

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Great Lakes Communication Corp., <i>et al.</i> ,)	
Petitioners,)	
)	
v.)	No. 19-1233
)	(consolidated with
Federal Communications Commission)	No. 19-1244)
and United States of America,)	
Respondents.)	

**OPPOSITION OF FEDERAL COMMUNICATIONS COMMISSION
TO EMERGENCY MOTION FOR STAY**

In September 2019, the Federal Communications Commission (FCC or Commission) adopted new rules designed to discourage regulatory arbitrage and a 45-day transition period for companies to comply with them. *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, 34 FCC Rcd 9035 (2019) (*Order*). The emergency motion for stay filed by CarrierX, LLC (Free Conferencing), the operating subsidiary of Free Conferencing Corporation, is the second attempt in this Court to avoid compliance with that transition period, but it is premised on a problem of Free Conferencing’s own creation.¹ So far as it appears, only days before the transition period expired, Free Conferencing took numerous actions that made the transition more—not less—difficult. Free

¹ Although CarrierX and Free Conferencing Corporation are two different entities, Carrier X refers to itself in the stay motion as “Free Conferencing.” We will follow the same convention here. We will refer to CarrierX’s parent company as “Free Conferencing Corporation.”

Conferencing is not entitled to obtain the extraordinary relief it seeks based on problems caused by its own actions.

As this Court is well aware, some local exchange carriers (providers of local telephone service) employ a practice known as access stimulation or “traffic pumping” to artificially inflate the number and duration of long-distance calls their customers receive, thereby increasing by tens of millions of dollars annually the per-minute access charges they collect from long-distance carriers to complete those calls.² As part of its ongoing effort to combat such arbitrage schemes, the FCC in the *Order* adopted new rules to discourage access stimulation.

Less than two months ago, this Court denied a similar motion by other petitioners to stay some of the FCC’s new rules pending appeal. Among other things, those petitioners claimed that they could face “substantial business disruption” because the “extremely brief implementation period” did not give them adequate time to move their call traffic to comply with the rules. Emergency Motion for Stay of FCC Order Pending Review (filed Oct. 30, 2019), at 23-24.

Free Conferencing now seeks a stay of the *Order* on the same grounds. Free Conferencing has teamed with local carriers to provide conferencing services that are free to its customers but are subsidized, through access charges, by long-

² See *All Am. Tel. Co., Inc. v. FCC*, 867 F.3d 81 (D.C. Cir. 2017); *N. Valley Commc’ns, LLC v. FCC*, 717 F.3d 1017 (D.C. Cir. 2013); *Farmers & Merchants Mut. Tel. Co. v. FCC*, 668 F.3d 714 (D.C. Cir. 2011).

distance carriers and their customers. Free Conferencing, which is not itself a carrier, is not subject to the new rules; but those rules apply to local carriers that transmit calls to Free Conferencing. The company asserts that, in response to the new rules, some local carriers that previously delivered high volumes of calls to Free Conferencing have decided to stop carrying those calls because they are leaving the access stimulation business or cannot otherwise comply with the *Order*. Mot. 8. Free Conferencing claims that as a result, it must move its call traffic, apparently amounting to hundreds of millions of minutes, to other networks that are willing to carry its calls. *Ibid*.

Free Conferencing alleges that the 45-day transition period provided by the *Order* has proved insufficient to implement its plans because long-distance carriers have refused to take the necessary steps to accommodate the migration of Free Conferencing's traffic, and consequently some calls to Free Conferencing are being dropped or blocked. It therefore asks this Court to stay the applicable access stimulation rules with regard to the local carriers that currently deliver traffic to Free Conferencing until long-distance carriers "can provide assurances that all calls will be properly routed without failures or blocking." Mot. 1.

Free Conferencing has not come close to justifying such extraordinary relief. It does not attempt to show that the transition period the Commission adopted was unreasonable or unsupported by the record before the agency. And, as a

submission by AT&T to the agency appears to show, the subsequent developments of which Free Conferencing complains reflect a problem of its own making. That problem neither undermines the Commission's predictive judgment nor constitutes irreparable harm because it is self-inflicted. A stay would also cause substantial harm to the public interest by leaving in place access stimulation schemes that the Commission has long sought to discourage because they impose tens of millions of dollars in unjust and unreasonable costs on long-distance carriers and their customers. For all these reasons, the motion for stay should be denied.

BACKGROUND

When an interexchange carrier (a provider of long-distance telephone service) transmits a long-distance call to the local exchange carrier serving the call's recipient, the interexchange carrier must pay an access charge to the local carrier for completing the call. *All Am. Tel.*, 867 F.3d at 84. Taking advantage of this access charge regime, some local carriers have engaged in an arbitrage "scheme known as 'traffic pumping' or 'access stimulation,'" whereby they artificially inflate the number and duration of long-distance calls their customers receive. *Id.* at 85. As a result of this practice, long-distance carriers and their customers have had to pay significant amounts to local carriers "in the form of artificially inflated and distorted access charges." *Ibid.*; *see also N. Valley Commc'ns*, 717 F.3d at 1018-19.

In 2011, the FCC adopted rules designed to curb such access arbitrage. *Connect America Fund*, 26 FCC Rcd 17663, 17874-90 ¶¶ 656-701 (2011). Under those rules, each carrier engaged in access stimulation must file revised tariffs reducing its access rates. *Id.* ¶¶ 679-698. As defined by the 2011 rules, access stimulation occurs when a local carrier has (1) entered into a revenue sharing agreement with another party collaborating in the scheme (such as a provider of conference calling service), *id.* ¶¶ 668-674, and (2) either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month or more than 100 percent growth in interstate minutes in a month compared to the same month in the preceding year, *id.* ¶¶ 675-678. The United States Court of Appeals for the Tenth Circuit upheld these rules as a reasonable exercise of the FCC's authority under 47 U.S.C. § 201(b) to prohibit unjust and unreasonable access rates. *In re FCC 11-161*, 753 F.3d 1015, 1144-47 (10th Cir. 2014).

Access-stimulating carriers changed their practices to circumvent the 2011 rules “by interposing intermediate providers of switched access service not subject to the ... rules in the call route, thereby increasing the access charges” paid by long-distance carriers. *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, 33 FCC Rcd 5466, 5467 ¶ 2 (2018) (*Notice*). To address these new arbitrage schemes, the FCC issued a notice of proposed

rulemaking in 2018 seeking comment on proposed amendments to the access stimulation rules. *See id.* ¶¶ 8-37.

Commenters submitted evidence that access-stimulating carriers, working in concert with intermediate access providers, had routed “*billions* of minutes” of long-distance traffic “through a handful of rural areas” in order “to increase [the] tandem switching and transport charges” they collected from long-distance carriers. *Order* ¶ 14 (internal quotation marks omitted). For example, one carrier reported that twice as many minutes per month were routed to Redfield, South Dakota (population 2,300) as were routed to Verizon’s facilities in New York City (population 8.5 million). *Id.* ¶ 15. These new arbitrage schemes, like those targeted by the 2011 rules, involved the provision of “free” conference calling and other high-volume calling services to “a small proportion of consumers.” *Id.* ¶ 20. Such services were provided “at an annual cost of \$60 million to \$80 million in access charges”—a cost that long-distance carriers and their customers were “forced to bear.” *Ibid.* The Commission also found “evidence that the staggering volume of minutes generated by these [access stimulation] schemes can result in call blocking and dropped calls.” *Id.* ¶ 3.

To reduce the incentive to participate in such schemes, the FCC in September 2019 adopted rules requiring any access-stimulating local carrier “to bear financial responsibility for all interstate and intrastate tandem switching and

transport charges for terminating traffic to its own end office(s) or functional equivalent whether terminated directly or indirectly.” *Order* ¶ 17. Under the new rules, access-stimulating carriers will not collect access charges and will be required to pay for services provided by intermediate carriers that they had introduced into the call path to evade the 2011 rules. The agency explained that the new rules “properly align financial incentives by making the access-stimulating [carrier] responsible for paying for the part of the call path that it dictates.” *Ibid.*

The Commission also found evidence that “access stimulation may occur even when there is no access revenue sharing agreement.” *Order* ¶ 4. To account for this possibility, the agency amended its rules to establish “alternate tests” for access stimulation “that require no revenue sharing agreement.” *Id.* ¶ 43. The new rules define a competitive local carrier without a revenue sharing agreement as “engaging in access stimulation” if it has “an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month.” *Ibid.*; *see* 47 C.F.R.

§ 61.3(bbb)(1)(ii).³

The FCC determined that a “transition period of 45 days after the effective date of the rules” would give access-stimulating carriers “sufficient time” to come into compliance with the rules. *Order* ¶ 76. The agency declined to adopt a longer

³ A separate access stimulation test applies to rate-of-return local carriers without revenue sharing agreements. *See* 47 C.F.R. § 61.3(bbb)(1)(iii). Free Conferencing does not seek a stay of that provision.

transition period. It saw “no reason to allow access-stimulating [carriers] and the intermediate access providers that they choose to use to continue to benefit from access arbitrage schemes.” *Ibid.*

The FCC found that a 45-day transition period would afford carriers sufficient time to adjust their business to avoid the new access stimulation triggers. The Commission cited record evidence that “access-stimulating [carriers] are able to relocate their traffic in days, if not hours.” *Order* ¶ 77 (citing AT&T Feb. 5, 2019 *Ex Parte* at 6 (a local carrier had previously moved a large volume of traffic “seemingly overnight”)). And the agency observed that its “rules provide a clear process by which an access-stimulating [carrier] can transition out of being categorized as such.” *Ibid.* (citing App. A, 47 C.F.R. § 61.3(bbb)(2)-(3)).

The new rules were published in the Federal Register on October 28, 2019. 84 Fed. Reg. 57629. Shortly thereafter, several petitioners moved for a stay of some of the rules pending appeal. The Court denied that motion on November 25, 2019. The rules took effect—and the 45-day transition period commenced—on November 27, 2019.⁴

⁴ On the same day, Iowa Network Services, Inc. d/b/a Aureon Network Services (Aureon) filed a petition for FCC reconsideration of the *Order*. The FCC accordingly moved to hold this case in abeyance for six months while the agency considers Aureon’s petition. That motion, which was not opposed by Free Conferencing or any other party, was granted on December 23, 2019.

