

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

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

COMMENTS OF SOUTH DAKOTA NETWORK, LLC

South Dakota Network, LLC (SDN) submits these comments in response to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter.¹ The Commission's proposals are not sufficient to end access arbitrage. Therefore, SDN urges the Commission to find that arbitrage is an unjust and unreasonable practice and, as such, is prohibited. In the alternative, SDN urges the Commission to prohibit any and all LECs engaged in access stimulation from utilizing a CEA tandem as a tandem provider. SDN supports the Commission's proposal to require carriers engaged in access stimulation to accept direct connections from IXC's. However, the Commission’s proposal to require intermediate carriers to bill access stimulators for terminating access charges will place an undue burden on intermediate carriers like SDN and raises a number of unresolved issues.

When the Commission adopted its access stimulation rules, it required a rate-of-return LEC engaged in access stimulation to file “its own cost-based tariff under section 61.38 of the Commission’s rules,” and prohibited them from filing a tariff based on historical costs under section 61.39 of the rules or from participating in the NECA traffic-sensitive tariff.² These

¹ *In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking (June 5, 2018) (“*NPRM*”).

² *In re Connect America Fund, et al.*, WC Docket No. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking (November 18, 2011)(“*Transformation Order*”) at ¶679.

requirements ensured that as the minutes of use of a rate-of-return LEC engaged in access stimulation increased, its rate would decrease. Competitive LECs were required to benchmark their tariffed access rates to the rates of the price cap LEC with the lowest interstate switched access rates in the state.³ By allowing CLEC access stimulators to charge a benchmark rate and not a cost-based rate, the opportunity for revenue to exceed cost, if enough minutes of use could be generated, remained. It is not surprising that entities offering "free" conference call services were able to take advantage of that opportunity to the detriment of SDN and the efficient operation of the nationwide network.

The Commission's proposed rules appear to be an attempt to "plug the holes," at least to some extent, that have continued to arise regarding access arbitrage. However, the proposed rules are not sufficient and, in some respects, will create new problems. First, the Commission's existing and proposed rules do not preclude carriers engaged in access stimulation from utilizing a CEA tandem as a tandem provider. Because CEA tandem providers aggregate traffic for a number of rural LECs and charge an averaged rate, this provides another opportunity for arbitrage for providers seeking such loop holes. Similar to the Commission's prohibition on rate-of-return LECs engaged in access stimulation from participating in the NECA tariff, the Commission should prohibit any and all LECs engaged in access stimulation from utilizing a CEA tandem as a tandem provider.

Second, it appears that the proposed rules will not address the latest iteration of "access arbitrage" as discussed by Inteliquent in the Rural Call Completion proceeding⁴ that also is impacting SDN. Specifically, for approximately the past year, SDN has experienced a

³ *Transformation Order* at ¶679.

⁴ Comments of Inteliquent, WC Docket No. 13-39, filed June 4, 2018.

tremendous number of terminating calls, sometimes thousands per day, that, from SDN's perspective, are being rejected by a CLEC engaged in access stimulation in connection with a "free" conference calling customer.⁵

This new issue highlights the point that as long as "free" services can be offered to consumers where the consumer does not pay for the service, arbitrage will follow. SDN notes that in the case of "free" conference calling, it is not a service free of cost. Rather, the consumer using the conference call service does not pay for that service. Instead, the parties involved – the conference calling company and possibly a CLEC and/or tandem provider – receive payment for the conference calling service from other carriers. In order to eliminate these access arbitrage schemes, SDN supports the comments filed by Aureon that the Commission should find that arbitrage is an unjust and unreasonable practice and, as such, is prohibited.⁶ SDN at this time, however, does not comment on Aureon's specific new rules on this point.

