WIDE VOICE

August 26, 2019

BY ECFS

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 18-155 – Response to Inteliquent's Ex Parte

Dear Ms. Dortch:

Wide Voice submits this letter in response to Inteliquent's Ex Parte dated May 14, 2019. The record evidence and industry consensus is that transport mileage is far and away the greatest source of remaining access arbitrage, where rates have otherwise been leveled as a result of the Commission's actions.[1] This is particularly true for traffic not tied to any specific geographical location (i.e., geographically agnostic traffic). As such, Wide Voice supports Inteliquent's proposal to cap mileage to 10 miles. The Commission should not, however, adopt the proposed revised triggers, which Inteliquent defines as a 6:1 inbound to outbound traffic ratio **and** greater than 1 million monthly minutes per end office, as these would likely lead to new forms of arbitrage resulting from efforts by carriers to manage traffic balances. Instead, the Commission should set its sights on a solution that directly and unambiguously addresses the identified problem. In short, a mileage cap should be *one of the* triggers rather than *the result of* a trigger. Specifically, where greater than 10 miles of transport is billed (and the current traffic trigger is also tripped), the Prong 1 and Prong 2 remedies would be invoked. Where 10 miles or less of transport is billed, Prong 1 and Prong 2 remedies would not be triggered. This approach would: (1) directly address the current source of rate arbitrage, transport mileage; (2) be easy to administer and enforce; and (3) avoid unintended consequences, such as traffic arbitrage to manage complex inbound:outbound ratios and other efforts.

The Commission's original access stimulation rules utilized a revenue sharing trigger along with traffic triggers to identify the occurrence of access stimulation and then to require CLECs that "trip" those triggers to benchmark their tariffed rates to the lowest priced price cap LEC rates in the state.[2] The

[1] See NPRM at ¶ 31; See AT&T ex parte, February 5, 2019, at 4; HD Tandem ex parte, August 12, 2019, at 9; T-Mobile Reply Comments, August 3, 2018, at 8; West Telecom Services Reply Comments, August 3, 2018, at 8.

[2] For rate-of-return LECs, the consequence requires the use of forward-looking demand in the rate calculations that neutralize the benefits of any access stimulation traffic. Interestingly, under the current rules there is no access stimulation consequence for price cap LECs – the presumption apparently being that such LECs can never trip the triggers or benefit from access stimulation traffic. *See 47 CFR § 61.3 – Definitions (bbb).* Inteliquent proposes,and Wide Voice supports, that the access stimulation rules apply to all LECs (Inteliquent ex parte, April 18, 2019, slide 10).

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intention, of course, was to neutralize the benefits that could be obtained by exploiting the often large access rate disparities – and it was inarguably successful. Most LECs willingly complied and hoped to avoid costly disputes and non-pay self-help. However, the current access stimulation provisions, while largely successful in addressing the targeted business plans, are imprecise and created an opportunity for disputing carriers to easily allege stimulation, while making it difficult for accused CLECs to refute such allegations.[3] The FCC seemed to recognize this enforcement problem in the 2011 *Transformation Order*, but expressed optimism that carriers operating in good faith could overcome these challenges.[4] Unfortunately, that has not been Wide Voice's experience.

Outside of these enforcement issues, access stimulators quickly identified that a remaining arbitrage opportunity lay with transport mileage, which the Commission sought comment on, but ultimately did not address, in its initial ruling. Consequently, non-geographic traffic moved to areas that maximized billing with additional transport miles between the tandem and the end office (or via CEA rate structures that do not bill per mile, but still have a high transport rate component).

To counter this remaining issue, the Commission should seek to limit or eliminate mileage-based charges for access stimulators at the tandem and end office in order to completely align market rates and eliminate distorted incentives. However, as discussed in Wide Voice's previous filings, in doing so the Commission must carefully consider the incentives created by any triggers it chooses to implement, as a sophisticated market will seek to maximize profits with all manner of workarounds. Accordingly, Wide Voice believes that the Inteliquent recommended triggers and structure could easily be navigated to allow for the charging of high transport mileage. The triggers must also be structured to remove any ambiguity *at all* that would lead to costly disputes and litigation.

[3] Perhaps the best example of how the provisions failed in this regard is the Peerless v. Verizon case (Case: 1:14-cv-07417). Verizon alleged that Peerless was an access stimulator. Peerless maintained that it was not, and never had been, engaged in access stimulation. Peerless then voluntarily filed a new tariff that met the requirements for access charges stemming from access stimulation activities in an attempt to stop Verizon from continuing to withhold payments under the new tariff. Even that effort did not address the problem to Verizon's satisfaction. In the end, the Court was unable to make a determination on the allegation of access stimulation because "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."

