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November 20, 2009

**VIA ELECTRONIC SUBMISSION**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

**RE: Establishing Just and Reasonable Rates for Local Exchange Carriers  
WC Docket No. 07-135**

Dear Ms. Dortch:

On November 19, 2009, Mary Henze, Safir Rammah, and the undersigned of AT&T and Michael Hunseder of Sidley and Austin met with Albert Lewis, John Hunter and Doug Slotten of the Pricing Policy Division of the Wireline Competition Bureau. The discussion focused on the problem of traffic pumping by a limited group of CLECs. Indeed, the companies involved in these activities seem to have been emboldened by Commission inaction and are encouraging other companies to “make hay while the sun shines” because they do not believe the Commission will move to address the problem in the foreseeable future.<sup>1</sup> AT&T then presented the data in the attached slides that shows these carriers not only receive 3-5 times more MOU’s than the typical NECA Band 8 carriers whose rate they mirror, but that such traffic to them is growing at an alarming rate. AT&T also urged the Commission to take immediate action to address this problem by adopting the rules jointly proposed by RICA and AT&T in January of 2008.

In accordance with Section 1.1206 of the Commission’s rules, this letter is being filed electronically with you office for inclusion in the public record of this proceeding.

Please call me if you have any questions.

Sincerely,

/s/ Brian J. Benison

Attachment

cc: Albert Lewis  
John Hunter  
Doug Slotten

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<sup>1</sup> And for the readers that don't know David Frankel [sp] has filed alot of paperwork with the FCC basically saying that he runs a business where he charges the customer and he is thinking about offering FREE conferencing but doesn't want to do it because it is just not right. David you ought to do what I do and that is to take advantage of both models while the sun is shining.

David Erickson – President of FreeConferencecall.com on TelecomSense blog October 12<sup>th</sup> 2009, 3:01PM  
<http://www.telecomsense.com/2009/08/heres-to-you-mr-traffic-pumper.php#comments>

# Traffic Pumping

November 19, 2009



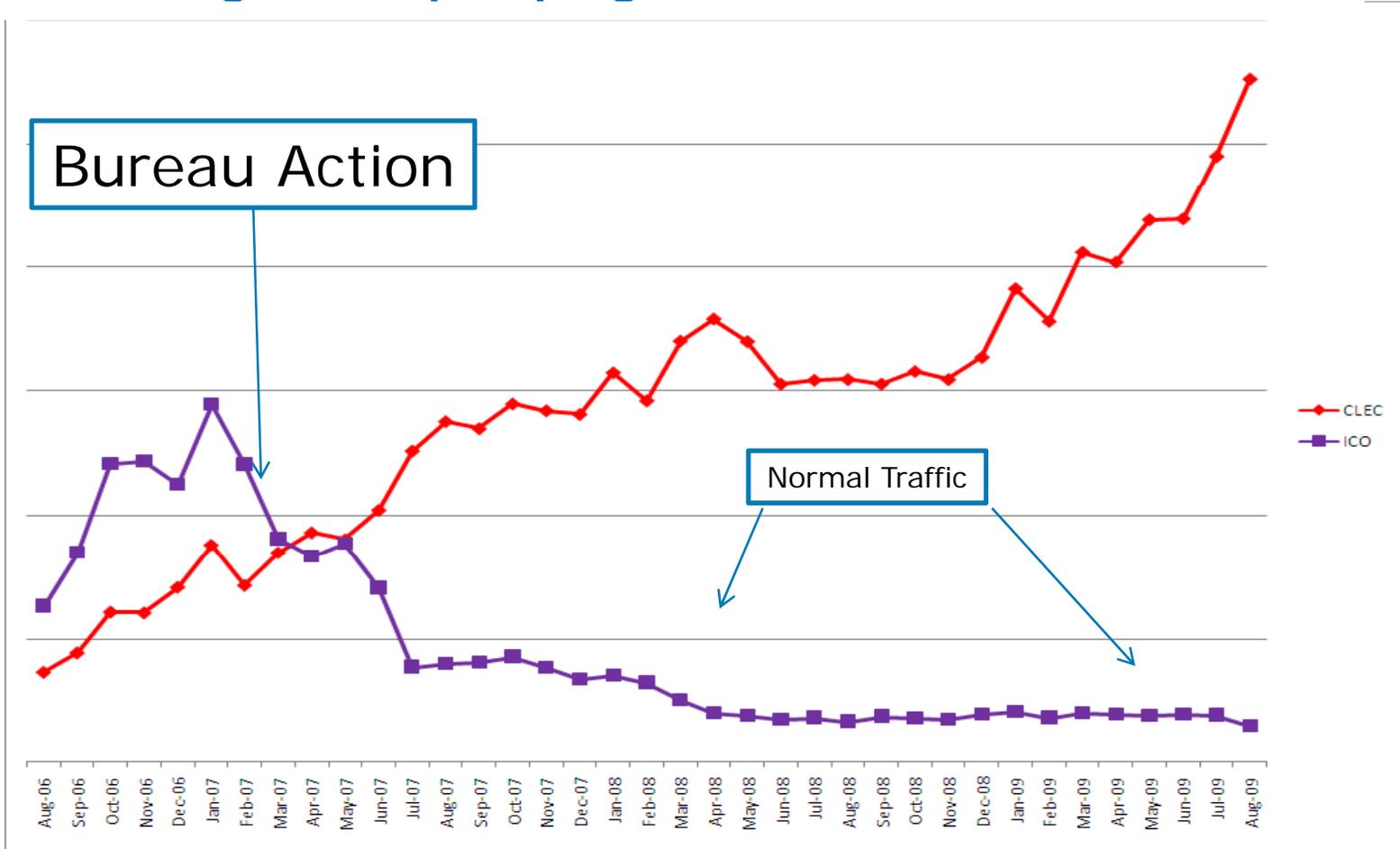
# This Problem was Dismissed in the CLEC Access Charge Order

