

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20544

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

COMMENTS OF HD TANDEM

HD Tandem

David Erickson

4300 Pacific Coast Highway

Long Beach, CA 90804

July 20, 2018

I.	SUMMARY	3
II.	HD TANDEM'S HISTORY AND INNOVATION PLATFORM.....	4
A.	HD Tandem's Network Topology and Points of Interconnection.....	4
B.	HD Tandem's Proposed Internet Protocol Homing Tandem ("IPHT") Solution.....	5
III.	THE FCC SHOULD ADOPT A COMPREHENSIVE DEFINITION OF ACCESS STIMULATION	7
A.	The Market Realities of Access Stimulation	7
B.	The Commission Should Broaden the Definition of Access Stimulation	8
IV.	THE COMMISSION SHOULD ADOPT A COMPREHENSIVE, CLEAR APPROACH TO THE ISSUE OF ACCESS STIMULATION.....	10
A.	The Commission's Solution Should Be Reciprocal in Nature	10
B.	The Obligation to Interconnect Directly Should Apply To Interexchange Providers, Access-Stimulating LECs, and Intermediate Providers.....	11
C.	The Principle of Reciprocity Should Apply to a Nationwide Policy of Bill and Keep	16
V.	THE COMMISSION SHOULD PRIORITIZE CLEAR ENFORCEABILITY AND THE RECOGNITION OF NO-PAY SELF HELP AS AN URGENT PROBLEM.....	17
VI.	CONCLUSION	18

I. SUMMARY

The road to this bill-and-keep end state will rely upon an IP-enabled network. It will also leverage platforms, such as HD Tandem, which encourage interoperability and interconnection between what remains of the TDM network and broadband infrastructure. The Commission will arrive at this pro-consumer end-state if it employs carrots instead of sticks. It will stall the move toward the next-generation network and its consumer benefits if it credits this regulatory whining of forbearance petitioners. Instead of traditional solutions to the issue of access stimulation, HD Tandem proposes in these comments a principled, straightforward, and enforceable method of achieving an equitable solution to the issues that gave rise to the NPRM.

First, the Commission should adopt a comprehensive definition of ‘access stimulation’ to include all the relevant parties, carriers, providers and other entities necessary to address the issue in a complete and non-discriminatory manner. In response to the NPRM seeking comment on whether intermediate access providers should be included in this definition, HD Tandem would support including intermediate providers in the definition of access stimulation if doing so would comprehensively address the problems in the marketplace.¹ Without a comprehensive definition and scope, the Commission risks a likewise incomplete solution. The Commission should prefer economically-efficient, reciprocal, bill-and- keep arrangements as the desired, national end-state.

Second, the Commission should require providers to enter into negotiations under an FCC designed framework to facilitate direct connection or their functional equivalents between access stimulators and carriers, including entities such as Verizon, AT&T and similar carriers. In furtherance of

¹ See *Access Arbitrage NPRM* at ¶. 29.

this requirement, the Commission should adopt its traditional role in arbitrating disputes concerning the reasonableness of carriers refusals to directly interconnect.

Third, the agency should organize its rules in this proceeding according to an overriding principle of reciprocity- both reciprocity in bill-and- keep arrangements and reciprocity in imposing a fair obligation for entities to establish direct connection arrangements or their functional equivalent. Historically, the Commission's approach to interconnection applied rights and responsibilities to both or all parties in the interconnection link. One-sided reversals of the access charges in such a way as to punish an entity in the interconnection relationship, tosses aside this settled history and could work a unique, unjustified hardship on providers offering services that have experienced mass adoption. Draconian reversals of economics could well disrupt the retail application-enabled services consumers have come to depend upon. Millions of consumers across the spectrum – large and small businesses, political organizations, consumer groups, religious organizations, etc. – have benefited tremendously from conference-calling services over the years. By one estimate, almost 2% of the people on the planet have used services provided by Freeconferencecall.com.² Such a reversal of policy will almost certainly increase the costly burden of litigating no-pay, self-help disputes over access charges.

