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April 10, 2018

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: *Rural Call Completion*, WC Docket No. 13-39.

Dear Ms. Dortch:

I write on behalf of AT&T Services, Inc., and its affiliates (“AT&T”) to address the proposed forthcoming rules and order in the above-captioned docket. As set forth in its comments in this proceeding, AT&T generally supports the Commission’s determinations to adopt a more effective regulatory approach to rural call completion issues, particularly emphasizing providers’ adherence to ATIS best practices in call completion. *See, e.g.*, Comments of AT&T, at 1-2, 7-8 (Aug. 28, 2017).

AT&T also strongly agrees with the Commission that “once complete, comprehensive reform of intercarrier compensation is likely to diminish the financial incentive structure that contributes to rural call completion issues.”<sup>1</sup> Because problems with the current intercarrier compensation system are a root cause of rural call completion issues, AT&T urges the Commission to take prompt action in response to its recent Public Notices that sought to refresh the record on issues related to further reform of the intercarrier compensation system.<sup>2</sup>

In this docket, the Commission should clarify its forthcoming rural call completion rules and order in at least two respects.

- *First*, it should clarify or revise its proposed rules so that the rural call completion rules do not encompass local exchange carriers (“LECs”) engaged in access stimulation. The Commission has determined that such carriers are more like large price cap LECs than rural carriers, and thus treating them as rural carriers is not appropriate. *See Connect America Fund*, 26 FCC Rcd. 17663, ¶ 689 (2011) (“*Transformation Order*”).

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<sup>1</sup> Circulation Order, *In the Matter of Rural Call Completion*, WC Docket No. 13-39, FCC-CIRC1804-04, ¶ 5 (March 22, 2018) (“*RCC Circulation Order*”).

<sup>2</sup> Public Notice, *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92, 32 FCC Rcd. 5117 (WCB2017); Public Notice, *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport and Transit*, WC Docket No. 10-90; CC Docket No. 01-92, 32 FCC Rcd. 6856 (WCB 2017).



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- *Second*, the Commission should clarify that any determination that a competitive LEC meets the relatively broad definition of “rural telephone company” for purposes of the forthcoming rural call completion rules does not mean that the competitive LEC also satisfies the far more narrow definition of “rural CLEC” for purposes of the Commission’s rural exemption to its CLEC access charge rules.<sup>3</sup>

***The Rural Call Completion Rules Should Not Apply To LECs Engaged In Access Stimulation.*** The Commission’s initial rural call completion rules applied to call attempts to “rural OCNs,” which uniquely identify “an incumbent LEC . . . that is a rural telephone company.” *See, e.g.*, 47 C.F.R. § 64.2101; *RCC Circulation Order*, ¶ 6 & n.21. In 2017, when the Commission proposed revisions to its rural call completion rules, its “proposed rule [] used the phrase ‘rural incumbent LEC’”—which by definition would exclude competitive LECs. *See id.* ¶ 29 n.99 (citing Second Further Notice of Proposed Rulemaking, *Rural Call Completion*, 32 FCC Rcd. 6047, App. A (2017)).

Nevertheless, as discussed in the *RCC Circulation Order*, the Commission is now proposing to make certain of its rural call completion rules apply “to both rural incumbent and rural competitive LECs.” *RCC Circulation Order*, ¶ 29. Under the proposed final rule, the Commission would “replace the phrase ‘rural incumbent LEC’ with ‘rural telephone company,’ which encompasses both incumbent and competitive LECs.” *Id.* ¶ 29, n.99.

AT&T does not necessarily object to expanding the scope of the rural call completion rules to include call attempts to rural competitive LECs that genuinely offer service in areas that can reasonably be considered rural, and that are engaged primarily in providing *bona fide* competitive local services to homes and businesses in such rural areas. However, the Commission should not expand its rural call completion rules to LECs engaged in access stimulation (as defined in the Commission’s rules (*see* 47 C.F.R. § 61.3(bbb))—even if such LECs operate in a sparsely populated area and otherwise meet the definition of “rural telephone company” in Section 51.5 of the Commission’s rules.

