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

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

**Adopted: June 10, 2020** **Released: June 11, 2020**

By the Commission:

## I. INTRODUCTION

1. In the 2019 *Access Arbitrage Order*, we tackled, once again, the troublesome use of "free" conference calling, chat lines, and certain other services operated out of rural areas to take advantage of inefficiently high access charges allowed under the existing intercarrier compensation regime.[1] As we explained, access stimulation schemes adapted to shrinking end office termination charges by taking advantage of access charges that had not transitioned or were not transitioning to bill-and-keep. As such, these schemes were structured to ensure that interexchange carriers (IXCs)[2] would pay high tandem switching and tandem switched transport charges to access-stimulating local exchange carriers (LECs) and to the intermediate access providers chosen by those access-stimulating LECs.[3] We also found that the vast majority of access-stimulation traffic was bound for LECs that subtended two centralized equal access (CEA) providers, Iowa Network Services d/b/a Aureon Network Services (Aureon) in Iowa and South Dakota Network, LLC (SDN) in South Dakota.[4]

2. To eliminate the financial incentives to engage in access arbitrage, we adopted rules making access-stimulating LECs—rather than IXCs—financially responsible for the tandem switching and transport service access charges associated with the delivery of traffic from an IXC to the access-stimulating LEC end office or its functional equivalent. To facilitate the implementation of the rules in Iowa and South Dakota, we also modified the section 214 authorizations for Aureon and SDN to permit traffic terminating at access-stimulating LECs that subtend those CEA providers' tandems to bypass the CEA tandems.

3. Now Aureon seeks reconsideration of the *Access Arbitrage Order*.[5] In its Petition,

[1] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, 34 FCC Rcd 9035, 9036, 9038, paras. 3, 7 (2019) (*Access Arbitrage Order* or *Order*), *pets. for review filed sub nom. Great Lakes Commc'n Corp. et al. v. FCC*, No. 19-1233 (D.C. Cir. Oct. 29, 2019) (consolidated with D.C. Cir. No. 19-1244).

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

[3] *Access Arbitrage Order*, 34 FCC Rcd at 9036, para. 3.

[4] *Id.* at 9041, para. 15.

[5] Aureon Petition for Reconsideration, WC Docket No. 18-155 (filed Nov. 27, 2019), https://ecfsapi.fcc.gov/file/11270367110709/Aureon%20-%20Petition%20for%20Reconsideration%20of%20FCC%20Arbitrage%20Elimination%20Order%2011.27.19.pdf (Petition).

Aureon reiterates several of the arguments it made on the record in the Access Arbitrage proceeding. In particular, Aureon objects to our decision to adopt rules making access-stimulating LECs responsible for paying for tandem switching and transport services, and argues that we should instead have adopted one of its proposals—either to ban access stimulation or to require consumers placing calls to access-stimulating LECs to pay their IXCs an additional charge for each such call.[6] Aureon also objects to our decision to modify its section 214 authorization, and it argues that we should have addressed its cost and rate complaints that are at issue in other Commission proceedings.[7] Upon review of the record, we dismiss Aureon's Petition as procedurally defective, and independently, and in the alternative, deny it on substantive grounds.

## II. BACKGROUND

4. The Commission has been combating access stimulation for more than a decade.[8] Traditionally, access-stimulating LECs relied on the existence of high end office terminating switched access rates in rural areas that allowed them to increase their revenue by inflating their terminating call volumes through arrangements with entities that offer high-volume calling services.[9] Because LECs entering traffic-inflating revenue-sharing agreements were not required to reduce their access rates to reflect their increased volume of minutes, access stimulation increased access minutes-of-use and access payments (at constant, per-minute-of-use rates that exceed the actual average per-minute cost of providing access). As a result, IXCs and their customers had to pay those inflated intercarrier compensation charges.[10]

5. In the 2011 *USF/ICC Transformation Order*, the Commission found that access-stimulating LECs were "realiz[ing] significant revenue increases and thus inflated profits that almost uniformly [made] their interstate switched access rates unjust and unreasonable."[11] The record showed that the "total cost of access stimulation to IXCs [had] been more than $2.3 billion over the [preceding] five years" and that "Verizon estimate[d] the overall costs to IXCs to be between $330 and $440 million per year."[12] The Commission explained that all long distance customers "bear these costs, even though many of them do not use the access stimulator's services, and, in essence, ultimately support businesses designed to take advantage of today's above-cost intercarrier compensation rates."[13] The Commission also found that "[a]ccess stimulation imposes undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment,"[14] and that it "harms competition by giving companies that offer a 'free' calling service a competitive advantage over companies that charge their customers for the service."[15]

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[6] Petition at ii-iii, 10-11, 20-21.

[7] *Id.* at 4-5, 7.

[8] *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, 17676, 17874-90, paras. 33, 656-701 (2011) (*USF/ICC Transformation Order*), *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2050, and 135 S. Ct. 2072 (2015).

[9] *See, e.g.*, *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, 33 FCC Rcd 5466, 5467, para. 2 (2018) (*Access Arbitrage Notice* or *Notice*).

[10] *Access Arbitrage Order*, 34 FCC Rcd at 9036, 9038, paras. 3, 7.

[11] *USF/ICC Transformation Order*, 26 FCC Rcd at 17875, para. 662.

[12] *Id.* at 17876, para. 664.

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

[14] *Id.*

[15] *USF/ICC Transformation Order*, 26 FCC Rcd at 17876, para. 665.

6. The Commission sought to eliminate the detrimental effect of access stimulation on all American consumers by requiring LECs to refile their interstate switched access tariffs at lower rates if: (1) the LEC has a revenue-sharing agreement; and (2) the LEC either has (a) a 3:1 ratio of terminating-to-originating traffic in any month or (b) has more than a 100% increase in traffic volume in any month measured against the same month during the previous year.[16] These rules were "narrowly tailored to address harmful practices while avoiding burdens on entities not engaging in access stimulation."[17] The LECs that were thereby identified as being engaged in access stimulation were, for the most part, required to change their tariffs for end office access charges. A rate-of-return LEC was required to file its own cost-based tariff under section 61.38 of the Commission's rules and could not file based on historical costs under section 61.39 of the Commission's rules or participate in the NECA traffic-sensitive tariff.[18] A competitive LEC was required to benchmark its tariffed end office access rates to the rates of the price cap LEC with the lowest interstate switched access rates in the state.[19]

7. In the *USF/ICC Transformation Order*, the Commission transitioned end office terminating access charges to bill-and-keep.[20] The Commission found that the transition to bill-and-keep would help reduce access stimulation by reducing "competitive distortions inherent in the intercarrier compensation system and eliminating carriers' ability to shift network costs to competitors and their customers."[21] At the same time, the Commission transitioned tandem switching and transport charges to bill-and-keep for price cap carriers when the terminating price cap carrier owns the tandem in the serving area.[22] For rate-of-return carriers, the Commission capped terminating interstate and intrastate transport charges at interstate levels.[23]

8. In September 2017, in light of developments that had occurred in the relevant markets since the *USF/ICC Transformation Order*, the Wireline Competition Bureau (Bureau) sought to refresh the record on several issues, including the transition of the remaining tandem switching and transport charges to bill-and-keep.[24] The comments that the Bureau received suggested that, in response to the reforms adopted in the *USF/ICC Transformation Order*, access stimulation schemes had adapted to shrinking end office termination charges and sought to take advantage of access charges that have not yet transitioned or are not transitioning to bill-and-keep.[25] It appeared that access stimulation schemes had restructured to take advantage of the tandem switching and tandem switched transport charges that IXCs pay to access-stimulating LECs.[26] The access stimulation schemes often involved carriers that billed

[16] *Id.* at 17676, para. 33.

[17] *Id.*

[18] *Id.* at 17882, para. 679.

[19] *Id.*

[20] *Id.* at 17677, para. 35. In the *USF/ICC Transformation Order*, the Commission adopted "a uniform national bill-and-keep framework as the ultimate end state for all telecommunications traffic exchanged with a LEC. Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary." *Id.* at 17676, para. 34.

[21] *USF/ICC Transformation Order*, 26 FCC Rcd at 17904, para. 738.

