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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF AT&T INC.

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April 1, 2011

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Pursuant to the *Public Notice*,[1] AT&T Inc., on behalf of itself and its wholly owned subsidiaries ("AT&T"), hereby comments on the regulatory arbitrage issues identified in Section XV of the *NPRM*.[2]

[1] *Comment and Reply Comment Dates Established for Comprehensive Universal Service Fund and Intercarrier Compensation Reform Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, Public Notice, CC Docket Nos. 96-45, 01-92, WC Docket Nos. 03-109, 05-337, 07-135, 10-90 and GN Docket No. 09-51, DA 11-411, released March 2, 2011 ("*Public Notice*").

[2] *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for the Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, FCC 11-13, released February 9, 2011 ("*NPRM*").

INTRODUCTION AND SUMMARY

Almost exactly ten years ago, the Commission issued a Notice of Inquiry recognizing that its intercarrier compensation regime was broken. Under the current rules, radically different compensation rates may apply depending on the technology used to provide the call or the regulatory category into which the traffic at issue happens to fit, and these arbitrary distinctions severely distort the entire industry's incentives for investment in next-generation networks. To make matters worse, there is increasing confusion in the industry about how these existing rules apply to these new and ever-changing technologies, and many service providers today are seeking to exploit this confusion by pursuing blatant arbitrage schemes that are patently at odds with the purpose of the existing rules and thus only exacerbate the problems endemic to the Commission's outdated regime.

AT&T therefore applauds the Commission's willingness to take strong interim action to stop the worst of these ongoing arbitrage schemes while the Commission designs and implements a more orderly transition to a new, unified intercarrier compensation and universal service framework – one that is consistent with and will facilitate the transition to the all-IP networks that are rapidly replacing the legacy, TDM-based networks of the last century. Interim action is long overdue. The existing rules, with their arbitrary and outdated distinctions, invite service providers to adopt entire business plans based solely on regulatory arbitrage. As soon as one of these providers (or their telecommunications consultants) concocts one of these schemes, scores of copycat schemes quickly arise, diverting enormous resources from more productive uses. Thus, we have seen numerous providers across the country engaged in traffic pumping schemes, phantom traffic schemes, IP/PSTN VoIP traffic arbitrage schemes, and much else. The result has been endless litigation in courts, state commissions, and at the Commission itself. The public interest harm has grown with each passing year and has now reached intolerable proportions.

The Commission simply cannot afford to ignore the worst of these schemes any longer. As the Commission has recognized in the National Broadband Plan, they impose significant costs on consumers and funnel enormous amounts of money away from beneficial broadband and other investment into unproductive activities carried out on legacy technologies deployed solely for the purpose of pursuing these arbitrage opportunities. Unless the Commission takes interim action to rationalize and bring clarity to its rules, these schemes will continue to grow unabated, exacerbating their collective impact, which already easily reaches into the hundreds of millions of dollars per year. For these reasons, it is critically important that the Commission immediately adopt rules to eliminate these arbitrage opportunities during the transition to a new intercarrier compensation regime.

The *NPRM* identifies three issues in particular – traffic pumping, phantom traffic, and VoIP traffic – that require immediate attention. As detailed below, there are a number of other schemes that are also causing consequential public interest harms. AT&T urges the Commission to take immediate action to address all of these issues.

Traffic Pumping. AT&T agrees with the Commission's statements in the *NPRM* that traffic stimulation is an arbitrage scheme that harms consumers, competition in long distance and other services, and the public interest generally. While the proposed rules are a good starting point, particularly with respect to traffic pumping by incumbent LECs, the proposals are not sufficiently broad to address traffic pumping by CLECs, which now carry out almost all of these schemes and which have gone to extraordinary lengths to evade existing regulations. The Commission therefore must ensure that any new rules cannot easily be circumvented. The simplest approach would be an outright prohibition against access revenue sharing arrangements of the types that have fostered traffic pumping and mandatory detariffing of those LECs engaged in such practices. The latter approach, which is similar to the one successfully adopted by the Iowa Utilities Board, would ensure that rates for any LEC traffic-pumping related services are market-based. If the Commission, however, chooses to allow traffic pumping LECs to keep filing tariffs, then rates for such traffic must be dramatically reduced, and the Commission's rules on dial-up ISP traffic offer the most appropriate benchmark. Further, the triggers for traffic stimulation that would require more restrictive tariff filing rules should be broadened beyond the proposal in the *NPRM* and should include, at a minimum, a trigger that is based on the number of minutes per line per month. AT&T agrees that the Commission's proposal to prevent traffic pumpers from filing "deemed lawful" tariffs should be adopted.

Phantom Traffic. The Commission should take immediate action to address the problem of "phantom traffic," which is traffic as to which a service provider has intentionally omitted or removed the information showing its source, making it difficult or impossible for access providers to properly bill for the termination of such calls. The Commission has correctly recognized that phantom traffic "is not consistent with the public interest, and rules are needed to address this problem."[3] AT&T supports the Commission's proposal to address phantom traffic that has been pending since 2008 and drew consensus support from the industry, with the caveat that the Commission should clarify that the "limited exceptions" to these rules should include instances where industry standards or practices make compliance with the rules inappropriate, as described in the *Missoula Plan*.[4]

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[3] *NPRM* ¶¶ 623-24.

[4] Letter from NARUC Task Force on Intercarrier Compensation to Chairman Martin (FCC), attaching Missoula Plan, CC Docket No. 01-92 (filed July 24, 2006) ("*Missoula Plan*").

VoIP. The Commission should also act immediately to stop arbitrage schemes associated with IP/PSTN VoIP traffic – especially situations in which CLECs that serve VoIP providers assess access charges for calls terminated to a VoIP customer but refuse to pay access charges for calls from such customers that are delivered to an ILEC for termination to the ILEC's customer on the PSTN. Under the Commission's existing rules, VoIP calls that terminate on the PSTN are and have always been subject to access charges. And the Commission has ample authority to adopt interim measures that would clearly eliminate these arbitrage opportunities. At a minimum, the Commission should make clear that the practice of some CLECs insisting on "asymmetrical revenue flows" (*NPRM* ¶ 610) – *i.e.*, "you pay me access charges" but "I pay you reciprocal compensation" – is unjust and unreasonable under Sections 201 and 202.

Mileage Pumping. Mileage pumping occurs when LECs (including competitive tandem providers) and centralized equal access ("CEA") providers engage in schemes to designate distant points of interconnection solely to inflate the mileage used to compute the transport component of switched access charges paid by IXCs. These purely paper transactions serve no legitimate purpose; often the traffic is routed identically either way but at higher rates. Such schemes undermine the central purpose of CEA and competitive tandem service arrangements – *i.e.*, to *reduce* access costs – by increasing such costs. There are already several lawsuits raising these issues (including one that already has been referred to the FCC), and the Commission should promptly adopt rules making clear that mileage pumping is an unreasonable practice that violates Section 201(b).

Prepaid Card Access Charge Avoidance. Although the Commission in 2006 made clear that all interexchange calls made using prepaid calling cards or similar devices are subject to access charges, some prepaid providers are still attempting to avoid paying such charges – this time by having their customers dial a local telephone number to access a "platform," which then forwards their calls to intrastate toll, interstate, and international destinations. The Commission should make clear that its prior orders prohibit such conduct, and that all interexchange calls placed with prepaid cards or similar devices are subject to access charges.

8YY Database Query Charges. Immediate Commission action is also required to prevent CLECs from assessing exorbitant charges for 8YY database queries. Many CLECs have tariffed 8YY database query charges that vastly exceed reasonable levels, often more than double RBOC rates. The Commission should adopt rules incorporating CLEC 8YY database query charges into its current CLEC access charge benchmarking rules, such that a CLEC may tariff 8YY database charges only if those charges are at or below the RBOC rate.

Unreasonable Direct Interconnection Restrictions. Prompt Commission action is also required to address a new access arbitrage scheme regarding tandem interconnection. Some LECs have contended that IXCs may no longer connect indirectly to their end offices through a tandem, and must instead obtain a direct connection. Such a requirement clearly undermines LEC incentives to compete for direct connections by virtue of price and quality. The Commission should promulgate rules prohibiting carriers from refusing to accept indirect interconnection as an unreasonable practice in violation of Section 201(b) of the Act, and as a violation of Section 251(a) of the Act, which expressly permits IXCs to connect directly *or* indirectly with other telecommunications carriers.

I. THE COMMISSION SHOULD PROMPTLY ADOPT RULES TO ADDRESS "TRAFFIC STIMULATION" PRACTICES.

A. Traffic Stimulation Harms The Public Interest.

AT&T strongly urges the Commission to adopt new rules that would restrict "traffic stimulation,"[5] and agrees wholeheartedly with the Commission's view that these practices are merely "arbitrage schemes" that impose "significant costs" which "are in fact borne by the entire system as long distance carriers that are required to pay these [] charges must recover these funds from their customers."[6]

There are numerous public interest harms associated with these schemes.[7] Under the Commission's current rules, we all pay more so that a subset of high-volume callers can enjoy

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[5] *NPRM* ¶¶ 635-77. While AT&T agrees with the Commission's general description of "access stimulation," *see id*. ¶ 636, AT&T vigorously disputes that the services offered by LECs engaged in these practices qualify as "switched access services" under the LECs' tariffs, and thus AT&T does not agree with the portions of the *NPRM* that loosely refer to these charges as "access charges." Indeed, the two principal decisions addressing these practices have determined that LECs engaged in these practices have *not* provided access services within the meaning of their tariffs. *Qwest Commc'ns Corp.* v. *Farmers & Merchs. Mut. Tel. Co.*, Second Order on Reconsideration, 24 FCC Rcd. 14801 (2009) ("*Farmers III*"), *recon. denied*, 25 FCC Rcd. 3422 (2010); Final Order, *Qwest Commc'ns Corp.* v. *Superior Tel. Coop.*, 2009 WL 3052208 (Iowa Utils. Bd. Sept. 21, 2009) ("*IUB Traffic Pumping Order*").

