

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**REPLY COMMENTS OF CENTURYLINK**

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**COMMENTS OF CENTURYLINK**

CenturyLink, Inc.<sup>1</sup> submits these reply comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-referenced matter regarding access arbitrage (*Access Arbitrage NPRM* or *NPRM*).<sup>2</sup>

**I. INTRODUCTION AND SUMMARY.**

The initial comments in response to the *NPRM* confirm the existence of the access arbitrage problems at issue and the urgency of the need for targeted solutions to address those problems. The comments also demonstrate that the better approach to do so is for the Commission to adopt the NTCA et al. framework for terminating access stimulation call flows<sup>3</sup> and the CenturyLink framework for all other terminating access contexts.<sup>4</sup>

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<sup>1</sup> This submission is made by and on behalf of CenturyLink, Inc. and its wholly owned subsidiaries.

<sup>2</sup> *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, FCC 18-68 (rel. June 5, 2018) (*Access Arbitrage NPRM* or *NPRM*).

<sup>3</sup> *See, e.g.*, Comments of NCTA, filed herein (July 20, 2018), at 2; Comments of ITTA, filed herein (July 20, 2018), at 1-5.

<sup>4</sup> *See, e.g.*, Comments of Peerless Network and Affinity Network d/b/a ANI Networks, filed herein (July 20, 2018), at 2, 3-9.

While certain parties suggested in their comments that various unsubstantiated “harms to competition” and other purported disadvantages could result should this approach be taken, a closer examination confirms that those contentions fail to hold water.

The Commission should also disregard unsubstantiated claims by certain parties that the NTCA et al. and CenturyLink Proposals would be overly difficult to implement. As CenturyLink demonstrated in its initial comments, both could be implemented relatively easily.

Finally, it is indisputably clear following the initial comments that the Commission has legal authority to adopt the NTCA et al. Proposal and the CenturyLink Proposal – and contentions by a single party (T-Mobile) to the contrary are baseless and should be rejected.

## **II. DISCUSSION.**

### **A. There Is Strong Support For Both The NTCA et al. Proposal And The CenturyLink Proposal.**

The initial comments demonstrate strong support for the NTCA et al. Proposal and the CenturyLink Proposal, respectively, as solutions for the two core access arbitrage problems that are the focus of the *NPRM*. As CenturyLink explained, the former (the NTCA et al. Proposal) is the best available solution for dealing with problems with charges for intermediate tandem services in the access stimulation context and the latter (the CenturyLink Proposal) is the best solution for problems with forced indirect interconnection and related arbitrage concerns outside of the access stimulation context.<sup>5</sup> A diverse group of parties across the industry concurred with these conclusions.

Regarding the NTCA et al. Proposal, numerous parties echoed CenturyLink’s concerns that: (1) the inclusion of a direct connect option (at the expense of the IXC) was flawed in the

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<sup>5</sup> See Comments of CenturyLink, filed herein (July 20, 2018), at 3, 9-10.

access stimulation context; and (2) that the only effective solution to the access stimulation problems targeted by the *NPRM* is a one-pronged approach where financial responsibility for third party intermediate switched access provider interstate tandem switching and transport charges is shifted to access stimulating LECs for traffic bound for them.<sup>6</sup>

Nor was there any credible rebuttal of these compelling points in the initial comments. There was limited support by certain parties for the *NPRM*'s "in the alternative" bill and keep solution for access stimulation.<sup>7</sup> But, notably, none of these parties suggested ways to avoid, or even acknowledged, the unavoidable flaw with this proposal – the fact that it would appear to mandate bill-and-keep for third party intermediate tandem service providers and thereby preclude those intermediate providers from recovering for their services.<sup>8</sup> In the meantime, there was virtually no support in the comments for the two-pronged proposal for access stimulation teed-up in the *NPRM*. And, the sole parties to outright oppose the adoption of a reform of some kind for the access stimulation context were access-stimulating LECs who, not surprisingly, generally questioned the legitimacy of the access stimulation concerns to begin with – rather than offering meaningful comment on the merits of the different proposals.<sup>9</sup>

Numerous parties also shared CenturyLink's view that its two-pronged solution for traffic outside of the access stimulation context will promote efficient interconnection arrangements and

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<sup>6</sup> See Comments of ITTA at 3-4; Comments of AT&T, filed herein (July 20, 2018), at 12-15; Comments of Verizon, filed herein (July 20, 2018), at 5-6; Comments of Peerless/ANI at 5-6.

