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

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

MEMORANDUM OPINION AND ORDER

Adopted: October 6, 2021 **Released: October 7, 2021**

By the Commission:

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I. INTRODUCTION

1. Over the last ten years, the Commission has taken a number of actions to combat arbitrage of its intercarrier compensation (ICC) rules to protect consumers and carriers from fraudulent and abusive charges. The Commission's efforts were initially focused on arbitrage related to terminating

access charges.[1] More recently, the Commission has acted to combat arbitrage related to originating access charges in connection with toll free (8YY) calls. These measures included adopting rules transitioning certain toll free originating access charges to bill-and-keep and capping 8YY database query charges at $0.0002, as well as prohibiting carriers from charging for more than one 8YY database query per call.[2]

2. Core Communications, Inc. (Core) is a competitive local exchange carrier (LEC)[3] that serves as an intermediate carrier, primarily for toll free calls.[4] As an intermediate carrier, Core does not originate any calls. Instead, Core purchases all of the 8YY traffic that traverses its network from other carriers.[5] On April 22, 2021, Core submitted Tariff F.C.C. No. 3, Transmittal No. 17 (Revised Tariff) containing tariff revisions concerning allegedly fraudulent or otherwise illegal traffic, dispute requirements for such traffic, late payment fees, cancellation provisions, and other issues regarding 8YY database query charges.[6]

3. Based on the record before it, the Wireline Competition Bureau (Bureau) questioned the lawfulness of the tariff revisions, and whether by filing the Revised Tariff Core was attempting to "profit from 8YY arbitrage schemes" that the Commission has sought to end.[7] The Bureau thus suspended the Revised Tariff for one day, thereby allowing it to go into effect without being "deemed lawful,"[8] and

[1] *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order* or *USF/ICC Transformation Further Notice*), *aff'd sub nom In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, 34 FCC Rcd 9035 (2019), *pets. for review denied sub nom. Great Lakes Commc'ns Corp. et al. v. FCC*, 3 F.4th 470 (D.C. Cir. 2021).

[2] *8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594, 11596-97, paras. 7-10 (2020) (*8YY Access Charge Reform Order*).

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

[4] "Core is 100 percent wholesale, and has no direct end user customers. . . . In all cases Core is in the middle of the call flow." Direct Case of Core Communications, Inc., et al., WC Docket 21-191, Transmittal No. 17, at 6 (filed July 14, 2021) (Direct Case).

[5] *Id*.

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

[7] *Core Commc'ns, Inc., et al. Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Order Designating Issues for Investigation, DA 21-739, at 4-5, para. 9 (WCB June 23, 2021) (*Designation Order*) (quoting Petition of Verizon and AT&T to Suspend or Reject Core's Revised Tariff, WC Docket No. 21-191, at 4 (filed Apr. 28, 2021) (Petition)).

[8] Section 204(a)(3) of the Act provides that LEC tariffs are "deemed lawful" unless suspended by the Commission within certain time periods. 47 U.S.C. § 204(a)(3) ("A [LEC] may file with the Commission a new or revised charge, classification, regulation, or practice on a streamlined basis. Any such charge, classification, regulation, or practice shall be deemed lawful and shall be effective 7 days (in the case of a reduction in rates) or 15 days (in the (continued….)

released an order designating issues for investigation.[9] In this Order, pursuant to our authority under sections 204 and 205 of the Communications Act of 1934, as amended (the Act),[10] we conclude the investigation into the lawfulness of the tariff revisions Core filed on April 22, 2021, require modifications to some of Core's Revised Tariff, find several sections of Core's Revised Tariff unlawful, and instruct Core as to how to remedy its tariff filing.

II. BACKGROUND

A. Procedural History and Relevant Precedent

1. *USF/ICC Transformation Order*

4. In the 2011 *USF/ICC Transformation Order*, the Commission adopted bill-and-keep as the default methodology for all intercarrier compensation charges, capped all terminating ICC rates, and established a transition path requiring scheduled reductions to certain terminating access charges.[11] The transition rules also required LECs to adjust, over a period of years, many of their terminating end office switched access charges, consistent with the Commission's ultimate goal of moving all access charges to bill-and-keep.[12]

2. *8YY Access Charge Reform Order*

5. Intercarrier compensation for calls to 8YY telephone numbers differs from compensation for other calls carried over the public switched telephone network (PSTN).[13] For calls to 8YY numbers, the party receiving the call, not the party placing the call, pays the toll charges, thereby rendering the calls "toll free" from the perspective of the calling party.[14] When a caller dials an 8YY number, the originating carrier does not simply pass the call to the customer's presubscribed interexchange carrier (IXC) as it would for a non-toll free call.[15] Instead, the originating carrier queries an industry-wide database operated by the Toll Free Numbering Administrator (the 8YY database) to determine the 8YY provider for the dialed number, as well as relevant routing information.[16] If a LEC is unable to conduct a database query, it may pass the call to the next carrier in the call path to conduct the query.[17] The originating carrier uses its own, or an intermediate carrier's, switching and transport facilities to route the call to the designated 8YY provider.[18] The 8YY provider must pay the caller's LEC for originating the call and performing the

(Continued from previous page)
case of an increase in rates) after the date on which it is filed with the Commission unless the Commission takes action . . . before the end of that 7-day or 15-day period . . . .").

[9] *Designation Order*.

[10] 47 U.S.C. §§ 204-205.

[11] *USF/ICC Transformation Order*, 26 FCC Rcd at 17904-05, paras. 737-39.

[12] 47 CFR §§ 51.907, 51.909; *see USF/ICC Transformation Order*, 26 FCC Rcd at 17942, paras. 817-18 (finding that "originating charges for all telecommunications traffic subject to our comprehensive intercarrier compensation framework should ultimately move to bill-and-keep," and capping most such charges as a first step in a "measured transition toward comprehensive reform"); *id.* at 17676, para. 34 ("Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary.").

[13] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11596-97, paras. 7-10.

[14] *Id*. at 11595-96, para. 5.

[15] *Id*. at 11596-97, paras. 7-10.

[16] *Id*.

[17] *Id.*

[18] *Id*.

8YY database query, and pay intermediate carriers in the call path for tandem switching and transport charges.[19] The 8YY customer compensates the 8YY provider for completing the call.[20]

6. In the *8YY Access Charge Reform Order*, the Commission found that the ICC regime that applied to toll free calls allowed inefficiencies,[21] and that "[a]rbitrage and fraud . . . increasingly affect and undermine the system of intercarrier compensation that currently underpins toll free calling."[22] As terminating access charges transitioned to bill-and-keep, some providers sought to take advantage of the originating access charges that remained in effect, particularly those associated with toll free calls,[23] by, for example, facilitating robocalling which generates "8YY traffic that has no legitimate purpose and exists solely for the purposes of obtaining intercarrier compensation."[24] In an effort to curb this arbitrage and promote efficient call routing, the Commission capped originating 8YY access charges and transitioned them to or toward bill-and-keep.[25] The Commission also permitted only one carrier in an 8YY call path to charge the 8YY provider for a database query, regardless of whether more than one carrier conducts such a query.[26] This limitation became effective on November 27, 2020.[27] In addition, as of July 1, 2021, only the originating carrier may conduct an 8YY database query as an initial matter, but if the originating carrier is unable to conduct the query or transmit the results, the next carrier in the call path may perform the database query and assess a database query charge in lieu of the originating carrier.[28]

3. Commission Efforts to Combat Illegal Calls

7. The Commission has taken numerous steps to stem illegal calls.[29] In 2019, Congress passed the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED)

[19] *Id*. at 11597, paras. 9-10.

[20] *Id*. at 11597, para. 10.

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

[22] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11595, para. 2.

[23] *Id*. at 11600-01, para. 16.

[24] *Id*. at 11601-02, para. 17.

[25] *Id*. at 11604-05, para. 25.

[26] *Id*. at 11629-30, para. 82.

[27] *Id*. (explaining that this requirement became effective "as of the effective date of this *Order*," which occurred on publication of the order); *8YY Access Charge Reform*, 85 Fed. Reg. 75894 (Nov. 27, 2020).

[28] 47 CFR 51.905(d); *8YY Access Charge Reform Order*, 35 FCC Rcd at 11629-30, para. 82.

[29] *E.g.*, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Fourth Report and Order, 35 FCC Rcd 15221 (2020) (*Call Blocking Fourth Report and Order*) (establishing obligations for voice service providers to limit illegal calls on their networks); *Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, Third Report and Order et al., 35 FCC Rcd 7614 (2020) (establishing safe harbors from liability for the unintended or inadvertent blocking of wanted calls); *Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act)*, EB Docket No. 20-22, Report and Order, 35 FCC Rcd 7886 (EB 2020) (selecting a single consortium, USTelecom's Industry Traceback Group, to conduct private-led traceback efforts); FCC Consumer and Governmental Affairs Bureau, Report on Robocalls at 10-11 (2019), https://docs.fcc.gov/public/attachments/DOC-356196A1.pdf (describing Commission enforcement actions against robocallers).

Act,[30] which "directs the Commission to encourage voice service providers to block unwanted calls by giving them safe harbors for erroneous blocking based, in whole or in part, on caller ID authentication information and by making it easier for carriers to identify and fix erroneous blocking."[31] In response, the Commission adopted the *Call Blocking Fourth Report and Order* and several new rules in 2020 aimed at curbing illegal calls, including illegal 8YY calls, by requiring voice service providers to meet certain obligations, and to mitigate illegal traffic.[32]

8. In the *Call Blocking Fourth Report and Order*, the Commission "require[d] all voice service providers to take steps to stop illegal traffic on their networks" by "respond[ing] to traceback requests from the Commission, civil and criminal law enforcement, and the [USTelecom's Industry Traceback Group]" in tracking down callers that make such calls.[33] In that Order, the Commission also expanded its safe harbor, which protects voice service providers from liability if they permissively undertake to block illegal calls, and explained to "get the benefit of this safe harbor," a terminating voice service provider only "*may* block any calls that it determines are highly likely to be illegal based on certain defined parameters."[34]

B. The Tariff Investigation

9. On April 22, 2021, Core filed Transmittal No. 17, proposing revisions to its interstate switched access service Tariff F.C.C. No. 3.[35] These revisions address what Core asserts is illegal traffic, dispute requirements for such traffic, late payment fees, cancellation provisions, and other issues regarding 8YY database query charges.[36] On April 28, 2021, Verizon and AT&T Services, Inc. (AT&T) (collectively Petitioners) filed a petition requesting that the Commission suspend and investigate or reject Core's proposed tariff revisions[37] and arguing that Core's proposed tariff revisions are unlawful.[38] Core

[30] Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. No. 116-105, 133 Stat. 3274 (2019) (TRACED Act).

[31] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15221-22, para. 1; *see* TRACED Act §§ 4(c), 7, 10(b); *Call Authentication Trust Anchor*, WC Docket No. 17-97, Second Report and Order, 35 FCC Rcd 1859, 1861-67, paras. 3-14, 16 (2020) (describing the Commission's efforts to promote implementation of the STIR/SHAKEN caller ID authentication process).

[32] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15222, para. 2. Voice service provider, for the purpose of the Commission's call blocking rules, means "any entity originating, carrying, or terminating voice calls through time-division multiplexing (TDM), Voice over Internet Protocol (VoIP), or commercial mobile radio service (CMRS)." *Id.* at 15222 n.2. The Order applies to "illegal calls" and "illegal traffic," terms used interchangeably and defined as any calls or traffic that "violate: (1) the requirements of the Telephone Consumer Protection Act of 1991 or the Truth in Caller ID Act of 2009; (2) the related Commission regulations implementing the Telephone Consumer Protection Act or the Truth in Caller ID Act; (3) the [Federal Trade Commission's] Telemarketing Sales Rule; or (4) any federal or state law or regulation that prohibits calls made for the purpose of defrauding a consumer." *Id.* at 15229-30 n.62 (internal citation omitted).

[33] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15226-27, paras. 13-14; *id.* at 15227 n.44 ("Traceback is the process of following the path of a call back to the point of origination. This is generally done by obtaining information from each voice service provider in the call chain regarding where they received the call, whether that is an upstream voice service provider or a customer. This is particularly valuable in the spoofing context, where truthful responses from voice service providers allow callers to be identified regardless of the caller ID information.").

[34] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15234-36, paras. 39, 41 (emphasis added); 47 CFR § 64.1200(k).

[35] Core's tariff revisions are reproduced in the Appendix to this Order.

[36] *See* Appx.

[37] Petition.

