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

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

COMMENTS OF AT&T

Keith M. Krom
Gary L. Phillips
David L. Lawson
Attorneys For:
AT&T Inc.
1120 20th Street NW
Suite 1000
Washington, D.C. 20036
202-463-4148

July 20, 2018

TABLE OF CONTENTS

Page

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 AT&T

Pursuant to the Commission's Public Notice, dated July 2, 2018, in the above-captioned proceeding,[1] AT&T Services, Inc. ("AT&T") submits these comments.

INTRODUCTION AND SUMMARY

The Commission's NPRM, proposing new rules to stop access stimulation arbitrage, is extremely welcome and timely. In its 2011 *Transformation Order*,[2] the Commission established rules seeking to combat access stimulation – requiring access-stimulating local exchange carriers (LECs) to tariff their charges associated with the termination of access stimulated traffic. As the NPRM notes, however, in the years since the *Transformation Order*, access stimulating LECs, particularly those in rural areas, have found new ways around the intercarrier compensation and access stimulation rules. One way they do so is by partnering with intermediate access providers. As a result, *billions* of minutes of long distance traffic are routed through a handful of rural areas, not for any legitimate engineering or business reasons, but solely to allow the collection and dispersal of inflated intercarrier compensation revenues to access stimulating LECs and their partners, as well as the intermediate providers. By artificially inflating the cost

[1] Public Notice, Wireline Competition Bureau Announces Comment Dates For NPRM On Updating The Intercarrier Compensation Regime To Eliminate Access Arbitrage ("NPRM"), WC Docket No 18-155 (July 2, 2018).
[2] *Connect America Fund, et al.*, 26 FCC Rcd. 17663 (2011) ("*Transformation Order*").

of service, these schemes ultimately hit the pocketbooks of ordinary consumers.[3] Consequently, it is time for the Commission to again act on access stimulation.[4]

The NPRM proposes several possible mechanisms to curtail the access stimulation problems presented by the improper use of intermediate access providers – the primary fix being a new, two-pronged access stimulation rule. Under the first prong of this rule, an access-stimulating LEC can choose to be financially responsible for calls delivered to its network so it, rather than interexchange carriers (IXCs), pays for the delivery of calls to its end office or the functional equivalent. Alternatively, the LEC can choose the second prong, under which an access-stimulating LEC must accept direct connections either from the IXC or an intermediate access provider of the IXC's choice, allowing IXCs to bypass intermediate access providers selected by the access-stimulating LEC. As discussed herein, the first prong of the Commission's proposal is consistent with its long-standing goal of eliminating the opportunity for arbitrage that accompanies access stimulation activities and the harm that such arbitrage places on both consumers and competition. The Commission accordingly should adopt the first prong of its proposed rule. However, the Commission should not expect the second prong of its proposal to curtail access stimulation unless it takes the additional step of placing the financial responsibility for those direct connects on access stimulating LECs that inefficiently require transport to remote locations.

The first prong will effectively address access stimulation by requiring LECs that are engaged in the practice to bear the costs of transporting calls from the IXC's network to the

---

[3] *See Transformation Order*, ¶ 663.

[4] The Commission intends to review the current arbitrage abuses specific to originating 8YY traffic in the Commission's parallel further notice of proposed rulemaking on 8YY traffic. *See In the Matter of 8YY Access Charge Reform*, Further Notice of Proposed Rulemaking, WC Docket No. 18-156 (June 8, 2018).

LEC's end office switch. In this fashion, the proposal would reduce the current incentive to locate the equipment used to provide conference and chat services at remote locations. The proposal also ensures that legitimate intermediate providers will continue to be paid for the services they provide, but be paid by the cost causer – the access stimulating LEC. [5]

The Commission, however, should not adopt the second prong of the NPRM's proposed rule without modifying it. This option would allow LECs that are engaged in access stimulation to avoid financial responsibility for the costs associated with the delivery of access stimulation traffic *simply* via an offer to IXCs to connect directly at their end offices (even though they are already obligated by existing precedents to allow such direct connections). This option, which, at the access stimulation LEC's choosing, would make the IXCs responsible for all the additional costs of establishing direct connection and the delivery of the access stimulation traffic, and will not do anything to stop the arbitrage abuse. This solution will not help to discipline access stimulating LECs and bring the much-needed rationality to the marketplace - indeed, it would make the current situation even worse. As detailed in these comments, the access stimulating LEC should remain the sole party responsible for the costs associated with delivering access

[5] The first prong mirrors the proposal submitted by members of the industry on April 11, 2018. *See* Letter to Marlene H. Dortch, Secretary, FCC, from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA–The Rural Broadband Administration; Matthew Nodine, Assistant Vice President, Federal Regulatory, AT&T Inc.; Jennifer K. McKee, Vice President and Associate General Counsel, NCTA – The Internet & Television Association; Carol Keith, Deputy General Counsel, Windstream Services, LLC; Curtis L. Groves, Associate General Counsel, Verizon; AJ Burton, Vice President of Federal Regulatory Affairs, Frontier Communications; Jeff Lanning, Vice President Federal Regulatory, CenturyLink; Derrick B. Owens, Vice President of Government Affairs, WTA – Advocates for Rural Broadband; and Jonathan Banks, Senior Vice President Law & Policy, USTelecom Association, filed (Apr. 11, 2018) ("Industry Solution"). Like the first prong, the Industry Solution would require carriers that are engaged in access stimulation to bear the financial responsibility for all terminating switched transport costs (both flat-rated and usage-sensitive charges) between their end office (or remote or functional equivalent) and the tandem switch to which the terminating carrier requires inbound calls to be routed.

stimulation traffic to the LEC's end offices whether via direct connections or via an intermediate provider.

Additionally, the time has come for the Commission to eliminate the Centralized Equal Access (CEA) service designation. While CEA service providers addressed the specific and valid policy concern of equal access to competitive long-distance service when they were established more than thirty years ago, technology and the availability of competitive alternatives now provide more and better competitive choices for consumers. Moreover, CEA service providers now provide the same tandem switching and transport services provided by other LECs and compete directly with them. CEA service providers are no longer offering a unique (valuable) service that requires "protection" and instead arguably provide one of the underlying conditions which feeds the continued prevalence of access arbitrage.[6] The Commission should therefore re-confirm that CEA providers are treated as CLECs for purposes of the *Transformation Order* rules.[7]

The NPRM also seeks comment on other proposals to combat access arbitrage beyond access stimulation (*e.g.,* mileage pumping and daisy chaining). The time is right for the Commission to close the remaining loopholes that allow bad actors to exploit the current *Transformation Order* rules to continue to reap excessive and improper profits at the expense of consumers. AT&T recommends the Commission take the following immediate actions as outlined in the NPRM.