[6] *NPRM* ¶ 636; *see id*. ¶¶ 637-38. In addition, two state commissions that have issued decisions regarding these practices have flatly condemned the conduct, concluding that such arrangements increase "costs to ratepayers while funneling money . . . into the hands of only a few, without promoting true competition or technological improvement, or serving any other public interest." *Consideration of the Rescission, Alteration, or Amendment of the Certificate of Authority of All American to Operate as a Competitive Local Exchange Carrier within the State of Utah*, Report and Order, Docket No. 08-2469-01 (Pub. Serv. Comm'n of Utah, Apr. 26, 2010) ("*Utah PSC Order*"); *see also IUB Traffic Pumping Order*, at *27-28.

[7] *Id.* ¶ 637; *see also Utah PSC Order*, at 30-31 (traffic stimulation arrangements "increase[] the cost of telecommunications to the customers of interexchange [] carriers").

"free" calling to services that include not just conference calling services, but adult chat lines – including chat lines that police say are havens for sexual predators to meet their victims.[8]

The Commission's current rules have encouraged the proliferation of numerous so-called "competitive" LECs that engage solely in traffic pumping and that do not actually compete to offer consumers any local services.[9] What is worse, in some cases these traffic-pumping "CLECs" have improperly obtained and used universal service disbursements, not to serve local residents, but instead to subsidize traffic stimulation activities.[10] Traffic stimulation also distorts competition. And, as the *NPRM* recognizes, traffic stimulation harms legitimate providers of conferencing, chat, and other services, because the legitimate providers are a "at a distinct competitive disadvantage" versus the "free" providers.[11] Further, unlike VoIP providers, such as Google Voice, which block calls associated with traffic pumpers, IXCs are prohibited from

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[8] *See* A. Lisberg, *Lurid Phone Chats Help Ring in Profits*, NY Daily News, Oct. 3, 2004 ("15 times in the past seven years, horrified parents have learned their teenage daughters were raped by men who lured them over telephone chat lines. The girls met their rapists in person after talking with them on sordid, free telephone chat lines, many of them unblockable"), *available at* http://articles.nydailynews.com/2004-10-03/news/18280672_1_chat-phone-bills-lake-tahoe. The chat line provider discussed in this article is involved with several traffic pumping LECs. *See also IUB Traffic Pumping Order*, at *28 (finding that several traffic pumping LECs "partnered with [entities] that provided free calling services for indecent or pornographic content. The record also shows that by using these free calling services, there were no technological methods in place to protect minors from making calls to access these pornographic services" which is "contrary to the public interest").

[9] *See, e.g., Utah PSC Order*, at 31 (revoking the certificate of All American, a supposed "CLEC" that for years operated without serving any entity except for its own affiliated free calling provider: "there are no customers . . . who receive the benefit of this so-called service. . . . Local residents see no benefits of competition as a result of the [traffic stimulation] arrangement").

[10] *See, e.g., IUB Traffic Pumping Order*, at *29 (discussing Aventure, which received millions in USF disbursements, based on line counts that "may be in error," and then used "the majority" of its "USF support for conferencing services" and for nearly two years served no traditional customers).

[11] *NPRM* ¶ 638.

blocking and thus suffer a competitive disadvantage vis-à-vis these providers.[12] Finally, efforts to identify and remedy traffic stimulation schemes on a case-by-case basis have proven enormously costly. Every time a particular scheme or arrangement is identified and condemned, the entities engaged in the scheme react by shifting their misconduct to other carriers engaged in pumping to evade the restrictions – which is why most traffic pumping now involves CLECs rather than ILECs. IXCs are thus engaged in a constant struggle – akin to the game of "whack a mole" – in which they obtain relief from the schemes in some locales and then must seek the same relief again when the schemes reemerge elsewhere or in slightly different forms.

B. Because Traffic-Pumping Is Difficult To Police On A Piecemeal Basis And Incentives To Engage In Access Arbitrage Will Continue To Exist, The Commission Should Adopt Broad Rules.

Traffic stimulation has existed in various forms for many years,[13] and both the Commission and other regulators have taken a variety of measures to try to halt the practice. However, the lure of above-cost access revenues has proven to be irresistible to traffic-pumpers, and they have consistently devised new ways to skirt the Commission's past efforts to limit these schemes.

Several years ago, most traffic stimulation schemes were undertaken by rural ILECs, which traditionally had been members of the NECA pool, but which then left the pool and filed their own tariffs so they could engage in traffic stimulation and retain for themselves (rather than share with NECA pool members) all of the access revenues they collected.[14] As the Commission

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[12] *See NPRM* ¶ 654.

[13] *See, e.g., Beehive Tel. Co., Inc., Tariff F.C.C. No. 1, Transmittal No. 8,* Memorandum Opinion and Order, 13 FCC Rcd. 12275, ¶ 15 (1998); *Total Telecomm. Servs. Inc.* v. *AT&T Corp.*, 16 FCC Rcd. 5726, ¶¶ 5-7 (2001) ("*Total*"), *aff'd in relevant part sub nom., AT&T Corp.* v. *FCC*, 317 F.3d 227 (D.C. Cir. 2003).

[14] *See NPRM* ¶ 656.

has since recognized in orders and in the *NPRM*, these ILECs were able to manipulate the Commission's tariffing rules for small, rate-of-return ILECs, and file tariffs with high access rates based on historical data, even though the ILECs' planned traffic stimulation schemes made the data and rates meaningless and unreasonable.[15] In 2007, however, when many additional ILECs exited the NECA pool to implement the schemes, the Wireline Competition Bureau responded by suspending and designating for investigation these ILECs' access tariffs.[16] The Bureau's action was an important step that helped reduce traffic stimulation by some small ILECs, and along with the Commission's proposed rule changes with respect to ILECs, which are discussed in further detail below, should provide the safeguards that are needed to prevent a re-occurrence of traffic stimulation by these small, rural ILECs. The unintended consequence, however, of the Bureau's 2007 *Designation Order,* was that traffic pumping by CLECs has skyrocketed – and often some of the worst offenders have been CLECs that were created by the former traffic pumping ILECs.[17]

Other piecemeal regulatory actions that occurred in individual adjudications by the Commission and state regulators have been vitally important and clearly correctly decided, but also have not addressed the core issues that underlie traffic stimulation, and as a result traffic-pumpers have generally attempted to evade the effects of these decisions. For example, in Iowa and in Utah, decisions against traffic-pumping LECs appear to have reduced, to some degree, traffic stimulation within those states, but the traffic pumpers often simply diverted traffic to

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[15] *See id.*; *see also Qwest Commc'ns Corp.* v. *Farmers & Merchs. Mut. Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd. 17973, ¶ 27 (Oct. 2, 2007) ("*Farmers I*") ("Farmers manipulated the Commission's rules to achieve a result unintended by the rules").

[16] *See July 1, 2007 Annual Access Tariff Filings*, Order, 22 FCC Rcd. 11619 (2007) ("*Designation Order*").

[17] *See NPRM* ¶ 657 & n.1020; *Ex Parte* Letter from Brian Benison (AT&T) to Marlene Dortch (FCC), WC Docket No. 07-135 (filed Dec. 3, 2009).

other states. Additionally, in response to the Commission's decisions in its *Farmers* proceeding, which found that a traffic-pumping LEC had not provided access services under its tariff, traffic pumpers have sought to file revised tariffs in an effort to circumvent the decision.

Thus, as the *NPRM* recognizes, the Commission's existing rules and regulations regarding access charges have perversely "set the stage for access stimulation and similar arbitrage opportunities," and the history of "prior Commission efforts to address" arbitrage and traffic stimulation demonstrates that traffic pumpers can and will invent new ways to circumvent the rules.[18] Accordingly, it will not be enough for the Commission merely to adopt narrow rules that address traffic stimulation in its *existing* forms. Rather, and as the *NPRM* recognizes, the Commission's new rules should "address access stimulation more broadly."[19]

C. The Commission's New Rules Must Address The Terminating Monopolies That Allow Traffic Pumpers To Force IXCs To Accept Calls Or The Existing Benchmark Rates, Which Are Far Above Any Reasonable Measure Of Cost.

