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MEMORANDUM

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AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

JUN 06 2012

DOCKETED BY

TO: THE COMMISSION

FROM: Utilities Division

DATE: June 6, 2012

RE: IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC TARIFF FILING TO REVISE TARIFF NO. 3 TO COMPLY WITH THE FEDERAL COMMUNICATIONS COMMISSION'S 2011 REPORT AND ORDER 11-161. (DOCKET NO. T-03654A-12-0012)

On January 12, 2012, Level 3 Communications, LLC ("Level 3") filed an application to make changes to its tariff as it relates to intercarrier compensation for Voice over Internet Protocol-Public Switched Telephone Network ("VoIP-PSTN")[1] traffic. Voice over Internet Protocol ("VoIP") is a technology that allows a subscriber to make and receive voice calls using a broadband Internet connection instead of a phone line. On January 19, 2012, Level 3 filed corrections to the January 12, 2012 tariff as requested by Staff.

On November 18, 2011, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rulemaking in WC Docket Nos. 10-90, et al. (FCC 11-161) ("the USF-ICC Order") that puts in place a process that will change the current process by which carriers pay for the use of each other's facilities and network. The FCC's name for this process is "intercarrier compensation." As a result of the USF-ICC Order, carriers are filing revisions to their access tariffs to conform to the provisions of the Order. Specifically, carriers are addressing access charges imposed on VoIP-PSTN traffic.

The FCC adopted the following intercarrier compensation framework for VoIP traffic, in particular VoIP-PSTN traffic[2]:

> *Voice over Internet Protocol (VoIP):* The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers. Such traffic will be rated at interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call. *All "toll" traffic <u>that originates in IP or terminates in IP</u> will be subject to current interstate access rates (regardless of whether it is interstate or intrastate) (Italics*

[1] "VoIP-PSTN traffic" is "traffic exchanged over the Public Switched Telephone Network that originates and/or terminates in internet protocol ("IP") format.

[2] The USF-ICC Order at para. 933, footnote 1869.

> *and underlining added.)*; local termination rates would not be affected. All such traffic is incorporated into the overall transition as rates for terminating interstate access traffic are reduced and eventually unified at $0.0007 pursuant to the comprehensive reform plan described below. *Under the plan, intrastate access rates will not be applied to VoIP traffic. (Italics added.)*

The USF-ICC Order also makes clear that on a going-forward basis payment obligations apply to VoIP traffic and adopts a transitional intercarrier compensation framework for VoIP.[3] Under the transitional framework[4]:

- Default charges for "toll" VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, both in terms of the rate level and rate structure;
- Default charges for other VoIP-PSTN traffic will be the otherwise-applicable reciprocal compensation rates; (footnote omitted); and
- LECs are permitted to tariff these default charges for toll VoIP-PSTN traffic in relevant federal and state tariffs in the absence of an agreement for different intercarrier compensation.

Based on the above language and Staff's interpretation of the USF-ICC Order, Staff believes that interstate access rates are applicable to both originating and terminating VoIP-PSTN traffic.

Frontier Communications Corp. ("Frontier") filed a Petition for Clarification and/or Reconsideration ("Petition") at the FCC to clarify, or reconsider its decision to state, that initially the interstate access charges for VoIP-PSTN calls will apply only for the termination of such calls and intrastate charges will apply to the origination of such calls.

Level 3's proposed tariff states that VoIP-PSTN traffic is traffic that is exchanged in Time Division Multiplexing ("TDM") format and originates and/or terminates in IP format. The proposed tariff further states that this traffic is required to be compensated at interstate access rates unless the parties have negotiated that applicable rate as is permitted by the FCC. This differs from Frontier's position that the charges apply only to traffic that is exchanged in TDM format and <u>terminates</u> in IP format.

On March 28, 2012, AT&T Services, Inc. ("AT&T") filed objections to Level 3's proposed tariff revisions. AT&T states it objects that there is no mechanism to address VoIP-PSTN traffic that Level 3 customers originate or terminate in IP format. AT&T states that the FCC's order requires that interstate access rates apply to calls that originate or terminate in IP format. AT&T surmises that a reason these calls are not included in the proposed tariff is that Level 3 does not provide retail VoIP services to its customers and if so, the tariff should be amended to include such traffic if Level 3 provides retail VoIP services in the future. Further,

[3] The USF-ICC Order at para. 652.
[4] The USF-ICC Order at para. 944.

