September 5, 2019

FACT SHEET[*]

Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage
Report and Order and Modification of Section 214 Authorizations – WC Docket No. 18-155

Background: Certain rural local exchange carriers (LECs) have been taking advantage of inefficiently high access charges allowed under the current intercarrier compensation regime to engage in an arbitrage scheme known as "access stimulation." Specifically, to artificially increase their access charge revenues, these LECs stimulate terminating call volumes through arrangements with providers of "free" high-volume calling services, such as conference calling and chat lines. Access stimulation generates extraordinary numbers of inbound calls, which results in excessive access charges that long-distance providers (known as interexchange carriers or IXCs) are forced to pay. This traffic currently costs IXCs between $60 and $80 million annually, and these costs are generally borne by all of their users, regardless of which customers actually make calls to high-volume calling services. As a result, long-distance customers collectively subsidize the "free" services offered by high-volume calling service providers.

In 2011, the FCC sought to eliminate the harm to American consumers from access stimulation through (1) targeted rules aimed at reducing the end office terminating access rates that access-stimulating LECs can collect, and therefore, share with high-volume calling service providers; and (2) changes to the broader intercarrier compensation system aimed at moving the entire system to bill-and-keep. Under bill-and-keep arrangements, a carrier generally looks to its own end-users (rather than looking to other carriers and their customers) to pay for the costs of its network. In response to the 2011 reforms, arbitragers have adjusted their schemes to take advantage of access charges that have not yet transitioned or are not transitioning to bill-and-keep. In particular, today's schemes are structured to ensure that IXCs pay high tandem switching and tandem switched transport charges to access-stimulating LECs and to the intermediate access providers chosen by those access-stimulating LECs. This *Report and Order and Modification of Section 214 Authorizations* (*Order*) would adopt rules aimed at eliminating the financial incentives to engage in these access arbitrage schemes.

What the *Order* Would Do:

- To eliminate the use of the intercarrier compensation system to subsidize "free" high-volume calling services, the *Order* would adopt rules requiring access-stimulating LECs—rather than IXCs—to bear financial responsibility for the tariffed tandem switching and transport charges associated with the delivery of traffic from an IXC to the access-stimulating LEC's end office or its functional equivalent.
- Recognizing that access stimulation may occur even when there is no revenue sharing agreement between the LEC and the high-volume calling service provider, the *Order* would expand the current definition of "access stimulation" in the Commission's rules to include situations in which the access-stimulating LEC does not have a revenue sharing agreement, but has at least 6 times more minutes of inbound calling traffic than outbound calling traffic.
- The *Order* would also eliminate decades-old requirements that force IXCs delivering traffic to access-stimulating LECs that subtend certain intermediate access providers (known as centralized equal access or CEA providers) to use those CEA providers for tariffed tandem switching and transport services.

---

[*] This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 18-155, which may be accessed via the Electronic Comment Filing System (https://www.fcc.gov/ecfs/). Before filing, participants should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR § 1.1200 *et seq.*

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

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

REPORT AND ORDER AND MODIFICATION OF SECTION 214 AUTHORIZATIONS*

Adopted: [] **Released: []**

By the Commission:

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION

1. "Free" conference calling, chat lines, and certain other services accessed by dialing a domestic telephone number are all types of high-volume calling services that take advantage of inefficiently high access charges allowed under the current intercarrier compensation (ICC) regime. The ICC regime was designed to help ensure that people living in rural America had access to affordable telephone service through a system of implicit subsidies. As a result, interexchange carriers (IXCs)[1]

* This document has been circulated for tentative consideration by the Commission at its September 2019 open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC's *ex parte* rules apply and presentations are subject to "permit-but-disclose" *ex parte* rules. *See, e.g.*, 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules, including the general prohibition on presentations (written and

(continued….)

traditionally were required to pay high terminating access rates to local exchange carriers (LECs). While competition has displaced monopolies, and new, more efficient technologies have replaced legacy technologies, particularly in urban areas, the ability to charge inefficiently high access rates for terminating calls in certain rural areas has encouraged some rural LECs to engage in access arbitrage. Specifically, to artificially increase their access charge revenues, these LECs stimulate terminating call volumes through arrangements with entities that offer high-volume calling services. This practice is known as access stimulation.

2. Access stimulation generates extraordinary numbers of inbound calls which results in excessive terminating access charges that IXCs are forced to pay. IXCs that pay those access charges 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. In 2011, in the *USF/ICC Transformation Order*, the Commission sought to eliminate the detrimental effect of access stimulation on all American consumers using two strategies: (1) targeted action aimed at reducing the end office terminating access rates that access stimulating LECs can collect, and therefore, share with the high-volume calling service providers; and (2) changes to the broader ICC system aimed at moving the entire system to bill-and-keep.[2]

3. In response to Commission action in 2011, access stimulation schemes have adapted to shrinking end office termination charges and now seek to take advantage of access charges that have not yet transitioned or are not transitioning to bill-and-keep. Today's schemes are structured to ensure that IXCs pay high tandem switching and tandem switched transport charges to access-stimulating LECs and to the intermediate access providers chosen by those access-stimulating LECs. And, while the direct cost to IXCs of access stimulation has dropped, the number of access stimulated minutes has not. Indeed, arbitragers are "openly promoting opportunities to get paid for generating minutes by dialing telephone numbers owned by access stimulator LECs."[3] Furthermore, in addition to imposing direct access costs on IXCs—and, by extension, their customers—access stimulation imposes other harms. For example, there is evidence that the staggering volume of minutes generated by these schemes can result in call blocking and dropped calls. Sprint, for instance, describes one scheme it uncovered using 33 phones at a single cell site in Tampa, Florida that were each placing calls lasting more than 1,000 minutes per day to a known access arbitrage carrier. In that case, access stimulation meant that "other customers were unable

(Continued from previous page)
oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission's meeting. *See* 47 CFR §§ 1.1200(a), 1.1203.

[1] The term IXC as used in this *Order* encompasses wireless carriers to the extent they are payers of switched access charges.

[2] *See 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 (2011) (*USF/ICC Transformation Order* or *USF/ICC Transformation Further Notice*), *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*In re FCC 11-161*), *cert. denied*, 135 S. Ct. 2050, and 135 S. Ct. 2072 (2015). In the *Access Arbitrage Notice*, the Commission incorporated filings from WC Docket Nos. 10-90 and 07-135, and CC Docket No. 01-92 into the record of this proceeding. *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, 33 FCC Rcd 5466, 5467 n.7 (2018) (*Access Arbitrage Notice* or *Notice*). We refer to documents filed in those dockets in this *Order*.

[3] Letter from Keith Buell, Senior Counsel, Sprint, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 7 (filed May 16, 2019) (Sprint May 16, 2019 *Ex Parte*) (providing a screen shot of a Facebook page advertising one such scheme). *But cf.* Letter from G. David Carter, Counsel to Joint CLECs, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1-2 (filed May 13, 2019) (Joint CLEC May 13, 2019 *Ex Parte*) (claiming there is still insufficient evidence of the "harm and negative consequences" of access stimulation).

to make regular calls and may not have been able to reach 911."[4] Sprint also offers an example of 1.4 million minutes being "sent from a single number (951-373-54XX) to a Boost Mobile phone (951-448-51XX) that was subsequently forwarded to Pacoptic terminating telephone numbers, a carrier that has filed a traffic-pumping tariff. . . . The traffic increased to six times the normal call volume in a single day."[5]

4. Consistent with the goals of the Commission's 2011 ICC reform, in this *Order* we take further action to broaden the scope and effectiveness of our anti-arbitrage rules. To eliminate the use of the ICC system to subsidize services, including the many "free" services offered through access stimulation schemes, we adopt rules making access-stimulating LECs—rather than IXCs—financially responsible for the tariffed tandem switching and transport service access charges associated with the delivery of traffic from an IXC to the access-stimulating LEC end office or its functional equivalent.[6] By adopting these rules, we will eliminate the incentive to inefficiently route high-volume, purposely inflated, call traffic. Recognizing that access stimulation may occur even when there is no access revenue sharing agreement, we also modify our definition of access stimulation—which currently is based on traffic volumes and access revenue sharing—to include an alternative traffic volume trigger without a revenue sharing component.

II. BACKGROUND

5. In the 1980s, after the decision to break up AT&T, the Commission adopted regulations detailing how access charges were to be determined and applied by LECs when IXCs connect their networks to the LECs' networks to carry telephone calls originated by or terminating to the LECs' customers.[7] Those regulations also established a tariff system for access charges that mandates the payment of tariffed access charges by IXCs to LECs.[8] In passing the Telecommunications Act of 1996 (the 1996 Act), 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.[9] In response, the Commission began the process of reforming its universal service and ICC systems.[10]

6. In the 2011 *USF/ICC Transformation Order*, the Commission took further steps to comprehensively reform the ICC regime and established a bill-and-keep methodology as the ultimate end

---

[4] Sprint May 16, 2019 *Ex Parte* at 7-8; *see also* Letter from Keith Buell, Senior Counsel, Sprint to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1-2 (filed Sept. 3, 2019) (Sprint Sept. 3, 2019 *Ex Parte* Letter).

[5] Sprint May 16, 2019 *Ex Parte* at 9.

[6] *Access Arbitrage Notice*, 33 FCC Rcd at 5467, para. 3.

[7] *See Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd 15982, 15991, para. 21 (1997) (*Access Charge Reform Order*), *aff'd sub. nom. Southwestern Bell v. FCC*, 153 F.3d 523 (8th Cir. 1998) (citing *MTS and WATS Market Structure*, Third Report and Order, CC Docket No. 78-72, Phase 1, 93 F.C.C.2d 241, *recon*., 97 F.C.C.2d 682 (1983), *second recon*., 97 F.C.C.2d 834 (1984)).

[8] *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9934, para. 28 (2001).

[9] *Access Charge Reform Order*, 12 FCC Rcd at 15985, paras. 1, 4.

[10] *See, e.g., Federal-State Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), *aff'd in part and vacated in part sub nom. Comp. Tel. Assoc. v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and remanded,* AT&T v. Iowa Utils. Bd., 525 U.S. 366 (1999); *on remand Iowa Utils. Bd. v. FCC,* 219 F.3d 744 (8th Cir. 2000), *reversed in part sub nom. Verizon Communications, Inc. v. FCC,* 535 U.S. 467 (2002).

state for all intercarrier compensation.[11] As part of the transition to bill-and-keep, the Commission capped most ICC access charges and adopted a multi-year schedule for moving terminating end office charges and some tandem switching and transport charges to bill-and-keep.[12]

7. In the *USF/ICC Transformation Order*, the Commission found that the transition to bill-and-keep would help reduce access stimulation, and it also attacked access arbitrage directly.[13] The Commission explained that access stimulation was occurring in areas where LECs had high switched access rates because LECs entering traffic-inflating revenue sharing agreements were not required to reduce their access rates to reflect their increased volume of minutes.[14] The Commission found that, because access stimulation increased access minutes-of-use and access payments (at constant per-minute-of-use rates that exceed the actual average per-minute cost of providing access), it also increased the average cost of long-distance calling.[15] The Commission explained that "all customers of these long-distance providers bear these 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 . . . above-cost intercarrier compensation rates."[16] The Commission, therefore, found that the terminating end office access rates charged by access-stimulating LECs were "almost uniformly" unjust and unreasonable in violation of section 201(b) of the Communications Act of 1934, as amended (the Act).[17]

8. To reduce financial incentives to engage in wasteful arbitrage, the Commission adopted rules that identify those LECs engaged in access stimulation and required that such LECs lower their tariffed access charges.[18] Under our current rules, to be considered a LEC engaged in "access stimulation," a LEC must have a "revenue sharing agreement," which may be "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 LEC is "based on the billing or collection of access charges from interexchange carriers or wireless carriers."[19] The LEC must also meet one of two traffic triggers. An access-stimulating LEC either has "an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or has had more than a 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."[20] An access-stimulating rate-of-return LEC is required by our current rules to reduce its tariffed terminating switched access charges by adjusting those rates to account for its projected high traffic volumes.[21] An access-stimulating competitive LEC must reduce its terminating

---

[11] *USF/ICC Transformation Order*, 26 FCC Rcd at 17676, para. 34.

[12] *Id*. at 17677, para. 35.

[13] *Id*. at 17904, para. 738.

[14] *Id*. at 17874, para. 657.

[15] *Id*. at 17875, para. 663.

[16] *Id*. at 17875, para. 663.

[17] *Id*. at 17874, 17883, paras. 657, 684-85; 47 U.S.C. § 201(b).

[18] *Id*. at 17874-75, paras. 656-60.

[19] 47 CFR § 61.3(bbb)(1)(i). When determining whether there is a net payment, "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." 47 CFR § 61.3(bbb)(1)(i). Our access stimulation rules only apply to rate-of-return LECs and competitive LECs. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17882-89, paras. 679-98.

[20] 47 CFR § 61.3(bbb)(1)(ii).

[21] *USF/ICC Transformation Order*, 26 FCC Rcd at 17882, para. 679; *see also* 47 CFR § 61.39(g) (prohibiting the filing of access tariffs using historical costs under section 61.39 by access-stimulating rate-of-return LECs and requiring that they file access tariffs using projected costs under section 61.38 of the Commission's rules); 47 CFR

(continued….)

switched access charges to those of the price cap carrier with the lowest switched access rates in the state.[22]

9. The record makes clear that these rules were an important step toward reducing access stimulation and implicit subsidies in the ICC system.[23] Before the rules were adopted, Verizon estimated that access arbitrage cost IXCs between $330 million and $440 million annually.[24] By contrast, IXCs estimate that access arbitrage currently costs IXCs between $60 million and $80 million annually.[25]

10. Terminating end office access rates have now been transitioned to bill-and-keep for price cap LECs and competitive LECs that benchmark their rates to price cap LECs, and by July 1, 2020, they will transition to bill-and-keep for rate-of-return LECs and the competitive LECs that benchmark to them. Price cap incumbent LEC terminating tandem switching and transport charges likewise have transitioned to bill-and-keep when such a LEC is the tandem provider and it, or an affiliated incumbent LEC, is the terminating end office LEC. As a result, terminating end office charges are no longer driving access stimulation.

11. At issue in this proceeding are arbitrage schemes that take advantage of those access charges that remain in place for those types of terminating tariffed tandem switching and transport services which, unlike end office switching charges, have not yet transitioned or are not transitioning to bill-and-keep. Access stimulators typically operate in those areas of the country where tandem switching and transport charges remain high and are causing intermediate access providers, including centralized equal access (CEA) providers, to be included in the call path.[26]

12. CEA providers are a specialized type of intermediate access provider that were formed about 30 years ago to implement long distance equal access obligations (i.e., permitting end users to use 1+ dialing to reach the IXC of their choice) and to aggregate traffic for connection between rural incumbent LECs and other networks, particularly those of IXCs.[27] Three CEA providers are currently in operation—Iowa Network Services, Inc. d/b/a Aureon Network Services (Aureon), South Dakota Network, LLC (SDN), and Minnesota Independent Equal Access Corporation (MIEAC).[28] When the

(Continued from previous page)
§ 69.3(e)(12)(i) (requiring an access-stimulating rate-of-return LEC to file its own interstate switched access tariff); 47 CFR § 69.3(e)(12)(ii) (prohibiting an access-stimulating LEC from participating in a National Exchange Carrier Association tariff).

[22] 47 CFR § 61.26(g)(1).

[23] *See, e.g.,* Sprint Comments at 1; Inteliquent Comments at 1; AT&T Comments at 6. *But see* Letter from James Troup, Counsel for Aureon, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 6 (filed May 23, 2019) (Aureon May 23, 2019 *Ex Parte*) ("[T]he Commission's predictive judgment that changes to intercarrier compensation would reduce wasteful arbitrage did not come true." (footnote omitted)).

[24] *USF/ICC Transformation Order*, 26 FCC Rcd at 17876, para. 664.

[25] *See* Letter from Matthew DelNero and Thomas Parisi, Counsel to Inteliquent, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, Attach. at 2 (filed Apr. 18, 2019) (Inteliquent Apr. 18, 2019 *Ex Parte*) (estimating that access-stimulation schemes cost the telecommunications industry over $60 million annually); Letter from Matthew Nodine, Assistant Vice President, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 4 (filed Feb. 5, 2019) (AT&T Feb. 5, 2019 *Ex Parte*) (estimating that access stimulation costs the telecommunications industry $80 million annually).

[26] *See Access Arbitrage Notice*, 33 FCC Rcd at 5476, para. 30; *see also* AT&T Comments at 1.

[27] *Access Arbitrage Notice*, 33 FCC Rcd at 5469, para. 7 & n.17.

[28] 47 U.S.C. § 214(a); *Application of Iowa Network Access Div.*, File No. W-P-C-6025, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 (CCB 1988) (*Aureon Section 214 Order*); *Application of SDCEA, Inc., to Lease Transmission Facilities to Provide Centralized Equal Access Service to Interexchange Carriers in the State of South Dakota*, File No. W-P-C-6486, Memorandum Opinion, Order and Certificate, 5 FCC Rcd 6978 (CCB 1990) (*SDN Section 214 Order*); Report No. D-570-A, Public Notice, 1990 FCC LEXIS 6582, at *5 (Dec. 12, 1990)

(continued….)

Commission authorized Aureon's creation as a CEA, it adopted a mandatory use requirement that requires IXCs that deliver traffic to the LECs subtending the Aureon tandem to deliver the traffic to the CEA tandem, rather than indirectly through another intermediate access provider or directly to the subtending LEC.[29] The SDN authorization also includes a similar mandatory use requirement.[30] MIEAC's authorization does not provide for mandatory use.[31]

13. In 2018, to address current access stimulation schemes, the Commission adopted the *Access Arbitrage Notice* and proposed to reduce access arbitrage by making the party that chooses the call path responsible for the cost of delivering the call to the access-stimulating LEC.[32] The proposed rules offered a two-prong solution. Under the first prong, an access-stimulating LEC could choose to be financially responsible for calls delivered to its network so it, rather than IXCs, would pay for the delivery of calls to the LEC's end office, or the functional equivalent.[33] Under the second prong, an access-stimulating LEC could choose to accept direct connections either from the IXC or from an intermediate access provider of the IXC's choice, allowing the IXC to bypass intermediate access providers selected by the access-stimulating LEC.[34] The Commission reasoned that, if the access-stimulating LEC were made responsible for paying the costs of delivering calls to its end office, or if the LEC had to accept a more economically rational direct connection to its end office for high volumes of calls, it would be incentivized to move traffic more efficiently.[35] In the *Access Arbitrage Notice*, the Commission also sought comment on possible revisions to the definition of access stimulation as well as on additional alleged ICC arbitrage schemes and ways to reduce them.[36]

III. ELIMINATING FINANCIAL INCENTIVES TO ENGAGE IN ACCESS STIMULATION

14. Today, we adopt rules aimed at eliminating the financial incentives to engage in access arbitrage created by our current ICC system. Under our existing rules, IXCs must pay tariffed tandem switching and transport charges to access-stimulating LECs and to intermediate access providers chosen by the access-stimulating LEC to carry the traffic to the LEC's end office or functional equivalent.[37] This

(Continued from previous page)
(announcing the grant of the section 214 application for SDCEA, Inc., W-P-C-6486); *Application of Minnesota Independent Equal Access Corp.*, File No. W-P-C-6400, Memorandum Opinion, Order and Certificate (rel. Aug. 22, 1990). The Iowa, South Dakota and Minnesota commissions also granted authorizations. *Iowa Network Access Division, Division of Iowa Network Services*, Docket No. RPU-88-2, Final Decision and Order, 1988 Iowa PUC LEXIS 1 (Iowa P.U.C. Oct. 18, 1988), *subsequent appeal sub nom. Northwestern Bell Telephone Co. v. Iowa Utilities Board*, 477 N.W.2d 678 (Iowa 1991); *Application of South Dakota Network, Inc., and SDCEA, Inc., for Permission to Construct Centralized Equal Access Facilities*, Amended Order Granting Construction Permit and Approving Tariff, F-3860 (S.D. P.U.C. Apr. 12, 1991), https://puc.sd.gov/commission/dockets/misc/2011/ms11-001/010511a.pdf; *Minnesota Independent Equal Access Corp.'s Application for a Certificate of Public Convenience and Necessity*, Docket P-3007/NA-89-76, 119 PUR4th 8, 1991 WL 50178, 1991 Minn. PUC LEXIS 11 (Minn. P.U.C. Jan. 10, 1991) (*MIEAC Minn. P.U.C. Order*) (granting, in part, MIEAC's application for a certificate of authority to provide CEA services to IXCs on behalf of any independent LEC that chose to use its services; MIEAC does not have mandatory use authority).

