with the tariff's terms.⁶⁶ Peerless cites nothing to the contrary, and we will not stretch the Tariff's language beyond its plain terms.⁶⁷ Thus, even if the IP-based access service Peerless has provided since the release of the *2019 VoIP Symmetry Declaratory Ruling* operates as the functional equivalent of tandem switching, the Tariff does not permit Peerless to assess tandem switched access charges for that "functionally equivalent" service.⁶⁸

15. In sum, there is a difference between a carrier having authority under the Commission's rules to assess an access charge and a carrier properly exercising that authority by filing a valid tariff that expressly permits assessment of the charge. Indeed, the Commission "cannot conclude that access charges for end office switching are due in every circumstance" where a LEC or its VoIP partner provides end office switching "[b]ecause such charges ultimately are governed by applicable tariffs."⁶⁹ Instead, a LEC's ability to assess end office charges for VoIP-PSTN traffic is dependent on "applicable tariff language [that] contemplates charging for functionally equivalent services."⁷⁰ To lawfully bill CenturyLink, Peerless's Tariff must contain the appropriate, unambiguous definitions, terms, and rates for it to charge for functionally equivalent VoIP-PSTN end office and tandem access services provided by it or its VoIP partners.⁷¹ The Tariff does not.⁷² As a result, Peerless's Tariff does not permit it to charge CenturyLink for access services relating to the VoIP-PSTN traffic at issue.⁷³ Peerless billed for access

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Peerless's tariff"); 60-81 (requesting that the Tariff be interpreted to permit Peerless to assess access charges on OTT-VoIP calls).

⁶⁶ See 47 CFR § 61.2(a). A carrier may not impose charges for functionally equivalent services that are not described in its tariff. See *supra* note 50.

⁶⁷ *Qwest v. Farmers*, 24 FCC Rcd at 14812, para. 24 ("We will not expand the term 'switched access' as used in the tariff before us to encompass more than the tariff itself delineates.").

⁶⁸ Our finding that the Tariff does not authorize Peerless to bill CenturyLink for functionally equivalent services provided by it or its VoIP partner affords CenturyLink all of the relief to which it is entitled. See also *AT&T Corp., et al. v. Wide Voice, LLC*, Memorandum Opinion and Order, 36 FCC Rcd 9771, para. 67 (2021); *AT&T v. YMax*, 26 FCC Rcd at 5761, paras. 52-53, n.147. Consequently, we need not address CenturyLink's arguments that Peerless unlawfully assessed switched access charges on traffic that does not terminate to an "End User" or "Carrier" or its arguments regarding the percentage of Peerless's traffic that is OTT-VoIP. See Complaint at 14-56, paras. 38-140; 68-79, paras. 176-217; Complaint Legal Analysis at 14-53, 67-78; Reply at 4-36, 60-67.

⁶⁹ *2015 Declaratory Ruling*, 30 FCC Rcd at 1596, n.64.

⁷⁰ *Id.* The D.C. Circuit vacated and remanded the *2015 Declaratory Ruling*, and the Commission reached a different conclusion regarding what constitutes end office switching for purposes of assessing end office charges. Nevertheless, neither the Court nor the Commission suggested a different result regarding the necessity of including accurate definitions, terms, and rates in tariffs.

⁷¹ See *AT&T v. Central Office Telephone*, 524 U.S. 214, 223 (1988) ("Rates do not exist in isolation. They have meaning only when one knows the services to which they are attached."). See also *Eighth Report and Order*, 19 FCC Rcd at 9115, para. 14 (same).

⁷² "[I]t is well established that any ambiguity in a tariff is interpreted against the party filing the tariff." See *AT&T v. YMax*, 26 FCC Rcd at 5755, para. 33 (citing *Associated Press v. FCC*, 452 F.2d 1290, 1299 (D.C. Cir. 1971)); *Qwest v. Farmers*, 24 FCC Rcd at 14810, n.83; *Halprin, Temple, Goodman & Sugrue v. MCI*, Order on Reconsideration, 14 FCC Rcd 21092, 21100, para. 19, n.50 (1999); *American Satellite Corp. v. MCI Telecommunications Corp.*, Memorandum Opinion and Order, 57 FCC2d 1165, 1167, para. 6 (1976)). Thus, to the extent that Peerless's Tariff is not clear and thus ambiguous regarding its ability to bill access charges for functionally equivalent access services provided by it or its VoIP partner, we construe the language in its Tariff against Peerless and conclude that it does not permit Peerless to assess access charges for functionally equivalent access services provided by it or its VoIP partner.