<sup>7</sup> See, e.g., Comments of HD Tandem, filed herein (July 20, 2018), at Section I., Section IV.A., Section IV.C. (note: Comments do not include page numbers); see also Comments of AT&T at 5, 19-21.

<sup>8</sup> Comments of CenturyLink at 8.

<sup>9</sup> See, e.g., Comments of Competitive Local Exchange Carriers, filed herein (July 20, 2018), at v, 3, 14-15.

reduce opportunities for arbitrage, solving a very real problem.<sup>10</sup> In contrast, those opposed to CenturyLink’s proposal offer no substantial reason for the Commission not to adopt it promptly.<sup>11</sup>

**B. Comments Pointing To Purported Concerns About Potential “Harm to Competition” Or Other Disadvantages Of The Solutions Fail To Hold Water.**

Certain parties suggested in their comments that various unsubstantiated “harms to competition” or other disadvantages will result from adoption of either a one-prong “shift of responsibility” solution for access stimulation (the NTCA et al. Proposal) or a two-pronged approach (direct connection or shift financial responsibility) outside of the access stimulation context (the CenturyLink Proposal). These purported concerns fail to hold water.

For example, Teliix<sup>12</sup> and T-Mobile<sup>13</sup> each suggest that the CenturyLink proposal is weakened by the fact that it may tend to lead to more traffic being terminated by IXC’s via affiliated tandems. But, this is a red herring. So long as an IXC follows LERG-based or contract-approved routing on terminating traffic, it is simply not material whether or not the tandem provider is affiliated. Moreover, T-Mobile’s contentions fundamentally miss the point. The CenturyLink Proposal will *encourage* competition in tandem services, and the viability of

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<sup>10</sup> Comments of AT&T at 21-25; Comments of ITTA at 6-9; Comments of O1 Communications, filed herein (July 20, 2018), at 2-4, 11; Comments of Peerless/ANI at 3-10.

<sup>11</sup> See, e.g., Comments of T-Mobile USA, filed herein (July 20, 2018), at 15-20; Comments of Inteliquent, filed herein (July 20, 2018), at 7-13.

<sup>12</sup> Comments of Teliix, filed herein (July 20, 2018), at 4, 13-14 (advocating for a prohibition against IXC’s choosing affiliated tandems).

<sup>13</sup> See Comments of T-Mobile at 5, 8-9, 15-16 (suggesting that a negative of CenturyLink’s solution to forced indirect interconnection is that it will prevent T-Mobile, which has no affiliated tandems, from choosing the tandem used for traffic terminated to it and potentially direct traffic to tandems affiliated with IXC’s).

alternative tandem providers, precisely because it will ensure that the decision about whether to use indirect interconnection and, if so, which provider to use, is made by the party that has the responsibility for paying those services.

INS' contention that a two-pronged approach will lead to IXC arbitrage is also wholly not credible.<sup>14</sup> INS offers no evidence to support this contention. Nor does it provide any coherent explanation for why the economic conditions for such arbitrage would be increased should the CenturyLink Proposal be adopted.

Finally, the Commission should reject T-Mobile's and Inteliquent's attempts to justify forced indirect interconnection based on a variety of vague and unsubstantiated contentions. For example, T-Mobile/Inteliquent claim that this conduct somehow facilitates the transition to an all-IP network.<sup>15</sup> CenturyLink agrees that the Commission should be encouraging network arrangements that help facilitate progression towards all-IP networks of the future. But, T-Mobile/Inteliquent ignore the fact that the intermediate tandem connectivity that IXCs are forced, as practical matter, to use entails traditional TDM functionality – hardly a help in facilitating all-IP networks. On the other hand, the direct interconnection that IXCs seek from T-Mobile and other carriers could be IP-based.

T-Mobile/Inteliquent also contend that refusals of direct interconnection can be justified by robocalling concerns – particularly for wholesale traffic.<sup>16</sup> This statement is also vague and unsubstantiated. There is simply no evidence that the intermediate tandem provider in these arrangements utilizes a meaningful methodology for addressing robocalls. Moreover, as the

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<sup>14</sup> See Comments of Iowa Network Services d/b/a Aureon Network Services, filed herein (July 19, 2018), at 4-6.