[22] *Id.* at 17934-35, 17943, 18112, paras. 801, 819, 1306; 47 CFR § 51.907.

[23] *Id.*

[24] *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90 et al., Public Notice, 32 FCC Rcd 6856, 6856 (WCB 2018).

[25] *See* AT&T Comments, WC Docket No. 10-90 et al., at 12-13 (rec. Sept. 8, 2017) (AT&T Refresh Comments).

[26] *Id.* at 13 ("[O]ne such scheme has grown so large that the one transport provider at issue is responsible for over *12 percent* of AT&T's *total, nationwide* billed terminating switched access expense—even though AT&T is billed by over 1,300 different LECs." (emphasis in original)).

"excessive transport charges, including lengthy per-mile, per-minute charges to remote areas on large volumes of stimulated" traffic.[27]

9. In 2018, the Commission adopted a Notice of Proposed Rulemaking (*Access Arbitrage Notice*) proposing to eliminate the financial incentive to engage in access arbitrage by giving access-stimulating LECs two alternatives for connecting to IXCs. First, the access-stimulating LEC could choose to be financially responsible for calls delivered to its network; in this situation, IXCs would no longer pay for the delivery of calls to the access-stimulating LEC's end office or the functional equivalent.[28] Second, instead of accepting this financial responsibility, the access-stimulating LEC could choose to accept direct connections either from the IXC or an intermediate access provider of the IXC's choice; this alternative would permit IXCs to bypass intermediate access providers selected by the access-stimulating LEC.[29] The Commission also sought comment on revising the access stimulation definition, on moving all traffic bound for an access-stimulating LEC to bill-and-keep, and on additional arbitrage schemes and ways to eradicate them.[30]

10. The Commission also sought comment on whether it should modify the section 214 authorizations of Aureon and SDN, which were granted almost 30 years ago. When the then-Common Carrier Bureau adopted the section 214 authorizations which formed the regulatory foundation for the CEA providers, it included a mandatory use provision for Aureon, and an apparent mandatory use provision for SDN.[31] These mandatory use provisions required IXCs delivering terminating traffic to a LEC subtending one of these CEA tandems to deliver the traffic to the CEA tandem rather than indirectly through another intermediate access provider or directly to the subtending LEC.[32] In the *Access Arbitrage Notice*, the Commission proposed to eliminate the mandatory use requirement as it pertains to traffic terminating at access-stimulating LECs because, among other things, delivery of such high volumes of traffic was not the reason that CEA providers were authorized.[33]

11. The Commission received over 140 formal comments and *ex parte* communications, and over 2,500 "express" comments in response to the *Access Arbitrage Notice*.[34] In the *Access Arbitrage Order*, we found that the rules adopted in the *USF/ICC Transformation Order* resulted in a dramatic reduction in costs to IXCs—from approximately $330 million to $440 million annually reported in 2010 to between $60 million and $80 million annually reported in 2019—and "effectively discouraged rate-of-return LEC access stimulation activity."[35] We also found that since terminating end office access rates

[27] *Id.*

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

[29] *Id.*

[30] *Id.*

[31] *Application of Iowa Network Access Div.*, File No. W-P-C-6025, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468, 1473, para. 33 (CCB 1988) (*Aureon Section 214 Order*); *Application of SDCEA, Inc., to Lease Transmission Facilities to Provide Centralized Equal Access Service to Interexchange Carriers in the State of South Dakota*, File No. W-P-C-6486, Memorandum Opinion, Order and Certificate, 5 FCC Rcd 6978, 6981, para. 24 (CCB 1990) (granting the section 214 authorization that eventually was transferred to SDN) (*SDN Section 214 Order*); *see Access Arbitrage Order*, 34 FCC Rcd at 9082, para. 113 n.350 (explaining the transfer of the section 214 authorization to SDN). The Iowa and South Dakota commissions also granted authorizations. *See Access Arbitrage Order*, 34 FCC Rcd at 9040, para. 12 n.30 (providing citations to the state decisions).

[32] *Aureon Section 214 Order*, 3 FCC Rcd at 1473, para. 33; *SDN Section 214 Order*, 5 FCC Rcd at 6981, para. 24.

[33] *Access Arbitrage Notice*, 33 FCC Rcd at 5472, paras. 16-17.

[34] *Access Arbitrage Order*, 34 FCC Rcd at 9045, para. 25 n.71; *see* FCC Electronic Comment Filing System (ECFS), https://www.fcc.gov/ecfs/search/filings?proceedings_name=18-155&sort=date_disseminated,DESC (listing all of the filings in the Access Arbitrage docket, WC Docket No. 18-155).

[35] *Access Arbitrage Order*, 34 FCC Rcd at 9039, para. 9.

had transitioned to bill-and-keep they were no longer driving access stimulation.[36] Instead, we found that access arbitrage schemes were taking advantage of terminating tandem switching and transport service access charges which, unlike end office switching charges, had not yet transitioned or are not transitioning to bill-and-keep.[37] We also found that access stimulators typically operate in those areas of the country where tandem switching and transport charges remain high and are causing intermediate access providers, including CEA providers, to be included in the call path. We further explained that the tariffed tandem and transport access charges of CEA providers with mandatory use requirements served as a price umbrella for similar services offered by intermediate access providers pursuant to commercial agreement, thus inviting access arbitrage.[38] The intermediate access provider would attract traffic to its facilities by offering a small discount from the applicable tariffed CEA rate.[39]

12. In the *Access Arbitrage Order*, we adopted three key rule modifications of relevance here. First, to reduce the use of the access charge system to subsidize high-volume calling services, we adopted rules making access-stimulating LECs—rather than IXCs—financially responsible for the tandem switching and tandem switched transport access charges for the delivery of terminating traffic from IXCs to the access-stimulating LECs' end offices or their functional equivalents.[40] Second, we modified the definition of access stimulation to include two new alternative triggers without a revenue-sharing component.[41] Third, to facilitate our new rules, we modified the Aureon and SDN section 214 authorizations to eliminate the mandatory use requirements insofar as they apply to traffic being delivered to access-stimulating LECs.[42] We therefore enabled "IXCs to use whatever intermediate access provider an access-stimulating LEC that otherwise subtends Aureon or SDN chooses."[43] We reasoned that our action would "allow IXCs to directly connect to access-stimulating LECs where such connections are mutually negotiated and where doing so would be more efficient and cost-effective."[44]

13. In November 2019, Aureon filed its Petition seeking reconsideration of the *Access Arbitrage Order*.[45] Aureon requests that we: (a) reconsider our rules requiring access-stimulating LECs to pay tandem switching and transport charges and instead either ban access stimulation or, in the alternative, require callers to high-volume calling services to pay for additional fees to cover the costs of the IXCs' access charges;[46] (b) retain the mandatory use provisions of the section 214 authorizations for

[36] *Id*. at 9039, para. 10.

[37] *Id*. at 9039, para. 11.

[38] *Id*. at 9042, para. 16.

[39] *Id*. (citation omitted).

[40] *Id*. at 9036-37, para. 4.

[41] *Id*. at 9055-59, paras. 47-53.

[42] *Id*. at 9078, para. 106; Opposition of AT&T Services, Inc. to Aureon's Petition for Reconsideration at 1-2, 15-20 (AT&T Opposition).

[43] *Access Arbitrage Order*, 34 FCC Rcd at 9079-80, para. 106.

[44] *Id*. Sprint points out that "[i]n a rational world, conference bridges that connect users across America (presumably in rough proportion to population density) would be located in lower cost urban traffic exchange centers and not in rural parts of Iowa." Comments of Sprint in Opposition to Petition for Reconsideration Filed by Aureon Network Services at 2 (Sprint Opposition).

[45] *See generally* Petition.

[46] Petition at 3-4, 10; Aureon Comments at 8-9; Letter from James Troup, Counsel for Aureon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (filed May 23, 2019) (Aureon May 23, 2019 *Ex Parte*); Iowa Network Services, Inc. d/b/a Aureon Network Services Reply at 13 (Aug. 3, 2018) (Aureon Reply Comments); *Access Arbitrage Order*, 34 FCC Rcd at 9050-51, paras. 38-39 & n.106.

