

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**COMMENTS OF INTELIGENT, INC.**

Matthew S. DelNero  
Thomas G. Parisi  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001

*Counsel for Inteligent, Inc.*

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**I. INTRODUCTION AND SUMMARY**

Inteligent, Inc. (“Intelligent”), by counsel, files these comments in response to the Commission’s *Eliminating Access Arbitrage Notice of Proposed Rulemaking* (“NPRM”), which the Commission adopted in the above captioned proceeding.<sup>1</sup>

The Commission has taken several actions that have helped curb access stimulation. As a result, today’s access arbitrage schemes are caused primarily by a small number of high-volume calling platforms that partner with CLECs subtending CEA providers in Iowa and South Dakota.<sup>2</sup>

In these comments, Intelligent makes two principal suggestions for maximizing the likelihood that reforms intended to address this type of arbitrage are successful. First, the Commission should take notice of and monitor new and evolving forms of access arbitrage schemes—in particular, those in which high-volume calling platforms block stimulated traffic on the regulated route to induce the re-routing of traffic to affiliated carriers. To help combat this

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<sup>1</sup> *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC 18-68 (rel. June 5, 2018) (*NPRM*).

<sup>2</sup> *NPRM* at para. 6. We note that Intelligent operates a third CEA, in Minnesota, known as MIEAC. The opportunities for arbitrage by LECs subtending MIEAC’s tandem are mitigated, however, as MIEAC’s tandem switching rates mirror those of the competing ILECs and MIEAC does not prohibit IXCs from connecting directly with subtending LECs.

behavior, the Commission should codify the finding that covered providers are not responsible for route advancing traffic that is illegally blocked by another party on the regulated path.

Second, the Commission should take definitive action against mileage pumping. Despite the Commission's declaration that mileage pumping is an unlawful practice, some LECs continue to designate points of interconnection ("POIs") in a way that artificially inflates transport charges. Some LECs bill additional fees for transport by charging for mileage between the end office and the remote terminal. The Commission can solve this problem permanently by capping mileage charges at 10 miles for access stimulation traffic.

At the same time that the Commission takes laudable steps to eliminate access arbitrage, it should be careful not to harm the market for legitimate services provided by access tandem providers *not* engaged in access stimulation. Wireless and other terminating carriers routinely interconnect indirectly with originating carriers via access homing tandems (either of the in-region ILEC or a competitive tandem provider), and there is nothing about interconnecting in this manner for non-stimulated traffic that constitutes "arbitrage." The Commission thus should reject the requests of certain wholesale carriers to dictate the terms under which wireless and other carriers interconnect under ordinary circumstances, and instead focus on the relatively small number of bad actors involved in access arbitrage schemes, which tend to be high-volume calling platforms and their LEC partners.

## **II. THE COMMISSION SHOULD TAKE ACTION TO PREVENT MILEAGE PUMPING AND NEWER FORMS OF ARBITRAGE BY HIGH-VOLUME CALLING PLATFORMS.**

Inteliquent supports and welcomes the Commission's efforts to curb access arbitrage schemes undertaken by a small number of high-volume calling platforms and their access simulating LEC partners, who are often located in remote rural areas and therefore subtend CEA

providers. The Commission already has reduced incentives to engage in this form of arbitrage, through its recent finding that CEA providers are not only rate of return LECs, but also CLECs for purposes of access charge rules, and therefore are subject to the Commission's rate cap and rate parity rules.<sup>3</sup> As the Commission makes further reforms, Inteliquent encourages it to make two principal changes to the rules.

First, as Inteliquent recently explained in reply comments in the *Rural Call Completion* proceeding,<sup>4</sup> access stimulation and call blocking have come together in a new method of arbitrage in which high-volume calling platforms and/or their LEC partners resort to intentionally rejecting the very traffic that they have stimulated—all as a means of causing that traffic to be route advanced to an intermediary *owned by the calling platform*. The Commission should ensure that its rules take away all financial incentive to engage in such nefarious practices.

