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

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

REPLY COMMENTS OF AT&T

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August 3, 2018

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Pursuant to the Commission's Public Notice, dated July 2, 2018, in the above-captioned proceeding,[1] AT&T Services, Inc. ("AT&T") submits these reply comments.

INTRODUCTION

The comments filed on July 20 provide near consensus that access stimulation arbitrage is rampant and continues to harm consumers. Indeed, two Centralized Equal Access ("CEA") service providers – service providers that the NPRM identifies as potentially linked to much of the current access stimulation arbitrage[2] – have gone so far as to ask that the practice of access stimulation be prohibited.[3] The only parties that oppose the Commission taking any action on

[1] Public Notice, Wireline Competition Bureau Announces Comment Dates For NPRM On Updating The Intercarrier Compensation Regime To Eliminate Access Arbitrage ("NPRM"), WC Docket No 18-155 (July 2, 2018).
[2] The NPRM notes that recent complaint activity suggests that much of the post-*USF/ICC Transformation Order* access arbitrage activity specifically involves LECs that use centralized equal access (CEA) providers to connect to IXCs. NPRM, ¶ 7.
[3] *See* Comments of Iowa Network Services, Inc. d/b/a Aureon Network Services (INS) at 4-8; Comments of South Dakota Network, LLC., at 3 (characterizing access stimulation as an 'unlawful' and an 'unjust and unreasonable practice.'). While a stunning recommendation, the 'devil is in the details.' AT&T agrees that the most effective solution to stop access stimulation arbitrage may be to ban the practice outright but that should not be tied to shoring up the CEAs' monopoly. For example, INS conditions its request that access stimulation be banned on the Commission enforcing the CEA mandatory use requirements and enabling the CEA providers to raise their rates should they suffer any loss in traffic volumes. INS Comments at 9-19. As AT&T's comments make clear, the mandatory use provisions are improper and should be rejected.

access stimulation are the access stimulating local exchange carriers ("LECs") who claim, not-surprisingly, access stimulation is beneficial. These statements of self-preservation do nothing to override the findings of harm the Commission reached in 2011, and upheld by the courts,[4] and clearly do not change the fact that billions of minutes-of-use and millions of dollars continue to be wasted on access traffic pumping schemes.[5]

Accordingly, AT&T urges the Commission proceed with its proposal to place the financial responsibility on an access-stimulating LEC so it, rather than interexchange carriers (IXCs), pays for the delivery of calls to its end office or the functional equivalent. This part of the rule would reduce the current incentive to locate the equipment used to provide conference and chat services at remote locations for no reason other than to bill improper intercarrier compensation. The Commission also should make clear that CEA service providers are CLECs for purposes of the Commission's traffic pumping rules. However, the Commission should not allow the access stimulating LEC a free pass by being able to make the IXCs responsible for all the additional costs of establishing direct connections and the delivery of the access stimulation traffic. Such a requirement will not do anything to stop the arbitrage abuse.

Additionally, AT&T disagrees with those commenters that argue the Commission should confine its reforms to just access stimulation. The NPRM appropriately raises concerns

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[4] *Connect America Fund, et al.,* 26 FCC Rcd. 17663, ¶ 663 (2011) ("*Transformation Order*") ("Access stimulation imposes undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment."); *see also* Notes 21-28 below.

[5] As AT&T indicated in its Comments (p. 10), AT&T estimates the industry and consumers continue to be burdened by wasteful schemes totaling 8.2 billion minutes-of-use annually, with a resulting cost of almost $80 million annually – notwithstanding that more than six years have passed since *Transformation Order* reforms and the transition to bill-and-keep on terminating access is nearly complete. The claim that large interexchange carriers like Verizon and AT&T have the financial wherewithal to eat these otherwise illegitimate costs would be laughable if it were not part of a claimed expert economic analysis trying to prove the overriding benefits of arbitrage. This analysis is without merit. Access stimulation harms consumers and investments. Ill-gotten gains, even if used for good purposes (which is not the case here) – are still ill-gotten gains. *See Transformation Order*, ¶¶ 662-64; *id.* ¶ 666 & n.1098.

regarding other arbitrage schemes involving mileage pumping and daisy chaining. The Commission can and should act to end these arbitrage abuses. A direct connect requirement, similar to the one proposed by CenturyLink,[6] would put an end to these non-access stimulation arbitrage schemes.

