

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER U-31211

CENTURYTEL OF CENTRAL LOUISIANA, LLC D/B/A CENTURYLINK

VERSUS

MCIMETRO ACCESS TRANSMISSION SERVICES LLC
D/B/A VERIZON ACCESS TRANSMISSION SERVICES

Docket No. U-31211 In re: Petition for Declaratory Ruling on the compensation scheme applicable to ISP-bound traffic routed to MCI metro Access Transmission Services LLC d/b/a Verizon Access Transmission Services.

(Decided at the Commission's Business and Executive Session held April 20, 2011.)

Nature of the Case

CenturyTel of Central Louisiana, LLC d/b/a CenturyLink ("CenturyLink")¹ filed a request for a Declaratory Ruling finding that ISP-bound traffic originated by CenturyLink via Local Option Service ("LOS") and terminated by MCI metro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services ("Verizon") to Internet Service Providers ("ISPs") located outside of Louisiana is not subject to intrastate switched access charges, nor, in the absence of a Commission approved interconnection agreement between CenturyLink and Verizon, does CenturyLink owe any reciprocal compensation for ISP-bound traffic terminated by Verizon. The Small Company Committee of the Louisiana Telephone Association ("SCC") and the Louisiana Public Service Commission ("LPSC" or "Commission") Staff ("Staff") support CenturyLink's declaratory request and state that LOS traffic is a mandatory local service that should not be subject to switched access charges, and that ISP-bound traffic is not subject to reciprocal compensation charges absent an interconnection agreement between the service providers.²

Verizon argues that CenturyLink should be required to pay the intrastate switched access charges Verizon has billed for this traffic (plus late payment charges) because, Verizon asserts, it has applied its tariffs correctly and the tariffs, according to Verizon, do not conflict with any Commission rulings or other applicable law. Furthermore, Verizon urges that the Commission should not require Verizon to modify its access tariff on a going forward basis.

¹ Collectively, the CenturyLink petitioners are: CenturyTel of Central Louisiana, LLC d/b/a CenturyLink, CenturyLink of Chatham, LLC d/b/a CenturyLink, CenturyTel of East Louisiana, LLC d/b/a CenturyLink, CenturyTel of Evangeline, LLC d/b/a CenturyLink, CenturyTel of North Louisiana, LLC d/b/a CenturyLink, CenturyTel of Northwest Louisiana, Inc. d/b/a CenturyLink, CenturyTel of Southwest Louisiana, LLC d/b/a CenturyLink, CenturyTel of Southeast Louisiana, LLC d/b/a CenturyLink, and CenturyTel of Ringgold, LLC d/b/a CenturyLink.

² AT&T Louisiana initially intervened in this matter and subsequently changed its status to that of an Interested Party.

Jurisdiction

The source of the Louisiana Public Service Commission's jurisdiction over public utilities in Louisiana is found in Article IV, Section 21(B) of the Louisiana Constitution, which provides that

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

Pursuant to constitutional and statutory provisions, the Commission is given broad power to regulate the service of telephone utilities and may adopt all reasonable and just rules, regulations and orders affecting or connected with the service or operation of such business. *South Central Bell Tel. Co. v. Louisiana Public Service Commission*, 352 So.2d 999 (La. 1997).

The source of the requirement that an Incumbent Local Exchange Carrier ("ILEC") offer interconnection and resale services to a CLEC is found in the Telecommunications Act of 1996. The stated intent of the Telecommunication Act of 1996 is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." (*Telecommunication Act of 1996, Preamble, Pub. L. No. 104-404, 110 Stat. 56 (1996)*). In furtherance of this goal, a framework was established of mandated agreements between CLECs and ILEC.

The Louisiana Public Service Commission has promulgated Regulations for Competition in the Local Telecommunications Market, most recently amended by Corrected General Order Number R-30347 dated August 13, 2009. The Regulations in Section 901(F) reference 252(b) of the Telecommunications Act of 1996 and state that either party to the negotiation may petition the Commission to arbitrate any open issue to the negotiation.

Procedural History

On November 30, 2009, CenturyTel of Central Louisiana, LLC d/b/a CenturyLink ("CenturyLink") filed a Petition for Declaratory Ruling on the compensation scheme applicable to ISP-bound traffic routed to MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("Verizon"). The Petition was published in the Commission's Official Bulletin on December 11, 2009. Interventions were filed by BellSouth

Telecommunications, Inc. d/b/a AT&T Louisiana (“AT&T”), the Small Company Committee of the Louisiana Telecommunications Association (“SCC”) and Verizon. A Notice of Assignment and Notice of Status Conference was issued on January 8, 2010, noticing a status conference for January 26, 2010. At the January 26, 2010 status conference, a procedural schedule was established to address any motions to strike and to address the merits of the case. A hearing was scheduled for June 29 – 30, 2010. On February 1, 2010, AT&T filed a Motion to Change Status from Intervenor to Interested Party. On February 15, 2010, Verizon filed a letter addressing the SCC’s status and their participation in the proceeding.

On February 15, 2010 Verizon filed its Answer and Counterclaim and on March 5, 2010, CenturyLink filed its Answer to the Verizon’s Counterclaim. On May 17, 2010, Commission Staff filed an Unopposed Motion for Extension of Time to File Comments, requesting that the current date of May 20, 2010 for the filing of Staff and Intervenor Testimony / Comments be extended to May 28, 2010. On May 18, 2010, a Notice of Extension of Time to File Comments was issued. The SCC and Commission Staff filed its Comments in Support of CenturyLink on May 28, 2010. On June 2, 2010, Verizon filed an Unopposed Motion for Extension of Time. Subsequently a Notice of Extension of Time to File Comments was issued, extending CenturyLink and Verizon’s deadline to file their Replies to June 9, 2010 and extending the discovery cutoff date to June 14, 2010. Rebuttal Testimony of Guy E. Miller, III on behalf of CenturyLink and Peter H. Reynolds on behalf of Verizon was filed on June 9, 2010. Unopposed Motions for Leave to File Corrected testimony were received on June 15 and 16, 2010. Pre-Hearing Statements were filed on June 18, 2010. The hearing was held on June 29, 2010. Testimony was received by Guy Miller and Charles DiGiulian on behalf of CenturyLink, and Peter Reynolds on behalf of Verizon. A transcript of the hearing was filed on July 14, 2010, and a Notice of Availability of Transcript and Post-hearing Briefing schedule was issued on July 15, 2010. An Unopposed Motion for Leave to Supplement Hearing Record was filed by Verizon on August 13, 2010. Post-hearing briefs were received on August 16, 2010 and August 23, 2010. An Unopposed Motion for Extension of Time to file reply briefs was filed and granted on September 2, 2010. Post-hearing reply briefs were filed on September 10, 2010. A Proposed Recommendation was issued on December 10, 2010. An Unopposed Motion for Extension of Time to File Exceptions was filed on December 14, 2010 and granted on December 15, 2010. Verizon filed Exceptions to the Proposed Recommendation of the Administrative Law Judge on

January 14, 2011. Oppositions to Verizon's Exceptions were filed by CenturyLink, SCC, and Staff on January 31, 2011.

The Final Recommendation of the Administrative Law Judge was issued on April 8, 2011. The Final Recommendation of the Administrative Law Judge was considered at the Commission's Business and Executive Session held on April 20, 2011. On motion of Commissioner Field, seconded by Commissioner Holloway, and unanimously adopted, the Commission voted to accept the Administrative Law Judge's Recommendation and grant CenturyLink's request for Declaratory Ruling. Accordingly it was found that ISP-bound traffic originated by CenturyLink via Local Option Service and terminated by Verizon to Internet Service Providers located outside of Louisiana is not subject to intrastate switched access charges, nor, in the absence of a Commission approved interconnection agreement between CenturyLink and Verizon, does CenturyLink owe any reciprocal compensation for ISP-bound traffic terminated by Verizon.