In this new form of arbitrage, the calling platform obtains telephone numbers from one or more rural LECs typically subtended behind a CEA provider in Iowa or South Dakota. When a carrier such as Inteliquent hands off the call to the CEA, this traffic is intentionally rejected by the calling platform connected to the LEC end-office. When the same call is then re-routed to an IXC or other provider that has a direct route into the calling platform's affiliated intermediate provider, the call completes successfully. With this scheme, the call completely bypasses the

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<sup>3</sup> See *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, Proceeding Number 17-56, Bureau ID Number EB-17-MD-001, FCC 17-148 (rel. Nov. 8, 2017). MIEAC supports the Commission's findings in the *Aureon* decision, and it looks forward to resolution of certain pending issues in that proceeding, which will provide clarity about how CEA providers should benchmark. Following that resolution, MIEAC will align its rates accordingly.

<sup>4</sup> See generally *Rural Call Completion*, WC Docket No. 13-39, Reply Comments of Inteliquent, Inc. (filed June 19, 2018), <https://ecfsapi.fcc.gov/file/10619635630783/Inteliquent%20RCC%20Reply%20Comments%20Filed%206-19-18.pdf>.

CEA tandem and the LEC end-office, and the calling platform's affiliated network provider charges a fee, equivalent to the cost of the call as if it were completed over the regulated path, to the IXC for terminating the call over its network. Under these scenarios, a high-volume calling platform would generate even greater revenues from stimulated traffic since it would be receiving the full amount and not just a share of regulated access charges from the LEC.

Although this scheme is unlawful because it entails traffic blocking, the financial incentives for calling platforms to engage in it apparently are significant. The Commission accordingly should make certain that high-volume calling platforms cannot profit from such behavior. In particular, the Commission should take the opportunity to codify its stance in the rural call completion context that covered providers are not responsible for route advancing traffic that is illegally blocked by another party via the regulated path.

In the *Rural Call Completion Second Report and Order*, the Commission clarified that a covered provider meets its duty to address call completion problems where it either promptly resolves problems or “determines that responsibility lies with a party other than the provider itself or any of its downstream providers and uses commercially reasonable efforts to alert that party to the anomaly or problem.”<sup>5</sup> In the case of call blocking, as occurs in the access arbitrage scheme described above, the Commission should codify in the code of federal regulations that a covered provider is not required to reroute such a blocked call. This clarification will provide certainty within the industry and make clear to certain high-volume calling platforms that they

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<sup>5</sup> *Rural Call Completion*, WC Docket No. 13-39, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 18-45 (rel. Apr. 17, 2018); *see also Rural Call Completion*, WC Docket No. 13-39, Comments of Inteliquent, Inc. at 7-8 (filed June 4, 2018) <https://ecfsapi.fcc.gov/file/1060486220847/Inteliquent%20Final%20RCC%20Comments%206-4-18.pdf>.

cannot use call blocking to elude new remedial measures that the Commission may adopt in this proceeding.

Second, the Commission should take away financial incentives for LECs to engage in another form of arbitrage: mileage pumping. In Inteliquent's experience, mileage pumping remains prevalent, and the most effective and appropriate way to address it would be to cap all distance-sensitive mileage charges at ten miles for access stimulation traffic, and to limit the number of tandem terminations that can be charged to two.

In order to perpetrate these mileage pumping practices, some CLECs operating in rural areas continue to move their POIs further away from the IXC to create a larger distance for traffic to travel. Because the transport charges are computed based on per minutes-of-use and per-mile traveled, the further the traffic must travel, the more compensation that can be obtained by moving the POI further away. Mileage pumping adds substantial unwarranted costs to completing calls. As the Commission recognized in the *Alpine* decision, the practice of moving POIs, with no corresponding benefits to customers, are "sham arrangements."<sup>6</sup> Nevertheless, mileage pumping persists because it can be quite lucrative for arbitrageurs.

In considering whether mileage pumping remains a problem, it bears remembering that less than two years ago, AT&T filed a forbearance petition in which one of the core concerns raised was that access arbitrage continues to flourish "in large part because the carriers engaged in the practice are able to generate access bills with very high per-minute per-mile transport

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<sup>6</sup> *NPRM* at para. 31 (citing *AT&T Corp. v. Alpine Communications, LLC et al.*, 27 FCC Rcd 11511, 11526, para. 39).

charges.”<sup>7</sup> AT&T explained, for example, that one carrier engaged in access stimulation billed AT&T 192 miles of distance-sensitive transport charges on virtually every minute of traffic, adding significantly to access charges associated with each call.<sup>8</sup> There is no evidence that the problem that AT&T complained of in 2016 has resolved itself. Indeed, in Inteliquent’s experience, mileage pumping has grown in recent years.