⁷³ Peerless therefore can bill for zero percent of the access charges relating to VoIP-PSTN traffic, which includes the OTT-VoIP traffic referenced in the *Referral Order*.

charges not permitted by its Tariff in violation of section 203(c), and that violation constitutes an unreasonable practice that violates section 201(b) of the Act.⁷⁴ Accordingly, we grant Counts II, III, and IV of CenturyLink's Complaint.⁷⁵

16. Because CenturyLink has not requested damages in its Complaint⁷⁶ and intends to pursue damages in court,⁷⁷ we do not address the issue of damages in this Order.⁷⁸ We further dismiss CenturyLink's request for "costs associated with [its] claims."⁷⁹ The request is vague and unsupported by any legal analysis supporting a right to seek costs at the Commission.⁸⁰ CenturyLink can pursue its request with the Court.

B. The Commission Has Jurisdiction to Address Peerless's Liability Under the Act

17. Having explained our determination that Peerless has violated sections 201(b) and 203 by imposing access charges not authorized by its Tariff, we now address Peerless's objection that the Commission lacks jurisdiction to reach that determination. Peerless does not appear to dispute that the Commission has jurisdiction to decide the scope of Peerless's Tariff. The scope of the Tariff was a question that CenturyLink specifically requested the Court refer to the Commission, and the Court granted CenturyLink's motion in full.⁸¹ Peerless argues, however, that the Commission lacks jurisdiction to grant relief requested in the Complaint that extends "beyond the District Court's request that the Commission answer three specific questions set forth in the Referral Order."⁸² Most significantly, Peerless contends that the Commission lacks jurisdiction to decide whether, having assessed charges for

⁷⁴ See *AT&T v. YMax*, 26 FCC Rcd at 5755, para. 34, n.105 (finding that YMax's violation of section 203(c) of the Act constitutes an unreasonable practice that violates section 201(b)); *AT&T v. All American*, 28 FCC Rcd at 3492-93, paras. 35-36 (finding a violation of sections 203 and 201(b) of the Act by billing for services not provided pursuant to a valid and applicable tariff).

⁷⁵ Because Peerless's Tariff does not allow Peerless to charge end office access charges when neither Peerless nor its VoIP partners physically interconnect to the last-mile facilities used to serve end users, we need not address CenturyLink's claim, in Count I, that Peerless violated section 201(b) by assessing end office charges in contravention of the *2019 VoIP Symmetry Declaratory Ruling*. Granting Counts II, III, and IV affords CenturyLink all of the relief to which it is entitled, and we dismiss Count I without prejudice.

⁷⁶ See Complaint at 84, para. 241. See also 47 CFR § 1.723(a) ("the complaint must contain a clear and unequivocal request for damages").

⁷⁷ See Reply in Support of Motion to Refer OTT-VoIP Issues to FCC Under Primary Jurisdiction, *CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al.*, Case No. 1:18-cv-03114 (N.D. Ill. June 23, 2021) ("The referral to the FCC will not require a separate proceeding for damages Once the FCC has decided the [referred issues], the case can return to this Court for application and resolution of all remaining disputes between the parties.") (ECF No. 240).

⁷⁸ See *April 26th Letter Ruling* at 2 (waiving the requirements of 47 CFR § 1.723 ("Damages") based on CenturyLink's representation). See also Complaint, Tab B (Intake Form) (answering "N/A" to statement "If damages are sought, the Complaint comports with the specifications prescribed by 47 CFR § 1.723").

⁷⁹ See Complaint at 84, para. 242. See also Answer Legal Analysis at 81-84.

⁸⁰ See 47 CFR §§ 1.721(b) (requiring "[a]ll matters concerning a claim, defense or requested remedy [in a pleading], including damages" to be "pleaded fully and with specificity"), (e) (requiring legal arguments in pleadings to be "supported by appropriate statutory, judicial, or administrative authority"); 1.722(e) (requiring complaints to contain "[l]egal analysis relevant to the claims and arguments set forth therein").

⁸¹ See *supra* para. 7.