Aureon and SDN;[47] and (c) reconsider what Aureon characterizes as additional financial burdens on CEA providers created by our reforms.[48]

14. We released a Public Notice announcing the filing of the Petition and established deadlines for Oppositions and Replies to the Petition.[49] We received Oppositions from AT&T, Verizon and Sprint, and a Reply from Aureon.[50]

15. Any interested party may file a petition for reconsideration of a final action in a rulemaking proceeding.[51] Reconsideration "may be appropriate when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters."[52] Petitions for reconsideration that do not warrant consideration by the Commission include those that: "[f]ail to identify any material error, omission, or reason warranting reconsideration; [r]ely on facts or arguments which have not been previously presented to the Commission; [r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding;" or "[r]elate to matters outside the scope of the order for which reconsideration is sought[.]"[53] The Commission may consider facts or arguments not previously presented if: (1) they "relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;"[54] (2) they were "unknown to petitioner until after [their] last opportunity to present them to the Commission, and . . . could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity;"[55] or (3) "[t]he Commission determines that consideration of the facts or arguments relied on is required in the public interest."[56]

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[47] Petition at 4; Aureon May 23, 2019 *Ex Parte* at 9; Letter from James Troup, Counsel for Aureon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1-2 (filed June 12, 2018); Aureon Comments at 9-13; *Access Arbitrage Order*, 34 FCC Rcd at 9081, para. 110.

[48] Petition at 4. Aureon's costs and rates are the subject of other proceedings concerning its tariffed rates. *See, e.g.*, *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Memorandum Opinion and Order, 33 FCC Rcd 7517 (2018) (investigation of Aureon's interstate switched transport rate), *recon.*, *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order on Reconsideration, 33 FCC Rcd 11860 (2018), *pets. for review pending*, *Iowa Network Servs., Inc. v. FCC*, No. 18-1258 (D.C. Cir. filed Sept. 19, 2018) (including review of a Memorandum Opinion and Order released February 28, 2019 in the same proceeding); *AT&T Corp. v. Aureon*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Memorandum Opinion and Order, 32 FCC Rcd 9677 (2017) (concerning Aureon charging for CEA service for access stimulation traffic), *recon.*, *AT&T Corp. v. Aureon*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Order on Reconsideration, 33 FCC Rcd 7964 (2018), *recon. denied*, *AT&T v. Aureon*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Second Order on Reconsideration, 33 FCC Rcd 11855 (2018), *pets. for review pending*, *AT&T Corp. v. FCC*, No. 18-1007 (D.C. Cir. filed Jan. 8, 2018).

[49] *Petition for Reconsideration of Action in Proceeding*, Report No. 3137, Public Notice (2019), https://ecfsapi.fcc.gov/file/12109315146 50/DOC-361252A1.pdf; FCC, Petition for Reconsideration of Action in Proceeding, 84 Fed. Reg. 70484 (Dec. 23, 2019).

[50] AT&T Opposition; Verizon Opposition; Sprint Opposition; Reply of Iowa Network Services, Inc. d/b/a Aureon Network Services to Oppositions to Petitions for Reconsideration (Aureon Reply).

[51] 47 CFR § 1.429(a).

[52] *See Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 et al., Order on Reconsideration, 27 FCC Rcd 898, 901, para. 8 (2012) (*Contribution Methodology Order on Reconsideration*); 47 CFR § 1.429(b).

[53] *See* 47 CFR § 1.429(l)(1)-(3), (5)

[54] *Id.* § 1.429(b)(1).

[55] *Id.* § 1.429(b)(2).

[56] *Id.* § 1.429(b)(3).

## III. DISCUSSION

16. We consider and dismiss Aureon's Petition as procedurally deficient. Separately, we deny the Petition on the merits. In the discussion below, we address the Petition's procedural defects and then turn to the shortcomings of Aureon's substantive arguments.[57]

### A. Aureon's Petition is Procedurally Defective

17. Aureon fails to meet the standard to justify reconsideration. It does not identify any material error or omission in the *Access Arbitrage Order*; raise facts that were not known or did not exist before Aureon's last opportunity to present such matters in the underlying rulemaking; or demonstrate that reconsideration would be in the public interest. Instead, Aureon's Petition suffers from numerous procedural flaws—repeating arguments that Aureon previously raised and to which we responded, raising "new" arguments that it could have made in the underlying proceeding, and presenting arguments that are beyond the scope of this proceeding—that warrant dismissal.[58]

18. *The Commission Need Not Address Petitions that Repeat Previous Arguments*. Our rules and precedent are clear that we need not consider petitions for reconsideration, such as Aureon's, that "merely repeat arguments we previously . . . rejected" in the underlying order.[59] Nonetheless, Aureon focuses its Petition on arguments it already made. Most notably, notwithstanding Aureon's claim to the contrary,[60] in the *Access Arbitrage Order*, we fully considered and rejected its recommendations to ban

[57] We also reject Aureon's suggestion that we "may want to take into consideration the D.C. Circuit's ruling on appeal before deciding the instant Petition." *See* Petition at 25 (referring to the "*November 2017 Referral Order*"—*AT&T Corp. v. Aureon*, Proceeding No. 17-56, Memorandum Opinion and Order, 32 FCC Rcd 9677 (2017), *pet. for review pending*, *AT&T Corp. v. FCC*, Case No. 18-1007 (D.C. Cir. filed Jan. 8, 2018)). Because our decision on the Petition concerns access stimulation and not Aureon's rates, we need not delay this Order until after any court decision regarding Aureon's rates.

[58] 47 CFR § 1.429(l).

[59] *See id.*; *see also Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10-44, Report and Order, 26 FCC Rcd 1594, 1606, para. 27 (2011) (reasoning that some petitions for reconsideration "are procedurally defective or merely repeat arguments the Commission previously has rejected, and that policy considerations do not require that the full Commission address such petitions"); *Federal-State Joint Board on Universal Service; Blanca Telephone Company Seeking Relief from the June 22, 2016 Letter Issued by the Office of the Managing Director Demanding Repayment of a Universal Service Fund Debt Pursuant to the Debt Collection Improvement Act*, CC Docket No. 96-45, Second Order on Reconsideration and Order, FCC 20-28, at 12, para. 28 (Mar. 4, 2020) (dismissing a petition for reconsideration, in part, because the petitioner presented "arguments that the Commission fully considered and rejected"); *Reexamining of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Order on Reconsideration, 29 FCC Rcd 7515, 7518, para. 8 (WTB 2014) (denying a petition for reconsideration under section 1.429(l) of the Commission's rules, in part, because the petitioner raised an argument "specifically considered and rejected" previously); *Scott Malcolm DSM Supply, LLC, Somaticare, LLC*, File No.: EB-TCD-12-00001013, Order on Reconsideration, 33 FCC Rcd 2410, 2412, para. 8 (2018) (explaining that "[n]either the [Communications] Act [of 1934, as amended,] nor Rules require the Commission to be administratively burdened by petitions for reconsideration that reargue issues that were already addressed, or that rely on facts or arguments that the petitioner could have—but did not—present to the Commission at an earlier stage"); AT&T Opposition at 5-6 (explaining that "Aureon's arguments were raised, in one form or other, in its comments, reply comments, and *ex parte* submissions"); Verizon Opposition at 1 ("The Aureon Petition largely repeats arguments that the Commission considered and rejected in the *Access Arbitrage Order*, and thus provides no basis for the Commission to reconsider the order." (citations omitted)).

[60] *E.g.*, Petition at 10-11.

access stimulation or to allow IXCs to charge users of access-stimulating services for the access costs associated with those services.[61]

19. We recognize that we are required to '"consider responsible alternatives to [our] chosen policy and to give a reasoned explanation for [our] rejection of such alternatives.'"[62] At the same time, while "an agency ordinarily must consider less restrictive alternatives and should explain its reasons for failing to adopt such alternatives,"[63] we are required only to provide an explanation of our decision to reject any particular proposal.[64]

20. With respect to Aureon's proposal to ban access stimulation, in the *Access Arbitrage Order*, we recognized Aureon's proposal and found, as the Commission concluded in the *USF/ICC Transformation Order*, that a ban would be an overbroad solution.[65] As we explained, we therefore opted to "prescribe narrowly focused conditions for providers engaged in access stimulation" that strike an "appropriate balance between addressing access stimulation and the use of intermediate access providers while not affecting those LECs that are not engaged in access stimulation."[66] Thus, we fully considered and rejected Aureon's proposal.