---

[6] The NPRM notes that recent complaint activity suggests that much of the post-*USF/ICC Transformation Order* access arbitrage activity specifically involves LECs that use centralized equal access (CEA) providers to connect to IXCs. NPRM, ¶ 7.

[7] *See In the Matter of AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Memorandum Opinion and Order, EB-17-MD-001, ¶ 25 (Nov. 8, 2017) ("*Liability Order*").

First, the only tangible way to stop all forms of arbitrage is to move to bill-and-keep. Therefore, the Commission should begin the immediate transition of originating switched access to bill-and-keep. Moving these remaining access charges to bill-and-keep would be consistent with the Commission's overarching goal of discouraging arbitrage, as well as the finding in the *Transformation Order* that, with respect to terminating traffic, the LEC's end user is the cost causer and therefore the LEC should look first to its subscribers to recover the costs of its network.[8]

Second, in parallel with adopting the transition to bill-and-keep, the Commission should consider adopting a rule (subject to appropriate conditions discussed herein) that shifts the financial responsibility for the delivery of access traffic where a carrier declines to accept a *legitimate* request for direct interconnection for the purposes of delivering that traffic. The appropriate routing of the traffic should be determined by the party that bears the financial responsibility for the delivery of traffic. It is only proper that, if the carrier responsible for the routing of that traffic decides that the most efficient means of delivery is through establishing direct connections with the LEC's end offices, and the proposed direct connection meets the criteria established herein, that proposed direct connection be established. On the other hand, the LEC's denial of that legitimate request for direct connection would be improper, and any LEC that refuses a legitimate request for direct connection should have to bear responsibility for the costs of the delivery of that traffic to its end offices. Accordingly, AT&T supports the proposal submitted by CenturyLink,[9] with the additional conditions discussed herein, but encourages the Commission to expand it to all access traffic — both originating and terminating — and ensure

---

[8] NPRM, ¶24.

[9] *See Ex Parte* Letter to Marlene H. Dortch, Secretary, FCC, from Timothy M. Boucher, CenturyLink, CC Docket No. 01-92, *et. al.,* (May 21, 2018) ("*CenturyLink Direct Connect Proposal*").

that it applies to all carriers. Doing so will eliminate any incentive on the part of unscrupulous carriers to create artificial revenue schemes based on traffic delivery and will bring about an immediate end to most, if not all, of the most egregious access arbitrage schemes.

I. THE CURRENT ACCESS STIMULATION RULES

In the *Transformation Order,* the Commission took certain steps to curtail wasteful arbitrage practices by adopting rules to address access stimulation. The rules generally required competitive carriers and rate-of-return incumbent LECs to refile their interstate switched access tariffs at lower rates if the following two conditions were met: (1) a LEC had a revenue sharing agreement and (2) the LEC either had (a) a three-to-one ratio of terminating-to-originating traffic in any month or (b) experienced more than a 100 percent increase in traffic volume in any month measured against the same month during the previous year.[10] An access revenue sharing agreement was defined broadly, and could be express, implied, written or oral; under the rules, such an agreement included any arrangement by a covered LEC that directly or indirectly results in a net payment to the other party (including affiliates) to the agreement, in which the LEC's payment is based on the billing or collection of access charges.[11]

A LEC that is engaged in access stimulation is required by the FCC's rules "to reduce its access charges either by adjusting its rates to account for its high traffic volumes (if a rate-of-return LEC) or to reduce its access charges to those of the price cap LEC with the lowest switched access rates in the state (if a competitive LEC)".[12] In addition, as the price cap LEC

---

[10] *Transformation Order,* ¶ 33.
[11] 47 C.F.R. § 61.3(bbb); *Transformation Order,* ¶ 669. The Commission held that "all payments, discounts, credits, services, features, functions, and other items of value, regardless of form" would be considered. *Id*. Further, shortly after this rule became effective, the Commission issued additional guidance clarifying that "any arrangement between a LEC and another party, including affiliates, that results in the generation of switched access traffic to the LEC and provides for the net payment of consideration of any kind, whether fixed fee or otherwise, to the other party, including an affiliate, is considered to be 'based upon the billing or collection of access charges.'" *In re Connect Am. Fund*, 27 FCC Rcd. 605, ¶ 27 (W.C.B. 2012) (emphasis added).
[12] NPRM, ¶ 5.

reduces its switched access rates pursuant to the transition in the *Transformation Order*, the CLEC is required to similarly reduce its rates.[13]

The Commission described the rules as "narrowly tailored to address harmful practices while avoiding burdens on entities not engaging in access stimulation."[14]

II. ACCESS ARBITRAGE CONTINUES TO FLOURISH DESPITE THE *TRANSFORMATION ORDER*.

Despite the Commission's efforts, the carriers engaged in access arbitrage have found ways to get around the rules — described below —resulting in billions in terminating minutes of use and causing IXCs and consumers to incur many millions in expenses caused by access arbitrage. The access arbitrage schemes that have proliferated often involve situations in which carriers have refused legitimate requests for direct connections (despite existing Commission and court precedent),[15] creating both charges from intermediate tandem providers, as well as their own billing for excessive transport charges, including inflated per-mile, per-minute charges to remote areas on large volumes of stimulated or aggregated traffic.

Intermediate Access Providers. As the NPRM notes, many of the current arbitrage schemes are enabled by the terminating LECs' use of intermediate access providers, which subjects IXCs to per-minute charges from *both* the intermediate access provider and the

---

[13] *Transformation Order,* ¶ 679.
[14] *Transformation Order,* ¶ 33.
[15] *Access Charge Reform*, 23 FCC Rcd. 2556, ¶ 27 (2008) ("a competitive LEC will permit an IXC to install direct trunking from the IXC's point of presence to the competitive LEC's end office, thereby bypassing any tandem function" and associated transport charges. "So long as an IXC may elect to direct trunk to the competitive LEC end offices, and thereby avoid the tandem switching function and associated charges, there should be limited incentive for competitive LECs to route calls unnecessarily through multiple switches."). *See also Northern Valley v. AT&T Corp.*, 245 F. Supp. 3d 1120, 1133 (D.S.D. 2017) (under the Commission's 2008 order, "a CLEC ought to agree to a direct trunk connection by an IXC at the IXC's expense"). Another district court referred this issue (along with other issues) to the Commission, and AT&T implemented the referral by filing a formal complaint against a CLEC alleging that the CLEC violated its obligations to either provide or at least permit a direct connection. *See* Formal Complaint, *AT&T Corp. v. Great Lakes Communication Corp.*, File No. EB-16-MD-001 (filed Aug. 16, 2016). The Commission should resolve AT&T's formal complaint and confirm that access stimulation CLECs are obliged to provide and permit direct connections. *See id.*

terminating LEC.[16] The NPRM cites two types of switched access charges that these intermediate access providers charge: 1) a per-minute-of-use tandem switching charge and 2) a per-minute-of-use, per-mile transport charge for the delivery of tandem-switched traffic between the tandem switch and connecting carriers.[17] The terminating LEC additionally assesses transport charges for any transport it provides and, if a rate-of-return ILEC (or a CLEC that benchmarks to that rate-of-return ILEC) charges for terminating end office switching.[18]

