Before the
Federal Communications Commission

Updating the Intercarrier Compensation	)	WC Docket No. 13-155
Regime to Eliminate Access Arbitrage	)	
	)	

Comments of Wide Voice LLC

II. Introduction and Background

Wide Voice, LLC is a nationwide, facilities-based CLEC established in 2010, to provide IP-based services to a wide variety of application-based communication services that require connectivity to the PSTN. As the Wide Voice business has grown, we evolved our network to provide access homing tandem and network hosting services to CLEC's and Interconnected VoIP providers. Our mission is to enable the next generation of communication applications. As such, our focus has and always will be to serve the needs of consumers by continually advancing our network and espousing the benefits of the future telecommunication ecosystem.

Wide Voice provides a full suite of communications services, including toll and toll-free origination, termination, messaging and rich applications that are accessible through our set of API's, our business strategy, operational model and network is focused on the specific needs of high-volume inbound voice applications. Originally, Wide Voice was established as a regional, facilities-based CLEC focused on the needs of free conferencing providers. Over time, our application partners have steadily grown into other applications such as toll conferencing, voicemail applications, robocalling prevention services, cloud-based PBX's, inbound call centers and so on. We have built our network and business operations to specifically address the needs of these providers, which include multiple points of ingress and redundancy across both regulated and commercial call paths, managing network capacity to accommodate high fluctuations in traffic, enhanced call flow information, and a responsive team to rapidly address any customer-facing issues that arise.

Wide Voice receives a substantial portion of our revenues from access charges, which are either directly charged at the tandem / intermediate carrier point of ingress or shared with Wide Voice through third-party tandem / intermediate providers. In any case, Wide Voice mirrors the incumbent rates for a given market where we provide service. Our customers leverage multiple carrier partners. As one might expect of contestable markets, Wide Voice we must share a portion of the revenue we receive with our partners to meet competitive offers in the market. In this context, Wide Voice often experiences discrimination based on the erroneous claim that our traffic is illegal and therefore, the services our customers provide are somehow suspect. We are subjected to continuous non-pay self-help, upstream fraudulent traffic routing, discriminatory surcharges applied to our network and the associated costly legal disputes.

The primary thrust of Wide Voice's comments are a request for the agency to define whatever rules emerge from this proceeding, clearly. Clarity and regulatory simplicity above all else, should guide the Commission's policy in this area. Wide Voice files these comments to bring to light the current epidemic of discriminatory practices and urges the Commission to resolve them consistent with the FCC's goals in this proceeding.

Specifically, Wide Voice urges the Commission to avoid the fuzzy and difficult-to-define definitional battles that have characterized "access stimulation" debates and instead adopt a straightforward policy and definitional rule that apply to this legitimate traffic. Wide Voice suggests that the Commission's policies are best served by adopting a rule which requires LECs operating behind CEA tandems with high volumes of traffic to operate as any other LEC should; by benchmarking to the non-rural, price-cap LEC who operates in non-rural areas. Additionally, the agency should announce a policy that if a LEC would like to meet its regulatory obligations as well as consumer's demands by operating behind an access homing tandem operated by a competitor such as Wide Voice, doing so is an acceptable, legal and pro-consumer method of transitioning this market to one characterized by regulatory stability. In this way, the agency can move to a policy of national uniformity, simplicity and clear enforceability by limiting geographically-based access arbitrage.

II. The current triggers are anticompetitive and easily gamed

For years, the agency has attempted to define a category of 'access stimulation' that would be subject to the Commission's anti-arbitrage policies. Wide Voice suggests that given the complexity and variation in the way carriers, application providers and other entities structure their commercial agreements, the Commission's institutional knowledge and expertise are at their nadir in understanding these many and varied commercial relationships. Moreover, it is not necessary for the agency to understand the varied ways in which entities share revenue, direct, route or optimize and swap traffic because doing so is not central to accomplishing the agency's goals in this docket. If the Commission, nonetheless, persists in defining a category of "access stimulation" based on these commercial arrangements it risks a rule that is more than likely to be overbroad - defining all carriers as access stimulators!