Summaries of the Parties' Positions

CenturyLink

CenturyLink requests a declaratory ruling from the Commission that ISP-bound traffic originated by CenturyLink via Local Optional Service and terminated by Verizon to Internet Service Providers is not subject to intrastate switched access charges, and further that, CenturyLink does not owe any reciprocal compensation for ISP-bound traffic terminated by Verizon. It would be, CenturyLink urges, contrary to Commission and Federal Communications Commission ("FCC") policy objectives to allow for the imposition of intrastate access charges on ISP-bound LOS traffic. The Louisiana Commission has, CenturyLink declares, mandated that CenturyLink offer LOS service. CenturyLink points out that it does not pay intrastate switched access charges for terminating ISP-bound LOS traffic to other local exchange carriers.

CenturyLink argues that Verizon's intrastate access tariff cannot be applied to ISP-bound traffic as ISP-bound traffic has been classified as jurisdictionally interstate by the FCC.³ The FCC employed an end-to-end analysis and concluded that ISP-bound traffic is subject to FCC

³ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68 (Rel. April 27, 2001)(" ISP Remand Order") and subsequent In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Developing a Unified Intercarrier Compensation Regime, Intercarrier Compensation for ISP-bound Traffic, CC Docket Nos. 96-45, 96-98,99-2000 and 01-92 (Rel. November 5, 2008)("Order on Remand").

oversight because the traffic is jurisdictionally interstate in nature; the calls do not terminate to local ISPs, rather they terminate to the internet. The D.C. Circuit Court of Appeal upheld the Order on Remand in January of 2010, finding that the FCC's analysis was reasonable. CenturyLink points out that Staff agrees that ISP-bound traffic is jurisdictionally interstate in nature, a position that is consistent with the decision made by the Louisiana Commission, the only time it considered the matter, in the KMC Telecom Order (Order No. U-23839 dated October 28, 1999).

The FCC has recognized the potential for arbitrage in assessing intercarrier compensation for ISP bound traffic. Due to the one-way unbalanced nature of ISP-bound traffic, a reciprocal compensation arrangement would create incentives for CLECs to sign up ISPs. "This undermined the operation of competitive markets because competitive LECs were able to recover a disproportionate share of their costs from other carriers." (*Order on Remand*, at paragraph 24) CenturyLink urges that such arbitrage be avoided in the current instance. The one-way nature of the traffic and the long duration of the calls, CenturyLink argues, warrants a bill and keep, rather than a switched access or reciprocal compensation scheme.

CenturyLink states that Verizon is attempting to apply the terms of its intrastate access services tariff to traffic that terminates "outside of the State and therefore is unquestionably interstate by FCC classification." (CenturyLink Post-Hearing Brief at 5) Regardless of the terms or interpretation of Verizon's tariff, CenturyLink asserts, "an intrastate tariff cannot govern the treatment of interstate traffic." In addition to the jurisdictionally interstate nature of all ISP-bound traffic, CenturyLink states, Verizon's tariff could not apply in this particular instance because the subject traffic does not terminate in Louisiana. Verizon has assigned virtual NXX numbers to Verizon's ISP customers that are not even located in Louisiana. CenturyLink argues that Verizon has not met its burden of showing that its customers, the ISP, are located within the state in order to demonstrate that an intrastate access tariff might be appropriate. Verizon's tariff provides, "Regulations and schedule on intrastate charges apply to access services in the State of Louisiana."⁴ Verizon is unable to show calls from a customer's premises location to an end user's premises in Louisiana as required by Verizon's tariff.

CenturyLink cites to several recent cases in which a Verizon ILEC affiliate, contrary to the position taken by Verizon in this docket, argued successfully against the imposition of

⁴ Verizon Tariff, 1st revised page n. 1, effective October 1, 2008. This same language has appeared in each version of the Verizon Tariff since 2004.

termination charges for ISP-bound traffic. In *GlobalNAPs Inc. v. Verizon New England Inc.*, 603 F.3d 71, (1st Cir. (Mass.) Apr 29, 2010), where the CLEC assigned its ISP customers VNXX numbers which appeared to be local but which to a large extent were located outside of the caller's local calling area, the Court upheld the Massachusetts Department of Telecommunications and Energy's ruling requiring the CLEC to inform Verizon of its customers actual locations so that it could be properly billed.

CenturyLink takes issue with Verizon's assertion that LOS is an "optional" service and therefore not included under local traffic. CenturyLink argues that the Louisiana Commission defines LOS as a mandatory local calling plan, as for example in LPSC Docket No. U-20883-C, when it states that, "The provision of service as defined in Section 501.A.22 tracks the elements and features of the **Local Optional Service ("LOS") calling plans that all incumbent local exchange carriers ("ILECS") must provide throughout the State of Louisiana.**" LOS calls are 7 digit dialed local calling, not 10 digit out of area dialing. CenturyLink urges that the billing of terminating switched access for ISP-bound LOS traffic is contrary to Commission and FCC policy and orders.

In its Opposition to Verizon's Exceptions to Proposed Recommendation, CenturyLink states that it agrees with the Proposed Recommendation, asks that Verizon's Exceptions be denied in their entirety, and requests that the Proposed Recommendation be affirmed by the Commission. CenturyLink asserts that Verizon's interpretation of its intrastate tariff lacks logical basis. CenturyLink points out that Verizon's own tariff expressly excludes mandatory EAS from imposition of switched access charges. There is no compelling reason to interpret "optional" as pertaining only to the customer rather than the provider and, CenturyLink argues, it is contrary to Commission precedent. Verizon's characterization of its imposition of terminating switched access charges on ISP-bound LOS traffic as "consistent with industry practice," is, CenturyLink states, "simply without basis." Neither CenturyLink, nor other SCC carriers pay intrastate switched access charges for terminating ISP-bound LOS traffic to other local exchange carriers. CenturyLink states it uses a bill-and-keep arrangement for ISP-bound LOS traffic which is consistent with industry standards. As Verizon never negotiated any other arrangement, it could not, CenturyLink argues, have any reasonable expectation of receiving any other type of compensation.

According to CenturyLink, Verizon's tariff is inapplicable to ISP-bound LOS traffic as the calls in dispute are routinely routed and terminated to location outside the state of Louisiana. CenturyLink asserts that Verizon is incorrectly attempting to apply the terms of its intrastate tariff to traffic that is interstate by FCC and Commission classification. Not only has the FCC employed an end-to-end analysis, and consistently held that traffic routed to ISPs is jurisdictionally interstate in nature and subject to FCC oversight, the traffic physically terminates outside of the State of Louisiana. CenturyLink states that the Proposed Recommendation treats ISP-bound traffic consistently with Commission precedent and relevant case law. CenturyLink points out that the Proposed Recommendation does not modify the terms of Verizon's Tariff as Verizon's Tariff is itself inapplicable to rate the traffic at issue due to the interstate nature of the traffic. At any rate, CenturyLink declares, the filed-rate doctrine does not preclude challenges to a utility's misapplication of its tariff.

Small Company Committee

The Small Company Committee of the Louisiana Telecommunications Association ("SCC") joins in, and adopts as its own, the position and arguments advanced by CenturyLink in its Post-Hearing Brief. The SCC strongly recommends that the Commission issue a ruling finding that ISP-bound traffic originated by CenturyLink via LOS and terminated by Verizon to an ISP is not subject to intrastate switched access charges. The SCC also urges that in the absence of a Commission-approved interconnection agreement between CenturyLink and Verizon that voluntarily provides to the contrary, CenturyLink does not owe any reciprocal compensation for ISP-bound traffic terminated by Verizon.