AT&T states Level 3's revised Access tariff indicates that the Percent VoIP Usage ("PVU") factors will be applied retroactively to January 1, 2012, which AT&T believes is inconsistent with the fact that the FCC Order became effective on December 29, 2011 and required immediate implementation.[5] AT&T requests the proposed tariff be revised to address VoIP-PSTN traffic that Level 3 customers originate or terminate in IP format and to be applied retroactively to December 29, 2011.

On June 5, 2012, Level 3 filed replacement tariff pages that include a mechanism to address VoIP-PSTN traffic that Level 3 customers originate or terminate in IP format.

On April 24, 2012, the FCC issued an Order[6] addressing Frontier's petition, stating "it would permit LECs to tariff default rates equal to their intrastate originating access rates when they originate VoIP traffic from the effective date[7] of the revised rules until June 30, 2014. On July 1, 2014, LECs will be permitted to tariff default rates for such traffic equal to their interstate originating access rates."[8]

During its review of numerous proposed tariff revisions to implement the FCC's decision as it relates to VoIP-PSTN calls, Staff was informed by AT&T and others that they believed that because the FCC's Order regarding these calls became effective on December 29, 2011, the new rates should apply to traffic beginning on that date and that there should be a rate adjustment. The Commission's tariff approval procedures apply and the tariffs become effective after Commission approval.

Staff has reviewed the proposed tariff revisions, the relevant FCC Orders and the comments that have been filed in the Docket. Staff recommends approval of Level 3's proposed tariff revisions, as amended.

Steven M. Olea
Director
Utilities Division

SMO:LLM:sms\MAS

ORIGINATOR: Lori Morrison

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5 The USF-ICC Order at para. 939, footnote 1890.

6 The USF-ICC Order, *Second Order On Reconsideration*, FCC 12-47, rel. April 25, 2012, ¶ 2 and ¶35 and footnote 96.

7 Id., Footnote 96, "Accordingly, our revised rules will become effective 45 days after publication in the Federal Register."

8 Id., ¶35.

BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE
Chairman
BOB STUMP
Commissioner
SANDRA D. KENNEDY
Commissioner
PAUL NEWMAN
Commissioner
BRENDA BURNS
Commissioner

IN THE MATTER OF THE APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC TARIFF FILING TO REVISE TARIFF NO. 3 TO COMPLY WITH THE FEDERAL COMMUNICATIONS COMMISSION'S 2011 REPORT AND ORDER 11-161	DOCKET NO. T-03654A-12-0012 DECISION NO. __________ ORDER

Open Meeting
June 19 and 20, 2012
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Level 3 Communications, L.L.C. ("Level 3") is certificated to provide telecommunications service as a public service corporation in the State of Arizona.

2. On January 12, 2012, Level 3 Communications, L.L.C. ("Level 3") filed an application to make changes to its tariff as it relates to intercarrier compensation for Voice over Internet Protocol-Public Switched Telephone Network ("VoIP-PSTN")[1] traffic. Voice over Internet Protocol ("VoIP") is a technology that allows a subscriber to make and receive voice calls using a broadband Internet connection instead of a phone line. On January 19, 2012, Level 3 filed corrections to the January 12, 2012 tariff as requested by Staff.

. . .

[1] "VoIP-PSTN traffic" is "traffic exchanged over the Public Switched Telephone Network that originates and/or terminates in internet protocol ("IP") format.

3. On November 18, 2011, the Federal Communications Commission ("FCC") issued a Report and Order and Further Notice of Proposed Rulemaking in WC Docket Nos. 10-90, et al. (FCC 11-161) ("the USF-ICC Order") that puts in place a process that will change the current process by which carriers pay for the use of each other's facilities and network. The FCC's name for this process is "intercarrier compensation." As a result of the USF-ICC Order, carriers are filing revisions to their access tariffs to conform to the provisions of the Order. Specifically, carriers are addressing access charges imposed on VoIP-PSTN traffic.