<sup>15</sup> See Comments of T-Mobile at 9, 15, 20; Comments of Inteliquent at 9.

<sup>16</sup> See Comments of T-Mobile at i, 1-2, 3-4, 6-8, 20; Comments of Inteliquent at 8-9.

Commission is well aware, there is a comprehensive effort underway to address the challenges related to robocalling that impact the entire industry. And, there is broad industry agreement about what types of practices are legitimate to address robocalling. These legitimate practices can be implemented just as easily via the direct connection arrangements that IXC's seek.

Equally unpersuasive are T-Mobile/Inteliquent attempts to justify their conduct based on allegations that a direct connection obligation would effectively preclude the use of homing tandems.<sup>17</sup> Not so. T-Mobile and other terminating carriers may be required to establish more direct connection arrangements. But, as the record makes abundantly clear, the marketplace will ensure that these types of requests only come when traffic volumes and overall efficiencies make them the most effective solution for the carrier assuming the costs to deliver the traffic. Indeed, this is what already happens in the industry and that explains why it is already industry practice for terminating carriers to grant those requests. For similar reasons, the requested relief will not eliminate the value of indirect connections. Rather, it will simply help ensure that they are able to be utilized in the right circumstances.

T-Mobile/Inteliquent also argue that T-Mobile should be able to force indirect interconnection in all contexts because it reduces T-Mobile's costs.<sup>18</sup> This does not justify the conduct at issue either. To begin with, CenturyLink does not contend that terminating carriers should never be able to utilize indirect interconnection. Rather, it simply contends that they should not be permitted to dictate the manner in which traffic is delivered to its network regardless of the negative impact it has on the carrier incurring the costs of the traffic delivery – and on overall efficiencies.

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<sup>17</sup> See Comments of T-Mobile at 5-9; Comments of Inteliquent at 7-13.

<sup>18</sup> See Comments of T-Mobile at 2, 19-20; Comments of Inteliquent at 11-12.



At bottom, relevant to many of these arguments, even if T-Mobile/Inteliquent were correct that Inteliquent provided some services relevant to robocalling or that Inteliquent's services were beneficial to T-Mobile, they have not explained why it is appropriate for customers of *other* providers to pay for them. The CenturyLink Proposal would permit T-Mobile to pay for them. But, T-Mobile's practices unilaterally force charges on other carriers for the benefit of their mobile customers. This is particularly unjustifiable considering that, if CenturyLink or other ILECs were to provide those services to benefit their ILEC end users, they would not be permitted to charge other carriers tariffed rates for them – as Inteliquent can.

**C. The Commission Should Also Disregard Unsubstantiated Claims That The NTCA et al. And CenturyLink Proposals Would Be Overly Difficult To Implement.**

Certain parties suggest, again without any real effort to substantiate their contentions, that it would be prohibitively difficult to implement the NTCA et al. Proposal and the CenturyLink Proposal.<sup>19</sup> But, as CenturyLink demonstrated in its initial comments, both could be implemented relatively easily.<sup>20</sup> The Commission, essentially, need only designate a short transition period during which carriers would be required to complete any activity necessary to accomplish the shift of financial responsibility that is at the core of the NTCA et al. Proposal and the second prong of the CenturyLink Proposal.<sup>21</sup> Minimal other accompanying implementation guidelines would be required.<sup>22</sup> Only one additional implementation step would be needed to accompany adoption of the CenturyLink proposal that is not needed for the NTCA et al. Proposal

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<sup>19</sup> See, e.g., Comments of Competitive Local Exchange Carriers at 67; see also Comments of Sprint, filed herein (July 20, 2018), at 2-3; Comments of INS at 4-5.

<sup>20</sup> Comments of CenturyLink at 4, 10-13.

<sup>21</sup> Comments of CenturyLink at 4, 10.