II. HD TANDEM'S HISTORY AND INNOVATION PLATFORM

A. HD Tandem's Network Topology and Points of Interconnection

HD Tandem is a nation-wide intermediate provider and direct connection partner which emphasizes Internet Protocol ("IP") connectivity between originating carriers and terminating carriers, including carriers to terminating applications and to the high-volume application providers. HD Tandem has established over 700 direct connections to 14 individual LECs hosting high volume applications behind Centralized Equal Access (CEA) switches or other LECS located in rural locations. Born out of

² Since FreeConferenceCall started in 2001 has had 121,805,848 unique calling numbers into our service. Divided by the population as of 7/20/2018 of 7,600,000,000.00 people, which equates to 1.6% of humanity.

the 2011 Transformation Order, HD Tandem serves a vital role in the call path as an intermediate carrier whose functions eliminate the problem of defining any specific edge between different physical locations in the call path. After the adoption of the Order, HD Tandem began preparing for a national, uniform, and reciprocal bill-and-keep end state occasioned with the sunset of terminating switched access services. HD Tandem's business charter focused on driving IP direct connects, HD enabled voice services, backwards compatibility to the TDM network. HD Tandem developed an innovative platform that offered IXC's customized interconnection arrangements with multiple Points of Interconnection (POIs)³ with aggregation and connection for traffic terminating to a host of rural LECs.

Today, in the rural and non-rural areas that HD Tandem serves, approximately 70% of traffic destined for these 14 LECs has transitioned to IP using the HD Tandem network. This traffic is now routed down rural broadband pipes, paid for by HD Tandem and the rural LECs connected to HD Tandem using state-of-the-art VoIP HD-enabled software based platforms, to residential, business and high volume application customers. HD Tandem is proud to play such a critical and tangible role in helping to further rural broadband deployment and the IP Transition.

B. HD Tandem's Proposed Internet Protocol Homing Tandem ("IPHT") Solution

As a result of HD Tandem's practical experience and business development since the *Transformation Order*, HD Tandem has sought to work with the FCC to address continued complaints of arbitrage plaguing the intercarrier compensation regime. Some originating carriers have complained that "access stimulating LECs currently refuse to accept" direct connections.⁴ Oddly, these complaints come from carriers who are connected to the same "access stimulating LECs" through HD Tandem's direct connect partnerships.⁵ Some carriers have expressed fear that if they made the financial investment to direct connect, the traffic could eventually move to another LEC with whom the carrier does not have a direct connection. In response to these complaints, HD Tandem proposed an alternative Internet Protocol

³ Current POIs include Los Angeles, Miami, Chicago, and Sioux Falls.

⁴ See *Access Arbitrage NPRM.* at ¶ 13

⁵ *Id.*

Homing Tandem ("IPHT") solution that would offer originating carriers an alternate connection.⁶ Specifically, a LEC hosting high volume applications should connect to an IPHT that allowed for convenience, cost savings, aggregation, fraud detection and redundancy while providing state-of-the-art technology advancing the IP Transition.

Importantly, however, while many carriers have established dedicated connectivity with HD Tandem for handing off traffic for termination, these originating carriers have refused multiple requests to direct connect with reciprocity. HD Tandem created convenient drop offs of the IXC's choice and facilitated aggregation or multiple LEC destinations. This network architecture resulted in additional redundancy, moved traffic from TDM legacy networks to state-of-the-art VoIP technologies that are HD enabled and offered fraud detection capability. In prior comments HD Tandem has offered this same solution to the FCC over the past few years – suggesting to the FCC that LECs engaging in access stimulation be required to offer an Internet Protocol Homing Tandem IPHT.⁷ In these situations, both direct connection and their functional equivalents, such as that provided by HD Tandem can be offered under end-to-end bill-and-keep.

