



Comcast Corporation
300 New Jersey Avenue, NW
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Washington, DC 20001

**REDACTED FOR PUBLIC INSPECTION – SUBJECT TO REQUEST FOR
CONFIDENTIAL TREATMENT PURSUANT TO 47 C.F.R. §§ 0.457 AND 0.459**

July 17, 2019

VIA ELECTRONIC FILING

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

Re: Request for Confidential Treatment: Updating the Inter-carrier Compensation
Regime to Eliminate Access Arbitrage, WC Docket No. 18-155

Dear Ms. Dortch:

Comcast Corporation (“Comcast”) hereby submits the attached redacted version of an *ex parte* letter in the above-referenced proceeding. A confidential version of the *ex parte* has been hand delivered to the Commission today.

Pursuant to Exemption 4 of the Freedom of Information Act (“FOIA”) and FCC rules,¹ Comcast requests confidential treatment for the commercially sensitive information marked in the letter (the “Comcast Information”). The Comcast Information relates to Comcast’s network costs and traffic volumes and includes company-specific, highly confidential and/or proprietary commercial information, including information protected from disclosure by FOIA Exemption 4² and the Commission’s rules protecting information that is not routinely available for public inspection and that would customarily be guarded from competitors.³

1. *Identification of the specific information for which confidential treatment is sought.* Comcast requests that the Comcast Information be treated as confidential pursuant to

¹ 5 U.S.C. § 552(b)(4); 47 C.F.R. §§ 0.457(d) and 0.459; *see also* 18 U.S.C. § 1905 (prohibiting disclosure “to any extent not authorized by law” of “information [that] concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association”).

² 5 U.S.C. § 552(b)(4).

³ 47 C.F.R. §§ 0.457(d) and 0.459.

Exemption 4 of FOIA and Sections 0.457(d) and 0.459 of the Commission's rules, which protect confidential commercial and other information not routinely available for public inspection. The Comcast Information concerns Comcast's network costs and traffic volumes. This is company-specific, competitively-sensitive, business confidential and/or proprietary and commercial information concerning Comcast's operations that would not routinely be made available to the public, and has been carefully guarded from competitors. If it were disclosed, Comcast's potential competitors could use it to determine information regarding Comcast's competitive position, operations, and performance, and could use that information to gain a competitive advantage over Comcast.

2. *Identification of the Commission proceeding in which the information was submitted or a description of the circumstance giving rise to the submission.* Comcast is submitting the letter in WC Docket No. 18-155.

3. *Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.* The Comcast Information contains company-specific, competitively-sensitive, confidential and/or proprietary, commercial information.⁴ This information can be used to determine information about Comcast's operations that is sensitive for competitive and other reasons. This information would not customarily be made available to the public in this form and customarily would be guarded from all others, especially potential competitors, that could use the information to enhance their market position at Comcast's expense.

4. *Explanation of the degree to which the information concerns a service that is subject to competition.* The confidential information at issue relates to the network over which Comcast provides residential and business interstate voice and private line services, including voice over Internet Protocol service, which are subject to vigorous competition from other providers. If the information is not protected, Comcast's competitors and potential competitors will be able to use it to their competitive advantage.

5. *Explanation of how disclosure of the information could result in substantial competitive harm.* Since the Comcast Information generally would not be subject to public inspection and would customarily be guarded from competitors, the Commission's rules recognize that release of the information is likely to produce competitive harm. Disclosure could cause substantial competitive harm, because Comcast's competitors and potential competitors could assess aspects of Comcast's commercial operations and could use that information to undermine Comcast's competitive position.

⁴ The Commission has broadly defined commercial information, stating that "[c]ommercial' is broader than information regarding basic commercial operations, such as sales and profits; it includes information about work performed for the purpose of conducting a business's commercial operations." *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 1851, 1860 (1998) (citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983)).

6.-7. *Identification of any measures taken by the submitting party to prevent unauthorized disclosure, and identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties.* The Comcast Information is not available to the public and has not otherwise been disclosed previously to the public. Comcast takes precautions to ensure that this information is not released to the general public or obtained by its competitors and potential competitors through other means.