4. The FCC adopted the following intercarrier compensation framework for VoIP traffic, in particular, VoIP-PSTN traffic[2]:

> *Voice over Internet Protocol (VoIP):* The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to VoIP traffic exchanged between LECs and other carriers. Such traffic will be rated at interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call. *All "toll" traffic <u>that originates in IP or terminates in IP</u> will be subject to current interstate access rates (regardless of whether it is interstate or intrastate) (Italics and underlining added.)*; local termination rates would not be affected. All such traffic is incorporated into the overall transition as rates for terminating interstate access traffic are reduced and eventually unified at $0.0007 pursuant to the comprehensive reform plan described below. *Under the plan, intrastate access rates will not be applied to VoIP traffic. (Italics added.)*

5. The USF-ICC Order also makes clear that on a going-forward basis payment obligations apply to VoIP traffic and adopts a transitional intercarrier compensation framework for VoIP.[3] Under the transitional framework[4]:

- Default charges for "toll" VoIP-PSTN traffic will be equal to interstate access rates applicable to non-VoIP traffic, both in terms of the rate level and rate structure;
- Default charges for other VoIP-PSTN traffic will be the otherwise-applicable reciprocal compensation rates; (footnote omitted); and
- LECs are permitted to tariff these default charges for toll VoIP-PSTN traffic in relevant federal and state tariffs in the absence of an agreement for different intercarrier compensation.

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[2] The USF-ICC Order at para. 933, footnote 1869.
[3] The USF-ICC Order at para. 652.
[4] The USF-ICC Order at para. 944.

Based on the above language and Staff's interpretation of the USF-ICC Order, Staff believes that interstate access rates are applicable to both originating and terminating VoIP-PSTN traffic.

6. Frontier Communications Corp. ("Frontier") filed a Petition for Clarification and/or Reconsideration ("Petition") at the FCC to clarify, or reconsider its decision to state, that initially the interstate access charges for VoIP-PSTN calls will apply only for the termination of such calls and intrastate charges will apply to the origination of such calls.

7. Level 3's proposed tariff states that VoIP-PSTN traffic is traffic that is exchanged in Time Division Multiplexing ("TDM") format and originates and/or terminates in IP format. The proposed tariff further states that this traffic is required to be compensated at interstate access rates unless the parties have negotiated that applicable rate as is permitted by the FCC. This differs from Frontier's position that the charges apply only to traffic that is exchanged in TDM format and <u>terminates</u> in IP format.

8. On March 28, 2012, AT&T Services, Inc. ("AT&T") filed objections to Level 3's proposed tariff revisions. AT&T states it objects that there is no mechanism to address VoIP-PSTN traffic that Level 3 customers originate or terminate in IP format. AT&T states that the FCC's order requires that interstate access rates apply to calls that originate or terminate in IP format. AT&T surmises that a reason these calls are not included in the proposed tariff is that Level 3 does not provide retail VoIP services to its customers and if so, the tariff should be amended to include such traffic if Level 3 provides retail VoIP services in the future. Further, AT&T states Level 3's revised Access tariff indicates that the Percent VoIP Usage ("PVU") factors will be applied retroactively to January 1, 2012, which AT&T believes is inconsistent with the fact that the FCC Order became effective on December 29, 2011 and required immediate implementation.[5] AT&T requests the proposed tariff be revised to address VoIP-PSTN traffic that Level 3 customers originate or terminate in IP format and to be applied retroactively to December 29, 2011.

. . .

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5 The USF-ICC Order at para. 939, footnote 1890.

9. On June 5, 2012, Level 3 filed replacement tariff pages that include a mechanism to address VoIP-PSTN traffic that Level 3 customers originate or terminate in IP format.

10. On April 24, 2012, the FCC issued an Order[6] addressing Frontier's petition, stating "it would permit LECs to tariff default rates equal to their intrastate originating access rates when they originate VoIP traffic from the effective date[7] of the revised rules until June 30, 2014. On July 1, 2014, LECs will be permitted to tariff default rates for such traffic equal to their interstate originating access rates."[8]

11. During its review of numerous proposed tariff revisions to implement the FCC's decision as it relates to VoIP-PSTN calls, Staff was informed by AT&T and others that they believed that because the FCC's Order regarding these calls became effective on December 29, 2011, the new rates should apply to traffic beginning on that date and that there should be a rate adjustment. The Commission's tariff approval procedures apply and the tariffs become effective after Commission approval.