I. HOLDING ACCESS STIMULATING LECs FINANCIALLY RESPONSIBLE FOR THE COSTS OF DELIVERING ACCESS STIMULATION TRAFFIC WILL CURTAIL ACCESS STIMULATION ABUSE.

Many commenters join AT&T in supporting the first prong of the NPRM's proposed rule – making access stimulating LECs responsible for the costs of the transport and delivery of access stimulation traffic to their end offices.[7] By requiring the access stimulating LEC to bear the costs of transporting such calls from the IXC's network to the LEC's end office switch, the Commission not only would reduce the current incentive to locate the equipment used to provide conference and chat services at remote locations but also would appropriately assign the costs of transporting these types of calls to the access stimulating LEC, the conference or chat provider and/or the users of such services.

Despite this general support for the first prong of the rule, there is not the same level of support for the second prong of the rule – which would allow the access stimulating LEC to avoid accepting financial responsibility for the delivery of the access stimulation traffic by allowing the IXC to direct connect with its network. In its Comments, AT&T argued that the second prong would enable access stimulating LECs to avoid entirely the impact of the

[6] *See Ex Parte* Letter to Marlene H. Dortch, Secretary, FCC, from Timothy M. Boucher, CenturyLink, CC Docket No. 01-92, *et. al.*, (May 21, 2018) ("*CenturyLink Direct Connect Proposal*").
[7] *See* AT&T Comments at 10-12; Comments of NCTA – The Internet & Television Association at 2; Comments of NTCA – The Rural Broadband Association at 2-3; Comments of ITTA – The Voice of America's Broadband Providers at 1-2; Comments of Verizon 4-6; Comments of CenturyLink at 8-9. *See also* Comments of Peerless Network, Inc. and Affinity Network Inc. d/b/a ANI Networks at 10-11 (advocating that the rule be limited to apply to LECs subtending CEA networks).

Commission's proposed reforms by: locating the POI where a direct connection is either not available or is only available at an exorbitant price (or by changing the location of its POI after the direct connection is built out); stranding IXC facilities after an IXC undertakes a costly build out by merely moving traffic; and incentivizing access stimulating LECs to locate the conference and chat equipment at even more remote (and costly to reach) locations.[8] Several commenters echo these concerns.

As CenturyLink describes, "a rule that requires the IXC to bear the burden to get traffic to the traffic-stimulating LEC, even if it can choose how, merely gives the IXC a choice of which wasteful way it wishes to spend resources."[9] Sprint also opposes the adoption of the second prong of the test, arguing that it "will not eliminate costly transport expenses associated with interconnection at a distant LEC end office" and "may be of only limited feasibility in rural areas where there are no competitive alternatives to the [access-stimulating] LEC's preferred intermediate access partner."[10] Similarly, as ITTA commented, "[p]ermitting access-stimulating LECs to unilaterally decide to accept direct connections in lieu of financial responsibility threatens to introduce more loopholes that could undermine the *NPRM's* intention of thwarting incentives to engage in arbitrage . . .."[11] The Commission should therefore eliminate the second prong in the final rule it adopts *unless* the Commission takes the additional step of placing the

[8] AT&T Comments at 13-14.
[9] CenturyLink Comments at 7.
[10] Comments of Sprint Corporation at 2.
[11] ITTA Comments at 3. As ITTA notes, a key deficiency in the NPRM's proposed second prong is that it allows the access-stimulating LEC to choose whether it will provision or require the IXC to provision the transport for the delivery of the access stimulation traffic. *Id.* at 4. "There is no cause for the Commission to place its emphasis on the welfare of entities that have long been flouting the ICC system to seize upon arbitrage opportunities that 'harm consumers, undermine broadband deployment, and distort competition'[ ]". *Id.*

financial responsibility for those direct connect costs on access stimulating LECs that inefficiently require transport to remote locations.[12]

Finally, many of the comments confirm that CEA service providers, specifically their claimed 'mandatory use' monopolies, are in many cases a significant enabler of the current access stimulation problems. Sprint opposes the mandatory use concept, arguing that mandated routing through CEA service providers is inefficient and anticompetitive.[13] Similarly, Wide Voice argues that "[b]reaking the CEA monopoly makes sense" and that access-stimulating LECs be permitted to choose alternative tandem providers.[14] One CEA requests the Commission establish a rule prohibiting access-stimulating LECs from using CEA tandems as tandem providers and that carriers engaged in access stimulation, even those subtending a CEA service provider, must accept requests for direct connect.[15]

