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December 3, 2018

Ex Parte Notice

Ms. 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 November 29, 2018, Philip Bowie, Keith Krom, Kim Meola and Jack Habiak of AT&T (in person) and Debbi Waldbaum, Adam Panagia and Pam Britt (telephonically) and the undersigned, all of AT&T, along with Michael Hunseder (Sidley Austin, LLP) representing AT&T, met with Lisa Hone, Gil Strobel, Lynne Engledow, Edward Krachmer, Gregory Capobianco, Shane Taylor, Al Lewis, Irina Asoskov, Christopher Koves, Rhonda Lien, Richard Kwiatkowski, David Zesiger and Justin Faulb of the Wireline Competition Bureau. During the meeting, AT&T discussed the urgent need for the Commission to adopt the industry proposal, which was discussed in the subject Notice of Proposed Rulemaking (NPRM).

AT&T reiterated its advocacy that the Commission benefits from a complete, thorough, robust and fulsome record supporting the NPRM's "prong one", around which the Commission enjoys widespread industry support. AT&T discussed the attached PowerPoint presentation as well as the mileage pumping call flows represented in the enclosed diagrams. AT&T incorporated by reference its prior filings in both the comment and reply comment rounds, as well as its prior advocacy from its September 12, 2018, ex parte meeting with staff.

As AT&T discussed, although the Commission's 2011 reforms ameliorated some of the marketplace abuses, arbitrage schemes persist today. AT&T explained the nature of today's access stimulation activities, whereby LECs earn inflated profits collecting unjust revenues by partnering and sharing revenue or other benefits with high volume conferencing/chat services, which locate their services in remote areas for the sole purpose of billing high, per mile transport rates.

These schemes target the availability of higher intercarrier transport revenue by locating in remote areas; further, the LECs/high volume conferencing/chat services are able to shift their high-volume traffic to almost any location, seemingly overnight, as they identify new areas or new methods of generating their ill-gotten revenues.

AT&T discussed the current Commission definitions of both access stimulation and revenue sharing agreements. AT&T stressed that the current definitions, as clarified by the



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Commission, are appropriately broad, covering *any* agreement between a LEC and *any* other party resulting in *any* net benefit or consideration. If enforced, the current definitions would cover many of the most egregious arbitrage activities today. While AT&T supports the Commission's 2011 definitions, AT&T also discussed that the NPRM specifically requested comment on the definition of revenue share agreement and whether the definition needed modification, and at least ten parties filed comments on that issue.

The Commission could easily expand the definition if it believed there are arbitrage activities that are not encompassed by the definition. Alternatively, it could adopt immediate reform by implementing "prong one", as proposed by the industry, and issue a further notice of proposed rulemaking to investigate broadening the definitions to cover additional arbitrage activities.

Nevertheless, it is AT&T's position that the Commission's current legal and regulatory precedent, affirmed by the Commission and upheld by the Courts, provides the Commission with ample authority to act today to adopt "prong one" further curtail these arbitrage schemes.

As stated before, AT&T believes that enacting the NPRM's second prong, unless modified to ensure that access stimulators, and only access stimulators, bear the full costs associated with direct connections, would allow those engaged in arbitrage to dictate terms, harming both consumers and the marketplace.

As AT&T explained, adopting a second prong would likely exacerbate the problem, by allowing pumpers to establish facilities in areas where there are no realistic transport alternatives and where it would be prohibitively expensive to deploy them, especially because the investments could be stranded by moving the traffic to a new area. AT&T supports prompt Commission action, based on prior precedent and the full record before it, and continues to reiterate its support for broader intercarrier compensation reform, including a nationwide move to bill and keep for switched access traffic.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Nodine", with a long horizontal flourish extending to the right.

Matt Nodine

AT&T Services Inc.