[38] *Id.* at 2.

filed a Reply to the Petition on May 4, 2021, requesting that the Petition be denied as Petitioners present no "credible basis" to support their substantive challenges to the proposed tariff revisions.[39]

10. The Bureau adopted a *Suspension Order* on May 6, 2021, finding that substantial questions exist regarding the lawfulness of Core's proposed tariff revisions that require further investigation.[40] Pursuant to section 204 of the Act, the Bureau advanced the tariff revisions' effective date for one day to May 6, 2021, and suspended the revisions for one day, allowing the revisions to become effective on May 7, 2021, imposed an accounting order, and instituted an investigation into the lawfulness of Core's proposed tariff revisions.[41] On May 13, 2021, Core submitted a supplemental tariff filing reflecting the suspension.[42] The Bureau subsequently released a *Protective Order* to govern any confidential filings submitted during the investigation.[43]

11. On June 23, 2021, the Bureau released a *Designation Order* directing Core to "provide the information requested in this Order pursuant to section 204(a)(1) of the Act so the Commission can determine whether Core's tariff revisions are just and reasonable."[44] Core filed its Direct Case on July 14, 2021, providing its responses, and arguing that its tariff revisions were designed to combat what it describes as "egregious and unlawful self-help and non-payment by Verizon and AT&T for legitimate 8YY traffic that Core delivers to those IXCs."[45] AT&T and Verizon filed oppositions to the Direct Case on July 28, 2021.[46] AT&T argues that Core's tariff revisions are unjust and unreasonable, and violate the *8YY Access Charge Reform Order* and Commission's call blocking orders.[47] Verizon argues that the Commission should reject Core's tariff revisions because Core failed to adequately respond to the *Designation Order*, violates Commission rules, and attempts to incorporate unlawful tariff revisions that would allow it to profit from toll free arbitrage schemes.[48] Core submitted an *ex parte* filing on August

[39] Core Communications, Inc.'s Response to Petition of Verizon and AT&T to Suspend or Reject Core's Revised Tariff, WC Docket No. 21-191 (filed May 4, 2021) (Core Response).

[40] *Core Commc'ns, Inc., et al. Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Order, 36 FCC Rcd 8198, 8198, 8200, paras. 1, 6 (WCB 2021) (*Suspension Order*). The existence of a substantial question of lawfulness regarding a proposed tariff revision forms the basis of a Commission determination of the need to suspend a tariff. The Commission may open tariff investigations on its own initiative. 47 U.S.C. § 204(a)(1) ("Whenever there is filed with the Commission any new or revised charge, classification, regulation, or practice, the Commission may either upon complaint or upon its own initiative without complaint, upon reasonable notice, enter upon a hearing concerning the lawfulness thereof."); *see also, e.g., July 1, 2018 Annual Access Charge Tariff Filings*; *South Dakota Network, LLC Tariff F.C.C. No. 1*, WC Docket No. 18-100, Transmittal No. 13, Order, 33 FCC Rcd 9412 (WCB 2018); *Northern Valley Commc'ns, LLC, Tariff F.C.C. No. 3*, WC Docket No. 20-11, Transmittal No. 12, Order, 35 FCC Rcd 402 (WCB 2020).

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

[42] Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Secretary, FCC, Transmittal No. 18 (May 13, 2021) (available via the Commission's Electronic Tariff Filing System); *see* 47 CFR § 61.191.

[43] *Core Commc'ns, Inc., et al., Tariff F.C.C. No. 3*, WC Docket No. 21-191, Transmittal No. 17, Protective Order, 36 FCC Rcd 8672 (WCB 2021).

[44] *Designation Order* at 8, para. 18.

[45] Direct Case at 3.

[46] AT&T Services, Inc.'s Opposition to Direct Case of Core Communications, Inc., et al., WC Docket No. 21-191, Transmittal No. 17 (filed July 28, 2021) (AT&T Opposition); Verizon's Opposition to the Direct Case of Core Communications, Inc., WC Docket No. 21-191, Transmittal No. 17 (filed July 28, 2021) (Verizon Opposition).

[47] AT&T Opposition at 1-2.

[48] Verizon Opposition at 1-2.

26, 2021, which reiterated assertions from its Direct Case.[49] Core, several of its clients, a telecom consultant, and several competitive LECs also made *ex parte* filings on the September 7, 2021 deadline established by the Bureau in the *Designation Order*.[50]

C. Core's 8YY Aggregation Business

12. In the *Designation Order*, the Bureau sought initially to determine whether the tariff revisions filed by Core to address what it refers to as "fraudulent or otherwise illegal traffic" do so in a lawful manner, and whether Core's attempt, by tariff, to place the responsibility on IXCs to detect and block illegal 8YY calls is just and reasonable.[51] The Bureau directed Core to provide information about the role and function that it plays in the transmission of 8YY calls, the marketplace for the purchase and sale of 8YY traffic, and the process for routing this traffic to IXCs and their 8YY customers.[52]

13. Core explains that it "aggregates toll-free traffic from a variety of carriers (landline, [Voice over Internet Protocol] VOIP and wireless service providers), then switches and transports that traffic via [Internet Protocol] IP to reach the appropriate IXC for each toll-free call," which ultimately sends the call to its 8YY customer.[53] As an intermediate 8YY aggregator, Core performs two principal functions in the transmission of 8YY traffic. It first purchases toll free traffic from originating carriers, using an affiliate, Ton 80, to effectuate its purchases.[54] Second, Core routes the traffic in IP format to the IXC that serves the relevant 8YY customer, assessing switched access charges for delivering that traffic.[55]

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[49] Letter from Carey Roesel, Consultant to Core, Inteserra Consulting Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191 (filed Aug. 26, 2021) (Core Aug. 26 *Ex Parte*).

[50] *Designation Order* at 15-16, para. 44; *see* Letter from Gary Fry, CEO, ANI Networks; Philip J. Macres, Klein Law Group, PLLC, Counsel for ANI Networks; Brian Carr, VP Carrier Services, Consolidated Communications; Patrick Reilly, VP Carrier Services, Impact Telecom; Jason Cummings, CTO, Magna5; and Randy Lemmo, SVP, Operations, Wholesale Carrier Services, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191 (filed Sept. 7, 2021) (Competitive Carriers *Ex Parte*); Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191 (filed Sept. 7, 2021) (attaching letter from the Office of People's Counsel (OPC) for the State of Maryland (Core Sept. 7, 2021 OPC *Ex Parte*); Letter from Carey Roesel, Consultant, Inteserra Consulting Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191 (filed Sept. 7, 2021) (Core Sept. 7, 2021 *Ex Parte*); Letter from Shaun T. Moore, Principal, Evolve Transformative, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191 (filed Sept. 7, 2021) (Evolve *Ex Parte*); Letter from Michael Crown, President, FracTEL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-191 (filed Sept. 7, 2021) (FracTEL *Ex Parte*); Letter from Kathleen Keller, Shift8 Networks (filed Sept. 7, 2021) (available via the Commission's Electronic Comment Filing System in WC Docket No. 21-191) (Shift8 *Ex Parte*); Letter from Skynet (filed Sept. 7, 2021) (available via the Commission's Electronic Comment Filing System in WC Docket No. 21-191) (Skynet *Ex Parte*). Verizon filed an *ex parte* on September 15, 2021, after the date specified by the Bureau in the *Designation Order*. *See* Letter from Alan Buzacott, Exec. Dir., Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket 21-191 (filed Sept. 15, 2021). Because Verizon's *ex parte* was filed after September 7, 2021, we do not consider the arguments made in that filing.

[51] *Designation Order* at 9, para. 21.

[52] *Id*.

[53] Direct Case Exh. 6 at 2; *see also* Evolve *Ex Parte*; Shift8 *Ex Parte*; Skynet *Ex Parte*.

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

[55] Direct Case Exh. 6 at 2; AT&T Opposition at 4.

The IXCs, which serve 8YY customers, perform the necessary functions to complete the routing of the calls to their customers.

14. In the *8YY Access Charge Reform Order*, the Commission described 8YY aggregation as contributing to arbitrage because "[t]he aggregating competitive local exchange carrier hands off its aggregated 8YY traffic to interexchange carriers in . . . more remote areas, thereby allowing the competitive local exchange carrier to charge higher access charges 'relative to what the provider would have been able to charge in the incumbent LEC area where the call was actually placed.'"[56] The Commission found that "[t]his kind of arbitrage 'increases the amount of revenue to be shared, often adds additional hops, and can result in failed calls . . . driving up costs and disrupting [carriers'] ability to properly manage their networks.'"[57] The Commission explained that "toll free aggregators 'are inserted into the call path by the originators of Toll Free traffic'" to "increase[] the amount of revenue to be shared."[58]

D. Revised Tariff

15. In its Transmittal No. 17, Core filed certain tariff revisions which are the subject of this investigation. In the following sections, we describe the substance of each tariff revision. The language of each of Core's tariff revisions is provided in the Appendix.

1. Tariff Sections 2.10.4.A and 2.21 - Dispute Resolution Provisions

16. Section 2.10.4.A of Core's tariff revisions describes the procedures a customer must follow to raise a general billing dispute "to permit [Core] to investigate the merits of the dispute."[59] The revised provision states that a "good faith dispute requires the Customer to provide a written claim" and specifies the requirements for such a written claim.[60] This section also discusses "alternative requirements" that apply for "disputes based on allegations of fraudulent or otherwise illegal traffic to be considered good faith disputes, as set forth in Section 2.21."[61] Section 2.21 states that "all traffic" (which, by definition would include not only toll free calls but also illegal calls) that Core sends to IXCs is "presumed to be legal traffic" if the IXCs do not block this traffic, and that an IXC cannot raise a dispute in good faith about such calls unless it shows that it did not charge its customers for those calls, or the IXC first credits its 8YY customer for any charges for those calls.[62]

17. In its Direct Case, Core argues that its "tariff revisions are meant to incentivize IXCs to clearly and quickly communicate any evidence of fraudulent or otherwise unlawful traffic."[63] Verizon asserts in its Opposition, however, that the dispute resolution provisions in Core's Revised Tariff "require . . . the carrier to pay a financial penalty by refunding (or not billing) its own customers for the traffic" before disputing the charges,[64] and "make . . . Core the sole judge of whether any dispute is in 'good faith,'" in violation of the findings of the *Northern Valley Order*.[65] AT&T asserts that the revised tariff

[56] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11602, para. 18 (internal citations omitted).

[57] *Id.* at 11602-03, para. 19 (internal citations omitted).

[58] *Id.*

[59] Appx. § 2.10.4.A.

[60] *Id.*

[61] *Id.*

[62] *Id.* § 2.21.

[63] Direct Case at 1-2.

[64] Verizon Opposition at 2.

[65] *Id.* at 11-12 (citing *Sprint Commc'ns Co. v. Northern Valley Commc'ns, LLC*, File No. EB-11-MD-003, Memorandum Opinion and Order, 26 FCC Rcd 10780, 10787, para. 14 (2011) (*Northern Valley Order*)).

"unreasonably shifts the burden from carrier to customer to prove that the carrier's access charges were lawfully billed, and to detect and prevent illegitimate traffic in the first instance."[66]

2. Tariff Section 2.10.5 - Late Payment Fees

18. Core's Revised Tariff section 2.10.5, which governs late payment fees, provides that if "an unpaid amount is not part of a good faith dispute as described in this tariff," the late payment fee increases to "3.0% (rather than 1.5%) per month, or the highest rate permitted by applicable law, whichever is less."[67] In its Direct Case, Core asserts that the change to its late payment provision is "meant to address unlawful self-help/non-payment for 8YY delivered to IXCs, in situations where the IXC turns around and charges its customer for that same traffic."[68] Petitioners argue that the 3% late fee is usurious[69] and unjust and unreasonable,[70] and that the revised language is impermissibly ambiguous.[71]

3. Tariff Section 2.13.3.H - Cancellation by Company

19. In its revision to section 2.13.3.H, Core states that "[i]f the Company discontinues service, it will provide, in connection with access traffic associated with the discontinued Customer, only those minimal functions necessary to identify the Customer as being the relevant carrier (i.e., 8YY database queries)."[72]

20. In its Direct Case, Core argues that, by not paying its bill, a discontinued carrier "caused the calls to fail and the query needed to be done to ascertain it was destined to the disconnected carrier."[73] Verizon counters that "these provisions purport to give Core the right to keep buying 8YY traffic destined for long-distance carriers Core has stopped serving and then to bill them 8YY database charges for those calls, which it will refuse to complete . . . [and is] unjust and unreasonable."[74] AT&T asserts that "when a carrier-customer has failed to pay a carrier's properly billed charges, the carrier can *either* continue performance and sue for the amounts unpaid, or it can disconnect the carrier-customer for nonpayment and cease providing services."[75]

4. Tariff Section 3.3.5 - Toll Free Interexchange Delivery Service

21. The revisions to section 3.3.5 of Core's tariff provide Core with the right to charge an IXC for 8YY database queries "even if the underlying call is not completed."[76] Core defends this tariff

[66] AT&T Opposition at 10.

[67] Appx. § 2.10.5.

[68] Direct Case at 40.

[69] AT&T Opposition at 9 ("[T]his usurious penalty (which amounts to 36% annually), is greater than the comparable ILEC tariffs that Core identifies, and significantly higher than the interest rate the Commission has applied in circumstances involving overcharges or withheld payments.").

[70] Verizon Opposition at 20 ("Core's revised section 2.10.5 proposes to double its already-high 1.5% late payment charge to 3% per month—the usurious rate of *36% annually*—on any amounts withheld in a dispute that Core decides was not raised in 'good faith.' . . . Core's 3% is double the 1.5% rate imposed by any of the carriers it points to in its Exhibit 8. That rate—like the 1.5% monthly (or 18% yearly) rate—*far* exceeds inflation.") (emphasis in original) (internal citations omitted).

[71] *Id.* at 21.

[72] Appx. at § 2.13.3.H.

[73] Direct Case at 41.

[74] Verizon Opposition at 22.

[75] AT&T Opposition at 26-27 (emphasis in original) (internal citations omitted).