To be clear, HD Tandem makes as part of its comments a true, end-to-end 'bill and keep' offer on behalf of originating carriers to direct connect at multiple convenient drop-offs, with valuable aggregation to a number of different, difficult to connect to LECs hosting high volume applications, increasing redundancy, improving quality and offering state-of-the-art fraud detection. We believe the end state is direct (or its functional equivalent) interconnection with symmetric reciprocity that would make bill-and-keep an efficient and sustainable outcome consistent with the FCC's goals in this proceeding.

⁶ See Comments of HD Tandem, Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit, WC Docket No. 10-90; CC Docket No. 01-92, *Public Notice*, DA 17-863 (rel. Sept. 8, 2017), (filed Oct. 26, 2017).

⁷ *Id* at III.

III. THE FCC SHOULD ADOPT A COMPREHENSIVE DEFINITION OF ACCESS STIMULATION

A. The Market Realities of Access Stimulation

HD Tandem agrees with the FCC that access stimulation continues to exist in the marketplace today.⁸ In fact, access stimulation arrangements between competitive local exchange carriers (“CLECs”) hosting applications with high traffic volumes are neither rare nor odd, but are rather commonplace. FreeConferenceCall.com, for example, is a conferencing service provider that originally worked with numerous rural LECs operating in areas with high access rates for high-volume inbound calling capability. Today, FreeConferenceCall.com hosts its services at a number of different LECs, some of which would classify themselves as “access stimulators” per the FCC’s definition and some of which apparently would not and are on the record stating so.⁹ Specifically, companies like Inteliquent and others host FreeConferenceCall traffic, as well as other toll conferencing company competitors (both free and paid) to FreeConferenceCall.

Despite being hosted at a rural “access stimulator” LEC or not, the high-volume application of FreeConferenceCall is the same application hosted at all LECs. Similarly, others have described the relationship between T-Mobile and Inteliquent as an access arbitrage relationship whereby the two companies work together to increase access revenue on T-Mobile’s points of ingress.¹⁰ HD Tandem believes a comprehensive solution to the issue of access stimulation requires these ‘intermediate-to-CMRS’ arrangements be defined as access stimulation.

Furthermore, despite implementation of the Transformation Order, certain interexchange carriers continue to complain about revenue sharing arrangements among CLECs and high volume applications,

⁸ See *Access Arbitrage NPRM* at ¶ 2.

⁹ See Reply Comments of Inteliquent, Inc., Parties Asked to Refresh the Record on Inter-carrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit, WC Docket No. 10-90; CC Docket No. 01-92, *Public Notice*, DA 17-863 (rel. Sept. 8, 2017) (filed Nov. 20, 2017) at 2.

¹⁰ See Letter from Klein Law Group to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed June 1, 2018) at 2.

regardless of the fact that revenue sharing arrangements are commonplace in the industry. For example, some carriers behavior suggests that access and revenue sharing on volume applications such as toll conferencing is not access stimulation if hosted in Colorado or Ohio, yet apparently becomes access stimulation when hosted in Iowa or South Dakota. HD Tandem will not spill a great deal of ink describing the obvious benefits of these arrangements for rural constituencies; but they include providing a source of support for rural LEC buildout in the service of their broadband consumers. Furthermore, high-volume applications will not be going away, but rather they will become more commonplace. It is, therefore, important at this stage in the regulatory process for the FCC to promote a stable regulatory environment for the continued development and innovation of such pro-consumer high volume applications, and subsequently drive the IP Transition, rather than stifle their growth due to an outdated intercarrier compensation model.

B. The Commission Should Broaden the Definition of Access Stimulation

HD Tandem believes the FCC should broaden the definition of access stimulation to apply to any carrier with a call path that assesses access charges of any kind (shared or not) and unreasonably refuses to direct connect, or its functional equivalent, with other carriers with reciprocity. HD Tandem believes that this definition will encourage more direct connections which, in turn, will facilitate the deployment of innovations such as HD-enabled VoIP.