Enclosure

Cc: Lisa Hone
Gil Strobel
Lynne Engledow
Edward Krachmer



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AT&T Ex parte

November 29, 2018

AGENDA

Access Stimulation NPRM

- **Background**
- **Revenue Sharing**
- **Solutions**
- **Legal Justification**

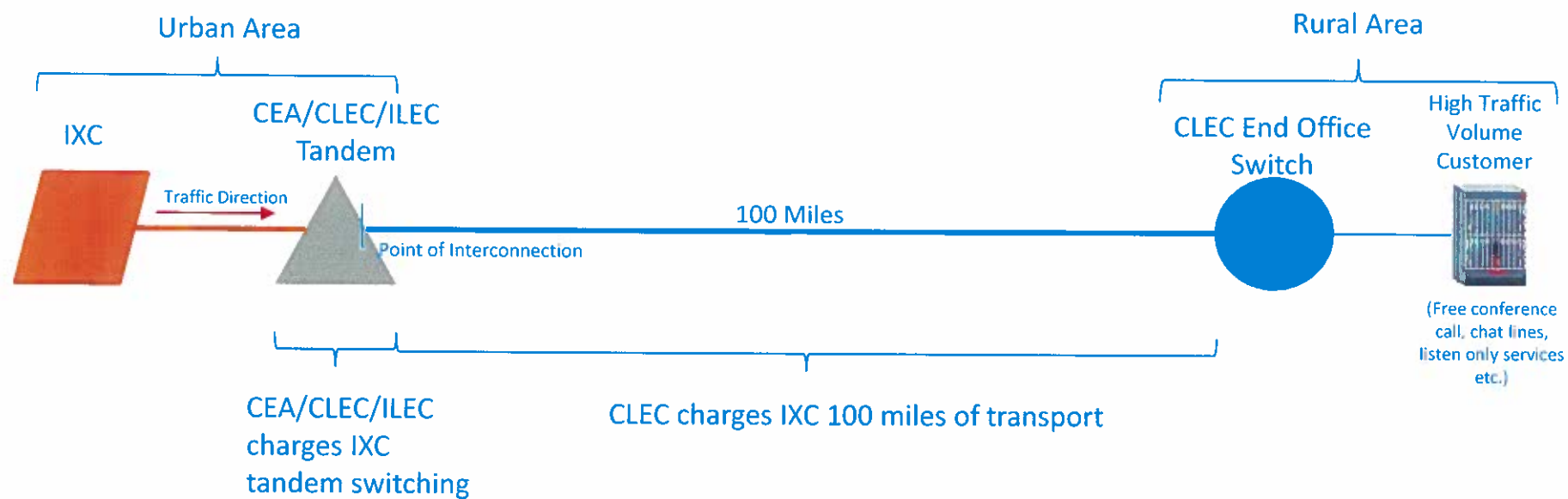
Background: Access Stimulation

- Current rules have not constrained ongoing arbitrage practices.
 - The Commission's desired end state is a uniform national bill-and-keep framework.
 - Access stimulation is an obvious area to end tariffed transport charges by making terminating access stimulation LECs responsible.
- Regulatory gaps allow access stimulation / arbitrage to thrive.
 - High volume conferencing / chat services enter into agreements with local exchange carriers located in remote areas to bill per mile high transport rates for the sole purpose of extracting inflated ICC revenues due to the distance and volume of access stimulation traffic.
 - Earn inflated and unreasonable profits by collecting unjust transport charges.
 - Carriers partner with high volume customers who drive traffic in exchange for benefits.
 - The Commission concluded in 2011 that ordinary rate-payers implicitly subsidize the cost of these calls.

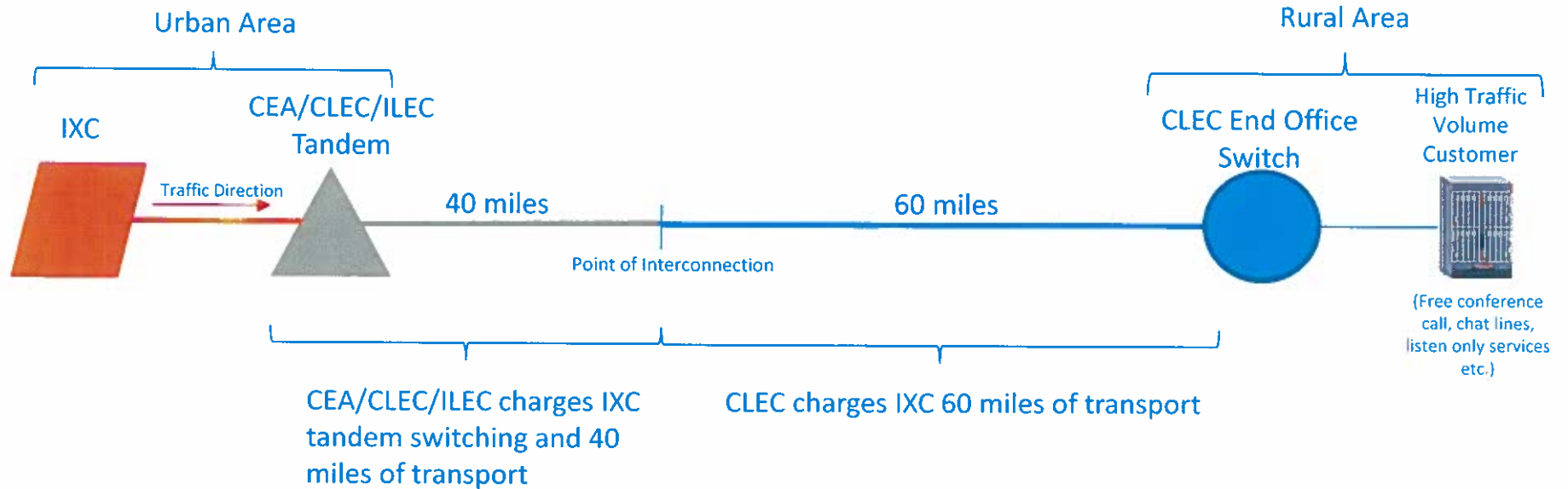
Background: Access Stimulation (cont.)