[76] Appx. § 3.3.5.

language by arguing that it duplicated this language from incumbent LEC tariffs.[77] In its Opposition, Verizon asserts that "this provision encourages inefficient routing" and that "Core can—and should—refuse to buy traffic destined for a company it no longer serves."[78] AT&T states that the revised tariff provision is "unreasonable and not justified on the record in this proceeding."[79]

III. DISCUSSION

A. The Legal Standard

22. Section 201(b) of the Act requires that "[a]ll charges, practices, classifications, and regulations for and in connection with . . . communication service, shall be just and reasonable and that any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful."[80] Section 204(a) of the Act provides that when a tariff filing has been suspended, the burden of proof is on the tariffing carrier[81] to show that the new or revised charge is just and reasonable.[82]

23. Commission precedent holds that in a tariff investigation, "LECs do not satisfy that statutorily imposed burden [of proof] merely by showing that they have not violated explicit regulatory provisions. To the contrary, . . . LECs must affirmatively show that their tariffed 'charges, practices, classifications, and regulations' are 'just and reasonable' under the Act."[83] At the conclusion of a tariff investigation, the Commission may, pursuant to section 205, "determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed."[84]

24. After reviewing the record in this investigation, we find that Core has not met its burden of proving that all of the provisions of its Revised Tariff in Transmittal No. 17 are just and reasonable. For example, Core does not answer all of the questions in the *Designation Order,* despite the explicit requirement that "Core must confirm, deny, or correct each of the statements below and provide detailed

[77] Direct Case at 45-46.

[78] Verizon Opposition at 22.

[79] AT&T Opposition at 29.

[80] 47 U.S.C. § 201(b).

[81] Core has repeatedly suggested that the Commission require the Petitioners to provide information or answer questions in this proceeding investigating Core's tariff. *See*, *e.g.*, Direct Case at 3, 32, 37-38. However, the burden to answer questions does not lie with the Petitioners; Petitioners are not the subject of this investigation. AT&T Opposition at 30. We decline Core's multiple requests to improperly expand this investigation by asking questions of the Petitioners. *See also* Core Sept. 7, 2021 *Ex Parte* Attach. at 10.

[82] 47 U.S.C. § 204(a)(1) ("At any hearing involving a new or revised charge, or a proposed new or revised charge, the burden of proof to show that the new or revised charge, or proposed charge, is just and reasonable shall be upon the carrier . . . ."). Core filed tariff revisions that affect the provision of certain services, including how it charges for services and how customers may dispute charges.

[83] *1993 Annual Access Tariff Filings*; *1994 Annual Access Tariff Filings*, CC Docket Nos. 93-193 and 94-65, Order, 19 FCC Rcd 14949, 14957-58, para. 17 (2004); *see also 1987 Annual Access Tariff Filings*, 2 FCC Rcd 280, 299 (1986) (Under the access charge system, local carriers cannot "unreasonably shift the burden of proof to the [long distance carriers] and customers," and "it is incumbent upon the LECs to charge properly and therefore to demonstrate to their customers that these charges are accurate."); *AT&T Corp. v. Alpine Commc'ns*, 27 FCC Rcd 16606, 16615, para. 16 & n.79 (2012) ("As the carrier attempting to enforce the terms of its tariff in the underlying litigation, [the local carrier], not AT&T, bears the burden of proving that it complied with its tariff.") (internal citation omitted).

[84] 47 U.S.C § 205(a).

and complete answers to each of the questions below."[85] Core also fails to demonstrate that its Revised Tariff is consistent with the Act, the *8YY Access Charge Reform Order*, and the Commission's orders and policies, such as call blocking policies, and rules. We conclude that Core has not justified the lawfulness of its Revised Tariff, in which it seeks to evade responsibility for the cost implications of its decisions to purchase 8YY traffic. Pursuant to our authority under section 205 of the Act, we find unlawful Core's Revised Tariff, as discussed in greater detail below.

B. Core's 8YY Aggregation Business

25. Petitioners challenge Core's Revised Tariff in part because "the unlawful provisions Core added would enable it to profit from toll-free arbitrage schemes that the Commission has sought to end."[86] Specifically, AT&T argues that Core's Revised Tariff is inconsistent with "substantial steps [the Commission has recently taken] to address and eliminate various improper practices associated with the delivery of 8YY calls, particularly in such aggregation arrangements."[87] Further, AT&T argues that the revisions to Core's tariff do nothing to "combat improper robocalling" as required in the *Call Blocking Fourth Report and Order*, but rather "weaken or effectively eliminate the public interest protections that [the] Commission only last year found beneficial and necessary."[88] Verizon alleges that "Core has every financial incentive . . . to generate switched access charges" because "[t]he more minutes Core sends [to IXCs], the more charges it can bill [to IXCs]."[89]

26. Core claims that it was "[i]n response to ongoing and unjustified failures by certain IXCs (namely, Verizon and AT&T) to dispute and pay its bills for interstate switched access charges, [that] Core prepared tariff revisions that were intended to remedy the non-payment problem."[90] In the *Designation Order*, the Bureau required Core to answer whether portions of its Revised Tariff are "intended to prevent or deter IXCs from engaging in lawful self-help remedies," such as withholding payment for disputed amounts,[91] and to identify Commission and other legal precedent in support of its claims that the IXC "actions that Core complains about constitute unlawful self-help."[92] In response, Core states that it does not understand what the Bureau means by the term "lawful self-help remedies," and posits that the Commission has never used the term "lawful self-help" or used the term "'self-help' in anything other than a negative and disapproving context."[93] Core claims that the text of the *USF/ICC Transformation Order* supports its position that there is no such thing as lawful self-help.[94] But in that Order, the Commission "decline[d] to address" the self-help issue, stated only that carriers should comply with "applicable tariffed dispute resolution provisions," and did not authorize or mandate any particular

[85] *Designation Order* at 9, para. 21. Core notes that in the Direct Case the Bureau asked the company 77 questions. Direct Case at 1, 3. Yet Core does not answer all of those 77 questions. For example, Core does not "identify the individual(s) in the company most knowledgeable about each of the issues [raised in the Designation Order] . . . and any additional issues that Core raises in response to this Designation Order." *Designation Order* at 9, para. 21. This further supports our finding that Core has failed to carry its burden in this tariff investigation. *See* 47 U.S.C. § 204(a)(1).

[86] Verizon Opposition at 1.

[87] AT&T Opposition at 1.

[88] *Id.* at 1-2 (citing *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15222, para. 2).

[89] *See, e.g.*, Verizon Opposition at 17.

[90] Direct Case at 4, 22 ("The purpose of the tariff revisions was not related to the Commission's robocalling rules.").

[91] *Designation Order* at 14, para. 36.

[92] *Id.*

[93] Direct Case at 38; *see also* Competitive Carriers *Ex Parte* at 1-2.

[94] Direct Case at 38-39 (internal citations omitted) (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17889-90, para. 700).

approach.[95] The Commission later affirmed this position in the *8YY Access Charge Reform Order*.[96] AT&T argues that Core's tariff, before the revisions made in Transmittal No. 17, complied with Commission self-help precedent and that the revisions being investigated (that Core claims are intended to discourage unlawful self-help) only "alter the burden of proof and then to increase *late payment penalties*" due to Core.[97] Consistent with our precedent, we decline to make any pronouncements about self-help here. We find that Core has not provided any legal justification for its position that the self-help in question, in the form of withholding payment, is categorically unlawful.[98]

27. Throughout its Direct Case, Core attempts to justify its Revised Tariff as a means of protecting IXCs' 8YY customers at large and advancing the public interest.[99] For instance, Core claims that the Revised Tariff will ensure the 8YY customers of its IXC customers are protected from fraudulent traffic and benefit from refunds or credits when IXCs claim that 8YY traffic is fraudulent.[100]

28. Core's customer is the IXC, not the IXC's 8YY customer. The purpose of a tariff is to provide the rates, terms, and conditions that govern a carrier's (Core's) relationship with its customers (IXCs), not to impose the carrier's will on its customer's end-user customer.[101] If an IXC's 8YY customer, which Core allegedly seeks to protect through its Revised Tariff, believes that it has been inappropriately charged, the Act and our rules—not Core's Revised Tariff—are the means of protecting it against unlawful charges.[102]

[95] *USF/ICC Transformation Order*, 26 FCC Rcd at 17889-90, para. 700.

[96] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11614, para. 48 (internal citations omitted) ("We continue to discourage providers from engaging in self-help except to the extent that such self-help is consistent with the Communications Act of 1934, as amended (the Act), our regulations, and applicable tariffs. Disallowing self-help, whether in the access stimulation context or not, would be inconsistent with existing tariffs, some of which permit customers to withhold payment under certain circumstances.").

[97] AT&T Opposition at 18-19 (emphasis in original).

[98] *See Designation Order* at 13-14, para. 36 (requesting that Core justify its position by with legal precedent); Verizon Opposition at 19 ("Core identifies none."). In fact, Core's tariff allows for disputed charges to be withheld. Appx. § 2.10.4 ("Disputed Charges" section providing steps that Core's IXC customers must take to dispute charges and that customers shall pay any undisputed charges by the date of the disputed invoice).

[99] *E.g.*, Direct Case at 47 (The tariff revisions "ensure that if IXCs do not pay for suspicious traffic, their customers also will not be forced to pay."); *see also* Core Sept. 7, 2021 OPC *Ex Parte*; Core Sept. 7, 2021 *Ex Parte* Attach. at 2, 4, 7, 10.

[100] Direct Case at 14 ("Core's tariff revisions were carefully designed to place the 8YY called-party on the exact same footing as the IXC."); *id*. at 33.

[101] In the *Call Blocking Fourth Report and Order*, the Commission noted the potential risks of allowing private entities to trigger regulatory obligations for other private entities and declined to allow them to play that role. *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15231, para. 28 ("[O]nly the Commission should be able to provide notice of bad traffic and trigger this requirement [to mitigate illegal traffic] . . . . If other entities provided notice in this context, it could lead to increased burdens and duplicative notice. And limiting the ability to trigger this requirement to the Commission ensures that voice service providers cannot use this requirement for anticompetitive reasons.").

[102] 47 U.S.C. §§ 201(b), 206-208. Additionally, the market for long distance services has long been competitive and detariffed. If an 8YY customer is not satisfied with how it is billed by the IXC it chose, then the 8YY customer can select a different carrier with terms preferred by the customer, in contrast to the inability of IXCs to choose which carrier delivers 8YY traffic to it. AT&T Opposition at 10-11.

C. Comparisons to Incumbent LEC Tariffs and Reliance on Informal Staff Discussions Are Unavailing

29. In response to several of the Bureau's questions in the *Designation Order*, Core argues that the language in its Revised Tariff is commonly found in other carriers' tariffs, and for that reason should be found lawful.[103] We reject Core's argument that certain of the provisions in its Revised Tariff should be deemed lawful because they duplicate language from other carriers' tariffs.[104] Pursuant to section 204 of the Act, the scope of a tariff investigation is limited to "the lawfulness" of the "revised charge . . . or practice" of the carrier being investigated.[105] As AT&T aptly points out, "Core's tariff, and Core's tariff alone, is under investigation."[106]

30. The Commission has previously determined that tariff provisions must be assessed based on "compliance with our rules, not on a comparison with the tariff of another carrier that is not before us in this proceeding."[107] This is a well-recognized principle: "[t]he fact that other tariffs that were never challenged contain a similar provision has no bearing on whether [a carrier's] tariff rate provisions are consistent with our rules."[108] As such, Core's reliance on the deemed-lawful status of provisions in other carriers' tariffs is misplaced. As the Commission and courts recognize, all tariff provisions that have been deemed lawful pursuant to section 204 of the Act are subject to reevaluation and may subsequently be found to be unlawful.[109] "[S]ection 205 . . . makes clear that the Commission may find that a rate 'is or will' be in violation of the Act and prescribe 'what will be the just and reasonable charge' for the future. The 'deemed lawful' language in section 204(a)(3) changes the current regulatory scheme only by immunizing from [retroactive] challenge those rates that are not suspended or investigated before a finding of unlawfulness. It does nothing to change the Commission's ability to prescribe rates as to the future under section 205. . . ."[110] For these reasons, Core's reliance on the deemed lawful status of other carriers' tariff provisions is unavailing. Core may not rely on the existence of similar language in other

[103] *E.g.*, Direct Case at 41. For example, Core's answer to questions about the lawfulness of the revisions to its late fees, in section 2.10.5, is that "[t]his wording is extremely common in the world of telecommunications carrier tariffs. There are hundreds of examples of this exact language." *Id.*; *see also id*. at 45. In response to questions about the lawfulness of Core's attempt to tariff charges in section 3.3.5 for database queries even if the call is not completed, Core answers that "[t]his provision was borrowed directly from Petitioners' tariffs." *Id.* at 45; *see also* Core Sept. 7, 2021 *Ex Parte* Attach. at 4, 7.

[104] *E.g.*, Direct Case at 43, 45; *see also* Competitive Carriers *Ex Parte* at 2.

[105] 47 U.S.C. § 204.

[106] AT&T Opposition at 23.

[107] *Southwestern Bell Telephone Company Tariff F.C.C. No. 73*, Transmittal Nos. 2297 and 2312, Memorandum Opinion and Order, 11 FCC Rcd 3613, 3615-16, para. 14 (1996).

[108] *American Telephone Company, Inc. Tariff F.C.C. No.3*, WCB/Pricing File No. 10-07, Transmittal No. 4, 25 FCC Rcd 5661, 5662, para. 5 n.12 (WCB 2010).