To address this definitional issue, some historical recollection is required. So called "access stimulation" first came about in rural areas where small phone companies would make a deal with a high volume application, such as FreeConferenceCall.com. This relationship created tensions in the intercarrier compensation system due to the combination of high volumes in high priced access service areas. The FCC's efforts to address access stimulation in the Transformation Order, then, appropriately targeted the rural/urban pricing disparities. These efforts, however, did not resolve all issues. Companies not engaged in access stimulation (as identified by the FCC's policy statement preceding the solution) were accused of the practice by other carriers, who then engaged in "self-help" measures (which crippled the revenue flows of those on the receiving end of such measures). In addition, the "lowest priced price

cap LEC” pricing standard left room for wide variations in interpretations, thereby enabling carriers to claim tariffs not satisfying a particular interpretation were invalid.

A recent decision in Federal court illustrates the problem well. Peerless, a large intermediate service provider, was accused by Verizon of being an access stimulator and not tariffing its access rates accordingly.¹¹ Judge Durkin was presented with the evidence on both sides and came to the following conclusion (emphasis added):

The Court finds that Verizon is not entitled to summary judgment on its access stimulation argument because that issue depends on the resolution of **numerous interpretative questions** concerning, among others, the FCC’s definition of an “access revenue sharing agreement,” and the proper methodology for identifying the benchmark rate of the “price cap LEC with the lowest switched access rates in the state.” *See* 47 C.F.R. §61.26(g)(1); *see also* R. 162 at 17–18; R. 236 at 10, 12. **The parties present dueling evidence** on these issues. **It is clear from the record that guidance is needed from the agency that devised the access stimulation rule as to how to interpret and apply that rule.** Verizon recognizes as much when it argues that, in the alternative to resolving the issues raised in its summary judgment motion, the Court should refer those issues to the FCC under the primary jurisdiction doctrine. *See* R. 178 at 30–31.¹²

In this case a Federal Judge was unable to use the FCC’s access stimulation rules to determine which side should prevail in this dispute without guidance from the FCC. This case was between major carriers about applying the current access stimulation rules to require (or not) a *reduction* in switched access charges and it involved years of disputes, litigation, and unlawful self-help. How much more would this occur if the existing access stimulation triggers- which could not bear the relatively modest

¹¹ *PEERLESS NETWORK, INC., et al., Plaintiffs-Counterclaim Defendants, v. MCI COMMUNICATIONS SERVICES, INC., VERIZON SERVICES CORP., and VERIZON SELECT SERVICES, INC., Defendants-Counterclaim Plaintiffs*; United States District Court, N.D. Illinois, Eastern Division; March 16, 2018.

¹² *Id* at 21-22.

load of the above case- were asked to bear the much heavier and complex load of complete *access rate reversal* for companies accused of being an access stimulator and not “accepting” direct connects?

The Commission is also seeking comment on the related definitional issue to define “intermediate access provider” as “any entity that carries or processes traffic at any point between the final interexchange carrier in a call path and the carrier providing end office access service.”¹³ HD Tandem does not object to this definition to the extent it is adopted in furtherance of a comprehensive solution to the issues described in the NPRM.

IV. THE COMMISSION SHOULD ADOPT A COMPREHENSIVE, CLEAR APPROACH TO THE ISSUE OF ACCESS STIMULATION

While HD Tandem is confident that its IPHT solution would work as a practical solution, HD Tandem appreciates the opportunity to comment on other solutions proposed by the FCC in the NPRM. Specifically, the FCC proposes “to provide access-stimulating LECs the option to offer to connect directly to the IXC or an intermediate access provider of the IXC’s choice.”¹⁴ HD Tandem agrees with the FCC that direct connections would work to eliminate arbitrage.

A. The Commission’s Solution Should Be Reciprocal in Nature

The missing key element, however, is **reciprocity** – HD Tandem seeks mutual traffic exchange with **reciprocal** arrangements with originating carriers. While many carriers have established dedicated connectivity with HD Tandem for handing off traffic for termination, these originating carriers have refused multiple requests to direct connect with **reciprocity**. After six years of negotiation efforts, millions of dollars of investment in the installation of broadband VoIP routes and network equipment that carry 70% of all traffic destined for rural LECs, not a single originating carrier has connected with HD Tandem on a full reciprocal basis. If an intermediate provider offers to aggregate multiple access-stimulating LECs, providing multiple convenient HD-enabled drop-offs, HD Tandem therefore believes

¹³ See *Access Arbitrage NPRM* at ¶13.