21. With respect to Aureon's proposal to require IXCs to charge access-stimulation service customers the cost of related access charges, we explicitly addressed Aureon's previous, more specific proposal that we allow IXCs to charge a penny a minute to their customers making calls to access-stimulating LECs.[67] We gave two reasons for rejecting Aureon's proposal on the merits, explaining that: (1) there was no evidence to suggest that access-stimulation calls cost a penny per minute, "so the proposal would simply trade one form of inefficiency for another;"[68] and (2) "such an overbroad proposal . . . would confuse consumers and unnecessarily spill into, and potentially affect, the operation of the more-competitive wireless marketplace."[69] Aureon now claims that it never intended to propose charging customers "a specific price for the call, such as a penny" and insists that its intent was simply to suggest

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[61] *See Access Arbitrage Order*, 34 FCC Rcd at 9050-51, paras. 38-39 (declining to adopt Aureon's "penny per minute" proposal or "an outright ban on access stimulation" due to a lack of evidence that access-stimulation calls cost a penny per minute and overbreadth concerns).

[62] *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 242 (D.C. Cir. 2008) (quoting *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987) (citation omitted) (internal quotation marks omitted)); *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 48 (1983) (noting that "[a]t the very least [an] alternative way of achieving the objectives . . . should have been addressed and adequate reasons given for its abandonment").

[63] *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 762 (6th Cir. 1995).

[64] *See, e.g.*, *Am. Iron & Steel Inst. v. EPA*, 115 F.3d 979, 1005 (D.C. Cir. 1997) (holding that a single comment demonstrating "that the agency at least considered whether it should adopt [an alternative] model" was sufficient to overcome a claim that the agency failed to respond to comments that suggested alternatives); *City of Waukesha v. EPA*, 320 F.3d 228, 258 (D.C. Cir. 2003) (concluding that in summarizing its reasons for adopting one model over another, the agency had demonstrated that it had considered and rejected arguments in favor of another model); *American Radio Relay*, 524 F.3d at 242 (stating that "[i]n offering an explanation for rejecting an alternative, the Commission was not required to do more").

[65] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17879, para. 672; *Access Arbitrage Order*, 34 FCC Rcd at 9051, para. 39 (also noting that there was "still no suggestion as to how a blanket prohibition could be tailored to avoid it being overbroad").

[66] *Access Arbitrage Order*, 34 FCC Rcd at 9051, para. 39.

[67] *Id.* at 9050-51, para. 38 ("declin[ing] to adopt Aureon's suggestion that would allow IXCs to charge their subscribers an extra penny per minute for calls to access stimulators").

[68] *Id.*

[69] *Id.*

charging customers "something other than zero for a call that has been falsely represented in the past as being 'free.'"[70] Putting aside Aureon's attempt to recast its proposal, Aureon fails to persuade us that our consideration of the concept of IXCs charging end users for placing calls to access-stimulating LECs was insufficient.

22. We also fully considered and rejected another request that Aureon now repeats: that we not modify its section 214 certification. As we explained when we rejected this request, Aureon provided no supporting detail for its claim that modifying its section 214 authorization would negatively affect its ability to provide services in rural areas and to maintain its network.[71] We further explained that "[o]ur decision to permit traffic being delivered to an access-stimulating LEC to be routed around a CEA tandem does not affect traffic being delivered to non-access-stimulating LECs that remain on the CEA network, and will not impact Aureon's ability to serve rural areas, contrary to Aureon's concern."[72] As these arguments have been "fully considered and rejected by the Commission," they are procedurally improper here.[73]

23. Aureon also repeats various other arguments that we addressed in the *Access Arbitrage Order*. For example, Aureon again claims that our access arbitrage rules shift costs to "a few thousand rural customers paying for access stimulation services that they never use, as the LECs recover their costs from their rural end users."[74] The claim is incorrect. As we explained in the *Access Arbitrage Order*, our new rules "shift the recovery of costs associated with the delivery of traffic to an access-stimulating LEC's end office from IXCs to the LEC."[75] And, under our new rules, carriers may respond to the shifting financial responsibilities "in a number of ways—including in combination—such as by changing end-user rates," selecting less costly intermediate access providers or traffic routes, or seeking out other revenue sources, such as "through an advertising-supported approach to offering free services or services provided at less than cost."[76]

24. Aureon also rehashes its previous argument that under the new rules, large IXCs "could engage in arbitrage with respect to wholesale IXC transport and transit service."[77] In the *Access Arbitrage Order*, we found "no merit" to these same arguments because Aureon failed to explain how IXCs would accomplish such arbitrage.[78] As we explained, our new rules did not shift arbitrage opportunities to IXCs or to any other providers.[79]

25. Aureon also repeats the argument that our new rules could lead to call completion

[70] Petition at 20.

[71] *See Access Arbitrage Order*, 34 FCC Rcd at 9081, para. 110.

[72] *See id.*

[73] *See* 47 CFR § 1.429(l)(3).

[74] Petition at 18, 24 (arguing that LECs' end user customers would "bear the brunt of the access costs associated with access stimulation traffic"); *accord* Aureon May 23, 2019 *Ex Parte* at 8 (arguing that "prong 1 would shift the costs of wasteful arbitrage from urban to rural residents").

[75] *Access Arbitrage Order*, 34 FCC Rcd at 9079, para. 105.

[76] *Id.* at 9069, para. 79.

[77] Petition at 13-14; *accord* Aureon Reply Comments at 14 ("If IXCs are exempt from paying for access service, they will engage in arbitrage under a bill-and-keep or a LEC-must-pay regime."), 17 ("[C]ost shifting would result in IXCs providing wholesale transport for larger volumes of harmful traffic . . . ."); Aureon May 23, 2019 *Ex Parte* at 5 ("IXCs are incentivized to increase arbitrage traffic volume if the Commission relieves them from any obligation to pay for switched access facilities they use to complete their long distance calls.").

[78] *Access Arbitrage Order*, 34 FCC Rcd at 9048, para. 33.

[79] *Id.*

problems.[80] In the *Access Arbitrage Order*, we concluded that an intermediate access provider may consider its call completion duties satisfied "once it has delivered the call to the tandem designated by the access-stimulating LEC."[81] Finally, Aureon again raises concerns about the "demise" of its network without access-stimulating LECs (one that it does not attempt to square with its request to outlaw access stimulation).[82] Aureon raised these concerns during the rulemaking proceeding[83] and we dismissed them because Aureon provided no data to support its claims.[84]

26. Apparently recognizing this weakness in its Petition, Aureon contends that we should exercise our discretion and consider its Petition even though it repeats arguments we have already rejected.[85] Yet, to support this contention, Aureon relies on three Commission orders denying other petitions for reconsideration. We find none of the proffered orders persuasive. The first order is simply inapposite—it does not even discuss review of repetitious petitions for reconsideration.[86] The second order denies the petitions at issue in part because they were repetitive.[87] In the third order, the Commission considers a repetitious petition for reconsideration, as Aureon would have us do here, but ultimately denies the petition because the petitioner failed to demonstrate any material error or omission or to raise any new facts, and found that the new arguments were unpersuasive.[88] Thus, the orders Aureon cites do little to advance its cause. Certainly nothing in those orders requires us to review, much less grant, Aureon's Petition to the extent it merely repeats arguments it made in the underlying proceeding.

27. *The New Arguments That Aureon Now Makes Should Have Been Known to It.* Aureon complains for the first time about possible costs it may incur related to compliance with the switch in financial responsibility for tandem switching and transport services provided to access arbitrage customers, claiming that it would be an "administrative nightmare" if LECs change their status from access-stimulating LECs to non-access-stimulating LECs—which it contends incorrectly could take place monthly.[89] Aureon also predicts an increase in billing disputes related to the *Order*.[90] Aureon failed to

[80] Petition at 23; Aureon May 23, 2019 *Ex Parte* at 5.

[81] *Access Arbitrage Order*, 34 FCC Rcd at 9049, para. 35.

[82] Petition at ii, 2, 16.