⁸² Answer Legal Analysis at 81.

services not described in the Tariff, “Peerless violated any law.”⁸³ According to Peerless, the Court has neither “divested itself of its existing jurisdiction to adjudicate [CenturyLink’s] . . . OTT-VoIP claims” nor “given the FCC authority to make any award or judgment in favor of or against Peerless or [CenturyLink] on the OTT-VoIP legal claims.”⁸⁴

18. Peerless’s view of the Court’s primary jurisdiction referral is overly narrow. As the United States Supreme Court explained in *Reiter v. Cooper*, the primary jurisdiction doctrine applies to “claims properly cognizable in court that contain some issue within the special competence of an administrative agency.”⁸⁵ “It requires the court to enable a ‘referral’ to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling.”⁸⁶ The *Reiter* Court noted that “referral” is an imprecise term that is “sometimes loosely described as a process whereby a court refers an issue to an agency.”⁸⁷ Most organic statutes contain “no mechanism whereby a court can on its own authority demand or request a determination from the agency; that is left to the adversary system”⁸⁸ Instead, “the court merely stays its proceedings”⁸⁹ while a party files an administrative complaint. Because the Act contains no mechanism allowing a court to “demand or request” a determination from the Commission, a court simply directs litigants to initiate an administrative proceeding before the Commission seeking resolution of particular issues.

19. The Commission has broad discretion to structure its proceedings to maximize fairness, promote efficiency, and conserve resources.⁹⁰ This discretion extends to establishing procedures to address primary jurisdiction referrals. The Commission determines the means by which it handles matters referred by a court under primary jurisdiction doctrine through an “assessment of the procedural history and nature of the issues involved.”⁹¹ In cases involving common carriers, primary jurisdiction

⁸³ *Id.* at 82. Peerless also contends that the Commission may not entertain CenturyLink’s request, in its Complaint, for “costs.” *Id.* Because we dismiss CenturyLink’s request for costs on other grounds, we focus our response to Peerless’s jurisdictional objection on whether the Commission may entertain CenturyLink’s claims that Peerless violated sections 201(b) and 203 of the Act by assessing charges for services not described in the Tariff.

⁸⁴ *Id.* at 83.

⁸⁵ *Reiter v. Cooper*, 507 U.S. 258, 268-69 (1993).

⁸⁶ *Id.*

⁸⁷ *Id.* at 268, n.3.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ See 47 U.S.C. §§ 4(i) (“The Commission may perform any and all acts . . . as may be necessary in the execution of its functions.”), 4(j) (“The Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”), 208(a) (“[I]t shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.”). See also *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22501, para. 5 (1997) (“Commission staff retains considerable discretion under the new rules to, and is indeed encouraged to, explore and use alternative approaches to complaint adjudication designed to ensure the prompt discovery of relevant information and the full and fair resolution of disputes in the most expeditious manner possible.”); *id.* at 22510, n.68 (“We emphasize again that the staff retains considerable discretion to use alternative approaches and techniques designed to promote fair and expeditious resolution of complaints.”).

⁹¹ See 47 CFR § 1.739(a) (requiring parties to a case involving claims under the Act that has been referred to the Commission to contact the Enforcement Bureau for guidance before filing any pleadings or otherwise proceeding before the Commission), (b) (stating that the Enforcement Bureau will assess the procedural history of the case and the nature of the issues involved in determining the procedural means by which the Commission will handle the referral). See also *Primary Jurisdiction Referrals Involving Claims Under the Communications Act*, Public Notice,

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referrals generally are “appropriately filed as formal complaints with the Enforcement Bureau pursuant to section 208 . . . of the Act.”⁹²

20. Consistent with this general practice, CenturyLink advised the Court, in its motion seeking a primary jurisdiction referral, that it would effectuate the requested referral by filing a formal complaint with the Commission.⁹³ After the Court granted CenturyLink’s motion, the Enforcement Bureau reviewed the Referral Order, the Court pleadings, and the parties’ written submissions.⁹⁴ Taking account of the relevant factors of law, policy, and practicality—including an extensive factual record specific to the parties, and the specific language of Peerless’s Tariff—the Enforcement Bureau agreed that a formal complaint proceeding was the appropriate process to effectuate the Court’s primary jurisdiction referral.⁹⁵

