

*In the Matter of Updating the Intercarrier
Compensation Regime to Eliminate Access
Arbitrage, WC Docket No. 18-155*

BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network,
Great Lakes Communication Corp., Louisa Communications,
Northern Valley Communications, LLC, and OmniTel
Communications (collectively “CLECs”)

February 12, 2019



Introduction

- **The Competitive Local Exchange Carriers (“CLECs”)** are rural carriers that provide telephone, Internet, cellular, cable, and many other services to rural citizens and businesses. They also participate in access stimulation. They include:
 - ❖ **BTC, Inc. d/b/a Western Iowa Networks (Iowa)**
 - ❖ **Goldfield Access Network (Iowa)**
 - ❖ **Great Lakes Communication Corp. (Iowa)**
 - ❖ **Northern Valley Communications, LLC (South Dakota)**
 - ❖ **Louisa Communications (Iowa)**
 - ❖ **OmniTel Communications (Iowa)**

Introduction

- The most active **Opposing Commenters** are the various interexchange carriers (“IXCs”) and tandem providers that, despite their rhetoric, have often benefited from access stimulation, but who would like to see their profits increase by shifting costs on to the rural CLECs and/or eliminating competitive conference calling services. These include:
 - ❖ **AT&T Services, Inc.**
 - ❖ **CenturyLink, Inc.**
 - ❖ **Inteliquent, Inc.**
 - ❖ **Verizon, Inc.**

Introduction

- **The Free Conference Calling Beneficiaries** are the more than 5 million individuals and organizations across the country that use conference calling & audio broadcasting services hosted by the CLECs. They include:
 - ❖ **Nonprofit Organizations**
 - ❖ **Addiction Support Networks**
 - ❖ **Small Businesses**
 - ❖ **Religious Institutions**
 - ❖ **Political Campaigns**
 - ❖ **Government Agencies**
 - ❖ **Immigrant Populations**

Introduction

- **November 2011 – Connect America Fund Order:**
 - ❖ FCC totally reforms ICC and access charge regime, establishing bill-and-keep as the “ultimate end state” and transitioning access end office rates to zero. Originating access rates and terminating rates for tandem switching remain unchanged.
- **Post-Connect America Fund Order:**
 - ❖ Access-stimulating CLECs accept substantially reduced access charge rates, determining that doing so presents the best opportunity to continue to provide enhanced broadband services to rural end users and provide free conference calling services to millions of Americans.
- **October 2017 – Refreshing the ICC Record:**
 - ❖ FCC seeks to refresh the record on intercarrier compensation and inquires about further reductions in access charges. Commenters implore the FCC to avoid further reforms until it gathers the necessary data and evidence. The record remains open, but no data or evidence warranting further reductions is submitted.
- **June 2018 – Access Stimulation NPRM:**
 - ❖ Without new, post-2011 data and evidence, the FCC proposes sweeping reforms at the behest of IXC’s unsupported allegations that are contrary to FCC precedent and its goal of a **uniform** bill-and-keep regarding as the ultimate end state.

Introduction

- In the **8 months** since the *Access Stimulation NPRM* was released:
 - ❖ The *IXCs and tandem providers have STILL failed to offer facts, data, or evidence* to substantiate the allegations of consumer harm contained in their comments and *ex parte* filings.
 - ❖ The *CLECs have provided the FCC with facts, data, and evidence* proving that further reforms to the access stimulation regime are not necessary and, if implemented, would harm consumers.
 - ❖ The CLECs have further *substantiated their findings with 2 economic analyses* conducted by Drs. Oliver Grawe and Daniel Ingberman, proving that the current access stimulation market benefits consumers and IXCs and that the current market is efficient.
 - ❖ *Over 2,500 citizens and organizations* have come forward *expressing their concerns* with the FCC's proposed access stimulation reforms.
 - ❖ The *FCC has not acted upon the CLECs' and other commenters' requests* that further data analysis be conducted, *nor has the FCC issued any of its own data requests*.

**OPPOSING COMMENTERS CONTINUE
MAKING ALLEGATIONS WITHOUT
PROVIDING FACTS, DATA, OR EVIDENCE**



Opposing Commenters Continue Making Allegations Without Providing Facts, Data, or Evidence

- The Opposing Commenters have demanded reforms by misleading the FCC through their anecdotes, hypothesis, and hysteria, rather than current data and evidence:

Unsubstantiated Allegations	Available Evidence Shows
IXCs will pass on further savings to consumers.	IXCs have pocketed savings as long-distance plans continue to rise in price.
Consumers are harmed by access stimulation.	Consumers nationwide save approximately \$78 million per year using their long-distance plans to access free conferencing and similar services, and because of these services rural CLECs are able to assist underserved rural networks.
IXCs are harmed by paying access charges at rates established by the <i>Connect America Fund Order</i> .	IXCs profit substantially from delivering both wholesale and access stimulation traffic
Access stimulation deters broadband deployment.	Thanks to access stimulation, rural CLECs have invested more than \$47 million in broadband deployment since 2011.