To begin with, there is no serious public interest benefit that necessitates the expansion of rural call completion rules to aid LECs engaged in access stimulation. To the contrary, in 2011, the Commission concluded that “access stimulation” was a “wasteful arbitrage scheme,” in which LECs “exploit[] loopholes in our rules.” *Transformation Order*, ¶¶ 648-49. Expanding the Commission’s rural call competition rules to benefit access stimulation LECs that have exploited the Commission’s rules makes no sense and does not serve consumers’ best interests.<sup>4</sup>

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<sup>3</sup> Compare 47 C.F.R. § 51.5 (defining “rural telephone company”) with *id.* § 61.26(a)(6), (e) (defining a “rural CLEC” for purposes of the narrow rural exemption).

<sup>4</sup> The Commission has taken numerous enforcement actions against LECs engaged in access stimulation. *See, e.g.*, *Qwest Commc’ns v. Farmers & Merchs. Tel. Co.*, 24 FCC Rcd. 14801 (2009), *aff’d*, 668 F.3d 714 (D.C. Cir. 2011); *Sprint Commc’ns v. No. Valley Commc’ns*, 26 FCC Rcd. 10780 (2011), *aff’d*, 717 F.3d 1017 (D.C. Cir. 2013); *Qwest Commc’ns Co. v. Sancom*, 28 FCC Rcd. 1982 (2013); *AT&T Corp. v. All American Tel. Co.*, 28 FCC Rcd. 3477 (2013). The states have also found serious problems in the operations of many access stimulation CLECs. *See, e.g.*, *In re Great Lakes Commc’ns Corp.*, No. SPU-2011-004, Slip Op. at 1-4, 11-31 (IUB Mar. 30, 2012);



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Further, the Commission has determined that access stimulation should be “curtail[ed].” *Id.* ¶¶9, 649; *see id.* ¶ 662 (there is a “need for prompt Commission action to address the adverse effects of access stimulation”). The Commission found that such schemes were “unfair for consumers, with hundreds of millions of Americans paying more on their wireless and long distance bills than they should in the form of hidden, inefficient charges.” *Id.* ¶ 9; *see id.* ¶ 663 (explaining that “all customers” of long distance service are forced to subsidize the costs of the supposedly “free” conference or chat services often associated with access stimulation schemes). Yet, by virtually all accounts, access stimulation schemes remain prevalent.<sup>5</sup> There is no need to expand the rural call completion rules to encompass LECs engaged in a “scheme” that the Commission has determined must be curtailed. *Transformation Order*, ¶¶ 648-49.

Moreover, although most LECs engaged in access stimulation operate in sparsely populated rural areas, that is not due to any genuine business reason, but has occurred because these LECs have sought to exploit the high switched access rates in such areas (including by billing hundreds of miles of mileage-sensitive transport charges). *See Transformation Order*, ¶ 656. The conference bridge and chat equipment to which access stimulation LECs often terminate calls need not be located in rural areas.

Further, the Commission has already determined that CLECs engaged in access stimulation *do not resemble* genuine rural carriers. Prior to 2011, the Commission’s rules allowed CLECs to benchmark their rates against a “competing ILEC,” and, because access stimulation CLECs typically elected to operate in rural areas, they often benchmarked their rates against rural incumbent LECs. However, the Commission in 2011 determined that access stimulation CLECs were not like rural incumbent LECs. That was because “the access stimulator’s traffic vastly exceeds the volumes of traffic of the [typically rural] incumbent LEC.” *Id.* ¶ 689. Because an access stimulation LEC has “traffic volumes [that] no longer operationally resemble” the traffic volumes of a rural incumbent LEC, access stimulation CLECs today must benchmark their access rates against the lowest-priced price cap LEC in the state. *Id.*; 47 C.F.R. § 61.26(g).