[109] *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, Report and Order, 12 FCC Rcd 2170, 2183, para. 21 (1997) (*Streamlined Tariff Order*). In adopting rules to interpret and implement section 204 of the Act, the Commission explained that "a rate that is 'deemed lawful' can also be reevaluated as to its future effect under sections 205 and 208, and the Commission may prescribe a rate as to the future under section 205." *Id.*; *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403, 411 (D. C. Cir. 2002) (*ACS of Anchorage*) ("'[D]eemed lawful' tariffs are not subject to refunds. If a later reexamination shows them to be unreasonable, the Commission's available remedies will be prospective only.") (citing *Streamlined Tariff Order*, 12 FCC Rcd at 2182-83, paras. 20-21).

[110] *Streamlined Tariff Order*, 12 FCC Rcd at 2183, para. 21 (quoting parts of section 205 of the Act) ("Even where the agency has made an affirmative finding of lawfulness, which would not be the case where a tariff has become effective without suspension under section 204(a)(3), the tariff remains subject to further review under section 205.").

tariffs to justify provisions in its Revised Tariff. Rather, Core must establish the lawfulness of its tariff revisions on their own terms.

31. In response to requests in the *Designation Order* for legal precedent supporting its Revised Tariff, Core also cites conversations with Commission staff.[111] We reject Core's argument that its tariff revisions are just and reasonable because they are supported by statements Core claims were made by Commission staff in informal discussions with Core. It is well established that discussions with Commission staff do not bind the Commission.[112] Parties rely on conversations with Commission staff at their own risk.[113]

D. Tariff Sections 2.10.4.A and 2.21 - Dispute Resolution Provisions

32. Core's Revised Tariff includes two sets of revisions regarding billing disputes. The first are revisions to the existing text of section 2.10.4.A, titled "Disputed Charges," and the second is new section 2.21, titled "Fraudulent or Otherwise Illegal Traffic ('Financial Traceback')." Customers that do not follow the requirements set forth in these revised sections when disputing Core's charges are subject to significant late payment penalties.[114]

33. In the *Designation Order*, the Bureau directed Core to provide the legal justification for these revisions,[115] to assert what carrier is in the best position to screen for illegal traffic,[116] and to discuss whether these provisions are consistent with the Commission's orders and rules.[117] Core responds that its Revised Tariff is consistent with Commission precedent, including the *Northern Valley Order*[118] and the *Call Blocking Fourth Report and Order*,[119] that the IXC is in the best position to screen out fraudulent 8YY traffic,[120] and that the Revised Tariff complies with the Commission's rules against ambiguity

[111] *E.g.*, Direct Case at 45, 47.

[112] *E.g.*, *Vernal Enterprises, Inc. v. FCC*, 355 F.3d 650, 660 (D.C. Cir. 2004) ("We recently reaffirmed our well-established view that an agency is not bound by the actions of its staff if the agency has not endorsed those actions."); *Additional Information Regarding Broadband PCS Spectrum Included in the Auction Scheduled for March 23, 1999*, Order, 14 FCC Rcd 6561, 6562, para. 4 (1999) ("[R]epresentations, if any, made by staff members do not bind the Commission to a course of regulatory action unless such action has been duly authorized in expressly delegated terms."); *Liability of Jacor Broadcasting of Colorado, Inc.*, Memorandum Opinion and Order and Forfeiture Order, 12 FCC Rcd 9969, 9970, para. 5 (1997) ("Jacor Broadcasting now acknowledges that informal staff approvals do not bind the Commission.").

[113] *Board of Regents, Northwest Missouri State University, Licensee of KRNW(FM) Chillicothe, Missouri*, File No. BRED-20050214AAN, Forfeiture Order, 25 FCC Rcd 3119, 3120, para. 5 (MB 2010) ("Commission precedent has established that parties relying on informal discussions with Commission staff do so at their own risk.") (citations omitted); *Allen Leeds*, Order on Reconsideration, 22 FCC Rcd 1508, 1513, para. 11 (WTB 2007) (noting that "alleged staff 'statements neither bind the Commission nor prevent [the Commission] from enforcing Commission regulations . . . . [P]arties who rely on staff advice or interpretations do so at their own risk.'") (citation omitted); *see also, e.g., Applications of: Texas Media Group, Inc. et al.*, File No. BPH-850712R7, Memorandum Opinion and Order, 5 FCC Rcd 2851, 2852, para. 8 (1990) ("It is the obligation of interested parties to ascertain facts from official Commission records and files and not rely on statements or informal opinions by the staff."). *See also* Verizon Opposition at 23.

[114] Appx. § 2.10.5 (imposing higher penalties for unpaid amounts that are not subject to "a good faith dispute as described in this tariff").

[115] *Designation Order* at 12, para. 31.

[116] *Id.* at 12, para. 33.

[117] *Id.* at 12, para. 32.

[118] Direct Case at 28.

[119] *Id.* at 29-30.

[120] *Id.* at 30-31; *see also* Competitive Carriers *Ex Parte* at 2.

because sections 2.10.4.A and 2.21 "cannot be read in any way other than their plain language."[121] Petitioners respond that these provisions in Core's Revised Tariff are unjust and unreasonable, and should therefore be rejected as unlawful.[122]

1. Tariff Section 2.10.4.A

34. Section 2.10.4.A of Core's Revised Tariff requires a customer seeking to dispute a charge to submit a documented claim to Core that must be in writing to be considered a "good faith dispute." The claim must include certain details "to permit [Core] to investigate the merits of the dispute."[123] The Revised Tariff provides that Core will . . . complete[] its investigation of the dispute [and] notif[y] the Customer in writing of the disposition."[124]

35. Petitioners claim that this provision "is unlawful because it makes Core the sole judge of whether any dispute is in 'good faith.'"[125] In support of this position, Verizon cites the *Northern Valley Order*, in which the Commission held that the tariff provision at issue in that proceeding made the tariffing carrier "the *sole judge* of whether any bill dispute has merit" and therefore was unjust and unreasonable.[126] Core argues that, unlike the tariff provision reviewed in the *Northern Valley Order*, its Revised Tariff language does not explicitly state that it is the "sole judge" of billing disputes and "simply says [Core] will 'investigate the merits of the dispute' and . . . 'notif[y] the Customer in writing of the disposition.'"[127]

36. We agree with Core that a key distinction here is that Core's Revised Tariff does not contain the language that the Commission found unreasonable in *Northern Valley* and therefore find that Petitioners' argument is misplaced. In the *Northern Valley Order*, the Commission found the tariff provision unreasonable because the language explicitly stated that Northern Valley was "the sole judge of whether any bill dispute has merit."[128] The Commission determined that this language therefore "conflicts with sections 206 to 208 of the Act, which allow a customer to complain to the Commission or bring suit in federal district court for the recovery of damages regarding a carrier's alleged violation of the Act."[129] Unlike in *Northern Valley*, the language in section 2.10.4.A of Core's Revised Tariff does not have the effect of limiting available remedies such as preventing a customer from bringing a dispute about charges before the Commission or a court of law.

37. Petitioners also express concern about possible adverse consequences of the section 2.10.4.A dispute resolution provision coupled with Core's Revised Tariff section 2.10.5 that require an increase in late payment penalties on any amounts withheld during a dispute and vest Core with "sole-decider power [and] a strong financial incentive to misuse it."[130] We agree and address this concern below, finding the Revised Tariff late payment penalty in section 2.10.5 to be unjust and unreasonable, and requiring that the impermissible late payment language be removed from Core's tariff.

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[121] Direct Case at 29.

[122] AT&T Opposition at 10-24; Verizon Opposition at 11-19.

[123] Appx. § 2.10.4.A.

[124] *Id.*

[125] Petition at 8.

[126] Verizon Opposition at 11-12; *Northern Valley Order*, 26 FCC Rcd at 10787, para. 14 & n.49 (emphasis in original) (quoting Northern Valley Tariff, Original Page No. 33, § 3.1.7.1(d)).

[127] Direct Case at 28.

[128] *Northern Valley Order*, 26 FCC Rcd at 10787, para. 14 & n.49.

[129] *Id.* at 10787, para. 14 (citing 47 U.S.C. §§ 206-208).

[130] Verizon Opposition at 12; AT&T Opposition at 25-26.

38. We also note that section 2.10.4.A contains language that provides "alternative requirements" related to "fraudulent or otherwise illegal traffic" as set forth in revised section 2.21 that Petitioners found objectionable.[131] Because we find separately below that section 2.21 of Core's Revised Tariff is unjust and unreasonable, we require Core to remove all language in section 2.10.4.A that references or pertains to section 2.21. Our decision that Core's Revised Tariff section 2.10.4.A is lawful is conditioned on Core's compliance with this directive. We conclude that the required deletions of the revised late fee payment in section 2.10.5 and the language in section 2.10.4.A referencing section 2.21 and fraudulent and illegal traffic alleviate concerns over the detrimental effect the revisions to section 2.10.4.A would otherwise have. Finally, our decision with regard to section 2.10.4.A should not be read to support Core's argument that section 2.10.4.A should be deemed lawful to the extent that it uses identical tariff language from other carriers' tariffs. As we make clear elsewhere in this Order, we reject that argument.

2. Tariff Section 2.21

39. As discussed, section 2.10.4.A provides that "alternative requirements apply for disputes based on allegations of fraudulent or otherwise illegal traffic to be considered good faith disputes, as set forth in Section 2.21."[132] Under section 2.21, all traffic that Core delivers to an IXC is "presumed to be legal traffic," and therefore billable, unless the IXC blocks that traffic from reaching its 8YY customers or submits what Core considers to be a "good faith dispute."[133] Pursuant to section 2.21, to "qualify as [a] good faith" dispute over whether traffic is "fraudulent or otherwise illegal," customers must provide sufficient "documentation" showing that they did not assess charges to, or credited, their own customers for the same traffic.[134] In other words, the Revised Tariff makes IXCs responsible for identifying and blocking suspect traffic, and to the extent that real-time blocking proves insufficient, IXCs must not charge or credit their own customers, and must gather sufficient "documentation," merely to "qualify" to submit a dispute that Core will then "investigat[e]."[135]

40. *Presumption that Core's Traffic Is Legal.* We find that section 2.21 suffers from several infirmities that make it unjust and unreasonable in violation of section 201(b) of the Act.[136] At the outset, we disagree with Core's claim that its "tariff revisions have nothing to do with shifting or altering any carrier's obligation to address illegal robocalling."[137] Rather, we conclude that the tariff revision

[131] Appx. § 2.10.4.A.

[132] *Id*. (referencing § 2.21).

[133] *Id.* § 2.21.

[134] *Id.* §

[135] *Id.* §§ 2.21, 2.10.4.A; AT&T Opposition at 9 ("Even then, Core indicates that it will 'investigat[e]' the matter, and the dispute may not be resolved in the customer's favor.").

[136] In the record developed in this proceeding Core, AT&T, and Verizon discuss disputes between the companies over the validity, and compensability, of originating traffic that Core delivers to the IXCs. *See, e.g.*, Direct Case at 2; AT&T Opposition at 5-6; Verizon Opposition at 6-7; Core Sept. 7, 2021 OPC *Ex Parte*. Several of Core's customers and a telecommunications consultant with knowledge of Core submitted filings indicating that their originating toll free traffic that Core terminates to IXCs is valid traffic or that they have no concerns about partnering with Core for the termination of their, or their client's, 8YY traffic. Evolve *Ex Parte*, FracTEL *Ex Parte*, Shift8 *Ex Parte*, Skynet *Ex Parte*. In this Order, we do not evaluate whether Core is responsible for carrying substantial illegal traffic. Rather, our analysis is limited to the lawfulness of Core's Revised Tariff. *See* 47 U.S.C. 204(a)(1).

[137] Direct Case at 21; Core Sept. 7, 2021 *Ex Parte* Attach. at 2-3, 7. We similarly reject Core's defense that "Core's 8YY traffic originates from the same sources as 8YY traffic carried by other intermediate providers" and that "AT&T and Verizon pass this same traffic on to their customers—and receive payment from those customers." Core Aug. 26 *Ex Parte* Attach. at 3, 5. Without further explanation or support, these statements do nothing to advance Core's assertion that its traffic is legal.

unilaterally establishes a presumption that all traffic Core sends to IXCs and that those carriers do not block in real time is "legal traffic."[138] Our call blocking orders and rules do not create any presumption that calls are legal if the terminating IXC does not take action to block them.[139] In fact, Core concedes "that [at] any moment, intermediate carriers may be unwittingly carrying traffic generated by some new robocall or fraud scheme that neither the intermediate carrier's algorithms nor an IXCs [sic] algorithms can stop."[140] Core claims to "follow industry best practices to ensure that 8YY traffic it obtains is legitimate,"[141] but the Petitioners argue that Core's "limited efforts to combat fraud, including the use of a 'google search,' are insufficient under the Commission's approaches, and . . . Core's Tariff revisions are simply another attempt—this time through a regulated tariff—to further shirk its burdens."[142] Core's assumption in section 2.21, that all the traffic it carries is legal, and that it is up to the IXCs to detect and block unlawful traffic, is inconsistent with the underlying premise of the Commission's *8YY Access Charge Reform Order*—that 8YY arbitrage is sufficiently pervasive to "increasingly affect and undermine the system of intercarrier compensation that currently underpins toll free calling" and to warrant a comprehensive response.[143] Core's misplaced assumption is counter to the central requirement in the *Call*

[138] Appx. § 2.21.