The reality is all carriers focus on minimizing their outbound termination costs (eg paying access) while optimizing their inbound access revenue. This should be evident to the FCC from the complaints which have arisen from T-Mobile and Sprint moving their wireless network behind an access homing tandem, or AT&T successfully arguing that their CLEC must to be able to charge access into their wireless network to remain competitive - at the same time denying and removing direct interconnect requests that undermine their access revenue. The only difference between these carrier practices and the practices of providers such as Wide Voice is that these carriers have other lines of business with which to blend traffic, thereby avoiding secondary triggers. When inbound or asymmetrical applications, like conferencing, voicemail or otherwise are behind a tandem, this has been called access stimulation or worse demonized as traffic pumping; but when Wide Voice requests reciprocating direct connects in order to return traffic these requests are unilaterally denied due to low traffic volumes, capacity or technology limitations. This unilateralism is both inequitable and inconsistent with the statutory command that policy in this area be strictly "reciprocal."

Furthermore, with outbound traffic routed through a least-cost-routing (LCR) and inbound through a homing tandem or commercial agreement, it is unlikely that outbound calls follow the same call path as inbound calls from the same carrier. The Commission should not be disturbed by this network configuration - as it is essential to forwarding the IP transition. However, the Commission must accept that its current policy environment is muting carrier incentives to engage in reciprocal direct connections because direct peering relationships, are only occurring between originators with significant and balanced volumes. This might be efficient in some circumstances but it is far from an established, accepted principle that direct connects are only efficient when traffic balances are equal.[1] Furthermore, these direct peering relationships often contain a negotiated offset rate or some other consideration, to address any inequity from traffic imbalances. Even within these peering relationships, carriers will continue to use their LCR and other methods to ensure the most profitable outcome from the traffic exchange relationship - and the Commission should be untroubled by that reality - as well as the related reality that commercial offset rate structures or other consideration will continue to render efficient direct peering connections where they might otherwise not be without those

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[1] *See Applications of Charter Communications, Inc., Time Warner Cable, Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, 30 FCC Rcd 10360, Attach. (2015) (*Protective Order*) and *Memorandum Opinion and Order*, Section F Para 206.

offsets. Finally, Wide Voice suggests that the Commission's statutory authority is simply absent when the agency is promulgating a rule whose target are these commercially-negotiated offset rates. The agency simply lacks statutory jurisdiction to upset these arrangements where two willing carriers/providers agree to such an offset. Any agency rule promulgated in this docket is likely susceptible to appellate challenge.

Many carriers who either host or operate asymmetrical applications, like audio conferencing or voicemail access, collect access on the inbound usage of these applications. Providers who focus on these classes of applications therefore trip the primary access stimulation revenue share trigger. Wide Voice argues that it is the very definition of arbitrary and capricious for the same inbound application operating within a larger portfolio of services be able to collect access but that same application at another LEC who might be operating at a smaller scale or with mostly inbound traffic be deemed an access stimulator and subject to different rules and pricing? This type of discriminatory pricing policy is anti-competitive, works only to favor incumbent LEC's and is otherwise inconsistent with the Telecommunications Act of 1996, that mandates that interconnection fees be based on reciprocal terms.[2] "In the CAF order, where the FCC defined the benchmarking rules for access stimulation traffic, specifically around the end office elements, the FCC uses revenue share as the primary trigger and proposes to use the same triggers to impose new obligations on LECs. With the sunsetting of end office, we believe the current access stimulation triggers that are based on revenue sharing, growth and balance no longer serve their purpose and should be modified to address a separate new issue that the FCC appears to believe is occurring.

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[2] Each local exchange carrier has the following duties: (5) The duty to establish reciprocal compensation arrangements for the transport and termination of the telecommunications.")