Because the Commission has already determined that LECs engaged in access stimulation more closely resemble price cap LECs than rural incumbent LECs, it would be arbitrary if the Commission were to expand its rules, so that access stimulation LECs would be treated as rural telephone companies for purposes of the forthcoming rural call completion rules.

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*Consideration of the Rescission, Alteration, or Amendment of the Certificate of Authority of All American*, 2010 WL 1731201 (Utah Pub. Serv. Comm’n Apr. 26, 2010).

<sup>5</sup> *See, e.g.*, Reply Comments of AT&T, at 9, WC Docket No. 16-363 (Dec. 19, 2016) (“[V]irtually no party has suggested—let alone presented any evidence to show—that [access stimulation] has in fact been curtailed”); Comments of Verizon, at 1, 3, WC Docket No. 16-363 (Dec. 2, 2016) (“traffic pumping remains a problem;” “traffic pumpers are stimulating hundreds of millions of minutes each month to Iowa and South Dakota”); Comments of CenturyLink, at 2, WC Docket No. 16-363 (Dec. 2, 2016) (“[access] charges related to access stimulation continues to be a problem”).



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Excluding access stimulation LECs from the rural call completion rules would not mean that calls to such LECs would not be completed or could be purposefully blocked. The Commission's long-standing policies that generally preclude call blocking continue to apply—as they have since at least 2007—to LECs even if they engage in access stimulation. *Call Blocking by Carriers*, 22 FCC Rcd. 11629 (W.C.B. 2007).

Because access stimulation LECs already have protection against unjustified call blocking, the Commission should not expand the rural call completion rules to benefit LECs engaged in a harmful practice. The Commission should thus make a slight adjustment to its proposed definition of “rural telephone company” in Section 64.2101. The final rule in 47 C.F.R. § 64.2101 should provide:

#### **§ 64.2101 Definitions**

\* \* \*

*Rural Telephone Company.* The term “rural telephone company” shall have the same meaning as in § 51.5 of this chapter, [[except that any LEC engaged in access stimulation, as defined in § 61.3(bbb) of this Subchapter B, shall not be considered a “rural telephone company” for purposes of this Subpart.]]

The bracketed language would serve to exclude LECs engaged in access stimulation, but could allow other, genuine rural CLECs to be encompassed within the Commission's rural call completion rules.

***The Commission Should Clarify That A CLEC Classified As A “Rural Telephone Company” Under The Rural Call Completion Rules Is Not Necessarily A “Rural CLEC” Under The CLEC Access Rules.*** In its *RCC Circulation Order*, the Commission proposes to “direct NECA to prepare on an annual basis and make publicly available a list of rural competitive LEC OCNs in addition to continuing its annual listing of rural and non-rural incumbent LEC OCNs.” *RCC Circulation Order*, ¶ 29.

As the Commission recognizes, directing NECA to compile a list of rural CLECs will be “difficult.” *Id.* n.100. In fact, rural CLECs are not generally members of NECA, and NECA is not necessarily better situated than any other private entity to compile an accurate list of CLECs that are also “rural telephone companies” under the proposed regulations.<sup>6</sup>

Accordingly, the Commission merely asks NECA to use “best efforts” to compile a list, *see id.* n.100, and the Commission has not proposed amending its rules to include any list of rural CLECs. *See id.*, App. B (final rules propose no change to the definition of “rural OCN,” which

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<sup>6</sup> Some rural CLECs may be affiliates of LECs that are NECA carriers, but many such rural CLECs would likely have no connection with NECA. The Commission recognizes that a NECA-compiled list could be underinclusive. *See id.* n.100. However, a NECA-compiled list could also be improperly *over*-inclusive. The definition of “rural telephone company” is complex and difficult to apply to a particular CLEC, *see id.*; *see also infra*, and CLECs that are not in fact rural telephone companies may have incentives to be included improperly on a NECA-compiled list of rural telephone companies.





