



1300 I Street N.W.
Suite 500 East
Washington DC 20005

Alan Buzacott
Executive Director
Federal Regulatory and Legal Affairs

September 17, 2019

Ex Parte

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

Re: Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, WC Docket No. 18-155

Dear Ms. Dortch:

On September 13, 2019, I spoke with Lisa Hone, Gil Strobel, and Lynne Engledow of the Wireline Competition Bureau regarding the draft order in the above-captioned proceeding.

I asked that the order limit access-stimulating LECs' incentives to game the 6:1 terminating-to-originating traffic ratio and expressed support for the clarifications T-Mobile suggested in its September 11th *ex parte* letter.¹ The order should make clear that "re-originated" or aggregated traffic cannot be counted in the "originating" component of the ratio.

I also asked that the order provide additional context for declining to address interexchange carrier withholding of disputed charges (so-called "self-help"). In particular, I said that the order should make clear it is consistent with and not departing from the *All American Order* and the *Northern Valley Order*, which the Commission issued in 2011.² In the *All American Order*, the Commission said

¹ See Letter from Todd D. Daubert, Counsel to T-Mobile USA, to Marlene H. Dortch, FCC, WC Docket No. 18-155 (September 11, 2019).

² *All American Telephone Co. v. AT&T Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 723, ¶ 13 (2011) ("*All American Order*"); *Sprint Communications Company L.P. v. Northern Valley Communications, LLC*, Memorandum Opinion and Order, 26 FCC Rcd 10,780, ¶ 14 (2011) ("*Northern Valley Order*").

that it “has never held that a failure to pay tariffed charges violates the Act itself.”³ Withholding disputed charges is never a violation of the Act because an interexchange carrier is acting “in its role as a customer,” not as a common carrier, when it purchases tariffed services.⁴ And in the 2011 *Northern Valley Order*, the Commission found that it is unlawful for a tariff to require payment of disputed amounts while they are in dispute.⁵ At a minimum, the order should cite approvingly to both 2011 decisions.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission’s rules. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan Buzacott". The signature is written in a cursive, slightly slanted style.

Alan Buzacott

cc: Lisa Hone
Gil Strobel
Lynne Engledow
Nirali Patel
Joseph Calascione
Arielle Roth
Travis Litman
Randy Clarke

³ *All American Order*, ¶ 13.

⁴ *Id.*, ¶ 12.

⁵ *See Northern Valley Order*, ¶ 14.