

COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 6000

September 16, 2019

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

Re: *Ex parte* presentation in WC Docket No. 18-155

Dear Ms. Dortch:

On September 12, 2019, the undersigned, as outside counsel to Inteliquent, Inc. (“Inteliquent”), met with Lisa Hone, Irina Asoskov, Gil Strobel, Lynne Engledow, Susan Bahr, Al Lewis (by phone), and Erik Raven-Hansen of the Wireline Competition Bureau, as well as Eric Burger, Pat DeGraba, Eric Ralph, and Shane Taylor of the Office of Economics and Analytics. In a separate meeting, the undersigned met with Nirali Patel, Wireline Advisor to Chairman Ajit Pai.

The purpose of the meeting was to discuss the draft *Report and Order* in the above-referenced proceeding,¹ and specifically to urge the Commission to clarify that a call is deemed complete when an IXC or intermediate provider delivers the call to the tandem specified by the access stimulating LEC in the LERG. As discussed below, this simple clarification will close a loophole by which access stimulators otherwise will continue to artificially inflate costs and evade anti-arbitrage measures, including the carefully-crafted rules that the Commission is on the cusp of adopting in this proceeding.

As Inteliquent and other parties have explained,² some access stimulators are intentionally rejecting the very traffic that they have stimulated—all as a means to cause IXCs

¹ *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Draft Report and Order and Modification of Section 214 Authorizations, WC Docket No. 18-155, FCC-CIRC1909-02.

² See, e.g., AT&T Feb. 5, 2019 *Ex Parte* at 6 (explaining that an access stimulating CLEC “seemingly overnight... increased its traffic by 20,000,000 minutes of use per month” and that the CLEC “suggested that rather than seeking to augment existing facilities in the current call flow, AT&T should use a higher cost, non-carrier provider of termination service (HD Tandem) to route the stimulated access traffic to the CLEC.”); SDN Comments at 2-3

COVINGTON

Ms. Marlene H. Dortch
September 16, 2019
Page 2

and/or intermediate providers to re-route this traffic to an unregulated intermediary owned by, or affiliated with, the access stimulator. The call is rejected when sent over the regulated path, yet it completes within milliseconds when re-routed over the alternate unregulated path established by the access stimulator. Contrary to the Commission's goal in this proceeding to reduce the financial incentives to engage in access stimulation, this scheme enables the access stimulator to force IXCs and intermediate providers to continue to bear the cost of delivering access stimulated traffic. It also gives the access stimulator another tool to evade anti-arbitrage rules.

The Commission can put an end to this cynical scheme by making clear that calls are deemed complete when the IXC or intermediate access provider delivers the call to the tandem specified by the access stimulating LEC in the LERG. This simple statement would remove the improper incentive that access stimulators otherwise will have to reject calls placed to their numbers. If the IXC or intermediate provider has handed off a call to the tandem that the *LEC itself has specified*, there should be no doubt that the IXC/intermediate provider has met its duty.

Absent such a clarification, these harmful schemes may become even more commonplace. Under the new rules, access stimulating LECs will be responsible for tariffed tandem charges, so they and their calling platform partners will be incentivized to get the calls off the regulated path and onto an alternate unregulated path without tariffed charges. Access stimulators also could use the call-rejection scheme to decrease their LEC partners' ratio of terminating-to-originating traffic and thereby avoid the Commission's anti-arbitrage remedies altogether.

The Inteliquent representatives also expressed agreement with the view of NTCA—The Rural Broadband Association (“NTCA”) that the new rules should not “inadvertently sweep in RLECs that are not engaging in access stimulation.”³ Specifically, the Commission should adopt NTCA's proposal for allowing LECs to rebut the presumption that they are engaged in access stimulation and to adopt different triggers (e.g., higher ratios of terminating-to-originating traffic, minimum volume thresholds) for RLECs.

(“SDN 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.”); and INS/Aureon Reply Comments at 18 (“Aureon has experienced this very sort of arbitrage, whereby calls routed by Aureon to a LEC are blocked, but when calls are routed to the LEC through HD Tandem, those calls miraculously complete.”). *See also* Inteliquent Comments at 3-5; Inteliquent Reply Comments at 4-5; Inteliquent Oct. 19, 2018 *ex parte* at 2-3; Inteliquent Nov. 16, 2018 *ex parte* at 1-3; Inteliquent April 18, 2019 *ex parte* at 14-18; Inteliquent May 14, 2019 *ex parte* at 12-16; Inteliquent Aug. 30, 2019 *ex parte* at 1-3; and Sprint Sept. 3, 2019 *ex parte* at 3 (“Sprint agrees with Inteliquent that the FCC should clarify that an IXC/Wireless Provider's obligation to monitor call completion to a rural LEC means the monitoring of the delivery of such calls to the Intermediate Access Provider (as defined in the 47 C.F.R. § 51.903(1) definitions).”).

³ NTCA Sept. 11, 2019 *ex parte* at 1.

COVINGTON

Ms. Marlene H. Dortch
September 16, 2019
Page 3

Please direct any questions to the undersigned.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew S. DelNero". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matthew S. DelNero
Thomas G. Parisi
Counsel to Inteliquent

cc: meeting attendees