[83] Aureon May 23, 2019 *Ex Parte* at 5 (arguing that the Commission's proposals would force Aureon to shut down its network); Aureon Comments at 14 (referencing the discontinuation of CEA service).

[84] *Access Arbitrage Order*, 34 FCC Rcd at 9080-81, para. 109.

[85] Petition at 4 & n.7.

[86] *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation for Consent to Transfer Control of Licenses and Authorizations et al.*, WT Docket Nos. 04-70, 04-254, and 04-323, Order on Reconsideration, 20 FCC Rcd 8660, 8663, para. 8 (2005) (applying the general rule that reconsideration is "generally appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond").

[87] *Contribution Methodology Order on Reconsideration*, 27 FCC Rcd at 903, 905, paras. 11-12, 15 (explaining that "[t]he Commission considered and rejected" one of the petitioners' arguments in a previous order, and denying the request for reconsideration because the petitioners had "failed to identify any new facts or circumstances, or any material error that would support reconsideration").

[88] *Application of Paging Systems, Inc.; Petition to Deny Filed by Warren C. Havens, Intelligent Transportation & Monitoring Wireless, LLC, Telesaurus-VPC, LLC, and Telesaurus Holdings GB LLC*, FCC File No. 0002232564, Order on Reconsideration, 22 FCC Rcd 4602, 4604, para. 6 & n.23 (WTB 2007).

[89] Petition at 23. Once a competitive LEC meets the definition of a LEC engaged in access stimulation, under our rules, it remains a LEC engaged in access stimulation until it no longer meets the definition for six consecutive months. 47 CFR § 61.3(bbb)(2). There is a similar rule for rate-of-return LECs engaged in access stimulation. 47 CFR § 61.3(bbb)(3). Therefore, our rules prevent competitive LECs not engaged in revenue sharing from changing their status more than once every six months.

raise these challenges in its various filings in the underlying proceeding, and it has provided no explanation why it could not have raised these issues before the *Access Arbitrage Order* was adopted.[91]

28. Also for the first time, Aureon provides data purporting to illustrate that "Aureon would be prevented from charging a cost-based rate above the competitive LEC benchmark rate if access stimulation traffic were removed from the CEA network."[92] Certainly, Aureon should have been able to provide such illustrative data during the rulemaking proceeding. The application of the competitive LEC benchmark rule is not new, and Aureon was on notice of our proposed course of action with respect to access stimulation. Aureon has provided no explanation as to why it could not have provided this financial data during the rulemaking proceeding (nor, again, how its argument here squares with its request to outlaw access arbitrage).[93]

29. *Aureon Seeks Reconsideration Based on Issues Beyond the Scope of This Proceeding*. We also find that Aureon's Petition is procedurally deficient and subject to dismissal insofar as it requests that on reconsideration we address the rates that Aureon can charge as a CEA provider.[94] Aureon complains about "rate differentials," the Commission's "accounting directive" for CEA service, and the rate caps that have applied to Aureon since before the *Access Arbitrage Order*.[95] Aureon also asserts that the reforms adopted in the *Access Arbitrage Order* will prevent it from recovering its costs—because of the preexisting cap on its rates[96]—and complains that those same reforms "do[] not allow Aureon to earn the authorized rate of return or to charge just and reasonable rates."[97] We dismiss these arguments because they are outside the scope of the proceeding. As we explained in the *Access Arbitrage Order*, the rules we adopted in that *Order* "do not affect the rates charged for tandem switching and transport."[98] Likewise, nothing in the *Access Arbitrage Order* affects the method that Aureon must use to calculate its

(Continued from previous page)

[90] Petition at 23.

[91] 47 CFR § 1.429(l); *see Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations et al.*, MB Docket No. 03-185, Second Memorandum Opinion and Order, 28 FCC Rcd 14412, 14418, para. 14 (2013) (*Parts 73 and 74 Order*) (dismissing a petition for reconsideration because the petitioner "relie[d] on facts and arguments not previously presented to the Commission").

[92] Aureon Reply at 5-9.

[93] 47 CFR § 1.429(l); 47 U.S.C. § 405 ("[N]o evidence other than newly discovered evidence, evidence which has become available only since the original taking of evidence, or evidence which the Commission or designated authority within the Commission believes should have been taken in the original proceeding shall be taken on any reconsideration."); *see also Parts 73 and 74 Order*, 28 FCC Rcd at 14418, para. 14.

[94] Petition at 5-8.

[95] *Id.* at 6-8, 25; *Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Memorandum Opinion and Order, 33 FCC Rcd 7517 (2018) (investigation of Aureon's interstate switched transport rate), *recon. Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order on Reconsideration, 33 FCC Rcd 11860 (2018), *pets. for review pending*, *Iowa Network Servs., Inc. v. FCC*, No. 18-1258 (D.C. Cir. filed Sept. 19, 2018) (including review of a Memorandum Opinion and Order released February 28, 2019 in the same proceeding); *AT&T Corp. v. Aureon*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Memorandum Opinion and Order, 32 FCC Rcd 9677 (2017) (concerning Aureon charging for CEA service for access stimulation traffic), *recon.*, *AT&T Corp. v. Aureon*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Order on Reconsideration, 33 FCC Rcd 7964 (2018), *recon. denied*, *AT&T v. Aureon*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Second Order on Reconsideration, 33 FCC Rcd 11855 (2018), *pets. for review pending*, *AT&T Corp. v. FCC*, No. 18-1007 (D.C. Cir. filed Jan. 8, 2018).

[96] Petition at 6-7.

[97] Petition at 7-8.

[98] *Access Arbitrage Order*, 34 FCC Rcd at 9067, para. 73.

rates. Indeed, the issue of Aureon's rates and the proper method of calculating those rates are the subject of two entirely separate proceedings.[99]

### B. Aureon's Petition Fails on the Merits

30. Although Aureon's Petition warrants dismissal on procedural grounds alone, we also find that the Petition fails on the merits. This failure provides an alternative and independent basis for rejecting the Petition. Contrary to Aureon's claims, the rules we adopted in the *Access Arbitrage Order* accomplish our goal of removing the financial incentives to engage in access arbitrage and reducing the use of intercarrier compensation to provide implicit subsidies to services offered by access-stimulating LECs.[100] It was also reasonable for us to find that the rules we adopted are more targeted and more effective than a blanket ban on access stimulation or a rule allowing IXCs to charge consumers more for calls to access-stimulation services. Finally, our decision to modify Aureon's section 214 authorization was supported by the record and furthers our goal of shifting financial responsibility for access stimulation to the access-stimulating LEC.

#### 1. The Reforms Adopted in the *Access Arbitrage Order* Are Consistent with the Commission's Policy Goals

31. *Our Action Removes Financial Incentives to Engage in Access Arbitrage.* In both the *Access Arbitrage Notice* and the *Access Arbitrage Order*, the Commission was clear that the fundamental goal in this proceeding was to remove financial incentives to engage in access arbitrage.[101] In the *USF/ICC Transformation Order*, the Commission successfully sought to reduce the cost of access arbitrage by defining access stimulation and by capping the terminating end office rates charged by access-stimulating competitive LECs.[102] The Commission also recognized that the transition of all terminating end office charges to bill-and-keep would further reduce the cost of access arbitrage to IXCs and their customers.[103] In the *Access Arbitrage Order*, we found that the Commission's existing rules worked well and reduced the annual cost of access arbitrage to IXCs, and by extension their customers,

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[99] *See Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Memorandum Opinion and Order, 33 FCC Rcd 7517 (2018) (investigation of Aureon's interstate switched transport rate), *recon. Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Order on Reconsideration, 33 FCC Rcd 11860 (2018), *pets. for review pending*, *Iowa Network Servs., Inc. v. FCC*, No. 18-1258 (D.C. Cir. filed Sept. 19, 2018) (including review of a Memorandum Opinion and Order released February 28, 2019 in the same proceeding); *AT&T Corp. v. Aureon*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Memorandum Opinion and Order, 32 FCC Rcd 9677 (2017) (concerning Aureon charging for CEA service for access stimulation traffic), *recon.*, *AT&T Corp. v. Aureon*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Order on Reconsideration, 33 FCC Rcd 7964 (2018), *recon. denied*, *AT&T v. Aureon*, Proceeding No. 17-56, Bureau ID No. EB-17-MD-001, Second Order on Reconsideration, 33 FCC Rcd 11855 (2018), *pets. for review pending*, *AT&T Corp. v. FCC*, No. 18-1007 (D.C. Cir. filed Jan. 8, 2018).