8. *Justification of the period during which the submitting party asserts that the material should not be available for public disclosure.* Comcast requests that the Comcast Information be treated as confidential indefinitely, as it is not possible to determine at this time any date certain by which the information could be disclosed without risk of harm.

9. *Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.* The Commission has recognized that such information is among the categories of commercial information that should be routinely treated as confidential, and the Commission's rules contemplate that this information will be accorded confidential treatment. Under applicable Commission and federal court precedent, the information provided by Comcast on a confidential basis should be shielded from public disclosure. Exemption 4 of FOIA shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question clearly satisfies this test.

Additionally, where disclosure is likely to impair the government's ability to obtain necessary information in the future, it is appropriate to grant confidential treatment to that information.⁵ Failure to accord confidential treatment to this information is likely to dissuade providers from voluntarily submitting such information in the future, thus depriving the FCC of information necessary to evaluate facts and market conditions relevant to applications, policy and public safety issues under its jurisdiction.

If a request for disclosure occurs, please provide sufficient advance notice to the undersigned prior to any such disclosure to allow Comcast to pursue appropriate remedies to preserve the confidentiality of the information.

⁵ See *National Parks and Conservation Ass'n. v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974); see also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) (*en banc*) (recognizing the importance of protecting information that "for whatever reason, 'would customarily not be released to the public by the person from whom it was obtained'" (citation omitted)).

If you have any questions or require further information regarding this request, please do not hesitate to contact me.

Respectfully submitted,

/s/ Beth Choroser

Beth Choroser

Vice President

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445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

Comcast Corporation (“Comcast”) hereby submits this *ex parte* presentation regarding the Federal Communications Commission’s (“Commission” or “FCC”) recent proposals for reducing access arbitrage (also known as “access stimulation”).¹ Specifically, Comcast urges the Commission to adopt its proposed “Prong 1” remedy for access stimulation, but not to adopt its proposed “Prong 2” direct connection remedy as currently formulated.² Comcast also provides below a real-world example demonstrating why the latter proposal would be economically irrational and ineffective.

In the NPRM, the Commission proposed to eliminate the financial incentives to engage in access arbitrage by giving access-stimulating local exchange carriers (“LECs”) two choices about how they connect to interexchange carriers (“IXCs”).³ An access-stimulating LEC could choose either to: (1) accept financial responsibility for calls delivered to its network; or

¹ See *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, 33 FCC Rcd 5466 (June 5, 2018) (“NPRM”).

² If the Commission nevertheless decides to adopt Prong 2 in its current form, it should permit the interexchange carrier delivering the traffic to select the option it prefers.

³ NPRM ¶ 3.

(2) accept direct connections from either the IXC or an intermediate access provider of the IXC's choice.⁴ The Commission reasoned that Prong 2 would deter access arbitrage because the direct connections would bypass intermediate switches selected by the terminating LEC (*i.e.*, the access tandems and common transport) and would be priced on a flat-rated, capacity basis instead of a usage-sensitive basis.⁵

As AT&T and others have shown, however, the second prong of the FCC's proposal would not deter access arbitrage,⁶ and therefore should not be implemented as currently formulated.⁷ In fact, the second prong could "just lead to new forms of arbitrage,"⁸ and it would not prevent the exploitation of "more loopholes that could undermine the NPRM's intention of thwarting incentives to engage in arbitrage."⁹ For example, under the proposed Prong 2, an access arbitrageur could locate the point of interconnection in an area where a transport service from a third party is either not available or only available at an excessive, uneconomic price.¹⁰ By doing so, the access stimulator would be able to disingenuously offer to accept direct connections under Prong 2, knowing that it would be uneconomical for providers to lease such

⁴ *Id.* ¶¶ 9-17.

⁵ *Id.* ¶ 13.

⁶ *See, e.g.*, Comments of CenturyLink, WC Docket No. 18-155, at 2 (July 20, 2018); Comments of ITTA, WC Docket No. 18-155, at 3 (July 20, 2018) ("ITTA Comments"); Comments of AT&T Services, Inc., WC Docket No. 18-155, at 12-15 (July 20, 2018) ("AT&T Comments"); Comments of Sprint Corporation, WC Docket No. 18-155, at 4 (July 20, 2018) ("Sprint Comments"); Comments of T-Mobile USA, Inc., WC Docket No. 18-155, at 20 (July 20, 2018) ("T-Mobile Comments").