Mileage-Pumping and Other Arbitrage Schemes. In the *Transformation Order*, the Commission recognized the risk of "mileage-pumping" schemes in which "service providers designate distant points of interconnection to inflate the mileage used to compute the transport charges."[19] Unfortunately, the problem has only worsened since 2011. As the transition to bill and keep has reduced arbitrage opportunities for terminating end office access charges, unscrupulous carriers turned instead to mileage pumping schemes, manipulating tandem and transport charges to support arbitrage schemes, especially in connection with terminating traffic and 8YY calls on originating traffic.

As described in the NPRM, LECs and intermediate providers receive greater compensation from IXCs the further the LEC or intermediate access provider carries the traffic. Mileage pumping occurs when the LECs locate their switches for the sole purpose of artificially inflating their per-MOU, per-mile transport rates and revenue.[20] As the NPRM notes, carriers

---

[16] NPRM, ¶ 6.

[17] *See* NPRM, Footnote 15. IXCs also incur the costs of designing and provisioning the additional trunking facilities necessitated because of the very large volumes of traffic involved with access stimulation.

[18] *Id*. The NPRM cites evidence that much of the current arbitrage activity results from LECs that use CEA service providers to exchange traffic with IXCs. NPRM, ¶ 7. Making matters worse, at least one CEA service provider has become emboldened, brazenly asserting that the Commission has adopted a "mandatory use" requirement that compels sending carriers to use only the carrier's transport services, and that all competitive transport alternatives are foreclosed as a matter of law. There is no merit to this view.

[19] *Transformation Order*, ¶ 820.

[20] NPRM, ¶ 31. *See also.,* NPRM, Footnote 49 *citing* a complaint in which AT&T alleged that the carriers unnecessarily changed the POIs that AT&T had established with a CEA provider to artificially inflate charges to

also have been improperly assessing switched access rates for superfluous network facilities (e.g., remote switches that subtend end offices) that are not subject to the current transition to bill-and-keep – a practice referred to as "daisy chaining."[21]

Because of these arbitrage schemes, literally billions of minutes of long distance traffic have been inefficiently and unnecessarily transported to or from remote locations like Spencer, Iowa; Westphalia, Michigan; and, Redfield, South Dakota. For example, the CLEC Northern Valley Communications in South Dakota established a remote end office switch in the city of Redfield, with a population of 2,333 (2010 census). This switch facility is nearly 200 miles from an intermediate tandem switch.[22] Northern Valley insisted that it had the sole and exclusive right to provide, bill, and collect access charges for the entire transport route, resulting in very substantial transport costs billed to IXCs and ultimately to consumers. During 2017, Northern Valley billed AT&T for almost 300 million minutes of long distance traffic (roughly 24 million minutes a month) routed to this remote switch in Redfield, South Dakota. In contrast, CenturyLink – Qwest billed AT&T in 2017 for only about 40 million minutes for <u>all the end</u>

AT&T for per-MOU per-mile transport (by increasing the billable mileage by amounts varying between 79 and 135 additional miles). *AT&T Corp. v. Alpine Communications, LLC et al.*, 27 FCC Rcd 11511 (2012) ("*Alpine*"). The Commission ultimately found that the evidence demonstrated that the Defendants: had significantly increased AT&T's operating costs without providing any enhanced service choices or benefits to customers; did not have the unilateral right under applicable tariffs to alter their POIs with the CEA provider; did not provide appropriate notice of the POI changes; violated the terms of their tariff by charging for transport services provided outside of the LATA in which such LECs had end users.

[21] NPRM, ¶ 32. AT&T data indicates that some companies route more minutes from remote switches than hosts switches, raising questions as to whether they send high volumes of traffic to these remote offices in lieu of the host in order to avoid direct trunk requests and to increase mileage charges. These arrangements cause the IXC to pay high access charges for remote office to host mileage, and then from the host to the access tandem. The concern is not limited to the volumes of minutes from the remote office, but also the cost. For example, while a million minutes from a lower access rated RBOC remote office might not cost very much, the same million minutes via an inefficient host/remote arrangement can incur significantly more expense due to the high tariffed rural rates.

[22] To maximize their mileage revenue, Northern Valley designed its network to charge 45 miles from the Redfield remote end office to connect to the Groton Host end office owned by James Valley Cooperative Telephone Company and 147 miles of additional mileage from the Groton host office to the Sioux Falls, South Dakota tandem owned by South Dakota Network.

offices they own across the entire state of South Dakota, averaging just 3.3 million minutes a month. Northern Valley, in short, routes about 7 times the volume of AT&T traffic to a single small town compared with Qwest for the entire state of South Dakota. Because of the large volumes and very long mileage distances, Northern Valley billed AT&T almost $1.7M for mileage charges in 2017.

Sadly, Northern Valley is just one of many examples. AT&T estimates the industry and consumers continue to be burdened by wasteful schemes totaling 8.2 billion minutes-of-use annually, with a resulting cost of almost $80 million annually notwithstanding that more than six years have passed since *Transformation Order* reforms and the transition to bill-and-keep on terminating access is nearly complete.

There is no legitimate economic or engineering reason why carriers — and ultimately consumers — must pay outdated tariffed transport charges to carry incredibly large volumes of traffic to these remote areas. The only reason that extraordinarily large volumes of traffic are being routed to these areas is that carriers are seeking to exploit the Commission's existing, incomplete rules for tariffing tandem and transport services.[23]

III. SHIFTING RESPONSIBILITY FOR THE COSTS OF TERMINATING ACCESS STIMULATION TRAFFIC TO THE ACCESS STIMULATION LECS WOULD PROVIDE IMMEDIATE RELIEF FROM THE CURRENT ACCESS STIMULATION ARBITRAGE SCHEMES DESCRIBED IN THE NPRM.