The Commission has already found CEA service providers to be CLECs for purposes of the *Transformation Order* Rules.[16] That same finding should apply to the access stimulation rules and, by extension, the role CEA service providers' alleged mandatory use policies play in access stimulation. There is absolutely no authority or Commission precedent suggesting that the Commission has a "mandatory use" policy to terminate traffic to any CLEC (let alone a

[12] Verizon expresses support for both prongs of the rule, arguing that they are "consistent with the principle that the carrier making the routing decision should be responsible for the financial consequences." Verizon Comments at 5. That principle (that the carrier making the routing decision should be responsible for the financial consequences), however, is the very reason why the second prong of the test should not be adopted with regard to access stimulation traffic. In the access stimulation scenario, traffic volumes are purposefully inflated and IXCs cannot block traffic to access-stimulating LECs or pass on the inflated costs of transport to the callers, thus distorting the normal economic incentives that otherwise would come into play for the IXC to decide to seek direct connects or use an intermediary. *See* CenturyLink Comments at 6-7. The access-stimulating LEC is the party causing the traffic anomalies and therefore should remain the appropriate party with the financial responsibility to transport and deliver that traffic.
[13] Sprint Comments at 5.
[14] Comments of Wide Voice LLC at 10-11. *See also* Comments of Inteliquent, Inc. at Note 2 wherein it notes that its CEA, MIEAC, does not prohibit IXCs from connecting directly with subtending LECs.
[15] *See* SDN Comments at 2, 4.
[16] AT&T Comments at 18. *See also* Inteliquent Comments at 3 conceding that CEAs are CLECs for purposes of access charge rules and therefore subject to the Commission's rate cap and parity requirements.

CLEC involved in access stimulation). CEA service providers should not be allowed to maintain any claims that they have an interconnection monopoly, particularly for access stimulation traffic by CLECs.[17]

II. THE COMMISSION HAS ALREADY CORRECTLY DETERMINED THAT ACCESS STIMULATION IS A "WASTEFUL ARBITRAGE SCHEME" THAT HARMS CONSUMERS AND COMPETITION, AND THERE IS NO BASIS FOR RECONSIDERING THAT CONCLUSION.

One set of comments – a group of many of the nation's largest traffic-pumping LECs – contends that there is "no evidence" either to support further reform or even to conclude that access stimulation has harmed consumers and the public interest; these companies have submitted a so-called "expert" economic report that purports to back these claims.[18] These pro-traffic-pumping arguments are a complete non-starter. Traffic-pumping LECs have been making these same arguments for more than a decade, relying on the same type of economic "evidence."[19] No entity – including the Commission – has ever accepted these claims, and the Commission should again flatly reject them in this proceeding.

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[17] INS requests that the Commission specifically affirm INS' ability to force IXCs to use its service to reach rural ILECs. "[T]he Commission should continue to require IXCs to pay CEA service, consistent with Aureon's Section 214 authorization, which concluded that CEA intercarrier compensation 'will serve the public convenience and necessity.'" INS Comments at 7. INS also claims that enforcement of the alleged mandatory use policy is necessary to ensure continued affordable access to broadband and other advanced telecommunications service. *Id*. at 13. As discussed in greater detail above, (*see Section II, supra)* this argument is a red herring. While expanded rural broadband deployment obviously is an important goal, the Commission has previously rejected claims that because access stimulation revenues are supporting broadband deployment they should be allowed to be collected. *See Transformation Order* ¶ 666 ("Although expanding broadband services in rural and Tribal lands is important . . . how access revenues are used is not relevant in determining whether switched access rates are just and reasonable in accordance with section 201(b)."). IXCs and their consumers should not be forced to subsidize rural broadband deployment through arbitrage schemes – no matter how laudatory the goal. Rather, as the Commission has held, there are specific subsidy programs and funds created to spur broadband investment and deployment in rural and high-costs areas (*id*.). Those explicit subsidy programs, rather than access stimulation windfalls, should be used to expand broadband investment and deployment in rural areas.

[18] *See* Comments of BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communication Corporation, Northern Valley Communications, LLC, and Louisa Communications, Parts I.A-H. ("BTC/CLECs Comments"); Expert Report of Oliver Grawe.