In its Opposition to the Exceptions filed by Verizon, the SCC states that it concurs with the Proposed Recommendation of the Administrative Law Judge and adopts as its own the Opposition to Verizon's Exceptions filed by CenturyLink. The SCC requests that the Commission deny Verizon's Exceptions and uphold the Proposed Recommendation.

Verizon

Verizon asserts that the Commission should deny CenturyLink's request and should require CenturyLink to pay the intrastate switch access charges Verizon has billed, plus late payment charges. Furthermore, Verizon declares, the Commission should not require Verizon to

modify its access tariff on a going forward basis. Verizon argues that it properly applies its tariffs, and that the tariffs do not conflict with any Commission rulings or other applicable law. Verizon's tariff has distinguished between optional and mandatory EAS since 2006. Verizon contends that it may apply access charges to optional EAS LOS calls, while it does not do so for EAS calls within mandatory extended areas, and that it may apply its access tariffs to traffic bound to ISPs in the same manner as for other customers. In Verizon's view, the Commission has made the same distinction as Verizon's tariffs, by making clear that LOS must be optional, not mandatory, for customers. Verizon argues that the Commission's authorization of the LOS Preservation Fund (LPSC Order No. U-17949-N dated October 18, 1991) should be seen as demonstrating Commission approval of access charges for calls to LOS areas.

Verizon asserts that "the FCC has stated that its intercarrier compensation rulings concerning ISP-bound traffic do not apply to traffic that terminates outside the calling party's local calling area." (Verizon Pre-Hearing Statement at 4), and that the Courts have agreed. Verizon argues that it may apply its access tariffs to traffic bound for ISPs in the same manner as for other customers. Verizon states that it follows industry practice in rating traffic based on the calling and called parties' NPA-NXXs, not the actual physical location. Verizon asserts that its tariffs are consistent with sound public policy. Verizon points out that CenturyLink would generate revenue from LOS traffic, and that there is declining dial-up internet traffic, which would limit possible impact of a decision in Verizon's favor. Verizon suggests that there is a CenturyLink affiliate that offers a long distance calling plan that could be used to reduce costs for LOS customers. Verizon states that it has provided call detail records enabling CenturyLink to verify the accuracy of the bills presented, and asks that CenturyLink be required to pay all past due access charges along with late payment charges.

In its Exceptions to the Proposed Recommendation, Verizon asserts that CenturyLink should be required to pay the billed charges, that Verizon applied its switched access tariffs correctly, and that the Proposed Recommendation fails to adequately address evidence presented by Verizon. Verizon continues to deny that LOS is a local service, as under Verizon's Tariff, Commission-mandated LOS areas are specifically excluded from Verizon's concept of local service. Verizon continues to urge that the LPSC is bound by the prohibition against retroactive ratemaking from refusing to enforce the Verizon tariff.

Commission Staff

Staff supports CenturyLink's request for a declaratory ruling finding that ISP-bound traffic originated by CenturyLink via Local Optional Service and terminated by Verizon is not subject to switched access or reciprocal compensation charges. Staff argues that the Commission's distinction between mandatory and optional extended area service exchanges has no bearing on the status of LOS as a mandatory local service. Staff states that both the Commission and the Staff have historically classified LOS as a Commission-mandated local service, and not as an intraLATA service subject to switched access charges. Because Commission orders repeatedly define LOS as local traffic, Staff argues, this traffic should not be subject to switched access charges even though customers have a choice whether to purchase this service. Service providers are required by the Commission to offer LOS, Staff therefore agrees with CenturyLink that LOS is a mandatory service.

Staff asserts that the traffic at issue should not be subject to reciprocal compensation charges due to extant Commission precedent, due to Verizon's ISP customers' lack of a physical presence in Louisiana, and due to the lack of an interconnection agreement between CenturyLink and Verizon. Staff believes that ISP-bound traffic is jurisdictionally interstate in nature, and Staff points out that the FCC has continued to find that ISP-bound traffic exchanged in the same local calling area is jurisdictionally interstate in nature. The Commission determined in the KMC Telecom Order (Order No. U-23839 dated October 28, 1999) that reciprocal compensation was not required by law for ISP-bound traffic, and exempted such traffic from reciprocal compensation charges in the absence of an interconnection agreement that provided for it. Staff states that it cannot support Verizon's claim that calls placed to a virtual NXX number outside Louisiana can be considered "local" call for reciprocal compensation purposes.

In its Opposition to Verizon's Exceptions, Staff states that it concurs in the reasoning of the Tribunal's Proposed Recommendation and contends that Verizon's Exceptions should be denied in their entirety. Staff asserts that the Proposed Recommendation correctly recognizes that LOS is a local service, historically characterized by the Commission as a 7-digit dialed, tariffed basic local service, not as an intraLATA service. Staff agrees that Verizon cannot apply intrastate switched access charges because the traffic terminates outside the boundaries of Louisiana. Because Verizon's tariff does not rightly apply to the traffic at issue, Staff states, the Proposed Recommendation does not engage in retroactive ratemaking as suggested by Verizon.

Findings of Fact

On November 30, 2009, CenturyTel of Central Louisiana, LLC d/b/a CenturyLink ("CenturyLink") filed a Petition for Declaratory Ruling on the compensation scheme applicable to ISP-bound traffic routed to MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("Verizon").

The Petition was published in the Commission's Official Bulletin on December 11, 2009. Interventions were filed by BellSouth Telecommunications, Inc. d/b/a AT&T Louisiana ("AT&T"), the Small Company Committee of the Louisiana Telecommunications Association ("SCC") and MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services.

A hearing was held on June 29, 2010. Testimony was received by Guy Miller, Director of Carrier Relations Strategy and Policy, and Charles DiGiulian, Director of Carrier Access Billing, on behalf of CenturyLink, and Peter Reynolds, Director, National Carrier Contracts and Initiatives, for Verizon Service Operations, on behalf of Verizon.

CenturyLink is made up of nine incumbent Local Exchange Carriers, CenturyTel of Central Louisiana, LLC, CenturyTel of Chatham, LLC, CenturyTel of East Louisiana, LLC, CenturyTel of Evangeline, LLC, CenturyTel of North Louisiana, LLC, CenturyTel of Northwest Louisiana, Inc. CenturyTel of Southwest Louisiana, LLC, CenturyTel of Southeast Louisiana, LLC and CenturyTel of Ringgold, LLC providing service in Louisiana, as well as a long distance affiliate, and a CLEC operation.

Verizon is a Competitive Local Exchange Carrier ("CLEC") providing facilities based services in the local exchange areas of AT&T Louisiana. Verizon does not provide local services within CenturyLink's territory. Verizon does exchange traffic with CenturyLink when their customers call one another.

"Switched access is a service provided by Local Exchange Carriers to other carriers, usually interexchange carriers for originating or terminating interexchange calls. Access charges generally apply to calls that begin and end in different local calling areas. Intrastate access charges apply to calls that originate and terminate in different local calling areas within the same state and are regulated by state commissions." (Reynolds, Corrected Testimony at 5)

The calls at issue in this docket are calls to Internet Service Providers which are characterized by one way communication and long duration.

Verizon has assigned these ISP customers virtual NXX numbers, so that the customers appear to be located within the extended calling area of CenturyLink customers, but are in fact in out of state locations.

A call originated by a CenturyLink customer goes to an AT&T tandem as Verizon is not directly connected to CenturyLink. When the call leaves the AT&T tandem it goes to a Point Of Interconnection ("POI") with Verizon and Verizon puts the call into its cloud that includes switching facilities in New Orleans. The call is routed to an ISP server farm or modem bank which is located outside of Louisiana. From the ISP the customer accesses the web and goes anywhere in the world.