In order for the Commission's new rules to be effective against existing traffic stimulation and to reduce future misconduct, they need to address the underlying structural problems that encourage traffic pumping and the defects in its existing rules that allow it to flourish. First, as the Commission recognized in 2001 in the *CLEC Access Charge Order*, the CLECs have bottleneck monopolies over IXCs.[20] When combined with the Commission's prohibition against unreasonable blocking of calls, that means that IXCs essentially are forced to accept the "services" provided under tariff by traffic-pumping LECs. Second, the rates reflected

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[18] *NPRM* ¶ 639 (acknowledging that the Commission's rules have "facilitated [traffic pumping] activity in several ways").

[19] *Id.* ¶ 639.

[20] *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, ¶¶ 30-34 (2001) ("*CLEC Access Charge Order*").

in the Commission's access charge rules are premised on assumptions that are manifestly improper when applied to traffic-pumping LECs: for traffic-pumping CLECs, the Commission's existing CLEC access charge rules improperly presume that these CLECs are performing the same functions as a "competing ILEC," even though the CLECs often do not seek to compete with ILECs for traditional customers and, in all events, the CLECs' costs for completing calls to their free calling partners are manifestly much, much lower than the costs that these ILECs incur. Compounding the problem, many traffic pumping CLECs are abusing the "rural exemption" in the Commission's access rules, so that they are actually charging rates that are much *higher* than the ILEC, even though these CLECs are doing nothing to bring the benefits of competition to rural areas. Further, as to small, rate-of-return ILECs, the Commission's rules improperly assumed that historical data will produce a reasonable rate and is an acceptable proxy for future costs and demand, even though, for traffic-pumping LECs, the costs will be dramatically lower and the volumes of traffic will be magnitudes higher.

With these principles in mind, AT&T turns to the specific proposals in the *NPRM*, first addressing the rules that should be adopted for CLECs and then turning to the proposals for new rules applicable to ILECs. AT&T then addresses the "triggers" that should apply to the Commission's new rules. Finally, AT&T addresses the application of "deemed lawful" status and the proposals for traffic stimulation in the LEC-CMRS context.

D. For CLECs, The Commission Should Mandatorily Detariff Services Associated With Traffic Stimulation, But If It Allows Tariffing, It Should Significantly Reduce The Benchmark Rate To Reflect The Very Low Costs Associated With Terminating Large Volumes Of Calls To Bridging Equipment.

1. Prohibition On Sharing Of Access Revenue.

Based on the public interest harms associated with traffic stimulation (and the complete lack of any off-setting benefits), it would be appropriate for the Commission to issue a rule declaring that any LEC access revenue sharing arrangement in which the LEC becomes a net payor of revenues to a customer is an unreasonable practice that is prohibited under Section 201(b) of the Act.[21] Given the Commission's view that traffic stimulation arrangements are "arbitrage schemes" that harm consumers by forcing them to subsidize free calls for a subset of high-volume users that enjoy the adult chat and other services offered pursuant to these schemes, there is no valid reason to allow these schemes to continue in any form.[22]

2. Mandatory Detariffing.

The simplest, and most deregulatory, approach would be to prohibit LECs from filing tariffs that encompass calls associated with traffic stimulation, and require LECs to negotiate with IXCs to reach market-based agreements for intercarrier compensation that would apply to such traffic.[23] The advantage to this approach is clear: the Commission would not need to engage in either detailed review of costs to determine a reasonable rate for the LECs, or arbitrary line-drawing to select an appropriate "benchmark" that – as with the "competing ILEC" benchmark – may become inappropriate over time or in new circumstances.[24] Mandatory

[21] *See NPRM* ¶ 670. In the past, the Commission appears to have been loath to declare that access sharing arrangements are *per se* unreasonable practices prohibited under section 201(b) on the off-chance that such arrangements might be reasonable in unique circumstances that the Commission had not foreseen. In the extremely unlikely event that such arrangements arguably would be reasonable in particular circumstances, a carrier could seek a waiver of the prohibition against such arrangements.

[22] The Commission should make clear that its rules apply to similar arrangements by tandem and VoIP providers who use regulations to increase the costs to their interexchange carrier customers who have no ability to influence either the price or the route of such traffic.

[23] LECs could continue to file access tariffs that would apply to calls to ordinary customers, such as business and residential customers that take local exchange services from the LECs and that do not receive a share of any access revenues collected by the LECs.

[24] The approach adopted by the Iowa Utilities Board for intrastate traffic in Iowa is essentially a mandatory detariffing approach, which forbids the filing of tariffs and requires traffic-pumping LECs to negotiate with IXCs, with the Board intervening to ensure reasonable rates if negotiations do not work.

detariffing would eliminate the ability of traffic-pumping LECs to abuse their terminating monopolies and to force IXCs to deliver and accept traffic at rates that the LECs file in their tariffs.[25] Notably, free calling providers and traffic-pumping LECs have advocated to the Commission that their services offer value to both consumers and IXCs, and if this is correct, then IXCs would be willing to compensate them – at market-based rates – for handling this traffic.[26]

Further, mandatory detariffing would not "abandon[] the premise of the existing framework" for CLEC access charges but in fact would be entirely consistent with it.[27] The Commission's existing CLEC access charge rules are based on the notion that CLEC access rates ideally should be detariffed,[28] and that tariffing is appropriate only when the CLEC provides services that are "functionally equivalent" to those of the ILEC, in which case the CLEC may tariff a rate that is no higher than that of the competing ILEC.[29] Today, traffic-pumping CLECs do not at all perform services functionally equivalent to ILECs when they complete calls to their free calling service partners. Consequently, there is no merit to the notion that traffic-pumping

[25] The Commission would need to make clear that such CLECs could obtain compensation only through express written agreements, and not through one-sided "constructive" ordering theories, implied contracts, or any other approach whereby an IXC is "deemed" to have accepted services.

[26] *NPRM* ¶ 676 & nn.1067-68.

[27] *See NPRM* ¶ 665.

[28] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, First Report and Order, 12 FCC Rcd. 15982 ¶¶ 1-5 (1997) ("*Access Charge Reform Order*") (describing the "detariffing regime we adopt" in the rules as a "deregulatory" approach that seeks, by "the least intrusive means possible" to ensure just and reasonable rates by "continu[ing] our move to market-based solutions by encouraging CLECs to negotiate rates outside of the tariff"), *pets. for rev. denied*, *Southwestern Bell Tel. Co.* v. *FCC*, 153 F.3d 523 (8th Cir. 1998).

[29] 47 C.F.R. § 61.26; *CLEC Access Charge Order* ¶¶ 51-52; *Access Charge Reform*, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, ¶¶ 14-21 (2004) ("*CLEC Access Charge Recon. Order*") (emphasizing that CLECs cannot tariff rates when they do not perform functions equivalent to those of an ILEC).

CLECs should be entitled to file "access" tariffs, and mirror rates charged by legitimate providers of access that actually bear the significant costs of connecting thousands or millions of users rather than a few pieces of call bridging equipment.[30]

Mandatory detariffing would also help to end the significant abuse of the Commission's "rural exemption" for CLECs. *See* 47 C.F.R. § 61.26(e). That exemption was intended to be "as narrow as possible," specifically to avoid any disadvantages that might be placed on CLECs that actually compete against large ILECs in rural areas.[31] Predictably, however, traffic pumping CLECs have sought to make this narrow exemption a gaping hole: such CLECs charge the highest NECA-band rates by asserting that they provide services in rural areas – when in fact they do not actually offer any services to ordinary residents and businesses in the rural area but instead only do business with high volume calling providers that merely locate equipment in rural areas but that do not in fact operate or have any real presence in these rural areas.

3. Revised Benchmarks.

If the Commission chooses not to detariff CLEC services associated with traffic stimulation, then, as the *NPRM* recognizes (¶ 665), it clearly needs to revise and dramatically reduce the rates that CLECs can lawfully file in tariffs that apply to such services. While the Commission could theoretically attempt to set reasonable benchmark rates by collecting and examining the costs associated with traffic stimulation – which would surely reveal that the costs

[30] In 2001, the Commission declined to adopt mandatory detariffing for all CLEC access rates because evidence in the record suggested that the transaction costs might be high for carriers to negotiate agreements with all other carriers, encompassing all types of traffic (although the Commission even then stated that mandatory detariffing would likely not impose "drastic" transaction costs). *See CLEC Access Charge Order* ¶¶ 35, 42. However, because the permissive detariffing regime would remain in place for calls to traditional customers, there should be no legitimate concern about undue transaction costs if mandatory detariffing were adopted for traffic pumping CLECs.

[31] *See CLEC Access Charge Recon. Order* ¶ 35; *CLEC Access Charge Order* ¶¶ 64, 71.

are extremely modest – in past access arbitrage situations, it has attempted to use a "benchmark" approach by selecting a reasonable proxy.

In some respects, the Commission's experience with dial-up ISP-bound traffic provides an appropriate analogue to the facts here.[32] Like traffic-pumping LECs with respect to free calling providers, CLECs chose to target ISPs as putative customers, even "offering free service to ISPs, paying ISPs to be their customers, and sometimes engaging in outright fraud."[33] These carriers then terminated extremely large volumes of traffic to the ISPs, and then issued bills to other carriers, using a benchmark rate that did not reflect the truly minimal costs associated with routing such large volumes of terminating calls to ISPs. There, the Commission determined that it was appropriate to set an interim benchmark rate of $0.0007 for the dial-up ISP traffic. Given the similarities of this situation to the ISP arbitrage schemes, that benchmark would also be appropriate for use in this situation, at least as an interim measure until the Commission reforms intercarrier compensation more broadly.