On January 8, 2020, more than three months after the *Order* was adopted, and just three days before the transition period was scheduled to expire, Free Conferencing Corporation (the parent company of CarrierX) filed with the Commission a “Petition for Expedited Waiver” of the *Order*. The company stated that it had “made arrangements to transition its traffic away from carriers that are either no longer engaging in the ‘access stimulation’ business or would not have balanced traffic ratios” that would comply with the new rules. Pet. at 4. Free Conferencing Corporation alleged that long-distance carriers were “making [this] transition impossible” by “intentionally refusing” to follow routing guidelines for the public switched telephone network and failing to provision “additional capacity required to handle the transition.” *Id.* at 4-5. The company requested a waiver of the *Order* “for any and all providers that transmit calls to Free Conferencing” Corporation “until [long-distance carriers] can provide assurances that all calls will be properly routed.” *Id.* at 7.

The day after Free Conferencing Corporation filed its petition for waiver with the Commission, CarrierX (calling itself “Free Conferencing”) filed with this Court an emergency motion for stay that largely reiterated the same claims and requested similar relief. Free Conferencing asked that the new rules applicable to competitive carriers without revenue sharing agreements (specifically, 47 C.F.R. §§ 51.914, 61.3(bbb)(1)(ii), 61.26(g), 69.3, 69.4, and 69.5) “be stayed with regard

to any and all providers that currently transmit calls to Free Conferencing” until long-distance carriers “can provide assurances that all calls will be properly routed without failures or blocking.” Mot. 1. Free Conferencing also requested an administrative stay “to give the Court more time to consider the matter.” Mot. 3-4.

The Court denied the request for an administrative stay on January 10. The transition period expired as scheduled on January 11.

On January 15, AT&T filed an opposition to Free Conferencing Corporation’s waiver petition, asserting that Free Conferencing had effectively manufactured its own call disruption problems.⁵ AT&T stated that on January 2, 2020—just nine days before the transition period expired—Wide Voice (a carrier working with Free Conferencing) “abruptly announced ... that AT&T must begin within days to re-route about 127 million minutes of calls in January alone.” AT&T Opposition to Waiver Petition (AT&T Opp.) at 2.⁶ According to AT&T, Free Conferencing then “began unilaterally to re-route millions of minutes” of calls to existing facilities in Miami and Los Angeles, even though Free Conferencing “*knew*” that those facilities “lacked capacity to handle such enormous call volumes” and “could not be upgraded on such limited notice.” *Id.* at 11; *see also*

⁵ A copy of AT&T’s opposition to the waiver petition is attached for the Court’s convenience.

⁶ To give some idea of just how massive this volume of call traffic is, AT&T noted that it “is typically billed for about 20 million minutes per month by Verizon for *all* of its New York City traffic.” AT&T Opp. at 2.

id. at 16 (asserting that “any call congestion that has occurred is the result of [Free Conferencing’s] decision to suddenly and unilaterally re-route millions of minutes to Miami or Los Angeles”). AT&T also asserted that Wide Voice sought unilaterally to designate two new points of interconnection for Free Conferencing Corporation’s traffic in remote locations in Iowa and South Dakota where AT&T and other long-distance carriers have no existing facilities. *Id.* at 13-15. AT&T maintained that Free Conferencing, by “unilaterally deciding ... at the eleventh hour to shift millions of minutes” of calls “to new providers and new locations,” had “all but ensured” that “call completion issues” would ensue. *Id.* at 8.

ARGUMENT

To obtain the extraordinary remedy of a stay, Free Conferencing must demonstrate that (1) it will likely prevail on the merits, (2) it will suffer irreparable harm without a stay, (3) a stay will not harm other parties, and (4) a stay will serve the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009). Free Conferencing has not satisfied any of these prerequisites. Instead, it appears to have manufactured its own “emergency.”

I. Free Conferencing Has Not Demonstrated A Likelihood Of Success On The Merits

1. At the outset, Free Conferencing's appeal is subject to dismissal because it did not participate in the proceedings before the agency that led to the *Order*.⁷ It is therefore not a "party aggrieved" that is entitled to seek judicial review of the *Order*, and its request for extraordinary relief must be rejected on that basis alone. *See Simmons v. ICC*, 716 F.2d 40, 42 (D.C. Cir. 1983); 47 U.S.C. § 405(a) (a petition for reconsideration is a "condition precedent to judicial review" of an FCC order if the party seeking review "was not a party to the proceedings resulting in" the order).

Furthermore, "a party 'generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'" *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)). In this case, Free Conferencing—which is not a carrier and therefore is not subject to the challenged rules—is asserting the legal rights and interests of carriers that *are* subject to the rules. Those carriers, which are

⁷ Free Conferencing asserts that it participated in meetings with FCC staff and filed "written comments" in the proceeding below. Mot. 1-2. But the administrative record does not reflect any comments or other participation by either Free Conferencing Corporation or its CarrierX subsidiary before the *Order* was adopted.

perfectly capable of asserting their own interests, have not joined Free Conferencing's motion.

2. In any event, Free Conferencing is not likely to prevail on the merits. It has made no attempt to show that the transition period the Commission adopted was unreasonable or unsupported by the record before the agency.

Instead, Free Conferencing relies on comments by other parties arguing that a 45-day transition period would be inadequate, as well as events that happened after the *Order* was issued and that Free Conferencing appears to have manufactured, to suggest that the FCC unreasonably and inaccurately predicted that a 45-day transition period would be sufficient. Mot. 4-8. As a general matter, the Commission's predictive judgments "are entitled to *particularly deferential* review, as long as they are reasonable." *United States Telecom Ass'n v. FCC*, 825 F.3d 674, 707 (D.C. Cir. 2016) (internal quotation marks omitted). And it is well settled that the reasonableness of the Commission's predictive judgment must be assessed "on the basis of the record then before it." *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C. Cir. 1999). Free Conferencing cannot prevail merely by asserting that the FCC's prediction regarding the adequacy of a 45-day transition period "appears *ex post* to have been mistaken." *Ibid.* The company must show that "the Commission's decision was unreasonable *ex ante*." *Ibid.* It has made no such showing.

Although some commenters in the proceeding below argued that carriers would need 18 to 24 months to come into compliance with the new rules, *Order* ¶ 77, the Commission identified “contrary evidence in the record” supporting the conclusion that 45 days would provide enough time for local carriers to shift their traffic and “avoid the definitional triggers,” *ibid.* (citing AT&T Feb. 5, 2019 *Ex Parte* at 6). Free Conferencing’s contention that the agency should have given greater weight to the comments questioning the sufficiency of a 45-day transition period is unavailing. Mot. 4-7. The FCC reasonably credited countervailing record evidence demonstrating that access-stimulating carriers “are able to relocate their traffic in days, if not hours,” *Order* ¶ 77, and the fact that the new rules “provide a clear process by which an access-stimulating [carrier] can transition out of being categorized as such,” *ibid.* Accordingly, the FCC had a reasonable basis for predicting that carriers could achieve compliance within 45 days after the rules took effect.

Furthermore, as explained in its opposition to Free Conferencing Corporation’s waiver petition, AT&T has submitted substantial evidence that the call disruptions about which Free Conferencing complains did not result from an insufficient transition period, but from the company’s own actions. There is evidence, as the Commission recognized, that a “staggering volume of minutes generated” during a short time “can result in call blocking and dropped calls.”

Order ¶ 3. In this case, Free Conferencing itself states that it seeks to shift “9,000,000 calls” comprising “250,000,000 minutes” in response to the *Order*.

Mot. 13. And AT&T states that it received notice from Free Conferencing’s carrier—less than ten days before the transition period expired—that it was being asked to re-route about 127 million minutes of calls in January alone. AT&T Opp. at 2. According to AT&T, Free Conferencing then unilaterally re-routed millions of minutes of calls to tandem switches in Miami and Los Angeles, even though it knew that those switches lacked the capacity to handle such high traffic volumes. *Id.* at 11, 13-16. AT&T maintains that Free Conferencing’s “decision to suddenly and unilaterally re-route millions of minutes” to facilities that could not bear the traffic is the cause of “any call congestion that has occurred.” *Id.* at 16.

Free Conferencing contends that it could not shift its call traffic to other networks within the 45-day transition period because long-distance carriers were “not prepared to transition in a manner that will preserve the integrity of millions of calls.” Mot. 8. But the *Order* made clear that long-distance carriers are under no “legal requirements” to “agree to a new point of interconnection designated by an access-stimulating [local carrier]” that “unilaterally attempt[s] to move the point of interconnection.” *Order* ¶ 34. AT&T states that Wide Voice, a carrier that works with Free Conferencing, sought unilaterally to designate new points of interconnection for Free Conferencing’s traffic in remote areas where long-

distance carriers have no existing facilities. *See* AT&T Opp. at 13-15. Nothing in the *Order* imposes any requirement on a long-distance carrier to accede to a unilateral demand that it accommodate the routing of large volumes of call traffic to remote locations.

3. Because any harm to Free Conferencing appears to have been “self-inflicted,” it also would “not amount to an ‘injury’ cognizable under Article III.” *Nat’l Family Planning & Reproductive Health Ass’n v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006). Such self-inflicted harm is “not fairly traceable to the challenged government conduct.” *Grocery Mfrs. Ass’n v. EPA*, 693 F.3d 169, 177 (D.C. Cir. 2012). And even if Free Conferencing were correct that the disruption of its call traffic is attributable to misconduct by AT&T and other long-distance carriers, the cause of its injury would not be the FCC’s *Order*, but the “independent action of some third part[ies] not before the court.” *Nat’l Ass’n of Home Builders v. U.S. Fish & Wildlife Serv.*, 786 F.3d 1050, 1054 (D.C. Cir. 2015) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Either way, the alleged injury would not be “fairly traceable” to the FCC’s *Order*, and Free Conferencing would lack standing to challenge the *Order*. *Am. Chemistry Council v. Dep’t of Transp.*, 468 F.3d 810, 817 (D.C. Cir. 2006) (internal quotation marks omitted). These jurisdictional questions further diminish the likelihood that Free Conferencing will prevail on the merits.

