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August 11, 2009

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: <u>Ex Parte</u>
Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135

Dear Ms. Dortch:

More than two years have passed since AT&T and other carriers brought the problem of traffic pumping to the attention of the Commission. While the Commission took some small steps to address the issue, recent trends confirm that traffic pumpers have not been deterred and are increasingly active in the face of Commission inaction.

Anyone who is unconvinced that a problem exists need only contemplate the following fact: In 2008, the 493 companies in NECA "Band 8" billed in aggregate less than 1.8 billion minutes of use (MOUs) while a mere twelve traffic pumping CLECs who mirror the "Band 8" rates, billed over 6 billion MOUs.[1] When the Commission adopted rules allowing "rural" CLEC's to mirror the rates of rural ILECs (even if they, in fact, operate in the rural portions of an RBOC's service area), it assumed that these CLECs needed to charge high rates because they would be serving low volume customers in low density areas,[2] or in other words the same type of customer and volumes that the NECA carriers serve. Traffic pumping CLECs have turned that reasoning on its head. In 2008, NECA Band 8 companies averaged 3.65 million MOUs per company, while the traffic pumpers averaged an estimated 500 million MOUs per company. These companies now have both high rates and high volumes making a mockery of the FCC's system for establishing intercarrier compensation rates in rural areas. Clearly, a traffic pumping CLEC with little if any physical plant and enormous traffic volumes bears little resemblance to a rural ICO or a true rural CLEC actually providing service to rural customers. Rates that recover an ILEC's cost after 3.65 million MOUs are unreasonable when the MOUs reach a level 137 times greater.

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[1] This is an industry estimate based on actual MOUs billed to AT&T

[2] CLEC Access Charge order at 66. In the CLEC Access Charge Order proceeding, CLECs argued that, lacking the lower-cost urban operations that non-rural ILECs can use to subsidize their provision of services to rural local service customers, CLECs should be permitted to charge more for access service, as do the small rural incumbents that charge the National Exchange Carrier Association (NECA) schedule rates. Clearly, the local service customers that were the intended beneficiaries of the FCC's rural exception were the traditional users that live and work in rural areas, not large volume generators who joined forces with CLECs for the sole purpose of getting rich by gouging IXCs for access charges.

The problem described will only be compounded by the increase in NECA rates in their most recent annual filing. Ironically, a downward trend in minutes for NECA companies that creates an increase in their rates also creates an even greater opportunity for traffic pumping CLECs mirroring those rates.

Additionally, two small ILECs have recently partnered with access pumping carriers despite the FCC's tentative conclusion that such activity is an unjust and unreasonable practice. While these carriers were forced to modify their tariffs in response to objections made by AT&T and others, the blatant disregard for past Commission action underscores the urgent need for reform.

This industry plague is caused by a limited group of rural ILECs and CLECs intent on enriching themselves at the expense of consumers nationwide. While the Commission's tariff intervention two years ago put a serious dent in ILEC traffic pumping, traffic pumping CLECs (some formed by rural ILECs themselves and many little more than paper shells created solely to engage in traffic pumping) have more than filled the void. The record in this proceeding contains several recommendations the Commission could pursue to remedy the problem, including the tentative conclusion it has already adopted and a joint proposal agreed to by AT&T and RICA (an association representing rural CLECs). Addressing this arbitrage would send a strong signal to the industry that the Commission will no longer tolerate companies gaming the system and would be a significant first step toward larger reform.

Please call me if you have any questions.

Sincerely,

Robert W. Quinn, Jr.
Senior Vice President-Federal Regulatory

cc: Priya Aiyar
Jennifer Schneider
Nicholas Alexander
Carol Simpson
Christi Shewman