Verizon argues that the call is terminated for telecom services at its POI. "Where it goes beyond our POI and into the world wide web, you don't know." (Tr. Reynolds at 115) It is Verizon's position that for intercarrier compensation purposes, the call terminates when Verizon's network interconnects with AT&T's network. (Tr. Reynolds at 115)

All other Parties follow the end-to-end analysis of calls to ISPs undertaken by the FCC and state that ISP-bound traffic is jurisdictionally interstate in nature. The call continues from point of origin and ultimately terminates in the world wide web.

History of Dispute

The dispute was initiated in late 2004. Verizon first billed CenturyLink in December of 2004 (DiGiulian Direct at 6) for a bill period beginning with November 2004. (Tr. O’Roark at 97)

Mr. DiGiulian at CenturyLink began questioning Verizon’s access billing for asserted “optional” EAS traffic in a number of states including Louisiana in January of 2005. (DiGiulian at 6)

Mr. DiGiulian called the 8XX number provided on Verizon’s invoices for billing inquiries. No specific individual’s name was listed in association with the telephone number for disputes and no e-mail address was provided. Mr. DiGiulian testified that, “Since the bills alone lacked sufficient information upon which to validate the charges, each time I called, I left a voice message requesting backup information to support the billed charges.” (DiGiulian at 6)

CenturyLink received no follow up from the messages left by Mr. DiGiulian. Mr. DiGiulian stated, “I do not remember how many calls I made but I do remember calling and leaving messages for Verizon multiple times over a several month period.” Mr. DiGiulian was not directed to Verizon’s access tariff. (Tr. DiGiulian at 102-103) Mr. DiGiulian did not get a call back from the billing department for additional detail regarding billing, and he did get calls from the collection side of the house.

Verizon Intermedia Communications, Inc. (“Intermedia”) tariff Sec. 2.5.2 states that a customer may notify the Company of disputed items within an invoice within 90 days of receipt. If the complaint is not resolved to the parties’ mutual satisfaction then the customer can bring the dispute to the Commission. Mr. DiGiulian stated he did not look at the tariff, instead he called the 800 number for billing inquires provided on the bill.

The first responsive contact was in May of 2006. In e-mail correspondence, Ms. Lisa Jones for Verizon and Mr. DiGiulian for CenturyLink agreed that since the general dispute covered quite a large number of states and an even larger number of CenturyLink affiliates, they should prioritize the dispute resolution and work on the largest balances first. Ms. Jones said that she would be providing call detail records that had been requested for the state of Missouri first, based on the volume of billing data for that state. The parties were to look at it a state at a time, starting with the largest amount.

An e-mail was received from Ms. Jones on May 31, 2006 wherein she stated that the request for call detail records had been made to her IT department. (DiGiulian at 7)

In an e-mail received from Ms. Jones on August 23, 2006, according to Mr. DiGiulian, “Ms. Jones told me that the call detail records for Missouri were not available yet, but that internal research had revealed that Verizon had been billing incorrectly for Missouri and the balance in dispute had been credited in full.” (DiGiulian at 7)

“In Missouri and Louisiana both, Verizon had been billing terminating state access on ISP-bound calls from consumers in a CenturyLink exchange who also chose to subscribe to an expanded local calling service mandated by the state commission. In 2006, the Verizon representatives authorized to handle this dispute at that time did agree with CenturyLink’s position that an expanded local calling area that was greater than EAS but that had also been mandated by Commission order was not ‘optional’ EAS and that terminating state access could not be billed on ISP-bound traffic within the same.” (DiGiulian at 8)

On September 1, 2006, Mr. DiGiulian sent a follow-up e-mail outlining various reasons why the remaining invoices were still being disputed. (There was no response for almost a year and a half.) (DiGiulian at 8)

Mr. DiGiulian was given the name of Rose Blomfeldt as having taken over the dispute responsibilities for Verizon from CenturyLink’s long distance affiliate company who Verizon was billing as well. DiGiulian sent Ms. Blomfeldt an email on February 4, 2008

outlining specific issues with the Louisiana billing. No response was received from Verizon. Mr. DiGiulian sent a follow-up e-mail on March 19, 2008.

Mr. DiGiulian received a letter on March 27, 2008 from Jamie Dylenski. Ms. Dylenski proposed setting up a time to discuss the outstanding bills for ~~all~~ of the states in question including Louisiana. With her correspondence, Ms. Dylenski included call detail records for all of the states. (DiGiulian at 8) Verizon provided call detail records for Louisiana traffic on March 27, 2008. (Reynolds at 11)

A letter from Jeffrey Glover to Peter Reynolds dated July 24, 2008 stated: "In summary please regard this as notice of CenturyTel's dispute of MCImetro's billing for ISO bound traffic in all states."

After a few calls to discuss respective dispute positions, Mr. Miller took over the escalated dispute discussion for CenturyLink and Mr. Peter Reynolds took over for Verizon. Mr. Miller and Mr. Reynolds had multiple calls and e-mail exchanges until CenturyLink reached the point of filing its Petition with the Commission. (DiGiulian at 8-9)

Verizon's billing did not specify which CenturyLink entity they were invoicing. In Louisiana there are nine separately regulated ILEC properties, a long distance affiliate, and a CLEC operation.

It would be labor intensive for CenturyLink to go through the Call Detail Records ("CDRs") as there are thousands of these. According to Mr. DiGiulian, "all those minutes that are on the Bell. You know there are several million minutes, then they are made up of thousands of these individual CDRs. First of all I'd have to request CDRs on a monthly basis, which I am sure Verizon doesn't want to go through the expense of supplying." (Tr. DiGiulian at 105)

CenturyLink has not been billed access charges by any other CLEC for ISP-bound traffic carried via LOS.

During the course of this proceeding in Louisiana, Verizon provided additional call detail records.

Neither Party has pursued resolution of the dispute in an entirely expeditious manner.

According to Verizon, it appears that there is not a significant dispute concerning the volume of disputed traffic. (Reynolds at 15) However, CenturyLink questions the factoring that is being applied to the Billing Account Number ("BAN") based on its understanding of industry practices.

The Intermedia Tariff switched access rate of \$.91680/MOU was applied to the traffic in question that Verizon terminated from October 2004 through March 2006. The Verizon Tariff rate of \$.009798/MOU was applied to the disputed traffic from April 2006 forward. (Reynolds at 16)

According to Verizon, CenturyLink owes \$605,329 for the disputed traffic through the April 10, 2010 invoice, plus late payment fees of \$260,848, for a total of \$866,177. (Reynolds at 16) CenturyLink continues to dispute that it owes any of the fees or interest.

Verizon calculated claimed late payment fees by applying an annual percentage rate of 18% each month to the balance due. (Reynolds at 16) CenturyLink states that Verizon has added late payment charges to this claim that were not even previously billed.

LPSC Orders

In Order No. U-17949-B, dated June 16, 1989, the LPSC established a Local Optional calling plan Service for all Local Exchange Carriers ("LECs") which became known as "LOS."

In the U-17949-B Order the Commission stated that “the plan is essential to modernize telephone tariffing in rural areas, facilitate the flow of information in these areas, and reduce the inequities that result from the application of tolls to intrastate telephone calls of short distances.”

Order No. U-17949-N explained that there were “two LOS offerings, basic LOS and LOS B” and that “LOS provides a mechanism for rural Louisiana telephone subscribers to complete what formerly were toll calls at greatly reduced rates”.

In Order No. U-17949-N the Commission ordered that “There be established a 40 mile 7 digit local calling area for all Louisiana customers and all calls made within such calling area shall be local calls.” Additionally, in Order No. U-17949-N, the Commission specifically moved LOS into carriers local tariffs.⁵

In LPSC Order No. U-20883 Subdocket C, the Commission defined LOS as a type of calling plan, “that all incumbent local exchange carriers must provide throughout the State of Louisiana.”

