



Federal Communications Commission
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Small Entity Compliance Guide

Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage

FCC 19-94
WC Docket No. 18-155
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This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In the *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Report and Order and Modification of Section 214 Authorizations, WC Docket No. 18-155 (rel. Sept. 27, 2019), the Federal Communications Commission acted to reduce financial incentives for arbitrage activities that harm consumers, undermine broadband deployment, and distort competition.¹

Access stimulation is a form of arbitrage which occurs when a local exchange carrier (LEC) serves high-volume calling service providers, such as “free” conference calling providers or chat lines, to stimulate calls directed to those services to increase the LECs’ access charge revenue and that of the intermediate access providers they use to deliver calls to their networks. Access-stimulating LECs and their partners take advantage of intercarrier compensation rates originally designed to ensure people living in rural areas have access to affordable telephone service.

The regulations adopted in the *Access Arbitrage Order* increase the scope and effectiveness of the Commission’s anti-arbitrage rules by shifting financial responsibility for terminating tandem switching and transport charges to access-stimulating LECs, thus requiring access-stimulating LECs to accept financial responsibility for calls delivered to their networks. These rules strengthen access-stimulating LECs’ incentives to route traffic efficiently, thereby reducing costs and eliminating implicit subsidies. If a LEC believes it is mis-identified as an access stimulator it may avail itself of the Commission’s waiver process.

II. COMPLIANCE REQUIREMENTS

In the *Access Arbitrage Order*, the Commission requires access-stimulating LECs to accept financial responsibility for interstate and intrastate terminating tandem switching and transport service access charges. It also expands the definition of access stimulation to include two new alternative tests in order to prevent carriers from evading the current rules by not entering into revenue sharing agreements. Finally, the *Order* also modifies the section 214 authorizations for centralized equal access providers with mandatory use provisions, eliminating those mandatory use requirements for traffic destined for access-stimulating LECs, and enabling interexchange carriers (IXCs) to voluntarily agree to directly connect to the access-stimulating LEC, or use other intermediate access providers that the LEC has chosen.

Access Stimulation Traffic [47 CFR § 51.914]

- The *Order* requires access-stimulating LECs to pay for tandem switching and transport for all calls that terminate at that LEC’s end office or functional equivalent.² Previously, IXCs were responsible for such costs.
- Access-stimulating LECs must now bear financial responsibility for traffic delivered both directly and indirectly to their end offices. Thus, they may not bill the IXC for terminating switching or transport services.

¹ *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* or *Order*).

² The *Order* also provides that an IXC or intermediate access provider may consider its call completion duties satisfied for access stimulation traffic once it has delivered the call to the tandem designated by the access-stimulating LEC, either in the LERG or in a contract.

Revised Definition of Access Stimulation [47 CFR § 51.903(k); 47 CFR § 61.3(bbb)]

- **Access Stimulation** is defined as occurring when a LEC satisfies any one of the following tests:
 - First, the current definition remains unchanged: a LEC is engaged in access stimulation where it has a revenue-sharing agreement based on access charge revenues that results in a net payment to another party *and also has* either (i) at least a 3:1 interstate terminating-to-originating traffic ratio in a calendar month *or* (ii) 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.
 - Second, a competitive LEC is engaged in access stimulation if it has an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month. No revenue-sharing agreement is required to satisfy this second test.
 - Third, a rate-of-return LEC is engaged in access stimulation if it has an interstate terminating-to-originating traffic ratio of at least 10:1 in a three-month period and also satisfies a threshold of 500,000 minutes or more of interstate terminating minutes-of-use per month in an end office averaged over the same three-month period. No revenue-sharing agreement is required to satisfy this third test.
- The revised rule also clarifies the steps needed for an access-stimulating LEC to end its status as an access stimulator for each test, provided that it does not qualify under another test: (i) a LEC that qualifies under the 3:1 ratio and revenue-sharing test must terminate all revenue-sharing agreements covered under the rule; (ii) a competitive LEC that qualifies under the 6:1 ratio test must reduce its interstate terminating-to-originating traffic ratio below 6:1 for six consecutive months; and/or (iii) a rate-of-return LEC that qualifies under the 10:1 ratio test must reduce its interstate terminating-to-originating traffic ratio below 10:1 and reduce its monthly interstate terminating minutes-of-use in an end office below 500,000 for six consecutive months.

Other Revised Definitions

- **Intermediate Access Provider** is defined as any entity that carries or processes traffic at any point between the final Interexchange Carrier in a call path and a LEC engaged in Access Stimulation. [47 CFR § 51.903(l); 47 CFR § 61.3(ccc)]
- **Interexchange Carrier** is defined as a retail or wholesale telecommunications carrier that uses the exchange access or information access services of another telecommunications carrier for the provision of telecommunications. [47 CFR § 51.903(m); 47 CFR § 61.3(ddd)]

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *Access Arbitrage Order* contains new or modified information collection and reporting requirements, and imposed new notice requirements on access-stimulating LECs:

- An access-stimulating LEC is required to remove provisions for terminating tandem switched access and or terminating switched access transport charges from its tariffs within 45 days of the effective date of the *Order*, which was January 11, 2020, or within 45 days of commencing access stimulation. [47 CFR § 61.26; 47 CFR § 69.3]
- An access-stimulating LEC must notify in writing all intermediate access providers it subtends and interexchange carriers it does business with of its status as an access stimulator and of its acceptance of financial responsibility within 45 days of the effective date of the *Order*, which was January 11, 2020, or within 45 days of commencing access stimulation, and must also publicly

file a record of the same in the Commission's Access Arbitrage docket on the same day. These requirements are subject to Office of Management and Budget approval as described below. [47 CFR § 51.914]

- Intermediate access providers may need to amend their billing practices to account for the change in financial responsibility. They have 45 days from the date of the aforementioned notice to make any such changes and to close out then-current monthly billing cycles with interexchange carriers under previous arrangements.
- Any LEC that ceases engaging in access stimulation must file notice with affected IXCs and intermediate access providers, as well as with the Commission, reflecting the end of its access stimulating status and the reversal of financial responsibility. [47 CFR § 51.914]

IV. IMPLEMENTATION DATE

The *Access Arbitrage Order* and its requirements for access-stimulating LECs became effective on November 27, 2019. The notice requirements adopted in 47 CFR §§ 51.914(b); 51.914(e) are subject to Office of Management and Budget approval.³ Compliance with these requirements will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the Federal Register announcing that compliance date.

V. INTERNET LINKS

A copy of the *Access Arbitrage Order* is available at: <https://docs.fcc.gov/public/attachments/FCC-19-94A1.pdf>.

A copy of the Federal Register Summary of the *Access Arbitrage Order*, 84 Fed. Reg. 57629 (October 28, 2019) is available at: <https://www.federalregister.gov/documents/2019/10/28/2019-22447/updating-the-intercarrier-compensation-regime-to-eliminate-access-arbitrage>.

³ 47 CFR § 51.914(b)(f).