II. Free Conferencing Has Not Shown Irreparable Injury

A party seeking a stay also must “demonstrate that irreparable injury is *likely*” in the absence of a stay. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). But, as the courts have consistently held, a “self-inflicted” harm cannot qualify as “irreparable” injury because it is “entirely avoidable.” *San Francisco Real Estate Inv’rs v. Real Estate Inv. Trust of America*, 692 F.2d 814, 818 (1st Cir. 1982).⁸

In its opposition to Free Conferencing Corporation’s waiver petition, AT&T has presented substantial evidence that Free Conferencing’s own actions led to the call disruptions that serve as the basis for its stay request. AT&T states that less than ten days before the transition period expired, it received a demand from Wide Voice (Free Conferencing’s carrier) that AT&T re-route about 127 million minutes of calls within the next month. AT&T Opp. at 2. According to AT&T, Free Conferencing then proceeded unilaterally to re-route millions of call minutes to facilities that lacked the capacity to handle the surge in traffic. *Id.* at 11, 13-16. Because Free Conferencing’s own actions appear to have directly contributed to

⁸ See also *Second City Music, Inc. v. City of Chicago*, 333 F.3d 846, 850 (7th Cir. 2003); *Salt Lake Tribune Publ’g Co. v. AT&T Corp.*, 320 F.3d 1081, 1106 (10th Cir. 2003); *Caplan v. Fellheimer Eichen Braverman & Kaskey*, 68 F.3d 828, 839 (3d Cir. 1995); *Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 40 (2d Cir. 1993).

the call disruption problems it is now experiencing, it cannot claim to have been injured, much less irreparably, by the Commission's *Order*.

III. A Stay Would Harm Other Parties And The Public Interest

A stay in this case would harm long-distance carriers and their customers. The new rules are reasonably designed to dismantle arbitrage schemes that impose unjust and unreasonable costs on both providers and consumers of long-distance telephone service. As a result of access arbitrage, "long-distance customers" throughout the nation have been "forced to bear the costs of 'free' conferencing and other services" that "only a small proportion of consumers" use. *Order* ¶ 20. If a stay is granted, access arbitrage schemes will persist, and long-distance carriers and their customers will continue to shoulder the cost of inequitable access charges artificially generated by access stimulation.

In addition, a stay would not serve the public interest. Even if (as Free Conferencing asserts) many of its calls "could fail" without a stay (Mot. 13), such call completion issues appear to be the consequence of its own actions. Moreover, access stimulation generally is a form of regulatory arbitrage that unfairly enriches the access stimulator and distorts competition "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." *Order* ¶ 26. Although roughly 75 million

consumers use “free” high-volume calling services, those services “are paid for by the more than 455 million subscribers of voice services across the United States, most of whom do not use high-volume calling services.” *Id.* ¶ 25. If the rules are stayed, implicit subsidies and inefficiencies will continue to skew competition in the telecommunications market. Given these competitive concerns, there is “no reason to allow access-stimulating [carriers] ... to continue to benefit from access arbitrage schemes.” *Id.* ¶ 76.

CONCLUSION

For the foregoing reasons, the Court should deny the motion for stay.

Respectfully submitted,

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January 17, 2020

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CERTIFICATE OF FILING AND SERVICE

I, James M. Carr, hereby certify that on January 17, 2020, I filed the foregoing Opposition of Federal Communications Commission to Emergency Motion for Stay with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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**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

**OPPOSITION OF AT&T SERVICES, INC.
TO FREE CONFERENCING'S PETITION FOR EXPEDITED WAIVER**

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**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

**OPPOSITION OF AT&T
TO PETITION FOR WAIVER**

AT&T Services, Inc. (“AT&T”) hereby submits its opposition to the Petition For Expedited Waiver (“Pet.” or “Petition”) filed by Free Conferencing Corporation (“Free Conferencing” or “Movants”) of the Commission’s *Access Arbitrage Order*.¹

INTRODUCTION AND SUMMARY

Free Conferencing’s request for “waiver” should be denied.² The request is entirely lacking in merit, misstates critical facts, and ignores the overwhelming role that Movants themselves play in causing the call congestion about which they complain.

Although Movants argue that the Commission’s new access stimulation rules are causing “irreparable harm to [their] business,” Pet. at 6-7, any harm is completely self-inflicted. As the Commission has found, Movants’ arbitration-oriented business model itself harms the public

¹ Report & Order, *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, 34 FCC Rcd. 9035, ¶ 3 (2019) (“*Order*” or “*Access Arbitrage Order*”). As discussed below, Free Conferencing is closely associated with a number of other entities, including Wide Voice, LLC (“Wide Voice”) and HD Tandem, which are engaged in promoting and profiting from access stimulation. These companies are collectively referred to as “Movants,” with individual entities specified in certain instances.

² This waiver request neither identifies the rules for which a waiver is sought nor any meaningful standard for when the requested “waiver” would end. Additionally, nowhere in this “waiver” petition do Movants acknowledge that both the Commission and the D.C. Circuit have each already declined to stay the same rules, which the Commission has determined need to be implemented now to address numerous public interest harms.

interest. *Order* ¶¶ 20, 25. Specifically, by exploiting regulatory loopholes in the Commission’s prior rules, Movants have forced hundreds of millions of ordinary Americans to subsidize its services even though they do not use them. The new rules are designed to close these loopholes and to curtail that anti-consumer business model. Rather than shift to a different revenue model that does not burden millions of third-party consumers, Movants claim they need an indefinite extension of their ability to engage in business as usual. Movants’ arguments about “irreparable harm” thus boil down to a complaint about the very public interest benefits the rules are designed to achieve.

There is similarly no merit to Movants’ cynical claims (Pet. 4, 6) about congestion and any ensuing dropped calls. Although it relies on telephone numbers provided by its local carrier partners, Free Conferencing effectively controls the flow of traffic to its conferencing facilities. Movants—not the Commission, AT&T, or other long distance carriers—caused that call congestion by abruptly seeking to reroute millions of minutes of access stimulation calls to locations they knew lacked sufficient capacity to handle that traffic.

None of the call congestion about which Movants complain occurred until they unilaterally decided to re-route millions of minutes of traffic at the eleventh hour. Months after the *Order*, Movants abruptly announced to AT&T on January 2, 2020, that AT&T must begin within days to re-route about 127 million minutes of calls in January alone. By comparison, AT&T is typically billed for about 20 million minutes per month by Verizon for *all* of its New York City traffic.³ Movants know that, as the Commission found, such sudden shifts of enormous minutes “result in call blocking or dropped calls.” *Order* ¶ 3. Movants apparently believe, however, that creating

³ AT&T Ex Parte Letter, at 3 (Feb. 5, 2019) (“*AT&T Feb. 5 Ex Parte*”); *Order* ¶ 15.

congestion in this way gives them leverage to extract arrangements with long-distance carriers so they can continue to collect inflated revenues and thereby maintain their existing arbitrage scheme.

Contrary to Movants' claims, nothing in the Commission's *Order* required them to re-route large volumes of traffic at the last minute. Movants could have instead undertaken "a number" of alternative approaches in response to the Commission's regulatory reforms. *Order* ¶ 79. For example, they could have reduced the number of access-stimulated minutes, charged their end users, or adopted an advertising-based revenue model. *Id.* Or Movants could have "self-provision[ed]" by paying for transport facilities capable of carrying the enormous volumes of calls that they voluntarily chose to re-arrange at the eleventh hour. *Id.* Movants chose disruption—and then cited that disruption as a basis for yet further delays in regulatory reform.

Movants have been on notice for nearly ten years that this day would come, that they would need to become legitimate businesses, and that they would need to rely on voluntary revenue sources rather than irrational, anti-consumer cross-subsidies. Each step along the way, Movants have ignored that imperative, causing needless disruption to interconnecting carriers. And now they are up to the same tricks again. The fact that Free Conferencing's "free" conference calls are experiencing some call congestion is thus the fault of Movants—not that of the Commission, AT&T, or other long distance carriers.

BACKGROUND

Movants' Harmful Access Stimulation Schemes. Free Conferencing is one of several closely associated entities responsible for numerous "access stimulation" schemes across the country. Under these schemes, a local exchange carrier ("LEC") partners with a provider of "free" calling services, such as "free" conferencing services, "free" chat lines, "free" international calls, and/or "free" streaming radio. *Order* ¶ 1. The calls can be free to the users of the calling service, but the costs of these calls are paid by interconnecting interexchange and wireless (collectively,

“long distance”) carriers—and ultimately by their hundreds of millions of customers. *Id.* ¶¶ 20, 25.

The arrangements between a LEC and free calling provider generate enormous volumes of calls to the LEC. The LEC typically places its interconnection facilities in a remote rural area—not because doing so is efficient, but precisely because it is inefficient. *See Order* ¶¶ 11, 14, 21-23, 31 (access stimulation “rel[ies] on unusually expensive calling paths”). Specifically, these LECs’ tariffs contain the enormous access charges that have previously received regulatory approval in remote areas only because call volumes in such areas have traditionally been very low and the ratio of network costs to minutes of use has thus been very high. When customers of long distance carriers place calls to a “free” conferencing service, the LEC imposes these tariffed charges on the long distance carriers for completing each call. Those charges, however, are absurdly inflated because the traffic-pumping LEC’s ratio of network costs to minutes of use is orders of magnitude lower than the corresponding ratio for ordinary rural LECs serving residential customers living in the same area.⁴ The LEC then shares this windfall with the free calling provider, which uses it to subsidize the costs of the “free” calls (plus a presumably handsome profit).

As the Commission and the courts long ago concluded, “hundreds of millions of Americans pay[] more on their wireless and long distance bills” because the costs of the “free” calls are passed

⁴ In particular, under the Commission’s “existing rules, IXC’s must pay 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. This creates an incentive for intermediate access providers and access-stimulating LECs to increase tandem switching and transport charges.” *Order* ¶ 14. The result 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.” *Id.*

on via these “hidden, inefficient charges.”⁵ In the D.C. Circuit’s words, access stimulation schemes are “a ‘win-win’ for the local carrier and its phone call-generating partner,” but “the losing end” consists of “the public and the interexchange carriers” that foot the bill for “artificially inflated and distorted access charges.” *All Am. v. FCC*, 867 F.3d 81, 85 (D.C. Cir. 2017) (quotation marks omitted). In short, everyone that pays for long distance services—including via a “bundle” of services such as those commonly offered with wireless calling plans or “triple play” offers of internet, television, and phone—pays more to subsidize the costs of “free” calling services placed by others. *Id.*; *Transformation Order* ¶¶ 9, 648, 663-64; *Order* ¶¶ 2, 20, 25.