[29] *Aureon Section 214 Order*, 3 FCC Rcd at 1473, para. 33.

[30] *SDN Section 214 Order*, 5 FCC Rcd at 6981, para. 24.

[31] *MIEAC Minn. P.U.C. Order*, 119 PUR4th 8, 1991 WL 501782, 1991 Minn. PUC LEXIS 11, at *45-*46.

[32] *Access Arbitrage Notice*, 33 FCC Rcd at 5469-70, paras. 8-9.

[33] *Id*. at 5470, paras. 10-12.

[34] *Id*. at 5470-72, paras. 13-15.

[35] *Id*. at 5473, paras. 19-20.

[36] *Id*. at 5475-77, paras. 26-33.

[37] *Id*. at 5468-69, paras. 6-7.

creates an incentive for intermediate access providers and access-stimulating LECs to increase tandem switching and transport charges.[38] The result, as AT&T explains, is that "*billions* of minutes of long distance traffic are routed through a handful of rural areas, not for any legitimate engineering or business reasons, but solely to allow the collection and dispersal of inflated intercarrier compensation revenues to access-stimulating LECs and their partners, as well as intermediate providers."[39]

15. Commenters offer evidence that there are at least 21 LECs currently involved in access stimulation.[40] Although there are access-stimulating LECs operating in at least 11 different states, there is wide agreement that the vast majority of access-stimulation traffic is currently bound for LECs that subtend Aureon or SDN.[41] To put the number of access stimulation minutes in perspective, AT&T observes that "twice as many minutes were being routed per month to Redfield, South Dakota (with its population of approximately 2,300 people and its 1 end office) as is routed to *all* of Verizon's facilities in New York City (with its population of approximately 8,500,000 people and its 90 end offices)."[42] Sprint explains, that while Iowa contains less than 1% of the U.S. population, it accounts for 11% of Sprint's long-distance minutes-of-use and 48% of Sprint's total switched access payments across the United States.[43] Similarly, South Dakota contains 0.27% of the U.S. population, but accounts for 8% of Sprint's total switched access payments across the United States.[44]

16. The record shows that CEA providers' tariffed charges for tandem switching and tandem switched transport serve as a price umbrella for services offered on the basis of a commercial agreement by other providers, meaning the commercially negotiated rates need only be slightly under the "umbrella" CEA provider rate to be attractive to those purchasing the service(s).[45] As AT&T explains:

> Some access stimulation LECs (either directly or via least cost routers) offer commercial arrangements for transport. The rates in these agreements, however, are well above the

[38] AT&T Comments at 9 n.21 ("AT&T data indicates that some companies route more minutes from remote switches than host switches, raising questions as to whether they send high volumes of traffic to these remote offices in lieu of the host in order to avoid direct trunk requests and to increase mileage charges. These arrangements cause the IXC to pay high access charges for remote office to host mileage, and then from the host to the access tandem. The concern is not limited to the volumes of minutes from the remote office, but also the cost. For example, while a million minutes from a lower access rated [Regional Bell Operating Company] remote office might not cost very much, the same million minutes via an inefficient host/remote arrangement can incur significantly more expense due to the high tariffed rural rates.").

[39] *Id*. at 1 (emphasis in original).

[40] *See* Letter from Joseph Cavender, Vice President & Assistant General Counsel, CenturyLink, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, Attach., Description of Methodology at 1 (filed Apr. 30, 2019) (CenturyLink Apr. 30, 2019 *Ex Parte*) (providing a list of 21 carriers it considers to be access-stimulating LECs). Secondary sources indicate the existence of additional access-stimulating LECs. Affidavit of Paige V. Schroeder in Support of Defendants' Opposition to Inteliquent Inc.'s Motion to Compel Zenoradio, LLC, and Zenofon, LLC, *Inteliquent, Inc. v. Free Conferencing Corp. et al.*, Case No. 1:16-CV-06976, Exh. 1 at 8 (N.D. Ill. Sept. 19, 2017) (Free Conferencing Corp.'s responses to Interrogatories providing a list of access-stimulating LECs that include three more carriers beyond those listed by CenturyLink).

[41] AT&T Feb. 5, 2019 *Ex Parte* at 4; Sprint May 16, 2019 *Ex Parte* at 5-6.

[42] AT&T Feb. 5, 2019 *Ex Parte* at 3 (emphasis in original).

[43] Sprint May 16, 2019 *Ex Parte* at 5.

[44] *Id*.

[45] *See* Letter from Matthew Nodine, Asst. VP, Federal Regulatory, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 24 (filed Apr. 9, 2019) (AT&T Apr. 9, 2019 *Ex Parte*); Sprint May 16, 2019 *Ex Parte* at 6-7 ("The high rates in Iowa are premised on typical volumes to high-cost rural exchanges. The rates imposed by tariff by the centralized equal access provider have created a price umbrella that other entities slightly undercut but still are far above the rates charged in other states.").

economic cost of providing transport. Because the only other available alternative is the tariffed transport rate of the intermediate provider selected by the LEC (such as a centralized equal access provider), that tariffed rate acts as a "price umbrella," which permits the access stimulation LEC to overcharge for transport service. The access stimulation LEC or least cost router can attract business merely by offering a slight discount from the applicable tariffed rate for tandem switching and transport. Because the Commission's rules disrupt accurate price signals, tandem switching and transport providers for access stimulation have no economic incentives to meaningfully compete on price.[46]

A. Access-Stimulating LECs Must Bear Financial Responsibility for the Rates Charged to Terminate Traffic to Their End Office or Functional Equivalent

17. To reduce further the financial incentive to engage in access stimulation, we adopt rules requiring an access-stimulating LEC to bear financial responsibility for all, interstate and intrastate, tariffed tandem switching and transport charges for terminating traffic to its own end office(s) or functional equivalent whether terminated directly or indirectly.[47] These rules effectuate a slightly modified version of the first prong of the access-stimulation rule proposed by the Commission in the *Access Arbitrage Notice* and properly align financial incentives by making the access-stimulating LEC responsible for paying for the part of the call path that it dictates.

18. After reviewing the record, we decline to adopt the second prong of the Commission's proposal that would allow an access-stimulating LEC to avoid paying for tandem switching and tandem switched transport by permitting an IXC to directly or indirectly connect to the LEC and pay for that connection, rather than having the LEC pay the cost of receiving traffic.[48] We are persuaded by the substantial number of commenters that argue that adoption of the first prong of the proposal will better address the problem of access stimulation and that allowing LECs the alternative of permitting direct or indirect connections paid for by the IXC would create a substantial risk of stranded investment.[49]

19. We also modify our definition of access stimulation to capture the possibility of access stimulation occurring even without a revenue sharing agreement between a LEC and a high-volume calling service provider.

---

[46] Letter from Matthew Nodine, Assistant Vice President, Federal Regulatory, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket Nos. 07-135, 10-90 and 18-155, at 2 n.3 (filed June 12, 2019) (AT&T June 12, 2019 *Ex Parte*). The record reflects that in Iowa and South Dakota, much access stimulation traffic is bypassing CEA networks pursuant to commercial agreements, notwithstanding mandatory use requirements applicable to IXCs. *See* Letter from David Erickson, President, HD Tandem, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (filed Apr. 8, 2019).

[47] Throughout this *Order*, we primarily discuss connections between an access-stimulating LEC and an IXC where those connections go through a tandem. Terminating tariffed "tandem switching and tandem switched transport" are the two key interstate exchange access services that are affected by this *Order*. These access services may be referred to differently in a LEC's tariff. For example, a LEC may have rate elements for tandem switched transport termination and tandem switched transport facility or may have a rate element called "common transport" as part of its tandem switched transport offering. *See* 47 CFR § 61.26(a)(3) (defining "switched exchange access services" for competitive LECs to include "[t]he functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching"); *see also* 47 CFR § 69.111(a)(2).

[48] *Access Arbitrage Notice*, 33 FCC Rcd at 5470-71, paras. 13-14.

[49] *See, e.g.*, Verizon Reply at 1-3, Letter from Matthew Nodine, Assistant Vice President, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Mar. 7, 2019) (AT&T Mar. 7, 2019 *Ex Parte*); Sprint May 16, 2019 *Ex Parte* at 3; Letter from Beth Choroser, Vice President, Regulatory Affairs, Comcast, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Mar. 21, 2019); INCOMPAS Reply at 1-2.

1. New Requirements for Access-Stimulating LECs

20. The approach we adopt today—shifting financial responsibility for all tariffed tandem switching and transport services to access-stimulating LECs for the delivery of terminating traffic from the point where the access-stimulating LEC directs an IXC to hand off the LEC's traffic—has broad support in the record. This shift in financial responsibility from IXCs to access-stimulating LECs for tariffed intermediate access provider charges and access-stimulating LECs' tandem switching and tandem switched transport charges is aimed at addressing the changes that have occurred in access arbitrage since the adoption of the *USF/ICC Transformation Order*.[50] The record shows that billions of minutes of access arbitrage every year are being directed to access-stimulating LECs using expensive tandem switching providers for conference calling and other services offered for "free" to the callers, but at an annual cost of $60 million to $80 million in access charges to IXCs and their customers.[51] Although only a small proportion of consumers call access-stimulating LECs, the costs are spread across an IXC's customers. As a result, long-distance customers are forced to bear the costs of "free" conferencing and other services that only some customers use. In attacking this form of cross-subsidization, we follow the lead set by the Commission in the *USF/ICC Transformation Order*.[52]

21. Our new rules eliminate the incentives that access-stimulating LECs have to switch and route stimulated traffic inefficiently, including by using intermediate access providers to do the same. Because IXCs currently pay the LECs' tandem switching and tandem switched transport charges and the intermediate provider's access charges, the terminating LEC has an incentive to inflate its own charges, and is, at a minimum, insulated from the cost implications of its decision to use a given intermediate provider. Indeed, in some cases the terminating LEC may not be merely indifferent to what interconnection option is most efficient but may have incentives to select less efficient alternatives if doing so would lead it to benefit, whether directly or on a corporation-wide basis.

22. As AT&T observes, making access-stimulating LECs financially responsible for traffic terminating to their end offices will be effective because it will "reduce the ability of terminating LECs and access stimulators to force IXCs, wireless carriers, and their customers [to subsidize], via revenues derived from inefficient transport routes, the costs of access stimulation schemes."[53] In addition, the costs of access stimulation are not limited to the access charges paid by IXCs and their customers. Costs also are incurred by IXCs in trying to avoid payments to access stimulation schemes whether through litigation or seeking regulatory intervention.[54]

---

[50] *See, e.g.*, AT&T Comments at 1 ("[I]n the years since the [*USF/ICC*] *Transformation Order*, access-stimulating LECs, particularly those in rural areas, have found new ways around the intercarrier compensation and access stimulation rules."); CenturyLink Comments at 1; HD Tandem Comments at 7 ("HD Tandem agrees with the FCC that access stimulation continues to exist in the marketplace today." (footnote omitted)); Inteliquent Comments at 1; Iowa Communications Alliance Comments at 4; NCTA Comments at 1-2; Sprint Comments at 1; Verizon Comments at 1; AT&T Reply at 1 ("The comments filed on July 20 provide near consensus that access stimulation arbitrage is rampant and continues to harm consumers."); Sprint Reply at 1-2. *But see* Letter from Andrew Nickerson, CEO, Wide Voice, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Jan. 15, 2019) (Wide Voice Jan. 15, 2019 *Ex Parte*) (suggesting that the *USF/ICC Transformation Order* "eliminated the ability of access stimulators to benefit from relatively high compensation associated with rural, rate-of-return access rate schedules"); Letter from David Erickson, President, HD Tandem, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 6-10 (filed Aug. 12, 2019) (HD Tandem Aug. 12, 2019 *Ex Parte*).

[51] *See* Inteliquent Apr. 18, 2019 *Ex Parte*, Attach. at 2; AT&T Feb. 5, 2019 *Ex Parte* at 4.

[52] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17875, para. 663.

[53] AT&T June 12, 2019 *Ex Parte* at 1.

[54] Litigation over access stimulation disputes is quite common. *See, e.g.*, AT&T Apr. 9, 2019 *Ex Parte* at 10-11; *see also Peerless Network, Inc. v. MCI Commc'ns Services, Inc.*, No. 14-C-7417, 2018 WL 1378347, at *5 (N.D. Ill. 2018), *judgment awarded*, 2018 WL 3608559 (N.D. Ill. 2018), *reversed in part and vacated in part*, 917 F.3d 538

(continued….)

23. Commenters argue that placing the financial responsibility on the access-stimulating LEC for delivery of traffic to its end office, or functional equivalent, will reduce inefficiencies created by access-stimulating LECs that subtend intermediate access providers and choose to work with high-volume calling service providers that locate equipment in remote rural areas without a reason independent of arbitraging the current ICC system.[55] We agree with these commenters. As CenturyLink explains, this change will "properly recognize[] that the responsibility to pay for the traffic delivery should be assigned to the entity that stimulated the traffic in the first place."[56]

24. We find unpersuasive arguments that as a result of the *USF/ICC Transformation Order* and the Aureon tariff investigation proceeding (addressing rate setting by CEA providers), there are few to no problems arising from arbitrage that need to be solved today.[57] The record shows that access stimulation schemes are operating in at least 11 states and are costing IXCs between $60 million and $80 million per year in access charges. The record also shows that access stimulation is particularly concentrated where CEA providers Aureon and SDN received authority from the Commission to construct their CEA networks.[58] In granting that authority, the Commission included a mandatory use requirement that requires IXCs to route telecommunications traffic through the CEA tandems to terminate traffic to the participating LECs that subtend those tandems.[59] The CEA providers' tariffed rates to terminate traffic "are premised on typical volumes to high-cost rural exchanges."[60] We find that these high CEA rates create a price umbrella: a price that other intermediate access providers can "slightly undercut" but still make a profit.[61] As a result, "AT&T and other carriers routinely discover that carriers located in remote areas with long transport distances and high transport rates enter into arrangements with high volume service providers . . . for the sole purpose of extracting inflated ICC rates due to the distance and volume of traffic."[62] The record shows that access stimulation also occurs in states not served by CEA providers but to a lesser extent.[63]

25. Nor do we find persuasive arguments that access stimulation is beneficial.[64] The Joint CLECs, for example, allege that more than 5 million people "enjoy the benefits" of high volume services."[65] As a result, they argue that "nonprofit organizations, small businesses, religious institutions,

(Continued from previous page)
(7th Cir. 2019); *Northern Valley Commc'ns, L.L.C. v. AT&T Corp.*, No. 1:14–CV–01018–RAL, 245 F.Supp.3d 1120 (D.S.D. 2017); *Qwest Communications Co., LLC v. Sancom, Inc.*, File No. EB-10-MD-004, Memorandum, Opinion and Order, 28 FCC Rcd 1982, 1982-83, paras. 1-3 (EB 2013) (*Qwest v. Sancom*).

[55] *See, e.g.*, AT&T June 12, 2019 *Ex Parte* at 5 (describing a shift of nearly 28 million minutes by simply porting telephone numbers to a new LEC); Sprint May 16, 2019 *Ex Parte* at 4.

[56] CenturyLink Comments at 7.

[57] Letter from G. David Carter, Counsel to Joint CLECs, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2-3 (filed Feb. 14, 2019) (Joint CLEC Feb. 14, 2019 *Ex Parte*); Wide Voice Jan. 15, 2019 *Ex Parte* Attach. (focusing on SDN's CEA service rates as problematic).

[58] *See* Inteliquent Apr. 18, 2019 *Ex Parte*, Attach. at 8 ("Three tandems carry more than 90% of the [access-stimulation] traffic volume (Aureon, SDN, and HD Tandem)."); *see also supra* note 28 (describing the grants of authority to the CEA providers).

[59] *Aureon Section 214 Order*, 3 FCC Rcd at 1472-73, paras. 28-33 (adopting a mandatory use requirement); *SDN Section 214 Order*, 5 FCC Rcd at 6981, para. 24 (apparently granting a mandatory use requirement).

[60] Sprint May 16, 2019 *Ex Parte* at 6.

[61] *Id*.

[62] AT&T Feb. 5, 2019 *Ex Parte* at 5.

[63] *See, e.g.*, AT&T Feb. 5, 2019 *Ex Parte* at 6 n.2.

[64] *See, e.g.*, Joint CLEC Feb. 14, 2019 *Ex Parte* Attach. at 24.

[65] Joint CLEC Comments at 15-16.

government agencies, and everyday Americans . . . will undoubtedly suffer if these [access stimulation] services are put out of business."[66] Other parties, including several thousand individual users of "free" conferencing and other high volume calling services, have filed comments expressing concern that such "free-to-the-user" services will be eliminated by today's action and urging us to retain the current regulatory system in light of the purported benefits such "free" services provide.[67] As commenters explain, these arguments are both self-serving and inconsistent with our goals in reforming the ICC system.[68] The benefits of "free" services enjoyed by an estimated 5 million users of high volume calling services are paid for by the more than 121 million subscribers of voice services across the United States, most of whom do not use high-volume calling services.[69] According to Sprint, for example, less than 0.2% of its subscribers place calls to access stimulation numbers, but 56% of Sprint's access charge payments are paid to access-stimulating LECs—leaving IXC customers paying for services that the vast majority will never use.[70] We find that while "free" services are of value to some users, these services are available at no charge because of the implicit subsidies paid by IXCs, and their costs are ultimately born by IXC customers whether those customers benefit from the "free" services or not.[71]

26. Access-stimulating LECs also argue that the Commission should find beneficial their use of access-stimulation revenue to subsidize rural broadband network deployment.[72] These implicit subsidies are precisely what the Commission sought to eliminate in the *USF/ICC Transformation Order*, as directed by Congress in the 1996 Act.[73] Indeed, the Commission addressed similar arguments in the *USF/ICC Transformation Order*, where it found that although "expanding broadband services in rural and Tribal lands is important, we agree with other commenters that how access revenues are used is not relevant in determining whether switched access rates are just and reasonable in accordance with section 201(b)."[74] As Sprint explains, "this sort of implicit cross-subsidy is contrary to the principle that access

[66] *See id*. at 15-20.

[67] Commission staff reviewed over 2,500 "express comments" filed in the docket. The vast majority of these express comments were identical form letters. *See, e.g.*, Kenneth Nilsestuen Express Comments at 1 (filed Sept. 10, 2018) ("My free conference calling services are currently at risk of being completely eliminated and costing me, millions of others and our businesses. I am writing to urge you to refrain from eliminating services that I and millions of other Americans use regularly. Long-distance carriers will not be negatively affected, financially or otherwise, if free conference calling services are left alone."); *see also, e.g.*, Bill Winch Express Comments (filed Sept. 10, 2018); Ganesh Viswanathan Express Comments (filed Feb. 13, 2019); Robyn Weisgerber Express Comments (filed July 10, 2019). Some of the express comments included personal accounts. *See, e.g.*, Molly Gordon Express Comments (filed Nov. 13, 2018); Julia Sanders Express Comments (filed Nov. 15, 2018); Angelique Andrae Express Comments (filed Sept. 13, 2018).

[68] *See, e.g.*, Sprint May 16, 2019 *Ex Parte* at 1-3.

[69] FCC, Voice Telephone Services: Status as of December 31, 2016 at 2 (WCB IATD 2018), https://docs.fcc.gov/public/attachments/DOC-349075A1.pdf ("In December 2016, there were 58 million end-user switched access lines in service, 63 million interconnected VoIP subscriptions, and 341 million mobile subscriptions in the United States, or 462 million retail voice telephone service connections in total.").

[70] Sprint May 16, 2019 *Ex Parte* at 1, 5 ("The outdated access charge system continues to reward inefficient network design, create fraudulent calling schemes, and undermine important Commission priorities and goals.").

[71] *See* Sprint Reply at 2; AT&T Apr. 9, 2019 *Ex Parte* at 3 n.6.