To address access arbitrage, the Commission proposes to require carriers engaged in access stimulation to either accept direct connections from the IXC or an intermediate access provider of the IXC's choice or "bear all financial responsibility for applicable intermediate access provider terminating charges normally assessed to an IXC (from the point of indirect interconnection to the access-stimulating LEC's end office or functional equivalent), and would be prohibited from assessing transport charges for any portion of transport between the intermediate access provider and the LEC's end office or functional equivalent that the LEC, itself, provides." Among other things, the Commission asks what steps intermediate access providers would need to take to bill access-stimulating LECs for terminating access and to not bill IXCs. It is SDN's understanding that this proposal would require SDN to bill an access

⁵ The CLEC has advised SDN that its customer is blocking the calls.

⁶ Comments of Aureon, WC Docket No. 18-155, filed July 20, 2018 at p. 8-9.

stimulating carrier its tariffed terminating switched centralized equal access charge for all of the traffic terminating to that carrier (and not just the traffic destined for the free conference call customer, for example) instead of the IXC.

SDN supports a requirement that carriers engaged in access stimulation must accept direct connections from the IXC, including those who utilize a CEA tandem as a tandem provider. SDN has repeatedly urged the Commission to make clear that CLECs engaged in access stimulation cannot refuse to allow direct trunking from the IXC to the CLEC's end office or to accept other solutions that result in similar outcomes. SDN believes this is in line with the purpose of establishing it as a CEA provider, which was to provide equal access functions and to bring the benefit of equal access to rural areas with low volumes of traffic.

Although SDN agrees with a requirement that carriers engaged in access stimulation must accept direct connections from the IXC, this requirement should not be applied to non-access stimulating LECs that route traffic to SDN, as requested by CenturyLink.⁷ When SDN was granted CEA authority, the Commission and state commission required IXCs to route traffic to the SDN member ILECs through the SDN tandem as a means of ensuring the viability of SDN's centralized equal access service. CenturyLink's proposal would undermine SDN's CEA network and would be at cross purposes with the Commission's policy objectives in authorizing them. Accordingly, CenturyLink's proposal should be rejected.

SDN also does not support the proposal to require SDN, as an intermediate access provider, to bill access-stimulating LECs for terminating access and to not bill IXCs. This proposal would only entangle SDN with access stimulators and increase SDN's cost at a time when SDN's revenues are decreasing and it appears SDN would not be able to recover any

⁷ *NPRM* at ¶23.

additional cost under current Commission rules. SDN's costs would increase because it would have to bill additional carriers for its services. Since LECs do not currently subscribe to SDN's access services, it is not clear whether or how SDN would be required to amend its tariff to bill LECs for access services. If SDN's tariff does not apply, then SDN would lose "deemed lawful" status for these charges. This proposal also would subject SDN to billing disputes from access stimulators and it may also subject SDN to disputes between access stimulators and IXCs, if there is an issue as to whether or not certain traffic is stimulated traffic.

If the Commission prohibits any and all LECs engaged in access stimulation from utilizing a CEA tandem as a tandem provider, as requested by SDN, it should not be necessary to apply this proposal to SDN. Accordingly, SDN asks that instead of requiring SDN to bill an access stimulating LEC its tariffed access charge, the Commission prohibit LECs engaged in access stimulation from utilizing a CEA tandem as a tandem provider.⁸

As shown herein, to prevent access arbitrage, the Commission should find that arbitrage is an unjust and unreasonable practice and, as such, is prohibited. If the Commission does not take this action, then the Commission should prohibit any and all LECs engaged in access stimulation from utilizing a CEA tandem as a tandem provider and it should require carriers engaged in access stimulation to accept direct connections from the IXC. However, SDN should not be required to bill an access stimulating carrier its tariffed terminating centralized equal access switching charge, as this proposal would entangle SDN with access stimulators and increase SDN's cost at a time when SDN's revenues are decreasing.

⁸ If, however, the Commission goes forward with this proposal, at a minimum, it needs to address the issues raised by SDN and allow for cost recovery for the additional costs incurred by SDN.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ben H. Dickens, Jr.", written in a cursive style.

Benjamin H. Dickens, Jr.

Mary J. Sisak

Salvatore Taillefer, Jr.

Counsel to South Dakota Network, LLC