

BEFORE THE PUBLIC UTILITIES 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 Revisions to its Tariff No 2.	)	

ANSWER OF YMAX COMMUNICATIONS CORP. TO  
AT&T PETITION TO INTERVENE

YMax Communications Corp. (YMax), pursuant to ARSD Section 20:10:01:15:04, answers the Petition to Intervene filed by AT&T Communications of the Midwest, Inc. (AT&T) as follows:

1. YMax is a foreign corporation and a registered Competitive Local Exchange Carrier (CLEC) authorized to do business in South Dakota. YMax's corporate headquarters is located at 5700 Georgia Ave., West Palm Beach, FL 33405.
2. YMax disputes the allegations set forth in paragraphs 4-5 of AT&T's Petition.
3. In support of its Answer, YMax states as follows:

YMax's tariff filing was submitted in compliance with the Federal Communications Commission Report and Order in WC Docket No. 10-90, etc., FCC No. 11-161 (released Nov 18, 2011) ("*CAF Order*") regarding the application of access charges to Toll VoIP-PSTN traffic and rate levels for intrastate switched access service. AT&T has filed protests and/or petitions to intervene regarding similar YMax tariff filings in other states, including Colorado, Maryland, Ohio, Maine, Georgia, Alabama, North Dakota and others. YMax has responded to the flawed arguments raised by AT&T in responses filed in Maryland and in Rhode Island and in a June 21, 2012 letter to the FCC. All three of those responses are attached hereto and offered as a response to AT&T's Petition. Also attached is a Notice of Ex Parte Communication filed with the FCC on behalf of Level 3 Communications, LLC and Bandwidth.com, Inc., which likewise disputes the positions taken by AT&T in its Complaint.

4. YMax requests that the Commission allow the tariff to go into effect as filed, as suspension of the tariff based on allegations in AT&T's Petition is unwarranted and would simply continue AT&T's misrepresentation of the recent FCC order that the attached communications to the Maryland PSC, the

Rhode Island PUC and the FCC describe and would permit AT&T to avoid paying lawful access charges. AT&T's challenge of YMax's tariff is nothing more than a transparent attempt to evade paying access charges associated with intercarrier toll VoIP-PSTN traffic, despite the FCC's explicit decision in the *CAF Order* that Local Exchange Carriers may tariff such charges, through both federal and state tariffs, and be compensated for such traffic. This is exactly the kind of gamesmanship, evasion, and arbitrage that the FCC was trying to stop in the *CAF Order*. The FCC sought to promote certainty and equity by ensuring that both TDM carriers and IP-based carriers were treated equally and subject to the same intercarrier compensation rules. AT&T itself is one of the very largest VoIP providers that originates and terminates calls "over the top."

AT&T is talking out of both sides of its mouth, because its ILECs continue to bill and collect switched access charges from other carriers for calls using "over the top" VoIP to different subsidiaries it owns. AT&T's subsidiaries are even separately certificated. It uses both femtocells/microcells to carry wireless traffic over its customers' ISP/Internet "over the top" too. To take this a step further, AT&T switches the same customers around its various subsidiaries to game the system and make a mockery of what the FCC has done in access reform.

Respectfully submitted this 19th day of July, 2012.

YMAX COMMUNICATIONS CORP.

By its Consultant

/s/Sharon Thomas

Sharon Thomas  
Consultant  
Technologies Management, Inc.  
2600 Maitland Center Pkwy, Suite 300  
Maitland, FL 32751  
(407) 740-8575

## CERTIFICATE OF SERVICE

Sharon Thomas hereby certify that on this 19th day of July, 2012, she caused to be filed the foregoing Answer of YMax Communications Corp. to AT&T Petition to Intervene in Docket No. TC 12-014 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.vangerpenla>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. Kara Semmler  
Staff Attorney  
SD Public Utilities Commission  
500 East Capitol  
Pierre SD 57501  
Kara.semmler@state.sd.us  
(605)773-320 I-voice  
(605)757-6031 – fax

William M. Van Camp  
Attorney for AT&T Communications of the Midwest, Inc.  
Olinger, Lovald, McCahren, and Reimers P.c.  
PO Box 66  
Pierre, South Dakota 57501  
bvancamp@olingerlaw.net

/s/ Sharon Thomas  
Technologies Management, Inc.