



February 14, 2019

VIA ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

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Dear Ms. Dortch:

On February 12, 2019, my colleague, John Nelson, and I attended two separate meetings as counsel to the Competitive Local Exchange Carriers (“CLECs”) to discuss matters related to the above-referenced proceeding. The meetings were held with (1) Nirali Patel, Wireline Advisor to Chairman Pai, and Will Holloway, FCC Intern; and (2) Arielle Roth, Wireline Legal Advisor to Commissioner O’Rielly. Several representatives of the CLECs also attended both meetings by phone, including James Groft, CEO of Northern Valley Communications, LLC (“NVC”); Ronald Laudner, CEO of OmniTel Communications (“OmniTel”); and Jeff Roiland and Kevin Skinner, CEO and CFO of BTC, Inc. d/b/a Western Iowa Networks (“Western Iowa Networks”). The presentation attached as **Exhibit A** was used during our discussions.

During our meeting with Ms. Patel, I briefly discussed the CLECs’ August 2018 and October 2018 meetings with Commission staff members and the CLECs’ initial concerns with the Commission’s Notice of Proposed Rulemaking (the “Access Stimulation NPRM”), including the unsupported allegations and factual omissions in the comments and reply comments submitted by the IXC and CEA providers. We also focused on the developments in the Access Stimulation NPRM docket that have occurred since the CLECs’ August and October meetings. Those developments include: (1) the IXCs’ continued failure to provide data and evidence supporting their positions; (2) the comments filed by other interested parties calling for additional fact-finding and data-gathering before proceeding further; and (3) the 2,500-plus comments filed by consumers attesting to the important value of free conferencing services for Americans across the country.

I pointed out that, over the course of the last month, multiple parties have joined the CLECs in asking the Commission to obtain more data, evidence, and information before it proceeds with this rulemaking,



including Wide Voice¹ and NTCA.² To date, however, the Commission has failed to issue the CLECs' proposed data requests. As I noted to Ms. Patel, this is especially concerning to the CLECs because it reflects a significant departure from the Chairman's often-expressed view that the Commission must make its decisions based on fully-developed evidentiary records.

We discussed with Ms. Patel examples of the types of unverified allegations that the IXC's have made, noting that, while AT&T alleges that access-stimulating CLECs have rejected requests for direct interconnections, in reality, AT&T has never intended to actually install facilities in rural America and, instead, has demanded that CLECs provide them with *indirect* interconnections utilizing the CLECs' tandem-switched facilities. I also explained how the IXC's have used these unverified allegations to direct policymaking in their favor, noting that AT&T has renounced the Commission's "Prong 2" proposal, which would allow LECs to avoid having to bear the cost of transport by allowing AT&T to install direct interconnections, in favor of allowing AT&T to shift its transport costs onto access-stimulating CLECs, thereby creating a windfall for AT&T (the Commission's "Prong 1" proposal).

Ms. Patel asked us what the CLECs would like to see the Commission do in this proceeding as it moves forward. In response, I explained that the CLECs would like the Commission to act on their proposed data requests and obtain information from the IXC's and CEA providers that seek to eliminate free conference calling services, after which the Commission should review and analyze that information to determine whether the proposed rules are necessary, nondiscriminatory, and in accord with the **uniform** system of bill-and-keep that the Commission espoused as the "ultimate end state" in the *Connect America Fund Order*. I also explained that the CLECs would like to see the Commission complete its investigation of both the Iowa Network Services d/b/a Aureon ("Aureon")³ and South Dakota Network, LLC ("SDN"),⁴ tariffs before proceeding further with the Access Stimulation NPRM. By addressing these CEA provider tariffs, the CLECs believe that the Commission will resolve the lingering concerns about the price of termination, which led to the creation of this docket.

In our meeting with Ms. Roth, I again began by briefly discussing the CLECs' ongoing concerns with the Access Stimulation NPRM proceedings, particularly focusing on how the Commission's failure to support the proposed rules and assertions with the necessary data and evidence conflicts with Commissioner O'Rielly's long-standing commitment to evidence- and fact-based rulemaking. We then detailed the developments in the Access Stimulation NPRM docket that have occurred since we last met with Ms. Roth in September.

After discussing the variety of consumer comments supporting free conference calling services and opposing the proposed rules, I summarized the Expert Report of Dr. Daniel E. Ingberman and his

¹ See Letter from A. Nickerson, CEO, Wide Voice, LLC, to M. Dortch, Secretary, FCC (Jan. 14, 2019).

² See, e.g., Letter from M. Romano, SVP – Industry Affairs & Business Development, NTCA, to M. Dortch, Secretary, FCC (Feb. 12, 2019); Letter from M. Romano, SVP – Industry Affairs & Business Development, NTCA, to M. Dortch, Secretary, FCC (Feb. 11, 2019).

³ See generally *In re Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60.

⁴ See generally *In re South Dakota Network, LLC Tariff F.C.C. No. 1*, WC Docket No. 18-100.



economic analysis regarding the access stimulation regime. In particular, we discussed Dr. Ingberman's conclusion that the current regime: (1) does not harm consumers; (2) is efficient; and (3) will not become more efficient by imposing new regulations or reallocating access stimulation traffic away from the access-stimulating CLECs. I also reiterated that the CLECs have done significant work to present the Commission with facts and economic analyses and encouraged the Commission to demand the same level of transparency from the IXC and CEA providers that are advocating for the rule changes.

We then discussed AT&T's recent *ex parte* filings of December 3, 6, 10, 17, and 21, wherein the IXC advocated for the Commission's adoption of Prong 1, but not Prong 2, of the Access Stimulation NPRM. Similar to our discussion with Ms. Patel, we explained to Ms. Roth that AT&T's recent request highlights its practice of using unverified allegations and unjustified requests to influence policymaking decisions that improve its bottom line while weakening the economic stability of rural CLECs and depriving consumers of valuable services. For example, I noted how, before the NPRM was issued, AT&T supported the idea of requiring access-stimulating CLECs to directly connect with IXCs, but now rejects this idea because a direct interconnection would require AT&T to incur the expense of installing its own facilities to connect with the rural CLECs, which it appears to have no intention of doing.

In concluding our meeting with Ms. Roth, I emphasized that the CLECs continue to request an evidence-based rulemaking process that does not result in rules that are unjustly or unreasonably discriminatory and that deviate from the Commission's stated commitment to a uniform intercarrier compensation regime. I also encouraged the Commission to complete its investigation into the Aureon and SDN tariffs before taking further action in this docket.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via the Commission's electronic comment filing system ("ECFS"). If you have any questions, please do not hesitate to contact me.

Sincerely,

G. David Carter
Partner

cc: John C. Nelson, Jr.
Nirali Patel
Will Holloway
Arielle Roth