[100] *Access Arbitrage Notice*, 33 FCC Rcd at 5467, para. 3; *Access Arbitrage Order*, 34 FCC Rcd at 9036-37, para. 4.

[101] *See Access Arbitrage Notice*, 33 FCC Rcd at 5469, para. 8 ("We propose solutions to the persistent, costly, and inefficient access stimulation arbitrage scheme described here and seek comment on how to prevent other types of arbitrage."); *Access Arbitrage Order*, 34 FCC Rcd at 9037, para. 4 ("By adopting these rules, we will reduce the incentive to inefficiently route high-volume, purposely inflated, call traffic.").

[102] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17877, 17882, 17934-35, paras. 667 (defining access stimulation), 679 (explaining the required tariff revisions if a LEC satisfies the definition of access stimulation), 801 & fig. 9 (capping terminating end office rates).

[103] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17904-05, 17909, paras. 738 ("A bill-and-keep methodology . . . reduces arbitrage and competitive distortions inherent in the current system, eliminating carriers' ability to shift network costs to competitors and their customers."), 748 (asserting that carries "will reduce consumers' effective price of calling, through reduced charges and/or improved service quality" through implementation of bill-and-keep).

from between $330 million to $440 million annually to between $60 million to $80 million annually.[104] We explained that, as terminating end office rates fell, those charges no longer drove access-stimulation schemes.[105] Despite this history, Aureon seeks to attack our decisions in the *Access Arbitrage Order*, first by arguing that "years of experience have shown that [reforming] the intercarrier compensation approach simply does not work" to curb access arbitrage.[106] This argument ignores the evidence presented in the *Access Arbitrage Order* demonstrating that the rules adopted in the *USF/ICC Transformation Order* substantially reduced access arbitrage.[107]

32. Aureon also ignores the very real benefit of the rules we adopted in the *Access Arbitrage Order*. By making access-stimulating LECs financially responsible for the rates charged to terminate traffic to their end offices or functional equivalents, we now prevent access-stimulating LECs from passing the costs of their services—or the services of their high-volume calling provider partners—on to IXCs and, by extension, the public at large. This may, in turn, cause "users to cease using those services, and cause access-stimulating LECs or their [high-volume calling provider partners] to terminate the calling services altogether."[108] This outcome is more than just hypothetical. While most of the rules have only been in effect since November 2019, we have already received letters from several entities stating that they are exiting the access stimulation business.[109] Aureon neither acknowledges these developments nor provides any new evidence demonstrating that IXCs are, or even could, engage in the type of hypothetical arbitrage it theorizes about.[110] Aureon argues that our new rules are ineffective at reducing access stimulation, citing the behavior of two companies that Aureon believes are taking steps to evade

[104] *Access Arbitrage Order*, 34 FCC Rcd at 9038-39, para. 9.

[105] *Id.* at 9039, para. 10.

[106] Petition at 9; *see also* Aureon May 23, 2019 *Ex Parte* at 6 (arguing that "the Commission's predictive judgment that changes to intercarrier compensation would reduce wasteful arbitrage did not come true") (footnote omitted)); *Access Arbitrage Order*, 34 FCC Rcd at 9038-39, para. 9 & n.23.

[107] *Access Arbitrage Order*, 34 FCC Rcd at 9038-39, para. 9.

[108] AT&T Opposition at 11.

[109] *Id.* at 11 & n.22; Letter from Ronald Laudner, Jr., CEO, Interstate Cablevision, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Jan. 9, 2020) (noting that as of December 29, 2019, the company terminated end-user relationships with high-volume calling providers); Letter from Ronald Laudner, Jr., CEO, OmniTel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Jan. 9, 2020) (notifying the Commission that as of October 29, 2019, the company terminated end-user relationships with high-volume calling providers); Letter from Randy Foor, General Manager, Louisa Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Dec. 27, 2019) (notifying the Commission that the company terminated its end-user relationships with high-volume calling providers as of December 25, 2019); Letter from Jared C. Johnson, General Manager, Goldfield Access Network, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Dec. 27, 2019) (providing notice that as of December 25, 2019, the company terminated its end-user relationships with high-volume calling providers); Letter from Jeff Roiland, CEO, BTC, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Dec. 27, 2019) (indicating that as of December 25, 2019, the company terminated its end-user relationships with high-volume calling providers); Letter from David Schornack, Director of Sales & Business Development, Tekstar Communications, Inc. dba Arvig, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Dec. 11, 2019) (notifying the Commission that its revenue sharing agreements would be terminated on or before January 10, 2020).

[110] Aureon appears to identify an additional arbitrage opportunity whereby incumbent LECs would gradually increase their traffic volume over time but keep that volume under the FCC's 100% traffic growth trigger. *See* Petition at 14 n.44. Though Aureon did not raise this scenario previously, we did not change the pre-existing test for access stimulation in section 61.3(bbb)(1) of our rules in the *Access Arbitrage Order*. *Access Arbitrage Order*, 34 FCC Rcd at 9053, para. 43 (noting that "we leave the current test for access stimulation in place"). We also declined to revisit the 100% traffic growth trigger. *Id.* at 9062, para. 61. As Aureon has provided no evidence in support of any of its arbitrage theories, our conclusion that our rules did not shift arbitrage opportunities to interexchange carriers or to any other providers stands. *Id.* at 9049, para. 33.

our new rules.[111] We stand ready to address and prevent any efforts to circumvent our new rules. Indeed, the Wireline Competition Bureau has already initiated one such investigation.[112] However, efforts to circumvent our rules do not undermine our reasonable predictive judgment that the rules adopted in the *Access Arbitrage Order* will help eliminate "the financial incentives to engage in access arbitrage,"[113] a prediction confirmed by the number of companies that have notified us that they have left the access stimulation business. In sum, Aureon's Petition does not support its claim that our new rules work at cross-purposes with our goal.

33. Our Actions Address the Use of Intercarrier Compensation to Provide Implicit Subsidies to Services Offered by Access-Stimulating LECs. As we explained in the Access Arbitrage Order[114] and Aureon has now acknowledged, prior to the Access Arbitrage Order, "it was the IXCs' customers that subsidized the access costs incurred for a small subset of customers to use an access stimulating service."[115] Under our new rules, a significant benefit of requiring access-stimulating LECs to pay for tandem switching and transport is that doing so ends the use of intercarrier compensation to implicitly subsidize access stimulation services.[116] Yet, Aureon claims that our access arbitrage rules shift costs to "a few thousand rural customers paying for access stimulation services that they never use, as the LECs recover their costs from their rural end users."[117] This argument makes a number of unsupported assumptions. First, it assumes that access-stimulation schemes will continue to operate out of rural areas, despite the loss of the financial incentives in the form of intercarrier compensation revenue that led them there in the first place. Second, it assumes that access-stimulating LECs have customers not engaged in access-stimulation schemes and that those customers would remain customers should they face higher prices. Finally, it assumes that access-stimulating LECs are charging or will charge their non-access-stimulation customers more to cover their new costs and fails to consider the possibility that access-stimulating LECs will instead pass tandem switching and transport charges through to the high-volume calling service providers that cause the LECs to incur those costs. The latter possibility properly aligns financial incentives by shifting costs to the cost causers, which is what we set out to accomplish.[118] And, despite significant evidence that access-stimulating LECs have already exited the access-stimulation

[111] Aureon Reply at 4.

[112] *See, e.g.*, *Northern Valley Communications, LLC, Tariff F.C.C. No. 3*, WC Docket No. 20-11, Order, 35 FCC Rcd 402 (WCB Jan. 10, 2020).

[113] *Access Arbitrage Order*, 34 FCC Rcd at 9041, para. 14.

[114] *E.g.*, *Access Arbitrage Order*, 34 FCC Rcd at 9037-38, para. 7 (explaining that access stimulation increased the average cost of long-distance calling and that the customers of long-distance providers bore the brunt of such increase).

[115] Petition at 17.

