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February 5, 2019

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Portals II, Room TW-A325
Washington, DC 20554

Ex Parte Submission

Re: *Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; Connect America Fund, WC Docket No. 10-90; Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, WC Docket No. 18-155.*

Dear Ms. Dortch:

The record in Docket 18-155 makes clear that, despite the Commission's best efforts, companies continue to thwart the access stimulation rules and protections contained in the 2011 *Transformation Order*. The most effective way to eliminate the incentive to engage in intercarrier compensation arbitrage is to complete the move of the switched access regime to a default bill-and-keep regime. In the *Transformation Order*; the Commission stated that its desired end state was a uniform national bill-and-keep framework. The transition for terminating end office access charges is near complete, but certain terminating access charges and originating access charges remain tariffed. AT&T asks the Commission to begin the immediate transition of these remaining switched access charges to a default bill-and-keep regime and ultimately de-tariff the industry. Moving these remaining access charges to bill-and-keep would be consistent with the Commission's overarching goal of discouraging arbitrage, as well as the finding in the *Transformation Order* that, with respect to terminating traffic, the LEC's end user is the cost causer and therefore the LEC should look first to its subscribers to recover the costs of its network.

In the interim, AT&T urges the Commission to act quickly on the pending Access Stimulation Notice of Proposed Rulemaking (NPRM), as explained in greater detail below.

First, access stimulation continues to occur on a massive scale, and causes the same types of harms to consumers, to competition, and to investment that the Commission found to be problematic in 2011. Some entities have resuscitated claims that access stimulation is beneficial, but the Commission already rejected those arguments in 2011 and the record now provides no valid basis for the Commission to revise its findings that access stimulation has many "adverse effects" and "ultimately costs consumers hundreds of millions of dollars." *Transformation Order*, ¶¶ 649, 662.

Second, as the NPRM noted, access stimulators are exploiting the tandem and transport charges that have not yet been reduced to bill-and-keep as a default. Some carriers seek to impose directly lengthy mileage charges that improperly inflate access charges. In other cases, a "price umbrella" has been created due to the high transport charges that can be applied to access stimulation traffic, often by a centralized equal access provider. Access stimulation LECs are able to obtain inflated access charges via least cost routers or other agreements where they provide a nominal discount that allows the IXC to avoid the tariffed rates for transport, but that still contains a significant price premium and the inflated profits that the Commission found were inevitable with access stimulation schemes.

Third, the Commission should enact only "Prong 1" of the Commission's NPRM, which would shift the financial obligation to the access stimulator by making it financially responsible for calls that it stimulates to be delivered to its network. To address fully the public interest harms of access stimulation, the Commission must remove the incentives for engaging in arbitrage activities, including access traffic stimulation and mileage pumping. The Commission can do so by ensuring that those engaged in these activities incur the full costs associated with their arbitrage activities. Prong 1 would go a long way to eliminating those incentives. The Commission should refrain, however, from adopting "Prong 2"—the option for a direct connect at the option of the access stimulation carrier—at least as currently proposed. Indeed, the record created in response to the NPRM establishes that this prong would only increase arbitrage opportunities. Moreover, it would likely embroil carriers and the Commission in disputes about the conditions under which direct connections must be provided.

Fourth, although AT&T believes that the current definition of access stimulation, if properly interpreted and enforced, is broad enough to encompass the primary forms of arbitrage, AT&T understands that many entities engaged in access stimulation have re-arranged their business to circumvent the existing rules by reducing reliance on direct forms of revenue sharing. Accordingly, AT&T has no objection if the revenue sharing aspect of the definition is eliminated.

I. Access Stimulation Has Not Been Curtailed, And It Continues To Harm Consumers, Competition, And Investment.

In its 2011 *Transformation Order*, the Commission noted that the "existing intercarrier compensation system" was "fueling wasteful arbitrage schemes and prompting costly compensation disputes." *Transformation Order*, ¶ 648**.** The Commission identified "access stimulation" as one of those wasteful arbitrage schemes. It found that access stimulation led to "inflated profits" that "almost uniformly" caused the carrier's switched access rates to be "unjust and unreasonable." *Id.* ¶ 657.