[139] *E.g.*, 47 CFR § 64.1200 *et seq. See generally Call Blocking Fourth Report and Order.*

[140] Direct Case at 33. Core is not an originating carrier but its affiliate, Ton 80, has existing contracts with the carriers from which it purchases 8YY traffic that likely gives it visibility into that traffic. *See id.* at 9. "Core's parent company, CoreTel Communications, Inc., . . . coordinates closely with upstream and downstream carriers to isolate, mitigate and eliminate illegal robocall traffic. Core has processes in place to vet wholesale customers throughout the contracting, testing and turn-up phases." *Id.* at 2.

[141] Direct Case at 12.

[142] AT&T Opposition at 5 (internal citations omitted); *see also* Direct Case Exh. 2 at 2 (Letter from Craig John, Lead Financial Analyst, AT&T Operations, Inc., to Bret Mingo, President, CoreTel Communications (May 20, 2021)) (AT&T further asserts that "Coretel claims to be an 'Industry Leader' in fighting robocalls yet cites no examples of providing any leadership. Coretel provides no evidence or examples of Coretel proactively policing customers that purchase services from Coretel. Rather, Coretel has relied on considerable AT&T resources to police Coretel customers. Only when AT&T presents Coretel with a complaint received from an AT&T Toll-Free customer, does Coretel take action to remove the customer from its network."). CoreTel Communications, Inc., is the holding company of Core Communications, Inc. FCC Form 499 Filer Database, Core Communications, Inc., https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=831558 (last visited Sept. 14, 2021); *see also* Verizon Opposition at 9-10 ("Core points to its 'Know Your Customer' policy as a centerpiece of its anti-fraud strategy. Under that policy, Core's sources of toll free traffic are to self-report in standard form contracts whether they generate 'autodialer traffic' or deal with entities who do. . . . Core provides no evidence that it has ever applied this policy to *any* company that sells toll-free calls to Ton 80. And the policy notably does not ask these 'customers' whether they know who dialed the toll-free calls they are selling and, as important, how they know that."). Core relies heavily on its claim that during the course of a single week, "it blocked over 7% of traffic it received due to concerns about fraud." *See* Core Sept. 7, 2021 *Ex Parte* Attach. at 8; Direct Case at 36. We find this reliance misplaced and the claim unpersuasive. In the *Designation Order*, the Bureau directed Core to provide monthly data for the years 2020 and 2021 about "the percentage of calls Core itself rejected or blocked without charging an IXC or other carrier for the call." *Designation Order* at 13, para. 34. Core responded in its Direct Case that "[a]fter extensive analysis of its records, Core is unable to provide the requested breakdowns with any precision" and that it did not have enough time to produce all of the information requested. Direct Case at 35-36. Nearly two months after its Direct Case was submitted, Core filed its *ex parte* letter relying on its blocking percentage for the same single week, as opposed to any update on the 2020-2021 data the Bureau requested. Core fails to provide sufficient context to demonstrate that the results from this particular week were representative of Core's typical blocking rate. We agree with Verizon that an effective fraud detection program could result in significantly more than seven percent of calls being blocked. *See* Verizon Opposition at 9 (estimating that over 22% of calls Verizon received from Core should have been blocked, pursuant to an effective "Know Your Customer" program); AT&T Opposition at 15; *8YY Access Charge Reform Order*, 35 FCC Rcd at 11611-12, para. 41. Accordingly, we find Core's claim unpersuasive.

[143] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11595, para. 2.

Blocking Fourth Report and Order that "all voice service providers . . . take steps to stop illegal traffic on their networks."[144]

41. *Improper Burden Shift to IXCs*. As explained, Core's Revised Tariff establishes the presumption that all toll free calls that Core sends to an IXC, and that the IXC does not block in real time, are "legal traffic" that the IXC must pay Core for transmitting.[145] Thus, practically speaking, under the Revised Tariff, an IXC *must* block a fraudulent call in real time to avoid facing the financial responsibility of being billed by Core and paying for that call pursuant to the dispute resolution provisions in the Revised Tariff.[146] While Core acknowledges that "every carrier in a call flow has a role in identifying suspect or fraudulent traffic," and discusses the steps it takes to ensure that the 8YY traffic it purchases is legal,[147] it still emphasizes that it is "largely dependent on the traceback process"—procedures that rely on IXCs and complaints by the IXC's 8YY customers—to identify suspicious calls.[148] Verizon suggests that the fact that Core's traceback process identified only 0.018% of its 8YY minutes as unlawful in an 18-month period highlights the limitations of "after-the-fact, downstream reporting"—particularly given evidence that a significant number of toll free calls are the result of traffic pumping or other improper schemes.[149] Verizon argues that the limitations of the traceback process are what make it appealing to Core, because "[t]racebacks pose no actual impediment to Core's ability to seek compensation."[150]

42. We find that Core, through its tariff revisions, attempts to shift the responsibility for detecting and blocking fraudulent traffic onto IXCs. Such a result is inconsistent with our call blocking rules in several respects. First, our current rules on blocking suspected illegal calls are permissive, not

[144] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15226, para. 13.

[145] *See* Appx. § 2.21.

[146] *Id.* After being billed for a call by Core that turns out to be fraudulent, this provision then puts the burden on an IXC to file a dispute that will be considered by Core only if the IXC did not bill or proactively refunds any charges it made for the call to its own 8YY customers. *Id.*

[147] Direct Case at 12-13, 16. These steps include a "Know Your Customer" policy, which states that Core's "[o]perations shall monitor traffic & block suspected unlawful traffic" based on criteria such as calls coming from unassigned numbers or numbers that start with 911. *Id.* Exh. 3 at 3. But as Verizon points out, Core provides no evidence that those monitoring efforts result in successful call blocking to prevent illegal calls. Verizon Opposition at 1, 9. Verizon argues that Core's Direct Case shows that Core does not take advantage of the opportunity, given its relationship with its customer—the originating carrier that sells 8YY traffic to Core—to directly ask where the traffic comes from and whether they are legal calls dialed by actual end users. Verizon Opposition at 15; *id.* at 2 ("Core never says that it or Ton 80 asks their sources the critical questions: 'Who actually dialed these 8YY calls?' and 'How do you know that?' They do not ask, because they—like the aggregators they get calls from—do not want to know."). Core's application of its "Know Your Customer" policy would be ineffectual to the extent that the entities from which Core purchases traffic may also not seek to know the sources of their own traffic. *See* Verizon Opposition at 15; *cf.* FracTEL *Ex Parte*.

[148] Direct Case at 16; *see also Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15227 n.44 (explaining that "[t]raceback is the process of following the path of a call back to the point of origination . . . by obtaining information from each voice service provider in the call chain").

[149] Verizon Opposition at 15 (citing Direct Case at 35 & Exh. 7 and *8YY Access Charge Reform Order*, 35 FCC Rcd at 11611-12, para. 41). The Commission explained that the record demonstrated evidence of widespread and growing arbitrage and fraud in connection with 8YY calling, requiring the adoption of new rules to combat 8YY arbitrage. *8YY Access Charge Reform Order*, 35 FCC Rcd at 11611-12, para. 41.

[150] Verizon Opposition at 17 ("But so long as Core shifts the burden to long-distance carriers to ferret out its bad traffic, it knows its tariff will deem almost all its toll-free traffic to be legitimate. Tracebacks pose no actual impediment to Core's ability to seek compensation—Core knows that, because of the difficulties in identifying suspect calls after the fact, those efforts leave more than 99.8% of its traffic untouched.").

mandatory.[151] They allow an IXC (or any other carrier) to block a call that is highly likely to be illegal, but purposely stop short of mandating such blocking to ensure that "such blocking impacts [only] a minimal number of lawful calls" and does not prevent consumers from receiving legitimate calls.[152] In the *Call Blocking Fourth Report and Order*, the Commission also established a safe harbor and made clear that a terminating voice service provider, "may"—not must—"block any calls that it determines are highly likely to be illegal based on certain defined parameters."[153] Core quotes the safe harbor provision as support for section 2.21, which shifts the burden of detecting and blocking illegals calls to IXCs.[154] But this safe harbor language merely allows terminating providers to permissively block calls that are "highly likely" to be fraudulent, and only under certain circumstances.[155]

43. Second, Core's reliance on the *Call Blocking Fourth Report and Order* to support its shifting of the burden of blocking illegal calls to IXCs is misplaced. Core's attempt to assign the primary responsibility for identifying, mitigating, and blocking suspected illegal traffic to IXCs goes beyond what our orders and rules contemplate.[156] In the *Call Blocking Fourth Report and Order*, the Commission indicated that originating and gateway voice service providers were better positioned to investigate the source of suspected illegal traffic.[157] The Commission also stated that it does not "expect perfection in mitigation" of illegal traffic from intermediate and terminating voice service providers.[158] The Petitioners confirm that, given the sophisticated schemes to disguise improper 8YY calls, illegal calls are very difficult for them and their 8YY customers to detect, particularly in real time.[159] Verizon argues that the resulting "winding path toll-free calls travel serves to obscure their true origin, making it harder for [terminating carriers] to root out artificial calls."[160]

44. The conclusions in the *Call Blocking Fourth Report and Order* cannot be interpreted to stand for the proposition that calls delivered downstream in the call flow to an IXC are presumed to be

[151] 47 CFR § 64.1200(k) (stating that downstream providers *may* block calls under certain circumstances). Beginning September 28, 2021, the Commission's STIR/SHAKEN rules direct intermediate and terminating voice service providers to not accept calls from certain voice service providers that do not comply with our rules, but that requirement does not apply to the blocking of individual suspicious calls discussed in this proceeding. 47 CFR § 64.6305.

[152] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15237, para. 46; 47 U.S.C. § 227(b)(1); 47 CFR § 64.1200(a).

[153] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15236, para. 41.

[154] Direct Case at 29-30 (referencing *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15234-35, para. 39).

[155] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15234-35, para. 39. In the *Call Blocking Fourth Report and Order*, the Commission expanded safe harbors for providers to include network-based blocking of calls that are highly likely to be illegal and that have been identified using reasonable analytics, including caller ID authentication. *Id.* To qualify for the safe harbors, blocking providers must target only calls highly likely to be illegal, while providing sufficient human oversight and network monitoring to ensure that blocking is working as intended. *Id.*

[156] *E.g.*, Direct Case at 16-18, 22, 30-31.

[157] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15231-32, paras. 26-27 ("For a voice service provider to take steps to 'effectively mitigate' the traffic identified, it must first investigate to identify the source of that traffic. . . . We anticipate that this requirement will primarily impact originating or gateway voice service providers.").

[158] *Id.* at 15232, para. 30.

[159] AT&T Opposition at 11 ("IXCs have limited visibility into the sources of improper robocalls."); Verizon Opposition at 15-16; *8YY Access Charge Reform Order*, 35 FCC Rcd at 11602, para. 17 (explaining that 8YY arbitrage schemes are very sophisticated, making it difficult to detect illegal calls).

[160] Verizon Opposition at 6.

legal.[161] Rather, in the *Call Blocking Fourth Report and Order*, the Commission explicitly stated that "[o]riginating and gateway voice service providers are *best positioned* to prevent illegal calls by stopping them *before* they enter the network."[162] We agree with AT&T and Verizon that Core has a "primary role of detecting and preventing illegitimate traffic, given its upstream position in the call flow, direct customer relationships, and status as the point of entry to the PSTN from VoIP providers."[163] Even if the perpetrators of illegal traffic are not Core's direct customers, Core is in a better position to identify the sources of and take steps to mitigate the impact of that traffic on downstream voice service providers. While tracebacks initiated by terminating carriers in response to complaints play a role in the fight against illegal calls, no Commission order or rule supports an effort by Core to justifiably claim that IXCs are better positioned than Core is to prevent or block fraudulent calls at their source.[164]

45. *The Requirement that IXCs Not Assess or Credit Charges as a Precondition to Disputing a Charge Is Unreasonable*. For an IXC billing dispute to qualify as a "good faith dispute" under section 2.21 of Core's Revised Tariff, the IXC must demonstrate that its "customer either (1) was not assessed otherwise applicable usage-based charges, or (2) the otherwise applicable usage charges were credited."[165] Billing disputes "which are not [so] supported . . . will not be considered good faith disputes."[166] Petitioners claim this aspect of section 2.21 imposes an impermissible financial precondition on IXCs' ability to dispute Core's charges.[167] In the *Designation Order*, the Bureau required Core to "explain how its revisions to section 2.21 are consistent with the *Northern Valley Order*."[168]

46. In the *Northern Valley Order*, the Commission held that a tariff provision that required long-distance carriers to pay a disputed charge before being able to dispute that charge was unreasonable.[169] Core argues that the *Northern Valley Order* does not apply here because Core's Revised

[161] Core also cites to a general headline on the FCC website—"FCC Further Limits Robocalls, Tasks Telcos With Blocking Illegal Calls"—that makes the *Call Blocking Fourth Report and Order* available to the public. Direct Case at 29. That headline, similar to press releases, is an unofficial announcement of a Commission action. Only the release of the full text of a Commission Order constitutes official action. *See MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974). Regardless, neither the headline nor the *Call Blocking Fourth Report and Order* provides any authority or basis for placing the burden and responsibility solely or principally on IXCs for blocking calls in the manner that Core's Revised Tariff would do.

[162] *Call Blocking Fourth Report and Order*, 35 FCC Rcd at 15232, para. 33 (emphasis added).