[4] *Transformation Order*, paragraph 699 (emphasis added): "The revised interstate access rules adopted in this Order will facilitate enforcement through the Commission's complaint procedures, if necessary. A complaining carrier may rely on the 3:1 terminating-to-originating traffic ratio and/or the traffic growth factor for the traffic it exchanges with the LEC as the basis for filing a complaint. This will create a **rebuttable presumption** that revenue sharing is occurring and the LEC has violated the Commission's rules. **The LEC then would have the burden of showing that it does not meet both conditions of the definition**. We decline to require a particular showing, but, at a minimum, an officer of the LEC must certify that it has not been, or is no longer engaged in access revenue sharing, and the LEC must also provide a certification from an officer of the company with whom the LEC is alleged to have a revenue sharing agreement(s) associated with access stimulation that that entity has not, or is not currently, engaged in access stimulation and related revenue sharing with the LEC. If the LEC challenges that it has met either of the traffic measurements, it must provide the necessary traffic data to establish its contention. **With the guidance in this Order, we believe parties should in good faith be able to determine whether the definition is met without further Commission intervention."**

An example can illustrate how Inteliquent's proposal could fail to achieve its intended goal. A rural LEC that charges for 100 miles of transport between the tandem switch and end office switch with greater than 1 million minutes per month would have significant incentive to capture outbound traffic in order to preserve its ability to bill mileage. Each outbound minute could preserve six (6) high-mileage terminating minutes, so the rural LEC values each originating minute by as much as $0.018 (100 miles * $0.00003 per mile * 6 minutes). Consequently, a LEC seeking to maximize its profit will seek out outbound traffic and have a $0.018 per minute incentive to capture offsetting traffic to avoid tripping the trigger and losing its ability to bill transport mileage. Some expected outcomes of this scenario would include LECs seeking out high-volume outbound callers (e.g., automated informational calls) by subsidizing the rate charged to these customers.[5] LECs would also seek out aggregated 8YY minutes through increasing market rebates on this traffic. This could also have the effect of pulling 8YY traffic into the highest cost areas of the country further exacerbating 8YY arbitrage issues.

At the same time, carriers would likely dispute the legitimacy of this traffic – whether warranted or not – and, as a result, dispute the access stimulator's ability to avoid the proposed 10-mile transport restriction. In other words, we could have a new set of rules with little reduction in carrier disputes and self-help.

Broadly speaking, then, Wide Voice agrees with the intent of Inteliquent's proposal that attempts to level rates across all LECs by eliminating mileage-based rate differences. However, Wide Voice believes a better, much more direct solution would be to replace the revenue sharing access stimulation trigger, elimination of which has support from other commenters in this proceeding,[6] with a billed transport mileage trigger, such as LECs billing over an aggregate of 10 miles across both the tandem and end office.[7] By having an unambiguous, quantifiable trigger that is available for the entire industry to view first hand, access stimulators seeking to take advantage of mileage-based charges are easily identified. There is *zero chance* for confusion since the billing LEC identifies on its monthly bill whether it trips that trigger or not. Of course, many LECs bill over 10 miles of transport in aggregate, but then the secondary triggers -- the 3:1 inbound to outbound traffic ratio and 100% growth -- can be used in their current form to prevent traditional rural carriers, who require mileage to recover their costs, from being adversely impacted by a policy which is not intended for their circumstances or traffic patterns.

Wide Voice's proposed transport mileage trigger, with its very clear definition of access stimulation, combined with Commission condemnation of self-help practices,[8] will eliminate the

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[5] Such a subsidy could result in such customer types being paid for their outbound traffic by the access stimulator rather than paying for it as they ordinarily would.

[6] See AT&T ex parte, February 5, 2019, at 7; Inteliquent ex parte, April 18, 2019, slides 4, 23.

[7] It is important to note that this proposed trigger is based on the total mileage billed by the end office provider and tandem provider combined. If an end office provider wished to avoid the Prong 1 and Prong 2 remedies, but its tandem provider exceeded the 10-mile trigger, it could seek out another tandem provider who would agree to not exceed the trigger. Such transitions, however, are not instantaneous, so the Commission would need to allow sufficient time for such end office providers to re-home to a new tandem provider before invoking the access stimulation remedies.

[8] It is hard to overstate this problem. For example, Wide Voice recently filed an FCC access tariff revision with the Commission that was intended to address persistent carrier disputes and self-help. AT&T and Verizon opposed the tariff, claiming that it should be rejected by the Commission as unlawful. The Commission declined the AT&T and

remaining source of access arbitrage and should help mitigate the disputing carriers' frequent and contentious accusations of access stimulation based on a murky, hard to define revenue sharing trigger. Accordingly, Wide Voice is supportive of both Prong 1 and Prong 2 as remedies in instances triggered where **"total mileage billed across the tandem and end office exceeds 10 miles."** This approach would eliminate the primary sources of arbitrage, be easy to administer, and avoid gamesmanship.

Sincerely,

/s/ Andrew Nickerson

Andrew Nickerson
Chief Executive Officer
Wide Voice, LLC

Verizon invitation, and Wide Voice's tariff revision took effect by operation of law and is deemed lawful. AT&T and Verizon, however, each continue to refuse to pay Wide Voice's lawfully tariffed rates on the very same grounds the Commission passed over. AT&T and Verizon's self-help knows few bounds, and only crystal clear and unambiguous Commission rules can ensure that any new policies do not lead to just another round of disputes, complaints, and litigation.