Opposing Commenters Continue Making Allegations Without Providing Facts, Data, or Evidence

- The Opposing Commenters have demanded reforms by misleading the FCC through their anecdotes, hypothesis, and hysteria, rather than current data and evidence:

Unsubstantiated Allegations	Available Evidence Shows
Access stimulation has become more widespread since 2011.	There has been a substantial decline in the volume of access stimulation traffic billed pursuant to tariff, thanks to CLECs voluntarily entering into IP-interconnection arrangements.
Access stimulation involves high switched access rates.	The CLECs' benchmarked rates are at or below the rates charged by the largest price cap ILEC, PacBell, an AT&T affiliate.
Access-stimulating LECs circumvent the FCC's rules by interposing intermediate providers.	There is no evidence showing the CLECs are violating the rules imposed by the Connect America Fund Order.
IXCs requested & were denied true direct connections.	IXCs have never requested true direct connections, but rather "virtual direct connections" through third-party carriers; IXCs now dismiss the direct connection proposal, acknowledging that they never intended to build their own facilities in rural territories.

Other Commenters Have Also Called for Further Data Gathering & Fact Finding

- **Wide Voice Ex Parte Filing at 2-3 – Jan. 14, 2019:**

Although it purports to rely on the *USF/ICC Transformation Order*, the **NPRM offers no data or factual analysis regarding whether or to what extent the Commission’s 2011 rate parity goals have been achieved.**

...

By virtue of the multi-year rate step down and the inability of access stimulators to benchmark to rural rates, the rates effective in 2019 are a small fraction of the 2011 rates.... **An unjustified amplification of the access stimulation regulations (“first prong” economic reversal and “second prong” direct interconnection) cannot be squared with current rate variations or market conditions.**



**OPPOSING COMMENTERS CONTINUE
SUPPORTING VAGUE PROPOSALS
AND HAVE FAILED TO ADDRESS
THE CLECs' CONCERNS**



Proposal #1 – CLECs Pay Intermediate Provider

- AT&T and Inteliquent have repeatedly asked the FCC to adopt Proposal #1 of the *Access Stimulation NPRM*:
 - ❖ “AT&T encourages the swift Commission action to adopt the NPRM’s ‘prong one,’ which would require the cost causer in current schemes to accept the financial obligations of the routing they have chosen in associating their high-volume services in remote areas.” (AT&T *Ex Parte* Filings – [Dec. 4](#), [Dec. 10](#), [Dec. 17](#), [Dec. 21](#)).
 - ❖ “The Commission ... [should] adopt[] the *NPRM*’s proposal to require access stimulating LECs to pay the costs of receiving traffic.” ([Inteliquent *Ex Parte* Filing](#) – Oct. 19, 2018).
- However, AT&T and Inteliquent have failed to resolve the vague language and assumptions Proposal #1 relies on.

Proposal #1's Discussion Regarding "Financial Responsibility" is Vague & Incomplete

10. *Revised Financial Responsibility.* We seek comment on the first prong of our proposal and the impact it will have on access stimulation schemes. Under this prong, an access-stimulating LEC that does not offer direct connections to IXC's would bear all financial responsibility for applicable intermediate access provider terminating charges normally assessed to an IXC (from the point of indirect interconnection to the access-stimulating LEC's end office or functional equivalent), and would be prohibited from assessing transport charges for any portion of transport between the intermediate access provider and the LEC's end office or functional equivalent that the LEC, itself, provides. What are the advantages of placing the financial responsibility for delivery of traffic to its end office, or functional equivalent, on the access-stimulating LEC? Are there disadvantages?

Major Concerns Regarding Proposal #1

Assumptions:

1. There is a single intermediate access-provider delivering traffic to any particular access-stimulating CLEC; and
2. This intermediate provider has a single rate that it uniformly assesses on IXCs for delivering traffic to access-stimulating CLECs.

Reality:

1. Each of the CLECs have in place more than 1 intermediate provider that delivers long-distance traffic to it and are connected to the FCC-sanctioned CEA provider for the delivery of tariffed TDM traffic.
2. In many cases, each of the CLECs have more than one connection to an IP provider, who deliver traffic on commercially-negotiated terms.