As discussed above, Wide Voice believes that sharing revenue received provides for an overall competitive market. By placing different obligations on those who share revenue - holding aside the fact that nearly all carriers and entities in the telecom ecosystem share revenues - the FCC risks becoming the referee of winners and losers by establishing in effect, enforcing artificial pricing ceilings. Furthermore, by involving itself in an area where its institutional knowledge is at its least, it is merely creating incentives or providers to become more creative in how they bundle their services to win business and evade the categorical nature of the rules. Wide Voice submits the following example to educate the agency's decision makers on how this can occur, quite apart from whether the agency's decision makers are well-intentioned. Wide Voice has observed other carriers use of inbound revenues or 8YY termination revenue to subsidize other services, such as outbound termination. Instead of explicit revenue sharing, carriers can rebate or reduce rate structures or swap network services and/or traffic as opposed to explicitly sharing revenue, or carriers will purchase complimentary services in return. While the FCC has drafted rules that these too are forms of revenue sharing, enforcement is near impossible. This ultimately leads to originating carriers and IXC's taking non pay self-help tactics that lead to costly litigation.. As other commenters have suggested, this must end.[3] As carriers will compete for business, these rules could place carriers like Wide Voice, who prefer to specialize, at a relative disadvantage. Wide Voice observes this in our daily negotiation, as many CLEC's currently share revenue. However, you would not know this from their ex parte filing which state explicitly that they do not.[4] The access stimulation trigger merely serves to create an inefficient market by setting an artificial price, encouraging gaming and costly litigation.

[3] See e.g. Bandwidth Ex Parte.
[4] See e.g. Inteliquent Ex Parte.

Instead, the agency should allow the market to establish a beneficial equilibrium as carriers compete efficiently as these benefits are ultimately passed onto the customer. If Wide Voice can provide a better service and economics on inbound services alone and allow other providers compete for the partners outbound services for example, the result is a more efficient marketplace. Furthermore, by sharing revenue with our partners, they are able create and offer innovative services that customers desire at more reasonable pricing. As an example, one of our voicemail customers has developed a better voicemail experience and is able to offer this to its customers for free to win customers from the carrier's inferior, but also free service. This kind of ever-expanding, evolving nature of innovation and competition - even for 'free' services - is precisely what the agency should view as the pro-consumer effects of maintaining a uniform access charge regime.

The secondary access stimulation triggers do not address the FCC's proposed arbitrage issue. As discussed above, carriers view, negotiate and route traffic asymmetrically. We also believe that traffic asymmetry will only continue to increase as application-based traffic proliferates. Gone are the days where the copper wire to the home was the only way to reach the customer, creating a symmetrical traffic profile. As customers shift to an increasingly digital world, phone numbers are a consumer's digital identity, becoming increasingly detached from the physical line where consumers can now place and receive calls in a variety of ways that they ultimately choose. As such, we are and will continue to move to a more and more asymmetrical traffic flow where consumers will choose to place outbound calls via one service and receive calls via another based on a myriad of their preferences such as time, location, presence, etc. This is positive for consumers as services can create innovative user experiences and pricing to compete for the customer.

The FCC should refrain from trying to discriminate against applications based on asymmetrical traffic flows and should instead consider policies that address access more comprehensively. If the FCC truly wants to end access and move to a "bill and keep" world, then it should consider policies that move all carriers uniformly toward that goal, but applying policies laden in old world, TDM thinking that discriminate based on an asymmetrical traffic profile are not in the public interest..