[116] *See Access Arbitrage Order*, 34 FCC Rcd at 9067, para. 73 ("We find that by reversing the financial responsibility, customers will receive more accurate price signals and implicit subsidies will more effectively be reduced.").

[117] Petition at 18, 24 (arguing that local exchange carriers' end user customers would "bear the brunt of the access costs associated with access stimulation traffic"); *accord* Aureon May 23, 2019 *Ex Parte* at 8 (arguing that "prong 1 would shift the costs of wasteful arbitrage from urban to rural residents").

[118] *See Access Arbitrage Order*, 34 FCC Rcd at 9042, para. 17; *see also* Sprint Opposition at 2 ("Aligning the costs this way appropriately eliminates implicit subsidies by requiring the final carrier—the cost causer access stimulating LEC (and ultimately its customer, the conference call company)—to bear the costs of decisions they make as to where to place the switch that is serving the conference call company."). *Accord* AT&T Opposition at 9 ("To the extent that the access stimulating CLECs and their [free calling partners] bear the costs of terminating access themselves or shift those costs to the users of the free calling services, the subsidy is eliminated."); *see also Access Arbitrage Notice*, 33 FCC Rcd at 5467, para. 3.

business, we have no evidence that our rules have led to an increase in rural rates and we have no evidence that future departures from the access-stimulation business will cause such increases.[119]

34. There Is No Reason to Think that the Access Arbitrage Order Will Have a Negative Impact on the Commission's Goal of Fostering Competition in Rural Areas. Aureon further argues that amending its section 214 authorization to exempt traffic delivered to access-stimulating LECs from the mandatory use provision of that authorization is inconsistent with a goal of that section 214 authorization: encouraging long distance competition in rural areas.[120] Aureon does not explain how modification of its section 214 authorization to eliminate the mandatory use requirement for traffic delivered to access-stimulating LECs will decrease IXC competition.[121] Rather, Aureon suggests that loss of access-stimulation traffic will lead to the "demise" of its network, which it argues will have a deleterious impact on competition in rural areas.[122] Yet, in its Petition, Aureon does not explain why it thinks the loss of access-stimulation traffic will lead to its demise, nor does it attempt to reconcile the inconsistency between its advocacy for an order on reconsideration that prohibits access stimulation and its apparent claim that loss of access-stimulation traffic will cause the Aureon network to collapse and eliminate long distance competition in rural Iowa.[123] Furthermore, there is no evidence that access-stimulation traffic existed when Aureon received its section 214 authorization.[124] Indeed, the section 214 authorization was granted based on the Commission's understanding that the CEA network would be supported primarily by intrastate traffic, not interstate traffic.[125] Aureon also fails to acknowledge that another CEA provider, Minnesota Independent Equal Access Corporation, does not have a mandatory use requirement in its authorization[126] and that SDN has not challenged the modification of its section 214 certification in the Access Arbitrage Order. Both facts suggest that the mandatory use requirement is not necessary for the successful operation of a CEA network.

### 2. The Commission Justifiably Rejected Aureon's Proposals

35. We continue to find no merit to Aureon's position that either its proposed ban on access stimulation or its proposal to allow IXCs to charge end users for some of the access costs required to complete a call to a high-volume calling service would be better than the more nuanced approach we took in the *Access Arbitrage Order*.[127]

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[119] *Cf.* AT&T Opposition at 4 (asserting that our new access stimulation rules will not impose burdens on rural end users).

[120] Petition at 14.

[121] Nor does Aureon square its advocacy with Commission action relaxing equal access requirements. *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next-Generation Networks et al.*, WC Docket No. 14-192 et al., Memorandum Opinion and Order, 31 FCC Rcd 6157, 6182, para. 46 (2015).

[122] Petition at 16.

[123] *See Access Arbitrage Order*, 34 FCC Rcd at 9081, para. 109 (pointing out that "neither Aureon nor SDN has provided any data that would show that operating a CEA network without the access-stimulating LECs would be economically unviable"); *see also* Aureon Comments at 8-9 (asking the Commission to eliminate arbitrage).

[124] *See Access Arbitrage Order*, 34 FCC Rcd at 9081, para. 111; AT&T Opposition at 16 ("Nothing in the Commission's 1988 order suggested that this type of requirement would apply to high volume, access stimulation traffic—which did not even exist at that time.").

[125] *Aureon Section 214 Order*, 3 FCC Rcd at 1473, para. 32.

[126] *Access Arbitrage Order*, 34 FCC Rcd at 9040, para. 12; *Application of Minnesota Independent Equal Access Corp.*, File No. W-P-C-6400, Memorandum Opinion, Order and Certificate (rel. Aug. 22, 1990).

[127] Petition at 8-14; *see* Aureon Comments at 8 (outlining a rule prohibiting LECs to carry traffic associated with a high-volume calling operation with a rebuttable trigger of 100,000 minutes per month to a single telephone number whereby calls to that number would be prohibited).

36. In its Petition, Aureon argues that by failing to ban access stimulation, the new rules will require it to "maintain large and potentially unused capacity to accommodate potential 'whipsawing' of traffic between networks."[128] Aureon fails to explain, however, how these issues stem from our access arbitrage rules and in its Petition provides no data—such as forecasted capacity requirements or the cost to Aureon of engineering its network to accommodate the alleged capacity requirements—to support its claims. We fail to see how Aureon's allegations about its capacity issues are attributable to the new access arbitrage rules. If anything, the issue of capacity on Aureon's network likely predates the *Access Arbitrage Order*.[129]

37. We are also unpersuaded by Aureon's argument that banning access stimulation would be preferable to our current rules because under the new rules, rural end users will pay for access stimulation services, even if those consumers don't use the services.[130] We disagree with Aureon's conclusion. Aureon does not attempt to square these unsupported assertions with the fundamental premise of the rules adopted in the *Access Arbitrage Order*: to make the access-stimulating LEC—not rural end users—financially responsible for the rates charged for stimulated traffic terminated to the LEC's end office or functional equivalent.[131] We agree with AT&T that, contrary to Aureon's assertions, "the bulk of the access termination costs will be borne by access stimulation LECs, the [free calling partners] or their customers—not by rural customers who do not use the services."[132]

38. Moreover, we agree with AT&T and Sprint that Aureon's proposed "ban" would be unlikely to be effective.[133] Aureon proposed to define "High Call Volume Service" as a high call volume operation marketed as free to the end user and to ban services that met that definition.[134] Aureon also proposed a blanket prohibition on carrying traffic associated with a high-volume calling operation "with a rebuttable trigger of 100,000 minutes per month to a single telephone number whereby calls to that number would be prohibited."[135] Aureon does not explain how we would effectively monitor whether a high-volume calling service is marketed as free to end users, however.[136] Nor does Aureon explain how we would enforce a prohibition on calls to a single number that exceed 100,000 minutes in a given month. If the Commission could not effectively identify whether a carrier is providing service to a "high call volume operation," it would not be able to enforce the proposed prohibition against carrying traffic for such providers. In addition, carriers could circumvent Aureon's proposed minutes-of-use trigger by operating enough telephone numbers for a particular access stimulation scheme to keep the call volumes for a single telephone number below the 100,000-minute threshold, and if they did so, it appears that Aureon would have the same issue with managing capacity requirements and call completion. Aureon did not grapple with these issues in its comments during the rulemaking proceeding and makes no effort to do so in its Petition or its Reply.

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[128] Petition at 22.

[129] *See* AT&T Opposition at 21 (citing Consolidated Rebuttal of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, at 55 n.192 (filed May 17, 2018) (illustrating that issues of movement of large volumes of traffic arose in the context of an Aureon tariff investigation, predating the *Access Arbitrage Order*)).

[130] *See* Petition at 18, 24.

[131] *See, e.g.*, *Access Arbitrage Order*, 34 FCC Rcd at 9042, para. 17.

[132] AT&T Opposition at 9.

[133] *Id.* at 13-14; Sprint Opposition at 2.

[134] Aureon Comments at 8; *see* Petition at 9-10.

[135] *See* Petition at 9-10; Aureon Comments at 8.

[136] *See* AT&T Opposition at 14 (explaining that this requirement would be difficult for the Commission to monitor).

