



G. David Carter | Member
david.carter@innovistalaw.com
RICHMOND: 804.729.0052
WASHINGTON: 202.869.1502

November 5, 2018

VIA ECFS

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

**Re: Notice of *Ex Parte*
*In the Matter of Updating the Inter-carrier Compensation Regime to Eliminate
Access Arbitrage*, WC Docket No. 18-155**

Dear Ms. Dortch:

These *ex parte* comments are filed on behalf of Competitive Local Exchange Carriers (“CLECs”) BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communication Corporation, Northern Valley Communications, LLC, OmniTel Communications, and Louisa Communications in response to the October 19, 2018 *ex parte* presentation of Inteliquent, Inc.¹

Inteliquent’s *ex parte* mainly repeats the claims that have been consistently echoed – but never substantiated – by the IXC’s, including the allegation that free conference calling services impose costs on non-users and that CLECs are billing excess mileage charges. As the CLECs have repeatedly pointed out: (1) there is **no evidence** that the long-distance charges paid by users of free conferencing services are insufficient to cover the costs incurred by the IXC’s in delivering their customers’ calls to the free conferencing providers;² (2) many of the CLECs no longer bill **any** mileage charges;³ and (3) there is **no evidence** that any CLEC moved its points of

¹ Letter from M. DelNero to M. Dortch, WC Docket No. 18-155 (Oct. 19, 2018) (“Inteliquent *Ex Parte* Comments”).

² See, e.g., Comments of Competitive Local Exchange Carriers, WC Docket No. 18-155, at 21-26 (July 20, 2018) (“CLEC Comments”); Reply Comments of Competitive Local Exchange Carriers, WC Docket No. 18-155, at 7-8 (Aug. 3, 2018) (“CLEC Reply Comments”); see also Letter from D. Carter to M. Dortch, WC Docket No. 18-155, at 2 (Oct. 2, 2018) (“AT&T [has] continued to make a profit on the calls it deliver[s] to the free conference calling providers.... Thus, the users of free conferencing services pay enough in their long-distance bills to cover their own access charges; free conferencing users as a whole are not shifting those costs to non-users. Thus, the most reasonable conclusion is that AT&T and other long-distance carriers would like to reduce the amount of calls that their subscribers make so that the long-distance carriers can sustain even greater profit margins.”).

³ See, e.g., CLEC Comments at 36-37.

interconnection following the FCC's *Connect America Fund Order*.⁴ It is time for the Commission to put an end to these unsubstantiated attacks by Inteliquent and the other IXC's. The Commission should either issue the data requests that the CLECs have proposed and gather real evidence,⁵ or, if the IXCs are unwilling to back up their claims, the Commission should close this proceeding.

Inteliquent's *ex parte* also asserts that the Commission should take steps to stop traffic from being "intentionally rejected by the LEC and/or the calling platform connected to the LEC end-office," an act which Inteliquent claims is the "latest access arbitrage scheme plaguing the public switched telephone network."⁶ Inteliquent represents to the Commission that the "sole purpose of blocking the traffic is to cause it to be re-routed to an affiliate of the high-volume calling platform, to the benefit of the affiliate and/or the calling platform."⁷

Inteliquent's discussion of this issue is incomplete and materially misleading in several respects.

First, Inteliquent fails to apprise the Commission that there are at least two distinct factual situations potentially occurring. The first is Inteliquent's attempted theft of access services from carriers like Northern Valley Communications, LLC ("Northern Valley"), a CLEC in South Dakota.⁸ This issue has been mentioned in prior filings made by the CLECs, but it is highlighted again here to demonstrate the inaccurate statements in the Inteliquent *ex parte*:

- In 2017, Inteliquent inserted itself in the call flow as a wholesale carrier of traffic coming to Northern Valley from other carriers, particularly T-Mobile.
- Shortly after inserting itself in the call flow, Inteliquent began withholding its payment of Northern Valley's tariffed access charges.⁹ Thus, Inteliquent was receiving compensation from its wholesale customers that otherwise would have been paid to Northern Valley under its lawful tariff, while at the same time refusing to compensate Northern Valley. In other words, Inteliquent was stealing the money Northern Valley was lawfully owed.
- As cover for its failure to pay Northern Valley's tariffed rates, Inteliquent claimed that it had sought to establish a direct connection with Northern Valley and Northern Valley

⁴ See, e.g., *id.* at 37.

⁵ See *id.*, Exhibit D.

⁶ Inteliquent *Ex Parte* Comments at 2.

⁷ *Id.*

⁸ Northern Valley assumes that it is the subject of the *ex parte* comments filed by South Dakota Network, LLC, which are referenced in Inteliquent's *ex parte*. See *id.* at 2 n.3 (citing *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Comments of South Dakota Network, LLC at 3 (filed July 20, 2018)).

