

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Updating the Intercarrier Compensation Regime to	)	WC Docket No. 18-155
Eliminate Access Arbitrage	)	

**ORDER DENYING STAY PETITION**

**Adopted: October 25, 2019**

**Released: October 25, 2019**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. Last month, the Federal Communications Commission (Commission) adopted the *Access Arbitrage Order*, in which it broadened the scope and effectiveness of its anti-arbitrage rules by again tackling the troublesome practice of access stimulation which distorts competition and harms consumers.<sup>1</sup> In adopting the *Access Arbitrage Order*, the Commission sought to reduce the incentive to inefficiently route high-volume, purposely inflated, call traffic to take advantage of the intercarrier compensation (ICC) system's access charge regime. On the basis of comments and *ex parte* submissions filed in response to the Commission's June 2018 *Access Arbitrage Notice*,<sup>2</sup> the Commission adopted rules making access-stimulating local exchange carriers (LECs)—rather than long distance and wireless carriers (IXCs)<sup>3</sup>—financially responsible for the tandem switching and transport service access charges associated with the delivery of traffic from an IXC to an access-stimulating LEC end office or its functional equivalent. Recognizing changes had occurred in access stimulation practices, the Commission also modified its definition of access stimulation—which was based on traffic volumes and revenue sharing—to include two alternative traffic triggers without a revenue sharing component. The Commission adopted different alternative triggers for competitive LECs and rate-of-return LECs in light of the different incentives each type of carrier has to engage in access stimulation.

2. Two competitive LECs that historically have engaged in access stimulation—Great Lakes Communication Corporation (GLCC) and Northern Valley Communications, LLC (NVC)—and three providers of high-volume calling services, and specifically, free conference calling services (No Cost Conference, Inc., Sipmeeting, LLC, and Total Bridge, Inc.) (collectively, Petitioners) filed a Petition for Stay of the *Access Arbitrage Order* (Petition) with respect to only those five companies.<sup>4</sup> For the reasons

---

<sup>1</sup> *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, FCC 19-94, 2019 WL 4785554 (Sept. 27, 2019) (*Access Arbitrage Order*).

<sup>2</sup> *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, WC Docket No. 18-155, 33 FCC Rcd 5466 (2018) (*Access Arbitrage Notice*). The record can be found online in the Commission's Electronic Comment Filing System at [https://www.fcc.gov/ecfs/search/filings?proceedings\\_name=18-155&sort=date\\_disseminated\\_DESC](https://www.fcc.gov/ecfs/search/filings?proceedings_name=18-155&sort=date_disseminated_DESC).

<sup>3</sup> The term IXC as used in this *Order Denying Stay Petition* encompasses wireless carriers to the extent they are payers of switched access charges.

<sup>4</sup> See Petition for Stay of Report and Order Pending Appeal of Great Lakes Communication Corporation, Northern Valley Communications, LLC, No Cost Conference, Inc., Sipmeeting, LLC, and Total Bridge, Inc., WC Docket No.

(continued...)

set forth below, we find that Petitioners have not demonstrated that they meet the standard for grant of a stay, and we therefore deny the Petition.

## II. BACKGROUND

3. In the *Access Arbitrage Notice*, the Commission expressed concern that access-stimulating LECs had adjusted their practices to circumvent the Commission's rules and were interposing intermediate providers of switched access service not subject to the Commission's existing access-stimulation rules in the call route to increase the access charges IXCs must pay.<sup>5</sup> The Commission sought comment on proposals to amend its access stimulation rules to address these new arbitrage schemes. In addition to proposing and seeking comment on how to remove the financial incentive to engage in access stimulation, the Commission sought comment on whether, and if so how, to revise the current definition of access stimulation to more accurately and effectively target harmful access-stimulation practices.<sup>6</sup> In so doing, the Commission specifically sought comment on whether and how to modify the ratios or triggers in the access stimulation definition.<sup>7</sup> The Commission also sought comment on whether to eliminate the portion of the access stimulation definition requiring a revenue sharing agreement.<sup>8</sup>

4. On September 5, 2019, the Commission publicly released a *Draft Order* that had been circulated to the Commission for its consideration at a meeting to be held on September 26, 2019.<sup>9</sup> Several dozen *ex parte* submissions were filed in response to the *Draft Order* between September 5, 2019 and the start of the Sunshine period on September 20, 2019.<sup>10</sup> Upon review of the full record, including the submissions made after the *Draft Order* was circulated, the Commission adopted rules aimed at further reducing access arbitrage.<sup>11</sup> The rules the Commission adopted make access-stimulating LECs—rather than IXCs—financially responsible for the tandem switching and transport service access charges associated with the delivery of traffic from an IXC to an access-stimulating LEC end office or its functional equivalent.<sup>12</sup>

5. In addition, in light of record evidence that access stimulation may occur even when there is no revenue sharing agreement, the Commission modified its definition of access stimulation—which operated on the basis of traffic volumes and access revenue sharing—to include two alternative traffic

(Continued from previous page)

18-155 (filed Oct. 4, 2019), <https://www.fcc.gov/ecfs/filing/1004822026599> (Petition). While Petitioners include two competitive LECs and three free conference calling providers, the Petition is drafted exclusively from the perspective of the two competitive LEC Petitioners. *See, e.g.*, Petition at 5 (“The CLECs are likely to prevail in their appeal of the *Access Stimulation Order*.”). Aside from the incorporation of declarations from the three free conference calling providers, the free conference calling providers add neither arguments nor evidence in support of the stay request. Petition at 1.

<sup>5</sup> *Access Arbitrage Notice*, 33 FCC Rcd at 5467-68, paras. 2, 6.

<sup>6</sup> *Id.* at 5475, 5479, paras. 26, 37.

<sup>7</sup> *Id.* at 5475, para. 26.

<sup>8</sup> *Id.*

<sup>9</sup> *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Draft Report and Order and Modification of Section 214 Authorizations, <https://docs.fcc.gov/public/attachments/DOC-359493A1.pdf> (circulated Sept. 5, 2019) (*Draft Order*).