[163] AT&T Opposition at 13-14 ("Core's Tariff turns the Commission's framework on its head . . . . It is not the burden of the IXCs and their defrauded customers to play 'whack a mole,' as arbitrageurs like Core direct illegal traffic onto the network."); Verizon Opposition at 14-15; *see also* AT&T Opposition at 2 n.4 ("Core may not be an originating voice service provider because it is apparently not at [the] very beginning of the call path, but Core is the gateway-originating carrier from an access charge perspective. Core should not be able to claim the benefits of billing 'originating' access charges to interexchange carriers ('IXCs'), without also taking on the burdens that apply to voice service providers, particularly as Core is commonly the first carrier in the call flows at issue. At the very least, Core cannot push the primary responsibility for identifying robocalls to the IXC, which is what its tariff revisions attempt to do.").

[164] Competitive Carriers *Ex Parte* at 2 (citing permissive steps terminating carriers may take pursuant to 47 CFR § 64.1200(k)(11)).

[165] Appx. § 2.21.

[166] *Id*. Disputes that do not meet Core's requirements for "good faith disputes" are subject to higher late payment penalties. *Id.* § 2.10.5.

[167] AT&T Opposition at 17-20; Verizon Opposition at 18-19.

[168] *Designation Order* at 13, para. 35.

[169] *Northern Valley Order*, 26 FCC Rcd at 10787, para. 14 & n.48 (quoting Tariff, Original Page No. 32 § 3.1.7.1(b) ("Any disputed charges must be paid in full prior to or at the time of submitting a good faith dispute and failure to tender payment for disputed invoices . . . is sufficient basis . . . to deny a dispute. . . .").

Tariff is unlike the tariff language in *Northern Valley* and "does not share the original Northern Valley problem."[170] Core's Revised Tariff does not include explicit language as in *Northern Valley* requiring long-distance carriers to pay Core disputed charges before raising disputes. We find, however, that Core's dispute resolution provision in section 2.21 has the same unlawful effect as the provision the Commission found unlawful in *Northern Valley*. Here, as in *Northern Valley*, section 2.21 imposes an unreasonable financial barrier to raising a dispute because it requires an IXC to incur a financial cost or penalty—either by issuing billing credits or declining to charge its toll free customers for completed calls—before an IXC can raise a good faith dispute with Core.[171]

47. Core claims that its Revised Tariff "commit[s] to full refunds to an IXC provided that the IXC extends the same benefit . . . to the end user consumer."[172] But section 2.21 does not provide that an IXC will win its dispute simply by refunding charges to its toll free customers. Rather, it states that the IXC has to refund the charges, or not charge, before it can even *raise* the dispute. As AT&T and Verizon point out, the tariff provides no assurance, particularly given the history of protracted disputes, including ongoing litigation between Core and IXCs, that Core will resolve the dispute in the IXC's favor, even if the IXC does not charge or issues the refunds required in Core's Revised Tariff.[173] Rather, Core's dispute resolution language "poses a major disincentive to raising disputes and thus makes it more likely Core will get to keep payments stemming from illegitimate traffic."[174] Core also fails to justify its admittedly "novel" approach of requiring an IXC to credit or not bill its own customers for traffic that is being disputed by not providing the Commission, as requested, with any legal precedent to support its position.[175] As a result, we find that Core fails to meet its burden to show that the tariff language at issue is reasonable. For these reasons, we find that the Revised Tariff language in section 2.21 is unjust and unreasonable.[176]

48. *Section 2.21 Is Not Clear and Unambiguous*. Section 61.2 of the rules requires that tariffs contain "clear and explicit explanatory statements regarding the rates and regulations."[177] The Commission has previously rejected tariffs for failing to meet this standard.[178] In the *Designation Order*,

[170] Direct Case at 36. Core states that its tariff (in section 2.10.4.B) reads: "Customer shall pay any **undisputed** charges in full by the due date of the disputed invoice(s) and in any event, prior to or at the time of submitting a good faith dispute." (Emphasis in original.); *see also* Core Sept. 7, 2021 *Ex Parte* Attach. at 3-4 (arguing that Core's Revised Tariff does not require IXCs to incur a financial penalty to raise a dispute).

[171] AT&T Opposition at 17 ("Core dismissed the Commission's concern on the basis that Northern Valley's tariff had different language, but that misses the point entirely: the issue is not that the provisions are identical but that Core's revisions establish a 'similar scheme' to that of Northern Valley.") (internal citations omitted); Verizon Opposition at 18.

[172] Direct Case at 33; Core Sept. 7, 2021 *Ex Parte* Attach. at 2, 4.

[173] AT&T Opposition at 18; Verizon Opposition at 18-19.

[174] Verizon Opposition at 18-19; AT&T Opposition at 17 ("Section 2.21 is also unlawful because the 'billing credit' scheme imposes an unreasonable dispute barrier in violation of § 201(b).").

[175] Direct Case at 37-38; *Designation Order* at 13, para. 35. Core argues that its Revised Tariff is consistent more broadly with the *Call Blocking Fourth Report and Order* and the *USF/ICC Transformation Order*, but it fails to show how these cases are on point here, and in any event, its reliance on these Commission decisions is misplaced, as we discuss elsewhere in this Order. Direct Case at 37 (generally referencing these cases).

[176] This analysis of Revised Tariff sections 2.10.4.A and 2.21 also addresses the Competitive Carriers' endorsement of tariff language that is "designed to ensure that IXC access billing challenges are only made in good faith and not used to engage in self-help or otherwise improperly avoid payment to the CLEC" and their support of tariff provisions with financial traceback requirements. Competitive Carriers *Ex Parte* at 1-2.

[177] 47 CFR § 61.2(a).

[178] *E.g.*, *Northern Valley Order*, 26 FCC Rcd at 10784-85, paras. 8-10; *Halpin, Temple, Goodman & Sugrue v. MCI Telecomm. Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 22568, 22574, para. 9 ("Section 201(b) of the Act (continued….)

the Bureau required Core to explain how the language of section 2.21 of the Revised Tariff is consistent with the requirement that tariff language be clear and unambiguous. Specifically, the Bureau asked Core to reconcile the use of both permissive and mandatory language in section 2.21.[179] In its Direct Case, Core dismisses these questions and simply asserts that "no reconciliation is necessary," because "[s]ections 2.21 and 2.10.4 are not unclear or ambiguous, and they cannot be read in any way other than their plain language."[180] Core suggests we ask the Petitioners for alternative interpretations.[181]

49. As an initial matter, Core's explanation is non-responsive and fails to meet Core's burden to defend its Revised Tariff in this tariff investigation. Further, as Verizon points out, section 2.21 explains how a customer can raise a good faith dispute in one sentence, and in a different sentence, "asserts that the permissive condition is a mandatory one."[182] Verizon asserts that "[t]he provision is ambiguous [because it] lays out a permissive condition: A customer *can* raise a good-faith dispute with certain documentation. If there are other ways to raise a good-faith dispute, they go unmentioned in Core's proposed tariff."[183] Verizon argues that "Core asserts that the permissive condition is a mandatory one: A customer *can only* raise a good-faith dispute if it documents it in a certain way. But that is not what the proposed section says."[184] We agree with Verizon and find that such a contradiction renders the tariff terms unclear and ambiguous, and therefore in violation of our tariffing rules because the language can be interpreted in several ways, making it impossible for Core's IXC customers to know how to raise a good-faith dispute in a manner that Core will accept.[185]

50. Section 2.21 suffers from additional ambiguities.[186] For example, Core requires its customers to show that their own customers were not assessed "usage-based charges" or were given a "usage charge" credit.[187] The Revised Tariff, however, does not define these terms. In addition, it is unclear how an IXC that bills bundled or flat-rated charges could satisfy this condition even if it did issue a refund or credit.[188] In its Direct Case, Core says it would "accept any type of credit" from an IXC and the "whole point of our financial traceback clause is to protect the consumer, and any good faith calculation that the IXCs made to accomplish that would be acceptable."[189] This answer provides us, and

(Continued from previous page)
requires that all of MCI's charges, practices, classifications and regulations for the provision of communications services be just and reasonable. To further this statutory obligation, Part 61.2 of the Commission's rules requires that all tariff publications shall contain clear and explicit explanatory statements regarding rates and regulations.").

[179] *Designation Order* at 12, para. 32.

[180] Direct Case at 29.

[181] *Id*.

[182] Verizon Opposition at 13 (referencing Revised Tariff section 2.21 and Direct Case at 28) ("Under Core's proposed section 2.21, a long-distance carrier 'can' raise a good-faith dispute over 'fraudulent or otherwise illegal' toll-free traffic it did not block if it documents that it either did not assess its customers 'otherwise applicable usage-based charges' for that traffic, or that it 'credited' those charges.").

[183] Verizon Opposition at 12-13.

[184] *Id.* at 13 (emphasis in original).

[185] *See* 47 CFR § 61.2(a) (requiring that tariffs contain "clear and explicit explanatory statements regarding the rates and regulations").

[186] *See, e.g.*, 47 CFR §§ 61.2(a), 61.54(j); *Northern Valley Order*, 26 FCC Rcd at 10784, para. 8; *see also Teliax Colorado, LLC, Tariff Order*, 2021 WL 1951558, at*3, para. 9 n.29 (WCB May 7, 2021) ("The application of a tariff provision should be clear to everyone and should not mean different things to different people.").

[187] Appx. § 2.21; AT&T Opposition at 21-22.

[188] *Designation Order* at 14, para. 37.

[189] Direct Case at 39-40. This is another example of Core's attempt to justify its Revised Tariff as a way to help IXCs' end user 8YY customers. *See supra* paras. 27-28.

Core's IXC customers, no clarity. Equally unclear is how Core expects an IXC to prove that the IXC issued a credit or never assessed its own customer in the first place.[190] Furthermore, section 2.21 of Core's Revised Tariff includes the phrase "Financial Traceback," in its title. Yet this term is never defined and its relevance is never clarified or even referenced in other parts of the tariff section, leaving customers to speculate on its meaning and how it relates to the rest of section 2.21.[191] These additional ambiguities violate the requirement that tariff language be clear and unambiguous.[192]

51. For all of the reasons discussed above, we find section 2.21 of Core's Revised Tariff unjust and unreasonable in violation of section 201(b) of the Act. Accordingly, we direct Core to remove section 2.21 from its Revised Tariff, as well as the language in section 2.10.4.A stating that "alternative requirements apply for disputes based on allegations of fraudulent or otherwise illegal traffic to be considered good faith disputes, as set forth in Section 2.21 herein."[193]

E. Tariff Section 2.10.5 - Late Payment Fees

52. *A 3% Monthly Late Payment Fee Is Not Just and Reasonable*. In its Revised Tariff, Core altered section 2.10.5, which governs late payment fees, to require that if "an unpaid amount is not part of a good faith dispute as described in this tariff," the late payment fee increases to "3.0% (rather than 1.5%) per month, or the highest rate permitted by applicable law, whichever is less."[194] In the *Designation Order*, the Bureau required Core to provide examples of late fees currently being assessed via tariff and explain the basis for its decision to charge a higher late fee.[195] In its Direct Case, Core attempts to justify the 3% late fee by arguing that "it is clear that the current 1.5% late fee is doing nothing to deter AT&T and Verizon from failing to pay, so it is self-evident that a higher rate is warranted," and that "[t]he 3% per month is also much lower than treble damages and penalties that are obtainable under most unfair trade practice laws."[196] In response to the Bureau's request for evidence supporting its revised 3% late fee, Core makes unsupported claims about retail toll free rates from unspecified IXCs[197] and provides 1.5% late fee language from several incumbent LECs' tariffs.[198]

53. In its Opposition, Verizon asserts that Core does not adequately support the use of a 3% late fee.[199] Verizon explains that Core's revised late fee of 3% "is double the 1.5% rate imposed by any of the carriers it points to in its Exhibit 8" and exceeds both inflation and the rate the Commission applies in cases involving "overcharging or improperly withheld payments."[200] AT&T argues that a late payment

[190] *See* Appx. § 2.21.

[191] Core states that the "tariff simply requires financial traceback." Direct Case at 49. Apart from the reference in the title of section 2.21, however, the Revised Tariff makes no reference to this requirement.

[192] 47 CFR § 61.2(a).

[193] Appx. § 2.10.4.A.

[194] Appx. § 2.10.5.

[195] *Designation Order* at 14, para. 38.

[196] Direct Case at 40.

[197] *Id.* at 40, Exh. 8.

[198] *Id.* Exh. 8.

[199] Verizon Opposition at 20 ("Core's only defense is that 'it is self-evident' that it needs the higher rate." (quoting Direct Case at 40)).

[200] Verizon Opposition at 20; *see also* AT&T Opposition at 25 ("[T]he 3% rate (which amounts to 36% annually) is significantly higher than the rate that the Commission has applied in similar circumstances involving 'overcharging or improperly withheld payments'—the IRS tax refund rate, which is less than 1% per year for overpayments of more than $10,000 to corporations.").

fee of 1.5% per month is "the near ubiquitous rate found in Petitioners' [incumbent LEC] affiliates' tariffs."[201]

54. Core fails to provide any examples of other tariffed late fees as high as 3%. To the contrary, Core's own submissions include only tariffed late fees from other carriers that are equal to or less than 1.5% per month.[202] None of the documentation Core provides supports its use of a 3% late fee or leads us to find that "a 3% per month late fee is just and reasonable, as required by section 201(b) of the Act."[203] Core's comparison of its late fee to IXC retail toll free rates has no bearing on the reasonableness of Core's 3% late fee and provides no relevant "context," as Core contends.[204]

55. Core attempts to justify its 3% late fee by arguing that it is "much lower than treble damages and penalties that are obtainable under most unfair trade practice laws."[205] Core makes this brief assertion with no support, explanation of relevance, examples, or legal justification.[206] This response to the Bureau's request for supporting evidence is insufficient and unconvincing. As further "evidence," Core claims that the need for its much-higher revised late fee is "self-evident" and that it is a necessary incentive for its customers to pay on a timely basis.[207] This response is similarly insufficient to demonstrate that Core's 3% late payment fee is just and reasonable. As Verizon notes, Core's 3% monthly late fee rate (36% per year) "*far* exceeds inflation (the Department of Labor put a key measure of inflation at 5.4% in the year through June 2021)."[208] AT&T argues that the 3% monthly late fee exceeds the rate the Commission applies in cases involving "'overcharging or improperly withheld payments'—the IRS tax refund rate, which is less than 1% per year for overpayments of more than $10,000 to corporations."[209]

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[201] AT&T Opposition at 25 (citing Core Response at 14).