[72] *See, e.g.*, Joint CLEC Comments at 19-20; Native American Telecom Companies (NATC) Reply at 2 (touting the economic benefits that rural Tribal communities enjoy as a result of broadband buildout subsidized by access stimulation revenue); Letter from G. David Carter, Counsel to Joint CLECs, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 4 (filed June 19, 2019) (Joint CLEC June 19, 2019 *Ex Parte*).

[73] *USF/ICC Transformation Order*, 26 FCC Rcd at 17909, para. 747 (noting the "direction from Congress in the 1996 Act that the Commission should make support explicit rather than implicit").

[74] *Id*. at 17876, para. 666 (footnote omitted).

rates should reasonably reflect the cost of providing access service, and that subsidies, including universal service support, be explicit and 'specific.'"[75] Competition also suffers 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.

27. Eliminating the implicit subsidies that allow these "free" services will lead to more efficient provision of the underlying services and eliminate the waste generated by access stimulation. After the implicit subsidies are eliminated, customers who were using the "free" services, and who value these services by more than the cost of providing them, will continue to purchase these services at a competitive price. Thus, the value of the services purchased by these customers will exceed the cost of the resources used to produce them, which implies both that customers benefit from purchasing these services and that network resources are used efficiently. Further, users who do not value these services by as much as the cost of providing them, including those who undertook fraudulent usages designed only to generate access charges, will no longer purchase them in the competitive market. Thus, 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.

28. We find misplaced or, in other cases, simply erroneous, the arguments offered by the Joint CLECs in an expert report by Daniel Ingberman that argues economic efficiency is enhanced when access-stimulated traffic is brought to a network with otherwise little traffic volume because this allows the small network to obtain scale economies.[76] The result, Ingberman claims, would be substantially lower prices for local end users, producing relatively large increases in consumer surplus.[77] In contrast, if the traffic were placed on a network that already carries substantial traffic volumes, the scale effects are minimal, and so the benefits to end users of lower prices are also minimal.[78] Thus, according to Ingberman, siting new traffic on smaller (rural) networks, as access stimulators do, must raise economic well-being.

29. We reject Ingberman's claim that lower consumer prices from siting new traffic on a smaller network are likely to be significant, if they arise at all. The Commission's high cost universal service program provides support to carriers in rural, insular, and high cost areas as necessary to ensure that consumers in such areas pay rates that are reasonably comparable to rates in urban areas. Thus, smaller rural carrier rates for end users will always be comparable to larger carrier rates whether the smaller carrier is a rural incumbent LEC that receives universal service support or is a competitive LEC that does not receive such support but competes on price against a rural incumbent LEC that does. Given reasonably comparable rates, siting new traffic on a smaller network is not likely to significantly lower, and may make no difference to, rates charged to end users of the smaller network.

30. Ingberman also fails to establish the validity of his claim that increased access traffic on a LEC network would result in lower prices to its end-user customers. In particular, he has not established that as a practical matter, increasing access traffic on a LEC's network lowers the LEC's cost of serving its end user customers. Without lowering such costs, a LEC would have no incentive to lower prices to

[75] Sprint Reply at 7 (citing section 254(b)(5) of the Act).

[76] Letter from G. David Carter, Counsel to Joint CLECs, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, Attach. (filed Aug. 24, 2018) (Ingberman Report).

[77] Consumer surplus equals the difference between the total value consumers collectively derive from the total quantity of a good or service they consume and the total they must pay for that quantity. Thus, if the price decreases, consumer surplus increases because this difference would be greater (all else the same). *See* Walter Nicholson & Christopher M. Snyder, Microeconomic Theory: Basic Principles and Extensions at 355-57, 679 (2nd ed. 1978).

[78] *See* Ingberman Report at 17.

its end user customers.[79] The access-stimulating LEC would simply continue to charge its profit maximizing price to its retail customers, while pocketing the windfall from access arbitrage.

31. We find several other fundamental problems with the Ingberman Report. Although Ingberman acknowledges that IXCs pay terminating switched access charges (which are often paid both to intermediate access providers and access-stimulating LECs), his model assumes bill-and-keep pricing. That is, Ingberman assumes away the central issue this proceeding must deal with: the use of intercarrier compensation charges to fund access stimulators' operations. Consequently, his analysis does not take into account the cost that access stimulators impose on larger networks and their subscribers. It also fails to model access stimulating services, beyond assuming they bring traffic to the smaller network. But these services are delivered in highly inefficient ways, relying on unusually expensive calling paths. These services also are sold in highly inefficient ways, almost always below the efficient cost of delivery of such services.[80] Nor does Ingberman's model account for the time and effort taken to generate traffic, often fraudulent, for access stimulation, and to develop the complex schemes and contracting relationships that generate access-stimulating LEC profits. Moreover, there is no recognition of the cost of IXCs engaging in otherwise unnecessary, and hence, wasteful, efforts to identify fraudulent traffic or to find ways to avoid the abuses of our tariffing regime perpetrated by access stimulators. Similarly, the model provides no means for estimating the efficiency costs of allowing terminating switched access charges that not only exceed marginal cost, but also total costs.[81] These are all significant costs for which any model should account.

32. Further, we find misplaced arguments by some commenters that there is no evidence that IXCs' customers will benefit from reduced access arbitrage.[82] Reducing 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, regardless of how IXCs elect to use their cost savings. The Commission has recognized for many years that long-distance service is competitive, and we generally expect marginal cost savings to be passed through to consumers in competitive markets. Even if we cannot precisely quantify the effects of past reforms (given the many simultaneously occurring technological and marketplace developments), as a matter of economic theory, we expect some savings to flow through to IXCs' customers or the savings to be available for other, beneficial purposes. For example, IXCs will no longer have to expend resources in trying to defend against access-stimulation schemes, and consumers will be provided with more-accurate pricing signals for high-volume calling services. More fundamentally, these commenters fail to explain how a policy that enables a below-cost (sometimes zero) price for services supplied by high-volume calling service providers and general telephone rates that subsidize these high-volume calling services could be expected to produce efficient production and consumption outcomes.[83]

---

[79] One exception to this is if the LEC were rate-of-return regulated. In this case, increased profits could result in the LEC lowering its retail price to maintain its overall rate of return.

[80] *See, e.g.*, Joint CLEC Comments at 15-17 (describing the critical component of the supposedly "free" nature of the pertinent services that stimulate terminating switched access traffic to such services' continued existence).

[81] Revenue sharing by the Joint CLECs is sustainable only if the income earned on access charges exceeds their total costs, which, in turn, cannot be less than, and in telecommunications generally vastly exceed, marginal costs.

[82] *See* Joint CLEC Reply at 3-5; Teliax Comments at 17.

[83] The Joint CLEC Comments include an expert report by Oliver Grawe, Ph.D., dated July 20, 2018 (Grawe Report). The Grawe Report argues there is no evidence that addressing access stimulation benefits consumers in the form of, for example, lower prices or increased broadband investment. As explained above, common sense and economic logic strongly suggests there will be such benefits to consumers. We also find that eliminating the implicit subsidies inherent in inefficiently high access charges that permit arbitrage provides an additional and independent justification for the rules we adopt today.

33. We also find no merit to arguments that IXCs will be able to seize new arbitrage opportunities as a result of the rules we adopt today.[84] Aureon, for example, argues that IXCs will be "incentivized to increase arbitrage traffic volume," without explaining how IXCs would accomplish such a task.[85] The Joint CLECs argue that if the new rules decrease the use of "free" conference calling services, IXCs will realize greater use of their own conference calling products and greater revenue while also benefiting from reduced access charges.[86] If our amended rules force "free" service providers to compete on the merits of their services, rather than survive on implicit subsidies, that outcome is to be welcomed because it would represent competition driving out inefficient suppliers in favor of efficient ones. Nothing we do today shifts arbitrage opportunities to the IXCs or to any provider; we are attacking implicit subsidies that allow high-volume calling services to be offered for free, sending incorrect pricing signals and distorting competition. In addition, as AT&T explains, IXCs have engaged in a decade-long campaign to end the practice of access arbitrage because they and their customers are the targets of such schemes.[87]

34. AT&T expresses concern that IXCs will be obligated to deliver access-stimulated traffic to remote tandem locations and to pay the related excessive transport fees for connecting to that remote tandem if access-stimulating LECs decide to build new end office switches in remote areas, and their affiliates decide to deploy new tandem switches in similarly remote locations.[88] AT&T therefore suggests that we limit the IXCs' delivery obligations to only those tandem switches in existence as of January 1, 2019.[89] AT&T does not point to any existing legal requirements that an IXC must agree to a new point of interconnection designated by an access-stimulating LEC should the access-stimulating LEC unilaterally attempt to move the point of interconnection. As such, we decline to address AT&T's hypothetical concern at this time.

35. We also reject several suggestions that we should not move forward with this rulemaking. For example, one commenter does not want us to adopt changes to address access arbitrage and suggests that we issue a further notice of proposed rulemaking to seek additional comment on the issues raised in the *Access Arbitrage Notice* or refocus the proceeding to ensure that tandem switching and tandem switched transport access charges remain available to subsidize their access stimulation-fueled operations.[90] The Joint CLECs, a set of access stimulators, go as far as arguing that we should close this docket without taking action.[91] For its part, T-Mobile suggests that we address ongoing arbitrage and fraud by enforcing current rules without further rulemaking.[92] We disagree with these suggestions; the record shows that access arbitrage schemes have adapted to the reforms adopted in 2011. We will not postpone adoption of amendments to our rules that address the way today's access arbitrage schemes use

[84] Aureon Comments at 5-6; HD Tandem Reply at 3.

[85] Aureon May 23, 2019 *Ex Parte* at 5.

[86] Joint CLEC Comments at 16; Joint CLEC May 13, 2019 *Ex Parte* at 6; *see also* HD Tandem Aug. 12, 2019 *Ex Parte* at 3.

[87] AT&T Apr. 9, 2019 *Ex Parte* at 6 n.16.

[88] *Id*. at 14; AT&T June 12, 2019 *Ex Parte* at 3-4; *see also* Inteliquent Comments at 5-6.

[89] AT&T June 12, 2019 *Ex Parte* at 4; *see also* WTA Reply at 5 (suggesting the Commission freeze all points of interconnection as of Dec. 31, 2017).

[90] Letter from Gene DeJordy, President, NATC, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2, 4 (filed May 3, 2019) (NATC May 3, 2019 *Ex Parte*); NATC Reply at 2 & Attach. at 5.

[91] Joint CLEC June 19, 2019 *Ex Parte* at 1.

[92] *See* T-Mobile Comments at 22.

implicit subsidies in our ICC system to warp the economic incentives to provide service in the most efficient manner.[93]

36. We also decline to adopt Aureon's suggestion that would allow IXCs to charge their subscribers an extra penny per minute for calls to access stimulators.[94] There is no evidence that access-stimulating calls currently cost a penny per minute, so the proposal would simply trade one form of inefficiency for another. We are also concerned that adopting such an overbroad proposal to address the stimulation of tariffed tandem switching and transport charges would confuse consumers and unnecessarily spill into, and potentially negatively affect, the operation of the more-competitive wireless marketplace and the choices consumers have made when selecting wireless calling plans.

37. At the same time, we remain unwilling to adopt an outright ban on access stimulation.[95] As the Commission concluded in the *USF/ICC Transformation Order*, prohibiting access stimulation in its entirety or finding that revenue sharing is a *per se* violation of section 201 of the Act would be an overbroad solution "and no party has suggested a way to overcome this shortcoming."[96] Instead, the Commission chose to prescribe narrowly focused conditions for providers engaged in access stimulation.[97] We adhere to that view today because there is still no suggestion as to how a blanket prohibition could be tailored to avoid it being overbroad.[98] We believe the rules we adopt today strike an appropriate balance between addressing access stimulation and the use of intermediate access providers while not affecting those LECs that are not engaged in access stimulation. The rules adopted today are not overbroad. They are consistent with the policies adopted in the *USF/ICC Transformation Order* and are the product of notice and record support.

38. Having concluded that a modified version of the first prong of the Commission's proposal in the *Access Arbitrage Notice* will adequately address current access arbitrage practices, we decline to adopt the second prong of the proposal. Prong 2 of that proposal would have provided access-stimulating LECs an opportunity to avoid financial responsibility for the delivery of traffic from an intermediate access provider to the access-stimulating LEC's end office or functional equivalent by offering to accept direct connections from IXCs or an intermediate access provider of the IXC's choice.[99] The record offers no support for the adoption of Prong 2 as drafted, and we agree with various concerns raised in the record that access-stimulating LECs could nullify any benefits of this approach.[100] For

[93] In 2011, the Commission determined bill-and-keep is the ultimate end state for intercarrier compensation. Arguments counter to that established policy are misplaced. *See supra* Sec. I.

[94] Aureon May 23, 2019 *Ex Parte* at 2 (describing its proposal and referring to T-Mobile's policy of charging customers one cent per minute for calls to services deemed to be access-stimulation services). Aureon argues that such a requirement will send the appropriate pricing signals and decrease arbitrage traffic because the "potential user of the access stimulating service is the only party in the call path with full control over the decision to utilize an access stimulating service, such as placing a conference call." *Id*.

[95] Aureon argues that such a rule would "strike[] at the heart of the problem," while avoiding unwarranted costs. Aureon Comments at 8-9; s*ee also* SDN Comments at 3 (supporting Aureon's proposal but not seeking a rule change); SDN Reply at 8.

[96] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17879, para. 672.

[97] *See Id*. at 17874-90, paras. 656-701; *see also* West Reply at 3-4.

[98] For the same reason, we do not adopt AT&T's suggestion that we issue a declaratory ruling that access stimulation is an unjust and unreasonable practice under section 201 of the Act. Letter from Matthew Nodine, Assistant Vice President, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (filed Dec. 17, 2018).

[99] *Access Arbitrage Notice*, 33 FCC Rcd at 5470-72, paras. 13-17.

[100] *See, e.g.*, AT&T Comments at 13-14; ITTA Comments at 3; Sprint Comments at 4; Inteliquent Reply at 5; T-Mobile Reply at 3-4; Verizon Reply at 7; AT&T Apr. 9, 2019 *Ex Parte* at 14-17; AT&T June 12, 2019 *Ex Parte* at

(continued….)

example, Prong 2 could allow access stimulators to avoid financial responsibility by operating in remote locations where direct connections would be prohibitively expensive or infeasible and alternative intermediate access providers may be nonexistent or prohibitively expensive. Under such circumstances, Prong 2 would be ineffective at curbing the practice while increasing disputes over the terms of direct connections before the courts and the Commission.[101]

39. Likewise, even where establishing a direct connection may initially appear cost-effective, the ease with which access stimulation traffic may be shifted from one carrier to another undermines the value of making the investment.[102] After a direct connection premised on high traffic volume has been established at an access-stimulating LEC's original end office, the access-stimulating LEC or providers of access-stimulating services could move traffic to a different and more distant end office, thus stranding the financial investment to build that direct connection with minuscule traffic volume after the access stimulation activity has shifted locations.[103] We conclude that requiring a shift in financial responsibility for the delivery of traffic from the IXC to the access-stimulating LEC end office or its functional equivalent is sufficient, at this time, to address the inefficiencies caused by access stimulation relating to intermediate access providers.[104] The attractiveness of these schemes will necessarily wane once the responsibility of paying for any intermediate access provider's charges is shifted to access-stimulating LECs. As a general matter, we acknowledge that companies can currently, and will continue to be able to, negotiate individual direct connection agreements[105] and leave the possibility of a policy pronouncement regarding direct connections for consideration as part of our broader intercarrier compensation reform efforts.[106]

(Continued from previous page)
5; Letter from Beth Choroser, Vice President, Comcast Corp., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2-3 (filed July 17, 2019) (Comcast July 17, 2019 *Ex Parte*).

[101] *See* Comcast July 17, 2019 *Ex Parte* at 2-3; AT&T June 12, 2019 *Ex Parte* at 5.

[102] The same principle undercuts the potential for entry by alternative intermediate access providers that otherwise might contemplate establishing connections to access-stimulating LECs, and which IXCs might have relied upon under proposed Prong 2.

[103] *See, e.g.*, AT&T Apr. 9, 2019 *Ex Parte* at 14-17; CenturyLink Apr. 30, 2019 *Ex Parte* at 2.

[104] In light of this decision, we do not address at this time the discussion in the record regarding the conduct of any negotiations between IXCs and LECs regarding establishing direct connections. *See, e.g.*, Joint CLEC Comments at 38-42; HD Tandem Reply at 10. We similarly decline to adopt suggestions to require direct connections when certain criteria are met. *See* O1 Comments at 9-10 (proposal to require all carriers to make direct connections available to requesting carriers that send or receive at least 200,000 monthly minutes-of-use); *see also* West Reply at 10-11. We make no judgment, at this time, on the appropriate level of calling volume, if any, at which a direct connection would be required. Our decision here also responds to NTCA's suggestion that we adopt both prongs proposed in the *Access Arbitrage Notice*. Letter from Michael Romano, Senior Vice President, Industry Affairs & Business Development, NTCA, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed May 16, 2019) (NTCA May 16, 2019 *Ex Parte*); Letter from Rebekah Goodheart, Counsel for NTCA, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed June 4, 2019) (NTCA June 4, 2019 *Ex Parte*).

[105] CenturyLink Apr. 30, 2019 *Ex Parte* at 3 ("IXCs arguably have a right to obtain connections to most end offices."). When a LEC is directly connected to an IXC via tariffed services, the LEC assesses a flat-rated monthly charge based on the LEC establishing dedicated transport facilities. The price of these facilities will vary by capacity and distance. These charges are ordinarily billed by the LEC to the IXC. The Commission did not propose changing the ability of an access-stimulating LEC to charge for dedicated transport in the *Access Arbitrage Notice*. The access-stimulating LEC also may directly connect to an IXC using commercially negotiated agreements with IP-based intermediate access providers.

[106] *See 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) (*Refresh-the-Record Public Notice*).

40. In the *Access Arbitrage Notice*, the Commission sought comment on moving to a bill-and-keep regime all terminating tandem switching and tandem switched transport rate elements for access-stimulating LECs or the intermediate access providers they choose.[107] Contrary to the claims of some commenters, the rules we adopt today are consistent with our goal of moving toward bill-and-keep.[108] They prohibit access-stimulating LECs from recovering their tandem switching and transport costs from IXCs, leaving access-stimulating LECs to recover their costs from high-volume calling service providers that use the LECs' facilities. Likewise, the rules we adopt treat access-stimulating LECs as the customers of the intermediate access providers they select to terminate their traffic and allow those intermediate access providers to recover their costs from access-stimulating LECs. Thus, we allow intermediate access providers to continue to apply their tariffs and tariffed rates to traffic bound for access-stimulating LECs, but those rates must be charged to the access-stimulating LEC, not the IXC that delivers the traffic to the intermediate provider for termination.

2. Redefining "Access Stimulation"

41. In recognition of the evolving nature of access-stimulation schemes, we amend the definition of "access stimulation" in our rules to include situations in which the access-stimulating LEC does not have a revenue sharing agreement with a third party.[109] In so doing, we leave the current test for access stimulation in place. That test requires, first, that the involved LEC has a revenue sharing agreement and, second, that it meets one of two traffic triggers.[110] The LEC must either have an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month or have had more than a 100% growth in interstate originating and/or terminating switched access minutes-of-use in a month compared to the same month in the preceding year.[111] We add a second, alternate, test which requires no revenue sharing agreement and an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month.

42. We adopt this alternate test for access stimulation because, as one commenter explains, as terminating end office access charges move toward bill-and-keep, "many entities engaged in access stimulation have re-arranged their business to circumvent the existing rules by reducing reliance on direct forms of revenue sharing."[112] Or, as another commenter explains, the revenue sharing trigger is creating incentives for providers to "become more creative in how they bundle their services to win business and evade" the rules.[113] We also are concerned about a prediction in the record that if we were to adopt the rules originally proposed in the *Notice*, without more, access-stimulating LECs will cease revenue sharing

[107] *Access Arbitrage Notice*, 33 FCC Rcd at 5474, paras. 24-25; *see* Sprint Comments at 2-3; Sprint Reply at 3 ("[T]he Commission should immediately move to full bill-and-keep in order to prevent or at least minimize, access arbitrage.") (citing AT&T Comments at 5; CenturyLink Comments at 2; Verizon Comments at 1); Verizon Reply at 4-5; AT&T Apr. 9, 2019 *Ex Parte* at 11; AT&T Mar. 7, 2019 *Ex Parte* at 1. Because we are not adopting suggestions to move remaining ICC rate elements to bill-and-keep at this time, we decline to adopt Sprint's suggested two-year transition to bill-and-keep. Sprint May 16, 2019 *Ex Parte* at 3.