The first prong of the Commission's proposed rule (which requires the access stimulating LEC to pay the transport costs of moving access stimulation traffic from the "final

[23] *E.g.*, *AT&T v. All American*, 28 FCC Rcd 3477, ¶ 25 (2013) (access stimulators "had no intention at any point in time to operate as *bona fide* CLECs or provide local exchange service to the public at large") (emphasis in original); *In re Great Lakes Commc'ns Corp.*, No. SPU-2011-004, (IUB Mar. 30, 2012) (until recently, an access stimulation LEC had "no outside plant or facilities. [It] has never provided access to [a] local exchange network and no person is able to make an outbound call or place a local exchange call"). *See also Transformation Order*, ¶ 666 (rejecting claims that access stimulation offers economic benefits such as expansion of broadband services to rural areas).

interexchange" carrier's network to the LEC's end office) would effectively eliminate the negative aspects of access stimulation. By requiring the access stimulating LEC to bear the costs of transporting such calls from the IXC's network to the LEC's end office switch, the Commission would reduce the current incentive to locate the equipment used to provide conference and chat services at remote locations and would appropriately assign the costs of transporting these types of calls to the access stimulating LEC, the conference or chat provider and/or the users of such services.[24]

Therefore, the Commission should adopt the first prong of the test, with the following enhancement. The proposed definition of the term "intermediate access provider" is vague because the term "final interexchange carrier" used in the definition is not defined. More specifically, it is not clear whether interexchange carriers that transport wholesale traffic for other IXCs or wireless carriers are "final interexchange carriers" or "intermediate access providers." The term "final interexchange carrier" should therefore be defined to make clear that an interexchange carrier that transports wholesale traffic is not an "intermediate access provider."[25]

---

[24] Like all LECs, access stimulating LECs are obligated to connect, either directly or indirectly, with other carriers in order to ensure the completion of calls. 47 U.S.C. § 251(a). Thus, under this prong, an access stimulating LEC would be bound either to carry the traffic itself via a direct connection, or to obtain an indirect connection and pay an intermediate access provider to carry the traffic from the IXC's point of presence to access stimulation LEC's facility. By the same token, under this prong, the IXC would be obligated to tender the access stimulation traffic for termination at the IXC's point of presence near to the access stimulating LEC (or the intermediate access provider). In these circumstances, nothing in the Act or in the Commission's rules (such as the rural call completion rules) would impose any obligation on IXCs to ensure that the calls, once tendered by the IXC at its point of presence, are in fact completed to any end users of the access stimulating LECs. To the extent that, under the first prong, an access stimulating LEC seeks to avoid its obligation to pay for transport by blocking calls, nothing in the Act or Commission's rules requires the IXC to ensure completion of the calls beyond tendering them at its point of presence. Likewise, the same would be true if an intermediate tandem provider elected to terminate service to an access stimulating LEC that failed to pay for the intermediate tandem services; nothing in the Act or the Commission's rules makes the IXC responsible in these circumstances for the failure of the access stimulating LEC to abide by its obligation to pay for the transport services between the IXC and the access stimulating LEC.

[25] The NPRM also seeks comment on whether the definition of access stimulation should be revised. (NPRM, ¶¶ 26-28). AT&T believes that the existing definition remains appropriate but just needs consistent enforcement. For example, the existing definition of the term "revenue sharing agreement" broadly encompasses arrangements that

Finally, the NPRM proposes a 45-day implementation period for carriers to come into compliance with of the first prong of the rule.[26] AT&T believes the 45-day period proposed by the Commission is reasonable. The Commission relied upon a similar 45-day implementation period in the *Transformation Order*.[27] In addition, AT&T agrees with the proposal in the NPRM[28] that any future entities who engage in access stimulation also should have only 45 days to come into compliance with these requirements and assume full financial responsibility for the costs of transporting the access stimulation traffic.

IV. WHILE THE COMMISSION SHOULD ENACT THE FIRST PRONG OF THE PROPOSED RULE, THE COMMISSION SHOULD NOT ADOPT THE DIRECT CONNECT OPTION CONTAINED IN THE SECOND PRONG OF THE PROPOSED RULE WITHOUT MODIFICATIONS.

The second prong of the Commission's proposed rule gives *the access stimulating LEC* the option to avoid bearing responsibility for the costs of transporting the access stimulation traffic by offering interexchange carriers the ability to directly connect to the LEC's network. This prong will not be effective in curtailing access stimulation – indeed, it would make the current situation even worse.[29] The notion that the Commission would provide entities that are perpetuating the access stimulation problem[30] with an option that would exacerbate access

---

result in net payments to access stimulators and thus capture many of the traffic agreements intermediate access providers have with access stimulating LECs today. Rather than changing the definition, the major reforms the Commission should adopt, as discussed herein, are aimed at ensuring that carriers engaged in access stimulation bear the financial responsibility for the costs of the delivery of the access stimulation traffic and that CEA service providers comply with the CLEC mirroring rules in the *Transformation Order*, which require intermediate access providers to offer direct trunking arrangements with rates, terms and conditions and mileage equivalent to the incumbent ILEC operating in the same service area.

[26] NPRM, ¶ 11.

[27] *See e.g., Transformation Order* ¶¶ 680, 685, 688, 691.

[28] NPRM, ¶ 11.

[29] In fact, as noted above, under existing Commission and court precedent, access stimulation LECs *already* are obligated to provide or at least permit direct connections. *See supra* note 15. Despite the existence of this obligation, access stimulation and abuse of transport charges has flourished. And, as explained below, it is likely to continue to flourish even if the Commission were to enforce its direct connection rules more vigorously.

[30] *See e.g.,* NPRM's earlier findings regarding (a) the harms associated with access stimulation (paragraphs 1, 8-9) and the efforts by access stimulators to circumvent and evade the Commission's rules (paragraphs 1, 6).

stimulation is both wrong and arbitrary.[31] The Commission should therefore eliminate the second prong in the final rule it adopts unless the Commission takes the additional step of placing the financial responsibility for those direct connect costs on access stimulating LECs that inefficiently require transport to remote locations.

First, under the proposed second prong, the access stimulating LECs would be able to entirely avoid the impact of the Commission's proposed rule by locating the POI where a direct connection is either not available or is only available at an exorbitant price (or by changing the location of its POI after the direct connection is built out). These actions would completely undermine the purpose of the new rule – creating a 'whack-a-mole' situation.

