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Via Electronic Comment Filing System

December 17, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Attention CALEA Monitoring Report
445 12th Street, S.W.
Washington, D.C. 20554

In Re: WC Docket No. 07-135

Dear Ms. Dortch:

Pursuant to the Commission's October 2, 2007 *Notice of Proposed* Rulemaking in the above-referenced matter, *e*nclosed for submission to the Commission are the Comments of Trans National Communications International, Inc. ("TNCI"). TNCI appreciates the opportunity to comment on this important matter.

Thank you for your attention to this matter. Questions may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

Andrew O. Isar

Andrew O. Isar

Regulatory Consultants to
Trans National Communications International, Inc.

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Establishing Just and Reasonable Rates for	)	WC Docket No. 07-135
Local Exchange Carriers	)	

COMMENTS OF
TRANS NATIONAL COMMUNICATIONS INTERNATIONAL, INC.

Trans National Communications International, Inc. ("TNCI") hereby submits the following comments in response to the Commission's October 2, 2007 *Notice of Proposed Rulemaking,* FCC 07-176 ("NPRM"), in the above-captioned proceeding. TNCI maintains that the Commission's current rules governing the tariffing of traffic-sensitive switched access services and enforcement tools already available to the Commission, are effective in ensuring that non-dominant, competitive local exchange carriers ("CLECs") switched access rates remain fair, just, and reasonable. Although TNCI readily recognizes the significant concerns raised over the unethical practice of those carriers who unfairly profit through artificial traffic stimulation and need to preclude such practices, a clear distinction should be drawn between the dominant rate-of-return and price cap carriers who have engaged in such practices, and competitive carriers who are not similarly situated, if additional safeguards are ultimately imposed.

I. Introduction

TNCI is a facilities-based provider of competitive local exchange, switched network exchange access, and interexchange services throughout the U.S. Founded in 1995, TNCI specifically provides competitive local exchange and switched network exchange access services through its expanding Company network, in serving more than 15,000 subscribers nationwide. The Company's growth and network expansion are a direct function of its market success in providing desirable services, reasonable value, and exceptional customer service in fully competitive markets. TNCI represents the very type of competitive, facilities-based carrier that was envisioned as emerging through enactment of the Telecommunications Act of 1996.

A majority of the NPRM discussion focuses on a regulatory approach to preclude the regrettable practices of a minority of disreputable rate-of-return and price-cap regulated entities. By their very ongoing market dominance and former monopoly status, a more stringent regulatory approach has been deemed appropriate for rate-of-return and price-cap regulated entities carriers generally, as the NPRM itself reflects. Complaints filed by interexchange carriers, which have precipitated the instant proceeding, too have been focused on such carriers; dominant carriers, which do not operate in robustly competitive markets.[1] Even Verizon's cited proposal for addressing Commission concerns would explicitly apply to "competitive LEC[s] relying on the rural exemption."[2] Such a clear differentiation between rate-of-return and price-cap regulated entities carriers and non-dominant competitive carriers, is entirely appropriate and should be maintained as the Commission evaluates its approach in this matter.

The proposed imposition of additional regulatory safeguards against artificial traffic stimulation, at least for fully non-dominant competitive local exchange carriers such as TNCI who operate in highly competitive markets, appears diametrically opposed to the Commission's effective regulatory streamlining policies for competitive carriers and markets.[3] While the Commission appropriately considers whether to impose

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[1] *See e.g. NPRM* at footnote 37.

[2] *e.g.* dominant rural incumbent carriers. *Id*, at 35.

[3] In granting Qwest Corporation's Petition for forbearance from regulation from the Omaha Metropolitan Statistical Area (MSA), *Qwest Corporation's Petition for Forbearance in the Omaha Metropolitan*

additional regulatory safeguards on all local exchange carriers, TNCI believes that extension of any such safeguards as may be adopted beyond rate-of-return and price-cap carriers, would be overreaching, add to the Commission's administrative burdens, and become an unnecessary retreat from its pro-competitive policies, with no countervailing benefit to interconnecting carriers or the public.

II. Basis For Artificial Traffic Stimulation Issues[4] Under Investigation Is Rooted In Rogue Rural LEC Practices, and Has Not Been Demonstrated to Apply to Non Rate-of-Return or Price-Cap Carriers.

Those interexchange carrier complaints cited in the NPRM as the genesis for this proceeding pertain exclusively to former incumbent rural carriers.[5] Despite carrying the "competitive" local exchange carrier moniker, these carriers are by no means similarly

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Statistical Area, WC Docket No. 04-223, Order, 20 FCC Rcd 2531 (WCB 2005), for example, the Commission states, "Today, we grant Qwest substantial relief from many of these obligations, where the level of facilities-based competition ensures that market forces will protect the interests of consumers and regulation is, therefore, unnecessary. Through this Order, *we show that we are ready and willing to step aside as regulators and let market forces prevail where facilities-based competition is robust* [emphasis supplied]. ¶1.