⁹ See CLEC Comments, Exhibit A (Oct. 5, 2017 Letter from J. Groft to P. Gardner) and Exhibit B (Nov. 14, 2017 Email from J. Groft to J. Clopton).

refused Inteliquent's request.¹⁰ In reality, however, as documents show, Inteliquent's staff had actually disclaimed any intention of installing direct connection facilities to Northern Valley's end office.¹¹ Indeed, Inteliquent has even admitted that the company was engaging in self-help withholding in order to exert economic pressure on Northern Valley to obtain below-tariffed rates.¹²

- After Northern Valley documented Inteliquent's unlawful conduct, Inteliquent resumed paying Northern Valley for a period of time,¹³ however, it began instituting its withholding practices again after the Commission issued the NPRM in this docket.¹⁴
- In July 2018, Northern Valley advised Inteliquent that, due to Inteliquent's withholding, it was implementing the disconnect procedures in its deemed lawful tariff.¹⁵ After initial issues with T-Mobile allowing its customers' calls to fail, NVC successfully implemented its disconnect procedures in August 2018.¹⁶
- Finally, on October 24, 2018, just a few days after Inteliquent held its meetings with the Commission and alleged that CLECs were engaged in fraud, it paid Northern Valley's outstanding invoice.

Inteliquent's decision to once again pay Northern Valley's tariffed charges¹⁷ does not change the fact that Inteliquent's representations in its *ex parte* fall desperately short of the candor that is to be expected of parties participating in the Commission's rulemaking process. Nowhere does Inteliquent inform the Commission of the fact that its calls to Northern Valley were being rejected because Northern Valley had implemented the **deemed lawful disconnect procedures** contained in its federal tariff. Instead, it falsely certifies that the "sole purpose of blocking the traffic is to cause it to be re-routed to an affiliate of the high-volume calling platform."¹⁸ This is simply not true.

Inteliquent also fails to advise the Commission that it is engaging in similar self-help withholding with other access-stimulating CLECs. Indeed, Inteliquent erroneously represents to the Commission that, "[i]f the calls were allowed to complete over the regulated pathways, then the **rural LECs** and the CEA tandem would be **paid the tariffed terminating access**

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

¹³ See *id.*, Exhibit B.

¹⁴ See *id.*, Exhibit C (July 9, 2018 Letter from D. Carter to Inteliquent).

¹⁵ See *id.*

¹⁶ See Letter from J. Groft to Inteliquent and T-Mobile (Aug. 15, 2018), attached hereto as **Exhibit A**.

¹⁷ Having proven itself to be a significant credit risk, Inteliquent must still satisfy the additional deposit obligations contained in Northern Valley's tariff before its services will be reinstated. However, as soon as that is completed, Northern Valley is prepared to reinstate service to Inteliquent.

¹⁸ Inteliquent *Ex Parte* Comments at 2.

charges.”¹⁹ This statement is false at least with regard to a second CLEC, OmniTel Communications (“OmniTel”). Similar to Northern Valley, Inteliquent began inserting itself in the call flow on traffic to OmniTel in the second half of 2017 and immediately began withholding payment on OmniTel’s tariffed access charges. Thus, while Inteliquent represents to the Commission that terminating access charges would be “paid” and accuses CLECs of engaging in “fraud,” the fact is that Inteliquent needlessly inserted itself into the call flow and thereafter diverted revenues away from OmniTel, even though it knew that OmniTel provided service to high-volume free conferencing providers. Inteliquent’s theft warrants no protection from the Commission.

Second, Inteliquent’s attempt to paint “the LEC and/or the calling platform connected to the LEC end-office”²⁰ with the same brush, rather than distinguishing between these separate entities, is equally erroneous. With the exception of Northern Valley, which acted in accordance with its deemed lawful tariff provision to discontinue service to Inteliquent, all of the CLECs represented by these comments expressly deny that they have blocked or re-routed Inteliquent’s traffic. Each of these carriers deliver to the intended end user all of the calls delivered to them by their respective CEA provider.

To the extent that one or more end user customers may be rejecting calls from Inteliquent, that is a matter to be addressed between Inteliquent and those service providers. As common carriers, the CLECs’ only duty is to provide facilities for the delivery of the calls. The CLECs have no obligation or ability to police the actions of their end users. Thus, Inteliquent’s suggestion that the Commission require “the LEC serving the calling platform to investigate and promptly stop large-scale rejection or blocking of traffic by one of its customers”²¹ is entirely impractical. A CLEC cannot commandeer control of its customers’ equipment and reprogram that equipment any more than it can commandeer control of Inteliquent’s accounts payable system and stop Inteliquent’s unlawful self-help withholding. Inteliquent’s self-serving proposal for rules that would encourage, rather than condemn, Inteliquent’s actions should be rejected.

Respectfully submitted,



G. David Carter

¹⁹ *Id.* at 2-3 (emphasis added).

²⁰ *Id.* at 2.

²¹ *Id.* at 3.