- Thus, the proposal both AT&T and Inteliquent support is:
 - **Vague**, because it does not acknowledge that more than 1 carrier may qualify as the intermediate provider; and
 - **Incomplete**, because it fails to address which provider is relevant to the issue of financial responsibility and fails to specify whether a CLEC that has multiple interconnecting carriers is entitled to specify which of those carriers will carry the traffic to the CLEC.

Major Concerns Regarding Proposal #1

- Other critical information is missing from the proposal:
 - ❖ How should financial responsibility be split when an intermediate provider provides the functional equivalent of tandem switching and tandem-switched transport and also provides additional services in delivering the IXC's calls?
 - ❖ Where CEA providers are acting as the intermediate provider, may they charge different IXCs different rates for delivering traffic to access-stimulating CLECs?
- Contrary to their current position, even the IXCs have stated they have concerns with this proposal:
 - ❖ **AT&T** finds “the definition of the phrase ‘intermediate access provider’ [to be] vague,” as the definition in turn fails to actually define several key terms, including the term “final interexchange carrier,” and does not explain whether wholesale-trafficking IXCs also fall within this definition. ([AT&T Comments](#) at 11 – July 20, 2018).
 - ❖ **Verizon** is concerned about “implementation issues,” as “[c]urrently, there are no established mechanisms for intermediate access providers to bill terminating tandem and transit charges to terminating LECs instead of billing IXCs.” ([Verizon Comments](#) at 6 – July 20, 2018).
 - ❖ **SDN** notes that “the Commission’s proposal ... will place an undue burden on intermediate carriers ... and raises a number of unresolved issues.” ([SDN Comments](#) at 1 – July 20, 2018).

Proposal #2 – “Direct Connection” Option

- At one time or another, AT&T and CenturyLink, among others, have asked the FCC to adopt Proposal #2 of the *Access Stimulation NPRM*:
 - ❖ “The Commission should [] issue rules making clear that the sending carrier, which has the financial responsibility to carry the traffic to the network edge, has the right to select how to transport the traffic to the edge, *i.e.*, which route to take, and whether to do so with its own facilities.” ([AT&T Comments](#) at 8 - *Refreshing the ICC Record* – Oct. 26, 2017).
 - ❖ “[T]he Commission should require carriers to offer other carriers direct or indirect connection with no additional charge for all terminating switched access traffic.” ([CenturyLink Ex Parte Filing](#) at 1-2 – Dec. 7, 2018).
- However, it is clear that these IXCs’ request for “direct connections” is a ruse. Moreover, the IXCs have failed to resolve the concerns the CLECs have previously pointed out.

The “Direct Connection” Proposal is Equally Flawed

13. *Direct Connection.* Commenters have argued that the volume of traffic bound for access-stimulating LECs justifies direct connections, but allege that access-stimulating LECs currently refuse to accept such connections.²³ Direct connections do not pass through intermediate switches and are offered on a capacity basis at monthly-recurring rates, as opposed to a per-MOU rate. If there is a sufficient volume of traffic, the monthly charges for direct connections can often be substantially lower than per-MOU rates for an equivalent amount of traffic.²⁴ As the second prong of our proposal, we propose to provide access-stimulating LECs the option to offer to connect directly to the IXC or an intermediate access provider of the IXC’s choice²⁵ as an alternative to bearing financial responsibility for intermediate access provider charges and ceasing to bill their own transport charges. Under this proposal, IXCs would have the option of selecting an intermediate access provider that would bill the IXC for transport to the access-stimulating LEC on a dedicated basis. We seek comment on this proposal and on how best to implement it. We note that as a result of this election, an IXC would have the choice to connect with an access-stimulating LEC directly or indirectly through the LEC’s existing intermediate access provider or another IXC directly connecting to the access-stimulating LEC.

Major Concerns Regarding Proposal #2

Commission's/IXC's Proposal:

- The Commission and IXCs suggest that a “direct connection” would include an arrangement where an IXC connects to an access-stimulating LEC through “an intermediate provider of the IXC’s choice.”