<sup>22</sup> Comments of CenturyLink at 4, 10-13.

and the access stimulation context – establishing a designated timeline within which a terminating carrier must notify an IXC, in responding to a given direct connection request, that the terminating carrier is either agreeing to direct connect with the IXC or exercising the financial responsibility option and therefore stating who the IXC should connect to for the terminating carrier’s intermediate switched access provider.<sup>23</sup>

**D. Contentions That The Commission Lacks Legal Authority To Adopt The Proposals Are Baseless.**

The initial comments also demonstrate that the Commission plainly has legal authority to adopt the NTCA et al. Proposal and the CenturyLink Proposal.<sup>24</sup> Indeed, it is noteworthy that only one party – T-Mobile – makes any real effort to rebut these contentions and then only for the CenturyLink Proposal – and its contentions can be easily discarded.

CenturyLink demonstrated in its proposal and its initial comments in this proceeding that the Commission has legal authority to adopt the CenturyLink Proposal under: (1) its general Section 201 rulemaking authority to implement its bill-and-keep ICC framework adopted pursuant to Sections 251, 201 and 332; and (2) pursuant to Section 251(a) and the Commission’s general rulemaking authority under 201(b).

With respect to (1), T-Mobile suggests that, while the legal authority at issue entitled the Commission to establish rates, it does not extend to interconnection relationships.<sup>25</sup> T-Mobile is wrong. As demonstrated in CenturyLink’s comments, and the *Transformation Order* itself demonstrates, the Commission clearly retains a role to provide guidance on edge and

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<sup>23</sup> Comments of CenturyLink at 12-13.

<sup>24</sup> See, e.g., Comments of CenturyLink at 4, 14-18; Comments of ITTA at 7-9; Comments of HD Tandem at Section IV.B. (note: Comments do not include page numbers); see also Comments of AT&T at 11 n. 24; Comments of Peerless/ANI at 6-7.

<sup>25</sup> Comments of T-Mobile at 16-17.

interconnection issues in a bill-and-keep regime.<sup>26</sup> The Commission can easily conclude that adoption of CenturyLink's proposed direct interconnection framework takes further, modest steps to implement the Commission's bill-and-keep framework and advances the same policy goals as those reforms adopted in the *Transformation Order*, and that the Commission therefore has authority under these same provisions.

With regard to (2), T-Mobile misreads past Commission precedents interpreting Section 251(a) to suggest that those decisions have blessed conduct by which carriers refuse direct interconnection and force indirect interconnection. According to T-Mobile, adoption of the CenturyLink Proposal would impinge upon a purportedly established right of non-LEC affiliated CMRS providers "to choose the most efficient means of interconnection" and would be contrary to Commission precedent establishing that competitive carriers cannot be required to bear the costs of interconnection with ILECs.<sup>27</sup> But, the Commission is free to conclude that, although Section 251(a) permits a carrier to satisfy its duty to interconnect by choosing to do so directly or indirectly, the proposed rule, which specifies the financial obligations that flow from the carrier's choice, is necessary to advance these important federal policies. And, the Commission can conclude that the statutory language does not, as applied in this context, give terminating carriers the option of insisting that requesting carriers bear the costs of indirect interconnection.

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<sup>26</sup> Comments of CenturyLink at 14-16; *Connect America Fund*; *A National Broadband Plan for Our Future*; *Establishing Just and Reasonable Rates for Local Exchange Carriers*; *High-Cost Universal Service Support*; *Developing an Unified Inter-carrier Compensation Regime*; *Federal-State Joint Board on Universal Service*; *Lifeline and Link-Up*; *Universal Service Reform - Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, 18117-18 ¶ 1321 (2011) (subsequent history omitted) (*Transformation Order*).

<sup>27</sup> Comments of T-Mobile at 18.

Moreover, T-Mobile's attempt to recast the forced indirect interconnection problem as one between competitive CMRS providers and ILECs is misguided. The relationships at issue are those between competitive interexchange carriers and all types of terminating carriers – but primarily CMRS providers. And, if anything, it is those CMRS providers that wear the mantle of relative dominance in this context since they seek to dictate a single method/path of termination to their networks driven solely by their own self-interest in a revenue opportunity – not by network efficiencies and economics. Moreover, the historic precedents that T-Mobile cites stand for the proposition that an incumbent LEC at the time of the 1996 Act could not force a competitive provider into direct interconnection. They do not stand for the proposition cited by T-Mobile: that a terminating CMRS carrier today can refuse direct interconnection with a competitive IXC that requests direct interconnection with it.

### **III. CONCLUSION.**

For the reasons stated above, the Commission should take the action described herein.

Respectfully submitted,

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