The Commission’s definition of local service area included in the Commission’s Local Competition Regulations, reads, in part, “The geographic area in which end users may place telephone calls without incurring toll charges which includes a flat rate calling area.”

Section 401.C.7 of the Commission’s Local Competition Regulations states that, “A tariff filing that is designed to alter or modify any Commission order, rule, regulation, policy or procedure in any way is prohibited.”

CenturyLink implemented LOS in response to Commission Orders. The Commission made a determination that it was in the best interests of the public to have an expanded calling scope especially for rural consumers, and required all of the incumbent companies including CenturyTel to implement the expanded calling area service.

CenturyLink affiliates offer EAS plans and LOS-A and LOS-B plans. It is mandated by the LPSC Orders that local carriers, including CenturyLink, offer these services.

Under the LOS plan, subscribers statewide could take advantage of **extended local calling** for calls that previously were billed as toll calls....The LPSC found that the implementation of LOS was to be a major step in making such calls more “local” in nature. (*Voicestream GSMI v. LPSC*, 943 So.2d 349, (La. 11/29/06) citing LPSC Order No. 23267)

The Louisiana Public Service Commission is entitled to deference in its interpretation of its own rules and regulations. *Hopkins d/b/a Old River Water Company v. Louisiana Public Service Commission*, 41 So.3d 479 (La. 5/19/10) citing *Plantation v. LPSC*, 685 So.2d 107 (La. 1/14/97) The Commission's interpretation and application of its own orders deserve great weight because the Commission is in the best position to apply them.

⁵ In Order No. U-17949-N, the Commission adopted the “40- mile 7 digit local calling area” under certain guidelines. Those guidelines were:

- a) All calls within 40 miles of customers central office shall be local calls to be completed with 7 digit dialing.
- b) The rates and services and conditions associated with these calls shall be moved into the local tariffs of the LECs.
- c) The prices for these calls (as well as those classified as “local” today) shall be unchanged.
- d) The establishment of the 40 mile 7 digit local calling area shall not be construed as endorsing measured service for basic exchange calling and all basic exchange service being offered on a flat rate basis shall remain in effect.
- e) All customers may continue to subscribe to LOS or LOS0B on an optional basis.
- f) 10XXX calls within the 40 mile band shall not be blocked by the LECs/
- g) South Central Bell and any LEC adopting the 40 mile plan shall inform customers in recordings used to advise them of the implementation of seven digit dialing that calls outside the base rate area will still be charged on a measured rate basis and shall otherwise inform customers of this fact in bill inserts and advertisements; if any of these actions appear impractical, the companies may apply for a waiver of this requirement by filing a request with the Commission.

Entergy Louisiana, LLC v. Louisiana Public Service Commission, 990 So.2d 716, (La. 7/1/08) citing *Dixie Electric Membership Corp. v. Louisiana Public Service Commission*, 441 So.2d 1208, 1211 (La.1983).

LOS

LOS plans create expanded local calling areas. The consumer has the option whether or not to subscribe to LOS service. If a customer subscribes to LOS service, then calls to the local optional service area will be rated as local. The LOS plan dictates what are the boundaries of a customer's local calling area.

Verizon's Tariff, Section 8113, defines a mandatory local calling area as, "the geographic area determined by the Commission to comprise the end users; local calling area."

LOS is a capped measured local service plan. LOS is seven digit local dialing.

If a customer does not subscribe to LOS service, then calls to the LOS area will be rated as toll, and must be dialed as 1+ or 0+ (ten digit numbers). The call will be carried by the picked interexchange carrier, and would be a toll call.

The Louisiana Commission mandated how LOS was to be funded and by whom and for what purpose.

Century Link sends LOS traffic to the AT&T tandem. AT&T forwards the traffic to Verizon as local traffic.

CenturyLink and AT&T pay each other access on LOS calls pursuant to a Commission ordered settlement process. The LOS Preservation Plan came after the Commission's Order in Docket No. U-17848-N. CenturyLink and AT&T Louisiana pay access only for voice calls, **they do not pay access for ISP-bound calls.**

AT&T and CenturyLink have devised a methodology for distinguishing ISP-bound traffic from voice traffic. CenturyLink is able to distinguish LOS traffic from non-LOS traffic based upon customer detail that is resident in the billing system.

FCC Orders

In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68 (Rel. April 27, 2001) the FCC did an end-to-end analysis of ISP-bound traffic and found ISP-bound traffic to be jurisdictionally interstate in nature.

The FCC expressed a preference for a bill and keep compensation scheme for ISP-bound traffic. The FCC instituted rate caps for ISP-bound traffic. If a state had already determined that reciprocal compensation did not apply to ISP-bound traffic, then the FCC ordered that bill and keep would be applicable until such time as the FCC established broader intercarrier compensation reform.

In the ISP Remand Order, the FCC found that the one-way nature of ISP-bound traffic creates significant arbitrage opportunities. Due to the unbalanced nature of ISP-bound traffic, the Commission observed that reciprocal compensation arrangements created enormous incentives for competitive LECs to sign up ISPs as customers and to profit not from competition, but from fees from other carriers.

In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 96-98 and 99-68 (Rel. Nov. 5, 2008) the FCC continued to view ISP-bound traffic as jurisdictionally interstate in nature and maintained the intercarrier compensation scheme set forth in the original ISP Remand Order.

The FCC Remand Order again addresses the jurisdiction of ISP-bound traffic as a policy for all ISP-bound traffic. The FCC Remand Order specifically set a compensation scheme for locally terminated ISP calls.

Verizon Michigan successfully argued at the Sixth Circuit that it could not be billed reciprocal compensation under a tariff when the CLEC sought to bypass the federal obligation to negotiate local compensation terms.

ISP-Bound

Mr. DiGiulian testified that the majority of calls at issue were to ISP numbers. He described how CenturyLink determined that they were ISP-bound calls. "We sampled a number of those to determine that when we call those numbers we would get the modem tone that would indicate that an ISP. You can look at the conversation time as well. There were hundreds of examples where the conversation time were lengthy – were in excess of 2,000 minutes on an individual call so obviously somebody must have been downloading something for an extremely long time for those types of calls. And there was, you know, like I said, hundreds of these types of examples so." (Tr. DiGiulian at 89-90)

Three-to-one ratio is a ratio that was established by the FCC that essentially provides that a company can report up to three times the originating voice traffic as presumptively local reciprocal compensation traffic, and that everything above that is ISP traffic that is subject to a rate determined by the FCC. Mr. O'Roark and Mr. DiGiulian agreed. (Tr. at 96)

AT&T does identify ISP-bound traffic dialed under LOS plans and excludes it from any billing, including billing transiting.

Virtual NXX

The assignment of a telephone number to a customer in one exchange where the customer is physically located somewhere else, but will appear to the caller to be present in the exchange, is known as Virtual NXX or VNXX. Verizon and CenturyLink offer Virtual NXX.

The traffic at issue in this docket is not only ISP-bound, it is traffic bound to an ISP located outside of the State of Louisiana, whose actual physical location is obscured by assigning it a virtual NXX

In its Response to CenturyLink's Data Request 1-7, Verizon admits that all Louisiana ISP-bound traffic is carried to Dallas/Fort Worth, Texas before being forwarded to ISP locations.

Verizon New England won a First Circuit case in which it argued that as the originating ILEC, it was due originating access for Virtual NXX traffic, but the terminating CLEC was not due compensation as it acted as the IXC in a Virtual NXX scenario. It would appear to the ILEC's customers that the VNXX numbers were local to the internet user, but the ISP was often located out of the user's local calling area.