- Access stimulation traffic easily shifted.
 - Currently, Iowa is the epicenter of most, but not all, arbitrage.
 - INS / Aureon Tariff dispute resolution will not solve access stimulation.
 - Conference and chat companies can easily move their traffic to different areas to exploit higher cost transport rates.
 - AT&T has already seen minutes shifted from Iowa to South Dakota.
 - Any opportunity that permits the collection of excessive mileage-based transport charges at above-cost rates will be exploited.

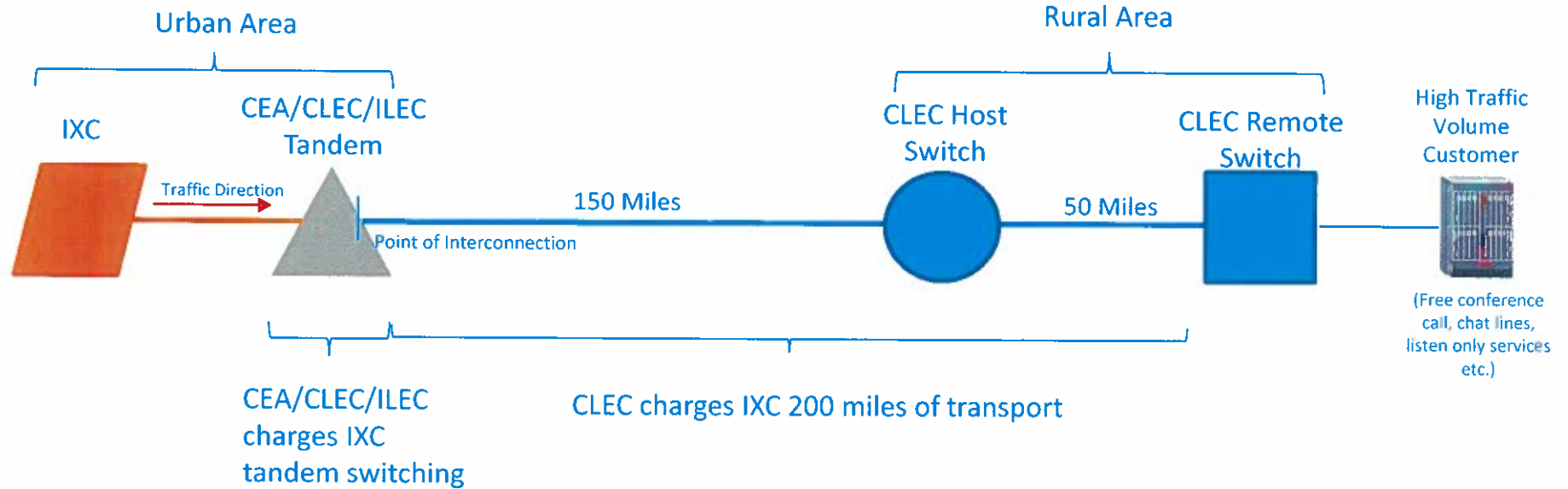
Mileage Pumping: Example 1



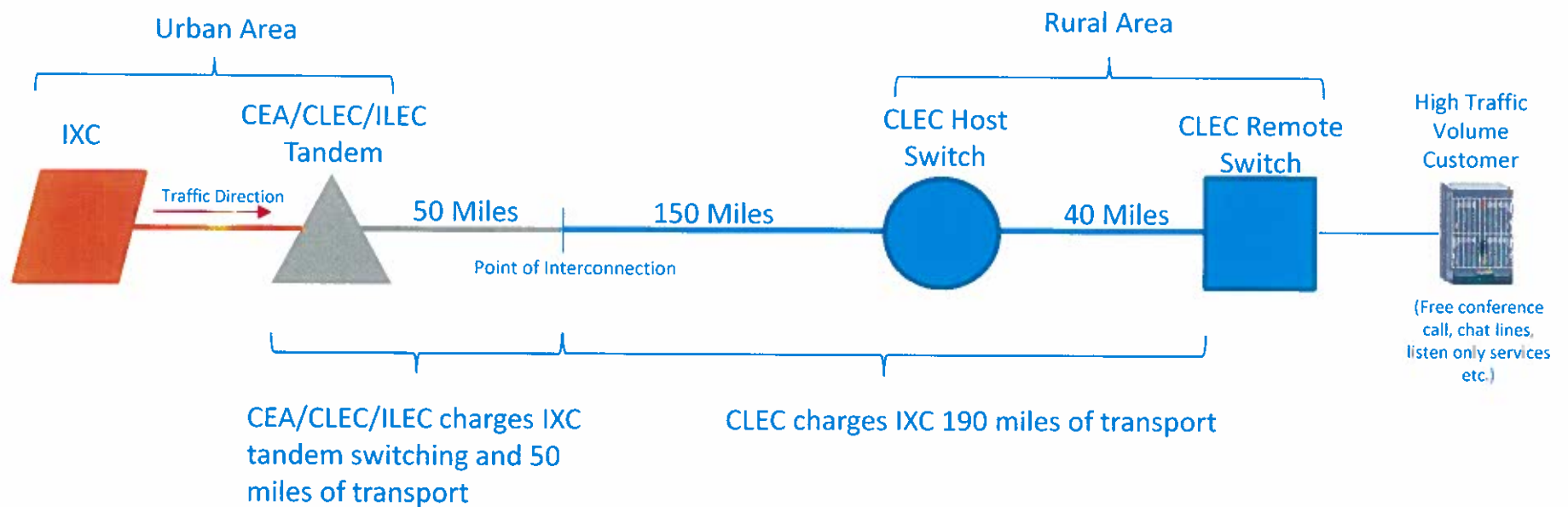
Mileage Pumping: Example 2



Mileage Pumping: Example 3



Mileage Pumping: Example 4



Revenue Sharing Agreements w/Terminating LECs

- The Commission correctly defined revenue sharing agreements broadly, incorporating a rebuttable presumption / burden shifting mechanism.
 - Terminating access stimulating LECs attract billions of minutes of traffic to remote areas from conference/chat providers as they offer substantial ICC benefit.
 - Rules are broad enough to encompass such arrangements, regardless of the precise form.
 - The definition does not need to change; it needs enforcement.
- In 2012, the Commission reinforced the broad scope, unequivocally stating that “any arrangement between a LEC and another party, including affiliates, that results in the generation of switched access traffic to the LEC and provides for the net payment of consideration of any kind, whether fixed fee or otherwise, to the other party, including an affiliate, is considered to be ‘based upon the billing or collection of access charges.’”
- If any entity believes their arrangement falls outside the current definition, they should disclose the terms to ensure the Commission has a full record.

Solutions

- Industry Proposal / “Prong One”.