[108] Joint CLEC Feb. 14, 2019 *Ex Parte* Attach. at 42; *see also* Letter from Michael Hazzard, Counsel to Wide Voice, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, Attach. at 6 (filed Mar. 7, 2019).

[109] *See Access Arbitrage Notice*, 33 FCC Rcd. at 5475-76, paras. 26-28 (asking about modifying the access stimulation definition, such as by modifying the triggers or removing the revenue sharing requirement).

[110] 47 CFR § 61.3(bbb).

[111] *Id*.

[112] AT&T Feb. 5, 2019 *Ex Parte* at 2, 7; AT&T Comments at 20 ("Now that the initial transition is mostly complete, many carriers have shifted their arbitrage schemes to the portions of the PSTN-related intercarrier compensation regime that have not yet been reformed to bill-and-keep – namely originating switched access charges and the remaining transport and tandem termination charges.").

[113] Wide Voice Comments at 6; *see* Inteliquent Apr. 18, 2019 *Ex Parte* Attach. at 21.

in an effort to avoid triggering the proposed rules, even while continuing conduct that is equivalently problematic.[114]

43. A number of commenters describe ways that carriers and their high-volume calling service partners may be profiting from arbitrage where their actions may not appear to fit the precise provisions of our revenue sharing requirement. For example, T-Mobile reports that some LECs create "shell companies to serve as their intermediate provider, and then force carriers to send traffic to that intermediate provider, who charges a fee shared with the ILEC."[115] Aureon posits that tandem provider HD Tandem could receive payment from a LEC or an IXC to provide intermediate access service and then share its revenues directly with its high-volume calling service affiliate without sharing any revenue with the terminating LEC.[116] Also, an access-stimulating LEC that is co-owned with a high-volume calling service provider could retain the stimulated access revenues for itself, while letting the high-volume calling service provider operate at a loss.[117] In those situations, the LEC would not directly share any revenues. Likewise, Inteliquent suggests that there would be no revenue sharing if the same corporate entity that owns a high-volume calling service provider also owns an end office, or if switch management is outsourced to a high-volume calling platform or its affiliate.[118] In those cases, the revenue would remain under the same corporate entity and not come from separate entities sharing "billing or collection of access charges from interexchange carriers or wireless carriers."[119] Because of these concerns, we find it reasonable and practical to adopt an additional trigger in our rules that defines access stimulation to exist when a LEC has a highly disproportionate terminating to originating traffic ratio. We, therefore, keep the revenue sharing requirement of section 61.3(bbb)(1)(i) as is, and adopt an alternative prong of the definition of access stimulation that does not require revenue sharing.[120]

44. Some commenters have "no objection if the revenue sharing aspect of the definition is eliminated" and if the Commission were to rely solely on traffic measurement data.[121] However, the record shows that the current definition has accurately identified LECs engaged in access stimulation.[122] We therefore find that the better course is to leave the current test in place and add a second test for access stimulation that does not include revenue sharing, and has a higher traffic ratio.

45. *A Higher Traffic Ratio Is Justified When No Revenue Sharing Agreement Is in Place*. In an effort to be conservative and not overbroad, the new alternative test of the access-stimulation definition requires a higher terminating-to-originating traffic ratio than the 3:1 ratio currently in place. We find that

---

[114] *See* Wide Voice Comments at 11; *see also* Sprint Sept. 3, 2019 *Ex Parte* at 2 (urging the removal of revenue sharing from the definition of access stimulation).

[115] T-Mobile Reply at 5.

[116] Aureon Comments at 6.

[117] *See* Declaration of Don J. Wood in Support of Defendant Sprint Communications Company L.P.'s Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment, *North County Commc'ns Corp. v. Sprint Commc'ns Co. L.P.*, Case No. 3:09-CV-02685-AJB-WMC, paras. 37 n.16, 39 (S.D. Cal. Sept. 22, 2011).

[118] Inteliquent Apr. 18, 2019 *Ex Parte* Attach. at 21. NTCA objects to the Inteliquent examples by arguing that they fall within the existing definition of revenue sharing. NTCA June 4, 2019 *Ex Parte* at 2 n.5. We need not reach that question at this time.

[119] *See* 47 CFR § 61.3(bbb)(1)(i).

[120] *Infra* Appx. A, 47 CFR § 61.3(bbb)(1)(ii).

[121] AT&T Feb. 5, 2019 *Ex Parte* at 2; Inteliquent Apr. 18, 2019 *Ex Parte* Attach. at 4 (asking the Commission to eliminate revenue sharing as a trigger).

[122] NTCA Comments at 7 ("But just because some entities continue to engage in such practices does not mean the rule has been ineffective in *identifying* them." (emphasis in original)); NTCA Reply at 5-6; Joint CLEC Comments at 1 (stating that the Joint CLECs "participate in access stimulation as defined by the Commission's rules").

a 6:1 terminating-to-originating traffic ratio provides a clear indication that access stimulation is occurring, even absent a revenue sharing agreement.[123] We could establish a smaller ratio; however, we agree with Teliax that tightening the ratio "would most certainly catch normal increases in traffic volumes," and thus be overinclusive.[124] We also want to protect non-access-stimulating LECs from being misidentified. We have selected a 6:1 ratio, which is twice the existing ratio and is the ratio recommended by Inteliquent.[125] Inteliquent proposes defining access stimulation as a 6:1 terminating-to-originating traffic ratio in one month, more than 10 miles of transport billed between the tandem and serving end office, and a terminating end office having at least one million interstate terminating minutes-of-use in a calendar month.[126] We find that the last two additional prongs unduly complicate the definition. The 6:1 ratio on its own should help to capture any access-stimulating LECs that decide to cease revenue sharing, as well as any access-stimulating LECs that already may have ceased revenue sharing, or that currently are not doing so.

46. This larger ratio is sufficient to prevent the definition from ensnaring LECs that have traffic growth solely due to the development of their rural communities. It also addresses NTCA's concern that any new definition changes should "avoid penalizing innocent LECs that may have increased call volumes due to new economic growth."[127] NTCA offers no data or examples to demonstrate that there are LECs not involved in access stimulation that have traffic imbalances so extreme as to meet or even come close to the 6:1 ratio. Nor do we find compelling Wide Voice's suggestion that an access-stimulating LEC that falls below the 6:1 ratio would have an incentive to try to game the system by obtaining more originating traffic, such as 8YY traffic, to stay below the 6:1 ratio.[128] All LECs, not just access-stimulating LECs, should have an incentive to obtain more traffic, whether it's originating 8YY traffic or terminating traffic. However, there is no evidence that access-stimulating LECs are currently able to avoid the 3:1 trigger by simply carrying more originating traffic, and Wide Voice offers no evidence that doing so will be a simple matter for LECs seeking to avoid the 6:1 ratio that we are adding to capture LECs engaging in this scheme without a revenue sharing agreement.

47. *Identifying When a LEC Is No Longer Engaged in Access Stimulation*. Because we are adding the 6:1 ratio as an alternate basis for identifying access stimulation, we also must modify the rule that defines when a LEC is no longer engaged in access stimulation. The existing rule provides that a LEC is no longer engaged in access stimulation when it ceases revenue sharing.[129] We amend our rules to provide that a LEC that has met the first set of triggers for access stimulation will continue to be considered to be engaging in access stimulation until it terminates all revenue sharing arrangements and does not meet the 6:1 terminating-to-originating traffic ratio; and a LEC that has met the 6:1 ratio will continue to be considered to be engaging in access stimulation until it falls below that ratio for six consecutive months, and it does not qualify as an access stimulating LEC under the first set of triggers.[130]

[123] This standalone 6:1 trigger thus obviates Wide Voice's concern that LECs otherwise will simply adjust to our definition by "ceas[ing] revenue sharing, thus rendering much of this NPRM meaningless." *See* Wide Voice Comments at 11. Revenue sharing remains an integral definitional component at lower, less extraordinary traffic ratios.

[124] Teliax Inc. (Teliax) Comments at 14.

[125] Inteliquent Apr. 18, 2019 *Ex Parte* Attach. at 22; *see also* Letter from Matthew DelNero and Thomas Parisi, Counsel to Inteliquent, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (filed Aug. 30, 2019).

[126] *Id*.

[127] NTCA June 4, 2019 *Ex Parte* at 2.

[128] Letter from Andrew Nickerson, CEO, Wide Voice, LLC, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 at 3 (filed Aug. 26, 2019) (Wide Voice Aug. 26, 2019 *Ex Parte*).

[129] 47 CFR § 61.3(bbb).

[130] *See infra* Appx. A, 47 CFR § 61.3(bbb).

We find that a six-month time frame will accurately signal a change in a LEC's business practices rather than identify a short-term variation in traffic volumes that may not repeat in the following months.

48. We also make a minor modification to section 61.3(bbb)(2) which states that LECs engaged in access stimulation are subject to revised interstate switched access rates.[131] When the rule was adopted in the *USF/ICC Transformation Order*, the Commission stated that revised interstate switched access rates applied to both rate-of-return LECs and competitive LECs.[132] However, the rule adopted in that Order, section 61.3(bbb)(2), refers to the rate regulations applicable only to rate-of-return carriers.[133] In the *Access Arbitrage Notice*, we asked for comments on the rules, and received no comments on this issue.[134] We therefore modify (now relabeled) section 61.3(bbb)(3) to refer to the rate regulations for competitive LECs as well as rate-of-return LECs.[135] The revised section 61.3(bbb)(3) therefore specifies that a LEC engaging in access stimulation is subject to revised interstate switched access charge rules under section 61.26(g) (for competitive LECs), or sections 61.38 and 69.3(e)(12) (for rate-of-return LECs).[136]

49. In response to comments, the rule we adopt specifically states that a LEC that is not itself engaged in access stimulation, but is an intermediate access provider for a LEC engaged in access stimulation, shall not itself be deemed a LEC engaged in access stimulation.[137] In addition, some commenters express concern that the breadth of the proposed rules may pose adverse consequences for non-access-stimulating LECs. NTCA cautions that "LECs that do not qualify as access stimulators under the Commission's rules but which subtend the same CEA as those who do [may] be inadvertently affected by the Commission's reforms."[138] We do not foresee such an issue with the rules. The rules we adopt today do not alter the financial responsibilities of any LEC that is not engaged in access stimulation regardless of whether it subtends the same CEA provider as an access-stimulating LEC.[139] We are nevertheless concerned about arguments that high-volume calling providers may not be considered end users.[140] Thus, we make clear that, for purposes of the definition of access stimulation, a high-volume calling provider, such as a "free" conference calling provider or a chat line provider, is considered an end user regardless of how that term is defined in an applicable tariff. Thus, a LEC that provides service to such a high-volume calling provider will be considered a "rate-of-return local exchange carrier serving end user(s), or a Competitive Local Exchange Carrier serving end user(s)."[141]

---

[131] 47 CFR § 61.3(bbb)(2); *infra* Appx. A, 47 CFR § 61.3(bbb)(3).

[132] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17882, para. 679.

[133] 47 CFR § 61.3(bbb)(2).

[134] *Access Arbitrage Notice,* 33 FCC Rcd at 5479, para. 37.

[135] *See infra* Appx. A, 47 CFR § 61.3(bbb)(3).

[136] *See infra* Appx. A, 47 CFR § 61.3(bbb)(3); 47 CFR §§ 61.26(g), 61.38, 69.3(e)(12).

[137] *See infra* Appx. A, 47 CFR § 51.914(d); *see* Aureon Reply at 19; Aureon May 23, 2019 *Ex Parte* at 4 n.11 (expressing concern that it could somehow be deemed to be engaged in access stimulation if an over-inclusive definition of access stimulation were adopted).

[138] NTCA May 16, 2019 *Ex Parte* at 4; *see also* NTCA Comments at 3-4; ITTA Comments at 5 n.19; Wide Voice Comments at 11 (urging the Commission to "allow the CEA providers to continue to provide their services to the majority of rural LECs not involved in access stimulation").

[139] *See* NTCA May 16, 2019 *Ex Parte* at 3 (requesting clarity "that prong 1 will apply only to access stimulators").

[140] *See* AT&T Apr. 9, 2019 *Ex Parte* at 6-7; *see also Qwest v. Sancom*, 28 FCC Rcd at 1994, para. 28 (holding that Free Conferencing Corporation and Ocean Bay Marketing were not end users under Sancom's tariff).

[141] *See infra* Appx. A, 47 CFR § 61.3(bbb)(1).

50. Having amended our access stimulation rules as they relate to the relationship among access-stimulating LECs, "interexchange carriers," and "intermediate access providers" for the delivery of access-stimulated traffic, we agree with AT&T on the need to define those terms to provide clarity.[142] We therefore define "interexchange carrier" to mean "a *retail or wholesale* telecommunications carrier that uses the exchange access or information access services of another telecommunications carrier for the provision of telecommunications" (emphasis added).[143] We define "intermediate access provider" to mean "any entity that carries or processes traffic at any point between the final Interexchange Carrier in a call path and a local exchange carrier engaged in access stimulation, as defined by § 61.3(bbb)."[144] In adopting this definition, we recognize the Joint CLECs' concern that there may be more than one intermediate access provider in a call path.[145] The use of the phrases "any entity" and "any point" is broad enough to allow for more than one intermediate access provider between the final IXC and the LEC even though we question the likelihood of this hypothetical. And the access-stimulating LEC will choose the intermediate access provider(s) to deliver the traffic to the LEC.[146] The adopted definitions are slightly different than those proposed in the *Notice* to help ensure clarity going forward. We have amended our rules under Part 51-Interconnection and have also added conforming rules applicable to access-stimulating LECs to the relevant tariffing sections since these rules will require tariff changes.[147] We believe these changes to the rules proposed in the *Notice* will allow better ease of reference.

51. Moreover, we encourage self-policing of our access stimulation definition and rules among carriers. IXCs and intermediate access providers, including CEA providers, likely will have traffic data to demonstrate infractions of our rules, such as a LEC meeting the conditions for access stimulation but not filing a notice or revised tariffs as discussed in the Implementation section below.[148] If an IXC or intermediate access provider has evidence that a LEC has failed to comply with our access-stimulation rules, it could file information in this docket, request that the Commission initiate an investigation, file a complaint with the Commission, or notify the Commission in some other manner.[149]

52. Finally, we reject several arguments from commenters regarding the definition of access stimulation. First, we reject Wide Voice's suggestion that we abandon the current definition of access stimulation entirely because its usefulness has "largely expired with the sunsetting of the end office."[150] This sentiment is belied by commenters that confirm the current definition has worked as intended to identify LECs engaged in access stimulation.[151] We likewise reject Wide Voice's proposed alternative,

[142] *See* AT&T Comments at 11.

[143] *Infra* Appx. A, 47 CFR § 61.3(ddd).

[144] *Infra* Appx. A, 47 CFR § 61.3(ccc).

[145] Letter from G. David Carter, Counsel to Joint CLECs, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, Attach. at 30 (filed Feb. 14, 2018) (Joint CLEC Feb. 14, 2018 *Ex Parte*).

[146] Joint CLEC Feb. 14, 2018 *Ex Parte*, Attach. at 14 (asking "which provider is relevant to the issue of financial responsibility" and "whether a CLEC that has multiple interconnecting carriers is entitled to specify which of those carriers will carry the traffic to the CLEC").

[147] *Infra* Appx. A, 47 CFR § 51.903 (referencing the definitions in § 61.3(bbb); *infra* Appx. A, 47 CFR § 61.26(g)(3) (tariffing for competitive LECs); *infra* Appx. A, 47 CFR §§ 61.39(g), 69.3(e)(12)(iv), 69.4(l), 69.5(b) (all concerning tariffing for rate-of-return LECs).

[148] Our expansion of the types of carriers that may file complaints is only an acknowledgment of the types of carriers that deliver terminating traffic to LECs.

[149] *USF/ICC Transformation Order*, 26 FCC Rcd at 17874-75, para. 659 (describing the filing of a complaint by an IXC); *see Access Arbitrage Notice*, 33 FCC Rcd at 5475, para. 26 (asking how the Commission will know if parties are engaged in revenue sharing). Our rules allow for confidential filings. 47 CFR § 0.459.

[150] Wide Voice Comments at 10.

[151] *See supra* note 122.

which would define access stimulation as "traffic originating from any LEC behind a CEA tandem with total minutes (inbound + outbound) in excess of 1000 times the number of its subscribers in its service area."[152] We agree with commenters that Wide Voice's "comments are obviously intended to further arbitrage activities, rather than stop them."[153] Wide Voice is certified as a competitive LEC in dozens of states, which do not include Iowa and South Dakota.[154] By suggesting that we abandon our current definition of access stimulation in favor of one that applies only in the states with CEA tandems, Wide Voice and others would be free to stimulate access charges without federal regulatory restraint in the 47 states that do not have CEA tandems. Furthermore, the mathematical formula proposed by Wide Voice is too broad because by including originating minutes in the formula, it is not focused on eliminating terminating access stimulation.

53. Second, Failsafe and Greenway suggest that the current access-stimulation definition be made more restrictive.[155] They both argue that the existing traffic growth trigger in the access-stimulation definition—which requires that there is more "than a 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"—could have the unintended consequence of labelling competitive LECs as engaged in access stimulation "simply by beginning to provide services" and thus presumably increasing their volume of traffic from no traffic to some traffic.[156] This suggestion and the concern these parties raise fail for at least two reasons. First, the 100% traffic growth trigger compares a month's switched access minutes with the minutes-of-use from the same month in the previous year. A competitive LEC that was not in business the previous year would not qualify because the absence of any monthly demand in the prior year renders this comparison inapposite, and requisite calculation to satisfy the trigger cannot be performed. Second, the 100% traffic growth trigger is only one part of that portion of the definition. The competitive LEC must also have a revenue sharing agreement, which presumably a new non-access-stimulating competitive LEC in Greenway's hypothetical would not have. Neither Greenway nor Failsafe cites any LEC that has been misidentified as engaged in access stimulation under the current definition using the traffic growth trigger. They also do not suggest how they would revise the current access-stimulation definition to restrict its possible application and avoid the misidentification they suggest might result. We find that this hypothetical concern is already addressed by the existing rule.[157]

54. Third, HD Tandem takes the opposite view and argues that the access-stimulation definition should be broadened "to apply to any carrier with a call path that assesses access charges of any kind (shared or not) and unreasonably refuses to direct connect, or its functional equivalent, with other carriers with reciprocity."[158] Similarly, CenturyLink proposes that we shift financial responsibility to any LEC, including those not engaged in access stimulation, that declines a request for direct connection for terminating traffic.[159] Both of these suggestions go beyond the issue of access stimulation and the current

---

[152] Wide Voice Comments at 10.

[153] Aureon Reply at 15 n.46.

[154] Wide Voice, Network Assets, http://www.widevoice.com/network.html (last visited Sept. 4, 2019) (listing the states in which Wide Voice is a certified competitive LEC, which do not include Iowa and South Dakota); *see* Aureon Reply at 15 n.46 (noting that the Iowa Utilities Board denied Wide Voice's application for competitive LEC certification).

[155] Greenway Comments at 1-2; Failsafe Comments at 2.

[156] Greenway Comments at 1-2 (citing 47 CFR § 61.3(bbb)); Failsafe Comments at 2.

[157] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17,881-82, para. 677.

[158] HD Tandem Comments at 8. Only Wide Voice has indicated support for HD Tandem's proposal but has offered no factual justification for its adoption. Wide Voice Reply at 4.

[159] CenturyLink Comments at 9-10; *see also* CenturyLink Apr. 30, 2019 *Ex Parte* at 1; *Access Arbitrage Notice*, 33 FCC Rcd at 5474, para. 23. *See* Letter from Doug Denney, Vice President, Costs and Policy, Allstream et al., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (filed Mar. 19, 2019); Letter from John Barnicle, Pres. and

(continued….)

record does not provide a sufficient basis to evaluate the impact of either proposal on LECs that are not engaged in access stimulation.[160] And, as discussed above, we do not adopt the Commission's direct connection proposal, at this time, and also find that nothing in the record would justify HD Tandem's suggested expansion of the access-stimulation definition.