<sup>10</sup> The “Sunshine period” is a designated period in Commission proceedings beginning the day “after the release of a public notice that a matter has been placed on the Sunshine Agenda,” meaning the matter will be considered at the next Commission Open Meeting. During that period, presentations to Commission decision-making personnel about the matter are prohibited, subject to limited exceptions. *See generally* 47 CFR § 1.1203.

<sup>11</sup> *See Access Arbitrage Order* at 52, Appx. A, Final Rules.

<sup>12</sup> *Id.* at 55-56, Appx. A (47 CFR §§ 61.26(g)(3), 69.3(e)(12)(iv)).

triggers without a revenue sharing component.<sup>13</sup> The Commission adopted alternative triggers for competitive LECs and rate-of-return LECs because each has different incentives to engage in access stimulation. Under the previously adopted rules, which remain unchanged, a carrier was engaged in access stimulation if it had a revenue sharing agreement and either had a 3:1 terminating-to-originating traffic ratio in a calendar month or more than 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year.<sup>14</sup> Under the newly adopted rules, a LEC is engaged in access stimulation if that carrier is: (1) a competitive LEC that meets a 6:1 terminating-to-originating traffic ratio; or (2) a rate-of-return LEC that meets a 10:1 originating-to-terminating traffic ratio and a 500,000 interstate, terminating minutes-of-use threshold.<sup>15</sup> The *Access Arbitrage Order* constitutes the next step in the process of fulfilling Congress's mandate to remove implicit subsidies to allow for a more efficient marketplace in which consumers receive the correct pricing signals, competition is no longer distorted, and consumers pay only for the services they use.<sup>16</sup>

### III. DISCUSSION

6. To qualify for the extraordinary remedy of a stay, Petitioners must show that: (1) they are likely to prevail on the merits of their appeal of the *Access Arbitrage Order*; (2) they will suffer irreparable harm absent the grant of preliminary relief; (3) other parties will not be harmed if the stay is granted; and (4) the public interest would favor grant of the stay.<sup>17</sup>

7. We first review Petitioners' allegations that they will prevail on the merits and find that they have failed to meet that prong of the stay standard. We next review Petitioners' allegations of irreparable harm and find that their failure to demonstrate irreparable harm is a standalone bar to the requested relief. Finally, we briefly review the balance of the equities, which we find favors denial.

#### A. Petitioners Have Failed to Show They Will Prevail on the Merits

8. We disagree with Petitioners' claim that they are likely to succeed on the merits of an appeal of the *Access Arbitrage Order*. As a general matter, the Commission thoroughly explained in the *Access Arbitrage Order* why its actions there were sound and consistent with applicable legal requirements. The heart of Petitioners' assertion that they will prevail on the merits of their appeal of the *Access Arbitrage Order* is their baseless claim that the Commission did not provide adequate notice and opportunity for comment before adoption of two additional alternative tests for determining whether LECs are engaged in access stimulation.<sup>18</sup> Equally baseless are Petitioners' claims that the Commission failed to consider record evidence that contravenes the Commission's conclusions and justifications for its

---

<sup>13</sup> *Id.* at 21-25, paras. 47-53.

<sup>14</sup> 47 CFR § 61.3(bbb).

<sup>15</sup> See *Access Arbitrage Order* at 19, para. 43 ("First, . . . competitive LECs with an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month will be defined as engaging in access stimulation. Second, . . . we define a rate-of-return LEC as engaging in access stimulation if it has an interstate terminating-to-originating traffic ratio of at least 10:1 in a three calendar month period and has 500,000 minutes or more of interstate terminating minutes-of-use per month in an end office in the same three calendar month period." (internal citations omitted)).

<sup>16</sup> In passing the Telecommunications Act of 1996, "Congress sought to establish a 'pro-competitive, deregulatory national policy framework' for the United States' telecommunications industry in which implicit subsidies for rural areas were replaced by explicit ones in the form of universal service support." *Access Arbitrage Order* at 3, para. 5 (internal citations omitted); see also 47 U.S.C. §§ 201(b), 254(e).

<sup>17</sup> See *Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958).

<sup>18</sup> Petition at 6-7.

new rules, that the *Access Arbitrage Order* is contrary to the Commission's geographic rate-averaging policies, and that the *Access Arbitrage Order* exceeds the Commission's authority.<sup>19</sup> The Commission provided more than adequate notice for all its actions and those actions are well supported by the record received in response to the *Access Arbitrage Notice* as well as by Commission and other relevant precedent. Petitioners' arguments misconstrue the Commission's geographic rate-averaging rules and misinterpret the Commission's statutory authority. In sum, we find that Petitioners have failed to demonstrate that they are likely to succeed on the merits.

### **1. The *Access Arbitrage Order* Satisfies the Administrative Procedure Act's Notice and Comment Requirements**

9. Petitioners' allegation that the Commission provided insufficient notice for the two new tests for access stimulation that it added to its rules is baseless.<sup>20</sup> Petitioners' argument rests on the erroneous premise that the Administrative Procedure Act (APA) required the Commission to provide notice and an opportunity to comment on the specific alternative tests it ultimately adopted. To the contrary, while a notice of proposed rulemaking "must be sufficient to fairly apprise interested parties of the issues involved," the notice "need not specify every precise proposal which [the agency] may ultimately adopt as a rule."<sup>21</sup> To satisfy the APA's notice requirement, "[a]n agency's final rule need only be a logical outgrowth of its notice."<sup>22</sup> And "a final rule represents a logical outgrowth where the [notice of proposed rulemaking] expressly asked for comments on a particular issue or otherwise made clear that the agency was contemplating a particular change."<sup>23</sup> In the *Access Arbitrage Notice*, the Commission expressly sought comment on whether it should "modify the ratios or triggers in the definition" of access stimulation, as well as whether to eliminate the revenue sharing requirement in the definition.<sup>24</sup> Thus, "interested parties should have anticipated that the change" ultimately made to the access stimulation definition "was possible."<sup>25</sup> That is all the notice the APA requires.

### **2. The Commission's Action Was Not Arbitrary and Capricious**

10. Petitioners also contend that they are likely to prevail on the merits because the Commission's action was arbitrary and capricious. They argue that the Commission failed to address data in the record, "reverse[d] course" as to its geographic rate-averaging policy, and exceeded the scope of its authority. None of these claims has merit.

