

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF SOUTH DAKOTA**

In the Matter of the Filing by Ymax)
Communications Corp.) Docket No. TC 12-104
For Approval of Its Revisions to)
Its Tariff No. 2)
)

**AT&T'S STATEMENT REGARDING YMAX COMMUNICATIONS CORP.'S
WITHDRAWAL OF TARIFF LANGUAGE**

AT&T of the Midwest, Inc., (“AT&T”) hereby files the following statement regarding YMax Communications Corp.’s (“YMax”) Letter dated August 27, 2012, withdrawing the tariff revisions that it had filed on June 28, 2012.

AT&T is not opposing the withdrawal. However, AT&T wants to make it clear that AT&T (i) contends that the end office switching charges that YMax has consistently billed to AT&T for years (and apparently will continue to bill to AT&T) are flatly inconsistent with both YMax’s switched access tariffs and with the orders and rules of the Federal Communications Commission (“FCC”);¹ (ii) continues to have substantial and valid concerns regarding the

¹ As AT&T has explained, YMax’s tariff and billed charges violate the FCC’s rules and orders. The FCC has made numerous, detailed factual findings – which remain binding on YMax – that YMax does not operate any facilities that are connected to lines that deliver VoIP-PSTN traffic to any individual caller’s home or business. *YMax Order*, 26 FCC Rcd. 5742, ¶¶ 3-9, 14, 19, 38-45 (2011). These findings compel the conclusion that, under the FCC’s clear rules, YMax does not provide end office switching and thus cannot bill AT&T for those services. *Id.* ¶¶ 40-41; *see Connect America Order*, 26 FCC Rcd. 17663, ¶ 970 (2011). After making these findings and rules, the FCC also flatly rejected YMax’s proposal to “clarify” the FCC’s rules to allow YMax to impose end office switching rates even though it is other internet service providers, and not YMax, that actually do the work of delivering the traffic to callers’ homes and businesses. *YMax Clarification Order*, 27 FCC Rcd. 2142, ¶¶ 4-5 (2012).

legality of YMax's existing access tariffs regarding VoIP-PSTN traffic;² and (iii) intends to continue to dispute and withhold payment of any unlawful YMax switched access charges on those grounds, *i.e.*, that YMax is billing those charges in violation of its tariffs and of FCC rules and orders.

AT&T nevertheless wishes to conserve its resources and those of the Commission, and, as a consequence, it is not requesting that the Commission take additional action at this time regarding YMax's revised access tariff.

Notwithstanding any closure of this docket, AT&T will continue to object to any effort on the part of YMax to bill AT&T the end-office switching charges and will avail itself of all remedies available. In short, the disputes between AT&T and YMax will continue so long as YMax insists that it can tariff and bill AT&T for end office switching services that YMax does not actually provide. If the parties cannot resolve this dispute, AT&T is concerned that the parties may need to appear before the Commission at some point in the future.

Respectfully submitted this 19th day of September, 2012.
Olinger, Lovald, McCahren & Reimers, P.C.
/s/ filed electronically
William M. Van Camp
PO Box 66
Pierre SD 57501
Telephone: 605-224-8851
Attorneys for AT&T Communications of the Midwest, Inc.

² Although the withdrawal of the pages filed on August 27, 2012 has the effect that Ymax's tariff mirrors the tariff effective prior to the June 28, 2012 filing, that does not mean that YMax's tariff is (or was) lawful. Nor does it mean that Ymax's tariff is compliant with the *Connect America Order*, 26 FCC Rcd. 17663 (2011) since the page revising the switched access rates to mirror FCC interstate rates, as required by the *Connect America Order*, was also withdrawn. The tariff **also** contains, for example, rates, terms and conditions for end office switching services, and for the reasons explained, YMax does not actually provide these services. While these provisions can be found in YMax's tariff prior to June 28, 2012, the fact is that the FCC has now made binding factual determinations regarding YMax's operations and its limited role in routing calls, and has also issued new rules that apply to YMax's services. Thus, even assuming, *arguendo*, that YMax's tariff was previously lawful, the effect of the FCC's factual findings regarding YMax and the FCC's new rules is that YMax is prohibited from maintaining a tariff that can be interpreted to allow it to charge for services (like end office switching) that YMax does not provide.

CERTIFICATE OF SERVICE

William M. Van Camp hereby certifies that on the 19th day of September 2012, he filed the foregoing AT&T'S STATEMENT REGARDING YMAX COMMUNICATIONS CORP.'S WITHDRAWAL OF TARIFF LANGUAGE, Docket No. TC 12-104, electronically with the Public Utilities Commission with electronic copies sent to the following persons:

Ms. Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre SD 57501
patty.vangerpen@state.sd.us
(605)773-3201 - voice
(605)757-6031 - fax

Ms. Kara Semmler
Staff Attorney
SD Public Utilities Commission
500 East Capitol
Pierre SD 57501
Kara.semmler@state.sd.us
(605)773-3201-voice
(605)757-6031 - fax

Mr. Chris Daugaard
Staff Analyst
SD Public Utilities Commission
500 E Capitol
Pierre SD 57501
Chris.daugaard@state.sd.us
(605)773-3201 - voice
(605)757-6031 - fax

Ms. Sharon Thomas
Consultant-Technologies Management, Inc.
Ste. 300
2600 Maitland Center Parkway
Maitland FL 32751
stthomas@tminc.com
(407)740-3031 - voice
(407)740-0613 - fax

Mr. Daniel Borislow
CEO and President
YMax Communications Corp.
5700 Georgia Ave.
West Palm Beach, FL 33405
regulatory@ymaxcorp.com
(561)832-3021 - voice
(561)832-8377 - fax

s/ filed electronically
William M. Van Camp
Olinger, Lovald, McCahren, and Reimers P.C.
PO Box 66
Pierre, South Dakota 57501
bvancamp@olingerlaw.net