

**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	)	

**REPLY COMMENTS OF INTELIGENT, INC.**

Inteligent, Inc. (“Intelligent”), by counsel, files these reply 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> In these reply comments, Intelligent reiterates its support for the Commission’s efforts to curb arbitrage schemes and the access stimulation practices that make them possible.

First, the record reflects substantial agreement that arbitrage schemes perpetrated by a handful of high-volume calling platforms, their affiliated networks, and their LEC partners remain a problem. To combat these problems, the Commission should adopt a 10-mile cap on mileage for access stimulation traffic and pursue enforcement action and other remedies against new forms of arbitrage that leverage call blocking schemes to drive up profits from access stimulation. Intelligent also agrees with AT&T and others that the second prong of the proposed rule should be revised to prevent access stimulating LECs and their high-volume calling partners from avoiding their financial responsibilities simply by offering a direct connect. IXC’s delivering traffic to these access stimulating LECs should retain the option of connecting via the tandem designated in the LERG rather than over the direct connect offered up by the LEC.

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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*).

Second, in contrast to the significant support in the record for curbing actual forms of arbitrage, there is substantial *division* among commenters as to proposals that would alter established industry norms around how carriers interconnect to exchange legitimate, non-stimulated traffic. That division is not surprising, given the substantial legal, operational, and technical challenges presented by new proposals to regulate interconnection across the board. While commenters may have legitimate disagreements over the optimal means of interconnecting, the fact remains that a carrier's choice to interconnect directly or indirectly to exchange non-stimulated traffic is not a form of "arbitrage." The Commission issued the NPRM with the sole goal of "eliminat[ing] access arbitrage," and it should remain focused on that goal as it finalizes rules in this proceeding.

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

The record in this proceeding underscores the wisdom of the Commission's continued focus on curbing access arbitrage schemes enabled by access stimulation. The relatively small group of high-volume calling platforms and CLECs responsible for these schemes cause great financial harm to other carriers and their customers throughout the PSTN. The Commission can make meaningful progress in stopping access arbitrage by taking three simple steps, described below.

First, the record shows that mileage pumping continues to unjustly raise the costs of completing calls. AT&T, for example, explains a mileage pumping scheme in which a CLEC in South Dakota established a remote end office switch "nearly 200 miles from an intermediate tandem switch," and "routes about 7 times the volume of AT&T traffic to a single small town

compared with Qwest for the entire state of South Dakota.”<sup>2</sup> Similarly, Verizon articulated concerns that “high transport charges—along with the mileage pumping that occurs when service providers designate distant points of interconnection to inflate the mileage used to compute the transport charges—remains a widespread and growing practice.”<sup>3</sup>

In light of this consensus that mileage pumping continues to be a problem, as Inteliquent suggested in its Comments, 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.<sup>4</sup> This cap 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. These measures would allow carriers to recover legitimate costs, while reducing the incentive to engage in abusive mileage pumping practices. Because the arbitrage opportunity stems from charges based on per-minute-of-use and per-mile-traveled, the proposed cap would foreclose the current opportunity for a windfall stemming from a practice that provides no benefits to customers and inflates costs.

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<sup>2</sup> See *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Comments of AT&T at 8-9 (filed July 20, 2018) (*AT&T Comments*). Tellingly, the CLEC to which AT&T’s comments refer, Northern Valley, does not attempt to defend its practice of mileage pumping. It instead suggests that “carriers like AT&T and Inteliquent” are to blame for seeking to deliver traffic to access stimulating LECs in more efficient ways that avoid unlawful mileage charges (e.g., through a Direct End Office Trunk (“DEOT”), which is colloquially referred to as a “direct connect”). See *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Comments of Competitive Local Exchange Carriers at 59 (filed July 20, 2018). For the record, Inteliquent has a valid billing dispute with Northern Valley based on that carrier’s mileage pumping practices, and Inteliquent has made *bona fide*, unconditional requests for a DEOT with Northern Valley.

<sup>3</sup> *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Comments of Verizon at 2 (filed July 20, 2018) (*Verizon Comments*) (internal citation omitted).

<sup>4</sup> *Inteliquent Comments* at 5-6.

Second, in this proceeding, and in the *Rural Call Completion* proceeding, Inteliquent has made the Commission aware of a new access stimulation scheme in which high-volume calling platforms and/or their LEC partners intentionally reject the very traffic that they have stimulated.<sup>5</sup> Notably, in South Dakota Network’s (“SDN”) Comments, SDN described the negative impacts it has been experiencing from the same scheme that Inteliquent has described. Specifically, SDN stated that it “has experienced a 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.”<sup>6</sup>

To address the situation where calls delivered down the regulated path are blocked, the Commission should (i) permit IXC’s to choose to deliver access simulation traffic to the terminating LEC by way of a direct connect, and (ii) pursue vigorous enforcement against high-volume calling platforms and their LEC partners that engage in this new form of arbitrage. To provide an additional measure of clarity throughout the industry, the Commission should codify in the code of federal regulations (“CFR”) that a covered provider is not required to reroute a purposely blocked call, such as is happening in this access stimulation scheme.<sup>7</sup> The Commission already has found 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

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<sup>5</sup> See *Inteliquent Comments at 3-5; Rural Call Completion*, WC Docket No. 13-39, Reply Comments of Inteliquent, Inc. (filed June 19, 2018).