Although the ISP rate is significantly lower than the current benchmark, it reasonably approximates the costs that a carrier incurs when terminating very large volumes of calls to a piece of telecommunications equipment.[34] Notably, detailed information on the actual costs of terminating calls to the free calling providers is within the possession of traffic pumping CLECs, but they generally have not been willing to disclose information on their costs. Nevertheless, the costs must be extremely low: the equipment used to complete calls is almost always located in a carrier's rural central office (which generally is so inexpensive that the space almost always is

[32] *Cf. NPRM* ¶ 655.

[33] *See id*. n.1016.

[34] Indeed, some free calling providers have proclaimed that they are akin to ISPs. *Ex Parte* Letter From Frederick Joyce (Futurephone's Counsel) to Marlene Dortch (FCC), WC Docket No. 07-135, at 3 (dated Nov. 14, 2007) ("Futurephone is an ISP, not a common carrier.").

provided free of charge), and thus there are no significant loop costs and no outside plant costs whatsoever. The ISP-bound traffic benchmark rate of $0.0007 is a rate that experience has proven not only effective at controlling arbitrage but is also sufficiently compensatory in circumstances analogous to traffic pumping.

For traffic-pumping CLECs, the *NPRM* proposes using as a benchmark the "rate of the BOC in the state in which the competitive LEC operates, or the independent LEC with the largest number of access lines in the state if there is no BOC in the state."[35] While this benchmark is an improvement over the existing rules, it is clearly excessive and would continue to encourage traffic stimulation – and, indeed, would only encourage it to occur on a larger and larger scale. In this regard, AT&T notes that, based on recent internal AT&T data, each of the largest traffic pumping CLECs in Iowa, Minnesota, and South Dakota handles volumes of traffic that exceed the traffic handled by the largest ILEC in those states by seven or nine times. The large ILECs in these states undoubtedly have significantly higher costs than the traffic pumping CLEC (*e.g.*, for the loops used to reach their traditional customers), and it would not be appropriate to allow a traffic pumping LEC to charge the same rates even though it has lower costs *and* higher volumes. Use of a BOC access rate as a benchmark would simply encourage traffic-pumping CLECs to increase the scope of their operations so that the BOC rate would be more than sufficient to allow these CLECs to reap ill-gotten profits based on unreasonable rates.

E. The Commission's Proposed Rules For ILECs Are Largely Appropriate.

The Commission proposes a different set of rules applicable to small ILECs, and AT&T generally agrees with the proposals in the *NPRM* that are applicable to ILECs. First, ILECs clearly should not be able to recover the costs of traffic stimulation activities, including the

[35] *NPRM* ¶ 665.

revenue sharing payments to their free calling providers, from their ratepayers, and the Commission long ago recognized that such conduct was unreasonable.[36] Accordingly, AT&T agrees with the Commission that it should, as it initially proposed in 2007, declare that a rate-of-return carrier that shares revenue, or provides other compensation to an end-user customer, or directly provides the stimulating activity, and bundles those costs with access is engaging in an unreasonable practice that violates Section 201(b) and the prudent expenditure standard.[37] Second, the modest changes requiring carriers in the NECA pool to exit the pool, and file revised tariffs if they meet the triggers established by the Commission, are likewise appropriate. Third, AT&T agrees that ILECs that meet the Commission-established triggers should be required to file new tariffs that contain provisions like those found in the 2007 *Designation Order* and that preclude them from basing their rates on historical costs.

F. To Discourage Additional Gamesmanship, The Commission Should Adopt Multiple Triggers.

The *NPRM* proposes that the new rules applicable to ILECs and CLECs would be triggered based on "the existence of access revenue sharing agreements." *NPRM* ¶ 659. Although AT&T supports the use of this as one trigger, reliance on these agreements as the only trigger is plainly insufficient, particularly in light of the traffic pumpers' long history of ingenuity in devising new schemes and practices to evade the Commission's rules. Because it would be quite "easy . . . for parties involved in access stimulation to reconfigure arrangements with their business partners to avoid a revenue sharing agreement trigger,"[38] the Commission

[36] *Beehive Tel. Co., Inc.*, 13 FCC Rcd. 12275, ¶¶ 15-16.

[37] *Establishing Just and Reasonable Rates for Local Exchange Carriers*, Notice of Proposed Rulemaking, 22 FCC Rcd. at 17989, 17997, ¶ 19 (2007) ("*Access Stimulation NPRM*").

[38] *NPRM* ¶ 660.

should adopt multiple triggers, and provide that its new, more restrictive rules apply if any of those triggers is met.

Indeed, in one of the very first reported instances of traffic stimulation before the Commission, the LEC engaged in a variety of ruses in an attempt to disguise the existence of an access revenue sharing agreement, including an arrangement pursuant to which the free calling partner received payments for "leases" of equipment.[39] While the Commission ultimately determined the leases were not genuine, the point is that traffic pumpers could easily re-arrange their dealings with free calling providers so that the free calling providers are not directly compensated from access revenues. Indeed, more recent history reflects that traffic pumpers will go to extraordinary lengths – including even fraudulent activities – to disguise the nature of their operations and to evade rules that limit the scope of traffic stimulation activities.[40] Further, cases pending before the Commission already demonstrate that traffic pumpers will vertically integrate, or exchange traffic with nominally separate affiliates, in an effort to continue to engage in access arbitrage.[41]

Accordingly, while a revenue sharing arrangement is a common badge of traffic stimulation activity, and can serve as one appropriate trigger, there are other common indicators of traffic pumping, including very large volumes of traffic relative to the number of switched access lines to which that traffic is terminated. AT&T thus continues to believe that the Commission should also adopt a trigger based on minutes of use per access line per month. To

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[39] *Beehive Tel. Co., Inc.*, 13 FCC Rcd. 12275, ¶ 15.

[40] *See*, *e.g.*, *Farmers III* ¶¶ 16-22 (discussing backbilling and manufacturing of evidence).

[41] *See AT&T Corp.* v. *All American Tel. Co.*, *et al.*, File No. EB-09-MD-010; *see also Total*, 16 FCC Rcd. 5726 (2001). AT&T does not agree that such misconduct can be quickly or adequately addressed by the prohibition on cross-subsidies in section 254(k). *See NPRM* ¶ 1026.

be sure, that trigger also could be subject to manipulation, and by itself would not be perfect, but such a trigger would rely on more objective data that generally is readily available to the LECs.

Although the Commission has expressed concern that such additional triggers "may be over-inclusive and capture LECs not engaging in access stimulation," *NPRM* ¶ 668, these concerns can be met by carefully crafting the trigger. In virtually all cases, the volumes of traffic handled by traffic pumpers are so much larger than what legitimate LECs carry that the Commission could adopt a trigger that would be very unlikely to encompass anyone other than LECs actually engaged in traffic stimulation. Indeed, although there are numerous instances of traffic pumpers evading existing rules, there have been *no* incidents in which a LEC has been inaccurately accused of engaging in traffic stimulation. And to the extent there are still valid concerns that the use of multiple triggers may be overbroad, the Commission should make clear that LECs may petition for a waiver of the rules.

G. Prohibitions on "Deemed Lawful" Status.

The *NPRM* also proposes changes to the Commission's access rules so that the tariffs of traffic-pumping LECs cannot become "deemed lawful" pursuant to Section 204(a)(3) of the Act.[42] Although AT&T supports the Commission's proposed rule changes in the event it decides to allow traffic-pumping LECs to continue to file tariffs, AT&T notes that, here again, the simpler, and more deregulatory approach would be to detariff these services, so that no tariffs could be filed and thus could not ever be "deemed lawful."

H. LEC-CMRS Reciprocal Compensation.

The *NPRM* seeks comment on whether above-cost reciprocal compensation rates between LECs and CMRS providers may trigger traffic pumping and, if so, what remedies the

[42] *NPRM* ¶ 666.

Commission should adopt.[43] AT&T agrees with CTIA that one-way traffic exchanged at high reciprocal compensation rates creates an incentive to increase profitability by artificially stimulating traffic. The Commission can remove this arbitrage incentive by either mandating bill and keep as proposed by CTIA, or adopting the $0.0007 rate that the Commission has prescribed for dial-up ISP traffic, as proposed by Verizon.

II. THE COMMISSION SHOULD ADOPT THE CONSENSUS PLAN TO ADDRESS PHANTOM TRAFFIC, SUBJECT TO APPROPRIATE EXCEPTIONS.

The Commission has long recognized that the "disparity of rates under existing intercarrier compensation mechanisms presents service providers with the opportunity and the incentive to misidentify or otherwise conceal the source of traffic to avoid or reduce payments to other service providers."[44] The record in these dockets confirms that there is indeed widespread stripping of signaling information and other forms of concealment of the information needed to identify the origins of calls,[45] with one carrier estimating that as much as "eight percent of the traffic terminating on its network" is comprised of this "phantom traffic."[46] These activities undermine carriers' ability to determine the source of traffic they receive from other carriers and to properly bill and be compensated for terminating such calls. The Commission has thus correctly concluded that "that traffic lacking sufficient information to enable proper billing of intercarrier compensation charges is not consistent with the public interest, and rules are needed to address this problem."[47]

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[43] *NPRM* ¶¶ 671-74.