Verizon's Tariff

Verizon has operated under two access tariffs since October 2004. From October 2004 to early April 2006, Intermedia Access Services Tariff No. 4 (the "Intermedia Tariff") was applied. Since the Intermedia Tariff was cancelled in early April 2006, Verizon's Access Services Tariff, L.P.S.C. Tariff No. 2 ("Verizon Access Tariff") has applied. (Reynolds at 6)

Both of the tariffs note that the mandatory local calling area includes the geographic areas as defined by the Commission that comprises the local calling area for end user calling purposes.

Verizon's later tariff also includes a second sentence to the effect the "the mandatory local calling area includes mandatory EAS exchanges, but excludes non-mandatory or optional EAS." A mandatory local calling area includes the end user's local calling area and mandatory EAS exchanges, but excludes optional EAS areas. (Verizon Access Tariff Sec. 8.1.1.3.)

The Intermedia Tariff under which terms Verizon is trying to impose intrastate access charges and reciprocal compensation for LOS traffic under the terms of the Intermedia Tariff for the time between October of 2004 and April of 2006 does not include the second sentence differentiating treatment for "mandatory" and "optional" local calling areas.

Verizon has been billing CenturyLink for switched access since its first invoice to CenturyLink dated December 10, 2004. (Reynolds at 8). Verizon has billed CenturyLink ca. \$700,000 for switched access.

CenturyLink has not paid any of Verizon's invoices for the disputed traffic. (Reynolds at 9)

Conclusions

Verizon first billed CenturyLink in December of 2004 (DiGiulian Direct at 6) for a bill period beginning with November 2004. (Tr. O'Roark at 97) Mr. DiGiulian at CenturyLink began questioning Verizon's access billing for asserted "optional" EAS traffic in a number of states, including Louisiana, in January of 2005. (DiGiulian at 6) Neither Party has pursued resolution of the dispute in an entirely expeditious manner.⁶ Verizon failed to respond to telephone inquiries to the telephone number provided on the bill for billing inquiries. CenturyLink did not follow directions listed in Verizon's tariff. Long periods of time, often many months or a year or two elapsed between Party contacts. The Parties agreed to work through claims beginning with those states that involved the highest claims. In the initial state that claims were examined, Missouri, the result was a determination of incorrect billing with the balance in dispute being credited in full. The bills Verizon gave to CenturyLink did not distinguish which of nine incumbent Local Exchange Carriers, CenturyTel of Central Louisiana, LLC, CenturyTel of Chatham, LLC, CenturyTel of East Louisiana, LLC, CenturyTel of Evangeline, LLC, CenturyTel of North Louisiana, LLC, CenturyTel of Northwest Louisiana, Inc. CenturyTel of Southwest Louisiana, LLC, CenturyTel of Southeast Louisiana, LLC and CenturyTel of Ringgold, LLC, providing service in Louisiana, as well as a long distance affiliate, and a CLEC operation was supposedly the debtor. Call detail records were not provided until

⁶ See Findings of Fact for details of the history of the dispute between the Parties.

March 27, 2008. During the course of this proceeding in Louisiana, Verizon provided additional call detail records. Given the conduct of the parties, Verizon's argument that charges should be dismissed based on the fact that CenturyLink allegedly "did not seek to address the dispute at the Commission until more than three years later" (Reynolds Direct at 10) is not convincing.

Extended Calling Areas are creations devised by the Commission to deal with some of the problems of rural local telecommunication services. The Commission expressed its concern that rural areas lacked affordable telecommunications. The Commission made a determination that it was in the best interests of the public to have an expanded calling scope especially for rural consumers, and required all of the incumbent companies, including CenturyTel, to implement the expanded calling area service. In Order No. U-17949-B the Commission stated that "the plan is essential to modernize telephone tariffing in rural areas, facilitate the flow of information in these areas, and reduce the inequities that result from the application of tolls to intrastate telephone calls of short distances." Extended Calling Areas are intended to provide wider access at a low cost, to encourage expansion and utilization of telecommunications services, and to increase access to the information highway. The establishment of Extended Calling Areas is largely a matter of policy, and lies particularly within the expertise of the Louisiana Public Service Commission that designed them and caused them to be implemented.

As described by the Louisiana Supreme Court:

To ensure affordable telecommunications services to rural and higher cost areas of the state, in 1989, the LPSC, in their effort "to modernize rural telephone service, to facilitate the flow of information in these areas, and reduce the inequities that result from the application of tolls to intrastate telephone calls of short distances"-stabilize the rates, concluded that the public interest warranted statewide implementation of a "Local Option Service" ("LOS"). Under the LOS plan, subscribers statewide could take advantage of **extended local calling** for calls that previously were billed as *toll* calls. ... The LPSC found that "the implementation of LOS was to be a major step in making such calls more 'local' in nature." (*Voicestream GSMI v. LPSC*, 943 So.2d 349, (La. 11/29/06) citing LPSC Order No. 23267)

The Louisiana Public Service Commission is entitled to deference in its interpretation of its own rules and regulations. *Hopkins d/b/a Old River Water Company v. Louisiana Public Service Commission*, 41 So.3d 479, 2010-0255 (La. 5/19/10) citing *Plantation v. LPSC*, 685 So.2d 107 (La. 1/14/97). The Commission's interpretation and application of its own orders deserve great weight because the Commission is in the best position to apply them. *Entergy Louisiana, LLC v. Louisiana Public Service Commission*, 990 So.2d 716, (La. 7/1/08) citing *Dixie Electric Membership Corp. v. Louisiana Public Service Commission*, 441 So.2d 1208, 1211 (La. 1983).

Policy concerns were responsible for the establishment of Local Option Service, and remain a major consideration in any determination of issues relating to interpreting LOS.

Commission Staff stated that it believes that LOS is a Commission-ordered, tariffed basic local service, and not an intraLATA service subject to switched access charges. The Commission's prior orders unmistakably reveal that Louisiana local exchange carriers ("LECs") are required to be able to provide LOS to any customer who wishes to subscribe to the service, and LECs have had to design their networks accordingly." (Staff Post-Hearing Brief at 1-2) All Louisiana LECs must operate under the assumption that all of their customers could elect to subscribe to LOS. In Order No. U-17949-B, dated June 16, 1989, the Commission established a local optional calling plan for all LECs which became known as "LOS." Order No. U-17949-N explained that there were "two LOS offerings, basic LOS and LOS B" and that "LOS provides a mechanism for rural Louisiana telephone subscribers to complete what formerly were toll calls at greatly reduced rates". In Order No. U-17949-N dated October 18, 1991, the Commission moved LOS into carriers local tariffs. The Commission ordered that "There be established a 40 mile 7 digit local calling area for all Louisiana customers and all calls made within such calling area shall be local calls." Additionally, in Order No. U-17949-N, the Commission adopted the "40- mile 7 digit local calling area" under certain guidelines. Those guidelines included:

- a) All calls within 40 miles of customer's central office shall be local calls to be completed with 7 digit dialing.
- b) The rates and services and conditions associated with these calls shall be moved into the local tariffs of the LECs.
- c) The prices for these calls (as well as those classified as "local" today) shall be unchanged.
- d) The establishment of the 40 mile 7 digit local calling area shall not be construed as endorsing measured service for basic exchange calling and all basic exchange service being offered on a flat rate basis shall remain in effect.
- e) All customers may continue to subscribe to LOS or LOS0B on an optional basis.
- f) 10XXX calls within the 40 mile band shall not be blocked by the LECs/
- g) South Central Bell and any LEC adopting the 40 mile plan shall inform customers in recordings used to advise them of the implementation of seven digit dialing that calls outside the base rate area will still be charged on a measured rate basis and shall otherwise inform customers of this fact in bill inserts and advertisements; if any of these actions appear impractical, the companies may apply for a waiver of this requirement by filing a request with the Commission.

