Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF VERIZON[1]

Uneconomical arbitrage schemes will persist as long as arbitrage opportunities present themselves. Completing the transition to bill-and-keep would eradicate intercarrier compensation arbitrage and benefit consumers by taking "hidden, inefficient charges"[2] out of the system. The Commission therefore should develop a plan to complete the transition to bill-and-keep for all telecommunications traffic. In the meantime, we support the Commission's targeted efforts to remove financial incentives for access stimulation, including the *NPRM*'s proposed rule.[3]

When the Commission in 2011 adopted bill-and-keep as the national default framework for the exchange of all telecommunications traffic, it took specific measures to address arbitrage schemes that by then were widespread. Arbitrage schemes related to access stimulation and phantom traffic, the Commission found then, "ultimately cost consumers hundreds of millions of dollars annually."[4] In 2011, the main source of arbitrage was terminating end-office switched access rates. The *Transformation Order* transitioned those rates to bill-and-keep, and that

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[1] The Verizon companies participating in this filing ("Verizon") are the regulated, wholly-owned subsidiaries of Verizon Communications Inc.

[2] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 9 (2011) ("*Transformation Order*").

[3] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, WC Docket No, 18-155, FCC 18-68 (rel. June 5, 2018) ("*NPRM*").

[4] *Transformation Order* ¶ 649.

transition now is nearly complete. And the Commission also adopted rules specifically targeting access stimulation. In doing so the Commission concluded, "Access stimulation imposes undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment."[5] It also found access stimulation harmed competition and resulted in unjust and unreasonable switched access rates.[6]

In the *Transformation Order*, the Commission expressed its intent to monitor and adjust its newly adopted framework as necessary to eliminate new arbitrage opportunities.[7] And despite the Commission's efforts, arbitrage schemes still persist and "harm consumers, undermine broadband deployment, and distort competition."[8] These schemes have shifted to the areas where positive intercarrier compensation rates remain, including terminating tandem and transport charges.

As the *NPRM* notes, access-stimulating LECs have "circumvent[ed] the Commission's rules"[9] adopted in 2011 to curtail their arbitrage activities "by interposing intermediate providers of switched access service not subject to the Commission's existing access stimulation rules in the call route,"[10] artificially inflating the access charges they assess on interexchange carriers by exploiting the transport rates not included in the initial transition. These high transport charges—along with the mileage pumping that occurs when "service providers designate distant points of interconnection to inflate the mileage used to compute the transport charges"[11]—remains a widespread and growing practice.

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[5] *Id.* ¶ 663.

[6] *See id.* ¶ 662.

[7] *See id.* ¶ 16.

[8] *NPRM* ¶ 1.

[9] *Id.* ¶ 2.

[10] *Id.*

[11] *Transformation Order* ¶ 820.

Transport arbitrage schemes rely on two factors. First, many transport rates—those not included in the initial transition—are still well above incremental cost. Rates above incremental cost are the primary enabler of arbitrage.[12] Under the Commission's rules, CLECs typically benchmark their rates to the prevailing ILEC rate. But to maximize the margin above incremental cost, some CLECs seek to benchmark to a high-priced incumbent LEC or inflate the transport mileage that they use to calculate billed charges. The second element of an arbitrage scheme is structuring the call flow to restrict interexchange carriers' ability to avoid unreasonable transport charges. For terminating transport and tandem switching, the terminating LEC designates a tandem in the Local Exchange Routing Guide (LERG) that directs traffic to its high-priced transport route. Then, the terminating LEC restricts interexchange carriers from using more efficient transport options by refusing direct connections or offering to provide them only under unreasonable rates and terms.

The Commission proposes a rule intended to eliminate the financial incentives to engage in these practices, but the Commission's alternative proposal—reducing "all terminating tandem switching, common transport, and tandem-switched transport rate elements for access stimulators to bill-and-keep"[13]—ultimately would be more effective than the rules the *NPRM* proposes. There is no better way to eliminate the financial incentives than immediately reducing transport usage and mileage-based rates to bill-and-keep for carriers engaged in access stimulation. It would be consistent with the Commission's adoption of a national bill-and-keep framework; the access stimulation "business model" is inconsistent with that framework. And it would accomplish the

[12] *Id.* ¶ 752. The Commission also said in the *Transformation Order* that "[o]ur conclusion that the incremental cost of call termination is very nearly zero, coupled with the difficulty of appropriately setting an efficient, positive intercarrier compensation charge, further supports our adoption of bill-and-keep." *Id.* ¶ 753.

[13] *NPRM* ¶ 24.

Commission's goal of eradicating arbitrage schemes, which "harm consumers, undermine broadband deployment, and distort competition."[14]

There is no reason for the Commission to give access stimulators an additional transition period. The *Transformation Order* put access stimulators on notice that comprehensive reform would "address remaining incentives to engage in access stimulation."[15] LECs engaged in access stimulation have already exploited a long transition period—six years—during which they have continued to engage in arbitrage schemes that are fundamentally inconsistent with the Commission's bill-and-keep regime. In addition, terminating tandem switching and transport rates for price-cap LECs—who are not involved in access stimulation—already have transitioned to bill-and-keep when that traffic traverses a tandem switch the terminating carrier or its affiliate owns.[16] So reducing these rate elements to bill-and-keep for access stimulators would not break new ground. And there is no policy defense for allowing access stimulators to continue to profit at the expense of consumers and competitors by charging for these rate elements.[17] There is no clearer example of a customer that should bear the entire cost of LEC services than the operator of chat lines and conference services that continue to drive terminating access stimulation traffic.