Reality:

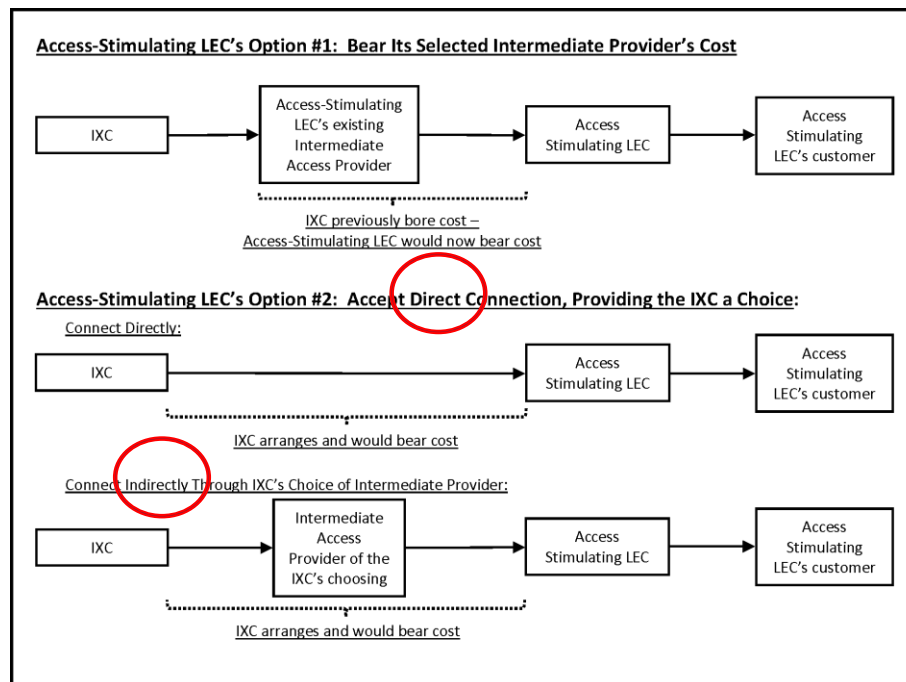
- “Direct connections” are arrangements where two carriers are **connected to each other**.
- While, “indirect connections” are “interconnection[s] of two carriers’ network, which are not directly connected to each other, via a third carrier’s network, to which the two carriers are each directly connected.”*

- Thus, the FCC’s proposal fails to appropriately apply the “direct connection” term, for as soon as it inserts the words “an intermediate access provider,” it is **no longer discussing a direct connection**.

* Definition obtained from *Newton’s Telecom Dictionary* (31st ed. 2018).

Major Concerns Regarding Proposal #2

- The FCC does understand the difference between the “direct” and “indirect” terms, as the diagram it uses to explain the “direct connection” proposal acknowledges that connections through an intermediate provider would require the IXC to “[c]onnect *indirectly* to the access-stimulating LEC:



Major Concerns Regarding Proposal #2

- Other critical information is missing from Proposal #2:
 - ❖ What obligations does a CLEC have to abide by in facilitating a direct connection for the IXC's benefit?
 - ❖ Must the IXC commit to installing the direct connection in writing?
 - ❖ May the IXC place any preconditions upon the offer to install a direct connection?
 - ❖ In accepting traffic from "an intermediate access provider of the IXC's choice," is the CLEC required to accept an IP-interconnection, as opposed to a TDM interconnection, if the IXC selects such a provider?
 - ❖ If so, does the FCC have the power to mandate and compel IP-interconnections without a notice of proposed rulemaking?
 - ❖ In accepting traffic from an "intermediate access provider of the IXC's choice," is the CLEC required to accept "virtual direct connections," whereby the CLEC is handed the traffic in a distant state and forced to incur the expense of hauling it back to rural America?

THE NUMBERS

SUPPORT THE CLECs' POSITIONS



Access Stimulation is Efficient

- According to Dr. Daniel Ingberman's recent economic analysis, siting access stimulation traffic in smaller (*i.e.*, rural CLEC) networks is efficient because:
 - ❖ When smaller network traffic volumes increase, the costs and rates associated with transporting the traffic over the smaller networks fall substantially.
 - ❖ When costs and rates fall, the smaller network's gains in consumer surplus exceed the larger (*i.e.*, urban IXC) networks' gains by more than the amount needed to subsidize the increased traffic volumes.

Access Stimulation Benefits Consumers

- The current access stimulation regime benefits consumers because:
 - ❖ The additional traffic volume obtained by smaller networks engaging in access stimulation enables scale economies in those networks.
 - ❖ The smaller networks' enabling of scale economies translates into lower prices for the smaller networks, which means lower prices for end users (*i.e.*, consumers).
 - ❖ The smaller networks' reduction in prices is more substantial than any reduction that could possibly occur in larger networks, which results in higher net savings for consumers.