[44] *High-Cost Universal Service* Support, Order on Remand And Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd. 6475, App. A., ¶ 326 (2008); *see also*, *e.g.*, National Broadband Plan, at 142 (same); *NPRM* ¶ 620 (same).

[45] *NPRM* ¶ 623 (citing and describing many examples).

[46] *NPRM* ¶ 623.

[47] *NPRM* ¶ 624.

With the caveats set forth below, AT&T supports the proposal in the *NPRM* (¶¶ 625-634) to expand the existing call signaling rules (which now apply only to interstate non-VoIP traffic) and further extend those rules to interconnected VoIP providers and to intra-state traffic. These proposed rules address phantom traffic by (1) requiring that for all calls the originating provider include the calling party's telephone number, and (2) prohibiting carriers from stripping or altering call signaling information. Under the Commission's proposal, the methods carriers may use to comply with these rules depends on the technology used by the carrier. Providers (including interconnected VoIP providers) that use SS7 or Multi Frequency ("MF") signaling must populate the calling party number ("CPN") field, including for inter- and intra-state calls. Providers using IP signaling (*e.g.,* signaling within Session Initiation Protocol ("SIP") sessions) must include the calling party's number in the signaling information it passes to other carriers.[48] These narrowly tailored rules clearly would impose little or no additional burden on legitimate service providers, while substantially reducing phantom traffic and the corresponding public interest harms associated with that traffic.

The Commission has clear authority to adopt these rules. It is well-settled that the Commission has authority to regulate intrastate services if it would be impossible to separate the intrastate and interstate services for purposes of the regulation at issue, such that federal regulation of interstate services would otherwise be defeated.[49] Extension of the current rules to intrastate calls is justified under these standards because maintaining separate mechanisms for passing CPN is infeasible, and passing CPN is necessary to identify and thus facilitate federal regulation of interstate traffic. As the Commission notes, it already reached a similar conclusion

[48] *NPRM* ¶ 626 & n.965.

[49] *See, e.g., Louisiana Pub. Serv. Comm'n* v. *FCC,* 476 U.S. 355 (1986).

with respect to caller ID.[50] In addition, the Commission has "ancillary" authority whenever necessary to "prevent frustration of [its] regulatory [authority] authorized by statute,"[51] and therefore even though interconnected VoIP services are information services, a requirement to pass CPN on such calls is reasonably ancillary to its express responsibility to regulate services that traverse the PSTN. Finally, the Commission has plenary authority over numbering under Section 251(e) of the Act, and the proposed rules are at least ancillary to (if not encompassed within) such authority, because major purposes of the numbering scheme would be defeated if any carriers or VoIP providers could strip numbers with impunity.

In adopting these rules, the Commission should clarify several points. A literal reading of the proposed rules appears to impose an obligation on the originating provider to signal information to the terminating provider, even if there are intermediate providers involved. The Commission should clarify that the proposed rules require that the originating provider signal the required information only to the next provider in the call path.

The *NPRM* correctly recognizes, however, that carriers must be free to depart from the call-signaling content rules in certain limited circumstances and that the proposed phantom-traffic rules are merely designed to accord with standard industry practice and technology concerning call-signaling content.[52] The *Missoula Plan* – a comprehensive proposal to address intercarrier compensation developed by a coalition of rural LECs, regional ILECs, and RBOCs, that is part of the record in this proceeding (CC Docket No. 01-92) – identifies several specific situations in which "standard industry practice" involves a departure from the typical content

[50] *NPRM* ¶ 629 n.971.

[51] *Comcast*, 600 F.3d 642, 654 (D.C. Cir. 2010); *see also*, *e.g.*, *United States* v. *Southwestern Cable Co.*, 392 U.S. 157 (1968); *United States* v. *Midwest Video Corp.*, 406 U.S. 649, 662 (1972).

[52] *NPRM* ¶ 633.

guidelines.[53] The Commission should clarify that the "limited exceptions" needed to "accommodate situations, identified in the record, where industry standards permit, or even require, some alteration in signaling information by an intermediate service provider" include those described in the *Missoula Plan*, and not just the lone example offered by Verizon and cited in the *NPRM* (¶ 633 & n.975). In addition, the Commission should make clear that technology and industry exceptions will apply for both the originating provider and to any intermediate providers on a call path.

Clarifying the scope of the exceptions to the new phantom traffic rules is critical to furthering the objectives of the National Broadband Plan. Absent these clarifications, the rules could lead to large expenditures on modifications of legacy TDM networks, where such expenditures could be put to much better use in developing and deploying next-generation broadband networks.

For example, a carrier should not be required to overhaul its existing systems to comply with these new rules, but should be permitted to continue accepted industry practices for settlement of such calls. In AT&T's legacy network, calls from certain dedicated access locations (*e.g.*, PBXs), which were never assigned CPNs, use internal (to AT&T) Charge Numbers ("CNs") that may be either a pseudo-NANP number or a number for a private numbering plan. These numbers were designed for end-user billing when these services were developed, often decades ago. These numbers are useless for jurisdictionalizing calls or for settlement purposes. Further, these systems largely have been discontinued by manufacturers, so they can not be easily retrofitted and made capable of transmitting meaningful CNs or CPNs.

[53] *Infra* n.4.

Instead, industry practice has been for AT&T to use other arrangements (*e.g.*, auditable percent interstate use ("PIU") and other factors) to ensure proper settlements with terminating carriers.

Similarly, in many instances, under current standards and technology, intermediate carriers do not and cannot signal information identifying the financially responsible party, as it the case, for example, for in EMI records created by tandem providers. It would require enormous expense and investment to develop such standards and to deploy such technology. Accordingly, the Commission's clearly should recognize these circumstances as an exception to new rules governing phantom traffic.

Likewise, Multi Frequency signaling was not designed in many instances to forward originating CN or CPN data to a terminating carrier in the MF Automatic Number Identification ("ANI") field. Rather, the MF ANI standards and technology were developed to provide *IXCs* with the data they need to bill end user customers that originate calls.[54] The Commission's Phantom Traffic rules should recognize these limitations in existing standards, and thus except such traffic from its new rules.

III. TREATMENT OF VOIP TRAFFIC.

The Commission should immediately adopt clear interim rules to eliminate the arbitrage opportunities and competitive imbalances that currently plague intercarrier compensation for IP/PSTN VoIP traffic. As the Commission notes (*NPRM* ¶ 610), despite seeking comment on these issues numerous times in "various proceedings" over the last ten years (including multiple pleas from the industry in petitions for declaratory ruling or forbearance[55]), the Commission "has declined to explicitly address the intercarrier compensation obligations associated with VoIP

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[54] *See, e.g.*, Bellcore GR-690-CORE, Issue 2, October 1995.

[55] *See*, *e.g.*, *Petition of AT&T for Interim Declaratory Ruling and Limited Waiver Regarding Access Charges and the "ESP Exemption"*, WC Docket No. 08-152 (filed July 17, 2008) ("AT&T VoIP Petition").

traffic." As the Commission acknowledges (*id.*), the refusal to address this issue has led different providers to take starkly different positions, which has resulted in industry-wide litigation and harmful disincentives for investment.

An especially harmful manifestation of this problem is the fact that many CLECs that provide interconnection for VoIP providers impose access charges on PSTN-to-IP calls that they *terminate* to their VoIP provider customers while at the same time insisting that they owe only reciprocal compensation for IP-to-PSTN calls that *originate* for those same customers and terminate to the PSTN.[56] Because of the enormous and rapidly increasing amount of money involved in these arbitrage schemes, there is an urgent need for the Commission to implement an interim solution to these problems immediately, instead of awaiting completion of comprehensive intercarrier compensation reforms.

At the outset, it is important to emphasize that the Commission's authority to adopt interim rules does not depend on the regulatory classification of VoIP services. For purposes of intercarrier compensation, the critical issue here involves the exchange of traffic between carriers on the PSTN and the *CLECs* that serve VoIP providers. Those CLECs are certificated as

[56] *See Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the "ESP Exemption*," WC Docket No. 08-152, at 19 (filed July 23, 2008) ("*AT&T Declaratory Ruling Petition*"). Notwithstanding their insistence that access charges do not apply to IP-to-PSTN traffic when they deliver that traffic to the PSTN, some CLECs nonetheless collect access charges today on PSTN-to-IP traffic bound for their VoIP-provider customers. Specifically, when a POTS end user dials a "1-plus" interexchange call to a VoIP end user, the POTS end user's LEC will route the call to the end user's presubscribed IXC, which in turn routes the call to the CLEC serving the VoIP provider. In many cases, the CLEC will then impose terminating access charges on the IXC for delivering the call to the VoIP provider, who will ultimately terminate the call to its end user. Because the IXC typically does not know the identity of the individual customers behind the CLEC, the IXC will not know whether a particular call bound for the CLEC is ultimately terminated to a VoIP end user or to a POTS end user. Thus, in the normal course of business, the IXC will usually have little, if any, ability to identify – let alone challenge – a CLEC that is imposing access charges on PSTN-to-IP calls but paying only reciprocal compensation on IP-to-PSTN calls.

common carriers and are acting as telecommunications carriers even when they exchange VoIP traffic with other carriers, and the Commission has direct authority to promulgate rules governing the compensation to be exchanged between such carriers.[57] Moreover, as the Commission notes (*NPRM* ¶ 615), "interconnected VoIP traffic is 'telecommunications' traffic [within the meaning of Section 251(b)(5)], regardless of whether interconnected VoIP service were to be classified as a telecommunications service or an information service." Accordingly, whether the Commission applies regimes grandfathered under Section 251(g) or chooses to displace that regime with new rules fashioned under Section 251(b)(5), the Commission has ample authority to address these issues regardless of the regulatory classification of retail VoIP services.