11. First, Petitioners argue that the Commission's conclusion that reducing access charges benefits all consumers who pay for long-distance services ignores record data indicating that the price of long-distance service has risen for American consumers, a claim that Petitioners base on analysis of certain pricing data.<sup>26</sup> This argument, even if true, misses the point. As the Commission explained in the *Access Arbitrage Order*, any increase in the price of long-distance service is partly attributable to the

---

<sup>19</sup> *Id.* at 10-16.

<sup>20</sup> *Id.* at 7-9.

<sup>21</sup> *Nuvio Corp. v. FCC*, 473 F.3d 302, 310 (D.C. Cir. 2006) (quoting *Action for Children's Television v. FCC*, 564 F.2d 458, 470 (D.C. Cir. 1977)); see also 5 U.S.C. § 553(b)(3) (requiring notice of "either the terms or substance of the proposed rule or a description of the subjects and issues involved" (emphasis added)).

<sup>22</sup> *Agape Church, Inc. v. FCC*, 738 F.3d 397, 411 (D.C. Cir. 2013) (quoting *Covad Commc'ns Co. v. FCC*, 450 F.3d 528, 548 (D.C. Cir. 2006)).

<sup>23</sup> *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1081 (D.C. Cir. 2009).

<sup>24</sup> *Access Arbitrage Notice*, 33 FCC Rcd at 5475, para. 26.

<sup>25</sup> *Agape Church*, 738 F.3d at 411 (quotation marks and citations omitted).

<sup>26</sup> Petition at 10.

increased presence of access arbitrage.<sup>27</sup> The pricing data Petitioners use reflects increases in the access recovery charges brought about by ICC reforms in 2011,<sup>28</sup> and also includes the pricing for bundled video and local telephone services—services which were not impacted by the Commission’s ICC reforms.<sup>29</sup> Because Petitioners fail to control for the effects of access arbitrage, relevant reforms, and other issues, their long-distance pricing data cannot be used to draw Petitioners’ conclusions about the pass through of intercarrier compensation reform-based savings to long-distance customers. Further, most of the price measures presented by Petitioners rely on Producer Price Indices—rather than Consumer Price Indices, which would more accurately measure what consumers are paying—and indicate only negligible changes in prices.<sup>30</sup> Rather than rely on these irrelevant—or at best, tangentially relevant—data, the Commission premised its action on ample record data clearly demonstrating the costs that access stimulation imposes on IXCs and their customers.<sup>31</sup> As explained in the *Access Arbitrage Order*, “[r]educing the costs created by access arbitrage by reducing the incentives that lead carriers to engage in such arbitrage is a sufficient justification for adopting our rules.”<sup>32</sup> By eliminating the wasteful implicit subsidies generated by access stimulation schemes, the new rules ensure that “valuable network resources that were used to provide services that had little or no value will no longer be assigned to such low-value use, increasing efficient utilization of network resources.”<sup>33</sup>

12. Petitioners also claim that long-distance fees paid by users of free conference services are “entirely sufficient to cover the access charges paid by IXCs when delivering those customers’ calls to free conferencing providers.”<sup>34</sup> Yet Petitioners present no data to substantiate this claim. Instead, Petitioners challenge the *Access Arbitrage Order* for considering the consequences if the IXCs’ pass through of cost savings “does not occur,” and suggest that the reasoning underlying such a scenario belies a lack of supporting evidence for the Commission’s action.<sup>35</sup> To the contrary, the Commission’s focus is on the problem that “all customers of these long-distance providers bear these [access arbitrage] costs, even though many of them do not use the access stimulator’s services, and, in essence, ultimately support businesses designed to take advantage of . . . [the] above-cost intercarrier compensation rates.”<sup>36</sup> More

---

<sup>27</sup> *Access Arbitrage Order* at 9-12, paras. 20, 25-27.

<sup>28</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17956-61, paras. 847-53 (2011) (*USF/ICC Transformation Order*), *aff’d*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>29</sup> See Joint CLEC Comments at 9-13. According to the Bureau of Labor Statistics, “[t]he index for bundled access services measures changes in actual transaction prices for packages that bundle two or more of the following: telephone service, video programming, and Internet access services.” U.S. Dept. of Labor, Bureau of Labor Statistics, *Producer Price Indexes for Wired Telecommunications Carriers—NAICS 517311*, <https://www.bls.gov/ppi/naics517110.htm> (last visited Oct. 25, 2019).

<sup>30</sup> See Joint CLEC Comments at 9-12. Two of the three Producer Price Indices (PPIs) grew by less than inflation. For example, the PPI for public switched toll service grew at a compound annual rate of 0.4% (Jan. 2011 to Jan. 2019) and, for bundled access services, grew at a compound annual rate of 1% (Dec. 2011 to Dec. 2018), whereas the Consumer Price Indices for all urban consumers grew at a compound annual rate of 1.7% (Jan. 2011 to Jan. 2019). See U.S. Dept. of Labor, Bureau of Labor Statistics, *Databases, Tables & Calculators by Subject* (series Ids PCU5173115173112, PCU5173115173114, PCU5173115173117, and CUUR0000SA0). <https://www.bls.gov/data/> (last visited Oct. 25, 2019).

<sup>31</sup> *Access Arbitrage Order* at 4-5, 9-11, paras. 9, 20, 22, 24 (recounting industry costs).

<sup>32</sup> *Id.* at 14, para. 32.

<sup>33</sup> *Id.* at 12, para. 27.

<sup>34</sup> Petition at 10-11.

<sup>35</sup> *Id.* at 11-12.