The Commission clearly delineated the calls within forty miles shall be considered local calls under LOS and would be dialed with 7 digit dialing just as are other local calls. Furthermore, the Commission mandated that the rates and services and conditions associated with these LOS calls shall be moved **into the local tariffs of the LECs.**

In other Commission Orders, such as for example in LPSC Order No. U-20883 Subdocket C, the Commission defined LOS as a type of calling plan, “that all incumbent local exchange **carriers must provide** throughout the State of Louisiana.” (emphasis added) The Commission’s definition of local service area, included in the Commission’s Local Competition Regulations, reads, in part, “The geographic area in which end users may place telephone calls without incurring toll charges which includes a flat rate calling area.” The Commission made a determination that it was in the best interests of the public to have an expanded calling scope especially for rural consumers, and required all of the incumbent companies, including CenturyLink, provide the service. CenturyLink implemented LOS in response to Commission Orders.

Commission rules have the force of law. *Re Gulf States Utilities Company*, Order No. U-22092-B dated September 10, 1998, 1998 WL 1285299 (La.P.S.C.) “The rulings and orders of administrative agencies carry the full force of law, and are binding on the parties”. *South Central Bell Tel. Co. V. Louisiana Public Service Commission*, 570 F.Supp. 227 (M.D.La. Jun 27, 1983), affirmed 744 F.2d 1107, certiorari granted, vacated on other grounds 106 S.Ct. 2884. The rulings and orders of administrative agencies carry the full force of federal law and are accorded the same preemptive effect as federal statutes” *South Central Bell Tel. Co. V. Louisiana Public Service Commission*, 570 F.Supp. 227 (M.D.La. Jun 27, 1983) citing *Fidelity Federal Savings & Loan Association v. de la Cuesta*, 458 U.S. 141 (1982). Section 401.C.7 of the Commission’s Local Competition Regulations speaks specifically to the possibility of a company making a tariff filing that is not in conformity with not only Commission order, rule or regulation, but also any Commission policy or procedure. Section 401.C.7 states that, **a tariff filing that is designed to alter or modify any Commission order, rule, regulation, policy or procedure in any way is prohibited.** (Emphasis added) If Verizon’s interpretation of its tariff were to be accepted, the tariff would then alter the scope of Commission’s Orders establishing LOS and be in violation of Commission order and Commission policy. Despite the Commission’s pronouncements, Verizon’s tariff purports to redesign LOS service by claiming that only “mandatory”, and not “optional”, LOS service is actually included in local service, and intrastate terminating access charges may be charged for “optional” LOS calls. Accepting Verizon’s interpretation would be to deny to Louisiana consumers the pricing benefit of some of the LOS services established by the Commission.

Against a series of Commission Orders establishing LOS, and clearly stated Commission policy, that has been upheld by the Louisiana Supreme Court, the only basis given for the imposition of intrastate access charges for ISP-bound LOS traffic is Verizon's interpretation of one of the sections of one of the tariffs that Verizon has operated under. Verizon has operated under two access tariffs since October of 2004. From October of 2004 to early April of 2006, Verizon applied Intermedia Access Services Tariff No. 4 (the "Intermedia Tariff"). Since the Intermedia Tariff was cancelled in early April 2006, Verizon has applied Access Services Tariff, L.P.S.C. Tariff No. 2 ("Verizon Access Tariff"). (Reynolds at 6). Both of the tariffs note that **the mandatory local calling area includes the geographic areas as defined by the Commission** that comprises the local calling area for end user calling purposes (emphasis added). Verizon's own tariff acknowledges that it is the Commission (and not the Company) that defines the local calling area. The Commission, through its pronouncements has defined the local calling area to include LOS.

Verizon asserts that its tariff, under Sec. 8.1.1.3, excludes switched access charges for traffic within a callers "Mandatory Local Calling Area," which is defined as the geographic area, as determined by the Commission, that comprises the local calling area for end-user calling purposes. However, according to Verizon, "the Mandatory Local Calling Area includes mandatory EAS exchanges, but excludes non-mandatory or optional EAS areas." Verizon thus attempts to redefine the Commission's own determination of expanded local calling areas, a practice specifically prohibited by the Commission's Local Competition Regulations.

The Intermedia Tariff under which terms Verizon is trying to impose intrastate access charges and reciprocal compensation for LOS traffic for the time between October of 2004 and April of 2006 does not contain the second sentence found in the later Verizon tariff differentiating treatment for "mandatory" or "optional" local extended calling areas. So even if Verizon's argument that its tariff allows it to charge intrastate access for "optional" LOS calls were to be accepted, the argument could not be employed for the period October of 2004 through April of 2006, as the statement differentiating treatment was not even in the tariff at that time. Rates are prospective in nature and are not designed to have retroactive effect. It is not reasonable to attempt to collect based on a provision that was not even in the tariff until several years later. Furthermore, "[I]n utility rate determinations there is a fundamental rule that rates are exclusively prospective in application and that future rates may not be designed to recoup

past losses.” *South Cent. Bell Telephone Co. v. Louisiana Public Service Commission*, 555 So.2d 1370, 1373-1374 (La.,1990)⁷ The only justification provided by Verizon to explain the Company’s attempt to retroactively import the later interpretation to the earlier tariff that did not contain the purported exclusion of “optional” EAS was not at all convincing. (Reynolds responds:”Yes, because our application or tariff and those definitions are so widely heard and the way we’ve applied tariff and those definitions are so widely understood in the industry, that it’s valid.” (Tr. at 122) However, no evidence that the imposition of access charges under these circumstances was wide spread, or even sometimes utilized, was presented. Verizon’s reliance on its own bald statement that its application was widely known is unwarranted. CenturyLink does not pay intrastate switched access charges for terminating ISP-bound LOS traffic to any other local exchange carrier. The SCC stated in its pre-filed Comments that its members “do not pay intrastate switched access charges for terminating ISP-bound LOS traffic to other local exchange carriers.” (SCC Comments in Support of CenturyLink, at 4) Verizon’s claims under the Intermedia tariff cannot be successfully maintained.

To accept Verizon’s proposed interpretation of its tariff would be in conflict with the Commission’s stated goals and orders. The Commission established LOS to mitigate problems in rural communication and achieve certain goals of expanded telecommunications access. If Verizon’s interpretation of its tariff provision excluding “optional” LOS from Local Service were accepted, then the Commission’s plan and policy would be undercut. By Commission mandate all LECs must offer LOS; Verizon’s questionable interpretation of its tariff is not sufficient to in effect eliminate a portion of the Commission’s plan and to deny customers the full benefit of the Commission’s LOS plan.

By the terms of Verizon’s own tariff, intrastate switched access charges should not apply to the calls in question. The traffic at issue is not intrastate traffic, so the intrastate tariff would not apply. The calls at issue are calls to ISPs. ISP-bound traffic has been determined by the FCC to be interstate in nature. *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order*, CC Docket Nos. 96-98 and 99-68 (Rel. April 27, 2001), the FCC did an end-to-end analysis of ISP-bound traffic and found ISP-bound traffic to be jurisdictionally interstate in nature. CenturyLink determined that the calls in question were

⁷ Citing *Louisiana Power & Light Co. v. Louisiana Public Service Commission*, 377 So.2d 1023, 1028 (La.1979) and *Louisiana Power & Light Co. v. Louisiana Public Service Commission*, 523 So.2d 850 (La.1988).

ISP-bound calls, rather than voice calls, by sampling and determined that when those numbers were called, they would get the modem tone that would indicate that an ISP. The conversation time was indicative as well. “There were hundreds of examples where the conversation times were lengthy – were in excess of 2,000 minutes on an individual call so obviously somebody must have been downloading something for an extremely long time for those types of calls. And there was, you know, like I said, hundreds of these types of examples so.” (Tr. DiGiulian at 89-90). Three-to-one ratio is a ratio that was established by the FCC that essentially provides that a company can report up to three times the originating voice traffic as presumptively local reciprocal compensation traffic, and that everything above that is ISP traffic. Mr. O’Roark and Mr. DiGiulian agreed with this stricture. (Tr. at 96). No evidence was provided that the calls in question were not ISP-bound calls. AT&T does identify ISP-bound traffic dialed under LOS plans and excludes it from any billing, including billing transiting.