3. Additional Considerations

55. *Self-Help*. We decline to ban providers from engaging in self-help to the extent that such self-help is consistent with the Act, our regulations, and applicable tariffs. Intercarrier compensation disputes involving payment for stimulated traffic have become commonplace, with IXCs engaging in self-help by withholding payment to access-stimulating LECs.[161] As a result, several commenters request that we address self-help remedies in access arbitrage disputes, and others would like us to disallow self-help more broadly.[162] We decline those requests. Disallowing self-help, whether in the access-stimulation context or not, would be inconsistent with existing tariffs, some of which permit customers to withhold payment under certain circumstances.[163]

56. More fundamentally, our focus here is on reducing access stimulation, and no commenters have argued that limiting self-help remedies will further that goal. As the Commission did in the *USF/ICC Transformation Order*, we caution parties to be mindful "of their payment obligations under the tariffs and contracts to which they are a party."[164]

57. We also decline to adopt other tariff-related recommendations made by commenters. AT&T, for example, suggests that we "eliminate tariffing of tandem and transport access services on access stimulation traffic."[165] We believe this suggested solution is unnecessary in light of the more narrowly drawn solutions to access stimulation that we adopt today.[166] Furthermore, there are protections provided by tariffs—such as the ability to dispute charges described above—that should not be eliminated as a result of an unexplored suggestion made in passing in this proceeding.[167] AT&T also suggests that we "make clear that LECs can include in their tariffs reasonable provisions that allow the LECs to decline to provide [telephone lines and/or access services] to a chat/conference provider."[168] We decline to

(Continued from previous page)
CEO, Peerless Network, Inc. and Philip Macres, Counsel for Peerless Network, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (filed May 1, 2019) (both supporting CenturyLink's proposal).

[160] NTCA May 16, 2019 *Ex Parte* at 5 ("Regardless of the merit of CenturyLink's sweeping proposal for mandatory interconnection, it travels beyond the proper scope of this proceeding."); Verizon Comments at 6-7; NTCA Reply at 6-7.

[161] *See* Wide Voice Comments at 2 (alleging that it is "subjected to continuous non-pay self-help"); Joint CLEC Comments at 18 (describing how "AT&T's decision to unilaterally implement self-help withholding of payment" affects the "CLEC's infrastructure investment plans"); Aureon Reply at 19 (alleging that Sprint is "one of the worst abusers of the self-help, non-payment remedy").

[162] *See, e.g.*, Teliax Comments at 17-18; O1 Reply at 8; HD Tandem Comments at 17; INCOMPAS Reply at 4; NTCA May 16, 2019 *Ex Parte* at 4.

[163] *See* Verizon Reply at 8-10.

[164] *USF/ICC Transformation Order*, 26 FCC Rcd at 17890, para. 700.

[165] AT&T Apr. 9, 2019 *Ex Parte* at 13.

[166] We note that the Commission also rejected a similar suggestion in the *USF/ICC Transformation Order*. *USF/ICC Transformation Order*, 26 FCC Rcd at 17887, para. 692.

[167] We also do not have sufficient administrative notice to adopt this suggested solution.

[168] AT&T June 12, 2019 *Ex Parte* at 4.

suggest tariff language changes in this proceeding beyond those necessary to implement our rule changes. Each carrier is responsible for its own tariffs and tariff changes are subject to the tariff review process.[169]

58. *Mileage Pumping and Daisy Chainin*g. "Mileage pumping" occurs when a LEC moves its point of interconnection, on which its mileage-based, per-minute-of-use transport charges are based, further away from its switch for no reasonable business purpose other than to inflate mileage charges.[170] "Daisy chaining" occurs when a provider adds superfluous network elements so as to reclassify certain network functions as tandem switching and tandem switched transport, for which terminating access is not yet scheduled to be moved to bill-and-keep.[171] Because there is nothing in the record to indicate that mileage pumping and daisy chaining are significant issues outside of the access stimulation context, we decline to adopt a new rule specifically addressing these issues. We believe that placing the financial obligation for tandem switching and tandem switched transport charges on the access-stimulating LEC should eliminate the practices of mileage pumping and daisy chaining.

59. Because our new rules will encourage access-stimulating LECs to make more efficient decisions the rules should negate the need for T-Mobile's proposal that would establish multiple interconnection points nationwide where providers could choose to connect either directly or indirectly, and HD Tandem's suggestion that LECs engaged in access stimulation be required to offer what HD Tandem terms an "Internet Protocol Homing Tandem."[172] Both proposals would require us to decide what would be efficient for affected providers without the benefit of specific, relevant information about their networks. Therefore, we decline to adopt these proposals. Any remaining abuses of illegitimate mileage pumping or daisy chaining activities after the implementation of our new and modified access-stimulation rules can be addressed on a case-by-case basis in complaints brought pursuant to section 208 of the Act.[173]

60. Finally, we do not address the merits of several other issues raised in the record because they are outside the scope of this proceeding or are insufficiently supported with data and analysis. For example, some parties used this proceeding as an opportunity to air grievances related to a dispute that

[169] 47 U.S.C. §§ 203-204.

[170] *Access Arbitrage Notice*, 33 FCC Rcd at 5477, para. 31. Inteliquent argues that "mileage pumping remains prevalent" and suggests that we permanently cap transport mileage charges at 10 miles for access stimulation traffic and cap "the number of tandem termination charges to two." Inteliquent Comments at 2-5. Wide Voice suggests that "the Commission should cap at 15 miles transport charges for access stimulators." Wide Voice Jan. 15, 2019 *Ex Parte* at 2. More recently, and without explaining the reasoning for its change, Wide Voice proposes a trigger of 10 miles of transport charges, arguing that if there were more than 10 miles of transport, the access stimulation rules would apply. Wide Voice Aug. 26, 2019 *Ex Parte* at 3-4. However, other providers dispute these claims of manipulation and argue that they do not artificially inflate per-minute-of-use or per-mile transport rates. *See* NATC May 3, 2019 *Ex Parte* at 1 n.1 ("The Native American Telecom Companies carry their own traffic, at significant costs, from their tandem in Sioux Falls to their end offices in Pine Ridge (approximately 294 miles) and Fort Thompson (approximately 138 miles), eliminating the need for a CEA provider."). Teliax notes that its points of interconnection are located within a mile of AT&T's switches. Teliax Reply at 4; *see also* Aureon May 23, 2019 *Ex Parte* at 4 n.12 ("Furthermore, the benefits of rural traffic concentration and long distance competition depend upon the transport of calls on average more than 100 miles to enable smaller IXCs to connect with the CEA network at only a single point of interconnection.").

[171] *See Access Arbitrage Notice*, 33 FCC Rcd at 5477, para. 32. Commenters assert that daisy chaining is "outright fraud." T-Mobile Comments at 21; *see generally* AT&T Comments at 9 n.21, 19; *see also* T-Mobile Reply at 9 (seeking a Commission clarification that daisy chaining is an unjust and unreasonable practice that violates section 201(b) or 202(a) of the Act).

[172] T-Mobile Comments at 20, Appx. A; HD Tandem Comments at 5-6 (explaining that HD Tandem offers an Internet Protocol Homing Tandem capability to connect IXCs and access-stimulating LECs using non-geographic rates not based on mileage); *see* Sprint Reply at 7-8.

[173] 47 U.S.C. § 208.

was twice before the South Dakota Public Utilities Commission.[174] We agree with the South Dakota 9-1-1 Coordination Board and SDN that it is not appropriate to raise a state dispute regarding efforts to implement next generation 911 service in this rulemaking proceeding in the hope that the Commission will include language in this *Order* to address that particular dispute.[175] As another example, the Joint CLECs suggest that we adopt a "uniform rate for access stimulating traffic,"[176] yet they provide no specific rate to accompany this suggestion, nor does the record otherwise provide a basis to fill that void.

B. Implementation Issues

61. We amend our Part 51 rules governing interconnection and our Part 69 rules governing tariffs to effectuate the requirements that: (1) access-stimulating LECs assume financial responsibility for terminating interstate or intrastate tandem switching and tandem switched access transport for any traffic between the LEC's terminating end office or equivalent and the associated access tandem switch; and (2) access-stimulating LECs provide notice of their assumption of that financial responsibility to all affected parties. To ensure that parties have enough time to come into compliance with our rules, we adopt a reasonable transition period for parties to implement any necessary changes to their tariffs and to adjust their billing systems. This *Order* and the rules adopted herein, except the notice provisions which require approval from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA), will become effective 30 days after publication of the summary of this *Order* in the Federal Register. We give access-stimulating LECs and affected intermediate access providers an additional 45 days to come into compliance with those rules.[177]

62. With respect to the new notice provisions in our rules, which require OMB approval pursuant to the PRA, within 45 days of PRA approval, each existing access-stimulating LEC must provide notice to the Commission and to any affected IXCs and intermediate access providers that the LEC is an access stimulator and accepts financial responsibility for all applicable tariffed terminating tandem switching and transport charges.[178] As proposed in the *Access Arbitrage Notice*, notice to the Commission shall be accomplished by filing a record of its access-stimulating status and acceptance of financial responsibility in the Commission's *Access Arbitrage* docket on the same day that the LEC issues such notice to the IXC(s) and intermediate access provider(s). This 45-day tariffing and notice time period will begin to run for new access-stimulating LECs from the time they meet the definition of a LEC engaged in access stimulation.

63. Some commenters have suggested that a longer transition for the transfer of financial responsibility is warranted.[179] We disagree. There is no reason to allow access-stimulating LECs and the intermediate access providers that they choose to use to continue to benefit from access arbitrage schemes. A transition period of 45 days after the effective date of the rules—or, in the case of a LEC that is newly deemed to meet the definition of a LEC engaged in access stimulation, 45 days after that date—is sufficient time for access-stimulating LECs and the affected intermediate access providers to amend their billing practices and to make any tariff changes deemed necessary, and to close out then-current billing cycles under previous arrangements.[180]

---

[174] *See* Comtech Comments; South Dakota 9-1-1 Coordination Board Reply.

[175] South Dakota 9-1-1 Coordination Board Reply at 1; SDN Reply at 8.

[176] Joint CLEC Comments at 75.

[177] *E.g.*, *infra* Appx. A, 47 CFR § 51.914 (a) (financial responsibility); *id* §§ 61.26(g)(3), 69.3(e)(12)(iv) (all concerning tariffing).

[178] *Infra* Appx. A, 47 CFR § 51.914(b).

[179] CenturyLink Comments at 10-11 & n.25; *see generally* CenturyLink Reply at 7.

[180] Whether such tariff revisions are necessary is a determination for each affected carrier to make.

64. No commenter opposed the proposed notice requirements, and others agreed that having access-stimulating LECs notify the Commission at the same time they notify affected intermediate access providers and IXCs will provide transparency and also address concerns raised in the record about confusion over whether a LEC is an access-stimulating LEC.[181] Affected carriers have had ample notice of these changes,[182] and the PRA approval process will provide additional time for carriers to prepare before the notice requirement comes into effect.[183]

65. We further amend our rules to require that when a LEC ceases engaging in access stimulation in accordance with section 61.3(bbb), the LEC must also notify affected IXCs and intermediate access providers of its status as a non-access-stimulating LEC and of the end of its financial responsibility.[184] We also require that an access-stimulating LEC publicly file a record of the end of its access-stimulating status and the end of its financial responsibility in the Commission's *Access Arbitrage* docket on the same day that the LEC issues such notice to the IXC(s) and intermediate access provider(s).[185] We decline to further prescribe the steps necessary to reverse the financial responsibility and leave it to the parties to work with each other to make the necessary changes in a reasonable period of time.[186]

66. We believe these changes will reduce complications that could arise from coterminous dates for giving notice and for shifting financial responsibility. We decline to further prescribe any elements of this notice obligation and instead leave it to the parties to clearly and publicly manifest their status and intent when providing the requisite notice.

67. *Implementation Concerns Are Surmountable*. We are not persuaded that there are implementation concerns significant enough for us to reject the Commission's proposal regarding the shifting of financial responsibility as an undue burden on providers. In its comments, SDN correctly observes that our rules may well require SDN to amend its tariff so that SDN can bill access-stimulating LECs for its services.[187] There is no reason to believe that this will be onerous, and SDN has not provided evidence of material incremental costs of making the necessary changes to implement billing arrangements with subtending access-stimulating LECs.

68. SDN expresses concern that disputes may arise about whether certain traffic is access-stimulation traffic.[188] However, traffic will be classified based on the status of the terminating LEC—if the terminating LEC is an access-stimulating LEC, all traffic bound for it will be subject to the changed financial responsibility. We expect that the new requirements for such carriers to self-identify will prevent the vast majority of potential disputes between IXCs and intermediate access providers concerning whether the LEC to which traffic is bound is engaged in access stimulation. An intermediate access provider's duty to cease billing an IXC for tariffed tandem switching and transport services attaches only after receiving written notice from an access-stimulating LEC. Thus, if a LEC engaged in access stimulation fails to notify the intermediate access provider (either due to a good faith belief that it

[181] *E.g.*, NTCA Comments at 4; INCOMPAS Reply at 4.

[182] *See Access Arbitrage Notice*, 33 FCC Rcd at 5472-73, paras. 18-20.

[183] For example, the notice requirements are subject to the Paperwork Reduction Act approval process which allows for additional notice and comment on the burdens associated with the requirement. This process will occur after adoption of this *Order*, thus providing additional time for parties to make the changes necessary to comply with the newly adopted rules. *See infra* para. 94.

[184] *See infra* Appx. A, 47 CFR § 51.914(e).

[185] *See infra* Appx. A, 47 CFR § 51.914(e).

[186] Whether such tariff revisions are necessary is a determination for each affected carrier to make.

[187] SDN Comments at 5. Whether a tariff change is necessary is a determination for SDN to make.

[188] *Id*.

does not meet the definition of being an access-stimulating LEC or simply failing to provide the notice, for whatever reason), an IXC's recourse is against the LEC, not the intermediate access provider.

69. In their comments, the Joint CLECs assert that the explanation in the *Access Arbitrage Notice* of the intermediate access provider's costs that must be borne by an access-stimulating LEC is vague.[189] We disagree. The Joint CLECs appear primarily to take issue with the use of the word "normally" in such an explanation but fail to recognize that the explanation that they quote is from the text of the *Access Arbitrage Notice*, not the proposed rule. The proposed rule refers to "the applicable Intermediate Access Provider terminating tandem switching and terminating tandem switched transport access charges relating to traffic bound for the access-stimulating local exchange carrier."[190] It is a relatively simple matter to determine the charges applicable to tariffed intermediate access service being provided by an intermediate access provider, particularly when the relevant service has already been provided for years (albeit with a different billed party).

70. We are similarly unpersuaded that the implementation issues raised by the Joint CLECs create issues of real concern. The issues raised by the Joint CLECs include: (1) identifying the relevant intermediate access provider when an access-stimulating LEC connects to IXCs through multiple such providers; (2) determining how financial responsibility should be split when an intermediate provider provides more than the functional equivalent of tandem switching and tandem switched transport in the delivery of the call; and (3) the CEA providers' rates.[191] We nonetheless clarify that an access-stimulating LEC is responsible for all of the tariffed charges for tandem switching and tandem switched transport of traffic from any intermediate access provider(s) in the call path between the IXC and the access-stimulating LEC.[192] We limit our rule to tariffed charges because we do not seek in this proceeding to regulate the intermediate access provider charges that an IXC has voluntarily agreed to pay pursuant to a commercial agreement. If an IXC no longer wishes to pay such commercial rates, it is free to route traffic over tariff-based arrangements.[193]

C. Legal Authority

71. The Commission last attacked access arbitrage in the 2011 *USF/ICC Transformation Order*, as part of comprehensive reform of the ICC system. The Commission undertook ICC reform informed by three principles and interrelated goals, all of which inform the *Order* we adopt today. First, the Commission sought to ensure that the entities choosing what network to use would have appropriate

---

[189] Joint CLEC Comments at 56.

[190] *Compare Access Arbitrage Notice*, 33 FCC Rcd at 5470, para. 10, *with Access Arbitrage Notice*, 33 FCC Rcd at 5483, Appx. A, proposed § 51.914(1)(1)(ii).

[191] Joint CLEC Comments at 56-59.

[192] Our final rule reflects this clarification. *See infra* Appx. A, 47 CFR §§ 51.914, 69.3(e)(12)(iv). To the extent that any party does not believe that the tariffed rates of intermediate access providers are just and reasonable, it may avail itself of the same processes under sections 204 and 208 of the Act and section 1.773 of our rules, as applicable, to seek a change to such rates. 47 U.S.C. §§ 204, 208; 47 CFR § 1.773. The particular objection raised by access-stimulating LECs pertaining to how projected demand is calculated has already been addressed. Joint CLEC Comments at 58; *Iowa Network Access Division Tariff F.C.C. No. 1*, Transmittal No. 36, WC Docket No. 18-60, Memorandum Opinion and Order, 33 FCC Rcd 7517, 7522, para. 12 (2018) (*Aureon Tariff Investigation Order*), *appeal pending* (challenging whether Aureon is subject to regulation as a Competitive Local Exchange Carrier, 47 CFR. § 51.911(c), and a dominant carrier, 47 CFR. § 61.38). We also note that because our rule applies only to tariffed charges, it does not apply to commercial arrangements for IP-based direct connections.

[193] We acknowledge that such commercial arrangements may tend to be IP-based, and pricing that favors TDM-based tariffed arrangements may appear to discourage the transition to IP (*see* HD Tandem Comments at 11, 15 (arguing that reducing TDM-based termination costs discourages movement toward IP)). However, we reject this as a reason for not adopting such a distinction because it would require Commission intervention in voluntarily negotiated commercial IP agreements.

incentives to make efficient decisions. In that regard, in the *USF/ICC Transformation Order* the Commission found that "[b]ill-and-keep brings market discipline to intercarrier compensation because it ensures that the customer who chooses a network pays the network for the services the subscriber receives. . . . Thus, bill-and-keep gives carriers appropriate incentives to serve their customers efficiently."[194] As one of the first steps toward bill-and-keep, the Commission adopted a multi-year transition period to move terminating end office access charges to bill-and-keep.[195]

72. Second, the Commission endeavored to eliminate implicit subsidies, consistent with the mandates of section 254 of the Act. The Commission recognized the historical role access charges played in advancing universal service policies, finding that "bill-and-keep helps fulfill the direction from Congress in the 1996 Act that the Commission should make support explicit rather than implicit" by requiring any such subsidies, if necessary, be provided explicitly through policy choices made by the Commission under section 254 of the Act.[196]

73. Third, the Commission weighed the regulatory costs of the steps it took in reforming the ICC regime. In so doing, it recognized that "[i]ntercarrier compensation rates above incremental cost" were enabling "much of the arbitrage" that was occurring.[197] The Commission adopted rules aimed at reducing an access-stimulating LEC's ability to unreasonably profit from providing access to high-volume calling services.[198] Although the Commission concluded that it might theoretically have been possible to establish some reasonable, small intercarrier compensation rate based on incremental cost, it rejected that approach because doing so would lead to significant regulatory burdens to identify and establish the appropriate rate(s), an approach the Commission sought to avoid in adopting a move towards bill-and-keep methodology.[199] Instead, to address access stimulation, the Commission capped the end office termination rates access-stimulating LECs could charge.

74. Based on our review of the record, we find that requiring IXCs to pay the tandem switching and tandem switched transport charges for access-stimulation traffic is an unjust and unreasonable practice that we have authority to prohibit pursuant to section 201(b) of the Act.[200] In 2011, when the Commission adopted the access-stimulation rules, its focus was on terminating end office access charges and it found that the high access rates being collected by LECs for access-stimulation traffic were unjust and unreasonable under section 201(b) of the Act.[201] Building on that legal authority and the Commission's goals for ICC reform in the *USF/ICC Transformation Order* here, we extend that logic to the practice of imposing tandem switching and tandem switched transport access charges on IXCs for terminating access-stimulation traffic. We find that that practice is unjust and unreasonable under section 201(b) of the Act and is therefore prohibited.

75. In the *USF/ICC Transformation Order*, the Commission sought to ensure that the entities choosing the network and traffic path would have the appropriate incentives to make efficient decisions

---

[194] *USF/ICC Transformation Order*, 26 FCC Rcd at 17905-06, para. 742.