**“We are similarly unpersuaded by AT&T’s argument that a rural exemption will cause a proliferation of chat line providers in the territories served by rural CLECs.** We recognize that AT&T has alleged that, in certain circumstances, it violates the Act for a LEC with relatively high access rates (such as a NECA carrier) to serve a chat line provider as a means of increasing the LEC’s access traffic. It appears that the conduct that AT&T challenges in these proceedings grows out of the arbitrage opportunity created by the higher access rates charged by rural NECA carriers. **However, we are skeptical that the rural exemption that we create today will add markedly to AT&T’s problem in this regard.** The FCC recently reported that non-price cap incumbent carriers served in excess of 12 million lines in the U.S. The bulk of these carriers either charge NECA access rates or something similar. Adding less than one percent to the number of rural lines eligible for higher access rates seems highly unlikely to increase dramatically the arbitrage opportunities involving chat line providers.”

Paragraph 71 of the CLEC Access Charge Order (2001)

# Pumping Trends

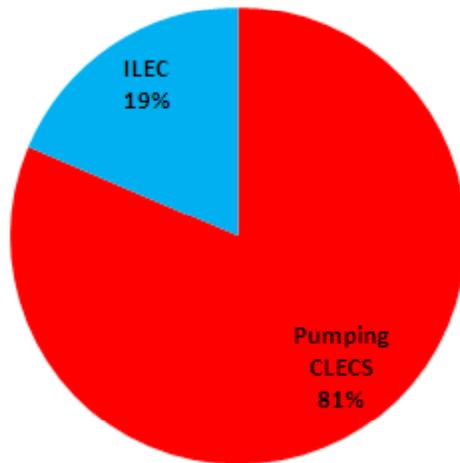
- ❑ Prompt Bureau action on ICO tariffs significantly curbed ICO participation in pumping schemes
- ❑ FCC inaction has emboldened CLECs, creating an alarming rise in pumping.



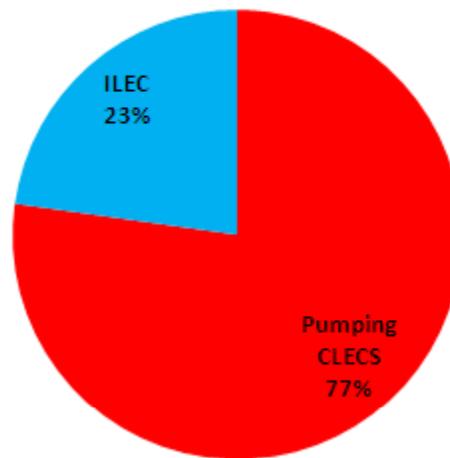
# MOUs: Pumping CLECs vs. Largest ILEC

- ❑ “Rural” Pumping CLECs are terminating three to five times as many minutes as the Largest ILEC.