Similarly, the "ESP exemption" does not apply here and would pose no bar to interim rules even if it did.[58] That exemption was adopted to enable enhanced service providers to purchase local business lines out of state tariffs in lieu of interstate access services in order to establish a link with *their own customers*.[59] It was never intended to apply to a situation in

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[57] *See Time Warner Cable Request for Declaratory Ruling That Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd. 3513 (2007) ("*Time Warner Order*"). For this reason, the classification is irrelevant to these carriers' interconnection obligations, because Section 251(a) entitles all telecommunications carriers to interconnect with other telecommunications carriers, regardless of the traffic they exchange.

[58] *MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 F.C.C.2d 682 (1983) ("*MTS/WATS Recon. Order*"). In that Order, the Commission carved out an exception from the access charge rules for enhanced service providers, requiring LECs to treat enhanced service providers as end-users eligible to purchase local business lines out of the LECs' intrastate tariffs, rather than as carriers required to pay the LECs' tariffed switched access rates. This exception is commonly referred to as the "ESP exemption."

[59] *Access Charge Reform Order*, 12 FCC Rcd. 15982, 16132-33 ¶ 343 (explaining that the ESPs for whom the exemption was devised "use incumbent LEC networks to receive calls from their customers").

which an entity is delivering calls to an ILEC for termination to the *ILEC's* customers on the PSTN. Indeed, the CLECs' invocation of the ESP exemption here is especially meritless because it is undisputed that the CLECs themselves are acting not as information service providers purchasing local business lines for their own use, but as wholesale providers of telecommunications services that deliver traffic to ILECs over local interconnection facilities. The only reason these CLECs are entitled to interconnect with ILECs under Section 251(c) (and to provide their VoIP provider customers with PSTN telephone numbers) is precisely because they are "telecommunications carriers," not information service providers.

This is why the Commission's existing rules require (and have always required) CLECs serving VoIP providers to pay access charges when they deliver interexchange calls to ILECs for termination to the ILEC's own PSTN customers.[60] But even if the ESP exemption applied here, the Commission would still have authority to fashion a different interim intercarrier compensation rule tailored to VoIP traffic in this rulemaking proceeding. There is no statute that compels the Commission to maintain the ESP exemption in any particular context. The "exemption" arises from a Commission rule – it is a result of how the Commission defines an "end user" for purposes of the access charge regime in 47 C.F.R. § 69.5 – and that rule may be modified in this rulemaking proceeding.

The Commission has allowed these issues to fester for ten years, and at this late date there is an urgent need for the Commission to adopt interim rules to put a stop to these arbitrage schemes that have become rampant and that are doing considerable harm. As the Commission noted in the National Broadband Plan (and here again in the *NPRM*), the Commission's "lack of

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[60] *See, e.g.*, Comments of AT&T, Inc., *Feature Group IP Petition for Forbearance from Section 251(g) of the Communications Act and Section 51.701(b)(1) ND 69.5(b) of the Commission's Rules*, WC Docket No. 07-256 (filed Feb. 19, 2008) ("*AT&T Feature Group IP Comments*").

clarity" is "deterring innovation and introduction of new IP services to consumers."[61] As the Commission has explained, these legacy compensation regimes (and the prevailing confusion about how they apply) are deterring the conversion to all-IP networks, as carriers today have an incentive to convert calls to TDM for the purpose of trying to collect access charges.[62] The Commission also notes correctly that regulatory uncertainty is deterring investment in IP innovation and investment more generally, as "both new entrants and established incumbents seeking to offer VoIP products and services are hampered" in offering more advanced services.[63] That regulatory uncertainty is also fostering competitive imbalances, because many CLECs have filled the vacuum by pursuing arbitrage schemes that result in "asymmetrical revenue flows," as they assess access charges for calls delivered to VoIP providers but refuse to pay access charges to ILECs for calls terminated on the PSTN.[64] These public interest harms are becoming more severe with each passing year because, as "consumer demand for VoIP services continues to increase," the amount of money at stake in these arbitrage schemes has become enormous and growing.[65] The Commission should not put these issues off any longer: it should promptly adopt interim rules that would immediately require IP/PSTN traffic to be subject to symmetrical treatment and incorporate those mechanisms into the overall plan for a transition to a more unified intercarrier compensation regime.

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[61] *NPRM* ¶ 608; National Broadband Plan, at 142.

[62] National Broadband Plan, at 142 (cited in *NPRM* ¶ 608 n.914).

[63] *NPRM* ¶ 611.

[64] *NPRM* ¶ 610; *see also id.* ¶ 610 n.920 ("the possibility that access charges 'may flow from PSTN carriers to VoIP providers and their CLEC partners but never in the opposite direction . . . could lead to the same type of economically irrational arbitrage opportunity the Commission thought it had stamped out when it reduced reciprocal compensation rates for dial-up ISP-bound traffic, for which compensation flows were similarly unidirectional'" (quoting Letter from James C. Smith (SBC) to Chairman Powell (FCC), WC Docket No. 03-266, Attachment at 16)).

[65] *NPRM* ¶ 610.

Finally, and in all events, the Commission should prohibit providers from insisting on asymmetrical compensation schemes for IP/PSTN traffic, under which they would *pay* reciprocal compensation rates for IP/PSTN traffic they originate and send to the PSTN but *receive* access charges for PSTN/IP traffic they terminate to VoIP providers and their customers. Even if it does nothing else, the Commission should adopt an interim rule prohibiting carriers from charging a higher rate for terminating a PSTN-to-IP call than they agree to *pay* when they originate a similar IP-to-PSTN call and send it to the PSTN. The "heads you pay, tails you pay" arbitrage scheme that many CLECs are pursuing today is an unjust and unreasonable practice that violates Section 201(b) of the Act.[66]

IV. ADDITIONAL ARBITRAGE AND ANTICOMPETITIVE SCHEMES DESERVE THE COMMISSION'S IMMEDIATE ATTENTION.

Until there is comprehensive intercarrier compensation reform, unscrupulous LECs and others will continue to devise and engage in predatory conduct that abuses terminating access monopolies and disparities in intercarrier compensation payments to obtain windfalls, and that cause clear and substantial harm to the competitive goals of the Act and the public interest. This section addresses a handful of these other abuses that require immediate Commission attention.

A. "Mileage Pumping": LEC Abuse Of Centralized Equal Access Arrangements (And Competitive Tandem Arrangements) To Inflate The Transport Component Of Access Charges.

One serious and growing problem that requires the Commission's immediate attention is "mileage pumping." This is an unreasonable practice that certain LECs participating in centralized equal access ("CEA") arrangements (and competitive tandem providers) have used to inflate switched access charges. These schemes, like traffic pumping, increase costs for all

[66] *See AT&T Declaratory Ruling Petition*, at 7.

telecommunications customers, impose substantial litigation costs,[67] and harm competition and the public interest. Accordingly, the Commission should issue a rule prohibiting mileage pumping as an unreasonable practice under Section 201(b) of the Act.

CEA arrangements were conceived as a means to *reduce* the costs of both rural LECs and IXCs in satisfying the equal access obligation. These mileage pumping schemes, however, *increase* IXC costs, without providing any savings whatsoever to LECs.

The mileage pumping occurring in Iowa illustrates the problem. In Iowa over one hundred small, rural LECs banded together to form a CEA provider called Iowa Network Services ("INS"). INS owns and operates both a CEA switch in Des Moines and transport facilities that connect the CEA switch to 16 different points of interconnection ("POIs") throughout Iowa to ensure that all LECs have a POI within reasonable proximity. In 1988, INS petitioned the Commission for approval of its CEA arrangement. The Commission agreed that this arrangement would reduce costs for both the LECs and IXCs, and thus approved it.[68] In so doing, the Commission ordered AT&T and other IXCs to deliver all long distance calls bound for customers of the participating LECs to the INS CEA switch in Des Moines. IXCs would then pay INS a single, low, flat rate for switching and transport to any one of the 16 POIs, with no mileage charges.[69] The LEC that served the called party would then pick up the call at the INS POI for termination, and the LEC would charge the IXC a distance-sensitive transport charge only for carrying the call the relatively short distance from the INS POI to its central office.

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[67] Indeed, one mileage pumping dispute between AT&T and five Iowa LECs has already been referred to the Commission (*Alpine Commc'ns, LLC, et al.* v. *AT&T*, No. 2:08-cv-01042-EJM (N.D. Iowa Dec. 16, 2010)), and another case is now pending before the same judge (*N. Iowa Tel. Co., et al.* v. *AT&T*, No. 5:11-cv-04022-EJM (N.D. Iowa)).