<sup>6</sup> *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Comments of South Dakota Network at 2-3 (filed July 20, 2018) (internal citation omitted).

<sup>7</sup> Of course, by extension, if the covered provider is not required to reroute the purposely blocked call, the covered provider’s intermediate carriers are not required to reroute such call.

reasonable efforts to alert that party to the anomaly or problem.”<sup>8</sup> Amplifying this finding by codifying it in the CFR will put high-volume calling platforms on notice that when they block the very calls that they have stimulated, they should not expect upstream providers to reroute the calls to the calling platform’s affiliated carrier.

Third, Inteliquent agrees with AT&T that as drafted, the second prong of the Commission’s proposed rule risks giving access stimulating LECs and their partners the power to avoid their financial responsibilities simply by offering a direct connect.<sup>9</sup> To address this potential loophole, IXCs delivering access stimulation traffic to these LECs should retain the choice of delivering that traffic to the access homing tandem designated in the LERG (versus the direct connect offered by the access stimulating LEC). In those instances where the IXC chooses to deliver traffic using that access homing tandem, the access stimulating LEC is responsible for providing the transport to the tandem switch, and the IXC is responsible for the tandem switching charge. In the event the access homing tandem in the LERG has filed a composite rate, the Commission should make clear that the maximum tandem charge for traffic destined to an end office involved in access stimulation is the incumbent tandem switching rate. Taking these steps will prevent access stimulating LECs and their high-volume calling partners from continuing to impose undue costs on other carriers.

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<sup>8</sup> *Rural Call Completion*, WC Docket No. 13-39, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 18-45 at para. 25 (rel. Apr. 17, 2018).

<sup>9</sup> *See, e.g., AT&T Comments* at 12-14 (“The access stimulating LEC (or its conference and chat line partners) easily could move their traffic overnight to another area – leaving the costly direct connect facilities stranded.”). *See also* Comments of CenturyLink, at 7 (filed July 20, 2018) (*CenturyLink Comments*) (explaining that an access stimulating LEC could abuse the direct connect option in a “cat-and-mouse game” by “simply shift[ing] the traffic to another destination where the IXC does not have a direct connection.”).

## **II. THE COMMISSION SHOULD REMAIN FOCUSED ON ADDRESSING ACCESS ARBITRAGE IN THIS PROCEEDING.**

The Commission has before it straightforward policy solutions to curbing persistent forms of access stimulation and the arbitration problems they create. Inteliquent urges the Commission to seize upon the near-consensus in the record for addressing these arbitration problems, and not to miss this opportunity by adopting broader rule changes—outside of the access stimulation context—that would raise significant legal, operational, and practical challenges.

Verizon and T-Mobile, for example, discourage the Commission from attempting to adopt new interconnection mandates outside of the access arbitration context.<sup>10</sup> Inteliquent agrees with Verizon and T-Mobile, among others, that this NPRM—which is expressly intended to address access arbitration—is not the right forum to explore these other questions. Inteliquent looks forward to continuing to engage with stakeholders and the Commission to identify and solve persistent access stimulation and resulting arbitration problems, and it hopes that the Commission will remain focused on these goals in this proceeding.

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<sup>10</sup> *Verizon Comments* at 6 (“[T]he rule, as the Commission proposes, [should be limited] to access stimulators. And the Commission should not expand the rule . . . to all LECs.”); *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Comments of T-Mobile at 15 (filed July 20, 2018) (arguing against the Commission “go[ing] beyond its access stimulation proposal and requir[ing] LECs to either accept a request for direct interconnection for the purpose of terminating access traffic or bear financial responsibility for the costs of receiving traffic from the point of interconnection”).

## **CONCLUSION**

Inteliquent supports the Commission's efforts to curb access stimulation and the arbitrage opportunities it creates. By (i) capping the amount of mileage that can be charged for tandem transport at ten miles for access stimulation traffic, (ii) providing interexchange carriers with the option of delivering access stimulation traffic to the tandem of record in the LERG or by way of a direct connect with the terminating LEC, (iii) codifying the finding that IXC's and intermediate carriers are not responsible for route advancing traffic that is intentionally blocked by another party on the regulated path, and (iv) remaining vigilant about emerging schemes, the Commission will be in the best position to combat abusive practices. Critically, these goals can be achieved without diverting attention to interconnection mandates outside of the access arbitrage context.

Respectfully submitted,

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