[4] The Commission finds that traffic may be stimulated "through a variety of means, including conference bridges, chat line facilities, call center operations, and help desk provisioning," and has requested comment. *NPRM* at 13. These venues may indeed contribute to traffic stimulation. Yet traffic stimulation will also arise from legitimate increases in demand by existing and new subscribers. Not only is a clear distinction between the rate of return/price-cap and CLECs critical as discussed herein, but a clear distinction between artificial and legitimate traffic stimulation is equally imperative in this investigation, accordingly. The Commission notes, "if the average revenue per minute remains constant as demand grows, but the average cost per minute falls (which occurs if the marginal cost per minute is less than the average cost per minute) then profits (or return) will rise. This principle is equally applicable to all LECs." [*NPRM* at 14.] While TNCI does not dispute this conclusion, an increase in profits becomes an important consideration in the regulation of rate-of-return and price cap LECs, but should not be so for CLECs who run profitable businesses. There is nothing inherently wrong with increasing profits, if done through legitimate means by CLECs. Non rate-of-return or price cap carriers should be – and indeed under Commission rules are - free to maximize revenue through legitimate addition of new customers and their associated usage, through legitimate stimulation of existing customer usage, and reduction of costs resulting from more efficient operations. This is a central tenet in open market competition. An increase of traffic will, as the Commission notes, result in increased profitability through additional revenues and a reduction of cost. At issue, is whether such increases are indeed legitimate or artificially stimulated and whether any safeguards applied to rate of return and price cap competitors should apply to other CLECs as well. Existing regulation and enforcement action for non rate-of-return or price cap CLECs has been effective in this regard and should be retained, as discussed further below.

[5] *See e.g. NPRM* at 11 and footnote 37. "Several IXCs have filed complaints, either with this Commission or with United States federal district courts pursuant to sections 206-209 of the Act, alleging that such increases in access traffic have caused the involved LECs to earn a rate of return grossly in *excess of the maximum allowed rate of return*…[emphasis supplied]."

situated to CLECs such as TNCI, witness the fact that they continue to be subject to rate-of-return or price-cap regulation. Unlike such LECs, few CLECs are former monopoly providers, do not maintain geographically focused networks, and moreover do not maintain market dominance, either through a rural exemption or as a matter of market power. Their competitive market position has lead to the Commission's streamlined regulatory paradigm.[6]

Historically, it is well established that rural incumbent carriers have derived a significant portion of their revenue streams from terminating switched access charges imposed on regional Bell operating companies and other larger interconnecting regional local exchange carriers. TNCI can only speculate as to the motivation for a minority of the carriers which have been the subject of interexchange carrier complaints, to engage in artificial traffic stimulation; presumably they have been motivated to increase revenues at a time of declining revenues resulting from encroaching inter and intra-modal competition coupled with limited retail revenue growth in the companies' former franchised service areas, and moreover, by a continued decline in access rates. Regardless of their motivation, these incumbent rural carriers fall squarely in the realm of the Commission's rate-of-return and price cap regulatory framework because of their unique market position, and do not share the same characteristics as CLECs.

Verizon's own proposal for curbing abuse is telling of the interexchange carriers' concerns specifically with rate-of-return and price cap local carriers that rely on the rural exemption. As one of the complainants whose concerns lead to this proceeding, Verizon's own focus on the applicability of its proposal underscores the fact that the

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[6] Competitive LECs are considered nondominant carriers and are thus subject to minimal rate regulation." *NPRM* at 10.

alleged abuses are rooted in specific rogue rural carriers. This is a critical and necessary distinction for purposes of this proceeding.

A broad brush approach to extending additional regulations on CLECs on the basis of speculative potential abuse simply because they provide local services, would ignore not only the basis for this investigation, but the unique competitive characteristics that have lead the Commission to streamline regulation for non rate-of-return and non price-cap LECs. Regardless of what additional safeguards may be imposed by the Commission through this proceeding, the Commission can effectively continue to safeguard the public from abuse under the existing streamlined regulatory approach and enforcement tools to which non rate-of-return and price-cap CLECs are already subject.