Second, the second prong fails to recognize that the transport costs associated with terminating calls to access stimulating LECs are very real, and very high—and harm consumers today.[32] It is extremely burdensome to build direct connections into some rural areas in order to directly terminate traffic.[33] In some cases, AT&T has had to install and engineer the equivalent of 10 DS3 circuits in locations with populations *less than* 1000 people. Yet after expending the money and resources to establish such direct connections, the second prong would not provide AT&T with any protection. The access stimulating LEC (or its conference and chat line partners) easily could move their traffic overnight to another area – leaving the costly direct connect facilities stranded. These locations are not intensely urban areas like downtown

---

[31] In paragraphs 34 and 35 of the NPRM, the Commission invites additional dialogue on the issue of whether access stimulation is a wasteful arbitrage practice that should be curtailed—that was a conclusion that the Commission reached in 2011, it was correct, and should not be re-visited.

[32] In fact, one such scheme has grown so large that the *one* transport provider at issue is responsible for over *12 percent* of AT&T's *total, nationwide* billed terminating switched access expense—even though AT&T is billed by over 1,300 different LECs. *See* Formal Complaint of AT&T Corp., *AT&T Corp. v. Iowa Network Servs. Inc.,* EB Docket No. 17-56, ¶ 8 (filed Jun. 8, 2017).

[33] *See* NPRM, ¶ 14 where the Commission describes some of the burdens in trying to establish direct connections – *i.e.,* the access stimulating LEC must first be able and willing to accept direct connections and then the arrangements must be negotiated between the access stimulating LEC and the IXCs.

Chicago, where the facilities could be reconfigured and repurposed. Rather, in these remote areas, the facilities will lay fallow once the access stimulator moves the traffic elsewhere to avoid the direct connection and again force the delivery of the traffic through an intermediate provider.

Further, this direct connect option offers no protection in situations where the end office housing the conference and chat equipment is located in a remote area that is not readily accessible via any network other than either the network controlled by the access stimulating LEC or an intermediate access provider working with the access stimulating LEC. In fact, this proposal would incentivize access stimulating LECs to locate the conference and chat equipment at even more remote locations, thereby making the current situation even worse. The second prong of the proposal as written also would allow access stimulating LECs to continue unabashedly to work in concert with intermediate transport providers, to continue to bill improper and excessive rates, and to force ordinary users to pay implicit subsidies that the Commission has found to be harmful.

To avoid this outcome, the Commission should eliminate the second prong from the proposed rule, or substantially modify its proposal so that the access stimulating LEC bears the full cost of the direct connect.[34] The access stimulating LEC, and only the access stimulating LEC, should be obligated to bear the financial responsibility for the delivery of calls to their networks.[35] The access stimulating LEC should not be given the option of transferring that

---

[34] Prophylactic protections like a code of conduct governing the negotiations between the access stimulating LEC and the IXCs (NPRM, ¶ 14) or notice requirements governing when the access stimulating LEC would choose the direct connect option (NPRM, ¶ 18) will not alleviate the harms that will occur under the second prong of the proposed rule.

[35] This obligation should attach to the access stimulating LEC irrespective of whether the interconnection is TDM or SIP. (*See* NPRM, ¶ 20 seeking comment on the effects of the direct connect proposal on the migration to IP). Driving cost to the cost causer (*i.e.*, the access stimulator) will actually motivate and incent the access stimulating LEC to interconnect utilizing NextGen SIP architectures. In general, most access stimulators are SIP enabled and take advantage of the lower operating costs associated with public internet transport between their networks and the

financial responsibility to the IXCs – and, in turn, to ordinary consumers of long distance service. The access stimulating LEC can choose to use an intermediate provider or they can choose to direct connect to the IXC, but under either option the access stimulating LEC should bear the financial costs.

V. THE COMMISSION SHOULD REAFFIRM THAT CEA SERVICE PROVIDERS ARE CLECS FOR PURPOSES OF THE *TRANSFORMATION ORDER'S* INTERCARRIER COMPENSATION RULES.

As the Commission properly notes, the recent complaint activity suggests that much of the post-*Transformation Order* access arbitrage activity can be traced to LECs that use CEA service providers to connect to IXCs.[36] CEA service providers were established in the 1980s to implement equal access obligations and aggregate traffic between rural, independent ILECs and other networks (primarily IXCs).[37] The establishment of CEA service providers allowed the subtending, small rural ILECs to offer customers the ability to select their preferred long distance carriers without requiring upgrades to the rural ILECs' facilities, while providing IXCs the ability to exchange long-distance telephone calls between their own customers and end users of the rural ILECs, by connecting their facilities to a centralized switch and network operated by a CEA service provider, and replacing the prior combination of intermediate tandem services provided by RBOCs or other large ILECs and direct connections established by individual IXCs.[38] The CEA service provider exchanges the long-distance traffic at POIs with the ILECs

---

services provided. Assigning the costs to the cost causing access stimulating LEC will help facilitate the evolution from traditional TDM interconnection to SIP because of the lower cost structures and the more efficient network to network interconnections defined by commercial agreements.

[36] NPRM, ¶ 7.

[37] CEA service was established in response to the claims of certain small, rural ILECs that they lacked the financial resources to upgrade or replace their existing switches to provide equal access and, that because of the anticipated low volumes of traffic from each ILEC, IXCs would not be willingly to incur the high costs to directly interconnect their long-distance networks with each ILEC. *Liability Order*, ¶ 5.

[38] The Commission authorized the provision of CEA service in Indiana, Iowa, Minnesota and South Dakota. *Liability Order,* ¶ 6.

that subtend its network.[39] In addition, the Commission allowed some CEA service providers to require IXCs to connect to the rural independent ILECs that subtend the CEA service provider indirectly through the CEA service provider's tandem switch and prohibited IXCs from connecting indirectly to these ILECs through another intermediate access provider or directly to the subtending LEC.[40] This requirement was known as the "mandatory-use" policy.[41]

At the time CEA service providers were established, they could be operated in a way that served a valuable purpose.[42] However, in light of the substantial, modernizing changes in the industry, there is no longer any need for a distinct CEA service.[43] Indeed, the evidence shows that CEA service providers have become a primary enabler of the current access stimulation arbitrage schemes.[44] Advances in switch technology over the past 30 years have eliminated the