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is the provision that directs NECA to compile the list of rural OCNs for “incumbent LECs”). AT&T thus assumes that any list of rural CLECs compiled by NECA would be for informational purposes only, and that such a list would not create any binding obligation to entities subject to the rules. Indeed, any attempt to do so could be problematic.<sup>7</sup> The Commission should therefore clarify that any NECA-compiled list of CLECs is for informational purposes only.

The Commission should also clarify that any list (or any determination) of CLECs that are “rural telephone companies” is limited in scope to the rural call completion rules, and has no effect whatsoever on the Commission’s CLEC access charge rules.

In 2001, when the Commission first implemented its benchmarking rules for CLEC access charges, it created a “rural exemption,” which is “as narrow as possible” to serve its limited purpose, and includes only a “small number of a carriers” serving a “tiny portion” of access lines. *Seventh Report and Order*, 16 FCC Rcd. 9126, ¶ 68 (2001); *Eighth Report and Order*, 19 FCC Rcd. 9108, ¶ 35 (2004). The rural exemption allows “rural CLECs,” as defined in Section 61.26(a)(6) of the rules, to tariff, in defined circumstances, higher access rates than other CLECs. 47 C.F.R. §§ 61.26(e); *id.* § 61.26(a)(6).

In defining the scope of the rural exemption, and the definition of “rural CLEC,” the Commission carefully and expressly departed from the definition of “rural telephone company” in the Communications Act—which is also the definition used in the proposed rural call completion rules. *See Seventh Report and Order*, ¶ 78 & n.158. Specifically, of the four subparts of the definition of “rural telephone company,” the Commission’s definition of “rural CLEC” in Section 61.26 of its access rules was modeled on only one. *Id.* (explaining that other subparts of the definition, when applied to CLECs, are “overly inclusive or irrational,” because among other things, “it would permit a CLEC serving 45,000 access lines in downtown Manhattan or Los Angeles to qualify as rural”).

Consequently, the Commission’s definition of “rural CLEC” for purposes of the rural exemption in its CLEC access charge rules is necessarily more narrow, and includes far fewer CLECs, than would be encompassed in the proposed rural call completion rules. Some unscrupulous CLECs, however, may attempt to rely on their inclusion as “rural telephone companies” in a NECA-created list of “rural telephone companies,” as support for asserting that they are also entitled to bill higher access charges under the Commission’s rural exemption. The Commission should prevent any gamesmanship by clearly stating in its forthcoming Order that any NECA-created list of CLECs that (according to NECA) are “rural telephone companies” for

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<sup>7</sup> Ultimately, it would be up to the Commission, rather than NECA, to determine whether a particular rural competitive LEC would satisfy the definition of “rural telephone company” in the Commission’s forthcoming rules. It seems unlikely that the Commission could delegate that function to NECA. *E.g., USTA v. FCC*, 359 F.3d 554, 565 (D.C. Cir. 2004). While NECA can permissibly file tariffs and collect charges on behalf of common carriers, it seems highly doubtful that an entity like NECA could make binding legal determinations on behalf of the Commission.



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purposes of the rural call completion rules has no bearing on whether a CLEC is entitled to the rural exemption as a “rural CLEC” for purposes of the Commission’s access charge rules.<sup>8</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Nodine", with a long horizontal flourish extending to the right.

Matt Nodine

Cc: Jay Schwarz  
Amy Bender  
Will Adams  
Nese Guendelsberger  
Travis Litman  
Kris Monteith  
D’Wana Terry  
Daniel Kahn  
Alex Espinoza

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<sup>8</sup> Although the term “rural telephone company” is a statutory term that may be reasonably well-defined as to incumbent LECs, in the access charge context, the Commission has recognized that it is *not* appropriate to apply all of the subparts of the definition of that term to CLECs. *See Seventh Report and Order*, ¶ 77 & n.158 (three of the four parts of the term “rural telephone company” should not apply solely to CLECs because it would be “administratively burdensome, or because they would be overly inclusive or irrational”).