III. Current Streamlined Regulation and Enforcement Tools Remain Appropriate for Non Rate-of-Return and Price-Cap CLECs.

In recognizing that CLECs are non-dominant carriers subject to streamed regulation, potential implementation of a broad-based regulation to curb artificial traffic stimulation that included non rate-of-return and price cap CLECs, would be at odds with the Commission's streamlined approach for fully competitive carriers. TNCI does not dispute the fact that CLECs *could* engage in unfair artificial traffic stimulation. But this remains a speculative premise. To the extent that CLECs may engage in artificial traffic stimulation, current safeguards and enforcement action already provides adequate protection for the few disreputable competitive carriers that could engage in this practice.[7]

[7] The Commission's proposal to establish an access demand trigger raises two additional concerns for CLECs which underscores the point (*NPRM* at 36); if an access demand trigger is implemented, applies to CLECs, and is ultimately based on a legitimate stimulation of traffic, requirements to revise access rates would ironically run counter to the Commission's benchmark rule and potentially force a CLEC to provide access services below cost, while providing competitors with valuable competitive information. TNCI

Section 61.26[8] of the Commission's rules establish a benchmark for CLEC access rates by requiring that CLECs charge no more to interconnecting carriers than incumbent carriers. This requirement has the effect of tying CLEC access rates to those of rate-of-return and price-cap LECs, whose rates and underlying cost studies are open to Commission investigation. By benchmarking CLEC access rates to those of the incumbent, the Commission has effectively precluded the possibility that CLECs unfairly profit from access charge arbitrage. The reasonableness of CLEC access rates, then, is tied directly to that of the incumbent carriers, as the Commission already notes.[9] Benchmarking addresses the cost side of the artificial traffic stimulation safeguards for CLECs.

Although the potential that a CLEC could benchmark rates to an incumbent engaged in artificial traffic stimulation exists,[10] the Commission would still maintain authority to direct the CLECs to implement corrective rates following Commission enforcement action against the offending incumbent. Yet this possibility would remain remote in light of the exceptionally few documented instances, which have arisen generally, and the rural markets where those incumbents who are alleged to have engaged in artificial rate stimulation operate. Ultimately, the Commission retains its broad authority to direct CLECs to implement amendments following enforcement action

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acknowledges the issues raised by the Commission regarding the correlation between traffic stimulation and carrier network costs. Yet such correlation does not easily apply to *non* rate-of-return and price cap CLECs, further supporting the basis for excluding CLECs from additional Commission safeguards.

[8] 47 C.F.R. § 61.26. "That section allows competitive LECs to file tariffs if the rates are no higher than those charged by the incumbent LEC serving the same area, or, in the case of rural competitive LECs competing against a non-rural incumbent LEC, to charge a rate no higher than NECA's access rates, assuming the highest band for local switching." NPRM at 34.

[9] *Id.*

[10] *Id.* at 37.

against rate-of-return or price cap carriers resulting from establishment of unreasonable rates under any circumstance, as is the case today.

Through its existing authority, the Commission already retains the ability to investigate allegations of artificial CLEC traffic stimulation on the revenue side of the equation, obviating the need for additional CLEC regulation. While legitimate traffic stimulation is a central tenet of competitive carriers as noted *supra*, the Commission correctly finds that the potential for artificial traffic stimulation is hypothetically possible for any local carrier. Yet the major incumbent carriers who precipitated this investigation are those most sensitive to the issue of artificial traffic stimulation and those entities best suited to initiate action in such instances under interconnection agreement dispute provisions and under the Commission's complaint process. Interconnection agreements and carrier access tariffs provide for dispute resolution provisions, which enable interconnecting carriers to question charges in instances where billing may appear dubious. Failure to resolve such disputes through direct discussion and negotiation may result in escalation of complaints under the current regulatory complaint process. and ultimately resolved through legal action in the most egregious of cases, as the major incumbents have repeatedly demonstrated. The current process for resolving disputes, including instances of potential artificial traffic stimulation, already provides industry and regulatory venues for resolution that do not depend upon additional CLEC oversight or regulation.[11]

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[11] AT&T's proposal to require CLEC certification that it does not engage in artificial traffic stimulation, on its face, appears of questionable value for the simple reason that disreputable entities engaging in such practices would likely have little apprehension in making false statements. An entity making a knowingly false certification would nevertheless require investigation if it were believed that the entity was engaged in artificial traffic stimulation.

IV. Conclusion.

Before any additional artificial traffic safeguards are considered, a clear distinction between rate-of-return/price cap local exchange carriers, and CLECs is imperative. The Commission has effectively overseen CLEC operations through its streamlined regulatory framework and enforcement tools and in doing so continues to foster the competitive environment. It should not now retreat from this approach by encumbering the Commission and fully competitive LECs with additional regulation based on the speculative premise that CLECs too may engage in artificial traffic stimulation. TNCI urges the Commission to continue reliance on the existing interconnection dispute, complaint, and *ad hoc* enforcement process, which has enabled the Commission effectively to oversee competitive carrier operations.

Respectfully submitted this 17th day of December, 2007,

Trans National Communications International, Inc.

By: ______________________

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