---

[39] *Liability Order*, ¶ 5.
[40] NPRM, ¶ 16.
[41] NPRM, ¶ 16. In initially permitting this practice almost thirty years ago, the Commission concluded that it "[did] not believe that the mandatory termination requirement for interstate traffic is unreasonable or differs substantially from the normal way access is provided, as both an originating and terminating service by the local exchange company." *Id*.
[42] *See* NPRM, ¶ 7 (noting that there are currently three CEA service providers, and the LECs that use them (subtending LECs) have traditionally been reliant on CEA service providers for this equal access implementation as well as traffic measurement and billing.)
[43] The Commission has by and large eliminated equal access obligations except for certain grandfathered services, and there is no evidence that any LECs today (and certainly not access stimulation LECs, which carry almost entirely terminating traffic) need to rely on CEA providers in order to offer their customers "1+" dialing to long distance carriers. In fact, the mandatory use policies were put in place as conditions on Section 214 authority, and the Commission has already eliminated those requirements. Further, as explained below, any "mandatory use" policy established in the 1980s applied only to small volumes of long distance traffic routed from (and in some cases to) independent ILECs. The Commission never expanded any mandatory use policy to competitive LECs, and certainly did not do so as to access stimulation LECs.
[44] This conclusion is supported by the fact that the majority of traffic pumping CLECs subtend CEA service providers, even though this kind of intermediate service is offered by a variety of carriers, including both ILECs and CLECs. The benefit of choosing to subtend a CEA service provider is reinforced by the example of a CLEC in South Dakota which elected to partner with conference, chat and radio streaming services to stimulate access traffic. The CLEC chose to locate its end offices over 190 miles away from the CEA's tandem switch, and for years billed over 190 miles of tariffed, per-mile, per-minute transport charges on its billions of minutes of access stimulation traffic, leading to excessive and unreasonable transport charges. The carrier flatly refused to provide or permit direct connections that would bypass its tandem transport charges, and when AT&T negotiated an alternative transport arrangement that covered a substantial part of the transport route, substantially reducing the expense, the CLEC sued AT&T claiming that, as the terminating carrier, it had the exclusive right to bill the 190 miles of transport, and that the agreement for competitive transport services was unlawful.

need for CEA tandems to provide equal access switched access service. This is evidenced by the fact that 47 out of the 50 states in the U.S. function without CEA tandem switches.[45]

The NPRM seems to recognize this fact – the delivery of access stimulation traffic, particularly at the very large volumes at issue, was not (and could not have been) a justification for forming CEA service providers in the 1980s.[46] Yet the NPRM also seems to lament that formally eliminating any "mandatory use" policies relied upon by CEA service providers, such as by permitting access stimulating LECs that subtend CEA service providers to connect directly with IXCs (or an intermediary of the IXC's choice) would possibly threaten the ongoing viability of CEA service providers.[47]

First, as the Commission long ago recognized, access stimulation produces inflated profits that make the interstate switched access rates charged by the access stimulating LEC unjust and unreasonable[48] and also imposes undue costs on consumers.[49] If in today's market, and in light of the Commission's determinations in 2011, the CEA service providers' primary business plan is handling access stimulation arbitrage, the Commission should not be concerned with preserving the designation of CEA service provider – that is not the purpose for which the CEA service provider designation was created.[50]

Second, as the Commission has determined, for purposes of the *Transformation Order*'s transitional access service pricing rules, the CEA service providers are CLECs, and their rates along with their terms and conditions are governed by those rules. The CEA service provider,

---

[45] Also, the Minnesota Independent Equal Access Corporation (MEAC) CEA switch tariff recognizes that subtending LECs may or may not require CEA services. The MEAC tariff has CEA and Non-CEA tandem transport rates so they can charge appropriately for CEA versus Non-CEA transport through the MEAC tandem.
[46] NPRM, ¶ 17.
[47] NPRM, ¶¶ 16-17.
[48] *Transformation Order*, ¶ 662.
[49] *Transformation Order*, ¶ 663.
[50] *See Alpine*, ¶ 29 (the "purpose of the [] CEA arrangement" and the creation of CEA providers was "to *lower* the cost of transporting traffic . . . to the various remote rural exchanges") (emphasis in original).

functioning as the intermediate carrier for the access stimulating LECs, serves the same role as other carriers which offer comparable transport service, but are limited, either by their status as price cap carriers or CLECs, to charging a competitive-based rate for the services performed to complete the call to the access stimulating LECs. CEA service providers are not excluded from the scope of the *Transformation Order*.[51] Indeed, for purposes of the *Transformation Order,* CEA service providers are CLECs.[52] As such, CEAs are subject to rate cap and rate parity rules that apply to CLECs.[53] That same finding should apply to the access stimulation rules.

Finally, the notion that the Commission still – over twenty years after the passage of the Telecommunications Act – has any "mandatory use" policy is misguided. No local carriers have a *de jure* monopoly. The discussion of "mandatory use" from decisions over thirty years ago simply has no continuing application today. Those decisions involved carrying very small volumes of long distance traffic between what were then new entrants to the long-distance markets and small, independent, rural ILECs. The decisions did not involve CLECs (which are primarily the LECs today involved in access stimulation), and there is absolutely no authority or Commission precedent suggesting that the Commission has a "mandatory use" policy to terminate traffic to any CLEC (let alone a CLEC involved in access stimulation).[54]

---

[51] *See Liability Order,* ¶ 28.

[52] *See Liability Order*, ¶ 25. In that decision the Bureau found Aureon, a CEA, to be a CLEC for purposes of the *Transformation Order* because it provide exchange access as defined in § 51.5 (therefore making it a LEC); but was not providing telephone exchange access on February 8, 1996 (therefore not an ILEC); thereby making it a CLEC which is defined as "any local exchange carrier as defined in [Section] 51.5, that is not an incumbent local exchange carrier." *Id*. (*brackets in original*).

[53] *See Liability Order,* ¶ 23 where the Bureau summarized Rule 51.911 as requiring a "'Competitive LEC' (1) to cap its intrastate rates that were in effect on December 29, 2011; (2) beginning on July 3, 2012, to move those intrastate rates halfway to the level of its capped interstate rates; and (3) beginning on July 1, 2013, to reduce its intrastate and interstate rates to those of the competing ILEC, which would be at parity at such time."

[54] In fact, there are many CLECs operating in the three states with CEA providers (Iowa, Minnesota, and South Dakota), and IXCs have for many years exchanged traffic with these CLECs via entities other than the CEA provider in the state. If there were a current "mandatory use" policy, all of these interconnections would be illegal.

The Commission should eliminate the designation of CEA service provider as part of its access stimulation arbitrage reform.