[195] *Id*. at 17934-36, para. 801.

[196] *Id*. at 17909, para. 747.

[197] *Id*. at 17911-12, para. 752.

[198] *See id*. at 17974-77, paras. 656-66. This *Order* continues the work the Commission began in the *USF/ICC Transformation Order*. In the *Access Arbitrage Notice* the Commission incorporated filings from WC Docket Nos. 10-90 and 07-135, and CC Docket No. 01-92 into the record of this proceeding. *Access Arbitrage Notice*, 33 FCC Rcd at 5467 n.7. We refer to documents filed in those dockets in this *Order*.

[199] *USF/ICC Transformation Order*, 26 FCC Rcd at 17906-07, para. 743.

[200] *See* 47 U.S.C. § 201(b).

[201] *USF/ICC Transformation Order*, 26 FCC Rcd at 17874, para. 657; 47 U.S.C. § 201(b).

and recognized that ICC rates above cost enable arbitrage.[202] The Commission also sought to eliminate implicit subsidies allowed by arbitrage, consistent with section 254 of the Act.[203] Given changes in the access-stimulation "market" after 2011, the access-stimulation rules adopted as part of the broader intercarrier compensation reforms in the *USF/ICC Transformation Order* now fail to adequately advance those goals. Allowing access-stimulating LECs to continue to avoid the cost implications of their decisions regarding which intermediate access providers IXCs must use to deliver access-stimulated traffic to the LECs drives inefficiencies and leaves IXCs to pass the resultant inflated costs on to their customer bases. The rules we adopt in this *Order*, requiring the access-stimulating LEC to be responsible for paying those charges, counter the perverse incentives the current rules create for LECs to choose expensive and inefficient call paths for access-stimulation traffic and better advance the goals and objectives articulated by the Commission in the *USF/ICC Transformation Order*.

76. Of course, the Commission's focus on the importance of efficient interconnection did not begin with the *USF/ICC Transformation Order*. It can also be found, for example, in the initial Commission Order implementing the 1996 Act. In that Order, in considering telecommunications carriers' interconnection obligations, the Commission specified that carriers should be permitted to employ direct or indirect interconnection to satisfy their obligations under section 251(a)(1) of the Act "based upon their most efficient technical and economic choices."[204] The focus on efficient interconnection is consistent with Congressional direction to the Commission in, for example, section 256 of the Act which requires the Commission to oversee and promote interconnection by providers of telecommunications services that is not only "effective" but also "efficient."[205] By adopting rules crafted to encourage terminating LECs to make efficient choices in the context of access stimulation schemes, the rules are thus consistent with longstanding Commission policy and Congressional direction.

77. Likewise, the record reveals that the incentives associated with access stimulation lead to artificially high levels of demand, often in rural areas where such levels of demand are anomalous and largely unaccounted-for by existing network capabilities. This, in turn, can result in call completion problems and dropped calls. For a number of years, the Commission has sought to address concerns about rural call completion problems[206]—a concern that Congress recently reinforced through its enactment of section 262 of the Act.[207] Adopting rules that help mitigate call completion problems in rural (and other) areas thus also harmonizes our approach to access stimulation under section 201(b) with those broader policies.

---

[202] *Id*. at 17875, 17905-06, paras. 663, 742.

[203] *Id*. at 17911-12, para. 752.

[204] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, 15991, para. 997 (1996). Somewhat similarly, in the case of LEC-CMRS interconnection under section 332 of the Act, the Commission has anticipated that the type of interconnection can depend upon "the best engineering or cost effective approach," and thus, for example, "[t]he particular point of interconnection of a given cellular system will be dependent upon the design of the system and other factors which may vary from case to case. . . ." *An Inquiry into the Use of the Bands 825–845 MHz and 870–890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems,* CC Docket No. 79-318, Report and Order, 86 F.C.C.2d 469, 496, para. 55 (1981).

[205] 47 U.S.C. § 256(b)(1).

[206] *See, e.g.*, *Rural Call Completion*, WC Docket No. 13-39, Fourth Report and Order, FCC 19-23, 34 FCC Rcd 1781, 1782-85, paras. 2-10 (2019) (*RCC Fourth R&O*) (summarizing the Commission's efforts).

[207] *RCC Fourth R&O*, 34 FCC Rcd 1781, 1781-82, para. 1 (citing the Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129, 132 Stat 329 (2018), which added new section 262 of the Communications Act).

78. We also conclude that our new rules are more narrowly targeted at our concerns regarding the terminating LECs' reliance on inefficient intermediate access providers in circumstances that present the greatest concern—those involving access stimulation—compared to other alternatives suggested in the record, such as adopting rules that would regulate the rates of access-stimulating LECs or of the intermediate access providers they rely on.[208] The record does not reveal any rate benchmarking mechanism that would effectively address our concerns, and establishing regulatory mechanisms to set rates based on incremental cost, as some parties have suggested, would implicate the same administrability concerns that dissuaded the Commission from embarking on such an approach in the *USF/ICC Transformation Order*.[209] We also are guided by past experience where attempts to address access stimulation through oversight of rate levels have had short-lived success that quickly was undone through new marketplace strategies by access stimulators.[210]

79. To the extent that access stimulation activities have the effect of subsidizing certain end-user services—allowing providers to offer the services to their customers at no charge in many instances—we also conclude that regulatory reforms that eliminate those implicit subsidies better accord with the objectives of section 254 of the Act. Specifically, Congress directed that universal service support "should be explicit and sufficient to achieve the purposes" of section 254.[211] Congress established a framework in section 254 for deciding not only how to provide support—i.e., explicitly, rather than implicitly—but also for deciding what to support.[212] Any implicit subsidies resulting from access stimulation are based solely on the whims of the individual service providers, which are no substitute for the considered policy judgments the Commission makes consistent with the framework Congress established in section 254.[213]

80. These same considerations also independently persuade us that it is in the public interest to adopt the access stimulation rules in this *Order* under section 251(b)(5) of the Act.[214] The *USF/ICC*

[208] Although some concerns may arise whenever terminating LECs are insulated from the cost implications of their choices regarding interconnection and intermediate providers—whether or not they are involved with access stimulation—we expect the magnitude of those concerns to be greatest in situations involving access stimulation, given the high volume of traffic and thus large payments IXCs make to the terminating LECs' chosen intermediate access providers that are implicated in access stimulation scenarios. *See, e.g.*, Joint CLEC Comments at 75 (suggesting the Commission adopt a "uniform rate for access stimulating traffic"); NTCA Comments at 10 ("support[ing] targeted efforts to address access stimulation" but recommending against "taking broader actions to reform the intercarrier compensation system or to wander into more far-ranging debates with respect to interconnection that do not relate specifically to access arbitrage" to avoid unanticipated or unintended consequences). We thus focus our actions in this *Order* on the access stimulation context.

[209] *USF/ICC Transformation Order*, 26 FCC Rcd at 17906-07, para. 743; *see also, e.g.*, AT&T Apr. 9, 2019 *Ex Parte* Letter at 11-12; Joint CLEC Comments at 75 (suggesting a uniform national rate for access stimulating traffic but providing no detail or proposed rate).

[210] *See, e.g.*, AT&T Apr. 9, 2019 *Ex Parte* at 4-11 (discussing the history of the Commission's efforts and the changes in approach by access stimulators).

[211] 47 U.S.C. § 254(e); *see also* S. Rep. No. 104-230, at 131 (1996) (Conf. Rep.) (stating that, "[t]o the extent possible, . . . any support mechanisms continued or created under new section 254 should be explicit, rather than implicit as many support mechanisms are today"); *USF/ICC Transformation Order*, 26 FCC Rcd at 17909, para. 747 (citing "direction from Congress in the 1996 Act that the Commission should make support explicit rather than implicit"); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559, 22574-75, para. 26 (2003) ("[S]ection 254 states a clear preference for explicit, rather than implicit, support.").

[212] 47 U.S.C. § 254(b)-(c), (e), (h)-(i).

[213] *See, e.g.*, AT&T Apr. 9, 2019 *Ex Parte* at 3 n.6 (discussing the policy issues implicated by particular services that are current beneficiaries of access stimulation).

[214] 47 U.S.C. § 251(b)(5).

Transformation Order already "br[ought] all traffic within the section 251(b)(5) regime."[215] In other words, under that precedent "when a LEC is a party to the transport and termination of access traffic, the exchange of traffic is subject to regulation under the reciprocal compensation framework" of section 251(b)(5).[216] And it clearly is traffic exchanged with LECs that is at issue here. Our rules govern financial responsibility for access services that traditionally have been considered "exchange access,"[217] and providers of such services meet the definition of a LEC.[218]

81. In particular, just as we conclude that our rules reasonably implement the "just and reasonable" framework of section 201(b) of the Act as workable rules to strengthen incentives for efficient marketplace behavior and advance policies in sections 251, 254, and 256 of the Act, we likewise conclude that they are in the public interest as rules implementing section 251(b)(5).[219] The Commission explained in the *USF/ICC Transformation Order* that section 201(b)'s statement that "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act" gives the Commission broad "rulemaking authority to carry out the 'provisions of this Act,' which include §[] 251."[220] Indeed, the Commission elaborated at length on the theory of its legal authority to implement section 251(b)(5) in the *USF/ICC Transformation Order*, which applies to our reliance on that authority here, as well.[221]

82. We find unpersuasive arguments that the proposed and existing access-stimulation rules are "discriminatory" because they treat access-stimulating LECs differently than other LECs.[222] Section 202(a) of the Act prohibits carriers from "unjust or unreasonable discrimination in charges, practices,

---

[215] *USF/ICC Transformation Order*, 26 FCC Rcd at 17916, para. 764. The rules we adopt today are applicable to all traffic, including intrastate traffic, bound for access-stimulating LECs. The Commission specifically sought comment on the applicability of these rules to intrastate traffic and received none. *Access Arbitrage Notice*, 33 FCC Rcd at 5479, para. 37 & n.65. The requirement for access-stimulating LECs to bear financial responsibility for the delivery of traffic from the IXC to the access-stimulating LEC end office applies to intrastate traffic as well as interstate traffic. The only change is that the access-stimulating LECs may choose to use different carriers to deliver their traffic, and the LECs will bear the financial responsibility for whatever path they use. We believe that making clear that our rules apply equally to interstate and intrastate traffic will discourage gamesmanship related to the geographic classification of the traffic; i.e., carriers creating ways to move access-stimulation schemes to intrastate service. This approach will also help prevent the possible undoing of our rules which address the unjust and reasonable practice of charging IXCs for the tariffed tandem switching and tandem switched transport access charges necessary to terminate access-stimulation traffic, the inefficiencies and network unreliability created by such schemes, and the implicit subsidies underlying those schemes.

[216] *USF/ICC Transformation Order*, 26 FCC Rcd at 17915, para. 762.

[217] *See, e.g.*, 47 CFR § 61.26(a)(3) (defining "switched exchange access services" to include "[t]he functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching").

[218] A LEC "means any person that is engaged in the provision of telephone exchange service *or* exchange access." 47 U.S.C. § 153(32) (emphasis added).

[219] 47 U.S.C. §§ 201(b), 251, 254, 256.

[220] *USF/ICC Transformation Order*, 26 FCC Rcd at 17919, para. 770.

[221] *Id*. at 17916-18, paras. 760-81.

[222] Joint CLEC Comments at 55-56; Wide Voice Comments at 5 (arguing that subjecting a smaller LEC's mostly inbound traffic to different rules and pricing is a "discriminatory pricing policy [that] is anti-competitive"); *see also* Joint CLEC Feb. 14, 2019 *Ex Parte* Attach. at 41; Letter from G. David Carter, Counsel to Joint CLECs, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (filed Aug. 17, 2018) ("[T]he Commission is singling out and discriminating against one particular type of traffic.").

classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."[223] It is neither unjust nor unreasonable to treat access-stimulating LECs differently from non-access-stimulating LECs. Section 202(a) does not apply to actions carriers take in compliance with requirements adopted by the Commission, particularly where, as here, the Commission finds those rules necessary under an analysis of what is "just and reasonable."[224] More generally, actions by the Commission are subject to the Administrative Procedure Act requirement that they must not be arbitrary and capricious,[225] and courts have found only that the Commission "must provide adequate explanation before it treats similarly situated parties differently."[226] The existing access-stimulation rules adopted by the Commission in 2011, which treat access-stimulating LECs differently than other LECs, have been reviewed and approved by the Tenth Circuit Court of Appeals, which specifically held that the rules were not arbitrary and capricious and that the Commission had explained its rationale for the differing treatment.[227] The rules we adopt today, treating access-stimulating LECs differently from other LECs, are similarly well-reasoned and justified.

83. Contrary to the Joint CLECs' claim, making the access-stimulating LEC, rather than the IXC, responsible for paying intermediate access provider(s)' terminating tandem access charges simply changes the party responsible for paying the CEA, or other intermediate access provider(s), for carrying that traffic.[228] We make the party responsible for selecting the terminating call path responsible for paying for its terminating switching and tandem switched transport. The act of stimulating traffic to generate excessive access revenues requires that we treat that traffic differently than non-stimulated traffic to address the unjust and unreasonable practices it fosters, as well as the implicit subsidies access stimulation creates. Further, we are not failing to recognize the potential impacts on CEA providers if access-stimulation traffic is removed from their networks.[229] If a CEA provider's demand changes, the existing tariff rules, applicable to the calculation of a CEA provider's tariffed charges, will apply—on a nondiscriminatory basis.

[223] 47 U.S.C. § 202(a).

[224] *See, e.g.*, *Modernizing the E-Rate Program for Schools and Libraries; Connect America Fund*, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15568-69, para. 76 (2014) (finding "that it is just and reasonable under section 201(b) for carriers to provide service at rates specific to the class of educational customers to which carriers must offer benchmarked rates" and "for the same reasons that carriers' compliance with the requirements adopted here do not violate section 202(a)").

[225] 5 U.S.C. § 706.

[226] *Petroleum Commc'ns, Inc. v. FCC et al.*, 22 F.3d 1164, 1172 (D.C. Cir. 1994) (citing *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir.1987); *Public Media Center v. FCC*, 587 F.2d 1322, 1331 (D.C. Cir.1978); *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965)).

[227] *In re FCC 11-161*, 753 F.3d at 1145-47 (holding, in response to a challenge of two aspects of the Commission's access stimulation rules as arbitrary and capricious, that the Commission "explained its rationale" and that "[t]he FCC's view may be debatable, but it is neither arbitrary nor capricious"). In that regard, we view arguments about the discriminatory nature of the access-stimulation rules adopted in 2011 as an untimely collateral attack and, independently, beyond the scope of our actions in this rulemaking, which is focused on new rules addressing the specific concerns regarding who is responsible for paying intermediate access provider tandem switching and tandem switched transport for access-stimulated traffic.

[228] We acknowledge that the definition of intermediate access provider adopted here differs from the definition of "intermediate provider" in section 64.1600(f) of our rules. 47 CFR § 64.1600(f).

[229] *See* Joint CLEC Comments at 55-56; *see infra* Sec. IV.

84. Equally meritless is the Wide Voice claim that sections 201(b) and 251(b)(5) of the Act "permit the Commission to establish rate uniformity, not rate disparity, which is what would result were the Commission to make access stimulators switched access *purchasers* rather than switched access *providers*. . . ."[230] Nothing in the text of those provisions requires rates to be uniform, however. And, more fundamentally, shifting the responsibility for paying a rate does not change the rate. In addition, we are moving toward the stated goal of a bill-and-keep methodology, not toward establishing a rate for access-stimulation traffic. We make no changes to rates here and sections 201(b) and 251(b)(5) of the Act support our adoption of the modified access-stimulation rules in this *Order*. The Joint CLECs also argue that making access-stimulating LECs financially responsible for the terminating switching and transport of traffic delivered to their end offices by adopting the Commission's Prong 1 proposal would violate the Tenth Circuit Court of Appeals' holding that section 252(d) of the Act reserves to the states the determination of carriers' network "edge."[231] Shifting the financial responsibility for the delivery of traffic to access-stimulating LEC end offices does not move the network edge or affect a state's ability to determine that edge. The Joint CLECs' argument is misguided. Section 252(d) governs "agreements arrived at through negotiation."[232] Just as the Commission's adoption of bill-and-keep as the ultimate end state for intercarrier compensation shifts the recovery of costs from carriers to end users,[233] here we shift the recovery of costs associated with the delivery of traffic to an access-stimulating LEC's end office from IXCs to the LEC. Our determination to shift the recovery of costs associated with the delivery of traffic to an access-stimulating LEC's end office from IXCs to the LEC does not interfere with "agreements arrived at through negotiation" and therefore does not affect a state's rights or responsibilities under section 252 of the Act with respect to voluntarily negotiated interconnection agreements.

IV. MODIFICATION OF SECTION 214 AUTHORIZATIONS FOR CENTRALIZED EQUAL ACCESS PROVIDERS

85. To facilitate the implementation of the rules we adopt today, we modify the section 214 authorizations for Aureon and SDN—the only CEA providers with mandatory use requirements—to permit traffic terminating at access-stimulating LECs that subtend those CEA providers' tandems to bypass the CEA tandems. By eliminating the mandatory use requirements, we enable IXCs to use whatever intermediate access provider an access-stimulating LEC that otherwise subtends Aureon or SDN chooses. Eliminating the mandatory use requirements for traffic bound for access-stimulating LECs will also allow IXCs to directly connect to access-stimulating LECs where such connections are mutually negotiated and where doing so would be more efficient and cost-effective.[234]

86. Currently, IXCs delivering traffic to access-stimulating LECs that subtend a CEA network are required to use Aureon and SDN's networks for tariffed tandem switching and transport services, because terminating traffic to those access-stimulating LECs is subject to a mandatory use requirement contained in the CEA provider's section 214 authorization. Wide Voice suggests that we "[b]reak[] the CEA monopoly" to the extent needed so that other providers can serve the access-stimulating LECs.[235] This *Order* does that. Sprint suggests that we eliminate the CEA mandatory use

[230] Wide Voice Jan. 15, 2019 *Ex Parte* at 2 n.3 (emphasis in original).

[231] Letter from G. David Carter, Counsel to Joint CLECs, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2-3 (filed Jan. 30, 2019); *see also* HD Tandem Aug. 12, 2019 *Ex Parte* at 3; *see generally In re FCC 11-161*.

[232] 47 U.S.C. § 252.

[233] *USF/ICC Transformation Order*, 26 FCC Rcd at 17921-22, para. 775.

[234] The record supports the efficiency of direct interconnection at access-stimulation levels of traffic, at least in some circumstances. *See, e.g.*, AT&T Comments at 7.

[235] Wide Voice Comments at 12.

requirements for the termination of *all* traffic.[236] There is no evidence that doing so would be in the public interest, or even that there are other tandem switching and transport providers available to serve other LECs subtending the CEA providers.[237] This proceeding is focused on access stimulation. We, therefore, adopt rules that are narrowly focused on access stimulation.

87. Aureon and SDN present seemingly opposing views. Aureon wants to continue to carry access-stimulation traffic on its CEA network because it believes the traffic volumes will drive down its rates to a point where arbitrage will not be profitable.[238] At the outset, we note there is nothing preventing a CEA provider from voluntarily reducing its rates to keep such traffic on its network rather than completely forgoing the revenue opportunity. Unlike Aureon, SDN wants the Commission to prohibit access-stimulating LECs from using SDN's tandem.[239] Because we expect that our adopted rules will effectively remedy the incentives associated with the differences in tandem switching and tandem switched transport rates between CEA providers and other intermediate access providers, we decline to prohibit access-stimulating LECs from subtending CEA providers.[240]

88. Aureon complains that if the subtending LECs use direct connections instead of the CEA network, there will be increased arbitrage, and it would put Aureon out of business.[241] However, evidence in the record shows that much of the access-stimulation traffic is currently bypassing Aureon's and SDN's networks.[242] Also, intermediate access providers, such as the CEA providers, remain free to collect payment for their tariffed tandem switching and transport services if the access-stimulating LEC chooses to use their services. In that situation, the intermediate access provider will receive payment from the access-stimulating LEC, and may not collect from IXCs.[243] If access-stimulating LECs decide to move their traffic off of a CEA network and the CEA provider has significantly less traffic on its network, the CEA provider may file tariffs with higher rates provided that such tariff revisions are consistent with our rules applicable to CEA providers.[244] Furthermore, neither Aureon nor SDN has provided any data

[236] Sprint Reply at 6.

