

September 20, 2019

VIA ECFS

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

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

Dear Ms. Dortch:

On Thursday, September 19, 2019, Michael Romano of NTCA and Matthew Nodine of AT&T spoke with Nirali Patel, wireline advisor to Chairman Ajit Pai, and Lisa Hone, Deputy Chief of the Wireline Competition Bureau, to discuss matters in the above-referenced proceeding.

NTCA and AT&T described their efforts to find common ground with respect to identifying when rate-of-return incumbent local exchange carriers (“RLECs”) might be engaged in access stimulation and resolving any disputes as to whether an RLEC is engaged in such activities. NTCA and AT&T discussed why processes specifically defined for RLECs would be appropriate in light of structural disincentives for RLECs to engage in access stimulation in the first instance, limited evidence that RLECs have engaged in such practices and the potential consequences for universal service in rural areas if an RLEC were deemed to have engaged in such a practice when any traffic patterns could instead be attributed to other factors noted below.

NTCA and AT&T therefore suggested the following for determining whether an RLEC is engaged in access stimulation and for resolving any disputes or disagreements related thereto:

- As the Commission has an expectation that a rate of return ILEC will not engage in access stimulation, an RLEC should not be presumed to have engaged in access stimulation unless its interstate traffic ratio exceeds 10:1 and its traffic volume exceeds 500,000 terminating interstate minutes per end office per month, both measured over three consecutive months.
- If a dispute arises over whether an RLEC is engaged in access stimulation, the party making the allegation could notify the Commission or the RLEC could seek a waiver, either in order to obtain a determination as to whether the RLEC is engaged in such a practice, or to state that the RLEC itself is not engaged in access stimulation.
- Unless and until the Commission finds that the RLEC is engaged in access stimulation, the financial burden for tandem switching and transport would not shift to the RLEC, and the interexchange carrier would remain liable for, and would continue to pay for, the relevant tandem switching and transport, and could, therefore, not engage in self-help practices during the pendency of the Commission’s process.
- In considering whether the RLEC is engaged in access stimulation, the Commission would consider factors such as local economic development in the form of new businesses physically locating or growing within in an area, seasonal variations in call patterns, changes in originating traffic volumes, and other factors that are not the type of conduct intended to generate access minutes specifically.

- If an RLEC is found by the Commission through this process to have engaged in access stimulation, the interexchange carrier could then seek recovery of any erroneously paid access charges from the access stimulating RLEC.

Finally, NTCA and AT&T expressed support for clarity in any final order as to the transport and tandem switching for which an access stimulating carrier will be responsible, the use of actual minutes switched (rather than billed records) in measuring traffic, and a periodic review of the access stimulation definition to ensure it will continue to reflect evolving trends in calling patterns.

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

Sincerely,

/s/ Michael R. Romano

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cc: Nirali Patel
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