<sup>36</sup> *Access Arbitrage Order* at 3-4, para. 7 (citing *USF/ICC Transformation Order*, 26 FC Rcd at 17875, para. 663).

fundamentally, Petitioners fail to recognize a central issue requiring the Commission's action: "the use of intercarrier compensation charges to fund access stimulators' operations" through implicit subsidies.<sup>37</sup> Petitioners also ignore the Commission's finding that competition suffers as a result of access stimulation schemes "because access-stimulation revenues subsidize the costs of high-volume calling services, granting providers of those services a competitive advantage over companies that collect such costs directly from their customers."<sup>38</sup> In addition, independent of the financial consequences of access arbitrage, the Commission found evidence that the artificially high levels of traffic generated by access stimulation schemes could lead to call completion problems and dropped calls.<sup>39</sup>

13. Next, Petitioners argue that the rules adopted in the *Access Arbitrage Order* are arbitrary and capricious because the Commission adopted additional definitional tests without "a real-reasoned basis and without adequate evidence," amid concerns that carriers might be incorrectly labeled as access stimulators.<sup>40</sup> Both the record and the *Access Arbitrage Order* clearly show that large traffic imbalances that would meet the adopted access-stimulation definitions are attributed to the prevalence of access stimulation.<sup>41</sup> The Commission acted based on the evidence in the record<sup>42</sup> and took steps to "protect non-access-stimulating LECs from being misidentified" under the revised definitions.<sup>43</sup> Moreover, in selecting the triggers for the new access stimulation tests, the Commission engaged in the sort of administrative line-drawing that is typically accorded great deference by the courts.<sup>44</sup> Because decisions of this sort are entitled to highly deferential judicial review, Petitioners are not likely to persuade a court that the lines drawn by the Commission in establishing the new access stimulation tests were arbitrary.

14. Petitioners' arguments regarding geographic rate averaging are based on a number of unfounded assumptions and a misunderstanding of Commission policy.<sup>45</sup> Petitioners allege that, as a result of the *Access Arbitrage Order*, conferencing providers will "move to larger urban carriers, where revenue-sharing will still be a viable option."<sup>46</sup> This is a speculative assumption without any support in

---

<sup>37</sup> Petition at 11-12; *Access Arbitrage Order* at 13-14, paras. 31-32.

<sup>38</sup> *Access Arbitrage Order* at 12, para. 26.

<sup>39</sup> *Id.* at 2, 40-41, paras. 3, 93-95.

<sup>40</sup> Petition at 12.

<sup>41</sup> *See, e.g., Access Arbitrage Order* at 2, 7, paras. 3, 15; *see also* Letter from Keith Buell, Senior Counsel, Sprint, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 7 (filed May 16, 2019).

<sup>42</sup> *See, e.g.,* Letter from Michael Romano, Senior Vice President, Industry Affairs & Business Development, NTCA to Marlene Dortch, Secretary, FCC, at 2 (filed Sept. 11, 2019).

<sup>43</sup> *Access Arbitrage Order* at 21, para. 47; *see also id.* at 22-23, para. 50. Petitioners also allege that the Commission "fails to define several critical terms," but the Petitioners fail to identify what those terms are. Petition at 9.

<sup>44</sup> *See Covad*, 450 F.3d at 541 (Courts are "'generally unwilling to review line-drawing performed by the Commission unless a petitioner can demonstrate that lines drawn . . . are patently unreasonable, having no relationship to the underlying regulatory problem.'" (quoting *Cassell v. FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998))); *WorldCom, Inc. v. FCC*, 238 F.3d 449, 461 (D.C. Cir. 2001) (If a line drawn by the Commission "reflects its informed discretion, and is neither patently unreasonable nor 'a dictate of unbridled whim,' then the agency's decision adequately satisfies the standard of review." (quoting *WJG Tel. Co. v. FCC*, 675 F.2d 386, 388-89 (D.C. Cir. 1982)); *AT&T Corp. v. FCC*, 220 F.3d 607, 627 (D.C. Cir. 2000) ("The Commission has wide discretion to determine where to draw administrative lines . . .").

<sup>45</sup> We note that the rules adopted by the Commission in the *Access Arbitrage Order* apply to LECs, not to free conference calling providers.

<sup>46</sup> Petition at 14. "[L]arger urban carriers" are typically price cap carriers. *Id.* Pursuant to the reforms adopted in the *USF/ICC Transformation Order*, price cap carriers' access rates for terminating traffic have already transitioned to bill-and-keep. *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, para. 801. As such, Petitioners' theory

(continued....)

the record. It assumes that businesses supported by access arbitrage will: (1) continue to facilitate access stimulation; and (2) find it lucrative to move their businesses to urban areas. There is nothing in the record to support either of these assumptions. Petitioners assume that high-volume calling service providers who remain with rural carriers will be “forced to charge consumers” for their services.<sup>47</sup> Leaving aside that the record is equally bereft of evidence to support this assumption<sup>48</sup>—or of any explanation for why having these providers recover their costs from their customers should be viewed as problematic—these services are only “free” insofar as they are the product of the implicit subsidies that Congress has charged the Commission with eliminating.<sup>49</sup>

15. Petitioners incorrectly claim that the rules adopted in the *Access Arbitrage Order* will result in violations of the Commission’s geographic rate-averaging policy because “consumers [of high-volume calling services] will incur different charges for the same service depending solely on the geographic location to which their call is routed.”<sup>50</sup> As an initial matter, there is no evidence that the *Access Arbitrage Order* will result in consumers paying different charges depending on how their calls are routed. More importantly, though, Petitioners fundamentally misunderstand the Commission’s geographic rate-averaging policy. Petitioners complain of a (hypothetical) difference in the prices consumers in different parts of the country may pay for similar conferencing services. The Commission’s geographic rate-averaging rules, however, apply to rates for long-distance service.<sup>51</sup> They do not apply to the rates charged for conferencing services, or for any other service provided through a telephone call. Nor do the rules adopted in the *Access Arbitrage Order* regulate the rates for long-distance services. Thus, Petitioners’ geographic rate-averaging arguments are inapposite.

16. We also disagree with Petitioners’ arguments that the Commission’s actions exceeded its authority under the Communications Act of 1934, as amended (the Act) or the Constitution.<sup>52</sup> Each of Petitioners’ arguments—that the reforms adopted in the *Access Arbitrage Order* interfere with states’ authority in defining the “network edge,”<sup>53</sup> unjustly discriminate against access-stimulating LECs,<sup>54</sup> or

(Continued from previous page) \_\_\_\_\_

that high-volume calling services will move to “larger urban carriers” because those carriers will be able to continue to revenue share despite the Commission’s access arbitrage rules seems particularly suspect. Petition at 14.

<sup>47</sup> Petition at 14.

<sup>48</sup> Providers permissibly could, for example, rely on advertising to cover their costs and continue to offer “free” services to their customers.