¹⁴ *Id* at ¶ 14.

that these connections should be reciprocal so that both carriers bear the cost of their own network and use reciprocal arrangements to achieve sustainable bill-and-keep. In addition, they should be governed by a sustainable bill-and-keep regime with a mutually negotiated off-set rate. Finally, in order to expedite the IP Transition, these direct connections should also be IP only - HD enabled.

HD Tandem's network of direct connections works better than individual direct connections by providing additional convenience aggregation redundancy, conversion, transcoding, and fraud detection for carriers looking to connect to LECs that host high volume applications – and can provide the economic shift to mutual traffic exchange, sustainable bill-and-keep economics, and reciprocity for simple, easy, mutual negotiation between carriers.

Simply reversing the economics or charges for access services based on refusal of a direct connect would produce an unsustainable, asymmetric, limited bill-and-keep which would ultimately reverse all of the rural broadband progress and transitioning of old TDM CEA to IP based HD enabled voice that HD Tandem and others have done since the Transformation Order.

B. The Obligation to Interconnect Directly Should Apply To Interexchange Providers, Access-Stimulating LECs, and Intermediate Providers

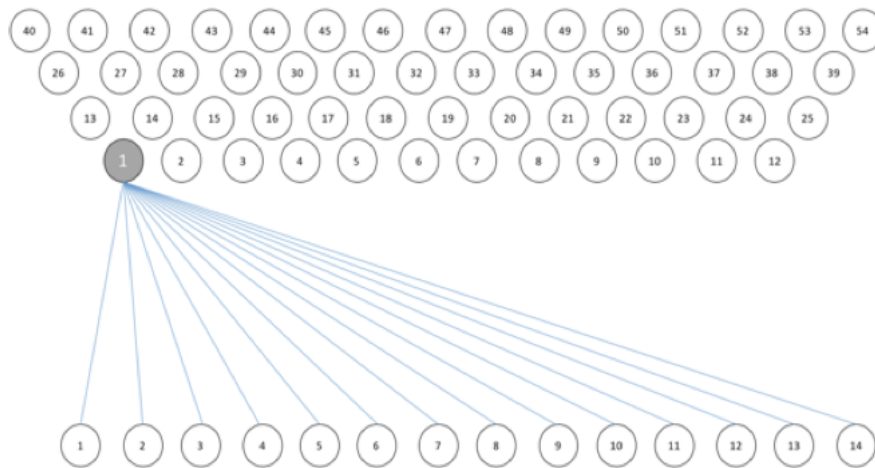
At the outset, HD Tandem would like to correct the NPRM's apparent misunderstanding regarding the willingness of HD Tandem and other similarly-situated providers to offer direct connections. As stated above, HD Tandem has offered direct connections to CLECs hosting high volume applications, since the 2011 Transformation Order. Put simply, the FCC's record of access stimulating LECs denying direct access is not supported by the record.

As a threshold legal matter, HD Tandem agrees that the FCC can find its authority to enlarge the obligation to provide direct connections pursuant to Section 251(b)(5). Furthermore, HD Tandem believes that Congress enshrined reciprocity in the sections 251 obligations. HD Tandem agrees with the FCC that an appropriate direct connection regime would eliminate arbitrage of all kinds between carriers and HD Tandem.