The traffic at issue in this docket is not only ISP-bound, the calls in this case were made to out-of-state Internet Service Providers who were given virtual NXX numbers which appeared to place them within CenturyLink’s LOS territory. The ISPs’ actual physical locations were obscured by assigning a virtual NXX. The actual physical locations however are not within Louisiana. Verizon’s tariff describes itself as: Regulations and Schedule of Intrastate Charges Applying to Access Services **between Fixed Points in the State of Louisiana.** (emphasis added) (Verizon Tariff, 1st Revised Page No. 1) As the ISP-bound traffic in question is not between fixed points within the State of Louisiana, Verizon’s Intrastate Tariff would not be applicable. In its Response to CenturyLink’s Data Request 1-7, Verizon admits that all Louisiana ISP-bound traffic is carried to Dallas/Fort Worth, Texas before being forwarded to ISP locations.

Verizon’s affiliate, Verizon New England, successfully argued in *Global NAPs, Inc. v. Verizon New England Inc.*, 603 F.3d 71 (1st Cir. 2010), writ denied 2011 WL197658 (January 24, 2011) that assignment of a VNXX cannot be used to change the actual nature of the call. Verizon New England won a First Circuit case in which it asserted that as the originating ILEC, it was due originating access for Virtual NXX traffic, but the terminating CLEC was not due compensation as it acted as the IXC in a Virtual NXX scenario. It would appear to the ILEC’s customers that the VNXX numbers were local to the internet user, but the ISP was often located out of the user’s local calling area. At issue in that case was what charges Verizon and GNAPs owe each other from dial-up internet traffic between some of their customers. The

Massachusetts department of Telecommunications and Energy (“DTE”) ruled, and the Courts up-held the DTE, that GNAPs must pay long-distance access charges to Verizon whenever ISP traffic is actually routed outside the caller’s local area, regardless of the phone number the internet user dialed. *GlobalNAPs Inc. v. Verizon New England Inc.*, 603 F.3d 71 (1st Cir.(Mass.) Apr 29, 2010) The position taken by Verizon in the current case is contradictory to the position taken by Verizon New England in *Global Naps* which was approved by the Massachusetts Department of Telecommunications and Energy and upheld by the Court.

It would be contrary to the Commission’s and the FCC’s policy objectives and regulatory directives to interpret the Verizon Tariff to allow for the imposition of intrastate access charges on ISP-bound traffic. This is particularly the case when the traffic at issue does not fit within the parameters of its own tariff. The filed-rate doctrine, which Verizon argues should guarantee the efficacy of its tariff, is not applicable, as the filed-rate doctrine does not preclude a party from challenging a utility’s misapplication of its tariff. *Daily Advertiser v. Trans-La, a Div. of Atmos Energy Corp.*, 140 P.U.R.4th 528, 612 So.2d 7 (La. Jan 19, 1993). What is being challenged in the instant case is Verizon’s interpretation of an aspect of its tariff, and not whether a rate may be applied retroactively as suggested by Verizon. Furthermore, as discussed above, the Commission prophylactically spelled out in its Rules for Local Competition that any “tariff filing that is designed to alter or modify any Commission order, rule, regulation, policy or procedure in any way is prohibited.” This provision eliminates any possibility that an argument could be successfully raised that the filing of the Verizon tariff could in any way modify any of the orders, regulations, or policies established by the Commission for expanded local service. Verizon’s tariff, in spite of Verizon’s desire, cannot be interpreted in a way that would amend or modify Commission orders on LOS.

Due to the unbalanced nature of ISP-bound traffic, the FCC observed that reciprocal compensation arrangements create enormous incentives for competitive LECs to sign up ISPs as customers and to profit, not from competition, but from fees collected from other carriers. To deal with such arbitrage problems, the FCC expressed a preference for a bill and keep compensation scheme for ISP-bound traffic. The FCC instituted rate caps for ISP-bound traffic. If a state had already determined that reciprocal compensation did not apply to ISP-bound traffic, then the FCC ordered that bill and keep would be applicable until such time as the FCC established broader intercarrier compensation reform. *In the Matter of Implementation of the*

Local Competition Provision in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, Order on Remand and Report and Order, CC Docket Nos. 96-98 and 99-68 (Rel. April 27, 2001) The very real probability of arbitrage, such as that that concerned the FCC exists in the instant case. The calls at issue are calls to ISPs, so that the calls are characterized by one way communication and long holding times. The situation is exacerbated by Verizon's assigning of virtual NPXXs which appear to be in CenturyLink's LOS area, to the out of state Internet Service Providers, and then claiming that intrastate access or reciprocal compensation charges are due because according to Verizon, the LOS is "optional" rather than "mandatory" under Verizon's tariff.

In the ISP Remand Order, the FCC found that the one-way nature of ISP-bound traffic creates significant arbitrage opportunities. *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound traffic, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking*, CC Docket Nos. 96-98 and 99-68 (Rel. Nov. 5, 2008) the FCC continued to view ISP-bound traffic as jurisdictionally interstate in nature and maintained the intercarrier compensation scheme set forth in the original ISP Remand Order.

The Telecommunications Act of 1966 creates a duty for LECs to negotiate reciprocal compensation agreements with each other. 47 U.S.C. Sec. 251(9)(c)(1) The position taken by Verizon in this docket is inconsistent with positions taken by Verizon in other cases. For example, an affiliate of Verizon, Verizon Michigan, successfully argued at the Sixth Circuit that it could not be billed reciprocal compensation under a tariff when the CLEC sought to bypass the federal obligation to negotiate local compensation terms. There was no interconnection agreement between CenturyLink and Verizon during the period for which Verizon is claiming compensation for ISP-bound calls. Verizon as the CLEC is the only one that can initiate the agreement. It had not done so in spite of prompting by CenturyLink. There is therefore no interconnection agreement basis under which Verizon can claim the imposition of reciprocal compensation for calls beginning in 2004.

Staff argues convincingly that: "The traffic at issue should not be subject to reciprocal compensation charges due to extant Commission precedent, due to Verizon's ISP customers' lack of a physical presence in Louisiana, and due to the lack of an interconnection agreement between CenturyLink and Verizon." Staff rightly considers ISP-bound traffic to be

jurisdictionally interstate in nature and therefore not subject to reciprocal compensation charges. The LPSC's KMC Telecom Order (Order No. U-23839 dated October 28, 1999), in which the Commission determined that reciprocal compensation was not owed for ISP traffic between BellSouth Telecommunication, Inc. and KMC Telecom, Inc., was the only Commission proclamation on the issue of ISP-bound traffic cited by the Parties. Louisiana precedent supports granting CenturyLink's request for a Declaratory Order denying reciprocal compensation for ISP-bound traffic.

Considering the above, CenturyLink's request for a Declaratory Ruling should be, and hereby is, GRANTED.

The Louisiana Public Service Commission finds that ISP-bound traffic originated by CenturyLink via Local Option Service ("LOS") and terminated by Verizon to Internet Service Providers located outside of Louisiana is not subject to intrastate switched access charges, nor, in the absence of a Commission approved interconnection agreement between CenturyLink and Verizon, does CenturyLink owe any reciprocal compensation for ISP-bound traffic terminated by Verizon.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

May 10, 2011

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CHAIRMAN JAMES M. FIELD

/S/ CLYDE C. HOLLOWAY
DISTRICT IV
VICE CHAIRMAN CLYDE C. HOLLOWAY

/S/ FOSTER L. CAMPBELL
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