[19] In 2010, proponents of traffic pumping submitted a similar "fact report," which purported to be a study of the "economic impact" of free chat and conference services. *See* Fact Report, Alan Pearce, *et al*., March 2010, available at https://www.fcc.gov/ecfs/filing/6015540445. As discussed herein, the Commission rejected the views in this report. *Transformation Order*, ¶¶ 648-666.

In 2011, in light of several years of first-hand experience with traffic-pumping schemes and after soliciting a complete record, the Commission evaluated claims very similar to those advanced today by BTC/CLECs. The Commission rejected claims that access stimulation was beneficial and instead concluded that access stimulation had multiple "adverse effects" and that "immediate" action was necessary to "curtail" such schemes.[20] The public interest harms of access stimulation that the Commission identified included the following:

- Access stimulation is a "wasteful arbitrage scheme[]" that "imposes undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment."[21]

- Because the intercarrier compensation rates billed by traffic-pumping LECs did not account for the lower costs of handling large volumes of traffic, traffic-pumping LECs were making "inflated profits" and almost invariably charged "unjust and unreasonable" rates that violated 47 U.S.C. § 201(b).[22]

- Under the access stimulation business model, all ordinary subscribers of long distance and wireless service are compelled to subsidize implicitly the costs of free or low cost calling services used by some consumers.[23]

- Access stimulation "also harms competition by giving companies that offer a 'free' calling service a competitive advantage over companies that charge their customers for the service."[24]

- Access stimulation harms IXCs and wireless carriers, because when these "carriers pay more access charges as a result of access stimulation schemes" (or incur excessive litigation costs to fight such schemes), "the amount of capital available to invest in broadband deployment and other network investments that would benefit consumers is substantially reduced."[25]

In describing these harms, the Commission also rejected the claim that they should be tolerated as an acceptable means of promoting the expansion of broadband services to rural

[20] *Transformation Order*, ¶¶ 33, 649, 662.
[21] *Transformation Order*, ¶¶ 648, 663.
[22] *See Transformation Order*, ¶¶ 657, 662.
[23] *Id.* ¶ 663; *see id.* ¶ 656.
[24] *Id.* ¶ 665.
[25] *Id.* ¶ 664.

areas.[26] Other agencies have reached similar conclusions,[27] and the courts have uniformly endorsed the adverse findings by the Commission and these other agencies.[28]

Based on these findings, and the ample record evidence since 2011 that access stimulation has not been curtailed, the Commission's proposed new rules attempt to close remaining loopholes that have allowed such access stimulation schemes to continue.[29] In their comments, the BTC/CLECs do not deny that they have refused to curtail their access stimulation practices, and that they continue to engage in this "wasteful arbitrage scheme." Rather, they brazenly assert that the Commission lacks authority to take further action, claiming that there is "no evidence" that access stimulation is harmful. These claims should be rejected.

First, the BTC/CLECs assert that there is no "evidence" that access stimulation harms consumers, because the Commission has not investigated any IXC, or otherwise quantified whether the inflated access charges of traffic pumping LECs are in fact being passed onto

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[26] *Id.* ¶ 666.

[27] *See, e.g.*, Final Order, *Qwest v. Superior Tel.* Docket No. FCU-07-2, at i, 58-59 (Iowa Utils. Bd. Sept. 21, 2009) (access stimulation was "an abuse" that produces an "unreasonable rate"); *In re High Volume Access Service*, Docket No. RMU-2009-0009 (Iowa Utils. Bd. June 7, 2010) (adopting rules that require negotiated rates before access stimulation, because it is a "serious problem for the telecommunications industry in Iowa"); Report and Order, *In re Certificate of Authority of All American*, Docket No. 08-2469-01, 2010 WL 1731201 (Apr. 26, 2010 Utah P.S.C.) (access stimulating LEC "provides no benefit to the general welfare nor encourage[s] economic growth in Utah;" the traffic pumping service "increases the cost of telecommunications to the customers of [IXCs] in the state and provide[s] no significant benefit," and the LEC's CEO "admitted that ultimately, the free conference calling service . . . is not free at all, but is paid for by the IXC's, whose customers are the general ratepayers").