12. Staff has reviewed the proposed tariff revisions, the relevant FCC Orders and the comments that have been filed in the Docket. Staff recommends approval of Level 3's proposed tariff revisions, as amended.

CONCLUSIONS OF LAW

1. Level 3 is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over Level 3 and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated June 6, 2012, concludes that the proposed tariff revisions, as amended by Staff, are reasonable, fair and equitable and therefore in the public interest.

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[6] The USF-ICC Order, *Second Order On Reconsideration*, FCC 12-47, rel. April 25, 2012, ¶ 2 and ¶35 and footnote 96.
[7] Id., Footnote 96, "Accordingly, our revised rules will become effective 45 days after publication in the Federal Register."
[8] Id., ¶35.

ORDER

IT IS THEREFORE ORDERED that the proposed tariff revisions for Level 3 Communications, LLC, as attached, be and hereby are approved.

IT IS FURTHER ORDERED that Level 3 Communications, LLC, shall file its tariff, in compliance with this Decision, for Staff review and approval, within 10 days from the date of this Decision.

IT IS FURTHER ORDERED that this Decision be and hereby is effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN COMMISSIONER

COMMISSIONER COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _______ day of ___________________, 2012.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: ____________________________

DISSENT: ____________________________

SMO:LLM:sms/MAS

SERVICE LIST FOR: LEVEL 3 COMMUNICATIONS, LLC
DOCKET NO.: T-03654A-12-0012

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CHECK SHEET

Current pages in this tariff are as follows:

Page	Revision	Page	Revision	Page	Revision
1*	9th Revised	25	1st Revised	52.2	Original
2	1st Revised	26*	2nd Revised	53	3rd Revised
3	1st Revised	26.1*	Original	54	3rd Revised
4	1st Revised	27	2nd Revised	55	4th Revised
5	1st Revised	28	2nd Revised	56	2nd Revised
6*	3rd Revised	29	1st Revised	57	6th Revised
7*	3rd Revised	30	2nd Revised	58	6th Revised
8	2nd Revised	31	1st Revised	58.1	1st Revised
9	2nd Revised	32	1st Revised	58.2	Original
10	1st Revised	33	1st Revised	58.3	Original
11	1st Revised	34	1st Revised	58.4	Original
12	1st Revised	35	2nd Revised	59	2nd Revised
13	1st Revised	36	2nd Revised	60	Original
14	1st Revised	37	1st Revised	61	Original
15	1st Revised	38	2nd Revised	62	Original
16	1st Revised	39	2nd Revised	63	Original
17	1st Revised	40	2nd Revised		
18	2nd Revised	41	1st Revised		
19	1st Revised	42	1st Revised		
19.1*	Original	43	1st Revised		
19.2*	Original	44	2nd Revised		
19.3*	Original	45	2nd Revised		
20	1st Revised	46	2nd Revised		
21	2nd Revised	47	1st Revised		
21.1	Original	48	3rd Revised		
21.2	Original	49	2nd Revised		
21.3	Original	50	3rd Revised		
21.4	Original	50.1	Original		
21.5	Original	50.2	Original		
22	2nd Revised	50.3	Original		
23	1st Revised	51	3rd Revised		
24	1st Revised	52	3rd Revised		
		52.1	Original		

*Pages included with this filing.

SECTION 1 - DEFINITION OF TERMS

Certain terms used generally throughout this tariff for Communications Service of this Company are defined below.

Advance Payment: Part or all of a payment required before the start of service.

Authorized User: A person, firm or corporation which is authorized by the Customer or Joint User to be connected to the service of the Customer or Joint User, respectively.

Bit: The smallest unit of information in the binary system of notation.

Commission: Arizona Corporation Commission.

Company: Level 3 Communications, LLC, the issuer of this tariff.

Customer: The person, firm or corporation which purchases service and is responsible for the payment of charges and compliance with the Company's regulations.

Dedicated: A facility or equipment system or subsystem set aside for the sole use of a specific Customer.