Free Conferencing’s Associated Entities Exploit The Commission’s Rules To Force Subsidies On Calls That Free Conferencing Stimulates. Movant Free Conferencing is one of the largest promoters of these supposedly “free” (*i.e.*, irrationally cross-subsidized) calling services. It has traditionally had contracts with numerous LECs in rural areas—concentrated in Iowa and South Dakota (*see Order* ¶ 24)—to handle billions of minutes of free conference calls. Under the contracts, Free Conferencing usually receives a substantial portion—as much as three-quarters—of the access revenues generated by its LEC partners.

Because access stimulation schemes have adapted to take advantage of the access charges associated with intermediate services (*see note 5, supra*), Free Conferencing is closely associated with other entities that provide these intermediate services, both on an unregulated and regulated basis (*see note 1, supra*). Wide Voice is a regulated common carrier that offers various tandem switching services via tariffs or negotiated contracts. HD Tandem, which is also closely associated with Free Conferencing, provides intermediate transport services on an unregulated basis.

⁵ *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, ¶ 9 (2011) (“*Transformation Order*”), *aff’d*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

Free Conferencing stimulates enormous volumes of traffic to rural areas, a scheme which, as stated above, imposes significant costs on long distance carriers to transport the calls to these areas. Then, HD Tandem and Wide Voice seek to insert themselves into these call routing arrangements, so that they can collect these tandem and transport charges pursuant to tariff or “negotiated” contracts. Although HD Tandem offers service on an unregulated basis, its associated companies (including Free Conferencing) ensure that long distance providers carriers will not negotiate contracts with it under efficient, free market conditions. Once a conference-calling entity chooses and partners with a LEC in a remote area, long distance carriers would need to purchase tariffed transport and tandem services from either access stimulation LECs or other intermediate providers. *Order* ¶ 14. These providers’ inflated rates create a “price umbrella,” enabling HD Tandem to charge inflated rates as well. *See Order* ¶ 16. In effect, Free Conferencing initiates a scheme by which long distance carriers must terminate large volumes of calls, typically to distant rural areas, and then its associated entities make money by “helping” these carriers trim the high costs that Free Conferencing’s schemes create.⁶

The Commission’s New Rules Allow For Reasonable Time And Many Options For Compliance. Movants have had more than ample time to come into compliance with the Commission’s new rules—which merely strengthened existing rules dating from 2011 notifying

⁶ Underscoring this scheme, in the rulemaking leading to the *Access Arbitrage Order*, HD Tandem advocated the Commission to adopt, as a “solution” to the transport problems created by Free Conferencing’s traffic, a presumption that carriers like HD Tandem could bill and collect up to 15 miles of transport on each call that Free Conferencing generates. *See Order* ¶ 63. In essence, Movants wanted the Commission to revise its rules so that whenever Free Conferencing generates “free” calls, its associated companies must be paid to carry those calls. This was just one of a variety of proposals that the Commission agreed were “obviously intended to further arbitrage activities, rather than stop them.” *Order* ¶ 60 (internal quotation marks omitted).

Movants and other traffic pumpers that their schemes should be “curtailed.” *Transformation Order* ¶ 9.

In June 2018, the Commission adopted a notice of proposed rulemaking entitled “Updating The Intercarrier Compensation Regime to *Eliminate Access Arbitrage*,” and the Notice clearly provided that the Commission was investigating “ways to eradicate” or reduce Free Conferencing’s access stimulation “schemes.”⁷ The rules that the Commission ultimately adopted are similar to those proposed by a group of industry participants in April 2018.⁸

After receiving and considering public comment, the Commission released a draft Order on September 5, 2019, and after additional input, released the *Order* on September 27, 2019. As noted, the Commission’s *Order* found that the very existence of access stimulation schemes like those promoted by Movants “can result in call blocking and dropped calls.” *Order* ¶¶ 3, 95. Dropped calls are especially likely when access stimulators elect to quickly move large volumes of traffic, many times above the “normal call volume” (*id.* ¶ 3)—which is precisely what is happening with Movants’ traffic.

The *Order* also addressed “Implementation Issues” in detail, including claims by HD Tandem that the Commission left “too little time” for entities to “come into compliance.” *Order* ¶¶ 74-88. The *Order* found that entities affected by the new rules were “free to respond in a number of ways” to ensure that they could come into compliance, within the time periods required—which, for most of the new rules, allowed carriers 45 days after Federal Register publication to implement changes. *Id.* ¶¶ 77-79.

⁷ Notice of Proposed Rulemaking, *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, 33 FCC Rcd. 5466, ¶ 3 (2019) (“*NPRM*”) (emphasis added).

⁸ See *Order* ¶¶ 21-22 (citing Letter from NTCA, AT&T, Verizon, Windstream, NCTA, Frontier, CenturyLink, WTA, USTelecom to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 (filed Apr. 11, 2018)).

Despite these numerous options, Movants' response to the *Order*—unilaterally deciding to continue their arbitrage scheme and at the eleventh hour to shift millions of minutes of its free calls to new providers and new locations—all but ensured that the call completion issues highlighted in the Commission's *Order* would come to pass. As explained in further detail below, these problems are caused not by the Commission or any long distance provider, but by Movants and other access stimulators.

STANDARD

Waiver of the Commission's rules may be granted “for good cause shown.” 47 C.F.R. § 1.3. To demonstrate “good cause,” a petitioner must put forward specific facts showing both that “special circumstances warrant a deviation from the general rule and [that] such deviation will serve the public interest.” *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In doing so, the petitioner must articulate “special circumstances beyond those considered during regular rulemaking.” *Id.*; *see also In re NECA Pet. for Waiver*, 3 FCC Rcd. 6042, ¶ 8 (1988) (rejecting petition that relied on arguments that the Commission “directly or indirectly rejected in adopting the rule”).

ARGUMENT

I. MOVANTS ARE NOT SUFFERING LEGALLY COGNIZABLE HARM; THEY ARE *CAUSING* IRREPARABLE HARM TO LONG DISTANCE CARRIERS AND CONSUMERS, INCLUDING THE RISK OF DROPPED CALLS.

Movants' claim that they are suffering “irreparable” harm ignores the Commission's findings that, by clinging to the same disreputable business model, they have been *imposing* substantial harm on long distance carriers and ultimately hundreds of millions of American consumers for more than a decade. Free Conferencing's free calling services are not actually “free”—rather, the costs of its services, and its profits, have traditionally been recovered via

“implicit subsidies” that are “paid for by the more than 455 million subscribers of voice services across the United States.” *Order* ¶ 25; *see also All Am.*, 867 F.3d at 85 (on “the losing end” are “the public and the interexchange carriers”). Additionally, beyond “imposing direct access costs on IXC— and, by extension, their customers—access stimulation imposes other harms,” including that the “staggering volume of minutes generated by these schemes *can result in call blocking and dropped calls.*” *Order* ¶ 3 (emphasis added).

For more than a decade, long distance carriers and their customers have been substantially harmed by paying these implicit subsidies. In 2011, the Commission cited evidence that Movants and other such operations were costing “between \$330 and \$440 million per year” in implicit subsidies, and it found that their business schemes were not legitimate, but instead were “wasteful” and “harmful” and should thus be “curtailed.” *Transformation Order* ¶¶ 648-66.

Yet, as the record clearly shows, Movants and other access stimulators ignored nearly a decade of warning flags from the FCC.⁹ They did not curtail these harmful schemes in response to the Commission’s 2011 rules and other actions. Rather, they “adapted” their schemes to exploit new regulatory loopholes, and the number of access stimulation minutes has thus not dropped meaningfully since 2011—meaning that carriers and consumers still pay tens of millions of dollars annually in inflated access charges to subsidize Movants’ primary business model (and, under a

⁹ *All Am.*, 867 F.3d at 85 (“Starting in 2010, the Commission issued a series of orders concluding that . . . traffic pumping schemes were unlawful under Sections 201(b) and 203(c) of the Communications Act”); *All Am. Recon. Order*, 29 FCC Rcd. 6393, ¶ 16 (2013) (rejecting position that access stimulators can act “with impunity” when they act unreasonably but in compliance with the letter of existing rules; “[i]ndeed, the Commission’s prior decisions demonstrate the exact opposite to be the case”); *see also Sprint Commc’ns Co. v. Crow Creek Sioux Tribal Court*, 121 F. Supp. 3d 905, 924 (D.S.D. 2015) (the purpose of the *Transformation Order* “was to curtail rather than legitimize access stimulation . . . [N]othing in [that *Order*] or the FCC’s prior and subsequent decisions stands for the proposition that access stimulation should simply be viewed as lawful conduct”).

conservative estimate, have paid about half a *billion* dollars since 2011). *See Order* ¶¶ 3, 15, 20. Thus, even after being told in 2011 of the numerous “adverse effects of access stimulation,” *Transformation Order* ¶ 660, Free Conferencing continued to operate and promote free calling services that “ultimately cost consumers” millions of dollars annually. *Id.* ¶ 649.

Against this backdrop, Movants’ claims that their business model is being irreparably harmed by the Commission’s strengthened rules ring hollow.¹⁰ Movants and other access stimulators have long been free to become legitimate businesses and comply with the rules by adopting new, efficient business models—for example, by charging users for service or by adopting an advertising-based approach similar to those used by countless online companies. *E.g.*, *Order* ¶ 27 (after implicit subsidies are eliminated, “customers who were using the ‘free’ services, and who value those services more than the costs of providing them, will continue to purchase these services at a competitive price”); *id.* ¶ 79 (“Our rules leave carriers free to respond in a number of ways,” including “changing end user rates” or an “advertising-supported approach”). They have simply chosen not to do so.¹¹

Thus, while Free Conferencing claims it will transition “in every way that it can,” Pet. at 4, it plainly has no intention of ending access arbitrage; it wishes to continue relying on cross-subsidies rather than alternative sources of revenue. And although Free Conferencing claims it

¹⁰ To the extent Movants are currently losing revenues due to the new rules, any harm arising from that is not irreparable, but self-inflicted—as AT&T explained in response to similar claims of irreparable harm raised by the access stimulation LECs and conference companies that unsuccessfully sought a stay of the Commission’s rules. *See Opp’n of Intervenor AT&T to Petitioners’ Emergency Motion for Stay*, at 16-20, *Great Lakes Communication Corp. v. FCC*, No. 19-1233 (D.C. Cir. Nov. 14, 2019).