⁷ *See, e.g.*, AT&T Comments at 12-13 (arguing that the FCC "should...eliminate the second prong in the final rule it adopts unless the Commission takes the additional step of placing the financial responsibility for...direct connect costs on access stimulating LECs that inefficiently require transport to remote locations"); Reply Comments of Verizon, WC Docket No. 18-155, at 7 (Aug. 3, 2018) (arguing that the FCC should eliminate the direct connection option "from the proposed rule or modify it so that the access stimulating LEC bears the full cost of a direct connection") ("Verizon Reply Comments").

⁸ T-Mobile Comments at 20.

⁹ ITTA Comments at 3.

¹⁰ *See* Verizon Reply Comments at 7 (citation omitted). *See also* Sprint Comments at 4 (stating that the second prong alone "does not eliminate the LEC's incentive or ability to designate a distant point of interconnection in order to maximize distance-sensitive transport charges paid by the interexchange or CMRS carrier... [b]ecause the access-stimulating LEC apparently would continue to determine where to provide the point of interconnection").

connections. As a result, the access stimulator would have no incentive to halt its traffic pumping practices.

To provide a concrete example of the shortcomings of Prong 2, Comcast examined two ways to connect its Point of Presence (“POP”) in Minnesota directly with an end office in Iowa, where millions of minutes of Comcast-originated traffic are terminated each month. Because Comcast is a regional provider of voice services and lacks the nationwide network coverage of other voice providers, the Minnesota POP is the company’s interconnection point that is closest to the Iowa end office.

First, Comcast obtained an estimate from a third party to provide transport between the Comcast POP and the Iowa end office, bypassing the local tandem switch and transport facilities in Iowa. Under this option, Comcast would purchase transmission capacity between the two points equivalent to seven DS3s for a typical three-year term at an annual cost of approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] or approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] over the life of the agreement.¹¹

To compare the implicit per-minute cost of this option with the current tariffed rates for tandem switching and tandem switched transport services needed to reach the end office, Comcast first determined that last year it terminated approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] minutes of use (“MOUs”) at the Iowa end office. Comcast then divided the annual cost of purchasing transmission capacity by this MOU total. Pursuant to this calculation, the imputed cost of using the third-party transport service described above would have amounted to approximately [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL] in 2018. This per-minute cost of purchasing capacity is substantially higher than the tariffed per-minute charges of the Iowa carriers, which amount to \$0.006036.¹² By contrast, the average per-minute rate that Comcast paid in 2018 to terminate traffic to consumers located in three major cities (New York, Los Angeles, and Chicago) was much lower at [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].¹³ In other words, the option of using a third-party service to connect

¹¹ Note that this cost does not include the expense associated with arranging for back-up transport service that could be used if there were to be a failure in the facilities that the intermediate IXC provided. Accordingly, the true cost of relying on third-party transport could be well above [BEGIN CONFIDENTIAL] [REDACTED] [END CONFIDENTIAL].

¹² See Iowa Network Services Tariff F.C.C. No. 1, § 6.8.1(A), Transmittal No. 42 (filed June 21, 2019); Great Lakes Communication Corp. Tariff F.C.C. No. 2, § 7.2.2 (issued July 14, 2017).

¹³ Similarly, AT&T recently calculated its costs of termination incurred with respect to “an access stimulator located in Iowa with traffic volumes of about 30 million minutes of use per

Further, failing to adequately address access arbitrage also would undermine the Commission's broader policy goal of accelerating the IP transition and ensuring that consumers can access the benefits that flow from this transition, such as STIR/SHAKEN, as quickly as possible.¹⁵ Therefore, the Commission should not implement its Prong 2 proposal as currently structured as part of its effort to eliminate access arbitrage schemes.

Should you have any questions about this submission, please contact the undersigned.

Respectfully submitted,

/s/ Beth Choroser

Beth Choroser

Vice President

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¹⁵ See, e.g., Letter from Keith C. Buell, Sprint Corporation, to Marlene H. Dortch, FCC Secretary, WC Docket No. 18-155, at 1-2 (May 16, 2019).

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