To curtail this ongoing form of arbitrage, the Commission should cap the total number of miles of transport for which an access-stimulating carrier can charge to, at most, ten miles, and the number of tandem termination charges to two. This amount would be the maximum number of tandem transport miles for which charges can be assessed, inclusive of miles between the end office and a tandem, on the one hand, and the end office and a remote terminal, on the other.

Capping the total number of miles of transport that may be charged at ten for access stimulation traffic will combat mileage pumping, while still allowing tandem providers to recover legitimate costs of providing their services. Ten miles is the appropriate maximum distance because it provides for the recovery of legitimate costs, while eliminating the opportunity for a windfall from a situation that offers no benefits to customers and levies unjustified charges on others in the ecosystem. Limiting mileage charges in this manner will benefit end-users who often experience higher rates as a result of these bad practices.

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<sup>7</sup> *AT&T Petition for Forbearance from Certain Rules for Switched Access Services and Toll Free Database Dip Charges*, WC Docket No. 16-363, Petition of Forbearance of AT&T Services, Inc. at 3-4 (filed Sept. 30, 2016).

<sup>8</sup> *Id.* at 10 (“Under the Commission’s reforms, this carrier’s end office charges per call have been reduced to 0.07 cents per minute, but the charges for the 192 miles of transport add about 0.60 cents per minute on each call. In other words, the existence of these transport charges increased the billed rate by over 300 percent.”).



### **III. THE COMMISSION SHOULD NOT HARM THE LEGITIMATE ROLES OF ACCESS HOMING TANDEMS IN THE EXCHANGE OF ORDINARY TRAFFIC.**

At the same time that the Commission vigorously works to close the door to arbitrageurs, it should remain focused on the relatively small number of entities engaged in access stimulation schemes instead of diverting the discussion to access tandem providers *not* engaged in arbitrage. Specifically, the Commission should reject allegations made by certain wholesale carriers (and cited at paragraph 30 of the *NPRM*) that erroneously characterize arrangements in which a wireless carrier relies upon an access tandem provider for ordinary, indirect interconnection with other carriers as a form of “arbitrage.”<sup>9</sup> In effect, these carriers incorrectly argue that any time a wireless or other non-ILEC carrier exercises its statutory right to interconnect indirectly through a tandem, the carrier is engaged in arbitrage.

In fact, originating and terminating wireless carriers exchange traffic via an access homing tandem in the ordinary course of business, which all terminating carriers designate in the LERG. Some wireless carriers designate the tandem of the in-region ILEC while in other cases wireless carriers elect to rely on a competitive tandem provider, such as Inteliquent (which, to be clear, charges the originating carrier a tandem rate no greater than that of the ILEC). As discussed below, the reasons for interconnecting indirectly via a tandem are wholly legitimate and benefit the entire public switched network, including in many cases to reduce unlawful robocalls / fraudulent traffic delivered by wholesale carriers, and to facilitate the industrywide IP transition.<sup>10</sup> The Commission accordingly should reject calls to use this proceeding as a forum

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<sup>9</sup> See *NPRM* at para. 30.

<sup>10</sup> See Letter from Todd D. Daubert, Counsel to T-Mobile USA Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90; 07-135, CC Docket No. 01-92 at 2-3 (filed Jan. 5, 2018) (*T-Mobile Jan 5, 2018 Ex Parte*).

for shifting costs of indirect interconnection to terminating carriers generally, and instead focus on stopping actual forms of arbitrage.

**A. Access Tandem Providers Play an Important Role in the Public Switched Telephone Network.**

Access tandem providers, including Inteliquent, provide an efficient means of interconnection and play an important role in the delivery of traffic to and from end users. Thousands of ILEC, CLEC, and mobile exchanges operate in the United States and it would be technically and economically inefficient for each exchange to directly connect with each other exchange. There are many good reasons for a carrier to rely on indirect interconnection by selecting an access tandem provider for the exchange of legitimate, non-stimulated traffic. This option is relied upon especially for receiving wholesale traffic, as without use of a tandem, the terminating carrier would have to interconnect directly with multiple traffic aggregators that have no relationship with the originating caller, and have little or no control over service quality.