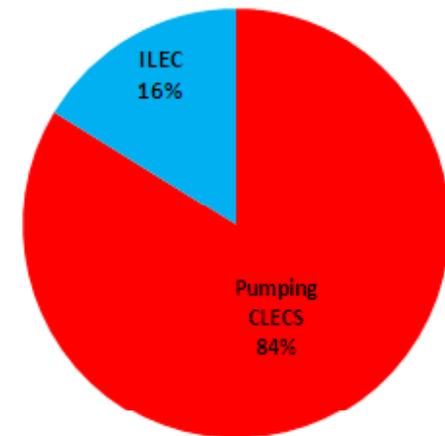
Iowa



Minnesota



South Dakota

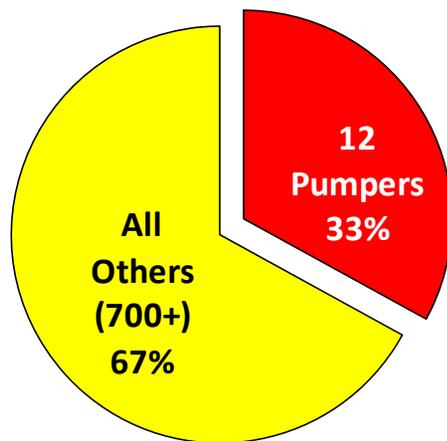


**Notes:** September, 2009 Interstate Terminating MOU

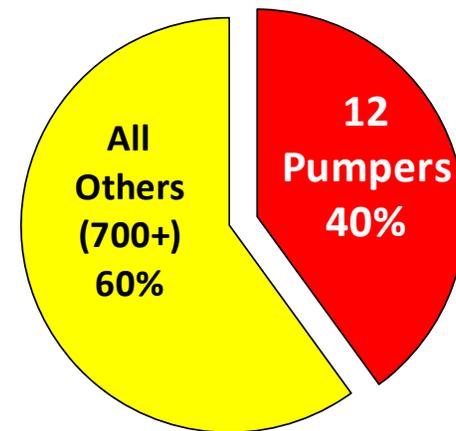
# Expenses: CLEC Pumping vs. Non Pumping

- ❑ AT&T expense associated with 12 Pumping CLECs continues to grow. As of September these account for 40% of total expenses for more than 700 CLECs.
- ❑ Pumpers, however, generally serve few if any legitimate customers and offer no real competitive benefits.

February 2009 Expense



September 2009 Expense

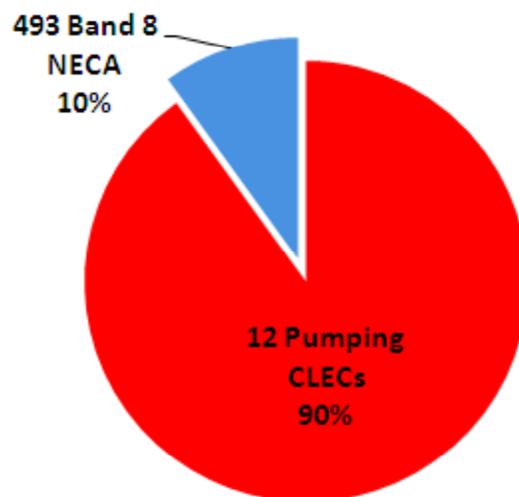


**Note:** Interstate Terminating Usage Expense

# NECA Band 8 ICOs vs. 12 Pumping “Rural” Exempt CLECs

- “Rural Exempt” Pumping CLECs clearly are not in the same business as NECA Band 8 ICOs

	Est. Terminating Annual MOU		Companies	Company Average MOU
<b>NECA Band 8 ICOs</b>	1,000,000,000	10%	493	2,028,398
<b>12 Pumping CLECs</b>	9,000,000,000	90%	12	750,000,000



## The Right Rate for Traffic Pumpers

A traffic pumping LEC with typical NECA band 8 cost structure that generates monthly volume of 3.5 million minutes could recover its costs and a reasonable return by charging less than one third of a cent per minute. But even that greatly overstates the rate needed by traffic pumping LECs to recover their costs and earn a return, because the cost structure for traffic pumping LECs is not remotely similar to that of Band 8 ILECs. As the FCC has pointed out, the additional cost of serving more minutes are very low or zero.\*

*\*See, e.g., Notice of Proposed Rulemaking, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-136, ¶ 14 (released Oct. 2, 2007) (“It is well established that there is a large fixed cost to purchasing a local switch and that the marginal or incremental cost of increasing the capacity of a local switch is low (some contend that it is zero.”).*