Further, the Commission found that access stimulation "imposes undue costs on consumers." *Id.* ¶ 663. This was because ordinary consumers of long distance and wireless services were paying user fees that were indirectly subsidizing the costs of the free or low-cost calling services associated with access stimulation. *Id.* The Commission also flatly rejected the specious and unsupported claim—which some have tried recently to revive—that access stimulation provided benefits in rural areas by allowing the expansion of broadband in areas where access stimulation flourishes. *Id.* ¶ 666.

The Commission's findings in 2011 about the public interest harms of access stimulation—which were amply supported by the record and by independent findings of state regulatory agencies[1]—were more than sufficient to justify rules that would have immediately ended access stimulation. The Commission instead adopted rules that were designed to "curtail" access stimulation over time. *Id.* ¶¶ 649, 691-92. The Commission seemed to believe that its 2011 rules, along with other reforms of intercarrier compensation, would ultimately "resolve remaining concerns." *Id.* ¶ 692.

Although the Commissions' 2011 rules may have reduced access stimulation in part, the Commission's prediction that its 2011 rules and other reforms would ultimately resolve the multiple public interest harms has proved too optimistic. Because intercarrier compensation reform is not complete, access stimulation carriers still have substantial financial incentive to game the existing rules and force consumers to pay implicit subsidies, leading to ill-gotten gains by access stimulating carriers and their partners.

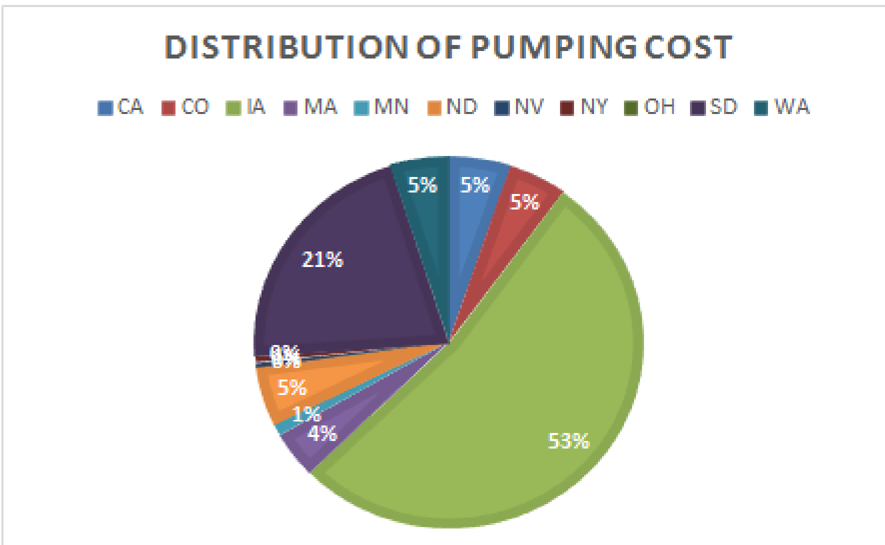
AT&T's records also confirm that access stimulation is still occurring on massive scale, with millions of minutes of long-distance traffic being routed to locales like Spencer, Iowa and Redfield, South Dakota. Routing massive traffic to these locations is not due to any network engineering principles, but because inflated intercarrier compensation revenues can be obtained by inefficiently routing the traffic. For example, twice as many minutes were being routed per month to Redfield, South Dakota (with its population of approximately 2,300 people and its 1 end office) as is routed to *all* of Verizon's facilities in New York City (with its population of approximately 8,500,000 people and its 90 end offices). As reflected in the chart below, access stimulators simply have not "curtailed" their access stimulation activities:

	Verizon	**Great Lakes**	**Northern Valley**	**BTC**
City	New York City	Spencer, Ia.	Redfield, SD	Carrol, Ia.
End Office Switches	90	2	2 remote switches	1
Billed Minutes to AT&T	**22,000,000**	**28,000,000**	**50,000,000**	**33,000,000**