VI. THE COMMISSION SHOULD ENACT ADDITIONAL REFORMS TO COMBAT THE ACCESS ARBITRAGE SCHEMES BEYOND ACCESS STIMULATION

The NPRM seeks comment on other reforms the Commission could enact that would help eliminate the ongoing arbitrage schemes that are present in the switched access world, *e.g.,* mileage pumping and daisy chaining. The Commission should promptly complete the full transition to bill-and-keep for originating switched access services. In parallel with that transition (and in addition to adopting the access stimulation-specific rule above), AT&T recommends the Commission clearly establish who is responsible for determining how traffic will be routed and who shall bear the financial responsibility for that traffic.[55]

A. The Commission Should Complete the Transition of Access Stimulation Traffic to Bill-and-Keep

The NPRM seeks comment on other reforms the Commission could enact that would help eliminate the ongoing arbitrage schemes that are present in the switched access world, *e.g.,* mileage pumping and daisy chaining. To that end, the Commission should promptly complete the full transition to bill-and-keep, including for all originating access services. The *Transformation Order* began the transition to a bill-and-keep regime by reducing a specified subset of carrier rate elements, relating mostly to end office charges, to a default charge of

[55] There is no reason for the Commission to be surgical in its proposed reforms, as espoused by certain parties. *See Ex Parte* Letter from Michael Romano, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et. al*. (May 22, 2018) and *Ex Parte* Letter, Tamar E. Finn, Bandwidth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, *et al*. (May 31, 2018). The Commission applied a narrowly tailored approach to access compensation reform in 2011 in the *Transformation Order*. And, while the *Transformation Order* did successfully curtail some of the most egregious terminating access arbitrage schemes, it did not dissuade carriers from pursuing new innovative ways to circumvent the rules. It is time for the Commission to embark upon broad reform of the switched access regime and finally complete the transition to bill-and-keep for originating switched access services.

zero.[56] The *Transformation Order* found that the carrier costs associated with those rate elements should be recovered through voluntarily negotiated arrangements and/or end user charges, subject to potential competition, versus through tariffed "intercarrier charges, which may not be subject to competitive discipline."[57] The Commission further concluded that it had legal authority to accomplish these results "pursuant to [its] rulemaking authority to implement sections 251(b)(5) and 252(d)(2), in addition to authority under the provisions of the Act, including sections 201 and 332."[58]

History shows that, absent comprehensive reform, unscrupulous carriers will continue to engage in regulatory arbitrage and other misconduct that they claim is permitted under perceived loopholes within the existing, outdated regime, resulting in continued overcharges and decreased broadband investment – to the detriment of consumers and competition.[59] Now that the initial transition is mostly complete, many carriers have shifted their arbitrage schemes to the portions of the PSTN-related intercarrier compensation regime that have not yet been reformed to bill-and-

---

[56] Specifically, this initial transition applied to (1) price cap ILEC end office charges (*Transformation Order* ¶ 800), (2) price cap ILEC tandem and transport charges in cases where the ILEC also owned the end office (*id.* ¶¶ 800, 1312); (3) CLEC tandem, transport and end office charges, to the extent CLECs must benchmark those rates to ILEC rates under the pre-existing CLEC access charge rules (*id.* ¶ 807); and (4) LEC-CMRS reciprocal compensation arrangements (*id.* ¶ 806). All of these intercarrier rates were (or will be) transitioned to zero, thus implementing a default bill-and-keep arrangement for these specified rate elements. *Id.* ¶ 812 (transition rules are default rates and "carriers remain free to enter into negotiated agreements that differ from the default rates"). The Commission also implemented a similar transition for rate-of-return carrier rate elements. *See id.* ¶ 800.

[57] *Transformation Order,* ¶ 742.

[58] *Transformation Order,* ¶ 738; ¶¶ 760-781. Specifically, it relied on the fact that Section 251(b)(5) states that LECs have a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications'" and the fact that "Section 201(b) grants the Commission authority to 'prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act.'" *Id.* ¶ 760. The Commission also found that it had authority under Section 332 to establish a bill-and-keep methodology to apply in the absence of an interconnection agreement with respect to wireless traffic exchanged with a LEC. *Id.* ¶ 779.

[59] *See, e.g.*, *Transformation Order,* ¶ 663 ("[a]ccess stimulation imposes undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment."); *id.* ¶ 664 (estimating that these arbitrage schemes cost long distance rate payers between $330 to $440 million per year); *id.* ¶ 33 (describing these "wasteful arbitrage practices, which cost carriers and ultimately consumers hundreds of millions of dollars annually").

keep – namely originating switched access charges and the remaining transport and tandem termination charges.[60]

Accordingly, as AT&T has argued elsewhere, the transition to a full, end-state bill-and-keep regime has become increasingly urgent.[61] But even with a transition to bill-and-keep, there will still be many instances in which an IXC will choose to fulfill its financial commitment to deliver traffic *to* the terminating carrier by contracting with a third-party provider. As AT&T has previously explained, however, this transition to bill-and-keep would not encompass intermediate, intercarrier arrangements and charges.[62]

B. In Parallel to Instituting a Transition to Bill-and-Keep, the Commission Should Enact a Rule that Provides that in any Instance a Carrier Denies a Legitimate Request for Direct Connection, that Carrier Shall Bear Financial Responsibility for the Costs of Transporting that Traffic.

As discussed above, AT&T believes that a Commission order establishing the transition for originating switched access services to bill-and-keep will eliminate the most egregious switched access arbitrage schemes. In parallel with that transition (and in addition to the adopting the access stimulation-specific rule above), AT&T recommends the Commission consider enacting additional rules establishing who is responsible for determining how traffic will be routed and who shall bear the financial responsibility for that traffic.

---

[60] As AT&T explained in its comments on originating access, 8YY services arbitrage practices have become prevalent on originating 8YY traffic, which the Commission has acknowledged is similar to terminating access. On originating 8YY traffic, the originating carrier or intermediate carrier will seek to force the receiving carrier to use a certain transport route to originate 8YY calls, and the receiving carrier can be required to pay tariffed tandem and transport charges that are not efficient and that it would seek to avoid if it had the clear ability to select the transport route. *E.g., AT&T Servs., Inc. v. Great Lakes Comnet, Inc.*, 30 FCC Rcd. 2586, ¶¶ 13-15, 21, 23 (2015), *aff'd in relevant part, remanded in part on other grounds, Great Lakes Comnet, Inc. v. FCC*, 823 F.3d 998 (D.C. Cir. 2016) (describing a scheme to overcharge transport on aggregated 8YY traffic, and confirming that IXCs may "'have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or terminating carrier. . . .'") (citing *Access Charge Reform*, 19 FCC Rcd. 9104, ¶¶ 15, 17 (2004)).