<sup>49</sup> See *Access Charge Reform et al.*, CC Docket No. 96-262 et al., First Report and Order, 12 FCC Rcd 15982, 15985, paras. 1, 4 (1997); *USF/ICC Transformation Order*, 26 FCC Rcd at 17909, para. 747. Although Petitioners claim that it is the Commission’s purported policy to protect “‘end-users placing calls to a stimulating entity,’” the only support for this claim comes from a notice of proposed rulemaking, the *Connect America Fund Notice*. Petition at 15 & n.47 (citing *Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4763, para. 654 (2011) (*Connect America Fund Notice*)). To the extent that the *Connect America Fund Notice* described the Commission’s historical policies generally prohibiting call blocking and requiring geographic rate averaging, nothing in the *Access Arbitrage Order* is contrary to those policies. See *Connect America Fund Notice*, 26 FCC Rcd at 4763, para. 654. While the Commission also went on to state that “[c]ustomers initiating calls to access stimulating entities are generally unaware” of the underlying marketplace circumstances, *id.*, it did not purport to establish any additional policies in that regard—nor would it have been expected to do so in a paragraph that was merely part of the background discussion preceding the Commission’s request for comment on possible access stimulation rules in a notice of proposed rulemaking.

<sup>50</sup> Petition at 15.

<sup>51</sup> 47 U.S.C. § 254(g); 47 CFR §§ 64.1801, 64.1900; *USF/ICC Transformation Order*, 25 FCC Rcd at 17908, para. 745 n.1308.

constitute a regulatory taking<sup>55</sup>—are recapitulations of arguments addressed and rejected in the *Access Arbitrage Order*, the reasoning of which we incorporate here.<sup>56</sup>

17. For the reasons discussed above, Petitioners’ arguments are not likely to succeed on the merits and therefore provide no basis to grant the requested stay.

**B. Petitioners Fail to Demonstrate that They Will Suffer Irreparable Injury Absent a Stay**

18. Failure to demonstrate irreparable harm is “grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.”<sup>57</sup> Petitioners fail to show that they will suffer irreparable injury if the *Access Arbitrage Order* goes into effect pending appeal, the “single most important prerequisite for the issuance of a preliminary injunction” or a stay.<sup>58</sup> This failure to prove irreparable injury dooms Petitioners’ request for the extraordinary relief of a stay.<sup>59</sup> Petitioners must satisfy “several well known and indisputable principles” to establish an irreparable harm justifying a stay. The claimed injury must be: (1) “actual and not theoretical”; (2) more than mere “economic loss”; and (3) imminent and “‘likely’ to occur.”<sup>60</sup> Petitioners do not establish any of these principles.

19. *Petitioners’ Alleged Harms Are Speculative.* Petitioners’ arguments that they will lose revenue absent a stay do not support a claim of irreparable harm. As courts have long held, “economic loss does not, in and of itself, constitute irreparable harm.”<sup>61</sup> The declarations that Petitioners filed in support of their claims, provide only estimated loss amounts with no provision of actual company financial data, no explanation of how those alleged losses relate to company profits as a whole, and provide no consideration of the potential mitigating effect of other revenue streams.<sup>62</sup> Nor do the declarants provide any analysis or evidence to support Petitioners’ arguments that their businesses will be

(Continued from previous page) \_\_\_\_\_

<sup>52</sup> Petition at 16-21.

<sup>53</sup> *Id.* at 16-18; *see Access Arbitrage Order* at 45, para. 105 (discussing the network edge under section 252 of the Act). The Commission has sought comment on network edge issues in a separate proceeding and will address such issues at a later date. *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, 32 FCC Rcd 6856 (WCB 2017).

<sup>54</sup> Petition at 18-20.

<sup>55</sup> *Id.* at 20-21.

<sup>56</sup> *See Access Arbitrage Order* at 42-45, paras. 99-105; *id.* at 35-37, paras. 78-81.

<sup>57</sup> *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006).

<sup>58</sup> *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114 (2d Cir. 2005).

<sup>59</sup> “A movant’s failure to show any irreparable harm is . . . grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.” *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297; *see also Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003) (“Failure to show irreparable harm is an independently sufficient ground upon which to deny a preliminary injunction.”); *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 420 (8th Cir. 1987) (“Once a court determines that the movant has failed to show irreparable harm absent an injunction, the inquiry is finished and the denial of the injunctive request is warranted.”).

<sup>60</sup> *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669 at 674 (D.C. Cir. 2015).

<sup>61</sup> *Id.*; *see also Chlorine Inst., Inc. v. Soo Line R.R.*, 792 F.3d 903, 916 (8th Cir. 2015) (“[T]he district court properly recognized that any increase in costs or reduction in business . . . would simply be compensable economic harm and

(continued....)

destroyed without a stay.<sup>63</sup> Without access to the declarants' underlying financial information, their calculations or an explanation of their analyses, we cannot find that Petitioners have demonstrated that their potential injury will be "certain" or "great" enough to justify a stay.<sup>64</sup>

20. Petitioners also claim complying with the rules adopted in the *Access Arbitrage Order* will negatively affect their networks, causing them to potentially lose business.<sup>65</sup> As described by Petitioners, this purported harm rests on a speculative chain of events: Petitioners will suffer a loss of revenue, followed by "technical difficulties," which will lead to service interruptions, and ultimately the loss of customers.<sup>66</sup> This argument is purely speculative and unsupported by the level of detail needed to justify the grant of a stay. Because Petitioners' claim of loss of goodwill is "speculative" and "not based on any factual allegations," it "does not constitute irreparable injury."<sup>67</sup>

21. Petitioners also speculate that they will be subject to more disputes as a result of the new access stimulation definition the Commission adopted in the *Access Arbitrage Order*.<sup>68</sup> Like the Petitioners' compliance concerns, the supposed harms from these disputes is unadorned speculation based on hypotheticals and conjecture.<sup>69</sup> Petitioners extrapolate from the expenses one competitive LEC apparently incurred in a single dispute with an IXC to support a claim of irreparable harm for all five Petitioners.<sup>70</sup> Similarly, although Petitioners' claim that they will need to hire internal and external human resources to address increased disputes, they do not quantify those costs, identify how many people they will need to hire, or explain why current staffing and external resources are insufficient.<sup>71</sup> In any event, the Supreme Court has held that "[m]ere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury."<sup>72</sup> Furthermore, Petitioners fail to explain why they could not alter their business models to avoid future litigation in light of the Commission's continued efforts to restrict access arbitrage.