¹¹ Free Conferencing’s website continues to encourage users to place these supposedly “free” calls, proclaiming that “Calls are 100% FREE.” Ex. A; *see also id.* (“Yes, FreeConference really is free! There is no catch. This is not a limited-time offer – no gimmicks, no gotchas, and no tricks. These standard free conference services are full-featured, with only minimal service limitations.”).

has “expended an incredible amount of time and resources” to comply with the Commission’s supposedly “unrealistic” rules, Pet. at 6, it describes *no* steps either it or other Movants have taken to alleviate the well-established harms associated with free calling services—including the risk of call blocking and dropped calls. *Order* ¶¶ 3, 95. Rather, Movants seem intent on continuing to abuse the Commission’s rules so that long distance carriers and their customers subsidize Movants’ “free” services. In these circumstances, there is simply no basis to waive or stay the new rules.

II. ANY CALL CONGESTION SUFFERED BY MOVANTS IS SELF-INFLICTED, NOT THE FAULT OF LONG DISTANCE CARRIERS OR THE COMMISSION.

Free Conferencing also contends that it has attempted to comply with the new rules but that some of its customers have been unable to connect to its service because of network congestion. It principally blames this congestion on the Commission’s rules and on long distance carriers, which it claims (1) have ignored new switches designated by Wide Voice to accept access stimulation traffic and (2) have failed to add capacity in response to shifts in traffic. Pet. at 4-5. These claims are entirely lacking in merit. Movants, not long distance providers or the Commission’s rules, caused the network congestion.

Specifically, well after the *Order* was issued, Movants sought unilaterally to establish new switches in remote locations where IXCs have no presence and no obligation to connect, and that would make no sense as a location for handling massive levels of inbound calls apart from access arbitrage. *See Order* ¶ 34. Then, in early January, they radically increased their prior traffic forecasts and, two business days later, began unilaterally to re-route millions of minutes of “free” calls to facilities that they *knew* lacked capacity to handle such enormous call volumes, and that could not be upgraded on such limited notice. In short, even though Movants had ample notice of the Commission’s rules, they nonetheless responded to the *Order* in a way that ensures that their

“free” calling schemes would in fact lead to dropped calls, a phenomenon that the Commission has properly attributed to those schemes rather than interconnecting carriers. *Order* ¶ 3.

A. Movants Failed To Take Available, Reasonable Steps To Comply With The Order.

Preliminarily, Movants’ initial response to the *Order* is as notable for what these entities elected *not* to do than by what they belatedly *did* do. Even though the *Order* was released over three months ago, Movants never filed a timely petition for reconsideration of the *Order*. Nor did these entities join the prior stay request filed by other access stimulators at the Commission and then at the D.C. Circuit.¹² In fact, after the D.C. Circuit denied a stay, they did not even object to the Commission’s successful motion to hold all petitions for review of the *Order* in abeyance for at least six months.¹³

Just as important, Movants apparently let three months go by without taking any of the other measures outlined in the Commission’s *Order*. To AT&T’s knowledge, they took no meaningful steps to reduce the number of minutes they stimulated, to charge their end users, to adopt an advertising-based approach similar to those used by online companies, or to begin “self-provisioning” by paying for transport facilities with adequate capacity. *Order* ¶¶ 77-79. To the extent Movants wanted to respond to the *Order* by changing the ultimate destination of the traffic they generate, they also could have engaged in appropriate “self-provisioning” steps to avoid any call congestion, but they have not done that either.¹⁴

¹² See Petitioners’ Emergency Mot. For Stay of FCC Order Pending Review, *Great Lakes Communication Corp. v. FCC*, No. 19-1233 (D.C. Cir. Oct. 30, 2019).

¹³ See Unopposed Mot. to Hold in Abeyance, *Great Lakes Communication Corp. v. FCC* (D.C. Cir. Dec. 11, 2019).

¹⁴ An agreement between AT&T and Wide Voice bears directly on this issue and supports AT&T’s position. A confidentiality provision may bar AT&T from disclosing the details of that agreement unless the Commission directs it to do so, as it may wish to do.

AT&T cannot be responsible for call congestion that Movants could have addressed by paying for additional capacity, and there are likewise no grounds to find any “irreparable” harm.

B. The Steps Movants Elected To Take—Unilaterally Changing Interconnection Points And Re-Routing Large Volumes Of Traffic At The Last Minute—Are What Caused Any Call Congestion.

When Movants did act, their business decisions were unreasonable, and any ensuing call congestion was caused by their own unilateral decision to re-route millions of minutes of “free” calls at the last minute, when such large scale network reconfigurations are—in Wide Voice’s own words—“not achievable.” *See* Wide Voice Response, at 6, WC Docket No. 18-155 (Sept. 16, 2019) (“*Wide Voice Sept. 16 Ex Parte*”).

Wide Voice’s Unilateral Designation of a New Tandem Was Not Lawful. Beginning in December, months after the issuance of the *Order*, Wide Voice tried to force AT&T and other long distance carriers to route access stimulation traffic to a new tandem switch in Rudd, Iowa. Wide Voice unilaterally sought to interconnect at this distant and remote town of about 350 people. *See* Ex. B (Emails of L. Walker (AT&T) and T. DeCosta (Wide Voice)). As in nearly all cases of access arbitrage, it had no legitimate reason to funnel access stimulation traffic to such a remote outpost. The only possible rationale for doing so was to open a new chapter of access arbitrage—by enabling its associated companies to extort payments from long distance companies that had no presence in this remote area in Iowa.

In the underlying rulemaking, AT&T had explained to the Commission that some access stimulators might play exactly this game—*i.e.*, might seek to force long distance carriers to pay added transport costs by designating new tandem switches in remote locations. *Order* ¶ 34. The Commission found that additional rule changes were unnecessary to address that scenario because there are not “any existing legal requirements” in the first place “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.” *Id.*

Wide Voice’s decision in December to move points of interconnection to a new tandem switch in Rudd, Iowa is precisely the scenario described in paragraph 34 of the *Order*. And the *Order* makes it clear that long distance carriers do not have to agree to re-route access stimulation traffic to remote outposts like Rudd, Iowa when an access stimulator unilaterally chooses such a location. In short, to the extent any call congestion is occurring because long distance carriers lack connections to Rudd, Iowa, that congestion is caused by Movants’ unilateral and unreasonable decision to force traffic to be routed to this point.¹⁵

Movants’ Sudden and Unilateral Re-Routing of Large Traffic Volumes Caused Call Congestion. After this Rudd, Iowa gambit, Movants caused call congestion by unilaterally announcing that it would begin to re-route over one hundred million minutes of access stimulation traffic to existing interconnection points with AT&T. They did so on less than a week’s notice, even though they knew that such rerouting under such a compressed time frame was infeasible, and that calls would be dropped given the existing capacity where AT&T hands off traffic to Wide Voice’s tandem switches. *See Wide Voice Sept. 16 Ex Parte*, at 6. In fact, Movants’ actions seem intended to create a routing controversy that they could use at the Commission and the courts in

¹⁵ Northern Valley, another carrier engaged in access stimulation, recently tried a similar end run around the new rules. For years, long distance carriers handed off access stimulation traffic in Sioux Falls, South Dakota. After the *Order*, Northern Valley attempted to modify its access tariff so that IXC’s would be forced to hand off traffic at a remote point nearly 200 miles away. Northern Valley’s attempted change to the interconnection point was, like Wide Voice’s, entirely unilateral and unreasonable. The Commission Staff suspended the Northern Valley tariff and has begun to investigate it. *See Suspension Order, In re Northern Valley Communications, LLC Tariff F.C.C. No. 3*, WC Docket No. 20-11, DA 20-40 (Jan. 10, 2020); *see also* Sprint Petition to Reject or Suspend, WC Docket No. 20-11, at 3 (Jan. 3, 2020) (Northern Valley has “simply inserted a new tandem in a remote location for the sole purpose of shifting transport costs associated with pumped traffic back to the interexchange carriers that deliver such traffic to Northern Valley”).

order to gain leverage over long distance carriers. It appears that they hope to force such carriers to “agree” to avoid blocking by using the transport services of HD Tandem, and thereby continue to indirectly subsidize the “free” conference services that Free Conferencing continues to promote.

Specifically, in December 2019, after Wide Voice unilaterally designated Rudd, Iowa as a new interconnection point, AT&T immediately requested, based on its usual business practice, a traffic forecast for this location. *See* Ex. B, Email of L. Walker (Dec. 4, 2019). Wide Voice ultimately told AT&T to expect about 300 to 400 hundred thousand minutes in January at Rudd, with volumes rising sharply after that. *See* Ex. B, Emails of T. DeCosta (Dec. 9, 2019); Ex. B-1 (e-mail attachment with traffic forecast, of which approximately 40% was designated for AT&T). Then, on January 2, 2020, Wide Voice provided an additional forecast—on that date, it suddenly “forecasted” over **127 million additional minutes** in January (with similarly large volumes in other months of the year) for Rudd and four other locations. *See* Ex. C, Email of T. DeCosta (Jan. 2, 2020); Ex. C-1 (e-mail attachment with additional traffic forecast).

Wide Voice also informed AT&T that it wanted to add—again, unilaterally—a new tandem switch in South Dakota and that AT&T needed, in a few days, to expand dramatically the capacity of the facilities connecting to the Wide Voice tandem switches in Miami or Los Angeles. *See id.*; Ex. D, Email of T. DeCosta (Jan. 6, 2020). AT&T quickly responded, noting that the new forecasts “jumped significantly from [the] previous forecast” in December, and that the Miami and Los Angeles tandems “will not handle the volumes you’ve forecasted.” *See* Ex. E, Email of L. Walker (Jan. 3, 2020). A few days later, after Wide Voice claimed that “AT&T will definitely be blocking,” AT&T explained that it “is not blocking traffic. The actions that Wide Voice took is what is causing blocking. . . . We are aware and I’m sure you are too that we do not have sufficient capacity at EITHER tandem [in Los Angeles or Miami] (let alone the 2 NEW tandems that we are

not interconnected to) for your forecasts. I'm not sure why you would proceed with this move and cause blocking? Further moves are just reckless." *See* Ex. F, Email of L. Walker (Jan. 8, 2020).

Based on these exchanges, any call congestion that has occurred is the result of Movants' decision to suddenly and unilaterally re-route millions of minutes to Miami or Los Angeles. The facilities in those cities were designed by the parties to carry a specific capacity, and re-routing millions of minutes onto these facilities—with just a few days of notice—was indeed "reckless" (*id.*) and unreasonable. As the Commission stated in the *Order*, access stimulation schemes can lead to "call blocking and dropped calls" when—as here—entities engaged in access stimulation quickly increase traffic far beyond the "normal call volume." *Order* ¶ 3.

