

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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In the Matter of the Filing by  
Ymax Communications Corp.  
For Approval of Revisions to its Tariff No. 2

Docket No. TC 12-104

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**PETITION TO INTERVENE AND REQUEST TO SUSPEND  
THE TARIFF AND INVESTIGATE**

Pursuant to SDCL 49-31-12.4(1), 49-31-12.4(2) and ARSD Section 20:10:01:15.02 AT&T Communications of the Midwest, Inc., (“AT&T”) petitions for leave to intervene in the above-captioned proceeding concerning the tariff filed by YMax Communications Corp. on June 28, 2012 pursuant to the Federal Communications Commission’s (“FCC”) November 18, 2011, Intercarrier Compensation Reform Order, FCC 11-161<sup>1</sup> regarding the treatment of Toll VoIP-PSTN traffic. AT&T also petitions to suspend the tariff pending investigation. As grounds for the intervention, AT&T states as follows:

1. AT&T is an interexchange carrier authorized to do business in South Dakota.
2. As an interexchange carrier, it is required to pay intrastate switched access fees for the completion of its interexchange calls.
3. AT&T does not dispute that the FCC’s order referenced above establishes that VoIP-PSTN traffic is access compensable under federal law. Nevertheless, the FCC has already explained “although access service might functionally be accomplished in different ways depending on the network technology, the right to charge does not extend to functions not performed by the LEC or its retail VoIP service provider partner.”<sup>2</sup>
4. However, YMax by its proposed tariff language is determined to justify access compensation for services that are not performed by either YMax or Magic Jack, the VoIP service provider that it partners with to provide end user service. For example, the definition of End Office Switch, First Revised Page 6, states that: “The ‘first point of interconnection’ means that there is no other

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<sup>1</sup> *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) (“Intercarrier Compensation Reform Order”).

<sup>2</sup> Intercarrier Compensation Reform Order, at para. 970, note 2028, *See also*, *AT&T v. Ymax*, 26 FCC Rcd 5757, paras. 41, 44 & n.120 (2011).

Switch performing these functions between it and the End User, regardless of how the End User obtains its connection to that switch.” Through this language YMax suggests that it is entitled to charge for end office switching in situations where the VoIP service provider customer obtains connectivity to the VoIP (i.e. the functional equivalent of the loop) by purchasing broadband service from a third, unrelated provider. It is exactly this situation – where the customer brings their own broadband and neither the LEC nor the VoIP Service Provider furnishes the facilities – where the FCC rule prohibits YMax from seeking compensation.

5. In Section 2.3.4. A.2. of its tariff, it also includes language that seeks to raises questions about under what circumstances YMax is attempting to receive compensation. For example, it states: “The Company will not charge for functions not performed by the Company or its affiliated or unaffiliated provider of VoIP service.” But then it goes on to state: “For the purposes of this provision, functions provided by the Company as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission in a manner that is comparable to a service offered by a local exchange carrier constitutes the functional equivalent of carrier access service.” There is no need for the latter language, if YMax means what it says in the prior sentence.
6. AT&T has a direct interest in the outcome of this proceeding. Pursuant to ARSD 20:10:01:15.05, it qualifies for intervention as its interest is distinguishable form an interest common to the public or taxpayers in general.

WHEREFORE, AT&T requests that it be granted intervention status in this proceeding and that the Commission suspend the tariff pending investigation.

Respectfully submitted this 11th day of July, 2012.

Olinger, Lovald, McCahren & Reimers, P.C.

/s/ filed electronically

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## CERTIFICATE OF SERVICE

William M. Van Camp hereby certifies that on the 11th day of July 2012, he filed the foregoing Petition for Intervention by AT&T Communications of the Midwest, Inc., Docket No. TC 12-104, electronically with the Public Utilities Commission with electronic copies sent to the following persons:

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