22. Finally, Petitioners' concerns regarding disputes and the Commission's "encouragement of self-policing" are overstated and misplaced.<sup>73</sup> In the *Access Arbitrage Order*, the Commission

(Continued from previous page) \_\_\_\_\_  
does not constitute irreparable harm."); *DISH Network Serv. L.L.C. v. Laducer*, 725 F.3d 877, 882 (8th Cir. 2013) ("Economic loss, on its own, is not an irreparable injury so long as the losses can be recovered.").

<sup>62</sup> See generally Petition at Attachs. Elsewhere in the Petition, Petitioners acknowledge that they have other lines of business such as residential telephone service, broadband service and business connections. *Id.* at 24.

<sup>63</sup> See Petition at 22-24.

<sup>64</sup> *Wisconsin Gas*, 758 F.2d at 674 (to demonstrate irreparable harm "the injury must be both certain and great; it must be actual and not theoretical").

<sup>65</sup> Petition at 24. As discussed in the *Access Arbitrage Order*, the record in this proceeding shows that access stimulation may harm network reliability. *Access Arbitrage Order* at 2, para. 3.

<sup>66</sup> Petition at 24.

<sup>67</sup> *Goldie's Bookstore, Inc. v. Superior Ct. of State of Cal.*, 739 F.2d 466, 472 (9th Cir. 1984); see also *Herb Reed Enters., LLC, v. Fla. Entm't Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013) (while evidence of harm to "business reputation and damage to goodwill could constitute irreparable harm," a finding of irreparable harm to goodwill cannot be "grounded in platitudes rather than evidence"); *General Motors Corp. v. Harry Brown's, LLC*, 563 F.3d 312, 319-20 (8th Cir. 2009) (upholding a district court's ruling that affidavits alleging damage to goodwill "were too speculative to establish [irreparable] injury").

<sup>68</sup> Petition at 25-27.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 26. The conference calling petitioners do not address potential disputes with IXCs. See Declaration of Thadeus Jay Nelson, No Cost Conference, Inc., Attach. to Letter from David Carter, Counsel to Joint CLECs, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (filed Sept. 19, 2019), at 2, para. 8 (Joint CLEC Sept. 19,

(continued....)

provided a well-reasoned response to commenters' requests to limit self-help.<sup>74</sup> The Commission also reiterated its existing and previously articulated view that parties should honor dispute resolution processes provided in carriers' tariffs and contracts.<sup>75</sup> The Commission further pointed out that "IXCs and intermediate access providers, including [centralized equal access] providers, likely will have traffic data to demonstrate infractions of our rules."<sup>76</sup> None of this is an invitation for IXCs or intermediate access providers to challenge a carrier's status.<sup>77</sup> The notice provision in the adopted rules<sup>78</sup> will allow for additional transparency and likely *fewer* disputes because public notice of a LEC's status as an access stimulator, and subsequent notice if the LEC no longer meets the definition of access stimulator, should largely eliminate disputes over a LEC's status.<sup>79</sup> Finally, if Petitioners believe they have been identified as access stimulators even though their operations do not implicate the concerns underlying the Commission's rules governing access-stimulating LECs, they can use the Commission's waiver process to demonstrate that fact and obtain relief from the access arbitration rules.<sup>80</sup>

23. *Compliance Costs Do Not Support a Claim of Irreparable Harm.* Petitioners' additional complaints about the cost of complying with the new rules do not support their claim of irreparable injury.<sup>81</sup> Potential compliance costs alone are insufficient to justify a stay. Courts have repeatedly and consistently determined that compliance costs are a necessary business expense and do not constitute the type of irreparable harm required to justify the extraordinary remedy of a stay.<sup>82</sup> In support of their argument, Petitioners provide vague and unsubstantiated speculation that potential contract renegotiations or tariff revisions required to comply with the Commission's new rules will cause Petitioners irreparable harm.<sup>83</sup> Petitioners baldly assert that compliance with the new rules will take "hundreds of man hours," but provide no support for that assertion.<sup>84</sup> Nor do Petitioners provide context for how "hundreds of man hours" compare to the "man hours" the companies need in the normal course of business, or how significant the alleged compliance costs are relative to Petitioners' overall corporate budgets. In any event, Petitioners have failed to show that their compliance costs are likely to be so substantial as to result

(Continued from previous page) \_\_\_\_\_

2019 *Ex Parte*) (addressing only future disputes with customers over perceived "bait and switch" practices); Declaration of Matthew Alan Bathke, Sipmeeting, LLC, Attach. to Joint CLEC Sept. 19, 2019 *Ex Parte*, at 2, para. 9 (same).

<sup>71</sup> Petition at 26-27; Declaration of Joshua Dean Nelson, GLCC, Attach. to Petition, at 4, para. 13; Declaration of James Groft, NVC, Attach. to Petition, at 4, para. 13 (NVC Decl.).

<sup>72</sup> *Renegotiation Bd. v. Bannercrest Clothing Co.*, 415 U.S. 1, 24 (1974).

<sup>73</sup> Petition at 25-26 ("Yet, due to the Commission's encouragement of self-policing by *all* IXCs, other carriers will still be able to dispute these CLECs' ratios based on the skewed data available to them, resulting in nonpayment schemes and self-help strategies that far surpass those that occurred under the Commission's 2011 access-stimulation rules." (emphasis in original)).

<sup>74</sup> *Access Arbitration Order* at 31, para. 68.

<sup>75</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17889-90, para. 700; *Access Arbitration Order* at 27, para. 59.

<sup>76</sup> See *Access Arbitration Order* at 27, para. 59.

<sup>77</sup> Petition at 25; Declaration of Kevin Skinner, BTC, Inc. d/b/a Western Iowa Networks, Attach. to Joint CLEC Sept. 19, 2019 *Ex Parte*, at 3, para. 12.

<sup>78</sup> 47 CFR § 51.914(b), (e).

<sup>79</sup> *Access Arbitration Order* at 37, paras. 82-83.