Movants seem to blame these sudden increases on the decisions by some LECs in Iowa to exit the access stimulation business. Of course, this was entirely foreseeable, as the purpose of the *Order* was to reduce the ability of LECs that partnered with free conference services to continue to engage in access stimulation, and Movants should thus have begun exploring alternative arrangements months ago. Further, even assuming, *arguendo*, that Free Conferencing, despite its best efforts, lacked notice of its partners' decisions, these LECs' decisions do not justify sudden re-routing of millions of minutes on facilities lacking capacity to handle such traffic increases. Rather than unilaterally re-routing traffic, Free Conferencing could have reduced the volumes of calls until its associated companies took steps cooperatively with long distance carriers to expand capacity, either by taking the steps suggested by the *Order* or by taking the numbers out of service.

Instead, they apparently “ported” the numbers from those LECs to areas lacking sufficient capacity, thereby causing call congestion.¹⁶

CONCLUSION

For the reasons discussed above, the Commission should deny Free Conferencing’s request for a waiver.

Respectfully submitted,

/s/_____
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Dated: January 15, 2020

Counsel for AT&T Services, Inc.

¹⁶ Free Conferencing argues that AT&T told the Commission, and that the Commission agreed, that access stimulation traffic can be re-routed in “days, if not hours.” *Order* ¶ 77 (citing *AT&T Feb. 5 Ex Parte* at 6); *see* Pet. at 4. This claim misstates the record. AT&T never claimed that significant levels of access stimulation traffic could always be moved, on a unilateral basis, in a manner of days or hours. Rather, AT&T’s letter was making a different point: that free calling companies like Free Conference can switch their traffic from one access stimulation LEC to a different access stimulation LEC by means of number portability. While AT&T pointed to an instance where that happened very quickly, AT&T nowhere even implied that such sudden re-arrangements of traffic are routine or could always be immediately accommodated. In the situation described in AT&T’s *ex parte* submission, AT&T was able to move the traffic quickly because the existing capacity in that case was sufficient. That is not the case with the existing tandem locations in Los Angeles or Miami, given the massive amounts of traffic Movants sought to shift.

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2020, I caused a copy of the foregoing Opposition of AT&T to Free Conferencing's Petition for Expedited Waiver to be served as indicated below to the following:

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/s/ Michael J. Hunseder

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EXHIBIT A

Setting up a Free Telephone Conference Call

How to determine the best free conference call service for my needs

Ask yourself the following 9 questions to help you choose the ideal free conference call service.

1. Capacity – How large are your calls and how often will they take place?
2. Technology – What is the skill set of those involved in your conference calls?
3. Telephone or Web Conferencing or both – How will your participants join the call?
4. Participant fees – Will you require a toll-free number?
5. Moderator Controls – Do you need to be able to manage the call as host?
6. Scheduling – Do you need a system to book calls and manage attendance?
7. Audio Quality – Does the free conference call service provide excellent quality?
8. Budget – Is your service transparent or are there additional hidden costs?

Looking for an affordable, conference calling solution? Try FreeConference.com (<http://freeconference.com/>), the original free conference calling service. It is by far the best free conference calling service. Easy, reliable, free conference calling – no downloads required. Create your free conference account now > (<https://www.freeconference.com/sign-up/>)

How do I get a free conference call number?

1. Sign up (<https://www.freeconference.com/sign-up/>) with only your email and password.



2. You will receive a free conference call number that can be used immediately.
3. Just provide all conference participants with your new dial-in number and access code.
4. Let them know when to call in.
5. Get talking!

<https://www.freeconference.com/sign-up/> (<https://www.freeconference.com/sign-up/>)

How do I make a free conference call?

Perfect for meeting with smaller groups for unplanned meetings, there is more than one way that you can initiate an on-demand **FreeConference.com** call right now.

- Simply **give your Dial-In Number and Access Code to all your participants**. Once everyone has dialed in using the same access code at the same time you will all be connected together on the conference line.
- Your call-in information can be found at the top of the Home page of your account. Simply click on the **'Copy call information'** button to add this information to your clipboard and paste into an email or text message to send to participants.
- Or initiate a call using your online meeting room. Login to your FreeConference.com account and click **"Start"**. *Note that you can have your callers join **via phone or internet and everyone will be connected together** in the same conference call.*
- The first caller in a web and/or telephone conference will hear hold music. Once at least one other participant arrives this music will stop and you will hear each other.
- While in the Online Meeting room you will see that you can **invite participants** via the button at the top of your Participant List on the right-hand side of the screen.

Read in more detail about how to set up a free conference call on our support site (<https://support.freeconference.com/support/home>).

How do I set up a free conference call?

There's more than one way to invite others to join you on a conference call. You can easily use your FreeConference Scheduling system

(<https://support.freeconference.com/support/solutions/articles/42000030670-how-do-i-schedule-a->



invite participants, simply sign into your account online and click **Schedule**. Our system gives you the option to enter your invitees' email addresses manually, upload your email contacts via Excel or even migrate them from your Google account.

- If you have already scheduled a conference through your account, you can easily send out additional invites by editing a call (<https://support.freeconference.com/support/solutions/articles/42000030677-how-do-i-edit-my-scheduled-call->) via the 'upcoming' section of your account.
- Invite others without signing in online by simply **sending your dial-in number and access code** via text, email, snail mail or however you set fit.
- Windows users can invite attendees with our convenient **Outlook Add-in** which allows you to send invitations from the comfort of your own email. You may download the App here:
<https://hello.freeconference.com/conf/apps/downloads>
(<https://hello.freeconference.com/conf/apps/downloads>)
- Keep in mind, you and your participants can join a conference call without the use of a phone by **providing your personal online meeting room link**. Learn more video conferencing and the use of your online meeting room here: [How To Use Your Online Meeting Room](https://support.freeconference.com/support/solutions/articles/42000030703-how-to-use-your-online-meeting-room)
(<https://support.freeconference.com/support/solutions/articles/42000030703-how-to-use-your-online-meeting-room>)

How do I get a free conference call number and access code?

Getting a free dial-in number and access code is easy.

1. Sign up (<https://www.freeconference.com/sign-up/>) with only your email address, name, and password
2. We send your free conference call number and code straight after
3. You can use the account immediately!

<https://www.freeconference.com/sign-up/> (<https://www.freeconference.com/sign-up/>)

Where can I get free conference call numbers?



After creating an account with FreeConference.com, you will get a conference call number, along with access to a large number of free local international numbers. You can find the full list of free numbers within your account via 'Dial-In Information' and then select 'Dial-In Numbers' tab.

View a full list of our available free conference call numbers here: Dial-Ins and Rates

(<https://www.freeconference.com/dial-ins-rates/>)

Do free conference calls include toll-free dial-in numbers?

Our basic free subscription includes unlimited use of a large number of US and international dial-in numbers. Toll-free dial-in numbers are available with any of our Paid Plans. With the Starter Plan, the cost for toll-free dial-ins is 10 cents a minute for each caller that uses the toll-free number (the rate drops with the Plus and Pro plans). The Starter Plan also includes 100 toll-free & premium international minutes each month.

Note: it is not required that all participants use the same dial-in number, whether it is toll-free or not. All participants can choose their preferred dial-in number and will connect to the same meeting by entering the unique access code for that room.

Take a look at our Pricing Page (<https://www.freeconference.com/pricing>) for a list of our paid plans, any of which provide you with the toll-free option.

What are Toll-Free Dial-ins?

Toll-free numbers are telephone numbers which can be dialed with no charge to the person placing the call. These numbers allow callers to reach businesses and/or individuals without being charged long-distance fees for the call. We currently have Toll-Free 800 dial-in numbers available in the following countries:

- United States
- Canada



- Australia
- Germany
- Singapore
- United Kingdom

You can read more about our toll-free service and find out how to sign up for a premium subscription on our support site (<https://support.freeconference.com/support/solutions/articles/42000030787-toll-free-dial-in-numbers>) or Pricing Page (<https://www.freeconference.com/pricing>).

Yes, FreeConference really is free!

While we do offer paid plans with premium features, **there is absolutely no requirement to purchase anything at all to host unlimited conference calls or online meetings.**

There is no catch. This is not a limited-time offer – no gimmicks, no gotchas, and no tricks. These standard free conference services are full-featured, with only minimal service limitations.

What is included for FREE:

Unlimited conference calls

Conference by phone with up to 1000 people at a time

Your own conference line to hold a conference call anytime

17 local and international dial-in numbers

View the list of FREE dial-ins > (<https://www.freeconference.com/dial-ins-rates/>)

Unlimited online meetings

Host online meetings with up to 5 people at a time

Your own online meeting room to use at any time – no downloads required

Video conferencing, screen sharing, document sharing and presenting

Full account access to manage your meetings with ease

Schedule in advance with automated invitations & Reminders

PIN-less Entry & SMS (Text message) alerts

Call Summaries & Call History

Moderator Controls

Mobile Apps (Android & iPhone) & Desktop App

Live Support



What is not included:

Optional **PREMIUM FEATURES** to enhance your conferencing experience, such as

- Call Recording
- Video Recording
- Automatic Transcription with Cue
- Toll-Free 800 Numbers
- Premium International Numbers
- More online meeting participants (up to 100)
- Additional Security (Meeting Lock & One-Time Access Code)

Paid plans (<https://www.freeconference.com/pricing/>) start at just \$9.99/month with no commitments or long-term contracts!

Some callers might be required to pay **long-distance fees to their phone service providers** if none of the FREE dial-ins (<https://www.freeconference.com/dial-ins-rates/>) are covered by their personal phone plan.