[202] Monthly rates listed in Core's Exhibit, calculated on a monthly basis for comparison to Core's tariff, equal 1.5% monthly. *See, e.g.*, Direct Case Exh. 8, Ameritech Operating Companies Tariff F.C.C. No. 2, 9th Rev. Page No. 44, § 2.4.1(B)(3)(b)(ii) ("0.000493 per day, (annual percentage rate of 18%[)] applied on a simple interest rate basis"); MCImetro Access Transmission Services Corp., Tariff F.C.C. No. 1, Original Page No. 41, § B.5.2.5.1 ("Customer agrees to pay the Company the lesser of: (a) an annual interest rate of eighteen percent (18%), or (b) the maximum amount allowed by law.").

[203] *Designation Order* at 14, para. 38.

[204] Direct Case at 40 ("The IXC retail toll-free rates are approximately **1000% (One-<u>Thousand</u> Percent)** higher than the rate the [sic] Core is charging the IXCs. That 1000% difference is the windfall that the IXCs realize when they do not pay Core, but charge their customers for the same traffic. In this context, 3% is a miniscule amount.") (emphasis in original).

[205] Direct Case at 40.

[206] *Id*. at 40-41.

[207] Direct Case at 40; *see also id*. at 2-3 ("Core was compelled to file the tariff revisions in order to combat the egregious and unlawful self-help and non-payment by Verizon and AT&T for legitimate 8YY traffic that Core delivers to those IXCs. That unlawful self-help is the driving factor behind the tariff revisions, not any scheme to facilitate fraudulent traffic."); *cf*. AT&T Opposition at 26 ("In all events, there is no rule that Core can unilaterally select a rate it deems appropriate to ensure that it is paid, again based on Core's sole discretion as to what constitutes a good faith dispute.").

[208] Verizon Opposition at 20 (emphasis in original) (citing *National Commc'ns Ass'n, Inc. v. AT&T*, No. 92-cv-1735 (LAP), 1999 WL 258263, at *6 (S.D.N.Y. Apr. 29, 1999)); *see also ACS of Anchorage*, 290 F.3d at 414 (The Commission "co-opts" the IRS tax refund rate "for the calculation of prejudgment interest.").

[209] AT&T Opposition at 25 (internal citation omitted); *see also id*. at 9 ("[T]his usurious penalty (which amounts to 36% annually), is . . . significantly higher than the interest rate the Commission has applied in circumstances involving overcharges or withheld payments.").

56. *Core's Reference to the "Highest Rate Permitted by Applicable Law" Is Ambiguous.* In the *Designation Order*, the Bureau also required Core to explain "how this tariff provision [section 2.10.5], which purports to charge customers the lesser of a listed rate or another rate that is not listed in its tariff—'the highest rate permitted by applicable law'—is consistent with the requirement that all tariffs must contain 'clear and explicit explanatory statements regarding the rates and regulations' to 'remove all doubt as to their proper application.'"[210] Commission rules and legal precedent affirm that tariff language violates sections 61.2 and 61.74(a) of our rules when "a party could not reasonably ascertain the 'proper application' of the tariff at the time it was filed" because it cross-referenced other documents.[211] Yet Core's tariff revision in section 2.10.5 does exactly that.[212] Therefore, we find that Core's reference to "the highest rate permitted by applicable law" is impermissibly ambiguous in violation of rule 61.2.

57. As discussed throughout this Order, Core bears the burden of affirmatively showing that its Revised Tariff is just and reasonable and in compliance with our policies, orders and rules.[213] Core has not carried its burden here. For these reasons, we find the revisions to section 2.10.5 in its Revised Tariff are not just and reasonable, as required by section 201(b) of the Act.[214] Therefore, at the conclusion of this tariff investigation, Core must withdraw the revisions to section 2.10.5 made in Transmittal No. 17.[215]

F. Tariff Section 2.13.3.H - Cancellation by Company

58. New section 2.13.3.H, in Core's Revised Tariff, states that if Core discontinues service to a customer, it will provide "only those minimal functions necessary to identify the Customer as being the relevant carrier (i.e., 8YY database queries)."[216] This new language purports to allow Core to continue to assess an IXC 8YY database query charge even after Core discontinues service to that customer.[217]

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[210] *Designation Order* at 14, para. 38 (citing 47 CFR § 61.2(a)); *see also* 47 CFR § 61.54(j) ("The general rules (including definitions), regulations, exceptions, and conditions which govern the tariff must be stated clearly and definitely. All general rules, regulations, exceptions or conditions which in any way affect the rates named in the tariff must be specified. A special rule, regulation, exception or condition affecting a particular item or rate must be specifically referred to in connection with such item or rate.").

[211] 47 CFR § 61.2; *see also id.* § 61.25 ("[A] nondominant carrier may cross-reference in its tariff publication only the rate provisions of another carrier's FCC tariff publication . . . ."); *id.* § 61.74(a) ("Except as otherwise provided in this and other sections of this part, no tariff publication filed with the Commission may make reference to any other tariff publication or to any other document or instrument."). No exception to this rule applies to Core's Revised Tariff section 2.10.5. *Global NAPs, Inc. v. FCC*, 247 F.3d 252, 258 (D. C. Cir. 2001) (finding a tariff that cross-referenced other documents violated section 61.2(a) of our rules requiring that tariffs be "clear and explicit" "[i]n order to remove all doubt as to their proper application").

[212] *See* Verizon Opposition at 21 ("And this language is ambiguous: [I]t requires a customer disputing Core's charges to do legal research to determine whether there is law in the applicable state that imposes a cap lower than the rate in Core's tariff. Customers have a right to know the charges a tariff imposes without resorting to outside documents, such as state statutes or case law.").

[213] *See supra* Section III.A. *1993 Annual Access Charge Tariff Filings*; *1994 Annual Access Charge Tariff Filings*, CC Docket Nos. 93-193; 94-65, Order, 19 FCC Rcd 14949, 14957-58, para. 17 (2004) ("Moreover, section 204(a) assigns to the carriers the burden of proving the lawfulness of the filed tariffs under investigation. The LECs do not satisfy that statutorily imposed burden merely by showing that they have not violated explicit regulatory provisions. To the contrary, the LECs must affirmatively show that their tariffed 'charges, practices, classifications, and regulations' are 'just and reasonable' under the Act.").

[214] 47 U.S.C. § 201(b).

[215] Appx. § 2.10.5.

[216] Appx. § 2.13.3.H. Core replies that the reference in this new section of its tariff to "minimal functions necessary" applies only to 8YY database queries. Direct Case at 25.

[217] Appx. § 2.13.3.H.

59. In the *Designation Order*, the Bureau asked Core to provide "justification for its attempt to impose tariffed charges on carrier customers to which it has discontinued service, including any legal authority."[218] Core's response—that it is "providing a service to IXCs by conducting a query to correctly identify the IXC recipient of the call so it can be routed correctly"—is unconvincing.[219] Core cannot both discontinue service to a customer and continue to bill that customer for Core's services. Core argues that its IXC customers that withhold payment to dispute its charges bear responsibility for Core discontinuing service to them and should therefore be financially liable for the cost of database queries.[220] It also claims that "a carrier that has been discontinued for non-payment continues to willfully impose costs on intermediate providers like Core,"[221] and that an "IXC is cost-causing the database query when it refuses to pay Core for legitimate traffic delivered to it, and therefore the database query is appropriately charged to that IXC."[222]

60. We are not persuaded by Core's cost-causation arguments and find Core's attempt to impose financial liability for these costs on customers it discontinues serving to be unjust and unreasonable. Core's practice of discontinuing to route traffic to customers that dispute tariffed charges causes it to incur database query charges for that traffic.[223] As AT&T explains, "[w]henever a carrier disconnects service to a customer, the disconnection causes the carrier to incur costs, but those costs are often not recovered from the customer."[224] Such costs may simply be an unavoidable consequence of the decision to discontinue service to a customer.[225]

61. Core's Revised Tariff would impermissibly allow it to unreasonably assess charges on IXCs to which it has discontinued service.[226] As AT&T points out, "a central reason for the disconnection

[218] *Designation Order* at 14, para. 39.

[219] Direct Case at 25, 42. Core also asserts that this tariff provision is "copied from ILEC tariffs." Core Aug. 26 *Ex Parte* Attach. at 9. As discussed above, comparison to ILEC tariffs is an inadequate defense in a tariff investigation and has no bearing on our analysis herein.

[220] In its Direct Case, Core asserts that "by not paying its bill," the IXC "caused the calls to fail and the query needed to be done to ascertain it was destined to the disconnected carrier." Direct Case at 41-42.

[221] *Id.* at 41.

[222] *Id*. at 42.

[223] Appx. § 2.13.3.H.

[224] AT&T Opposition at 27. AT&T further explains that it "does not agree that a LEC like Core can lawfully or properly disconnect an IXC for non-payment of access charges that are currently disputed." *Id.* at 27 n.101. In rejecting Core's tariff revision, we do not address the issue of Core's right to discontinue service to an IXC customer for non-payment of disputed charges, as that issue is not relevant to our tariff investigation.

[225] AT&T cites another example of costs that a carrier discontinuing service to a customer incurs but which cannot be recovered: "[O]ther end users may continue to dial the disconnected end user, and the carrier may incur certain network costs as a consequence of the continued attempts to reach the disconnected customer." AT&T Opposition at 27. It is possible that Core could avoid some of these costs by simply declining to purchase 8YY traffic destined for a discontinued IXC customer. Verizon Opposition at 22 ("Core can—and should—refuse to buy traffic destined for a company it no longer serves."). We also disagree with Core's assertion that it must bill for disconnected customers because "the costs of the query are incurred before the LEC (ILEC or Core) knows the destination IXC." Core Aug. 26 *Ex Parte* Attach. at 10. As Verizon states, Core can refuse to buy traffic for a discontinued IXC customer. Alternatively, Core could build the costs of database queries into its bid for the purchase of 8YY traffic. Core should have no need to query the 8YY database for calls that it purchases if the seller can identify the terminating IXC.

[226] In the *Designation Order*, the Bureau asked Core to explain "how its tariff changes will conform to the database query limitations adopted in the *8YY Access Charge Reform Order* and the accompanying rules." *Designation Order* at 14-15, para. 40 & n.119 (citing 47 CFR § 51.905(d)). Core has not adequately responded to our questions concerning Core's future compliance with limitations on the imposition of database query charges. Rather, Core

(continued….)

[of a customer] is to avoid further charges to the customer."[227] Core has not met its burden of showing that it is reasonable for Core to disconnect a customer and continue to charge that former customer for a database query that provides no benefit to the former customer, given that it is Core that has elected not to route calls to that former customer. In addition, were we to allow Core to charge discontinued customers for these database queries, it would create an incentive for increased 8YY database query arbitrage, contrary to the intent of the *8YY Access Charge Reform Order*,[228] rather than an incentive to mitigate the costs associated with discontinuance.[229] Allowing this tariff revision would likely encourage pricing and routing inefficiencies that are inconsistent with the *8YY Access Charge Reform Order* and that we cannot sanction.[230] Consistent with the discussion throughout this Order, we also reject as insufficient and unpersuasive Core's argument that this tariff revision should be deemed lawful because Core copied language from other deemed lawful tariffs.[231]

62. We therefore find section 2.13.3.H to be unjust and unreasonable in violation of section 201(b) of the Act and inconsistent with the stated policy goals of the *8YY Access Charge Reform Order*. Core must withdraw section 2.13.3.H from its tariff.[232]

G. Tariff Section 3.3.5 - Toll Free Interexchange Delivery Service

63. Core's revisions to section 3.3.5 of its tariff provide it with the right to charge for 8YY database queries "even if the underlying call is not completed."[233] In the *Designation Order*, the Bureau

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simply says its "tariff revisions do not contravene the requirements of the 8YY Access Reform Order or any other Commission Order." Direct Case at 44. Core asserts generally that it "has always insured calls with a query already in the call flow do not result in query charges." Direct Case at 45. As such, Petitioners were unable to provide a detailed response. *See* AT&T Opposition at 28-29; Verizon Opposition at 23. Because we have found that section 2.13.3.H is unjust and unreasonable on other grounds, we need not reach this issue. However, we do take the opportunity to remind carriers in the 8YY call flow that only one database query charge may be assessed, and that charge should be assessed by the originating carrier unless it is unable to do so. 47 CFR § 51.905(d) ("Beginning July 1, 2021, and notwithstanding any other provision of the Commission's rules in this chapter, only the originating carrier in the path of the Toll Free Call may assess a Toll Free Database Query Charge for a Toll Free Call. When the originating carrier is unable to transmit the results of the Toll Free Database Query to the next carrier or provider in the call path, that next carrier or provider may instead assess a Toll Free Database Query Charge."); *8YY Access Charge Reform Order*, 35 FCC Rcd at 11629-30, para. 82 ("[A]s of the effective date of this *Order*, we will eliminate double dipping and allow only one carrier in a call path to charge a single database query for each 8YY call."). The *8YY Access Charge Reform Order* became effective on November 27, 2020. 8YY Access Charge Reform, 85 Fed. Reg. 75894 (Nov. 27, 2020).

