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VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155

Dear Ms. Dortch:

On May 31, 2019, Michael R. Romano, Senior Vice President – Industry Affairs & Business Development at NTCA–The Rural Broadband Association ("NTCA"), and the undersigned and James Dawson of Jenner & Block LLP, counsel to NTCA, met with Gil Strobel, Lynne Engledow, Albert Lewis, John Hunter, Lisa Hone (by phone), Irina Asoskov (by phone), Erik Raven-Hansen (by phone), Susan Bahr (by phone), and Allison Baker (by phone) of the Federal Communications Commission's ("Commission") Wireline Competition Bureau and Eric Ralph (by phone), Richard Kwiatkowski (by phone), and Shane Taylor (by phone) of the Office of Economics and Analytics.

In the meeting, NTCA urged the Commission to adopt both prongs of its proposal to curb terminating access arbitrage in the intercarrier compensation systems.[1] NTCA explained that the first prong of the Commission's plan—while supported by ample evidence in the record—should be implemented with appropriate safeguards to protect innocent LECs that do not engage in access stimulation.[2] NTCA encouraged the Commission to either amend the text of Section 51.914(a) of its proposed rule or to otherwise clarify in its final rule that LECs that do not qualify as access stimulators but who subtend to the same CEA as those who do will not be affected by

[1] *See In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, 33 FCC Rcd 5466, 5470-71 ¶¶ 10-13 (2018); Letter from Michael R. Romano, NTCA–The Rural Broadband Association, to Marlene Dortch, Secretary, FCC, at 2-4, WC Docket No. 18-155 (May 16, 2019) ("NTCA May 16 Ex Parte") (explaining why the Commission should adopt both prongs of its proposed approach to address access simulation); Comments of NTCA, WC Docket No. 18-155 (July 20, 2018) ("NTCA July Comments").

[2] *See* NTCA May 16 Ex Parte at 4.

prong 1. As to prong 2, NTCA highlighted the benefits of the Commission's proposal to promote direct interconnection. Concerns about prong 2 leading to sunk investments are premised on anecdotal reports rather than concrete, on-the-ground evidence, and in any event, NTCA explained that such concerns could be easily mitigated by safeguards.[3]

NTCA also encouraged the Commission to retain revenue sharing as a component of the definition of access stimulation.[4] Absent some economic benefit, entities would not engage in access stimulation. Indeed, this entire proceeding is focused on eliminating the financial incentive for access stimulation. The Commission's rules already include an expansive definition of what constitutes an access revenue sharing agreement and vague concerns in the record do not explain why the definition is insufficient or under inclusive.[5] Requiring a revenue sharing agreement is also necessary to avoid penalizing innocent LECs that may have increased call volume due to new economic growth. Should the Commission modify the definition of revenue sharing, prong 2 becomes even more essential. In this circumstance, absent prong 2, innocent LECs with volume growth may be penalized for expansions in traffic that are driven by development in their rural community rather than by economic incentives for access stimulation. Such LECs should not be forced to bear transport costs if they are not part of a scheme to stimulate access revenues. Instead, these LECs should retain the option of direct interconnection to handle increasing and shifting traffic volumes.

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[3] *Id.* at 3.

[4] *See* NTCA July Comments at 5-6 (suggesting that the "Commission should retain the existing definition of access stimulation" because it "strike[s] the right, carefully considered balance between over-inclusiveness and under-inclusiveness").

[5] 47 C.F.R. § 61.3(bbb) (defining an access revenue sharing agreement "whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account."). Inteliquent has suggested that the Commission should modify the revenue share requirement in the definition of access stimulation in order to close a purported loophole. *See, e.g.*, Letter from Matthew S. DelNero, Counsel to Inteliquent, Inc., to Marlene Dortch, Secretary, FCC, attach. at 17-20, WC Docket No. 18-155 (May 14, 2019). But the examples of "end-runs around 'revenue shares'" cited by Inteliquent—including co-ownership of an end office and a high-volume calling platform by the same corporate entity, *id.* at 19—would appear to fall within the existing definition of revenue sharing, which includes payments between affiliates and in-kind payments made without an express agreement.

Please contact the undersigned if you have any questions regarding these matters.

Sincerely,

/s/ Rebekah P. Goodheart
Rebekah P. Goodheart

Counsel for NTCA–The Rural Broadband Association

cc: Erik Raven-Hansen
Susan Bahr
Lynne Engledow
Albert Lewis
Lisa Hone
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