[1] *See, e.g.*, Report and Order, *Consideration of the Rescission, Alteration, or Amendment of the Certificate of Authority of All American to Operate as a Competitive Local Exchange Carrier within the State of Utah*, (Apr. 26, 2010) (revoking the operating certificate of an access stimulator, and concluding that it provided "no economic benefit to the state;" its actions "increas[e] the cost of telecommunications to the customers of interexchange (IXC) carriers in the state and provide no significant benefit;" access stimulation increases "costs to Utah ratepayers while funneling money out of the state or into the hands of only a few, without promoting true competition or technological improvement, or serving any other public interest").

AT&T estimates that these arbitrage schemes consistently inflate artificial traffic, and total more than 8.2 billion minutes-of-use (MOU), with an estimated industry cost of at least $80 million annually. As the Commission concluded, these increased access charges for this inefficiently routed traffic harm investment and ultimately are borne by ordinary long distance and wireless consumers.

AT&T's records show that access stimulation remains common in multiple states. Although Iowa has always had significant volumes of access stimulation traffic, other states also have access stimulation LECs, as shown in the attached figure.



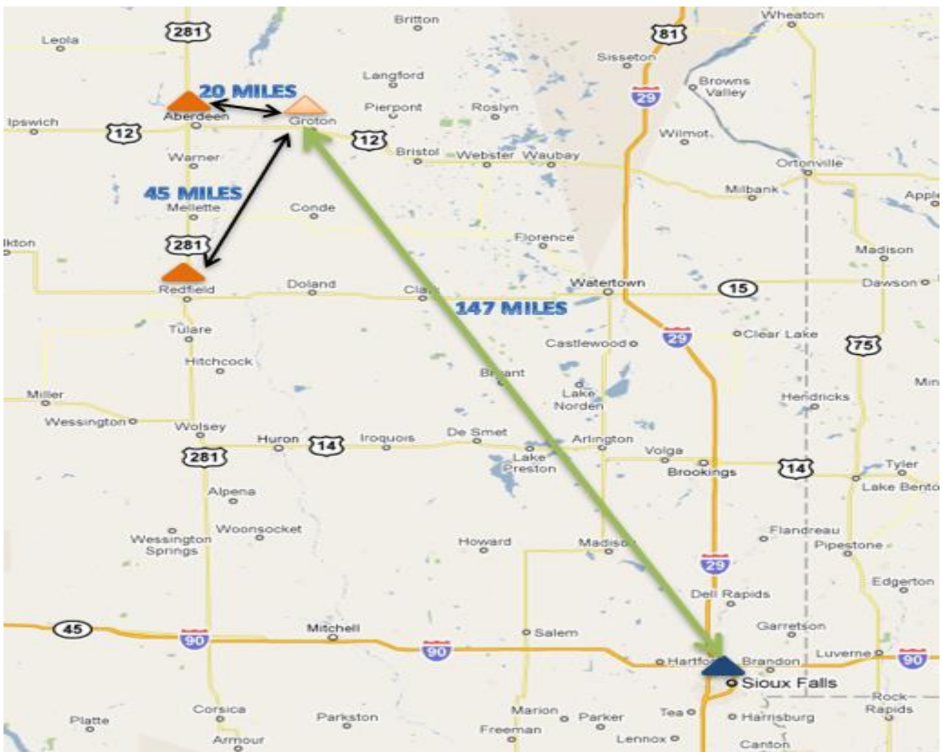
As this chart shows, access stimulation is not limited to Iowa, and enforcement action involving carriers in that state is necessary but not sufficient, if access stimulation is truly going to be curtailed. So long as there is an opportunity *anywhere* to collect long, mileage-based transport charges at above-cost rates, access stimulators will agree to route traffic to the areas with the highest transport rates. Conference and chat companies can easily move their traffic to different areas to exploit higher cost transport rates. In fact, AT&T has already seen a shift of minutes from Iowa to South Dakota, and schemes exist in other geographically dispersed areas of the country.