III. Rate Structures Are The Root Problem

Along with the evolution of application based communication services, is the reality that communications are becoming non-geographic, while our rules and rates are entirely based upon geography. Pricing plans have mostly become unlimited, and as a result, area codes have become mostly a feature of a bygone communications system. Applications have located in optimal areas to meet their customers preferences, whether it be the emotional notion of an area code or cost based non geographic. In opening this NPRM, the FCC states that access arbitrage appears to continue to be the most widespread scheme and states that "access stimulation (also known as traffic pumping) occurs when a local exchange carrier with ***relatively-high*** switch access rates enters into an arrangement to terminate calls – often in a remote area – for an entity with a high call volume operation, such as a chat line, adult entertainment calls, and ***"free"*** conference calls, collectively high call volume services." It goes on to state that most "access arbitrage activity specifically involves LECs that use centralized equal access (CEA) providers to connect to IXCs." The Commission then goes on to ask whether an access-stimulating LEC that does not offer direct connections to IXCs would 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.[5]

First, the FCC statement of "relatively-high" switched access rates is a statement without a benchmark. From Wide Voice's perspective, access rates have decreased by up to 90% from the time of the 2011 CAF order, from around $.044 to a range of $0.002 - $0.007. Furthermore, this range is in parity with the same cost range we receive for our inbound toll free usage to the same applications (eg toll vs. toll free conferencing) from the same originators complaining about toll access rates being too high. Of course, whether a rate is reasonable is subject to real subjectivity - whether an access rate is "right" for their hosted or owned & operated applications, they will say the rate that it is charging, but if you ask what access rate they should pay to others, they will say zero, because the application does not need to be located there. So what is the right access pricing policy for high volume applications? It seems that the issue is really focused on the LEC's with high volumes of traffic behind CEA providers. The commission should focus its rulemaking on this scenario and appropriate benchmarking as it did in the 2011 CAF order. Secondly, by reversing the charges, should the LEC not offer direct connections, which it doesn't state any acceptable reasons for rejection, the Commission is simply shifting the problem in the other direction and exposing the call flow to the similar arbitrage issues it is seeking to address in the 8YY NPRM.

A Solution: Homing and Mirroring ILEC Rates

Wide Voice supports a policy of unified, geographically insensitive access rate for high-volume application traffic and the encouragement of direct connections, where efficient. The commission stated that "access-stimulating LEC's have adjusted their practices, and now they support such services by interposing intermediate providers of switched access service not

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[5] NPRM at para 11.

subject to the Commission's existing access stimulation rules in the call route, thereby increasing the access charges interexchange carriers (IXC's) must pay" [6] However, carriers always have had the regulated call path, at tariffed rates, which establishes the baseline access charges that originator's pay. Furthermore, tariffs already offer the option for direct connects. In addition, most LEC's have other intermediate providers offering secondary call path options as well. As such, IXC's have several options available for efficient delivery of their traffic , whether it be a commercial call path provider, regulated call path or direct interconnection. Presumably, any option the IXC chooses would be made based on a cost benefit analysis by the IXC. Our experience is that these commercial call paths are typically less expensive than the regulated call path and provide benefits such as IP connectivity, protocol conversion, convenient, aggregated interconnection points, simplified billing and fraud protection.

However, if the FCC is convinced that access arbitrage is truly an issue, it should focus its rules on the LEC's behind a CEA tandem with high volumes of traffic. As they suggest that this would address "much of the post-USF/ICC Transformation Order access arbitrage." To address this scenario, it should redefine access stimulation around this scenario, as the old definitions have largely expired with the sunsetting of the end office. Breaking the CEA monopoly makes sense as there are other providers that can serve these access stimulating LEC's. This scenario should be easy to define since traffic volumes are largely disproportionate to the population base of the serving LEC. For example, access stimulation could be redefined as: traffic originating from any LEC behind a CEA tandem with total minutes (inbound + outbound) in excess of 1000 times the number of its subscribers in its service area. The idea behind this test is to provide for a typical or normal number of expected minutes associated with a typical replacement telephony product, provide a generous margin for error and then

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[6] NPRM at para 2.

define any traffic above this threshold as associated with access stimulation. Once a LEC is deemed an access stimulator, then it would have 2 choices:

1) The CEA provider could mirror the ILEC rates for those access stimulating LECs, assuming they can do this profitably.
2) The access stimulating LEC could home to an alternative tandem provider priced at the ILEC rate

This solution will provide several benefits. First, it aligns with what the Commission believe is at the root of the access arbitrage problem, by benchmarking these rural markets to a rate like the rest of the United States where similar applications exist. Most importantly, it will clearly specify what access stimulation is, and this new clarity will remove the non-pay self help issues that plague the rest of the access market. It also, will allow the CEA providers to continue to provide their services to the majority of rural LECs not involved in access stimulation. This is the best way the FCC can address the issue, while not proliferating uncertainty and imbalance in the rest of the market.

It is difficult to fully comment on the impacts of the FCC's current proposal, as we believe there is additional clarification required. However, as drafted, we believe that should the FCC move toward its apparent conclusions, the adjustment that will happen is that LEC's will cease revenue sharing, thus rendering much of this NPRM meaningless. As a result, it will increase uncertainty, non-pay self help and litigation as carriers try to attack LEC's they believe to be sharing or implementing other tactics to disguise revenue sharing. We saw this in the 2011 CAF order, but since an access stimulator simply had to benchmark their rates, which was reasonable and not viewed as punitive, many LEC's simply benchmarked rates to avoid further issues, regardless of meeting the definition or not.

Since all carriers optimize access, if the FCC believes that access is an issue that extends past LEC's behind CEA tandems, the Commission will need to look at a much larger access reform and an overall plan to phase out or rationalize all access. We believe access rates outside of CEA rural areas are not unjust and unreasonable. Inteliquent and HD Tandem have stated in their previous comments and ex parte presentations, that aggregation points for traffic provide value to LECs and originators, which we agree. Whatever, the FCC decides, a basis of any reform should be reciprocity, which is the authority that the FCC is operating under and it should ensure it is not placing new entrants at a disadvantage to large, existing market operators. Under the current draft, Wide Voice assumes that the terms of any direct interconnections established between an originator (or IXC of the originators choosing) and LEC would be reciprocal. If this is the case, the FCC will still need to decide factors such as edge, capacity, utilization, reciprocity and offset rate, or as is Wide Voice's preference, leave that up to the parties to negotiate. If the FCC will leave it up to the parties to negotiate, we do not see how it can place a time frame on these negotiations, with a threat of reversed charges, as it would create an imbalanced negotiation. Why would a carrier negotiate in good faith if they know in a given amount of time, that the burden will default entirely to the other party and they can simply stop paying? Furthermore, how many direct connects must an LEC scale its network to support? We think there should be some limit as this will consume significant resources away from current operations of a carrier's business.

Ultimately, the FCC should more clearly define the problem that it believes to exist, as on the face it does not appear to be a data-driven exercise.. From there it should form a solution that clearly and directly addresses the issue from a basis of benchmarking and reciprocity. We doubt that many LEC's will chose the first option of bearing the costs, as this shifts the economics to look more like a toll free call. This prong will serve simply as a threat, and lead the carriers into the negotiation of a direct connect without clearly defined obligations. Without this, we believe that carriers negotiations will reach an impasse, as direct connects are available today, but rarely are implemented due to these and other issues.

Furthermore, the Commission must ensure that non-pay self help that currently exists is ceased, with sufficient penalties for carriers caught performing this behavior. Otherwise, it should look at comprehensive access reform to move to its desired end state of bill and keep. , Wide Voice, believes that the market is in balance, so whatever new rules the FCC decides upon, it must ensure it not creating market imbalances and must create clear definitions of where it wants access to go for all and not specific types of endpoints (VoIP, CMRS, etc.) or traffic profiles or geographies.

IV. Conclusion

Wide Voice respectfully request that the Commission adopt rules in this proceeding that are consistent with the positions described in these Comments.

Respectfully,

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