[68] *Application of Iowa Network Access Division*, Memorandum Opinion and Order, 3 FCC Rcd. 1468, ¶¶ 2-4, 15 (1988).

[69] *Iowa Network Access Div. Tariff F.C.C. No. 1*, Order, 4 FCC Rcd. 3947, ¶¶ 2, 5 (1989).

Both IXCs and LECs saved considerable costs in this efficient arrangement. IXCs were spared the need to build facilities to connect with each rural LEC, and paid a low flat rate for the transport from Des Moines to the POI near the LEC. The LECs avoided the need both to purchase a new, equal access-capable switch and to build transport facilities beyond the INS POI.

Participants in INS's CEA operated under the arrangement as intended for many years, with great success. In recent years, however, certain Iowa LECs and INS devised a scheme to game the CEA system. These LECs entered into sham arrangements with INS whereby the LECs supposedly "leased" the INS fiber transport facilities between their POIs and Des Moines. The LECs then arranged to "move" their POIs from the INS connection point nearest them to Des Moines. They then began to bill IXCs *distance-sensitive* transport charges based on the distance from their central offices all the way to Des Moines (as opposed to the relatively short distance between their central offices and the nearby INS POIs), thus artificially inflating monthly access charges by millions of dollars.

These were all paper transactions. No engineering, network efficiency, or network performance benefits were obtained, and no costs were saved. Call quality did not increase, and neither end users nor IXCs received any benefit. No such benefits were even possible because nothing changed on account of the LECs' "leases" with INS and the corresponding POI changes – the calls travel over precisely the same INS facilities and follow precisely the same route as they did prior to the change. Likewise, both before and after the POI changes, INS performed precisely the same functions in operating and maintaining the fiber transport facilities. And, significantly, INS remained responsible for actually transporting and delivering the traffic from the former POIs to Des Moines.

These Iowa LECs have not attempted to provide any legitimate justification for these mileage pumping schemes. They have merely asserted that their tariffs give them the right to select any POI they wish for any reason, and to charge IXCs the resulting transport costs. That is not true. But even if it were, such tariff provisions would clearly be unjust and unreasonable in violation of Section 201(b) of the Act. As the Commission has previously explained, its "decision permitting [CEA arrangements] to proceed should *not* be interpreted as unbounded authority on the part of [LECs], or their affiliates, to determine points of interconnection with IXCs."[70] The Commission explained, therefore, that LECs "cannot unreasonably designate[]" POIs that "significantly increase[] IXCs' operating costs without significant increases in service choices or benefits to subscribers."[71]

Consistent with these prior holdings, the Commission should now adopt rules that prohibit mileage pumping. For LECs that participate in CEA arrangements, AT&T urges a rule that would require the LEC to select the POI closest to its end office with which it can practicably connect. The rule should expressly forbid LECs from including fiber transport facilities leased from the CEA provider in the mileage used for the transport charge calculation.[72] Also, to ensure that mileage pumping does not occur outside of the CEA context, the Commission's rules should make clear that the core principles announced in *Indiana Switch*

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[70] *Application of Indiana Switch Access Div.*, Memorandum Opinion and Order, 1 FCC Rcd. 634, ¶ 5 (1986) ("*Indiana Switch*").

[71] *Id.* In addition, competitive tandem providers have enticed end office companies to re-home access traffic from the ILEC Tandem to the competitive tandem provider which in some cases drives much higher mileage and mileage charges. For example, CommonPoint, a CLEC, interconnects with end office companies well outside the state in which it operates seeks to recovers up to 150 miles of transport associated with that interconnection.

[72] As an alternative, the Commission could consider a rule providing that, regardless of the point designated by a LEC as its POI in a CEA arrangement, the LEC must bill IXCs for transport mileage based on the POI closest to its end office with which the LEC can practicably connect.

apply to all LECs – no LEC can "unreasonably" select a POI with an IXC that would increase the IXC's costs as compared to other POI locations without any attendant benefits to end users or the IXC. Finally, the rule should make clear that any tariff provision that purports to bestow upon a LEC the right to select a POI other than as permitted in the rule violates Section 201(b) of the Act.

Likewise, the Commission should take steps to end the practice by which LECs abuse their monopoly power by employing deliberately inefficient network architectures and then forcing IXCs to interconnect with distant "alternative" tandems. In these schemes, unscrupulous LECs will unilaterally decide to "rehome" long distance traffic so that it is no longer routed over traditional tandem switches but instead via a new "competitive" tandem provider (which is often in cahoots with the LECs or may be the LEC's own new tandem). The so-called competitive tandem provider then routes the call for hundreds of miles, not for any legitimate purposes but solely to inflate transport costs to captive IXCs – with transport charges sometimes reaching nearly *three dollars per minute*. Indeed, in one case, an allegedly "competitive" tandem provider in Chicago has listed transport routes that travel through Missouri and even as far away as Washington state. While AT&T has no problems with truly competitive providers of tandem transport and switching, this conduct is clearly abusive and does nothing to promote competition. And while competitive providers of tandem services should not be required to track the exact routes of incumbents, nor can they be allowed to use inefficient arrangements and thereby raise IXCs' costs while providing no benefits. Accordingly, the Commission should also declare these practices to be unreasonable and prohibit so-called competitive tandem providers from charging longer mileage than incumbents.[73] Alternatively, the Commission could find that these tandem providers are really providing interexchange service bundled with exchange access service, and require that the interexchange portion be unbundled and detariffed.

B. The Commission Should Reaffirm That Its Prior Prepaid Calling Card Orders Require The Payment Of Access Charges For All Interexchange Calls, Regardless Of How They Are Routed Through Intermediate Platforms.

The Commission should reaffirm that its prior orders governing prepaid calling cards[74] require "all" prepaid calling card providers to pay "access charges" for interexchange calls placed by their customers, regardless of the "calling pattern" used to initiate such calls.[75] Reaffirmation of these principles is appropriate because certain prepaid calling card providers have taken the position that the Commission's rules permit them to avoid access charges for interexchange calls by having their customers first dial a local telephone number to reach a "platform" before the call is connected to their non-local (including international) destinations. These providers are unlawfully denying LECs' access charges for the tariffed services they provide, and there are now multiple proceedings where these disputes are being raised, including ones before the Commission.[76]

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[73] *See Access Charge Reform Order* ¶ 37 ("it is highly unusual for a competitor to enter a market at a price dramatically above the price charged by the incumbent, absent a differentiated service offering.")

[74] *See*, *e.g.*, *Regulation of Prepaid Calling Card Services*, Declaratory Ruling and Report and Order, 21 FCC Rcd. 7290 (2006) ("*Second Prepaid Calling Card Order*"); *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 4826 (2005) ("*First Prepaid Calling Card Order*").

[75] Although the term "calling card" is often used to describe how calls reach the service provider's platform, the Commission's rules clearly do not turn on whether a physical calling card is used, and are applicable where a PIN number or other method is used to initiate such calls.

[76] *See, e.g.*, *Arizona Dialtone Inc. Petition for Reconsideration*, WC Docket No. 05-68 (Aug. 31, 2006); *Petition for Clarification or, in the Alternative, for Reconsideration of IDT Telecom, Inc.*,

These calling card providers claim that the Commission's prior orders are ambiguous as to whether access charges are owed when an interexchange call using a prepaid calling card or similar device is initiated by first dialing a local telephone number to reach a calling platform. In fact, the Commission's prior orders explicitly state that "all" prepaid calling card providers must pay the applicable access charges for prepaid long-distance calls.[77] These rules are clearly not limited to any particular calling services (*e.g.*, to just 8YY services), and there is no exception for calls placed through locally assigned numbers that are used to reach the provider's "platforms." Indeed, the Commission has specifically rejected the view that the dialing pattern for initiating a prepaid interexchange call would have any impact on the applicability of access charges: "We see no reason why the use of a different dialing pattern to make calls, without more, should result in a different regulatory classification."[78]

WC Docket No. 05-68 (Sept. 1, 2006). To make matters worse, in some cases the use of these local number access schemes causes CLECs that service the local access numbers or platforms to bill AT&T for reciprocal compensation – and AT&T has unknowingly paid CLECs for reciprocal compensation when no such charge should have been billed in the first place.

[77] *Second Prepaid Calling Card Order* ¶ 27.

[78] *Id.* ¶ 20; *see also id.* ¶ 1 ("prepaid calling card service providers . . . must pay intrastate access charges for interexchange calls that originate and terminate in the same state and interstate access charges on interexchange calls that originate and terminate in different states"); *id.* ¶ 21 ("these providers are now subject to all of the applicable requirements of the Communications Act and the Commission's rules, including requirements to contribute to the federal USF and to pay access charges"); *id.* ¶ 27 ("providers of prepaid calling cards that are menu-driven or use IP transport to offer telecommunications services are obligated to pay interstate or intrastate access charges based on the location of the called and calling parties"); *id.* ¶ 54 ("providers of these types of prepaid calling cards will be treated as telecommunications carriers and therefore must pay access charges, contribute to the Universal Service Fund, and comply with all the other applicable obligations under the Communications Act and the Commission's rules"); *id.* ¶ 68 ("the Commission finds that certain types of prepaid calling card providers are telecommunications carriers and therefore subject to applicable requirements of the Communications Act and the Commission's rules, including the obligation to pay access charges and contribute to the Universal Service Fund").