<sup>80</sup> *Id.* at 24-25, para. 53.

<sup>81</sup> Petition at 23.

in irreparable harm.<sup>85</sup> Accordingly, we find that the costs Petitioners may incur to comply with the rules adopted in the *Access Arbitrage Order* do not rise to the level of irreparable harm.

24. Petitioners' attempt to repackage speculative financial harms as a reputational harm is similarly unavailing.<sup>86</sup> Petitioners allege that, as a result of the *Access Arbitrage Order*, they will "lose revenue" and "their ability to maintain and improve their local telecommunications networks" will diminish, leading their customers to "abandon" them.<sup>87</sup> The root of this argument is the "harm" that will befall the Petitioners if they lose the implicit subsidies generated by their arbitrage schemes. This harm is fundamentally financial and, therefore, insufficient to justify a stay.<sup>88</sup>

25. *Petitioners Fail to Show Immediacy of Harm.* Parties seeking a stay must show "[t]he injury complained of [is] of such imminence that there is 'clear and present' need for equitable relief to prevent irreparable harm."<sup>89</sup> Petitioners fail to show that any potential harm is "imminent." In particular, Petitioners have not demonstrated that they will suffer any irreparable harm while a court reviews Petitioners' appeal of the *Access Arbitrage Order*. As discussed above, Petitioners' arguments that they will be irreparably harmed because they do not have sufficient time to come in to compliance with the Commission's new rules are unsupported and unavailing.<sup>90</sup> In fact, "[t]he possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm."<sup>91</sup> Petitioners have not documented any imminent injury that could not be adequately remedied in the normal course of litigation. Accordingly, a stay is not warranted.

26. Petitioners' alleged injuries "are not enough" to show the irreparable harm necessary to justify a stay.<sup>92</sup> Consequently, the Petition must be denied.<sup>93</sup>

### C. The Balance of the Equities Does Not Favor a Stay

27. There also is no merit to Petitioners' claims that third parties and the public interest will

(Continued from previous page) \_\_\_\_\_

<sup>82</sup> See *Freedom Holdings, Inc.*, 408 F.3d at 115 ("[O]rdinary compliance costs are typically insufficient to constitute irreparable harm."); *Am. Hosp. Ass'n v. Harris*, 625 F.2d 1328, 1331 (7th Cir. 1980) ("[I]njury resulting from attempted compliance with government regulation ordinarily is not irreparable harm."); *A. O. Smith Corp. v. FTC*, 530 F.2d 515, 527 (3d Cir. 1976) ("Any time a corporation complies with a government regulation that requires corporation action, it spends money and loses profits; yet it could hardly be contended that proof of such an injury, alone, would satisfy the requisite for a preliminary injunction.").

<sup>83</sup> Petition at 27-28.

<sup>84</sup> *Id.* at 26-27.

<sup>85</sup> *Wisconsin Gas*, 758 F.2d at 674 ("Implicit in each of these principles is the further requirement that the movant substantiate the claim irreparable injury is 'likely' to occur.").

<sup>86</sup> Petition at 24.

<sup>87</sup> *Id.*

<sup>88</sup> *Wisconsin Gas*, 758 F.2d at 674 ("[E]conomic loss does not, in and of itself, constitute irreparable harm."). Although extreme economic loss could constitute irreparable harm, as noted above, Petitioners have provided only speculation that their harm would rise to that level. See also *A. O. Smith Corp.*, 530 F.2d at 528; *General Motors Corp.*, 563 F.3d at 319 ("The district court found that GM's claim of lost customer relationships was equivalent to a claim of lost profits. It noted that . . . any decrease in sales . . . was quantifiable and could therefore be compensated. Consequently the projected impact did not rise to the level of irreparable harm.").

<sup>89</sup> *Wisconsin Gas*, 758 F.2d at 674.

<sup>90</sup> See *supra* para. 23; Petition at 27-28.

<sup>91</sup> *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297-98 (quoting *Va. Petroleum Jobbers*, 259 F.2d at 925).

be harmed if the *Access Arbitrage Order* is allowed to go in to effect.<sup>94</sup> As explained below, third parties *will* be harmed if the *Access Arbitrage Order* is stayed. In addition, we find that the public interest does not favor a stay.

28. *Third Parties Will Be Harmed by Stay of the Access Arbitrage Order.* As the Commission explained in the *Access Arbitrage Order*, long-distance consumers are being harmed by access arbitrage schemes, and these harms will continue unless and until the *Access Arbitrage Order* takes effect.<sup>95</sup> Accordingly, we reject Petitioners' claims that third parties will not be harmed because, Petitioners contend, IXCs profit from access arbitrage<sup>96</sup> and long-distance and rural consumers benefit from high-volume calling services.<sup>97</sup> These arguments ignore the real and continuing harms that access arbitrage schemes inflict on consumers throughout the country.

29. First, even if Petitioners were correct in claiming that IXCs profit from LECs' access arbitrage schemes—claims that are not supported by evidence in the record—their arguments ignore the burdens that the economic inefficiencies created by access arbitrage ultimately impose on IXCs' customers.<sup>98</sup> As the Commission explained in the *Access Arbitrage Order*, IXCs that pay excessive access charges generated by access stimulation schemes “generally spread those costs to all of their customers, regardless of which customers actually make calls to high-volume calling services. As a result, long-distance customers collectively fund the ‘free’ services offered by the high-volume calling service providers whether they use the services or not.”<sup>99</sup> A stay would therefore harm third parties—in this case, consumers of long-distance services—by requiring them to continue paying the excessive costs imposed by access stimulation.<sup>100</sup>

30. Petitioners' argument that IXC customers benefit from high-volume calling services<sup>101</sup> fails to recognize that the high-volume calling service customers make up “only a small proportion of consumers”<sup>102</sup> while the costs of those services are spread across all long-distance customers.<sup>103</sup> As explained in the *Access Arbitrage Order*, all “long-distance customers are forced to bear the costs of ‘free’ conferencing and other services that only some customers use.”<sup>104</sup> The implicit subsidies created by access stimulation impose unfair costs on consumers and impede efficient competition in the market.<sup>105</sup> A

(Continued from previous page) \_\_\_\_\_

<sup>92</sup> *Va. Petroleum Jobbers*, 259 F.2d at 925.