[28] *See, e.g.*, *Farmers & Merchants Mut. Tel. Co. v Iowa Utils. Bd.*, 829 N.W.2d 190, 2013 WL 535594 (Ct. App. Iowa 2013) (traffic pumping LECs violated tariffs); *Aventure Comm. Tech v. Iowa Utils Bd.*, 734 F. Supp. 3d 636 (N.D. Iowa 2010) (state regulations limiting traffic pumping were valid); *All American Tel. Co. v. FCC*, 867 F.3d 81, 85 (D.C. Cir. 2017) ("It has been said that 'the darkest hour of any man's life is when he sits down to plan how to get money without earning it.' But that does not seem to keep people from trying. Through a scheme known as 'traffic pumping' or 'access stimulation,' some local exchange carriers sought to artificially inflate the number of local calls they could connect, thereby increasing both the call volume and the rates that they could charge interexchange carriers); *Sprint v. Crow Creek*, 121 F. Supp. 3d 905, 923-24 (D.S.D. 2015) (rejecting arguments that access stimulation was lawful: "the FCC did not consecrate the practice of access stimulation. To the contrary, the Commission noted that one of [its] purposes . . . was to 'curtail wasteful arbitrage practices'"); *see also, e.g.*, *Farmers & Merchants Tel. Co. v. FCC*, 668 F.3d 714 (D.C. Cir. 2011); *No. Valley Commc'ns v. FCC*, 717 F.3d 1017 (D.C. Cir. 2013) (both upholding Commission decisions on access stimulation).

[29] *See e.g., NPRM*, ¶¶ 2-3, 6-7, 9.

consumers.[30] This argument is specious. The Commission in the *NPRM* is proposing to close loopholes in its existing rules that have permitted traffic-pumping LECs to continue to engage in a wasteful scheme; it is not necessary in these circumstances for the Commission to conduct "audits" or other investigations of IXCs, consumers, or other intended victims of those schemes, in order to justify closing these loopholes. Nor is it necessary for the Commission to quantify the exact pecuniary harm to consumers (or the precise amount of savings to consumers that resulted from its prior reforms). Access stimulation indisputably creates higher access costs – indeed, the increased access revenues are an essential component of traffic-pumpers' business model (*see Transformation Order*, ¶¶ 656-57). In light of the highly competitive market for long distance services, some material portion of those access costs will necessarily be passed onto consumers under fundamental and incontrovertible economic principles. That is more than sufficient to justify the Commission enacting new regulations designed to limit unnecessary and inflated transport charges imposed on IXCs for access stimulation traffic.[31]

Second, BTC/CLECs argue that the proposed new rules represent a form of additional regulation that cannot be justified on this record, and that certain members of the Commission have pledged to avoid or eliminate additional regulations that are not adequately supported.[32] This argument is a red herring. Traffic-pumping LECs do not want – and have not requested – complete de-regulation of their services.[33] If that were to occur, the Commission's current regulations would be unnecessary. Traffic-pumping LECs would not be able to force IXCs to

[30] BTC/CLECs Comments at 14-21.
[31] In any event, because the Commission's existing rules (and those proposed by AT&T) are premised on the *multiple* adverse effects of access stimulation, *Transformation Order*, ¶¶ 648-666, the Commission could rationally further curtail (or even eliminate) access stimulation even assuming, *arguendo*, that there were no measurable consumer impacts.
[32] BTC/CLECs Comments at 5.
[33] Indeed, in 2016, AT&T proposed that the Commission simply de-tariff transport charges associated with access stimulation charges, and most traffic-pumping CLECs opposed that relief.

take their tariffed services, and IXCs would not be prohibited from blocking calls to traffic-pumping LECs except in very specific circumstances. As the Commission has recognized, high tariffed access charges like those imposed by traffic-pumping LECs are caused in substantial part by these and other Commission rules. In actuality, what BTC/CLECs are seeking is not actual de-regulation, but partial, one-sided regulations – rules that force IXCs to complete calls, but with substantial loopholes that allow traffic-pumping LECs to bill inflated, unnecessary access charges.