Access Stimulation Benefits Consumers

Consumers Nationwide Benefit:

- On a monthly basis, more than 5 million consumers across the country use the conference calling & audio broadcasting services hosted by just these CLECs. The number is probably larger if all others are taken into consideration.
- These consumers include:
 - ❖ Nonprofit Organizations
 - ❖ Addiction Support Networks
 - ❖ Small Businesses
 - ❖ Religious Institutions
 - ❖ Political Campaigns
 - ❖ Government Agencies
 - ❖ Immigrants

Rural Consumers Benefit:

- By servicing high volume service provider customers, rural CLECs are able to provide their local residential & business customers with enhanced services:
 - ❖ **Northern Valley** is investing in fiber and other broadband capacity to ensure rural South Dakotans are not left behind in the digital divide. It is a rural broadband experiment winner and has received multiple service awards from its CLEC communities.
 - ❖ **Western Iowa Networks** is offering high speed Internet and local phone service to an expanded footprint of customers and is connecting with neighboring companies to help them offer similar broadband services to their customers.
 - ❖ **Great Lakes** is providing broadband access to 2,000 Iowa residences & businesses in 3 counties that would otherwise still be waiting for access. It has been labeled a key source of innovation in Northern Iowa.

Access Stimulation Benefits IXC

- In *Northern Valley Communications, LLC v. AT&T*, No. 1:14-cv-01018, AT&T was required to turn over revenue and cost data, allowing Northern Valley to conduct an in-depth analysis of how IXCs like AT&T are affected by access stimulation. According to that analysis:
 - ❖ Between March 2013 to June 2016, AT&T collected **\$50 million** for Northern Valley-bound traffic, producing a **net profit of \$30 million** for AT&T.
 - ❖ AT&T generated **\$8.2 million in revenue** alone from its wholesale traffic to Northern Valley.
- Thus, the claims made by the FCC and IXCs alleging IXCs are harmed by delivering traffic to access-stimulating CLECs is entirely contradicted by the evidence. This would be even more concretely proven if the CLECs were able to obtain revenue and cost data from other IXCs.

New Regulations Will Not Improve Efficiency

- According to Dr. Daniel Ingberman's recent economic analysis, imposing new rules that reallocate existing access stimulation traffic will not improve efficiency because:
 - ❖ Based on economies of scale, existing access stimulation market arrangements are already at market equilibrium.
 - ❖ Altering the market equilibrium that exists will only displace this equilibrium, creating minimal gain for larger networks and substantial losses for smaller networks.
 - ❖ The access stimulation arrangements that exist operate under DeGraba's bill-and-keep end state, which the FCC previously recognized as the operative efficient marketplace for access stimulation traffic.

New Regulations Will Harm Consumers Financially

- By enacting either of the *NPRM*'s proposals, free conference calling & audio broadcasting services will be eliminated, forcing consumers to pay for conferencing service on top of paying for long-distance service. Thus, if the opposing commenters get their way:
 - ❖ A church that simulcasts its 60-minute church service to the elderly and infirm would incur a cost per-user to hear the service. If 500 people listened in, the church could incur additional charges of **\$1,170 each Sunday**.*
 - ❖ A political campaign gathering together 10,000 supporters across the country for a 45-minute discussion on “get out the vote” efforts could have to pay **\$17,550** to host **a single conference call**, even while each campaign volunteer still pays his or her long-distance bill.*
 - ❖ At a volume of 2 billion minutes per year (the FCC’s 2011 estimate), **consumers save an estimated \$78 million per year** by being able to use their long-distance phone plans to access the services hosted by rural CLECs.

* These calculations assume a rate of \$0.039 per minute, which is the rate AT&T currently charges when the consumer uses his or her long-distance plan to participate in AT&T’s conferencing service.



Any Savings Created By New Regulations Will Only Increase IXC Profits

- Despite the IXCs' statements to the contrary, any savings created by the *NPRM*'s proposals will not be passed on to consumers:
 - ❖ While the 2011 *Connect America Fund Order* drastically reduced the access charge rates paid by IXCs, the Producer Price Index ("PPI") shows that consumers are paying more for long-distance service now than they did in 2011.
 - ❖ Overall, the price for residential wire service rose 24% between 2011 and 2017.