End Office: The term "end office" denotes the switching system office or serving wire center where Customer station loops are terminated for purposes of interconnection to each other and/or to trunks.

End Office Access Service: For the purpose of this tariff, End Office Access Service shall mean: (1) The switching of access traffic at the carrier's end office switch and the delivery of such traffic to or from the called party's premise; (2) The routing of interexchange telecommunications traffic to or from the called party's premises, either directly or via contractual or other arrangements with an affiliated or unaffiliated entity, regardless of the specific functions provided or facilities used; or (3) Any functional equivalent of the incumbent local exchange carrier access service provided by Company including local switching, the carrier common line rate elements, and intrastate access services. End Office Access Service rate elements for Company includes any functionally equivalent access service. (4) The origination and termination of interexchange telecommunications traffic to any end user, either directly or via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. § 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. § 153(36), that does not itself seek to collect reciprocal compensation charges prescribed by this subpart for that traffic, regardless of the specific functions provided or facilities used. (N)

End User: A non-carrier customer of an intrastate telecommunications service. If a carrier uses telecommunications service for administrative purposes, it shall be deemed to be an End User.

Individual Case Basis (ICB): A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the case.

Interconnect Carrier: Any carrier that connects to Company's network for exchange of communications traffic.

Joint User: A person, firm or corporation which is designated by the Customer as a user of services furnished to the Customer by the Company and to whom a portion of the charges for the service will be billed under a Joint User arrangement as specified in the Company's tariff.

LATA: A Local Access and Transport Area established pursuant to the Modification of Final Judgement entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4.

Major Service Interruption: An interruption of Customer service due to the Company's negligence or due to its noncompliance with the provisions of this tariff.

SECTION 1 - DEFINITION OF TERMS (CONT'D)

PIU: Percent Interstate Usage

Premises: The space occupied by a Customer, Authorized User or Joint User in a building or buildings or contiguous property (except railroad rights-of-way, etc.) not separated by a highway.

Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the duration of the service.

Service Commencement Date: The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or the tariffs of the Company, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute Service Commencement Date. In the case of Tandem Connect service ordered under option (2) of Section 12.1.1.2, the Service Commencement Date is the date on which the Customer first sends Switched Access Service traffic to the Company or accepts Switched Access Service traffic from the Company.

Service Order: A written request for Company Services that may be submitted by the Customer in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company will initiate the respective obligations of the parties as set forth herein, but the duration of the service is calculated from the Service Commencement Date.

Shared: A facility or equipment system or subsystem that can be used simultaneously by several Customers.

Switched Access Service: Access to the switched network of an Exchange Carrier for the purpose of originating or terminating communications. Switched Access service includes Local Switching, Local Transport, and Carrier Common Line.

Transmission: The sending of electrical or optical signals over a line to a destination.

Toll Free: The terms "Toll Free" or "Toll Free Service" refer to an inbound telecommunications service which permits calls to be completed to the customer's location without charge to the calling party. Access to the service is gained by dialing a ten-digit telephone number which terminates at the customer's location or a location designated by that customer. Toll Free Services typically originate via normal shared use facilities and are terminated via the customer's local exchange service access line.

Toll VoIP-PSTN Traffic: The term Toll VoIP-PSTN Traffic denotes a customer's interexchange voice traffic exchanged with the Telephone Company in Time Division Multiplexing format over PSTN facilities, which originates and/or terminates in Internet Protocol (IP) format. Toll VoIP-PSTN Traffic originates and /or terminates in IP format when it originates from and/or terminates to an end user customer of a service that requires IP-compatible customer premises equipment. (N)

User: A Customer, Joint User, or any other person authorized by a Customer to use service provided to the Customer under a Level 3 Communications, LLC tariff.

SECTION 3 – OBLIGATIONS OF THE CUSTOMER (CONT'D)

3.4.6 Identification and Rating of VoIP-PSTN Traffic (N)

This section governs the identification of VoIP-PSTN Traffic that is required to be compensated at interstate access rates (unless the parties have agreed otherwise) by the F.C.C. in its Report and Order in WC Dockets Nos. 10-90, etc., F.C.C. Release No. 11-161 (November 18, 2011) (F.C.C. Order). Specifically, this section establishes the method of separating VoIP-PSTN Traffic from the Customer's traditional intrastate access traffic, so that VoIP-PSTN Traffic can be billed in accordance with the F.C.C. Order. VoIP-PSTN Traffic identified in accordance with this tariff section will be billed at rates equal to the Company's applicable tariffed interstate switched access rates as set forth in the Company's Tariff F.C.C. No. 4.