We can not and DO NOT put charges on your phone bill.

f SHARE (<HTTP://WWW.FACEBOOK.COM/SHARER/SHARER.PHP?U=HTTPS%3A%2F%2FWWW.FREECONFERENCE.COM%2FFAQ%2F>

🐦 TWEET (<HTTP://TWITTER.COM/SHARE?TEXT=SETTING%20UP%20A%20FREE%20TELEPHONE%20CONFERENCE%20CALL&URL=HT>

G+ SHARE (<HTTP://PLUS.GOOGLE.COM/SHARE?URL=HTTPS%3A%2F%2FWWW.FREECONFERENCE.COM%2FFAQ%2FHOW-TO-CONFE>

📌 PIN IT (<HTTP://WWW.PINTEREST.COM/PIN/CREATE/BUTTON/?URL=HTTPS%3A%2F%2FWWW.FREECONFERENCE.COM%2FFAQ%2>

✉ EMAIL (<MAILTO:EMAIL@DOMAIN.COM?SUBJECT=SETTING%20UP%20A%20FREE%20TELEPHONE%20CONFERENCE%20CALL&BO>

🖨 PRINT

in SHARE (<HTTP://WWW.LINKEDIN.COM/SHAREARTICLE?MINI=TRUE&URL=HTTPS%3A%2F%2FWWW.FREECONFERENCE.COM%2FF>

CATEGORIES: Phone Conferencing (<https://www.freeconference.com/faq/category/phone-conferencing/>)

Search FAQ

SE



EXHIBIT B

From: Tandy DeCosta <tdecosta@widevoice.com>
Sent: Monday, December 9, 2019 6:03 PM
To: WALKER, LYN; MALANCA, DONNA C
Cc: Erla Erlingsdottir; Tandy DeCosta
Subject: RE: RUDDIA0104T

Hi Lyn,

Sorry for the confusion on the total minutes. This is my mistake, I sent the total minutes instead of just ATT's portion. ATT is normally about 40% of our total minutes. So if you could take 40% or I can resend you the forecast. Let me know what you would like to do.

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta
Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

From: Tandy DeCosta
Sent: Monday, December 9, 2019 1:28 PM
To: WALKER, LYN <lw3579@att.com>; MALANCA, DONNA C <dm9637@att.com>
Cc: Erla Erlingsdottir <erlae@widevoice.com>; Tandy DeCosta <tdecosta@widevoice.com>
Subject: RE: RUDDIA0104T

Lyn,

These are company projections, with the changes that are going on the traffic could be way less or way more.

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta
Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

From: WALKER, LYN [<mailto:lw3579@att.com>]
Sent: Monday, December 9, 2019 12:25 PM
To: Tandy DeCosta <tdecosta@widevoice.com>; MALANCA, DONNA C <dm9637@att.com>
Cc: Erla Erlingsdottir <erlae@widevoice.com>
Subject: RE: RUDDIA0104T

Tandy –

I just want to confirm that per your forecast when I add all 4 CLLIs together and then do a conversion of MOUs to trunks you would be growing from 400 trunks required in month 1 to over 17,500 in one year? Is that correct?

Lyn Walker

AT&T Services
Area Manager Network Planning
TP&E Global Technology Optimization and Implementation
925-468-8145 (office)

From: Tandy DeCosta <tdecosta@widevoice.com>
Sent: Monday, December 09, 2019 10:46 AM
To: WALKER, LYN <lw3579@att.com>; MALANCA, DONNA C <dm9637@att.com>
Cc: Tandy DeCosta <tdecosta@widevoice.com>; Erla Erlingsdottir <erlae@widevoice.com>
Subject: FW: RUDDIA0104T

Hi Lyn,

Any word on the forecasts or questions?

Thanks,

Tandy

WIDE VOICE, LLC

—
Tandy DeCosta
Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

From: Tandy DeCosta
Sent: Thursday, December 5, 2019 2:10 PM
To: WALKER, LYN <lw3579@att.com>; MALANCA, DONNA C <dm9637@att.com>; Erla Erlingsdottir <erlae@widevoice.com>

Subject: RE: RUDDIA0104T

Hi Lyn,

Attached are the forecasts that you requested. Please keep in mind that the numbers could be lower or higher as these are projections. To start out, if ATT wants to send this traffic to our tandem in Miami, I would suggest that you have your commercial group get in touch with my CEO Andy Nickerson to arrange some type of an agreement. As you all know, all of our codes are routed via the LERG and normally would not get accepted to another tandem that is not listed in the LERG.

On another topic we are trying to get connectivity to all of ATT's tandems across the country at a tariffed rate. Is this something you could help us with?

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta
Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

From: Tandy DeCosta
Sent: Wednesday, December 4, 2019 5:11 PM
To: WALKER, LYN <lw3579@att.com>; MALANCA, DONNA C <dm9637@att.com>; Erla Erlingsdottir <erlae@widevoice.com>
Cc: Tandy DeCosta <tdecosta@widevoice.com>
Subject: RE: RUDDIA0104T

Lyn,

We are working on forecasts and will get them to you soon.

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta
Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

From: WALKER, LYN [<mailto:lw3579@att.com>]
Sent: Wednesday, December 4, 2019 4:26 PM
To: Tandy DeCosta <tdecosta@widevoice.com>; MALANCA, DONNA C <dm9637@att.com>; Erla Erlingsdottir <erlae@widevoice.com>
Subject: RE: RUDDIA0104T

Tandy and Erla –

You must know that we do not have a trunk group to a Widevoice tandem in IA, correct?

So I'm wondering why you would make LERG entries to route to one?

We need a forecast to even consider a build and we will continue to route these codes to your existing tandem.

Thanks,

Lyn Walker

AT&T Services

Area Manager Network Planning

TP&E Global Technology Optimization and Implementation

925-468-8145 (office)

From: Tandy DeCosta <tdecosta@widevoice.com>
Sent: Wednesday, December 04, 2019 2:59 PM
To: MALANCA, DONNA C <dm9637@att.com>; Erla Erlingsdottir <erlae@widevoice.com>
Cc: WALKER, LYN <lw3579@att.com>; Tandy DeCosta <tdecosta@widevoice.com>
Subject: RE: RUDDIA0104T

Hi Donna,

These are new Iowa rate centers we are opening and they will be homed to the Iowa tandem.

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta

Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

From: MALANCA, DONNA C [<mailto:dm9637@att.com>]
Sent: Wednesday, December 4, 2019 3:40 PM
To: Erla Erlingsdottir <erlae@widevoice.com>; Tandy DeCosta <tdecosta@widevoice.com>

Subject: RUDDIA0104T

Hi Erla and Tandy;

We are seeing a new WIDEVOICE Tandem in the LERG; RUDDIA0104T and currently there are 4 CLLI/SHA's "moving" to this tandem;

DESMIADTXVX
DVNPIAEAUMD
OMAHNENWX9Y
SXCYIADTXMD

All of these switch locations are currently routing on the MIAUFLWS08T WV Tandem. Will we continue to route this traffic through Miami? I don't believe we were informed of this new planned Tandem switch.

Thanks,

Donna C. Malanca
Trunk Planning & Engineering
(312)-559-5154
dm9637@att.com

EXHIBIT B-1

LATA 630 Spenser, IA
RC Code = 712-613-1
RC = SIOUX CITY, IA
CLEC CLI = SXCUIADTXMD
LEC AT CLI = SXCUIADT37T

	Jan-20	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
0288 AT&T	1000000	3000000	4000000	10000000	12000000	14400000	17280000	20736000	24883200	29859840	35831808	42998170

Total	1000000	3000000	4000000	10000000	12000000	14400000	17280000	20736000	24883200	29859840	35831808	42998170
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LATA 632,DES MOINES IOWA
RC Code = 515-416-1
RC = DES MOINES, IA
CLEC CLLI = DESMIADTXVX
LEC AT CLLI = DESMIADT18T

	Jan-20	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
0288 AT&T	1000000	3000000	4000000	10000000	12000000	14400000	17280000	20736000	24883200	29859840	35831808	42998170

Total	1000000	3000000	4000000	10000000	12000000	14400000	17280000	20736000	24883200	29859840	35831808	42998170
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LATA 634, DAVENPORT, IA
RC Code = 563-551-1
RC = DAVENPORT, IA
CLEC CLLI = DVNPIAEAUMD
LEC AT CLLI = DVNPIAEA17T

	Jan-20	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
0288 AT&T	1000000	3000000	4000000	10000000	12000000	14400000	17280000	20736000	24883200	29859840	35831808	42998170

Total:	1000000	3000000	4000000	10000000	12000000	14400000	17280000	20736000	24883200	29859840	35831808	42998170
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LATA 644, OMAHA,NE
RC Code = 531-541-1
RC = OMAHA, NE
CLEC CLLI= OMAHNENWX9Y
LEC AT CLLI = OMAHNENW03T

	Jan-20	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
0288 AT&T	1000000	3000000	4000000	10000000	12000000	14400000	17280000	20736000	24883200	29859840	35831808	42998170

Total:	1000000	3000000	4000000	10000000	12000000	14400000	17280000	20736000	24883200	29859840	35831808	42998170
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EXHIBIT C

From: Tandy DeCosta <tdecosta@widevoice.com>
Sent: Thursday, January 2, 2020 7:02 PM
To: WALKER, LYN; MALANCA, DONNA C
Cc: Erla Erlingsdottir; Tandy DeCosta; Andrew Nickerson
Subject: FORECAST FOR MINUTES ON OUR TANDEMS
Attachments: ATT Forecasts for HDC in Iowa and SD 01022020.xlsx

Hi Lyn and Donna,

Attached are the forecasts for a carrier that will be using Wide Voice's tandems. Please keep in mind that the numbers could be lower or higher as these are projections. To start out, if ATT wants to send this traffic to our tandem in Los Angeles or Miami, I would suggest that you have your commercial group get in touch with my CEO Andy Nickerson to arrange some type of an agreement. As you all know, all of our codes are routed via the LERG and normally would not get accepted to another tandem that are not listed in the LERG.