Third, BTC/CLECs repeat the arguments that access stimulation promotes rural broadband development.[34] However, BTC/CLECs ignore that the Commission has already found that access stimulation is not a proper means of promoting expanded broadband services in rural areas.[35] Rather, "Congress created an explicit universal service fund to spur investment and deployment in rural, high cost, and insular areas."[36] In any event, the claim that access stimulation promotes development of broadband services in rural areas is baseless. Most notably, traffic-pumpers typically agree to pay at least half, and often much more, of their access revenues to the chat/conference providers. These entities do not even purport to promote any rural telephone services – they simply pocket the profits.[37]

Fourth, BTC/CLECs argue that, in light of the Commission's 2011 reforms, their rates are not that high because they are benchmarked to the lowest-priced price cap LEC in the state.[38]

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[34] BTC/CLECs Comments at 29-31.
[35] *Transformation Order*, ¶ 666.
[36] *Id.*
[37] Further, in recent years, the largest traffic-pumping CLECs have principally operated in a few specific counties in Iowa and South Dakota. Given the massive scale of traffic-pumping in these areas, then – if it were true that access stimulation promotes broadband deployment – residents of these areas should be enjoying the most advanced, highest capacity telephone services on the planet. Likewise, because access stimulation is concentrated in this tiny slice of rural areas in the U.S., the purported broadband benefits of access stimulation inure to an infinitesimal percentage of the country's rural population, while imposing huge costs on the nationwide industry.
[38] BTC/CLECs Comment at 33-35.

However, as the Commission concluded, the issue is whether, in light of the very large volumes of traffic, the rates billed by traffic-pumping CLECs are unjust and unreasonable because they are well above the very low costs needed to carry such volumes.[39] Although BTC/CLECs call for the Commission to investigate access stimulation, traffic-pumping CLECs have not disclosed very much about the alleged limited costs they incur in connection with this scheme. The fact is that, at the very high volumes of traffic handled by access stimulation CLECs, the transport rates billed for these services are undoubtedly excessive.

Finally, the self-serving claim that users of free conference and chat services have come to rely on these free services provides no grounds for allowing access stimulation to continue.[40] In 2011, the Commission determined that this was a serious *harm* caused by access stimulation, because it distorted the market for retail conference services.[41] Rather than allow this continued harm, the Commission should act promptly to stop this wasteful practice from altering consumer perceptions and causing further distortions. In this regard, because the Commission gave ample notice in 2011 that access stimulation should be curtailed and ultimately eliminated, any consumer reliance is the fault of traffic-pumping LECs and their partners, which should have informed their users, thereby avoiding any false expectations.

III. A DIRECT CONNECT REQUIREMENT, OUTSIDE OF THE ACCESS STIMULATION SCENARIO, WILL CURTAIL SWITCHED ACCESS STIMULATION ARBITRAGE.

While there was general opposition to imposing a direct connect requirement in the context of access stimulation, the comments are split as to whether the Commission should

[39] *Transformation Order*, ¶¶ 657, 662.
[40] *See* BTC/CLECs Comments at 15-17.
[41] *See Transformation Order*, ¶ 665.

impose a direct connect requirement outside of the access stimulation scenario.[42] AT&T continues to support the Commission adopting the *CenturyLink Direct Connect Proposal* - with the additional enhancements discussed herein.

Specifically, AT&T urges the Commission to clarify that in situations where the IXC is financially responsible for calls to or from a LEC or CMRS carrier, the IXC has the right to choose to directly connect with the LEC's or CMRS carrier's end office (or the equivalent) or to select the intermediate access provider that the IXC prefers – based upon justifiable transport costs and the IXC's routing and economic preferences.[43] Moreover, should the IXC request direct connection with the LEC or CMRS carrier, and that request is denied, the financial responsibility for delivering and terminating that traffic should shift to the LEC or CMRS carrier.[44] This rule would ensure that the entity making the choice regarding network deployment or traffic routing bears the cost of that choice and eliminates the incentive (outside of the access stimulation scenario – which the first prong of the NPRM's rule would address) for carriers to refuse requests for direct connection in order to obtain the revenues or benefits derived from inserting an intermediate access provider in the call path.

Contrary to T-Mobile's concerns, such a rule would not violate Section 251(a) of the Act or the Commission's prior orders interpreting that section.[45] Under AT&T's proposal, the

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[42] *See e.g.,* the following comments discussing generally the benefits of a direct connect requirement: Peerless Comments at 3-10; O1 Comments 9-12; CenturyLink Comments 9-14, *as compared to,* Verizon Comments at 6-7 (urging the Commission to not expand its proposed reforms beyond the context of access stimulation); SDN Comments at 4 and Iowa Communications Alliance Comments at 2 (arguing a direct connect requirement would dismantle the CEA networks); and NTCA Comments at 9 (urging the Commission to defer consideration of a direct connect requirement to broader intercarrier compensation reform).