Calculation and Application of Percent-VoIP- Usage Factors

The Company will determine the number of VoIP-PSTN Traffic minutes of use (MOU) to which interstate rates will be applied by applying a Percent VoIP Usage (PVU) factor to the total intrastate access MOU exchanged between a Company End User and the Customer. The PVU will be derived and applied as follows:

a. The Customer will calculate and furnish to the Company a factor (PVU-A) representing the whole number percentage of the total intrastate and interstate access MOU that the Customer exchanges with the Company in the State that (i) is sent to the Company that originated in IP format or (ii) is received from the Company and terminated in IP format.

b. The Company will calculate a factor (PVU-B) representing the whole number percentage of the Company's total intrastate and interstate access MOU in the State that originates or terminates in IP format.

c. The Company will use the PVU-A and PVU-B factors to calculate a PVU factor that represents the percentage of total intrastate and interstate access MOU exchanged between a Company End User and the Customer that is originated or terminated in IP format, whether at the Company's end, at the customer's end or at both ends. The PVU will be the sum of (i) the PVU-A factor and (ii) the PVU-B factor times (1 minus the PVU-A factor). The Company will apply the PVU factor to the total intrastate access MOU exchanged with the Customer to determine the number of VoIP-PSTN Traffic MOUs.

Example 1: The PVU-B is 10% and the PVU-A is 40%. The PVU factor is equal to 40% + (10% x 60%) = 46%. The Company will bill 46% of the Customer's intrastate access MOU at its applicable interstate switched access rates.
Example 2: The PVU-B is 10% and the PVU-A is 0%. The PVU factor is equal to 0% + (100% x 10%) = 10%. The Company will bill 10% of the Customer's intrastate access MOU at the Company's applicable interstate switched access rates.
Example 3: The PVU-A is 100%. No matter what the PVU-B factor is, the PVU is 100%. The Company will bill 100% of the Customer's intrastate access MOU at the Company's applicable interstate switched access rates. (N)

SECTION 3 – OBLIGATIONS OF THE CUSTOMER (CONT'D)

3.4.6 Identification and Rating of VoIP-PSTN Traffic (con't) (N)

d. The Customer shall not modify its reported PIU factor to account for VoIP-PSTN Traffic.

e. Both the PVU-A and the PVU-B factors shall be based on information such as the number of each party's retail VoIP subscriptions in the state (e.g. as reported on F.C.C. Form 477), traffic studies, actual call detail or other relevant and verifiable information which will be provided to the Company upon request.

f. The Customer shall retain the call detail, work papers, and information used to develop the PVU-A factor for a minimum of one year.

g. The Company shall use a default PVU factor until such time as Customer supplies a PVU-A factor. For this purpose, Company will utilize a PVU equal to the percentage of VoIP subscribers in the state based on the Local Competition Report, as released periodically and/or such other reports as the Company deems appropriate and reasonable. Under the Local Competition Report methodology, the PVU will be the total number of incumbent LEC and non-incumbent LEC VoIP subscriptions in a state divided by the sum of those reported VoIP subscriptions plus incumbent LEC and non-incumbent LEC switched access lines.

3.4.7 The preceding section 3.4.6 will be applied to the billing of switched access charges to a Customer that is a local exchange carrier only to the extent that the Customer has also implemented billing of interstate access charges for VoIP-PSTN Traffic in accordance with FCC orders, rules and regulations.

3.4.8 Initial Implementation of PVU Factors

a. If the PVU factor cannot be implemented in the Company's billing systems by December 29, 2011, once the factor can be implemented the Company will adjust the Customer's bills to reflect the applicable PVU factor retroactively to December 29, 2011. If the Company receives a PVU-A from the Customer prior to April 15, 2012, it will apply that PVU-A pursuant to the formula contained herein retroactive to December 29, 2011. If the Company does not receive a PVU-A prior to April 15, 2012, it will apply the default PVU retroactive to December 29, 2011 and will apply the PVU-A beginning on the next billing period following the Company's receipt of the PVU-A. (N)

b. The Company may choose to provide credits based on the reported PVU factors on a quarterly basis until such time as the billing system modifications can be implemented.