While there are many benefits to the public switched network that arise from indirect interconnection, we elaborate upon two in particular here: detecting and deterring fraudulent traffic and facilitating the IP transition.

*Detecting and Deterring Fraudulent Traffic.* Access tandem providers like Inteliquent have implemented systems that detect and deter unlawful robocalls and other fraudulent traffic. The company also provides tools to originating and terminating carriers that help detect and warn carriers about certain abusive call patterns that may be a scam. In these abusive call cases, originating parties perpetrate robocalls, fraudulent scams, and abusive harassment calls using Least Cost Routing (“LCR”) carriers to avoid detection. The originating source of this fraudulent traffic often uses multiple LCR carriers to further complicate detection and capacity planning as traffic shifts from one LCR carrier to another on a regular basis. Identifying and

helping to combat such abusive traffic benefits all users of the network. By providing a common point of ingress into the terminating carrier's network, the access tandem provider is well-positioned to detect patterns of abusive calls, block unlawful traffic to the extent allowed by Commission rules, and work with the originating carrier sending the unlawful traffic to help identify the upstream source of the traffic.

*Facilitating the IP Transition.* A carrier also may use an access tandem provider to facilitate the IP Transition, which benefits the entire ecosystem. For example, under its arrangement with T-Mobile, Inteliquent accepts traffic from third parties in TDM format and then converts it to IP format for delivery to T-Mobile. This allows T-Mobile to move to an all IP network. This is especially important in rural areas where the inability to transition to IP could otherwise present serious compatibility and other call completion problems. Carriers working to transition to an all-IP format can interconnect to Inteliquent's network in IP in order to facilitate that transition. In contrast, without use of an access homing tandem, a terminating carrier may be forced to accept traffic from myriad carriers in TDM format, delaying its conversion to all-IP format and thus slowing this important industrywide transition.

**B. Relying on Indirect Connections for the Exchange of Voice and Other Traffic is Not a Form of "Arbitrage."**

The parties who brought these claims to the Commission cite one example of alleged "arbitrage": the arrangement in which Inteliquent serves as the default tandem for T-Mobile. In

fact, this arrangement is a legitimate means by which T-Mobile, a major U.S. wireless carrier, manages the exchange of voice traffic with a variety of wholesale and other carriers.<sup>11</sup>

Inteliquent is designated as T-Mobile's access tandem in the LERG, which is a well-known and standard operating procedure within the telecom industry. Under its arrangement with Inteliquent, T-Mobile is free to enter into direct connections with other carriers, as it routinely does for exchange of *retail* traffic. As T-Mobile stated in a January 5, 2018 letter to the Commission, the company elects not to interconnect directly for the exchange of *wholesale* traffic.<sup>12</sup> This is traffic in which the interconnecting carrier does not have a direct relationship with the end user originating the traffic, and which typically has a higher incidence of unlawful robocalls and other forms of fraudulent traffic.

The handling of traffic exchange between T-Mobile and wholesale carriers via Inteliquent contains none of the hallmarks of arbitrage. First, contrary to what is required under the definition of access stimulation, there is no revenue sharing agreement between Inteliquent and T-Mobile for the termination of that traffic.<sup>13</sup> The absence of any such agreement, especially in light of all of the legitimate reasons to interconnect via a tandem, weighs strongly against the claims of an arbitrage scheme. Additionally, the volume of traffic routed through Inteliquent for termination by T-Mobile has no financial impact on T-Mobile. The relationship does not amount to access arbitrage because no aspect of the arrangement between a wireless carrier and

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<sup>11</sup> See *NPRM* at para. 30.

<sup>12</sup> See *T-Mobile Jan 5, 2018 Ex Parte* at 2-3.

<sup>13</sup> See, e.g., *id.* at 2 (“T-Mobile does not receive any revenue in the form of payments, credits, or any other type of benefit from Inteliquent or any other party for terminating any type of traffic routed through Inteliquent.”).