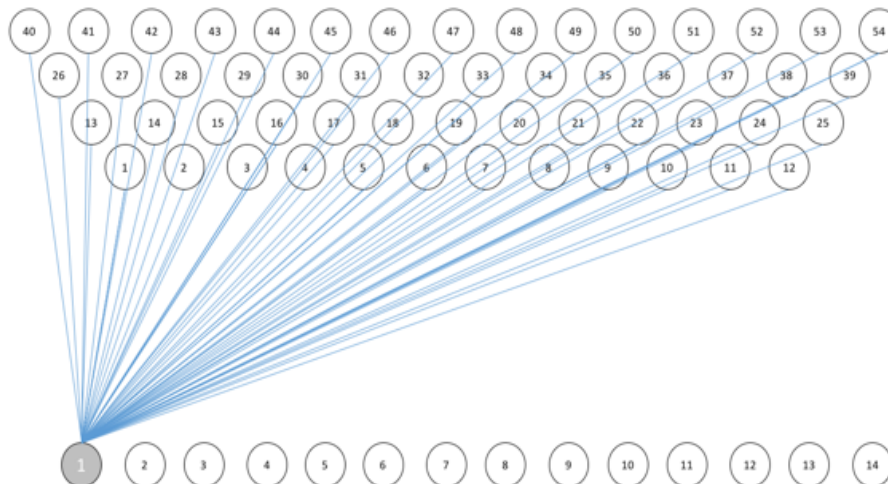
The NPRM appears to believe certain LECs hosting high-volume applications with routes homed to CEA refuse direct connects. HD Tandem disagrees – there is zero evidence of this – and HD Tandem's network is proof of the alternative – direct connections are being offered and accepted. HD Tandem has asked for and received direct connects from 14 different LECs that host High Volume applications. HD Tandem aggregated numerous LECs hosting high volume applications then offered conveniently located “Edges” or Points of Interconnection (POIs) in major cities such as Los Angeles, Miami, Chicago and Sioux Falls. In some cases HD Tandem extended the connectivity to the edge of the originating carriers network.

The challenge of directly connecting LECs serving high-volume applications with originating carriers and the rest of the PSTN is not a small one. Aggregation, redundancy, technical sophistication and efficient economic relationships are necessary to ensure that the consumers of originating carriers reach their intended end point. After adding valuable redundancy that is not found in traditional direct connects, aggregating multiple LECs can be a challenge because of the location and low-teledensity of these serving LECs. HD Tandem has worked to provide convenient drop-offs / POIs that balance the interests of originating carriers and serving LECs. HD Tandem routinely seeks direct connection with originating carriers, with symmetrical traffic flows. After 6 years of pursuit, millions in investment, the installation of broadband VoIP routes that carrier **70% of the traffic to high volume applications** – still not a *single* originating carrier has connected to HD Tandem in a true, end-to-end reciprocal bill and keep arrangement. Not a single originating carrier appears willing to connect at the terminating LEC's switch. When one gets underneath the concerns of originating carriers you are left with the feeling that, in spite of their protests to the contrary, they simply would rather not have to bother with direct connect relationships that, to them are “out in the middle of nowhere.”

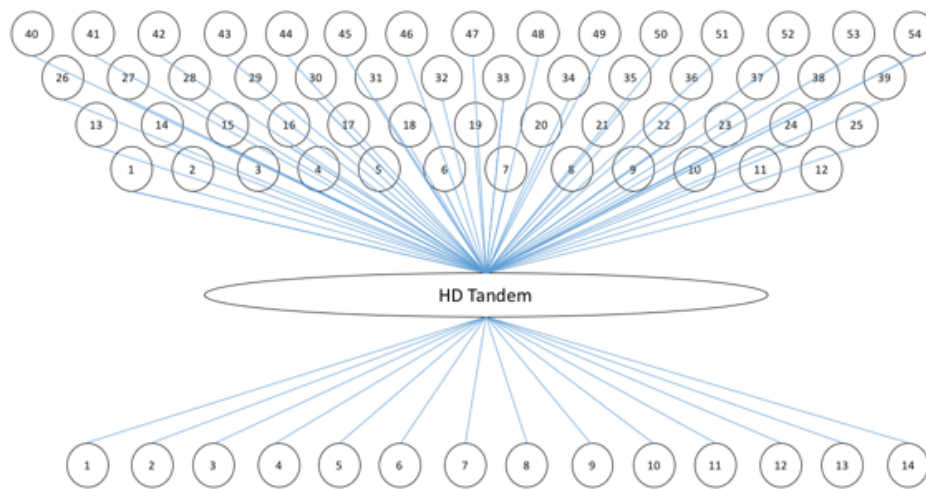
Even if the parties wanted to directly connect down to the terminating LEC, it may simply be too cumbersome in these cases. Each of the 54 carriers HD Tandem works with would have to establish 14 separate direct connect arrangements:



Each terminating LEC would have to establish 54 separate arrangements to accommodate all of HD Tandem's carrier customers:



Or, the 756 (14 LECs connecting to 54 carriers) total connections required under 756 individual direct-connect arrangements negotiated between two competing companies could be handled by the IPHT proposed by HD Tandem with just 68 connections.



The Commission should be aware that whatever rule is announced in this proceeding, it will have a material effect on the bargaining over the details of a direct connect relationship. The Commission should balance economic efficiency - from the perspective of the originating carrier - with the reality that terminating LECs should not be forced into having one network edge or point of interconnection for every originating carrier's unique needs. The public interest requires some kind of smoothing of different network needs across the range of interconnectors.

It should be noted that direct connection terms are offered in most LEC tariffs and it should not be the LEC's burden to solve a situation where originating carriers really do not want to connect directly but instead, use this idea only as negotiation tactics. The Commission should be careful to not unwittingly become part of the originating carriers' negotiation tactics by shifting economic responsibility of intermediate carriers based on the simple assertion that originating carriers want to directly connect but the LECs refuse. In HD Tandem's experience, the instances of direct access denials by terminating LECs is not common. What is common is that originating carriers use the prospect of direct connections as a negotiation tool - not an actual plan to implement direct connections.

Direct connection between two carriers with reciprocity means the resulting terms are negotiated because they offer mutual benefits and burdens with each carrier recovering the cost of their own

respective networks. As discussed in section V below, the FCC has some institutional knowledge of the reasons that interconnection negotiations break down and in other related contexts, has defined a set of procedural and good faith negotiation norms to put some stripes on the field of these negotiations.¹⁵ HD Tandem suggests that the FCC should define in this docket what a bad faith refusal to connect directly looks like. By setting some regulatory parameters around the most difficult sticking points in a direct connection negotiation, the FCC can avoid becoming conscripted into originating carrier bargaining strategies and instead, perform its proper role as a facilitator of efficient interconnection relationships - defining out of bounds those positions which frustrate widespread direct connections or their equivalents.

For example, the Commission could declare that if a company like HD Tandem supplies terminating LECs with a network edge/POI that aggregates at least five such LECs, then the refusal of an originating carrier to directly connect at that POI is *per se* unreasonable and subject to enforcement by the Commission. Additionally, the Commission could define a set of consumer-facing benchmarks regarding connection quality, utilization rates or other resource constraints that should act as baselines for a direct connection relationship. Given the transition to an IP-enabled public network, HD Tandem would support a Commission rule which defines as an essential part of this direct connection enabled relationship, the ability to translate and convert voice protocols to ensure that all consumers experience the high quality that users of the PSTN have come to expect.

In no case, however, should the FCC impose the penalty of reversing the economics (or the responsibility to pay the access charges themselves) of a given interconnection offer or arrangement. Such an approach flies in the face of appropriate baselines for good interconnection practices and therefore the Commission should be slow to impose such a draconian reversal on a party who is seeking to interconnect in good faith.

¹⁵ In the Matter of Technology Transition Policy Task Force, Before the Federal Communications Commission, GN Docket No. 13-5, July 8, 2013.

Finally, the Commission has identified a subset of access stimulation which it refers to as ‘mileage pumping’. Because LECs and intermediate access providers receive greater compensation from IXCs the further the LEC or intermediate access provider carries the traffic to reach a POI with the IXC, some commenters allege that LECs have changed their POI with IXCs for the sole purpose of artificially inflating their per-MOU, per-mile transport rates and revenue.¹⁶ As described above, entities such as HD Tandem offer customized points of interconnection to ensure that originating and terminating carriers establish efficient arrangements. HD Tandem does not artificially inflate per-MOU or per-mile transport rates and revenue.