The Commission's stated goal in issuing the prior orders was to ensure that its orders would have no limitations or exceptions. The Commission acted to ensure a "level regulatory playing field" for "all providers" and to eliminate any "incentives for providers to reduce exposure to charges they may owe or evade them all together." Moreover, the Commission stated that "uncertainty regarding applicability of our rules could stifle continued market innovation and encourage providers to adapt their products solely to evade contribution to the universal service funding mechanisms."[79] It would defeat these goals if prepaid calling card providers could avoid access charges by routing their calls to platforms using local telephone numbers.

The history of the Commission's orders further confirms their comprehensive scope and intent. In 2005, the Commission had initially addressed specific prepaid calling card arrangements individually and determined whether access charges applied to each particular arrangement.[80] But, in that same order, the Commission initiated a rulemaking to consider *generally* the classification and jurisdiction of "all types of current and planned calling card services"[81] and all "new forms of prepaid calling cards."[82] And, in that subsequent order in 2006, the Commission "conclude[d] that immediate action . . . is necessary to preserve universal service and provide regulatory certainty" by issuing unambiguous rules of unlimited application "requiring *all* [providers] to pay intrastate and interstate access charges."[83]

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[79] *Id.* ¶ 8.

[80] *See, e.g., First Prepaid Calling Card Order* ¶ 14.

[81] *Id.* ¶ 38.

[82] *Id.* ¶ 2.

[83] *Second Prepaid Calling Card Order* ¶¶ 8, 27 (emphasis added).

The other requirements of the Commission's order further confirm that prepaid calling card providers cannot use locally assigned numbers to disguise long-distance calls and thereby evade the access charges that apply to "all" providers. The Commission stated that all carriers – including prepaid calling card providers and the carriers that serve them – "must pass the CPN [calling party number] of the calling party (*i.e.*, the number associated with the telephone used by the cardholder) and not replace that number with the number associated with the platform,"[84] and it "prohibit[ed] carriers that serve prepaid calling card providers from passing the telephone number associated with the [calling card] platform in the charge number (CN) parameter of the SS7 stream."[85] Under these requirements, access charges categorically apply to all long distance calls placed through calling card platforms, regardless of the "telephone number associated with the [calling card] platform" – be it an 8YY number, a locally assigned number, or some other number.

Nonetheless, certain calling card providers contend that this rule violates Section 251(b)(5) of the Act, 47 U.S.C. § 251(b)(5). According to these providers, all calls to local numbers fall within Section 251(b), unless the traffic is excluded by Section 251(g) of the Act, 47 U.S.C. § 251(g). Section 251(g) permits "continued enforcement" of pre-1996 Act arrangements, and, according to these providers, there are no such pre-1996 Act arrangements. In fact, there are such pre-1996 arrangements covering these types of calls, and thus there is no merit these providers Section 251(b)(5) argument.

To the extent a prepaid calling card provider wishes to offer its customers the ability to use locally-dialed numbers to originate interexchange prepaid calls, AT&T and other providers have long offered (well before 1996) Feature Group A services, which are functionally

[84] *Id.* ¶ 33.

[85] *Id.* ¶ 34.

equivalent to the locally-dialed routing arrangements typically used by the prepaid providers at issue here.[86] Specifically, Feature Group A is "a form of switched access" that interexchange carriers, including prepaid calling card providers, can use to originate calls by their end user customers. In a Feature Group A dialing arrangement, "the end user dials a seven digit number to reach the LEC's 'dial tone' office serving the IXC, where the LEC switches the call to the IXC's POP via a dedicated loop-side connection."[87] Because the LEC offering Feature Group A is aware that such a locally-dialed call is bound for an IXC, the LEC can route the call appropriately and bill the IXC for the applicable access charges. In addition, if a locally-dialed prepaid interexchange call begins on an originating LEC's network and is bound for an intermediate LEC offering Feature Group A to a prepaid calling card provider, the originating and intermediate LECs would typically have the ability to coordinate the routing and billing for such a call through a jointly provided access arrangement, which would result in the applicable access charges being shared appropriately between the two LECs. The existence of these pre-1996 arrangements precludes any claim that Section 251(b) shields prepaid calling providers' schemes to avoid access charges from Commission action.

Indeed, these providers are engaged in unlawful access avoidance, plain and simple. Rather than forthrightly purchasing Feature Group A services and arranging to pay applicable access charges to the originating LEC, these prepaid calling card providers are using local dialing arrangements for the express purpose of avoiding the payment of access charges. As explained above, the Commission's prior calling card orders expressly preclude such conduct.

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[86] *See, e.g., Transport Rate Structure and Pricing*, First Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd. 5370 ¶ 15 (1993) ("*Transport Rate Order*").

[87] *Id. See also id.* ("In many cases, the dial tone office is the [serving wire center]; in some cases, dial tone is provided from a different office, in which case there will be a separate [serving wire center] between the dial tone office and the POP.")

The Commission should put this issue to rest once and for all by reaffirming that its prior calling card orders apply to *all* prepaid calling services, including those that use local telephone numbers to dial into a calling platform. The Commission should also make clear that similar arrangements designed to use local trunks to reach VoIP platforms and avoid appropriate access charges such as Skype to Go are also unlawful access avoidance schemes.

C. The Commission Should Revise Its CLEC Access Charge Rules To Address Excessive 8YY Database Query Charges.

The Commission should eliminate the features of its CLEC access charges rules that have allowed and encouraged certain LECs to tariff charges for 8YY database queries that vastly exceed reasonable levels, to enter into arrangements to direct high volumes of 8YY traffic to their networks, and to impose substantial excessive charges on IXCs. IXCs cannot avoid these excessive charges. When a CLEC customer dials an IXC's 8YY number, the CLEC serving that customer has a monopoly over the 8YY database query service needed to determine the IXC to which the call should be routed. Accordingly, as described further below, the Commission should modify its CLEC access charge rules to limit the 8YY database charges that a CLEC may lawfully tariff.

The Commission's current CLEC access charge rules permit CLECs to tariff charges for 8YY database queries, but exempt those charges from the benchmarking rules that govern other CLEC access charges.[88] Although the Commission has explained that it expects that CLECs will "not look to this category of tariffed charges to make up for access revenues that the benchmark system denies them,"[89] CLECs have, as noted, abused their monopoly status over 8YY access

[88] 47 C.F.R. § 61.26.

[89] *CLEC Access Charge Order* ¶ 56 & n.128.

services and have tariffed rates for 8YY database queries that far exceed any just and reasonable level.

XO's tariff illustrates this point. The RBOC national average 8YY database query charge is less than half a cent per query. XO, however, has tariffed an 8YY database query charge of 1.1 cents per query – more than two times that national average.[90] There can be no legitimate cost basis for "competitive" providers to charge more than two times the average that other carriers charge for the same service. As the Commission has explained, it is "highly unusual for a competitor to enter a market at a price dramatically above the price charged by the incumbent."[91]

To prevent such abusive conduct, the Commission should amend its CLEC access charge rules so that benchmarks apply to CLEC 8YY database query charges. In particular, a CLEC should only be allowed to tariff 8YY database charges that are at or below the RBOC rate. A CLEC that seeks to impose a higher 8YY database query charge should not be allowed to tariff such charges, but should instead be required to negotiate such charges with its IXC customers.

D. The Commission Should Clarify That IXCs Are Not Required To Directly Interconnect With All LECs.

Some CLECs have recently taken the position that they will no longer offer IXCs the ability to connect indirectly to their end offices and that when an IXC wishes to route traffic to or through such facilities it must instead purchase a direct connection. The Commission should confirm that this position is a direct violation of Section 251(a), which permits IXCs to connect

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[90] *See* XO Tariff FCC No. 1, § 8.9.5.

[91] *CLEC Access Charge Order* ¶ 37.

directly *or* indirectly with telecommunications carriers, and that carriers may not preclude indirect connections to their networks.[92]

In addition to violating Section 251(a) of the Act, these direct-interconnection requirements are unreasonable practices that substantially harm the public interest in violation of Section 201(b) of the Act. Rather than competing for IXCs' direct connections (*e.g.*, by offering lower prices, better services, more connectivity, and so on), these requirements are an attempt by these CLECs to exploit their monopoly status on calls placed to their end user customers and to force IXCs to incur the costs of direct connections, even if there are lower-cost or otherwise superior alternatives. In addition to unnecessarily inflating AT&T's (and other IXCs') costs, these actions are unreasonable in violation of Section 201(b) because they undermine core competitive goals of the Act. If LECs could simply force IXCs to purchase direct connections to their networks, the LECs would have no reason to develop direct connections that provide better prices or services.

Accordingly, the Commission should make clear that carriers may not deny access to indirect connections and that any such denials violate both Section 251(a) of the Act, and constitute an unjust and unreasonable practice in violation of Section 201(b) of the Act.

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[92] 47 U.S.C. § 251(a) ("[e]ach telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers").

CONCLUSION

For the foregoing reasons, the Commission should adopt the regulatory reforms that AT&T has set forth herein.

Dated: April 1, 2011

Respectfully submitted,

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