[43] It should be noted that although many carriers, including AT&T affiliates, have voluntarily entered into commercial arrangements which establish the direct exchange of some types of traffic (for example intraMTA traffic between a CLEC and a CMRS carrier), without an industry-wide requirement and implementation, individual carriers risk being placed at a competitive disadvantage if they volunteer such arrangements. Enactment of this recommendation would alleviate those concerns.

[44] AT&T Comments at 21-24.

[45] Comments of T-Mobile USA, Inc. at 15-20.

Commission would not be taking away a carrier's rights under section 251(a) to choose direct or indirect connection. The carrier still has that choice. If, in response to a request for direct connect from an IXC, the LEC or the CMRS provider deems indirect connection superior, it can choose indirect connection. The only change would be that in that scenario the LEC or CMRS provider denying direct connection in favor of indirect would become financially responsible for *its* preferred indirect connection.[46]

In adopting the rule, AT&T believes that the Commission should make clear that:

- the rule applies to *both* originating and terminating switched access traffic.[47]
- the rule includes a clear prohibition on the imposition of any "additional charges" for establishing connectivity to the other carrier's POI. For example, the other carrier should not be given the ability to locate the POI remotely and then charge transport to move the traffic to the carrier's end office.
- while a carrier cannot place unreasonable conditions on allowing the requesting carrier direct connection, carriers would retain the ability to refuse a request for direct connection if there were substantiated network limitations.
- carriers should be allowed to refuse illegitimate requests for direct connection, *e.g.*, the carrier seeking the direct connection refuses to bear the costs for the transport.

[46] Admittedly, T-Mobile presents some compelling reasons why it prefers indirect connection (through Inteliquent) for the exchange of 'wholesale' traffic, claiming that direct connect arrangements for wholesale traffic expose its customers to an unacceptable level of fraudulent calls, including unwanted robocalling. T-Mo Comments at 4. The problem with T-Mobile's rationale is, even if true, why other carriers, who would prefer direct connects, should have to pay for this enhanced service to T-Mobile and *its* subscribers? If T-Mobile apparently sees greater benefits in indirect connect arrangements, so much so that it would deny requests for direct connect, then T-Mobile should be responsible for the costs of that indirect arrangement. *See* ITTA Comments at 6-7 ("If the CMRS provider declines a request to connect directly with no additional charge, and instead designates one or more points of indirect interconnection, then that CMRS provider and not the carrier requesting direct interconnection would be financially responsible for any intermediate services necessary to receive traffic from such point of indirect interconnection (including, e.g., tandem switching and tandem switched transport provided by an affiliated or third party intermediate carrier.")

[47] *Cf* Peerless Comments at Note 12 (advocating that direct connects be made available for all traffic types: retail, wholesale, interLATA, intraLATA, intraMTA, interMTA); O1 Comments at 4-9 (O1 claiming that a CMRS carrier's limiting direct connects to intraMTA traffic is a new form of arbitrage). AT&T disagrees, and opposes such a broad requirement. The direct connect rule should be limited to originating and terminating switched access traffic.

A rule, as proposed above, would codify the principle that the carrier financially responsible for the transport of traffic should have the choice in how traffic is delivered to/from the terminating carrier; if the originating/terminating carrier denies that carrier the choice in how to deliver the traffic, the originating/terminating carrier should then become responsible for the financial consequences.

IV. SOME CLECs – AND NOT AT&T – HAVE ACTED INCONSISTENTLY WITH THE COMMISSION'S RULES AND ORDERS.

Finally, the claim that AT&T has somehow acted inconsistently with the Commission's existing access stimulation rules, or has improperly withheld disputed charges billed by traffic pumping LECs,[48] is entirely inaccurate. To the contrary, it is not AT&T, but certain access stimulation LECs that have continued to flaunt and violate the Commission's rules.