	Base Period	July 2011	Dec. 2011	Dec. 2012	Dec. 2013	Dec. 2014	Dec. 2015	Dec. 2016
Bundled Wired Telecom. Access Services	Dec. 2011	n/a	100.0	99.5	100.5	101.2	103.7	105.1
Bundled Access Services	Dec. 2011	n/a	100.0	99.6	100.6	101.3	103.8	105.2
Internet Access Services	March 2009	97.6	97.7	97.6	97.6	98.1	97.6	97.6
Cellular & Other Wireless	March 2009	90.5	89.5	87.9	87.1	82.6	74.2	69.2
Residential Wired	June 2009	106.5	107.9	111.4	118.5	123.6	127.8	133.0
Business Wired	June 2009	96.5	96.1	96.4	96.0	96.1	96.5	95.8

CONSUMERS SUPPORT THE CLECs' POSITIONS



Consumer Perspectives

- As of February 10, **over 2,500 comments** have been filed by citizens who benefit from free conference calling services.
- Specific service/organization sectors referenced include:
 - ❖ Healthcare Services & Illness Support Groups;
 - ❖ Non-Profit Organizations;
 - ❖ Pro Bono Legal Services;
 - ❖ Religious Organizations & Faith-Based Support Groups;
 - ❖ Twelve-Step Programs & Other Addiction Support Networks; and
 - ❖ Veteran Service Organizations & Veteran Support Groups.
- Most importantly, free conference calls benefit the poor and rural communities, who would likely go without the services these calls provide if they had to pay for them.

Healthcare Services & Illness Support Groups

- Sharon F. of Blue Springs, Missouri, finds free conference calls to be extremely “valuable” given her precarious situation:

I am disabled. I use free conferencing calls as a way to supplement my therapy. My carrier, Verizon, charges me for unlimited calling. Calling into ... support groups should not cost me more than what I already pay. **These conference calls are valuable to me, as well as thousands of other Americans who can't drive or afford to seek services outside the home.**

Non-Profit Organizations

- Lee P. of Raleigh, North Carolina, reminds the FCC that it is not just individuals that rely on free conference calling services, but also those non-profit organizations that provides services to individuals:

As a retiree who volunteers his services to non-profits and others I make extensive use of free conference calling. **Not having this service available will negatively affect my ability to support these non-profit organizations.** As a taxpayer, a voter, and a free conference calling client, I ask you to please reconsider acting on WC Docket No. 18-155.

- Christine K. of Winnebago, Illinois, makes a similar statement:

Sometimes this is the only way some groups can afford to communicate. Keep free-conference calls FREE!

Pro Bono Legal Services

- Alicia P. of San Francisco, California, states that, without free conference calling services, she would not be able to adequately represent her clients:

I am a court appointed attorney for indigent clients in San Francisco, CA juvenile dependency cases. **I use free conference calling to facilitate case collaboration on my cases representing abused and neglected children and their families....** [I]f the FCC does decide to remove these services, I and millions of other American citizens and American businesses will be immediately and negatively affected. We will no longer be able to use these services for free and will instead be forced to pay.

Religious Organizations & Faith-Based Support Groups

- Curtis F. of Brookville, Ohio, notes that, without free conference calling services, “hundreds” of his church’s worshipers would have to forego attending religious services:

We as a church group have hundreds of worshipers who for various reasons listen to our preaching, singing, news information, prayer groups, and support groups through free conference calling services. **Some of our members would not be able to afford paying for extended long distance charges for this service....** I am praying that you will carefully consider my request.

- America’s Amish & Mennonite Communities especially rely on free conferencing calling services.
 - ❖ For example, from August 21, 2018, to September 24, 2018, **10,791 unique phone numbers** dialed into the Amish & Mennonite Conference Line to attend religious services, receive emergency response updates, and receive healthcare support and educational services.

Veteran Service Organizations & Veteran Support Groups

- Many Veterans rely on free conference calls to cope with service-related illnesses/injuries and/or to help Veteran communities. For example:
 - ❖ **The United States Military's Survivor Outreach Services at Joint Base Lewis McChord** in the state of Washington uses free conference calls to provide timely information to Gold Star families who have recently lost a family member in service.
 - ❖ **The San Diego Veterans Coalition** coordinates monthly conference calls among various Veteran organizations that participate in a Family Life Action Group, which seeks to strengthen the nation's commitment to engaging and supporting post-discharge military families.
 - ❖ **The New Hampshire Justice Involved Veterans Task Force** uses conference calls to conduct meetings and address the unique needs of Veterans, particularly focusing on those diagnosed with service-related illnesses and/or who have ongoing legal issues.
- Many Veterans also frequently use conference calls to interact with Twelve-Step programs and addiction support networks.

Poor & Rural Communities

- Scott K. of Great Neck, New York, points out that free conference calls are “invaluable” to those who can afford little:

Free conference calling has proven invaluable to the 12-step community – of which I am a member – and **without it, countless people who cannot afford paid conference calling will lose the help that they need which will result in needless suffering and death.** Please don't end free conference calling.