II. Access Stimulation LECs Rely on Inflated, Excessive Transport Charges Imposed Directly Via Tariff Or Via Agreements With Rates Inflated By A "Price Umbrella."

Because terminating end office charges were transitioned to bill-and-keep in 2017, access stimulation LECs have come to rely on inflated tandem and transport revenues to fuel their continued access stimulation schemes.

Under the current ICC system, access stimulators can compel an IXC to purchase inefficient and unnecessary transport services, either via tariffs or via contracts at prices that provide a nominal discount off the tariff price. In both cases, the prices are well above the costs associated with transporting very large volumes of traffic between two points. In most cases, if IXCs were able to elect how to deliver these volumes of traffic, the cost would be a small fraction of the LECs' tariff or contract prices. AT&T and other carriers routinely discover that carriers located in remote areas with long transport distances and high transport rates enter into arrangements with high volume service providers (e.g. free conference call providers) for the sole purpose of extracting inflated ICC rates due to the distance and volume of traffic. The only reason that extraordinarily large volumes of traffic are being routed to these remote areas is that carriers are seeking to exploit the remaining loopholes in the Commission's ICC rules.

As AT&T noted in its comments, some access stimulation LECs seek to impose excessive transport charges directly, via tariffs. For example, Northern Valley's position is that it is entitled under the Commission's rules to bill over 190 miles of transport charges. Even at the per mile, per minute rate of the lowest-priced price cap LEC in the state (CenturyLink), this very long—and unnecessary—transport distance results in substantially inflated access charge bills.



In other cases, access stimulation LECs have been able to collect excessive transport charges due to a "price umbrella." For example, in Iowa, traffic was traditionally routed to access stimulation LECs via Iowa Network Services ("INS"). INS has traditionally billed a very high transport rate—nearly 1 penny per minute. Traffic pumpers continued to thrive in Iowa because they could offer "bypass" to IXCs: IXCs could either pay INS's tariffed rate, or the Iowa traffic pumpers (or the conference companies themselves) would allow IXCs to terminate the traffic via contractual arrangements that offered a slight discount off the INS tariff rate. Access stimulating

LECs in Iowa continued to thrive even after terminating end office rates went to zero because they were able to collect transport revenues due to a price umbrella.[2]

III. The Commission Should Adopt Prong 1 But Not Prong 2, Which Will Not Address The Incentive To Engage In Arbitrage.

In response to the public interest harms from the continuation of access stimulation schemes, the Commission should attack the root of the problem—namely, the Commission's rules that allow access stimulators to collect transport revenues (either via tariff or via contracts with rates using the price umbrella). By de-tariffing such charges, or by immediately adopting Prong 1 and making the access stimulation LEC financially responsible for the transport of traffic from an IXC POP, the Commission would eliminate the hidden subsidies that consumers continue to pay.

AT&T has long advocated enforcement of the Commission's 2008 Order in which it required CLECs to offer direct connections to avoid tandem and transport charges. *Access Charge Reform; PrairieWave Telecomm. Petition for Waiver*, 23 FCC Rcd 2556, ¶ 27 (2008) ("a competitive LEC will permit an IXC to install direct trunking from the IXC's point of presence to the competitive LEC's end office, thereby bypassing any tandem function" and "avoid[ing] the tandem switching function and associated charges"). Requiring such direct connections is a reasonable way to deal with individual disputes between carriers. However, it is not a panacea for access stimulation traffic. Because the chat/conferencing traffic can be moved easily, once a direct connection is established, then the traffic can be moved to another carrier, creating (once again) an endless game of "whack-a-mole." Indeed, as AT&T explained in its comments, allowing an access stimulating CLEC to elect to offer a direct connection would only exacerbate traffic pumping—by incentivizing carriers and providers to locate equipment in more remote areas, where the cost of establishing direct connections is high (and providing yet another reservoir of ICC charge to exploit).

