



**Matthew Nodine**  
Assistant Vice President  
Federal Regulatory

**AT&T Services, Inc.**  
1120 20<sup>th</sup> Street, NW  
Suite 1000  
Washington, DC 20036

T: 202.457.3715  
F: 214.486.1602  
matthew.nodine@att.com  
att.com

May 1, 2019

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

**Ex Parte Submission**

Re: *HD Tandem submission of AT&T/HD Tandem MSA in NPRM, Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, 33 FCC Rcd. 5466 (2018), WC Docket 18-155.*

Dear Ms. Dortch:

I write to address the April 17, 2019, Ex Parte submission by HD Tandem of a Confidential Master Services Agreement (“MSA”) between AT&T Corp. and HD Tandem. Although HD Tandem sought confidential treatment for the MSA, AT&T believes it is important to inform the Commission that HD Tandem submitted the agreement without obtaining AT&T’s consent for the MSA’s disclosure.

Although AT&T does not now seek to limit the Commission’s review of the document, AT&T seeks to provide the appropriate context for its actions in entering the MSA with HD Tandem, and to confirm that although AT&T executed the MSA in August 2018, it has not used the services offered by HD Tandem. Further, AT&T agrees with HD Tandem that the MSA contains “the parties’ proprietary network information and negotiated pricing information,” that such information should be maintained as confidential and asks that the Commission grant HD Tandem’s request to limit public access of the MSA to the redacted version provided by HD Tandem.<sup>1</sup>

For at least the last ten years, AT&T has actively sought to mitigate the impact of certain access arbitrage activities on its network and customers. In fact, AT&T took the lead in bringing its concerns regarding this abuse to both the FCC and, where appropriate, state regulators. In

---

<sup>1</sup> AT&T reserves all rights to oppose any planned disclosure of the confidential information pursuant to FOIA or any other mechanism. AT&T further requests prompt notice of any such intended disclosure and an opportunity prior to disclosure to advocate for the continued confidentiality of the confidential information before the Commission, and if necessary, a court of appropriate jurisdiction.



**Matthew Nodine**  
Assistant Vice President  
Federal Regulatory

**AT&T Services, Inc.**  
1120 20<sup>th</sup> Street, NW  
Suite 1000  
Washington, DC 20036

T: 202.457.3715  
F: 214.486.1602  
matthew.nodine@att.com  
att.com

addition to AT&T's continued advocacy regarding the need for regulation to curb such abuse, AT&T also recognized the need to evaluate business opportunities to ensure that it is appropriately mitigating the harm caused by access arbitrage while it seeks regulatory reform.

As a result, AT&T entered into commercially negotiated agreements with Competitive Local Exchange Carriers (CLECs) to establish acceptable terms for access compensation. Indeed, in at least one case, AT&T developed a successful working relationship with a CLEC that has allowed AT&T to limit the impact of access arbitrage, as well as other forms of abuse, including some forms of robocalling designed simply to generate access charges.

Given this two-prong approach to attempting to address access arbitrage's impact, AT&T is generally open to exploring options available in the competitive market place. Therefore, when AT&T was approached by David Erickson of HD Tandem with his alternative transport service, it was reasonable to evaluate the service and determine if it was a sensible substitute to address rising costs associated with access stimulation.

After many months of negotiations, AT&T executed the current MSA with HD Tandem. AT&T invites FCC staff to review term 1.3 of the confidential MSA version – a term that was essential to AT&T to ensure it could effectively meet its own service standards, the expectations of its customers and its regulatory obligations for traffic termination.

This provision was especially important to AT&T because of a variety of factors. Among those concerns are the facts that HD Tandem is not a certificated telecommunications carrier; its owner, Mr. Erickson, is also the owner of entities that provide the platforms designed to provide the incentive for access stimulation, and therefore likely to not be a neutral provider of transport services; and, AT&T is aware of representations by other carriers of difficulties encountered in seeking to move traffic from HD Tandem to more traditional routing arrangements.

Further, and perhaps most importantly, AT&T believes that the proposals the FCC is considering in the current Access Stimulation Notice of Proposed Rulemaking provides the best and most effective remedy to access stimulation, a practice that has been regularly identified by this Commission as an unlawful and unreasonable "scheme" with many "adverse effects."<sup>2</sup>

---

<sup>2</sup> See *Transformation Order*, 26 FCC Rcd. 17633, ¶¶9, 33, 648-57, 662-66.



**Matthew Nodine**  
Assistant Vice President  
Federal Regulatory

**AT&T Services, Inc.**  
1120 20<sup>th</sup> Street, NW  
Suite 1000  
Washington, DC 20036

T: 202.457.3715  
F: 214.486.1602  
matthew.nodine@att.com  
[att.com](http://att.com)

As a result, AT&T took a cautious approach to alternatives as it focuses on the more comprehensive solution that updated regulation can provide.

AT&T files this letter to provide accurate context to the HD Tandem submission and stands ready to answer any questions.

Sincerely,

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

Matt Nodine

Cc: Lisa Hone  
Gil Strobel  
Lynne Engledow  
Edward Krachmer  
Gregory Capobianco  
Shane Taylor  
Al Lewis  
Irina Asoskov  
Christopher Koves  
Rhonda Lien  
Richard Kwiatkowski  
David Zesiger  
Justin Faulb