RECENT DEVELOPMENTS



CLECs' Response to AT&T's Recent *Ex Parte* Filings

- AT&T repeatedly asserts that the FCC has the “authority” to adopt Proposal #1. **However, this is not true because:**
 - ❖ **Proposal #1 violates binding precedent**, which holds that, in implementing bill-and-keep, the FCC cannot interfere with the states’ Section 252(d) authority to (1) “arbitrate charges for the transport and termination of traffic” where carriers cannot agree on such charges; and (2) determine carriers’ network “edge”;
 - ❖ **Proposal #1 is unreasonably discriminatory** against carriers engaged in access stimulation; and
 - ❖ **Proposal #1 is inconsistent with the bill-and-keep framework**, which the FCC has characterized as the “ultimate end state” for intercarrier compensation.

Proposal #1 Violates Binding Precedent

- *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014):

- ❖ Although the FCC has the authority to establish bill-and-keep as a “pricing methodology” for access stimulation traffic, it may not interfere with the states’ Section 252(d) authority.
- ❖ Under Section 252(d), states are given arbitration authority over “transportation and termination charges” and the “terms and conditions” related thereto.
- ❖ One of the “terms and conditions” states retain jurisdiction over, even after the implementation of bill-and-keep, is the determination of a carrier’s network “edge.”

Under Section 252(d)(2), states continue to enjoy authority to arbitrate “terms and conditions” in reciprocal compensation. For example, **even under bill-and-keep arrangements, states must arbitrate the “edge” of carrier’s networks. This reservoir of state authority can be significant.**

The “edge of a carrier’s network consists of the points “at which a carrier must deliver terminating traffic to avail itself of bill-and-keep.” **The location of the “edge” of a carrier’s network determines the transport and termination costs for the carrier.***

* *In re FCC 11-161*, 753 F.3d at 1126 (emphasis added).

Proposal #1 Violates Binding Precedent

- Under Proposal #1, local carriers would be forced to pay for the transportation of access stimulation traffic from the IXC's POP to the LEC's central office in *all* circumstances.
- Under Proposal #1, then, the FCC – not the *states* – would be creating a *de facto* network “edge” at the IXC's POP, in violation of the Tenth Circuit's holding in *In re FCC 11-161*.
- Under Proposal #1, the FCC additionally would be shifting all costs onto the called party, which runs contrary to the FCC's prior justifications for establishing bill-and-keep.

Proposal #1 Is Unreasonably Discriminatory

- Through Proposal #1, the FCC and IXC's seek to:
 1. Adopt different prices for the delivery of access stimulation traffic through CEA providers; and thereby
 2. Discriminate against rural CLECs based on the type of traffic and volume of traffic they receive.
- Thus, Proposal #1 violates:
 - ❖ The FCC's longstanding rejection of discriminatory treatment to access stimulation traffic:

Connect America Fund Order, ¶ 692:

[W]e reject the suggestion that we detariff competitive LEC access charges if they meet the access stimulation definition.

- ❖ Sections 201(b) and 202(a) of the Communications Act:

All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.*

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.**

* 47 U.S.C. 201(b).

** 47 U.S.C. 202(a).



Proposal #1 Is Inconsistent with the FCC's Goal of Establishing A Bill-and-Keep End State

- When the FCC adopted the *Connect America Fund Order*, it justified moving away from the traditional access charge regime by relying on Patrick DeGraba's theory of a "unified approach to interconnection pricing," known as "central office bill-and-keep," or "COBAK."
- While COBAK would "apply to interconnecting arrangements between all types of carriers that interconnect with the local circuit-switched network," it would "**not ... eliminate access charges for terminating transport** if the IXC uses the LEC's terminating transport facilities," because this transport "is what long-distance customers pay their long distance carriers to do."
- Thus, COBAK relies on two key rules:

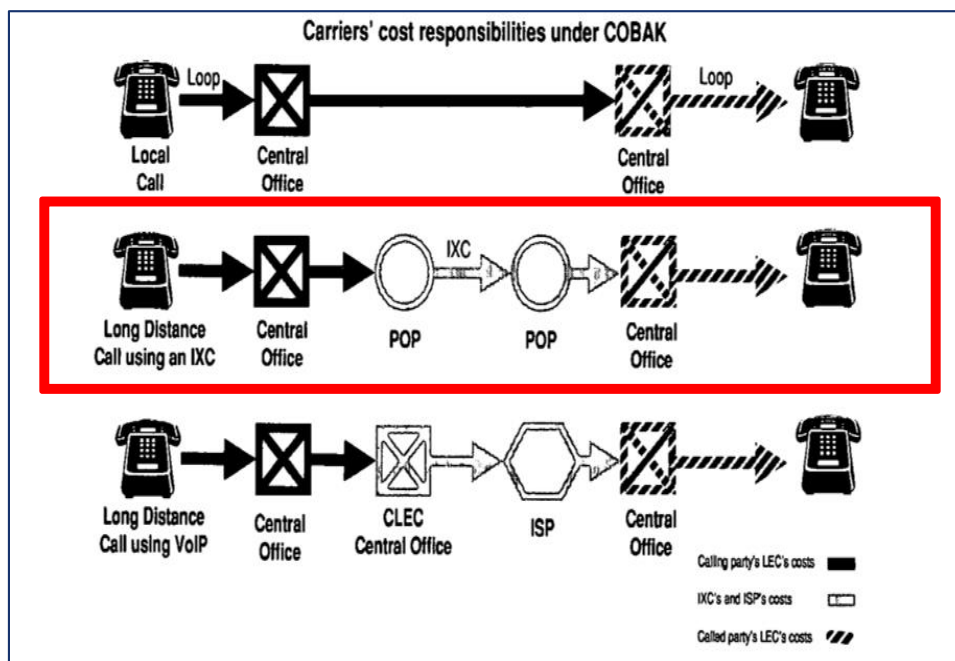
Rule 1: No carrier may recover any costs of its customers' local access facilities from an interconnecting carrier.

Rule 2A: For interexchange calls, the calling party's local network is responsible for delivering the call to the POP of the calling party's IXC; the calling party's IXC is then responsible for delivering the call to the called party's central office.



Proposal #1 Is Inconsistent with the FCC's Goal of Establishing A Bill-and-Keep End State

- As DeGraba's depiction of the desired end state for COBAK makes clear, contrary to AT&T's proposal, the **IXC** – *not* the CLEC – is to be made **responsible** for the costs of transporting the call between the IXC's POP and the LEC's central office:



CLECs' Response to Wide Voice's Recent *Ex Parte* Filing

- A majority of Wide Voice's comments are correct:
 - ❖ The FCC's proposed access stimulation reforms are **not supported by new data or evidence** ([Wide Voice Ex Parte Filing](#) at 2-3 – Jan. 14, 2019);
 - ❖ The FCC's proposed access stimulation reforms **unreasonably discriminate against access-stimulating CLECs** in violation of Sections 201(a) and 202(b) of the Act ([Wide Voice Ex Parte Filing at 3-4](#) – Jan. 14, 2019); and
 - ❖ The FCC's proposed access stimulation reforms would **controvert the legal and policy underpinnings of the FCC's bill-and-keep framework** ([Wide Voice Ex Parte Filing](#) at 2-3 – Jan. 14, 2019).

CLECs' Response to Wide Voice's Recent *Ex Parte* Filing

- However, Wide Voice's proposal to adopt a 15-mile transport rate cap for access-stimulation traffic contravenes its earlier comments because:
 - ❖ A 15-mile transport rate cap is just as unreasonably discriminatory as the FCC's proposed reforms, as it places unreasonable limitations on *only* one type of traffic; and
 - ❖ A 15-mile transport rate cap runs contrary to the bill-and-keep end state envisioned by the FCC, as it would contradict the FCC's conclusion that IXCs must pay the costs of *all transport* between the IXCs' POPs and the CLECs' central offices.

CLECs' Response to Wide Voice's Recent *Ex Parte* Filing

- Wide Voice's analysis fails to recognize the key distinction between Iowa and South Dakota:
 - ❖ In Iowa, the CEA provider provides an average of **103.519 miles of transport** as part of its CEA rate.*
 - ❖ In South Dakota, however, the CEA provider does not provide **any** transport.
- By failing to recognize and account for this fundamental difference, Wide Voice presents an illogical analysis and policy proposal.
- Thus, if the Commission were to impose a mileage cap, the logical cap would be to permit the CEA provider and/or LECs to bill for a combined total of **at least 118.5 miles of transport**.

* See *In re Iowa Network Access Division Tariff F.C.C. No. 1*, Memorandum Opinion and Order, WC Docket No. 18-60, at 19 ¶ 43 (July 31, 2018) (“[T]he weighted average mileage of 103.519 should be used to calculate the composite benchmark rate to be used by Aureon.”); see also *In re Iowa Access Division Tariff F.C.C. No. 1*, Order on Reconsideration, WC Docket No. 18-60, at 6-7, ¶¶ 13-17 (Nov. 28, 2018) (affirming FCC’s decision to adopt a 103.519 average mileage to determine Aureon’s tariffed benchmark rate).

Thank You

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