 - Access stimulating LEC should remain the sole party responsible for switching and transport costs for access stimulation traffic to the LEC’s end offices (and remotes), including costs associated with the use of an intermediate provider.
 - Commission can effectively restore marketplace balance.
 - Reduces arbitrage incentive.
- Reject second aspect of proposed rule, for access stimulation traffic, unless access stimulators are required to pay all costs.
 - An ineffective measure as traffic can shift, almost overnight.
 - The Commission should not approve ongoing gamesmanship or allow arbitrage actors to dictate the marketplace.
 - Would encourage further arbitrage and future “whack-a-mole” efforts, wasting precious industry and Commission resources.

Legal Justification: Section 201(b) of the Act - Unjust and Unreasonable

- In 2011, the Commission identified “access stimulation” as a wasteful arbitrage scheme.
- Forces ordinary long distance and wireless customers to subsidize the free, or low-cost, conferencing and chat services.
- Affirmed by later Commission action and the courts.
- The Commission has authority to adopt bill-and-keep, and to move some rates to bill-and-keep earlier than others, as it did in 2011.
- It is authorized to move to a bill-and-keep default regime to end an arbitrage scheme.

Access Stimulation Broadband “Red Herring”

- The Commission should again reject claims that access stimulation contributes to broadband investment through inflated costs to be diverted to rural and tribal communities.
 - Specifically rejected in the 2011 Transformation Order.
 - Broadband deployment, if subsidized, should be through explicit subsidies, not through inflated charges to IXC.
 - Any purported benefits of access stimulation would inure to an extremely small percentage of the country’s rural population, while imposing high costs on the nationwide industry.

QUESTIONS