21. A party bringing a formal complaint to the Commission must assert that the defendant carrier committed violations of the Act.⁹⁶ CenturyLink advised the Court in its motion that it would file a formal complaint, and the Court granted that motion. The *Referral Order* specifically designated the scope of the Tariff as a subject of the Court’s referral, and Commission precedent is clear that assessing tariffed charges for services not specifically described in a tariff violates section 203(c) and section 201(b).⁹⁷ Thus, it is fully consistent with the Court’s primary jurisdiction referral for the Commission to determine not only that Peerless assessed charges for services not described in the Tariff, but that doing so violated the Act. Indeed, because the Commission “must” address issues “properly presented” in a complaint proceeding,⁹⁸ the Commission is required to decide the ultimate questions of liability that CenturyLink presents in Counts II through IV of the Complaint. We conclude in the circumstances here that addressing those questions will assist the Court and is consistent with the *Referral Order*. Peerless has identified no authority that contradicts this conclusion.

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29 FCC Rcd 738 (EB Jan. 30, 2014) (*PJR Public Notice*) (“The means by which the Commission handles matters referred by a court pursuant to the primary jurisdiction doctrine may vary according to the procedural history and nature of the issues in the referred matter.”).

⁹² *PJR Public Notice*, 29 FCC Rcd at 738. See 47 U.S.C. § 208(a) (“[a]ny person . . . complaining of anything done or omitted to be done by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition”). See also Reply at 73 (“[G]iven the Commission’s limited jurisdiction to hear claims for violations of the Communications Act, the referred issues must be framed in the context of the provisions of the Act that Peerless is violating.”).

⁹³ See Motion to Refer OTT-VoIP Issues to FCC Under Doctrine of Primary Jurisdiction at 2; Memorandum of Law in Support of Motion to Refer OTT-VoIP Issues to FCC Under Doctrine of Primary Jurisdiction at 2, 15, 16, *CenturyLink Communications, LLC et al. v. Peerless Network, Inc. et al.*, Case No. 1:18-cv-03114 (N.D. Ill. May 11, 2021) (ECF No. 232).

⁹⁴ See Letter to Anthony J. DeLaurentis, Special Counsel, Market Disputes Resolution Division, FCC Enforcement Bureau, from Henry T. Kelly, Counsel for Peerless (Apr. 18, 2022); see also Letter to Anthony J. DeLaurentis, Special Counsel, Market Disputes Resolution Division, FCC Enforcement Bureau, from Charles W. Steese, Counsel for CenturyLink (Apr. 21, 2022).

⁹⁵ See *April 26th Letter Ruling*. See also 47 CFR § 1.739(b).

⁹⁶ See 47 U.S.C. § 208(a) (“Any person . . . complaining of anything done . . . by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition”) (emphasis added).

⁹⁷ See *supra* paras. 7, 11.

⁹⁸ E.g., *AT&T v. FCC*, 970 F.3d 344, 354 (D.C. Cir. 2020); accord *AT&T Co. v. FCC*, 978 F.2d 727, 732 (D.C. Cir. 1992).

IV. ORDERING CLAUSES

22. Accordingly, IT IS HEREBY ORDERED, pursuant to sections 4(i), 4(j), 201(b), 203, 208, and 251(b)(5) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203, 208, and 251(b)(5), and sections 1.720-1.740, 51.913(b), 61.2 of the Commission's rules, 47 CFR §§ 1.720-1.740, 51.913(b), 61.2, that Counts II, III, and IV of the Complaint are GRANTED as described herein, and that this proceeding is TERMINATED.

23. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201(b), 203, 208, and 251(b)(5) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203, 208, and 251(b)(5), and sections 1.720-1.740, 51.913(b), 61.2, of the Commission's rules, 47 CFR §§ 1.720-1.740, 51.913(b), 61.2, that Count I of the Complaint is DISMISSED WITHOUT PREJUDICE.

24. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), 201(b), 203, 208, and 251(b)(5) of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 201(b), 203, 208, and 251(b)(5), and sections 1.720-1.740, 51.913(b), 61.2, of the Commission's rules, 47 CFR §§ 1.720-1.740, 51.913(b), 61.2, that CenturyLink's request for costs is DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Loyaan A. Egal
Chief
Enforcement Bureau