[237] Sprint Comments at 2 (admitting that competitive alternatives to the CEA providers may be extremely limited or non-existent). We acknowledge that there are competitive tandem providers, such as Inteliquent, Level 3, HyperCube, Peerless and Onvoy. Petition of AT&T Services, Inc., for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363, at 7 (filed Sept. 30, 2016). However, no commenter has provided any data about the locations of these tandems in Iowa and South Dakota, and the availability of associated transport services. *See Access Arbitrage Notice*, 33 FCC Rcd at 5577-78, para. 34 & n.54 (asking about alternatives for solving arbitrage issues and mentioning competitive intermediate providers).

[238] Aureon Reply at 7.

[239] SDN Comments at 1-2, 5; SDN Reply at 1-3, 5.

[240] *Cf.* Peerless and ANI Comments at 10 (arguing that, if we adopt the rule proposed in the *Access Arbitrage Notice*, we should narrowly tailor it to apply only to LECs that subtend CEA networks).

[241] Aureon May 23, 2019 *Ex Parte* at 5.

[242] AT&T Feb. 5, 2019 *Ex Parte* at 5-6; AT&T Apr. 9, 2019 *Ex Parte* at 10 n.30; Sprint May 16, 2019 *Ex Parte* at 6-7.

[243] CenturyLink Comments at 11 ("This does not mean that the intermediate switched services tandem provider has to perform the tandem functions for free, it means the terminating carrier has worked with the intermediate switched services tandem provider to assume all financial responsibility and therefore shifts the financial responsibility to them.").

[244] *See, e.g.*, *Aureon Tariff Investigation Order*, 33 FCC Rcd at 7562-63, para. 112 (summarizing the rules applicable to Aureon's transport rate); *July 1, 2018 Annual Access Charge Tariff Filings; South Dakota Network, LLC, Tariff F.C.C. No. 1*, WC Docket No. 18-100, Transmittal No. 13, Memorandum Opinion and Order, 34 FCC Rcd 1525, 1525, para. 2 (2019) (summarizing the rules applicable to SDN's access service). Aureon admits that HD Tandem has removed billions of minutes of traffic from Aureon's CEA network. Aureon Reply at 12.

that would show that operating a CEA network without the access-stimulating LECs would be economically unviable.

89. Aureon and SDN ask us to reject any proposals that would modify their section 214 authorizations.[245] Aureon voices concern that requiring access-stimulating LECs to pay for the use of the CEA tandem would be a drastic modification to its section 214 authorization.[246] Aureon does not explain what would need to change in its section 214 authorization, and we are not aware of any change that needs to be made in this regard. Aureon expresses concern that a modification to its section 214 authorization will impact its ability to provide competitive services to rural areas, and to maintain its investment in its fiber-optic network.[247] Our decision to permit traffic being delivered to an access-stimulating LEC to be routed around a CEA tandem does not affect traffic being delivered to non-access-stimulating LECs that remain on the CEA network, and will not impact Aureon's ability to serve rural areas, contrary to Aureon's concern.[248] Similarly, Aureon argues that if LECs pay for the terminating traffic, Aureon would need to make "significant changes to the compensation arrangements for CEA service, which would render it financially infeasible for the CEA network to remain operational."[249] But Aureon provides no supporting detail for these claims.

90. When the section 214 authorizations were granted three decades ago, there were no individual LECs subtending these CEA providers exchanging traffic, particularly terminating traffic, with IXCs at close to access-stimulation levels—and no reports of subtending LECs that would be sharing excess switched access charge revenue with anyone. In fact, the original applications of the Iowa and South Dakota CEA providers stated that the majority of their revenues would be for intrastate calls.[250] Now, AT&T reports that "twice as many minutes were being routed per month to Redfield, South Dakota (with its population of approximately 2,300 people and its 1 end office) as is routed to *all* of Verizon's facilities in New York City (with its population of approximately 8,500,000 people and its 90 end offices)."[251] Access stimulation has upended the original projected interstate-to-intrastate traffic ratios carried by the CEA networks.

91. The Commission may modify or revoke section 214 authority to address abusive practices or actions when necessary.[252] Today, we find that the public interest will be served by changing any mandatory use requirement for traffic bound to access-stimulating LECs to be voluntary usage. We

[245] Aureon May 23, 2019 *Ex Parte* at 9; *see* Letter from James Troup, Counsel for Aureon, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1-2 (filed June 12, 2018); Aureon Comments at 9-13; SDN Reply at 3-4.

[246] Aureon May 23, 2019 *Ex Parte* at 9.

[247] Aureon Comments at 4, 18-19; Aureon Reply at 3.

[248] Aureon May 23, 2019 *Ex Parte* at 9.

[249] *Id*.

[250] *See Aureon Section 214 Order*, 3 FCC Rcd at 1473, para. 32; *SDN Section 214 Order*, 5 FCC Rcd at 6980, para. 15.

[251] AT&T Feb. 5, 2019 *Ex Parte* at 3 (emphasis in original). AT&T's focus is on Northern Valley Communications (NVC), which AT&T lists as being in Redfield, South Dakota, and having two remote switches. *Id.* at 3 (providing a chart listing "Northern Valley"); *see* Joint CLEC Comments at 1 (listing NVC as a competitive LEC that participates in access stimulation).

[252] *Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance,* CC Docket No. 97-11, AAD File No. 98-43, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11372-74, paras. 12-16 (1999) (*Blanket Section 214 Order*) (finding that blanket authority for all domestic carriers was in the public interest for dominant and non-dominant carriers, and that by declining to completely forbear from section 214, the Commission affirmatively retained the ability to revoke section 214 authority or take enforcement action when warranted).

determine that access stimulation presents a reasonable circumstance for departing from the mandatory use policy.[253]

92. In sum, it is in the public convenience and necessity that we modify the section 214 authorizations for Aureon and SDN to state: "The mandatory use requirement does not apply to interexchange carriers delivering terminating traffic to a local exchange carrier engaged in access stimulation, as that term is defined in section 61.3(bbb) of the Commission's rules."[254] We find that this modification is an appropriate exercise of our authority under sections 4(i), 214 and 403 of the Act.[255] Only those LECs engaged in access stimulation and IXCs delivering traffic to access-stimulating LECs will be affected by these changes to Aureon's and SDN's section 214 authorizations.[256] Our methodology reflects the "surgical approach" that GVNW Consulting requested the Commission to use to address access stimulation.[257] We remind Aureon and SDN that all other relevant section 214 obligations remain.

93. *Legal Authority*. In addition to our broad legal authority to adopt our rules applicable to access-stimulation traffic, we have specific legal authority to modify the section 214 authorizations for Aureon and SDN to eliminate any mandatory use requirements that may be applicable to traffic bound for access-stimulating LECs.[258] The Common Carrier Bureau (Bureau) adopted the original section 214 certificates for Aureon and SDN pursuant to section 214 of the Act.[259] Indeed, whether section 214 of the Act was applicable to Aureon's application (which preceded SDN's application) was an issue in that proceeding.[260] In the end, the Bureau agreed with Aureon's "view that [Aureon] requires Section 214

[253] *See Access Arbitrage Notice*, 33 FCC Rcd at 5472, para. 17.

[254] The modifications to the section 214 authorizations will be made in the names of Iowa Network Access Division (INAD) and South Dakota Network, LLC. INAD is a division of Iowa Network Services, Inc. d/b/a Aureon Network Services, and is the entity that originally received the section 214 certificate for Iowa. *Aureon Section 214 Order*, 3 FCC Rcd at 1468 n.3; *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, Memorandum Opinion and Order, FCC 19-14, 2019 WL 1010709, at *1, paras. 1-2 (Feb. 28, 2019) (INAD is still a division of Iowa Network Services, Inc.). SDCEA, Inc., is the entity that originally received the section 214 certificate for South Dakota, and was wholly owned by South Dakota Network, Inc. *SDN Section 214 Order*, 5 FCC Rcd at 6978, para. 2. SDCEA dissolved in 1993, and its section 214 authorization was assigned to South Dakota Network, Inc. *See* South Dakota Secretary of State, Business Entity Detail, SDCEA, Inc. (last visited Sept. 4, 2019) (For dissolution information, search on "SDCEA" at https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx.); Report No. D-675-A, Public Notice, 1992 FCC LEXIS 7024, at *5 (Dec. 30, 1992) (announcing the grant of the pro forma assignment, W-P-C-6837). In 2000, South Dakota Network, Inc., became South Dakota Network, LLC. *See* State of South Dakota, Certificate of Merger, Limited Liability Company (last visited Sept. 4, 2019) (For merger information, search on "South Dakota Network, LLC" at https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx, click on "DL002688" twice, and view page 9).

[255] 47 U.S.C. §§ 154(i), 214(c), 403; *see ITT World Commc'ns, Inc., et al.*, File Nos. T-C-1989-1, T-C-2121-1, Memorandum Opinion, Order and Authorization, 14 F.C.C.2d 818, 821-22, paras. 12-13 (1968) (modifying all section 214 authorizations relating to the overseas services of the applicants to increase the number of telephone channels); *Blanket Section 214 Order*, 14 FCC Rcd at 11365, para. 1; *see also* 47 CFR § 63.01.

[256] *E.g.*, Letter from Rebekah Goodheart, Counsel for NTCA, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed June 11, 2019) (requesting that any reforms adopted in this proceeding "do not sweep so broadly as to affect innocent" LECs).

[257] Letter from Jeffry H. Smith, President and CEO, GVNW Consulting, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (filed July 12, 2018).

[258] 47 U.S.C. § 214(c).

[259] *Aureon Section 214 Order*, 3 FCC Rcd at 1468-69, paras. 6-10; *SDN Section 214 Order*, 5 FCC Rcd at 6978, para. 1.

[260] *Aureon Section 214 Order*, 3 FCC Rcd at 1468-69, paras. 6-10.

authority prior to acquiring and operating any interstate lines of communications."[261] Our modifications to the Aureon and SDN section 214 authorizations are an appropriate exercise of the Commission's authority under section 214, which gives the Commission authority to "attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require," as well as our authority under sections 4 and 403 of the Act.[262]

V. PROCEDURAL MATTERS

94. *Paperwork Reduction Act Analysis*. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198; *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.[263]

95. In this *Order*, we have assessed the effects of requiring an access-stimulating LEC to take financial responsibility for the delivery of traffic to its end office or the functional equivalent and find that the potential modifications required by our rules are both necessary and not overly burdensome. We do not believe there are many access-stimulating LECs operating today but note that of the small number of access-stimulating LECs in existence, many will be affected by this *Order*. We believe that access-stimulating LECs are typically smaller businesses and may employ less than 25 people.[264] However, we find the benefits that will be realized by a decrease in the problematic consequences associated with access stimulation outweigh any burden associated with the changes (such as submitting a notice and making tariff or billing changes) required by this *Report and Order and Modification of Section 214 Authorizations*.

96. *Congressional Review Act*. The Commission will submit this draft *Report and Order and Modification of Section 214 Authorizations* to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether these rules are "major" or "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this *Report and Order and Modification of Section 214 Authorizations* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

97. *Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this *Report and Order and Modification to Section 214 Authorizations*.[265] The FRFA is contained in Appendix B.

---

[261] *Id*. at 1469, para. 9 (footnotes omitted).

[262] 47 U.S.C. § 214(c); *id.* § 154(i) ("The Commission may perform any and all acts, make such rules and regulations, and issue such orders, . . . as may be necessary in the execution of its functions."); *id.* §§ 154(j), 403; *see generally International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806, 19910, para. 228 (1997) (applying conditions to existing holders of section 214 certificates).

[263] *Access Arbitrage Notice*, 33 FCC Rcd at 5484-94, Appx. B.

[264] In the *Access Arbitrage Notice*, the Commission specifically sought comment on how it might further reduce the information collection burden for businesses with fewer than 25 employees that may be affected by the proposed rules but received none. *See Access Arbitrage Notice*, 33 FCC Rcd at 5480, para. 41.

[265] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

VI. ORDERING CLAUSES

98. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201-206, 218-220, 251, 252, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201-206, 218-220, 251, 252, 254, 256, 303(r), 403 and section 1.1 of the Commission's rules, 47 CFR § 1.1, this *Report and Order and Modification of Section 214 Authorizations* IS ADOPTED.

99. IT IS FURTHER ORDERED, pursuant to sections 4(i) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, and sections 1.47(h), 63.01 and 64.1195 of the Commission's rules, 47 CFR §§ 1.47(h), 63.10, 64.1195, that the section 214 authorizations held by Iowa Network Access Division and South Dakota Network, LLC, are modified such that the mandatory use requirement contained in the authorizations does not apply to interexchange carriers delivering terminating traffic to a local exchange carrier engaged in access stimulation. These modifications are effective 30 days after publication of this *Report and Order and Modification of Section 214 Authorizations* in the Federal Register.

100. IT IS FURTHER ORDERED that a copy of this *Order* shall be sent by U.S. mail to Iowa Network Access Division and South Dakota Network, LLC, at their last known addresses. In addition, this *Report and Order and Modification of Section 214 Authorizations* shall be available in the Commission's Office of the Secretary.

101. IT IS FURTHER ORDERED that the amendments of the Commission's rules as set forth in Appendix A ARE ADOPTED, effective 30 days after publication in the Federal Register, except for sections 51.914(b) and 51.914(e) which contain new or modified information collection requirements that require review by OMB under the PRA. The Commission directs the Wireline Competition Bureau to announce the effective date for those information collections in a document published in the Federal Register after OMB approval, and directs the Wireline Competition Bureau to cause section 51.914 to be revised accordingly.

102. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order and Modification of Section 214 Authorizations*, including the Final Regulatory Flexibility Analysis, to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

103. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order and Modification of Section 214 Authorizations*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons set forth above, the Federal Communications Commission amends Parts 51, 61 and 69 of Title 47 of the Code of Federal Regulations as follows:

PART 51—INTERCONNECTION

1. Amend § 51.903 by adding paragraphs (k), (l), and (m) to read as follows:

§ 51.903 Definitions.
* * * * *

(k) Access Stimulation has the same meaning as that term is defined in § 61.3(bbb) of this chapter.

(l) Intermediate Access Provider has the same meaning as that term is defined in § 61.3(ccc) of this chapter.

(m) Interexchange Carrier has the same meaning as that term is defined in § 61.3(ddd) of this chapter.

2. Section 51.914 is added to read as follows:

§ 51.914 Additional Provisions Applicable to Access Stimulation Traffic.

(a) Notwithstanding any other provision of the Commission's rules, if a local exchange carrier is engaged in Access Stimulation, it shall, within 45 days of commencing Access Stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later:

(1) not bill any Interexchange Carrier for terminating switched access tandem switching or terminating switched access transport charges for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch; and

(2) assume financial responsibility for any applicable Intermediate Access Provider's terminating switched access tandem switching or terminating switched access transport charges for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch.

(b) Notwithstanding any other provision of the Commission's rules, if a local exchange carrier is engaged in Access Stimulation, it shall, within 45 days of commencing Access Stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later, notify in writing the Commission, all Intermediate Access Providers which it subtends, and Interexchange Carriers with which it does business of the following:

(1) that it is a local exchange carrier engaged in Access Stimulation; and

(2) that it will obtain and pay for terminating access services from Intermediate Access Providers for such traffic as of that date.

(c) In the event that an Intermediate Access Provider receives notice under paragraph (b) that a local exchange carrier engaged in Access Stimulation will be obtaining and paying for terminating access service from such Intermediate Access Provider, the Intermediate Access Provider shall not bill Interexchange Carriers for terminating tandem switching or terminating switched transport access for traffic bound for such local exchange carrier but, instead, shall bill such local exchange carrier for such services.

(d) Notwithstanding paragraphs (a) and (b), any local exchange carrier that is not itself engaged in Access Stimulation, as that term is defined in § 61.3(bbb), but serves as an Intermediate Access Provider with respect to traffic bound for an access-stimulating local exchange carrier, shall not itself be deemed a local exchange carrier engaged in Access Stimulation or be affected by paragraphs (a) and (b).

(e) Upon terminating its engagement in access stimulation, as defined in § 61.3(bbb) of this part, the access-stimulating LEC shall provide concurrent, written notification to the Commission and any affected Intermediate Access Provider(s) and Interexchange Carrier(s) of such fact.

(f) *Compliance date*. Paragraphs (b) and (e) of this section contain new or modified information-collection and recordkeeping requirements. Compliance with these information-collection and recordkeeping 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 and revising this paragraph accordingly.

3. Amend § 51.917 by revising paragraph (c) as follows:

§ 51.917 Revenue recovery for Rate-of-Return carriers.

* * * * *

(c) 2011 Rate-of-Return Carrier Base Period Revenue shall be adjusted to reflect the removal of any increases in revenue requirement or revenues resulting from Access Stimulation activity the Rate-of-Return Carrier engaged in during the relevant measuring period. A Rate-of-Return Carrier should make this adjustment for its initial July 1, 2012, tariff filing, but the adjustment may result from a subsequent Commission or court ruling.

* * * * *

PART 61 – TARIFFS

4. Amend § 61.3 by revising paragraph (bbb) and adding paragraphs (ccc) and (ddd) to read as follows:

§ 61.3 Definitions.

* * * * *

(bbb) Access stimulation.

(1) A rate-of-return local exchange carrier serving end user(s), or a Competitive Local Exchange Carrier serving end user(s), engages in Access Stimulation when it satisfies either paragraph (bbb)(1)(i) or (bbb)(1)(ii) of this section.

(i) The rate-of-return local exchange carrier or a Competitive Local Exchange Carrier:

(A) Has 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; and

(B) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or has had more than a 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.

(ii) The rate-of-return local exchange carrier or a Competitive Local Exchange Carrier has an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month.

(2) A rate-of-return local exchange carrier or a Competitive Local Exchange Carrier will continue to be engaging in Access Stimulation until: for a carrier engaging in access stimulation as defined in paragraph (1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (1)(i) of this section and does not engage in access stimulation as defined in paragraph (1)(ii) of this section; and for a carrier engaging in Access Stimulation as defined in paragraph (1)(ii) of this section, its interstate terminating-to-originating traffic ratio falls below 6:1 for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (1)(i) of this section.

(3) A local exchange carrier engaging in Access Stimulation is subject to revised interstate switched access charge rules under § 61.26(g) of this part (for Competitive Local Exchange Carriers) or § 61.38 and § 69.3(e)(12) of this chapter (for rate-of-return local exchange carriers).

(ccc) *Intermediate Access Provider* means, for purposes of this part and §§ 69.3(e)(12)(iv) and 69.5(b), any entity that carries or processes traffic at any point between the final Interexchange Carrier in a call path and a local exchange carrier engaged in Access Stimulation, as defined in § 61.3(bbb).

(ddd) *Interexchange Carrier* means, for purposes of this part and §§ 69.3(e)(12)(iv) and 69.5(b), a retail or wholesale telecommunications carrier that uses the exchange access or information access services of another telecommunications carrier for the provision of telecommunications.

5. Amend § 61.26 by adding paragraph (g)(3) to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.
* * * * *

(g) * * *

(3) Notwithstanding any other provision of the Commission's rules, if a CLEC is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall:

(i) Within 45 days of commencing access stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later, file tariff revisions removing from its tariff terminating tandem switching and terminating tandem switched transport access charges assessible to an Intermediate Access Provider or an Interexchange Carrier for any traffic between the tandem and the local exchange carrier's terminating end office or equivalent; and

(ii) Within 45 days of commencing access stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later, the CLEC shall not file a tariffed rate that is assessible to an Intermediate Access Provider or an Interexchange Carrier for terminating tandem switching or terminating switched transport access charges for any traffic between the tandem and the local exchange carrier's terminating end office or equivalent.

6. Amend § 61.39 by revising paragraph (g) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings by incumbent local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

* * * * *

(g) A local exchange carrier otherwise eligible to file a tariff pursuant to this section may not do so if it is engaging in Access Stimulation, as that term is defined in § 61.3(bbb) of this part. A carrier so engaged must file interstate access tariffs in accordance with § 61.38 of this part, and § 69.3(e)(12) of this chapter.