AT&T recently encountered a situation wherein, seemingly overnight, a CLEC (Northern Valley) increased its traffic by 20,000,000 minutes of use per month (the equivalent traffic of all of New York City) and provided no business-to-business forecast notice to either the intermediate carrier it sub-tends or AT&T directly. In a relatively short time frame, AT&T found the previously sufficient trunk capacity congested, not with traditional end user voice traffic, but with ONLY access stimulation traffic. The access stimulation traffic that impacted AT&T's network and our customers was equivalent to *5,000 trunk lines* of capacity, far exceeding the existing trunk capacity, which was based on long standing historic traffic volumes. AT&T immediately took steps to increase ~~the~~ capacity between AT&T's POP and the intermediate carrier to resolve the network congestion issue, but at a noticeable cost.

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[2] INS's rate has recently been under review by the Commission, and the evidence in those proceedings establishes that INS's rate was grossly inflated. To the extent INS's rate is reduced, then the price umbrella may be reduced in part. But if that were to occur, then, as noted above, access stimulation schemes will likely be re-located to those areas where high transport rates can be billed directly via tariffs, due to the remote locations of the chat and conference equipment.

AT&T notified the access stimulator CLEC of the standard industry practice to provide carriers in a call flow accurate and timely forecasts of potential traffic volume changes to ensure adequate facilities exist to mitigate congestion events. The access stimulating CLEC claimed that the congestion problem was AT&T's fault, rather than acknowledging a standard industry practice of providing such forecasts. AT&T notes that the traffic increase was associated with traffic terminating to what appeared to be a new platform associated with telephone numbers provided by the access stimulating CLEC. The access stimulating CLEC suggested that rather than seeking to augment existing facilities in the current call flow, AT&T should use a higher cost, non-carrier provider of termination service (HD Tandem) to route the stimulated access traffic to the CLEC.

The nature of access stimulation traffic is that it can be shifted quickly from area to area, from region to region and from a remote area to an even more remote area, with the attendant higher ICC charges, with almost the flip of a switch. Prong 2, as currently drafted, will allow access stimulating LECs to continue to thwart the Commission's rules by allowing the IXCs to direct connect, and as soon as the connections are in place, divert the high-volume traffic to another area. AT&T believes this proposal should be rejected outright.

IV. Although The Current Definition of Access Stimulation Is Broad, The Commission Could Eliminate The Revenue Sharing Agreement Portion To Preclude Carriers From Attempting to Circumvent The Definition.

While some carriers have denied that they have revenue sharing agreements, most of the primary access stimulators have admitted they are subject to the current rules – primarily by filing high-volume traffic tariffs. However, some parties have suggested that conference and chat providers have changed the nature of their arrangements with LECs so that they no longer fall within the definition of a "revenue sharing agreement." AT&T believes that the Commission's revenue sharing arrangement rules are sufficiently broad to capture these schemes. However, the Commission should not allow carriers to circumvent the intended scope of the access stimulation rules by structuring their schemes to avoid direct revenue sharing agreements. Consequently, AT&T is not opposed if the Commission were to remove that aspect of the definition, and rely on traffic measurement data.

In doing so, the Commission should make two things clear. One, when a carrier meets the traffic measurement conditions, then there would be—as now (Transformation Order, ¶ 699)—a rebuttable presumption. Two, the Commission should at the same time make clear that it has the authority to take enforcement action against a carrier that is engaged in improper and unreasonable access arbitrage even if the carrier does not fall within the traffic measurement conditions. In other words, the traffic measurement conditions are not a "safe harbor."

* * *

In conclusion, AT&T reiterates that the access stimulating LEC should remain the sole party responsible for the costs associated with delivering access stimulation traffic to the LEC's end offices (and remotes) whether via direct connections or via an intermediate provider.

By adopting the NPRM's first prong, the Commission can effectively restore marketplace balance by requiring LECs that are engaged in the practice to bear the costs of transporting calls from the IXC's network to the LEC's end office switch, thus reducing the current incentive to locate the equipment used to provide conference and chat services at remote locations. Prong 1 ensures that legitimate intermediate providers will continue to be paid for the services they provide but be paid by the cost causer – the access stimulating LEC.

Sincerely,

Matt Nodine

AT&T Services Inc.

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