AT&T is one of the very largest payors of switched access service, and it has fully complied with the Commission's access stimulation rules. Where a LEC has properly tariffed, provided, and billed rates consistent with the Commission's rules, or if AT&T has negotiated a commercial agreement with which the service provider has complied, AT&T pays the billed charges. However, when an access stimulation LEC has violated its tariffs or the Commission's rules, then AT&T properly disputes the charges, pays any undisputed amounts, and in some cases withholds disputed amounts pending judicial resolution of the dispute.[49] As AT&T explained recently in other comments, AT&T's policy on these issues is entirely consistent with the Communications Act, the Commission's rules and orders, and the filed tariff doctrine.[50]

[48] *E.g.*, BTC/CLECs Comments at 1-2, Teliax Comments at 18.
[49] Withholding of disputed charges to access stimulation LECs is often necessary, because these LECs are typically contractually obligated to pay over half of the revenues they collect to other entities pursuant to contracts deemed confidential. Because they pay out so much money as soon as they receive it, these access stimulation LECs may lack the funds necessary to repay any overcharges (plus applicable interest) where there is not withholding.
[50] Reply Comments of AT&T On CenturyLink Petition For Declaratory Ruling, at 15-22, WC Docket No. 10-90, et al. (filed July 3, 2018).

By contrast, a number of traffic pumping LECs – including some of those improperly accusing AT&T of wrongdoing[51] – have consistently violated and flaunted regulatory requirements, and have tried to force AT&T and other IXCs to pay disputed charges regardless of the circumstances and even when properly disputed.[52] Notably, the Commission has determined that a CLEC – Northern Valley – acted unreasonably and in violation of the Act by imposing several one-sided, unlawful billing dispute provisions in its tariff; the Commission specifically rejected a traffic-pumping LEC's tariff provision requiring customers to pay all disputed charges in a bill in order to raise a dispute.[53] Despite this holding, some CLECs continue to insist that every billed charge must be paid even when properly disputed. This is simply not the law.[54]

CONCLUSION

For the foregoing reasons, the Commission should adopt the first prong of its proposed access stimulation rule making access-stimulating LECs responsible for the costs associated with the transport and delivery of access stimulation traffic. Beyond the above specific rule to fix

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[51] BTC/CLEC Comments at 1-2.

[52] *See, e.g.*, *In re Great Lakes Commc'ns Corp.*, No. SPU-2011-004, (IUB Mar. 30, 2012) (traffic-pumping LEC either made "a knowing falsehood" to the Board or "lacks the managerial ability to understand and provide any of the services it claimed to offer;" it also "demonstrate[d] insufficient managerial ability to provide service in accordance with its tariffs"); *Great Lakes Comm. v. AT&T Corp.*, 2014 WL 2866474 (N.D. Iowa June 24, 2014) (denying claim that AT&T failed to raise billing dispute and agreeing that tariff provision requiring payment of disputed charges was unreasonable).

[53] *Sprint Commc'ns v. No. Valley Commc'ns*, 26 FCC Rcd. 10780, ¶ 14 (2011), *aff'd*, 717 F.3d 1017 (D.C. Cir. 2013) ("[T]he Tariff provision that requires all disputed charges to be paid 'in full prior to or at the time of submitting a good faith dispute' is unreasonable. As written, this provision requires everyone to whom Northern Valley sends an access bill to pay that bill, no matter what the circumstances (including, for example, if no services were provided at all)").

[54] The BTC/CLECs' Comments seriously mischaracterize the facts of Northern Valley's dispute with AT&T. *Id.* at 1-2. There, NVC billed, and tried to force AT&T to pay for, substantial volumes of transport services that Northern Valley did not even provide, and that AT&T purchased from another provider. *See Eighth Report and Order*, ¶ 22 (CLEC may not properly bill for services they do not provide). Further, most of Northern Valley's transport charges were billed only because it violated its obligation to "permit an IXC to install direct trunking" to avoid such charges. *Access Charge Reform*, 23 FCC Rcd. 2556, ¶27 (2008); *Northern Valley v. AT&T Corp.*, 245 F. Supp. 2d 1120, 1133 (D.S.D. 2017) (under the Commission's 2008 order, "a CLEC ought to agree to a direct trunk connection by an IXC at the IXC's expense").

access stimulation arbitrage, the Commission should expeditiously adopt a rule clarifying that the carrier making the choice regarding network deployment and traffic routing bears the cost of that choice, but should that carrier request direct connection, and that request is denied, the financial responsibility for delivering and terminating that traffic should shift to the carrier that denied the direct connect.

Respectfully submitted,

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August 3, 2018