3.4.9 PVU Factor Update (N)

The Customer may update the PVU-A factor quarterly using the method set forth herein. If the Customer chooses to submit such updates, it shall forward to the Company, no later than 15 days after the first day of January, April, July and/or October of each year, a revised PVU-A factor based on data for the prior three months, ending the last day of December, March, June and September, respectively. The revised PVU-A factor will serve as the basis for future billing and will be effective on the bill date of each such month and shall serve as the basis for subsequent monthly billing until superseded by new PVU-A factors.

3.4.10. PVU Factor Verification

Not more than twice in any year, the Company may ask the Customer to verify the PVU-A factor furnished to the Company, and the Customer may ask the Company to verify the PVU-B factor, and the respective calculations thereof. The party so requested shall comply, and shall reasonably provide the records and other information used to determine the applicable PVU-A and PVU-B factors. Notwithstanding the prior sentence, if the Customer updates its PVU-A more than twice in a year, the Company may seek to verify the PVU-A factor each time it is updated. In the event that the Customer fails to provide adequate records to enable the Company or an independent auditor to verify the Customer's PVU-A factor, the Company will continue using the most recent undisputed PVU-A factor reported by the Customer or, if no PVU-A has been provided, the default PVU. (N)

SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)

4.6.3 Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred, less net salvage, applies. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.

4.6.4 The special charges described in paragraphs 4.6.1 through 4.6.3, above, will be calculated and applied on a case-by-case basis.

4.7 Changes in Service Requested

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

4.8 Taxes

The Customer is responsible for the payment of Federal excise taxes, gross receipts, access, state and local sales and use taxes and all taxes, fees, surcharges (however designated) and other exactions imposed on the Company or its services by governmental jurisdictions, other than taxes imposed generally on corporations. Any taxes imposed by a local jurisdiction (e.g. county and municipal taxes) will only be recovered from those customers residing in the affected jurisdictions. All such taxes, fees, and charges shall be separately designated on the Company's invoices, and are not included in the tariffed rates. It should be the responsibility of the Customer to pay any such taxes that subsequently become applicable retroactively.

4.9 Disputed Bills

The Customer may dispute a bill in good faith only by written notice to the Company. Unless (T)
such notice is received within 90 days (commencing 5 days after such bills have been mailed or |
otherwise rendered per the Company's normal course of business), the bill statement shall be (T)
deemed to be correct and payable in full by Customer. Any Customer who has a dispute shall be advised by the Company that the Customer may file a formal or informal complaint with the Commission. Such claim must identify in detail the basis for the dispute, and if the Customer (N)
withholds disputed amounts, it must identify 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. (N)

SECTION 4 - PAYMENT ARRANGEMENTS (CONT'D)

4.9 Disputed Bills (con't) (N)

The date of the dispute shall be the date on which the Customer furnishes the Company the following account information:

- A clear explanation of the basis of the dispute, including what the Customer believes is incorrect (e.g., nonrecurring charge; mileage; circuit identification) and the reason why the Customer believes the bill is incorrect (e.g., monthly rate billed not same as in tariff; facility not ordered; service not received);
- The account number under which the bill was rendered;
- The date of the bill;
- The invoice number;
- The exact dollar amount in dispute;
- The universal service order code(s)(USOCs) and/or rate element associated with the service;
- Details sufficient to identify the specific amount(s) and item(s) in dispute;
- The name of the person initiating the Customer's dispute;
- Additional data as the Company reasonably requests from the Customer to resolve the dispute. The request for such additional information shall not affect the Customer's dispute date as set forth preceding.

The date of resolution is the date the Company completes the investigation and credits the Customer account or confirms the billing as accurate and denies the dispute.

In the event that a billing dispute concerning any charges billed to the Customer by the Company is resolved in favor of the Company, any payments withheld pending settlement of the dispute shall be subject to the late payment penalty set forth in 4.2.6 preceding. (N)