C. The Principle of Reciprocity Should Apply to a Nationwide Policy of Bill and Keep

The Commission’s access reform initiatives have a long and complicated provenance. For more than twenty years, the FCC has sought to move access rates toward economically rational levels while protecting consumers, particularly rural consumers, along the way. The history of this proceeding is so long that today, we may have forgotten about a few of foundational principles underlying pro-consumer access charge reform. HD Tandem submits that the principle of reciprocity should guide the agency in this docket.

Economists have long supported reciprocal interconnection policies because they tend to establish efficient outcomes and generally support competitive outcomes.¹⁷ The text and structure of the statute itself establishes ‘reciprocal’ compensation arrangements in Section 251(b)(5). Reciprocity must be a theme in any intercarrier compensation arrangement in that it ensures a mutually negotiated symmetrical benefit for both carriers seeking connection. In addition, reciprocity will help eliminate arbitrage, billing disputes, self-help gamesmanship, litigation and never-ending FCC proceedings and actions. Finally, reciprocity is a cornerstone to the self-professed "end state" goal of bill-and-keep. Without reciprocity, bill-and-keep is not a sustainable "end state" solution.

¹⁶ See *Access Arbitrage NPRM* at ¶ 32.

¹⁷ See e.g., [Strategic Commitments and the Principle of Reciprocity in Interconnection Pricing](#), Nicholas Economides, Giuseppe Lopomo and Glenn Woroch.

V. THE COMMISSION SHOULD PRIORITIZE CLEAR ENFORCEABILITY AND THE RECOGNITION OF NO-PAY SELF HELP AS AN URGENT PROBLEM

Given the imprecision in the Commission's existing triggers, the problem of no-pay self-help has become rampant. Millions of dollars - perhaps hundreds of millions of dollars industry wide - are currently being held hostage to the demands of originating carriers leveraging regulatory uncertainty. The NPRM notes "[t]he Commission also found that access stimulation diverts "capital away from more productive uses such as broadband deployment."¹⁸ Far from diverting resources from broadband, these resources are being held up in frivolous self-help litigation and could be deployed to investments in developing other innovative services - which is the key driver to stimulating broadband demand.

This problem must be addressed through the full-throated exercise of the Commission's jurisdiction to resolve interconnection disputes. The Commission can have confidence that its statutory power and institutional competency are at their apex when policing the interconnection relationship to ensure a healthy market. The gnomon of healthy interconnection markets is the widespread and increasing adoption of reciprocal bill and keep arrangements at the access tandem or other POI. The agency has available to it a useful model when thinking about enforcement methods in this area. It has already defined the good-faith requirements for interconnection in Section 252 of the Act and there is no reason to believe that this norm could not apply to the current direct connection (and partner-facilitated direct-connect) scenario described at Section II. By utilizing good faith benchmarks, burden shifting, and sure enforcement, the Commission can act in a way that fosters efficient direct, or partner-facilitated direct equivalent, interconnection arrangements. Many throughout the industry have recognized the importance of pro-competitive interconnection. Moreover, it is not automatic that the Commission would necessarily require the states to involve themselves in this area due to the inherently interstate nature of IP

¹⁸ See *Access Arbitrage NPRM* at ¶ 36

enabled services. Well-defined standards and procedures, developed through the 252 process, could provide a blueprint - a guide - for clear enforcement standards in this docket.¹⁹

VI. CONCLUSION

HD Tandem respectfully requests that the Commission adopt rules in this proceeding that are consistent with the views described in this pleading.

Respectfully submitted,

Dave Erickson

CEO

HD Tandem

¹⁹ HD Tandem recognizes that the 252 process was targeted at incumbent LECs. Here HD Tandem suggests exporting what makes sense from that process to manage the interconnection relationship with regard to access stimulation.