If, however, the Commission adheres to its proposal and adopts its proposed rule, that would also go a long way towards solving the problem. That proposal would give access

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[14] *Id.* ¶ 1.

[15] *Transformation Order* ¶ 672.

[16] *See id.* ¶ 801, Figure 9 ("Terminating [tandem switching and transport rates] are reduced to $0.0007 for all terminating traffic within the tandem serving area when the terminating carrier owns the serving tandem switch" by July 1, 2017; and "Terminating [tandem switching and transport rates] are reduced to bill-and-keep for all terminating traffic within the tandem serving area when the terminating carrier owns the serving tandem switch" by July 1, 2018); *id.* ¶ 819 ("For price cap carriers, in the final year of the transition, [tandem switching and transport rates] shall go to bill-and-keep levels where the terminating carrier owns the tandem.").

[17] *Id.* ¶ 742.

stimulating LECs a choice. First, they can offer interexchange carriers (or an intermediate provider the interexchange carrier chooses) direct interconnection at the LEC's end office. In this scenario, the inflated tandem switching and transit charges fall away. There are no tandem or transit charges if the IXC interconnects at the end office. And if the IXC interconnects through an intermediate provider it chooses, the IXC would pay that intermediate provider according to tariff or commercial contract. Second, if the access stimulating LECs refuse to offer direct interconnection and force IXCs to interconnect through an intermediate provider that the stimulating LECs choose, then the LECs, not the IXC, would be financially responsible for applicable terminating charges from the point of direct interconnection to the acesss stimulating LECs' end office. Either way, the IXC would not be responsible for tandem switching or transit charges imposed by LECs or intermediate providers they did not choose.

This approach is consistent with the principle that the carrier making the routing decision should be responsible for the financial consequences. If the IXC chooses to connect directly at the LEC's end office, the IXC would bear the costs of getting the telecommunications traffic to the end office. Similarly, if the IXC chooses to use an intermediate provider, the IXC would bear the costs of getting the traffic to the intermediate provide, including applicable tandem or transit charges, and the intermediate provider would bear the costs of getting the traffic from the point of indirect interconnection to the end office. In both of those scenarios, the IXC makes the routing decision. If, however, the access-stimulating LEC makes the routing decision and forces the IXC to use an intermediate provider the LEC chooses, then the access-stimulating LEC bears the financial responsibility for getting the traffic from the point of indirect interconnection to the end office, and it cannot bill those costs back to the IXC.

The proposal is also consistent with a widely supported industry proposal endorsing rules requiring access stimulators "to bear financial responsibility for all terminating switched transport

costs …between their end office … and the tandem switch to which the terminating carrier requires inbound calls to be routed."[18] As we and other signatories—including NTCA, NCTA, Advocates for Rural Broadband, USTelecom, AT&T, Windstream, and Frontier—noted, the access stimulating carriers (not the IXCs) made the choice to have their traffic routed through intermediate providers in remote locations, resulting in high charges. So the access stimulating carriers should bear the financial responsibility for transporting these calls between the point of interconnection the LEC designates and the applicable end office, and they should not be permitted to render bills to IXCs for terminating switched transport.

If adopted, this proposed rule should lead to the demise of the arbitrage schemes in which terminating LECs force traffic through intermediate access providers to generate high terminating tandem and transit charges. So as a practical matter, the industry likely will not have to wrestle with the implementation details associated with the proposal. Currently, there are no established mechanisms for intermediate access providers to bill terminating tandem and transit charges to terminating LECs instead of billing IXCs. But if the rule has its intended effect, there will be nothing to implement. And if for some reason an access-stimulating LEC decides to continue its tandem and transit access stimulation, the onus would be on that LEC to figure out the implementation details.

But those implementation issues are challenging enough to merit limiting the rule, as the Commission proposes, to access stimulators. And the Commission should not expand the rule, as CenturyLink suggests, to all LECs. The Commission's proposal as is satisfies CenturyLink's

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[18] Letter from NTCA, *et al*. to Marlene Dortch, FCC, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges*, WC Docket No. 16-363, at 1 (Nov. 16, 2017); *see also* Letter from AT&T, *et al*. to Marlene Dortch, FCC, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (April 11, 2017).

stated goals: efficient network deployment, reduced incentives for arbitrage, enhanced competition, and efficiency, and fewer disputes. CenturyLink's recommended expansion of the Commission's proposal to cover all LECs doesn't materially advance those goals beyond what the Commission's proposal already accomplishes. If CenturyLink's recommendations provide any additional benefit, the associated implementations costs and burdens substantially outweigh that benefit.

At the end of the day, to eliminate arbitrage incentives and intercarrier compensation disputes, the Commission should complete the transition to the bill-and-keep end state for all telecommunications traffic. Until then, however, the Commission's proposed rule would address most if not all of the remaining arbitrage issues associated with terminating traffic.

Respectfully submitted,

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July 20, 2018