PART 69 – ACCESS CHARGES

7. Amend § 69.3 by revising paragraph (e)(12) by adding subsection (e)(12)(iv) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(12) * * *

(iv) Notwithstanding any other provision of the Commission's rules, if a rate-of-return local exchange carrier is engaged in Access Stimulation, or a group of affiliated carriers in which at least one carrier is engaging in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall:

(A) Within 45 days of commencing Access Stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later, file tariff revisions removing from its tariff terminating tandem switching and terminating tandem switched transport access charges assessible to an Intermediate Access Provider or an Interexchange Carrier for any traffic between the tandem and the local exchange carrier's terminating end office or equivalent; and

(B) Within 45 days of commencing Access Stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later, the local exchange carrier shall not file a tariffed rate for terminating tandem switching or terminating switched transport access charges that is assessible to an Intermediate Access Provider or an Interexchange Carrier for any traffic between the tandem and the local exchange carrier's terminating end office or equivalent.

* * * * *

8. Amend § 69.4 by adding paragraph (l) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(l) Notwithstanding paragraph (b)(5), a local exchange carrier engaged in Access Stimulation as defined in § 61.3(bbb) of this Chapter or the Intermediate Access Provider it subtends may not bill an Interexchange Carrier as defined in § 61.3(bbb) of this Chapter for terminating switched access tandem switching or terminating switched access transport charges for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch.

9. Amend § 69.5 by revising paragraph (b) to read as follows:

§ 69.5 Persons to be assessed.

* * * * *

(b) Carrier's carrier charges shall be computed and assessed upon all Interexchange Carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services, except that:

(1) Local exchange carriers may not assess a terminating switched access tandem switching or terminating switched access transport charge described in section 69.4(b)(5) on Interexchange Carriers when the terminating traffic is destined for a local exchange carrier engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this part consistent with the provisions of §§ 61.26(g)(3) and 69.3(e)(12)(iv) of this Chapter.

(2) Intermediate Access Providers may assess a terminating switched access tandem switching or terminating switched access transport charge described in § 69.4(b)(5) on local exchange carriers when the terminating traffic is destined for a local exchange carrier engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this part consistent with the provisions of §§ 61.26(g)(3) and 69.3(e)(12)(iv) of this Chapter.

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[266] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* for the access arbitrage proceeding.[267] The Commission sought written public comments on the proposals in the *Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[268]

A. Need for, and Objectives of, the Order

2. Although the Commission's earlier rules, adopted in the *USF/ICC Transformation Order*, made significant strides in reducing access stimulation, arbitragers have reacted to those reforms by revising their schemes to take advantage of access charges that remain in place for tariffed tandem switching and transport services.[269] New forms of arbitrage now command significant resources and create significant costs, which together raise costs for consumers.[270] In general, the intercarrier compensation regime allows access-stimulating local exchange carriers (LECs) to shift the costs of call termination to interexchange carriers (IXCs) and their customers via tariffed tandem switching and transport rates, creating perverse incentives for access-stimulating LECs to route network traffic inefficiently in a manner that maximizes those rates. IXCs are obligated to pay these charges, but are left without any choice about how the traffic is routed, and pass those inflated costs along to their customers in turn, raising the price for consumers generally.[271]

---

[266] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[267] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, 33 FCC Rcd 5466, 5484, Appx. B (2018) (*Access Arbitrage Notice*).

[268] *See* 5 U.S.C. § 604.

[269] *See, e.g.*, *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, 18112, para. 1306 (2011) (*USF/ICC Transformation Order*) ("The initial transition . . . does not fully address tandem switching and transport charges."), *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); AT&T Comments at 1 ("[I]n the years since the [*USF/ICC*] *Transformation Order*, access-stimulating LECs, particularly those in rural areas, have found new ways around the intercarrier compensation and access stimulation rules."); Letter from Matthew Nodine, Asst. VP, Federal Regulatory, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 9 (filed Apr. 9, 2019) (AT&T Apr. 9, 2019 *Ex Parte*) ("[A]ccess stimulators are able to continue to engage in such schemes by exploiting tandem and transport charges: either directly, through excessive and unnecessary tariffed transport rates, or via contractual arrangements where the price of transport is still excessive but offered at a slight discount from the tariff rates of intermediate transport providers.").

[270] CenturyLink Comments at 1 ("CenturyLink echoes the Commission's concerns regarding these practices, which are currently imposing significant harms on the industry and undermining the Commission's [ICC] regime."); HD Tandem Comments at 7 ("HD Tandem agrees with the FCC that access stimulation continues to exist in the marketplace today." (footnote omitted)); NCTA Comments at 2; Sprint Comments at 1; Verizon Comments at 1, 6; Sprint Reply at 1-2; *see also* Peerless and ANI Comments at 5; AT&T Reply at 2.

[271] *See generally USF/ICC Transformation Order*, 26 FCC Rcd at 17908, para. 745 ("A consequent effect of the existing intercarrier compensation regime is that it allows carriers to shift recovery of the costs of their local networks to other providers because subscribers do not have accurate pricing signals to allow them to identify lower-cost or more efficient providers."); *see also* Peerless Comments, WC Docket No. 10-90; CC Docket No. 01-92, at 13-15, 18-19 (rec. Oct. 26, 2017); Letter from Matthew Nodine, Assistant Vice President, Federal Regulatory, AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket Nos. 07-135, 10-90 and 18-155, at 3 (filed June 12, 2019).

3. In this *Order*, to reduce the perverse incentives to engage in the latest iteration of access stimulation, as well as to continue the reforms of the *USF/ICC Transformation Order*, we adopt a rule making access-stimulating LECs, rather than IXCs, financially responsible for the tariffed tandem switching and transport service access charges associated with the delivery of traffic from the IXC to the access-stimulating LEC end office or its functional equivalent.

4. The rules adopted in today's *Order* will thus require tariff switched tandem and transport costs to be charged to the carrier that chooses the transport route. This change will encourage cost-efficient network routing and investment decisions, and remove the perverse incentives that lead to inefficient interconnection and call routing requirements.[272] We also modify the definition of access stimulation to include an additional traffic volume trigger.[273] We add this higher ratio to capture any access-stimulating LECs that do not have a revenue sharing agreement, which would have escaped our current definition.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[274]

7. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

8. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[275] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[276] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[277] A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[278]

---

[272] West Reply at 4; AT&T Reply at 2-3; CenturyLink Comments at 7.

[273] *See supra* Appx. A, 47 CFR § 61.3(bbb).

[274] 5 U.S.C. § 604 (a)(3).

[275] 5 U.S.C. § 604(a)(3).

[276] 5 U.S.C. § 601(6).

[277] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[278] 15 U.S.C. § 632.

9. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[279] First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[280] These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.[281]

10. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[282] Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).[283]

11. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[284] U.S. Census Bureau data from the 2012 Census of Governments[285] indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[286] Of this number there were 37, 132 General purpose governments (county[287], municipal and town or township[288]) with populations of

[279] *See* 5 U.S.C. § 601(3)-(6).

[280] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016)

[281] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

[282] 5 U.S.C. § 601(4).

[283] Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than $100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of $50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of $100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. *See* http://nccs.urban.org/sites/all/nccs-archive/html//tablewiz/tw.php where the report showing this data can be generated by selecting the following data fields: Report: "The Number and Finances of All Registered 501(c) Nonprofits"; Show: "Registered Nonprofits"; By: "Total Revenue Level (years 1995, Aug to 2016, Aug)"; and For: "2016, Aug" then selecting "Show Results".

[284] 5 U.S.C. § 601(5).

[285] *See* 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Program Description Census of Government *https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#*.

[286] *See* U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

[287] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01. There were 2,114 county governments with populations less than 50,000.

[288] *See* U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States –

(continued….)

less than 50,000 and 12,184 Special purpose governments (independent school districts[289] and special districts[290]) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.[291] Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."[292]

12. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[293] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[294] Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

13. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[295] According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of

(Continued from previous page)
States.https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

[289] *See* U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. There were 12,184 independent school districts with enrollment populations less than 50,000.

[290] *See* U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01. The U.S. Census Bureau data did not provide a population breakout for special district governments.

[291] *See* U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

[292] *Id.*

[293] U.S. Census Bureau, *2012 NAICS Definition*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012+NAICS+Search (last visited Aug. 15, 2019).

[294] 13 CFR § 121.201 (NAICS Code 517110).

[295] 13 CFR § 121.201 (NAICS Code 517110).

this total, 3,083 operated with fewer than 1,000 employees.[296] The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

14. *Incumbent LECs*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.[297] According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[298] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[299] Of this total, an estimated 1,006 have 1,500 or fewer employees.[300]

15. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.[301] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[302] Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

16. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its

---

[296] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[297] 13 CFR § 121.201 (NAICS Code 517110).

[298] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[299] *See* FCC, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[300] FCC, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[301] 13 CFR § 121.201 (NAICS Code 517110).

[302] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

field of operation."[303] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[304] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

17. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[305] U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[306] According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[307] Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

18. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[308] Under that size standard, such a business is small if it has 1,500 or fewer employees.[309] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

19. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual

---

[303] 5 U.S.C. § 601(3).

[304] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

[305] 13 CFR § 121.201 (NAICS Code 517110).

[306] *See* U.S. Census Bureau, American Fact Finder (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[307] *See Trends in Telephone Service*, at tbl. 5.3.

[308] U.S. Census Bureau, *2012 NAICS Definition*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012 (last visited Aug. 15, 2019).

[309] 13 CFR § 121.201 (NAICS code 517911).

network operators (MVNOs) are included in this industry.[310] The SBA has developed a small business size standard for the category of Telecommunications Resellers.[311] Under that size standard, such a business is small if it has 1,500 or fewer employees.[312] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

20. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[313] Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[314] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[315] Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the Notice.

21. *Prepaid Calling Card Providers*. The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[316] According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards.[317] The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

22. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide

[310] U.S. Census Bureau, *2012 NAICS Definition*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012 (last visited Aug. 15, 2019) (NAICS 517911 Telecommunications Resellers).

[311] 13 CFR § 121.201 (NAICS code 517911).

[312] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[313] 13 CFR § 121.201 (NAICS code 517110).

[314] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[315] *Trends in Telephone Service*, at tbl. 5.3.

[316] 13 CFR § 121.201 (NAICS code 517110).

[317] *See* FCC, *FCC Form 499 Filer Database*, http://apps.fcc.gov/cgb/form499/499a.cfm (last visited Aug. 15, 2019).

services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[318] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[319] For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.[320] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[321] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

23. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that may be affected by our actions today.[322] The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.[323] Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

24. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[324] The SBA has approved these definitions.[325]

25. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[326] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[327] According to

[318] NAICS Code 517210. *See* U.S. Census Bureau, *American Fact Finder—About the Data*, https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210.

[319] 13 CFR § 121.201 (NAICS code 517210).

[320] U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table (NAICS 51720, "Subject Series - Estab & Firm Size: Employment Size of Establishments for the U.S.: 2012").

[321] Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[322] *See* FCC, *Universal Licensing System*, http://wireless.fcc.gov/uls (last visited Aug. 15, 2019). For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

[323] *Trends in Telephone Service*, at tbl. 5.3.

[324] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[325] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998).

[326] 13 CFR § 121.201 (NAICS code 517210).

[327] *Id*.

Commission data, 413 carriers reported that they were engaged in wireless telephony.[328] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

26. *Cable and Other Subscription Programming*. This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[329] The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees.[330] The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees.[331] Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

27. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[332] Industry data indicate that there are currently 4,600 active cable systems in the United States.[333] Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard.[334] In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[335] Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[336] Thus, under this standard as well, we estimate that most cable systems are small entities.

28. *Cable System Operators (Telecom Act Standard)*. The Communications Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[337] There are approximately 52,403,705 cable video subscribers in the United States

[328] *Trends in Telephone Service*, at tbl. 5.3.

[329] *See* U.S. Census Bureau, *2012 NAIC Definition*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515210&search=2012+NAICS+Search&search=2012 (last visited Aug. 15, 2019) (2012 NAICS code, "515210 Cable and Other Subscription Programming").

[330] 13 CFR § 121.201 (NAICSs Code 515210).

[331] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table (NAICS code 51510, "Estab & Firm Size: Employment Size of Establishments for the U.S.").

[332] 47 CFR § 76.901(e).

[333] This figure was derived from an August 15, 2015 report from the FCC Media Bureau, based on data contained in the Commission's Cable Operations and Licensing System (COALS). *See* http://www.fcc.gov/coals.

[334] Data obtained from SNL Kagan database on Apr. 19, 2017.

[335] 47 CFR § 76.901(c).

[336] August 5, 2015 report from the FCC Media Bureau based on its research in COALS. *See* http://www.fcc.gov/coals.

[337] *See* 47 CFR § 76.901(f) & nn.1-3.

today.[338] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[339] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[340] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[341] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

29. *All Other Telecommunications*. The "All Other Telecommunications" industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[342] The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of $32.5 million or less.[343] For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[344] Thus a majority of "All Other Telecommunications" firms potentially may be affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

30. *Recordkeeping and Reporting*. The rule revisions adopted in the *Order* include notification requirements for access-stimulating LECs, which may impact small entities.[345] Those LECs engaged in access stimulation are required to notify affected intermediate access providers and affected IXCs of their status as access stimulators and of their acceptance of financial responsibility for the tariffed tandem and transport switched access charges IXCs used to bear. An access-stimulating LEC must also publicly file a record of its access-stimulating status and acceptance of financial responsibility in the Commission's Access Arbitrage docket on the same day that it issues notice to IXC(s) and/or intermediate access provider(s).

---

[338] *See* SNL Kagan at http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx (subscription required).

[339] 47 CFR § 76.901(f) & nn.1-3.

[340] *See* SNL Kagan at http://www.snl.com/interactivex/TopCable MSOs.aspx (subscription required).

[341] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR § 76.901(f).

[342] U.S. Census Bureau, *NAICS Search*, http://www.census.gov/cgi-bin/sssd/naics/naicsrch (last visited Aug. 15, 2019) (enter 2012 NAICS code 517919).

[343] 13 CFR § 121.201 (NAICS Code 517919).

[344] U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table (2012 NAICS Code 517919, "Estab & Firm Size: Receipts Size of Firms for the U.S.").

[345] *Id.*

31. Rule changes may also necessitate that affected carriers make various revisions to their billing systems. For example, intermediate access providers that serve access-stimulating LECs will now charge tariffed terminating switched access rates and tariffed transport rates to the corresponding LECs, whereas IXCs that serve access-stimulating LECs will no longer be required to pay such charges. As intermediate access providers cease billing IXCs, and instead bill access-stimulating LECs, they will likely need to make corresponding adjustments to their billing systems.

32. Today's *Order* will also require access-stimulating LECs to file tariff revisions to remove any tariff provisions they have filed for terminating tandem switched access or terminating switched access transport charges. Although we decline to opine on whether today's *Order* requires carriers to file further tariff revisions, affected carriers may nonetheless choose to file additional tariff revisions to add provisions allowing them to charge access-stimulating LECs, rather than IXCs, for the termination of traffic to the access-stimulating LEC. These revisions may necessitate some effort to revise the rates (and who pays them), including tariffed terminating switched access rates and tariffed transport rates. The requirement to remove related provisions, and the choice to make any additional revisions, would apply to all affected carriers, regardless of entity size. The adopted rule revisions will facilitate Commission and public access to the most accurate and up-to-date tariffs as well as lower rates paid by the public for the affected services.

33. Existing access-stimulating LECs, or LECs who later become access stimulators, will also face similar reporting and recordkeeping requirements should they later choose to cease access stimulation. These steps are virtually identical as the steps discussed above that are required or may be necessary when commencing access stimulation, including providing third-party notice, filling a notice with the Commission, potential billing system changes, removing tariff provisions, and potentially preparing and filing a revised tariff.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[346]

35. *Transition Period.* To minimize the impact of the changes affected carriers may need to make under today's *Order*, we implement up to a forty-five day transition period for the related recordkeeping and reporting steps. To give effect to the financial shift of responsibility, we require that access-stimulating LECs remove any existing tariff provisions for terminating tandem switching or terminating tandem switched transport access charges within the same period within 45 days of the effective date of the *Order* (or, for those carriers who later engage in access stimulation, within 45 days from the date it commences access stimulation). To ensure clarity and increase transparency, we require that access-stimulating LECs notify affected IXCs and intermediate access providers of their access-stimulating status and their acceptance of financial responsibility within 45 days of PRA approval (or, for those carriers who later engage in access stimulation, within 45 days from the date it commences access stimulation), and file a notice in the Commission's Access Arbitrage docket on the same date and to the same effect. The Commission announced the notice aspects of the transition period in the proposed rule in the *Access Arbitrage Notice*, and while several commenters voiced support, none cited any specific

[346] 5 U.S.C. § 603(c)(1) – (c)(4).

problems nor concerns associated with these notice requirements.[347] These notice requirements for such carriers to self-identify will help parties conserve resources by limiting potential disputes between IXCs and intermediate access providers concerning whether the LEC to which traffic is bound is engaged in access stimulation. Such changes are also subject to the Paperwork Reduction Act approval process which allows for additional notice and comment on the burdens associated with the requirement. This process will occur after adoption of this *Order*, thus providing additional time for parties to make the changes necessary to comply with the newly adopted rules. Also, being mindful of the attendant costs of any reporting obligations, we do not require that carriers adhere to a specific notice format. Instead, we allow each responding carrier to prepare third-party notice and notice to the Commission in the manner they deem to be most cost-effective and least burdensome, provided the notice announces the carrier's access-stimulating status and acceptance of financial responsibility. Furthermore, by electing not to require carriers to fully withdraw and file entirely new tariffs and requiring only that they revise their tariffs to remove relevant provisions, we mitigate the filing burden on affected carriers.

36. We recognize that intermediate access providers may need to revise their billing systems to reflect the shift in financial responsibility, and may also elect to file revised tariffs. Though we believe the potential billing system changes to be straightforward, in order to allow sufficient time for affected parties to make any adjustments, we also grant them the same period from the effective date for implementing such changes. Thus, affected intermediate access providers have 45 days from the effective date of this rule (or, with respect to those carriers who later engage in access stimulation, within 45 days from the date such carriers commence access stimulation) to implement any billing system changes or prepare any tariff revisions which they may see fit to file. The time granted by this period should help carriers make an orderly, less burdensome, transition.

37. These same considerations were taken into account for LECs that cease access stimulation, a change which carries concomitant reporting obligations and to which we apply associated transition periods for billing changes and/or for tariff revisions that, collectively, are virtually identical to those mentioned above.

38. In comments not identified as IRFA-related, centralized equal access (CEA) providers Aureon and SDN argued that the potential billing changes and tariff revisions that would arise from making LECs financially responsible constitute an undue burden that "would render it financially infeasible for the CEA network to remain operational."[348] Aureon's sole support for this assertion is that this change would "necessitate significant changes to the compensation arrangements for CEA service."[349] We have considered these costs but are not persuaded that these costs are significant enough to rise to an undue burden on affected carriers. We believe these changes to be straightforward, particularly because the identities of the relevant parties will already be known to one another because of existing relationships between them, and because they have previously charged others for the same services. There is no reason to believe that these changes will be onerous and the record is bereft of evidence of material incremental costs of making the necessary changes to implement billing arrangements with subtending access-stimulating LECs. We find no further evidence in the record of financial difficulties that would befall CEAs from this switch. In addition, we revise the definition of

[347] *Access Arbitrage Notice*, 33 FCC Rcd at 5472-73, paras. 18-20; *see, e.g.*, AT&T Comments at 12 (stating that a 45-day implementation period is "reasonable"); NTCA Comments at 4; INCOMPAS Reply at 4 ("INCOMPAS encourages the Commission to require an access-stimulating LEC to provide written notice of its choice to the FCC and that the agency then make that election public.").

[348] Letter from James Troup and Tony Lee, Counsel for Aureon, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 18-155 and 18-60, at 9 (filed May 23, 2019) (Aureon May 23, 2019 *Ex Parte*); SDN Comments at 5. Whether or not a tariff change is necessary is a determination for each individual carrier to make.

[349] Aureon May 23, 2019 *Ex Parte* at 9.

access stimulation to apply only to LECs that serve end users. This definitional change will narrow the providers who will be deemed access stimulators by excluding CEA providers, as they do not serve end users.

39. **Report to Congress:** The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[350] In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[351]

---

[350] *See* 5 U.S.C. § 801(a)(1)(A).

[351] *See* 5 U.S.C. § 604(b).