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta
Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

EXHIBIT C-1

LATA 630**RC Code = 712-514-9****RC = Spenser, IA****CLEC CLLI =SXCYIADTYMD**

	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20
0288 AT&T	10000000	9700000	9409000	9126730	8852928	8587340	8329720	8079828	7837434	7602311	7374241	7153014

LATA 632**RC Code = 515-405-9,641-461-9****RC = Renwick, IA, CHARLES CY, IA****CLEC CLI =DESMIADTXWX, RUDDIA012MD**

	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20
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ATT	33000000	32010000	31049700	30118209	29214663	28338223	27488076	26663434	25863531	25087625	24334996	23604946
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LATA 634**RC Code = 563-283-9****RC = Muscatine, IA****CLEC CLLI =DVNPJAEAVMD**

	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20
ATT	7000000	6790000	6586300	6388711	6197050	6011138	5830804	5655880	5486204	5321617	5161969	5007110

LATA 644**RC Code = 712-512-9, 712-513-9****RC = Mineola, IA, Carroll, IA****CLEC CLI= OMAKNEYW7MD,OMAHNENWXAY**

	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20
ATT	34500000	33465000	32461050	31487219	30542602	29626324	28737534	27875408	27039146	26227972	25441132	24677898

LATA 640

RC Code = 605-607-9, 605-608-9

RC = SIOUX FALLS, SD, Rapid City, SD

CLEC CLLI = SXFLSDPS7MD,SXFLSDCHWMD

	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	Aug-20	Sep-20	Oct-20	Nov-20	Dec-20
ATT	43000000	41710000	40458700	39244939	38067591	36925563	35817796	34743262	33700964	32689936	31709237	30757960

EXHIBIT D

From: Tandy DeCosta <tdecosta@widevoice.com>
Sent: Monday, January 6, 2020 2:30 PM
To: WALKER, LYN; MALANCA, DONNA C
Cc: Erla Erlingsdottir; Andrew Nickerson; Tandy DeCosta
Subject: RE: FORECAST FOR MINUTES ON OUR TANDEMS

Hi Lyn,

The forecast sent on 1/2/2020 is traffic for one of our customers. The forecast sent on 1/5/2019 was only for Wide Voice, please note that the 2 forecasts should be combined. Please note that the minutes in that forecast on 12/5 was a total and ATT minutes is only about 30% of that total.

We are adding a new tandem in South Dakota which is the CLLI SXFLSDCH09T that you have listed in this email. If there are any other questions please let me know.

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta
Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

From: WALKER, LYN [mailto:lw3579@att.com]
Sent: Monday, January 6, 2020 12:21 PM
To: Tandy DeCosta <tdecosta@widevoice.com>; MALANCA, DONNA C <dm9637@att.com>
Cc: Erla Erlingsdottir <erlae@widevoice.com>; Andrew Nickerson <anickerson@widevoice.com>
Subject: RE: FORECAST FOR MINUTES ON OUR TANDEMS

Tandy –

I just want to confirm that your 1/2/2020 forecast is in addition to the forecast you sent on 12/5/19 for volume at a new RUDDIA0104T tandem? I should add the two together for planning purposes?

I see that many (but not all) of the HD Carrier CLLI's are also to be homed to the new RUDDIA tandem according to your forecast and there is an addition NEW Widevoice tandem in this latest forecast? SXFLSDCH09T?

Lyn Walker
AT&T Services
Area Manager Network Planning
TP&E Global Technology Optimization and Implementation
925-468-8145 (office)

From: Tandy DeCosta <tdecosta@widevoice.com>

Sent: Thursday, January 02, 2020 4:02 PM

To: WALKER, LYN <lw3579@att.com>; MALANCA, DONNA C <dm9637@att.com>

Cc: Erla Erlingsdottir <erlae@widevoice.com>; Tandy DeCosta <tdecosta@widevoice.com>; Andrew Nickerson <anickerson@widevoice.com>

Subject: FORECAST FOR MINUTES ON OUR TANDEMS

Hi Lyn and Donna,

Attached are the forecasts for a carrier that will be using Wide Voice's tandems. Please keep in mind that the numbers could be lower or higher as these are projections. To start out, if ATT wants to send this traffic to our tandem in Los Angeles or Miami, I would suggest that you have your commercial group get in touch with my CEO Andy Nickerson to arrange some type of an agreement. As you all know, all of our codes are routed via the LERG and normally would not get accepted to another tandem that are not listed in the LERG.

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta

Director of Telephony Services

P 1+702-913-1078

E tdecosta@widevoice.com

EXHIBIT E

From: Tandy DeCosta <tdecosta@widevoice.com>
Sent: Friday, January 3, 2020 12:47 PM
To: WALKER, LYN; MALANCA, DONNA C
Cc: Erla Erlingsdottir; Andrew Nickerson; Tandy DeCosta
Subject: RE: FORECAST FOR MINUTES ON OUR TANDEMS

Hi Lyn,

Thanks for the information. I do recall that ATT has removed capacity from both of our tandems so maybe they need to be restored.

If ATT is interested in putting in an IP connection to use as overflow, we can work with you on that option as well.

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta
Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

From: WALKER, LYN [mailto:lw3579@att.com]
Sent: Friday, January 3, 2020 9:20 AM
To: Tandy DeCosta <tdecosta@widevoice.com>; MALANCA, DONNA C <dm9637@att.com>
Cc: Erla Erlingsdottir <erlae@widevoice.com>; Andrew Nickerson <anickerson@widevoice.com>
Subject: RE: FORECAST FOR MINUTES ON OUR TANDEMS

Tandy –

I've received your forecast and looked at the January requirements (which jumped significantly from your previous forecast). As you know, we do not have interconnection at the Rudd IA tandem and existing capacity at the Miami and Los Angeles tandems will not handle the volume you've forecasted. I will be discussing with our AT&T team next week when everyone returns from vacations but want to make sure we will not end up with a blocking situation starting Monday.

Lyn Walker
AT&T Services
Area Manager Network Planning
TP&E Global Technology Optimization and Implementation
925-468-8145 (office)

From: Tandy DeCosta <tdecosta@widevoice.com>

Sent: Thursday, January 02, 2020 4:02 PM

To: WALKER, LYN <lw3579@att.com>; MALANCA, DONNA C <dm9637@att.com>

Cc: Erla Erlingsdottir <erlae@widevoice.com>; Tandy DeCosta <tdecosta@widevoice.com>; Andrew Nickerson <anickerson@widevoice.com>

Subject: FORECAST FOR MINUTES ON OUR TANDEMS

Hi Lyn and Donna,

Attached are the forecasts for a carrier that will be using Wide Voice's tandems. Please keep in mind that the numbers could be lower or higher as these are projections. To start out, if ATT wants to send this traffic to our tandem in Los Angeles or Miami, I would suggest that you have your commercial group get in touch with my CEO Andy Nickerson to arrange some type of an agreement. As you all know, all of our codes are routed via the LERG and normally would not get accepted to another tandem that are not listed in the LERG.

Thanks,

Tandy

WIDE VOICE, LLC

—

Tandy DeCosta

Director of Telephony Services

P 1+702-913-1078

E tdecosta@widevoice.com

EXHIBIT F

From: Tandy DeCosta <tdecosta@widevoice.com>
Sent: Thursday, January 9, 2020 11:36 AM
To: WALKER, LYN; Erla Erlingsdottir; Andrew Nickerson
Cc: MALANCA, DONNA C; Tandy DeCosta
Subject: RE: TRAFFIC SHIFTED TONIGHT TO LRN 641-461-9

Good morning Lyn,

After providing the information, has ATT made a decision on the options that Wide Voice has provided? We are here to help ATT alleviate the issue ASAP. Please let me know how you would like to move forward.

WIDE VOICE, LLC

—
Tandy DeCosta
Director of Telephony Services

P 1+702-913-1078
E tdecosta@widevoice.com

From: Tandy DeCosta
Sent: Wednesday, January 8, 2020 12:41 PM
To: WALKER, LYN <lw3579@att.com>; Erla Erlingsdottir <erlae@widevoice.com>; Andrew Nickerson <anickerson@widevoice.com>
Cc: MALANCA, DONNA C <dm9637@att.com>; Tandy DeCosta <tdecosta@widevoice.com>
Subject: RE: TRAFFIC SHIFTED TONIGHT TO LRN 641-461-9

Lyn,

The CLLI that we moved last night is RUDDIA012MD we have a second batch of minutes to move for the RUDD CLLI. The following CLLI's will be moving as listed. We are still willing to offer you to send codes to our Los Angeles tandem until capacity is added or you are connected to our other 2 tandems in Iowa and South Dakota. Other options would be to add the capacity back that you removed from both tandems or we also want to offer you a public sip connection to pass traffic to. Please let us know how you would like to move forward and we can accommodate you with any of the options provided.

***** PLEASE NOTE ALL TRAFFIC WILL BE SHIFTED COMPLETELY BY JANUARY 10TH 2020*****

01/8- OMAKNEYW7MD moving tonight
01/9- Phase 2 RUDDIA012MD, DVNPIAEAVMD Tomorrow night

Thanks,

Tandy

WIDE VOICE, LLC
—
Tandy DeCosta

P 1+702-913-1078
E tdecosta@widevoice.com

From: WALKER, LYN [<mailto:lw3579@att.com>]
Sent: Wednesday, January 8, 2020 10:18 AM
To: Tandy DeCosta <tdecosta@widevoice.com>; Erla Erlingsdottir <erlae@widevoice.com>; Andrew Nickerson <anickerson@widevoice.com>
Cc: MALANCA, DONNA C <dm9637@att.com>
Subject: RE: TRAFFIC SHIFTED TONIGHT TO LRN 641-461-9

Tandy –

Contrary to your email, AT&T is not blocking traffic. The actions that Widevoice took is what is causing blocking. AT&T cannot overflow traffic at Miami to your Los Angeles tandem. We are aware and I'm sure you are too that we do not have sufficient capacity at EITHER tandem (let alone the 2 NEW tandems that we are not interconnected to) for your forecasts. I'm not sure why you would proceed with this move and cause blocking? Further moves are just reckless.

By our calculations of your forecasts we would need to add over 6000 trunks at Miami for your JANUARY forecast and another 4000 trunks to Los Angeles. That takes a significant amount of time (months) to get that capacity.

Can you tell us (from your forecast) what shifted last night? Which CLLIs?

Lyn Walker

From: Tandy DeCosta <tdecosta@widevoice.com>
Sent: Tuesday, January 07, 2020 6:59 PM
To: WALKER, LYN <lw3579@att.com>; MALANCA, DONNA C <dm9637@att.com>
Cc: Tandy DeCosta <tdecosta@widevoice.com>; Erla Erlingsdottir <erlae@widevoice.com>; Andrew Nickerson <anickerson@widevoice.com>
Subject: TRAFFIC SHIFTED TONIGHT TO LRN 641-461-9

Hi Lyn,

Traffic has shifted onto the LRN 641-461-9999 and your trunks in Miami are full. We have a lot more traffic moving this week to our tandem and ATT will definitely be blocking. We would like to offer the option of overflowing your traffic to our Tandem in Los Angeles if you are interested. Please let me know and we can discuss this further.

Thanks,

Tandy

WIDE VOICE, LLC

—
Tandy DeCosta
Director of Telephony Services

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