[61] *See, e.g.,* Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c), *Petition of AT&T Services, Inc. for Forbearance Under 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 (filed Sept. 30, 2016) ("AT&T Forbearance Petition").

[62] Comments of AT&T to Refresh the Record, *In the Matter of Connect America Fund*, WC Docket No.10-90, 14-21 (Oct. 26, 2017).

Under the current Commission rules, there is a disconnect, because an IXC is obligated in most cases to deliver and pay the costs of transporting the call to/from the terminating/originating end office via intermediate carriers, but some terminating/originating carriers and/or intermediate transport providers insist that *they* have the right to dictate the transport route used by the IXC.[63] Unlike the IXCs, the terminating carriers charging for the tariffed tandem and transport services have no incentive to select the most efficient route, based on economic or engineering considerations – to the contrary, certain carriers are seeking to force the use of particular transport routes because they will be able to collect or share in tariffed tandem and transport charges. This mismatch — combined with the Commission's incomplete reforms on certain tariffed tandem and transport services — creates ongoing arbitrage opportunities.[64]

The industry needs solutions that will bring rationality to the market. Specifically, the Commission should clarify that in situations where the IXC is financially responsible for calls to or from a LEC or CMRS carrier, the IXC has the right to choose to directly connect with the LEC's or CMRS carrier's end office (or the equivalent) or to select the intermediate access provider that the IXC prefers – based upon justifiable transport costs and the IXC's routing and economic preferences. Moreover, should the IXC request direct connection with the LEC or

[63] Incumbent LECs, however, are required to enter into interconnection agreements and generally to permit interconnection either at their tandem switches or at the end offices, and thus the sending carriers are generally able to elect the most appropriate transport route when routing calls to the customers of incumbent LECs. For other carriers, the Commission's interconnection rules are not as well-established, and some carriers have attempted to take advantage of perceived ambiguities in the Commission's rules to insist that a particular transport route must be used.

[64] In a normal market, it would be the carrier that is responsible for routing the traffic that would decide whether to employ an intermediate provider or seek a direct connection. *See* AT&T Forbearance Petition at 8 ("much of the problem arises because, under the Commission's traditional rules, IXCs generally must pay properly tariffed and billed tandem and transport charges, but are not always clearly permitted to select the provider of those services or the most efficient means to transport traffic. This perverse economic relationship means that IXCs are often billed for inefficient and costly tandem and transport services, which they would not willingly choose if they could more freely select among competitive providers of tandem and transport services.").

CMRS carrier, and that request is denied, the financial responsibility for delivering and terminating that traffic should shift to the LEC or CMRS carrier.

In this regard, AT&T supports the underlying precepts of the *CenturyLink Direct Connect Proposal*, with some additional enhancements. Under the *CenturyLink Direct Connect Proposal*, carriers would be required to either permit requesting carriers to directly connect their networks for the termination of access traffic or bear the financial responsibility for the costs of receiving that traffic through indirect connection.[65] AT&T agrees with CenturyLink that such a rule would improve efficiency, eliminate incentives for wasteful arbitrage, and align Commission policy with sound economic principles, thereby enhancing competition.[66] The rule also would ensure that the entity making the choice regarding network deployment or traffic routing bears the cost of that choice.[67] In addition, the rule would eliminate the incentive (outside of the access stimulation scenario – which the first prong of the NPRM's rule would address) for carriers to refuse requests for direct connection in order to obtain the revenues or benefits derived from inserting an intermediate access provider in the call path.[68]

While AT&T is supportive of the *CenturyLink Direct Connect Proposal*, AT&T sees no reason (nor has CenturyLink explained) why it should be limited to just terminating switched access traffic. Limiting this direct connect rule to just terminating access service will not prove a sufficient deterrent to access arbitrage. Moreover, unscrupulous carriers are not limiting their arbitrage activities to just terminating access but have turned to arbitrage opportunities using

---

[65] *CenturyLink Direct Connect Proposal* at 1. This would include all tandem switching and tandem transport provided by an affiliated or third party intermediate carrier. *Id*. at 3.
[66] *Id.* at 1.
[67] *Id*. at 2.
[68] *Id.*

originating charges on 8YY traffic.[69] Therefore, the rule should apply to all switched access traffic – both originating and terminating.[70]

Further, the Commission should make clear that a carrier cannot place unreasonable conditions on allowing the requesting carrier direct connection. Carriers would retain the ability to refuse a request for direct connection if there were network limitations. Similarly, carriers should be allowed to refuse illegitimate requests for direct connection, *e.g.*, the carrier seeking the direct connection refuses to bear the costs for the transport. However, similar to the *CenturyLink Direct Connect* Proposal, the rule allowing a carrier the option to directly connect must include a clear prohibition on the imposition of any "additional charges" for establishing connectivity to the other carrier's POI. For example, the other carrier should not be given the ability to locate the POI remotely and then charge transport to move the traffic to the carrier's end office. A prohibition preventing carriers from tacking on "additional charges" on direct connectivity also will prevent the practice of daisy chaining.

With these caveats, the Commission should consider adopting a rule that makes clear that the carrier that has the responsibility for designing its network and the financial responsibility for transport should also have the right to determine the best way to deliver its switched access traffic, including using an intermediary to deliver the traffic or seeking direct connections, and that in any instance a carrier denies a legitimate request for a direct connection, that denying carrier shall bear financial responsibility for the costs of transporting that switched access traffic.[71]

---

[69] *See* footnote 60, *infra*.
[70] The proposal should only apply to switched access traffic. For example, these rules should not apply to nor affect current industry arrangements for intraMTA/interMTA traffic.
[71] Consistent with these comments, AT&T will be filing a formal proposal for a direct connect rule in the coming weeks.

CONCLUSION

For the foregoing reasons, the Commission should adopt the first prong of its proposed access stimulation rule but eliminate the second prong which would allow the access stimulating LEC to evade its responsibility for bearing the financial costs for the termination of access stimulation traffic. Beyond the above specific rule to fix access stimulation arbitrage, the Commission should expeditiously complete the transition to a bill-and-keep regime for originating switched access and, in parallel, adopt a rule clarifying that the carrier making the choice regarding network deployment and traffic routing bears the cost of that choice.

Respectfully submitted,

By: s/ Keith M. Krom____________

Keith M. Krom
Gary L. Phillips
David L. Lawson

AT&T Services, Inc.
1120 20th Street NW
Suite 1000
Washington, DC 20036

202-463-4148

Its Attorneys

July 20, 2018