<sup>93</sup> *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

<sup>94</sup> *Va. Petroleum Jobbers*, 259 F.2d at 925.

<sup>95</sup> *Access Arbitrage Order* at 2-3, para. 4.

<sup>96</sup> See Petition at iv.

<sup>97</sup> *Id.*; cf. *Access Arbitrage Order* at 11-12, paras. 25-26.

<sup>98</sup> *Access Arbitrage Order* at 2, para. 2; see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17875, para. 663.

<sup>99</sup> *Access Arbitrage Order* at 2, para. 2.

<sup>100</sup> Access arbitrage also harms IXCs by requiring them to combat access stimulation schemes through litigation or regulatory intervention. *Id.* at 10, para. 22. A stay would continue to burden IXCs—and ultimately, their customers—with those additional costs. Conversely, allowing the *Access Arbitrage Order* to take effect would likely reduce those costs for IXCs and their customers. *Id.* at 14, para. 32.

<sup>101</sup> Petition at 28.

<sup>102</sup> *Access Arbitrage Order* at 9-10, para. 20; *id.* at 11, para. 25.

<sup>103</sup> *Id.* at 9-10, para. 20.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 12, para. 26.

stay would perpetuate those harms.

31. Finally, Petitioners contend that rural customers will benefit “as the access-stimulating CLECs whom they subscribe to will be able to continue providing them with . . . advanced telecommunications services.”<sup>106</sup> That contention fails for two reasons. First, Petitioners do not provide any evidence showing that rural customers will lose access to any telecommunications services as a result of the *Access Arbitrage Order*.<sup>107</sup> Second, to the extent that Petitioners’ services depend on arbitrage to remain financially viable, they are supported by implicit subsidies from consumers who do not use their services.<sup>108</sup> Such subsidies impose unfair costs on those consumers and harm competition.<sup>109</sup> Thus, grant of a stay would harm third parties.

32. *The Public Interest Does Not Favor a Stay.* Finally, we disagree with Petitioners’ argument that the public interest favors a stay. To the contrary, we find that staying the effect of the *Access Arbitrage Order* would harm the public interest.

33. There is no basis for Petitioners’ argument that allowing the *Access Arbitrage Order* to go into effect will result in shifting traffic back to intermediate centralized equal access (CEA) providers, inevitably overwhelming those networks, and subsequently disrupting service for the Petitioners’ rural customers.<sup>110</sup> As with many of Petitioners’ claims, their arguments about possible technical difficulties are merely speculative. Petitioners fail to explain why implementation of the *Access Arbitrage Order* would cause an “immediate shift of traffic back to the CEA networks” or why those networks would be unable to handle those calls. Similarly, Petitioners’ argument that the adopted transition period would be insufficient to prepare for a shift in traffic<sup>111</sup> is belied by the record, which shows that access-stimulation traffic can be moved quickly.<sup>112</sup>

34. Petitioners also contend that concerns that they “will be deemed an access stimulator . . . likely will force them to reject offers to host traffic for call centers and business headquarters,” harming rural communities.<sup>113</sup> Once again, Petitioners’ argument is speculative and lacks evidentiary support. Petitioners fail to identify any offers to host traffic that they have rejected or will reject absent a stay.<sup>114</sup> If Petitioners or any carrier were to host traffic that would erroneously trigger the Commission’s access-stimulation rules, they could seek relief through a waiver on a case-by-case basis.<sup>115</sup>

---

<sup>106</sup> Petition at 28-29.

<sup>107</sup> Cf. NVC Decl. at 2-3, para. 9 (identifying NVC’s customers, but failing to show that NVC would collapse absent a stay or that its customers would have no alternative service).

<sup>108</sup> *Access Arbitrage Order* at 11-12, para. 25.

<sup>109</sup> *Id.* at 12, para. 26.

<sup>110</sup> Petition at 30.

<sup>111</sup> *Id.* at 29.

<sup>112</sup> See *Access Arbitrage Order* at 22, para. 49.

<sup>113</sup> Petition at 31.

<sup>114</sup> *Access Arbitrage Order* at 24-25, para. 53 (“[S]hould a non-access-stimulating LEC experience a change in its traffic mix such that it exceeds one of the ratios we use to define access-stimulating LECs, that LEC will have ‘an opportunity to show that they are in compliance with the Commission’s rules.’” (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17883, para. 683)); *id.* at 28, para. 61.

<sup>115</sup> *Id.* at 24-25, para. 53 (“We recognize the possibility that a LEC may experience significant traffic growth and if, for example, such customers include one or more inbound call centers, the result could be that its traffic exceeds one of the new traffic ratio triggers we adopt. We are not aware of any similar problems occurring with the existing 3:1 ratio and the record contains no evidence of that happening.” (internal citations omitted)).

35. Ultimately, Petitioners' arguments regarding the public interest are unavailing for a more fundamental reason: They ignore the harms caused by access stimulation. As described above, access stimulation saddles the vast majority of consumers with the costs of subsidizing calling services that benefit only a small proportion of consumers. Such schemes harm competition,<sup>116</sup> inefficiently allocate network resources,<sup>117</sup> and may lead to service disruptions.<sup>118</sup> The benefits of ensuring the efficient use of network resources far outweigh the speculative harms presented by Petitioners. For the above reasons, the public interest does not favor a stay.

#### IV. CONCLUSION

36. Petitioners bear the burden of showing they satisfy each of the elements required of a stay request. Petitioners have not met that burden. Therefore, we deny the Petition.

#### V. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 4(j), 201(b), 202(a), 254 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 202(a), 254, 303(r) and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291, this Order Denying Stay Petition in WC Docket No. 18-155 IS ADOPTED and SHALL BE EFFECTIVE IMMEDIATELY.

38. IT IS FURTHER ORDERED, that the Petition for Stay filed by Great Lakes Communication Corporation, Northern Valley Communications, LLC, No Cost Conference, Inc., Sipmeeting, LLC, and Total Bridge, Inc., on October 4, 2019, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

---

<sup>116</sup> *Id.* at 12, para. 26.

<sup>117</sup> *Id.* at 12, para. 27.

<sup>118</sup> *Id.* at 2, para. 3; *id.* at 40-41, para. 95.