[227] AT&T Opposition at 27.

[228] Verizon Opposition at 22 ("Core's proposed provision makes these charges particularly attractive—Core gets to collect the [database query] charge while some other company will have to handle the delivery.").

[229] AT&T Opposition at 27 ("Core cites no precedents in which the carrier can continue to bill the disconnected customers.").

[230] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11595, para. 4 ("As we continue our progress toward bill-and-keep for all intercarrier compensation, curtailing carriers' incentives to engage in toll free arbitrage, we reduce the cost of 8YY calling overall, and decrease inefficiencies in 8YY call routing and compensation, encourage the transition to IP-based networks, and diminish the frequency and costs of 8YY intercarrier compensation disputes.").

[231] Direct Case at 45.

[232] In the *Designation Order*, the Bureau also asked Core to clarify any potential ambiguity with what types of minimal functions it would provide to discontinued customers. *Designation Order* at 14, para. 39 ("Core must . . . explain how its use of the undefined term 'minimal functions' is clear and unambiguous as required by the Commission's rules. What is Core's definition of 'minimal functions' as used in section 2.13.3.H of its tariff? Should Core include a definition of 'minimal functions' in its tariff?") (internal citations omitted). Because we find section 2.13.3.H unlawful for other reasons, we need not decide the issue of potential ambiguity with this section.

instructed Core to explain why it would charge for database queries for 8YY calls that are not completed, provide the legal authority for doing so, and explain why this tariff provision is just and reasonable.[234] The Bureau further directed Core to explain how this tariff provision complies with the policies and rules adopted in the *8YY Access Charge Reform Order*.[235]

64. Core responds that this tariff language was borrowed directly from Petitioners' tariffs.[236] Core fails to provide legal authority for the revisions in section 3.3.5, stating that "[o]riginating access charges have always applied to both complete and incomplete calls," and likens this tariff provision to language allowing charges for non-conversation time.[237] Additionally, Core claims that Commission staff suggested that "matching language in an [incumbent LEC (ILEC)] tariff provides compelling evidence that the provision is lawful."[238] Core also contends that the revised language furthers the Commission's consumer protection goals.[239]

65. Despite Core's pronouncement that its "tariff filing is entirely consistent with the Commission's express policy goals," we find that Core's tariff revision in section 3.3.5 contradicts the policies the Commission articulated in the *8YY Access Charge Reform Order* of encouraging efficient 8YY call routing.[240] In that Order, the Commission expressed specific concerns about intermediate providers, such as Core, continuing to conduct 8YY arbitrage. As the Commission explained, "originating carriers and intermediate providers . . . have an incentive to engage in . . . inefficient routing and aggregation of 8YY traffic to high rate areas."[241] As the Commission explained in the *8YY Access Charge Reform Order*, intermediate carriers such as Core have been particularly prone to database abuse, as they are "inserted into the call path by the originators of Toll Free traffic [and] routinely ignore the routing instructions in the SMS 800 database," choosing to route 8YY calls to "whichever IXC or tandem is willing to pay the highest rate."[242] Allowing this tariff revision to go into effect would result in unnecessary additional database query charges being assessed for these calls, facilitating inefficient routing.[243] It may also give Core the incentive to intentionally drop calls or to purchase 8YY calls that it knows or should have known cannot be completed.[244] In the *8YY Access Charge Reform Order*, the Commission noted that this type of 8YY arbitrage "increases the amount of revenue to be shared, often

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[233] Appx. § 3.3.5.

[234] *Designation Order* at 15, para. 41.

[235] *Id.*; *see, e.g., 8YY Access Charge Reform Order*, 35 FCC Rcd at 11595, paras. 3-4.

[236] Direct Case at 45; Core Sept. 7, 2021 *Ex Parte* Attach. at 4.

[237] Direct Case at 45.

[238] *Id*. at 46.

[239] *Id*.

[240] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11600-03, paras. 16-21.

[241] *Id*. at 11618, para. 54.

[242] *Id*. at 11602-3, para. 19 (internal citations omitted).

[243] Verizon Opposition at 22. Core is dismissive of the routing inefficiencies its tariff would cause. Direct Case at 43 ("A second query . . . is the disconnected carrier's own problem. Core is [sic] no position to even know where the second call on the reattempt appears on a disconnected carrier's network.").

[244] In the *Designation Order*, the Bureau asked whether Core could determine which IXC's traffic it purchased. *Designation Order* at 11, para. 28. Core denies that it specifies which IXC's traffic it acquires but states that the "SIP signaling practice . . . permits Core to quickly identify to which IXC [traffic] is destined." Direct Case at 26. Verizon states that "Core does not claim it cannot specify which long-distance carrier's traffic it wants to buy. Nor does Core deny that other carriers specify which long-distance carriers they will work with." Verizon Opposition at 22-23 n.92.

adds additional hops, and can result in failed calls . . . driving up costs and disrupting [carriers'] ability to properly manage their networks."[245] The Commission further explained that this type of arbitrage can affect network management, causing "unnecessary network congestion and ultimately distorting network investment."[246] Allowing such actions directly contradicts the policy goals articulated in the *8YY Access Charge Reform Order*.

66. We disagree with Core that it should be allowed to collect database query charges even for incomplete calls. Core asserts that "[o]riginating [a]ccess charges have always applied to both complete and incomplete calls."[247] The example Core cites, however, underscores the fact that incomplete calls typically represent a small fraction of total calls.[248] In the *8YY Access Charge Reform Order*, the Commission noted that "[n]ot allowing intermediate carriers to assess a second 8YY Database query charge per call should have a de minimis impact on those carriers' bottom lines generally," as the number of times that an intermediate carrier would need to conduct a query if the originating carrier is unable to do so should be "a relatively small fraction of customers and a similarly small fraction of 8YY calls overall."[249] This situation differs materially from the one Core's Revised Tariff creates when it allows assessment of database query charges for all 8YY traffic destined to an IXC, even traffic which Core is not responsible for routing to the IXC. We find that assessing database query charges for 100% of "incomplete" 8YY calls to an IXC is distinguishable from the normal incidence of incomplete calls and is an unreasonable practice.

67. Core also argues that this tariff provision "was borrowed directly from Petitioners' tariffs [and] has been in deemed lawful tariffs for decades."[250] Core's response does nothing to "explain the rationale for this provision and why it is just and reasonable" as required in the *Designation Order*.[251] Core does not provide any legal authority to support its attempt to charge for an 8YY database query when the call for which the database is queried is not completed. In addition, we agree with Petitioners that Core's tariff revisions, taken together,[252] give this language a troubling effect that is different than

[245] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11602-3, para. 19 (internal citation omitted).

[246] *Id*.

[247] Direct Case at 45.

[248] *Id.* (citing another tariff in which "non-conversation time" amounted to less than 10% of total minutes, only some of which were for calls that were not completed).

[249] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11630-31, para. 84.

[250] Direct Case at 45.

[251] *Designation Order* at 15, para. 41.

[252] In the *Designation Order*, the Bureau asked if "we should determine the legality of [Core's] tariff revision in isolation, or whether in our investigation we should consider the effect of the tariff revisions taken as a whole." *Designation Order* at 12, para. 30. Core responds that "[t]he Commission should determine the legality of Core's tariffs as they would for any other carrier, regardless of their size or market position." Direct Case at 28. Later in the *Designation Order*, the Bureau asked if, in evaluating Core's Revised Tariff, we "should take into consideration the totality of the language in Core's tariff—and not just the revisions—to determine the lawfulness of Core's tariff revisions" and asked Core to provide relevant precedent supporting its position. *Designation Order* at 15, para. 42. Core replies here that "[o]nly if the Commission believes Core's ILEC-mirrored tariff language somehow has a fundamentally different meaning than the ILEC provision—and it does not—should it even consider disparate, discriminatory treatment of Core's proposed tariff revision." Direct Case at 46. Core's responses fail to provide any legal precedent or support for its position. Nor does Core provide why or how, in light of this tariff investigation, considering its tariff as a whole would be discriminatory. With regard to determining the lawfulness of the revisions in section 3.3.5, the Petitioners suggest we consider this section in concert with the revisions to section 2.13.3.H. This is different than reviewing Core's revisions as they relate to non-revised portions of Core's tariff. These two sections address database query charges and Core has said repeatedly that it is using its tariff changes to incentivize certain IXC conduct. Direct Case at 27, 33-34. As such, we believe it is reasonable to consider the effect of these sections taken together. *See, e.g., Northern Valley Tariff Investigation Order*, 35 FCC Rcd at 6207, para. 21 (In (continued….)

that accomplished by similar language in Petitioners' tariffs.[253] As Verizon explains, "[n]one of the ILEC tariffs Core relies on combines its discontinuance provision with a provision that purports to allow it to charge database queries on undelivered calls."[254] We find that Core's answers to the questions about section 3.3.5 raised in the *Designation Order* are insufficiently responsive and that Core has not met its burden of demonstrating that this tariff provision is just and reasonable.[255] As discussed previously, we also find Core's affirmative defense that this tariff provision "furthers the Commission's consumer-directed goals by ensuring consumers, and not just the Petitioners, are protected when unlawful or unwanted traffic is identified" unconvincing.[256]

68. We find that Core has not met its burden of showing that this tariff revision is just and reasonable.[257] We also conclude that Core's Revised Tariff section 3.3.5 is contrary to the policies adopted in the *8YY Access Charge Reform Order*.[258] Accordingly, we find that the proposed revisions to section 3.3.5 are unjust and unreasonable, and we order Core to remove the language added to section 3.3.5 in Transmittal No. 17 filed on April 22, 2021.[259]

IV. PROCEDURAL MATTERS

69. We require Core to delete the language revised or added by Transmittal No. 17 in sections 2.10.5, 2.13.3.H, 2.21, and 3.3.5. Core must also delete the following language in section 2.10.4.A of its Revised Tariff: "alternative requirements apply for disputes based on allegations of fraudulent or otherwise illegal traffic to be considered good faith disputes, as set forth in Section 2.21 herein."

70. Given the complexities associated with the implementation of the findings made in this Order, we direct the Wireline Competition Bureau to ensure that the Commission's findings are properly reflected in Core's new revised tariff. We further direct the Wireline Competition Bureau to determine any refunds that may be required once the newly revised tariff is effective.

V. ORDERING CLAUSES

71. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 2, 4(i), 4(j), 201, 203, 204, 205, 206, 208, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201, 203, 204, 205, 206, 208, and 403, and sections 61.2, 61.54(j), and 61.74(a) of the Commission's rules, 47 CFR §§ 61.2, 61.54(j), and 61.74(a), that this *Memorandum Opinion and Order* is ADOPTED.

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deciding the investigation of Northern Valley's tariff Transmittal No. 12, the Commission considered the totality of the circumstances.).

[253] *See* Verizon Opposition at 23; AT&T Opposition at 28-29.

[254] Verizon Opposition at 23. In the *8YY Access Charge Reform Order*, the Commission noted that the "unique routing of, and compensation for, 8YY calls have created opportunities for arbitrage and other abuse of the intercarrier compensation system," which includes "traffic pumping, benchmarking abuse, mileage pumping, and database query abuse." *8YY Access Charge Reform Order*, 35 FCC Rcd at 11600-01, para. 16.

[255] *See supra* Section III.A.

[256] *See supra* paras. 27-28.

[257] *See supra* Section III.A.

[258] Our requirement that Core remove the language added to section 3.3.5 in Transmittal No. 17 addresses AT&T's suggestion that, at a minimum, we "should re-affirm that, as with any access service, Core may charge only for services that it provides." AT&T Opposition at 28 n.102.

[259] Appx. § 3.3.5.

72. IT IS FURTHER ORDERED, pursuant to sections 1, 2, 4(i), 4(j), 201, 203, 204, 205, 206, 208, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201, 203, 204, 205, 206, 208, and 403, and sections 61.2, 61.54(j), and 61.74(a) of the Commission's rules, 47 CFR §§ 61.2, 61.54(j), and 61.74(a), that Core Communications, Inc., et al. SHALL DELETE the revised or added language in sections 2.10.5, 2.13.3.H, 2.21, and 3.3.5 in Transmittal No. 17 and DELETE the language identified herein in section 2.10.4.A and FILE tariff revisions consistent with this Order within ten days of the release of this Order.

73. IT IS FURTHER ORDERED that, pursuant to sections 203, 204(a), and 205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 203, 204(a), and 205, the tariff investigation, initiated in WC Docket No. 21-191, is TERMINATED.

74. IT IS FURTHER ORDERED that the accounting order applicable to Core Communications, Inc., et al., shall remain in effect until such time as its revised tariff becomes effective.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX

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

2.10 Billing and Payment For Service

2.10.4 Disputed Charges

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

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

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

2.10 Billing and Payment For Service

2.10.5 Late Payment Fees

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

2.13 Cancellation by Company

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

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

2.21 Fraudulent or Otherwise Illegal Traffic ("Financial Traceback")

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

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

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

3.3 Switched Access Service

3.3.5 Toll Free Interexchange Delivery Service

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

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