Inteliquent exists to inflate access charges or traffic volumes. This is legitimate, non-stimulated traffic being handled efficiently.

Moreover, carriers interconnecting via Inteliquent's tandem are assessed a tariffed, regulated rate, which is benchmarked to the rate of the competing ILEC. Thus, the rate that Inteliquent charges carriers interconnecting via the tandem is not set "unilaterally" by Inteliquent,<sup>14</sup> and Inteliquent did not, and could not, increase its tandem rates above those benchmarks following the entering of its relationship with T-Mobile in 2015. This simply is not arbitrage, and the Commission should reject calls to use a proceeding designed to reduce arbitrage to regulate the terms of interconnection for ordinary (non-stimulated) traffic.

**C. Shifting Costs of Indirect Interconnection to Wireless and Other Terminating Carriers Would Far Outweigh Any Marginal, Perceived Benefits.**

The NPRM asks about "the costs and benefits of requiring a terminating provider that requires the use of a specific intermediate access provider to pay the intermediate access provider's charges."<sup>15</sup> As discussed below, costs of such a change in rules would far outweigh any perceived, marginal benefits.

At the outset, we note that all carriers designate a default tandem in the LERG, for the exchange of traffic with carriers with whom they do not have direct connections. Given the thousands of carriers in existence, and the fact that many carriers are not directly connected, many calls would fail if carriers did not designate a default tandem in the LERG. And the rates

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<sup>14</sup> See Letter from Michael Singer Nelson and Philip Macres, Counsel for O1 Communications Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (filed Jan. 11, 2018) (alleging that "carriers providing wholesale services (either exclusively or comingled with retail services, such as O1) are effectively forced to route traffic through Inteliquent at rates it unilaterally sets").

<sup>15</sup> NPRM at para. 30.

that access tandem providers charge are regulated, with competitive providers' rates benchmarked to the rate of the competing ILEC. Thus, there is no reason that terminating carriers should be penalized for designating a "specific" tandem provider in the LERG, as this is an established, industrywide practice that is critical to a well-functioning public switched network.

In any event, the costs of such a change in the rules would be significant. As noted above, in Inteliquent's experience, wireless and other terminating carriers often elect not to connect directly with wholesale carriers. Under the current rules, the originating wholesale carrier pays the regulated tandem charges. This approach prevents the wholesale carrier from imposing the full costs of sending unlawful robocalls or other fraudulent traffic into the terminating carrier's network. Given that the wholesale carrier must bear these costs, it has at least some incentive to attempt to ferret out unlawful traffic and to impose acceptable use policies on its upstream customers. If, instead, the wholesale provider were allowed to deliver that traffic to the tandem "for free" (i.e., at the cost of the terminating carrier), the wholesale carrier would have no incentive to limit its carriage of unlawful traffic. The result would be increased unlawful robocalls and other harmful traffic on the network, ultimately causing consumer harm.

The "benefits" of such a rule change, in contrast, would be modest at best. Wholesale carriers, like those whose complaints are discussed at paragraph 30 of the *NPRM*, would benefit financially, as they would be able to shift their costs to terminating carriers. Lowering the cost of doing business for wholesale carriers, however, should not be the goal of this proceeding, particularly given the more significant harms that would be caused to the broader network.

#### **IV. CONCLUSION**

Inteliquent supports the Commission's efforts to curb the persistent problem of access arbitrage. When resources are improperly diverted to nefarious actors, this limits the funds available to upgrade networks, improve call quality, and provide better services for customers all over the country. By codifying the finding that IXCs and intermediate carriers are not responsible for route advancing traffic that is illegally blocked by another party on the regulated path, capping the amount of mileage that can be charged for tandem transport at ten miles for access stimulation traffic, and remaining vigilant about emerging schemes, the Commission will be in the best position to combat abusive practices. Critically, these goals can be achieved without hampering the important roles played by access tandem providers in the call path.

Respectfully submitted,

**INTELIQUENT, INC.**

By: /s/ Matthew S. DelNero

Matthew S. DelNero  
Thomas G. Parisi  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001

*Counsel for Inteliquent, Inc.*

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