39. Relatedly, Aureon fails to provide any explanation as to how or why a ban would be less restrictive than the narrowly focused rules we adopted. Confusingly, Aureon asserts that "[a]ll evidence points to Aureon's proposed [ban] as satisfying both the FCC's existing policy . . . and being less restrictive and burdensome because no sea-change would be required with regard to how . . . the telecommunications industry operated" prior to the adoption of our new access arbitrage rules.[137] But, surely a complete ban on access stimulation (if it were successful) would result in less traffic being delivered from IXCs to CEA providers, not "higher traffic volumes" as Aureon suggests.[138] Aureon likewise provides no information about the alleged "sea-change" wrought by our new rules beyond saying that it has always been the norm for IXCs to pay access charges.[139] Simply because "it has always been done that way" does not mean that the Commission cannot change course. And a change in course was warranted here to reduce the LECs' incentives to engage in access stimulation.

40. Aureon also fails to substantively support its claim that our new rules create an "administrative nightmare."[140] Aureon complains that it will incur billing costs because LECs could become access stimulators one month and then cease to be access stimulators the next, resulting in the potential for billing disputes.[141] Aureon provides no data to support its concerns about billing costs. Nor does it provide any data about how many LECs would change their status monthly, or even how many access-stimulating LECs currently subtend its network.[142] Moreover, Aureon fails to address the fact that our rules prevent access-stimulating LECs not engaged in revenue sharing from changing their status more than once every six months.[143] In addition, Aureon does not explain why the reforms adopted in the *Access Arbitrage Order* would lead to increased billing disputes.

41. Aureon claims that the rules requiring access-stimulating LECs to pay Aureon for all terminating CEA services are "overly broad" because the CEA traffic will be "some mix of traditional traffic and access stimulation traffic."[144] Aureon's concerns are misplaced. We clearly and intentionally made sure that our rules covered both "traditional" and access-stimulation traffic, shifting "financial responsibility for *all* tandem switching and transport services to access-stimulating LECs."[145] As a result, it should make no difference to Aureon whether the traffic it delivers to an access-stimulating LEC consists entirely of access-stimulation traffic, non-access stimulation traffic, or a mix of both.

42. Finally, Aureon argues that the Commission has, "in analogous contexts, determined that it was *not* overly broad to prohibit certain types of behaviors."[146] This argument falls far short of

[137] Petition at 6.

[138] *Id.* (arguing that a ban on access stimulation would ensure affordable CEA rates for IXCs because higher traffic volumes would mean lower CEA rates).

[139] *See* Aureon Reply at 12 ("For decades, it has been the norm for an IXC that uses another carrier's network to complete the long distance calls placed by that IXC's customers to pay for such usage. The FCC has now turned that regime on its head to allow IXCs to use the service they ordered free of charge, and to require the company completing the long distance calls to be responsible for the IXCs' cost of using that service.").

[140] Petition at 23 (suggesting, without support, that a ban on access stimulation would be superior to the alleged "administrative nightmare" created by our new rules).

[141] *Id.*

[142] Indeed, Aureon claims that it does not even know how many access-stimulating LECs are on its network. Petition at 23; *see also* AT&T Opposition at 22.

[143] *See* 47 CFR § 61.3(bbb)(2)-(3); *see also Access Arbitrage Order*, 34 FCC Rcd at 9059, paras. 54-55. Indeed, the record suggests that many entities engaged in access stimulation are no longer relying on direct forms of revenue sharing. *See Access Arbitrage Order*, 34 FCC Rcd at 9053, para. 44.

[144] Petition at 24.

[145] *See Access Arbitrage Order*, 34 FCC Rcd at 9043, para. 20 (emphasis added).

[146] Petition at 11 & n.32 (emphasis in original) (citing various Commission prohibitions).

justifying Aureon's requested reconsideration. Simply because the Commission has chosen to ban certain unrelated practices in unrelated proceedings does not mean that we were bound to ban a particular practice in this particular proceeding.

43. Aureon's proposal that we allow IXCs to pass through the costs of access stimulation to customers calling access-stimulating LECs also fails on the merits. Aureon argues that allowing pass-through charges to the users of high-volume calling services sends the correct pricing signals whereas, as Aureon implies, the rules adopted in the *Access Arbitrage Order* do not.[147] But Aureon still does not provide any data about what the pass-through cost could or should be, it does not explain why it provided no such data in the underlying proceeding, nor does it explain how we could reach a decision about what would be an appropriate charge without such data. Our approach, which places financial responsibility on the access-stimulating LECs, is simpler to administer and avoids the difficulty of attempting to calculate a pass-through charge absent relevant data, which, as we recognized in the *Access Arbitrage Order*, is lacking.[148]

44. In any event, contrary to Aureon's assertion, consumers are "provided with more-accurate pricing signals for high-volume calling services" under our new rules.[149] In the *Access Arbitrage Order*, we moved the cost of terminating access charges for stimulated traffic from IXCs to access-stimulating LECs, thereby aligning the cost of using high-volume calling services closer to the actual users of those services.[150] As AT&T aptly explains, access-stimulating LECs and high-volume calling service providers now "have a choice to either absorb the terminating access cost themselves, or pass them along to the users of free calling services."[151] If access-stimulating LECs decide to pass those costs through to the users of those calling services, those services will no longer be free.[152] But, in either case, end users will receive more accurate indications of the price of the services they use. Our approach is also more consistent with cost causation principles because it aligns the "costs associated with traffic destined for 'free' conference call services to the carrier directly serving the free conference call company rather than to all the carriers that deliver conference call traffic that originates all over the world."[153] We agree with Sprint that "[a]ligning costs this way . . . requir[es] the final carrier—the cost causer access stimulating LEC (and ultimately its customers, the conference call company)—to bear the costs of decisions they make as to where to place the switch that is serving the conference call company."[154] Thus, we agree with commenters that Aureon has not shown that requiring IXCs to pass through costs to end users would be more effective at eliminating access arbitrage than our chosen approach.[155] We also

[147] *Id.* at 10. In Aureon's view, our new rules "permit[] arbitrageurs to continue to falsely advertise their access stimulation services as 'free'" because customers have no "direct indications . . . of the cost of those calls." Petition at 18 (suggesting that new rules do not provide end users with any pricing signals); *see also* Aureon Reply at 16.

[148] *See Access Arbitrage Order*, 34 FCC Rcd at 9051-51, para. 38 (explaining that "[t]here is no evidence that access-stimulation calls currently cost a penny per minute").

[149] *Id.* at 9048, para. 32.

[150] *See* Sprint Opposition at 2 ("The FCC has created a reasonable solution: Assign costs associated with traffic destined for 'free' conference call services to the carrier directly serving the free conference call company rather than to all the carriers that deliver conference call traffic that originates all over the world.").

[151] AT&T Opposition at 9.

[152] *Id.*

[153] Sprint Opposition at 2.

[154] *Id.*

[155] AT&T Opposition at 14-15 (reasoning that "Aureon's claim that its proposal would have eliminated access stimulation is speculative"); Sprint Opposition at 3 ("Aureon's other proposed solution, to allow IXCs to flow through access charges to the users of 'free' conference call services, does not address the underlying problem. This proposal simply makes the IXCs 'the bad guy' for inefficient network design choices made by the conference call company and access stimulating LEC.").

reaffirm our conclusion that the rules we adopted in the *Access Arbitrage Order* provide customers with more accurate pricing signals than they had before our *Order*.[156]

### 3. Aureon Fails to Show that Our Decision to Modify Its Section 214 Authorization Should Be Reconsidered

45. We also deny on the merits Aureon's request that we reconsider the modifications to Aureon's and SDN's section 214 authorizations that now explicitly permit IXCs terminating traffic at an access-stimulating LEC that subtends either of their CEA tandems to use routes other than those CEA tandems to reach the access-stimulating LEC.[157] Aureon raises several objections, but none have merit.

46. To begin with, the reforms adopted in the *Order* do not prohibit any access-stimulating LEC from choosing Aureon or SDN as its intermediate carrier and paying them to provide service. Second, Aureon argues that we did not consider how changing the mandatory use policy would affect competition for long distance services.[158] Although it is not clear, Aureon's argument seems to be based on a prediction that a reduction of access-stimulation traffic on the Aureon and SDN networks as a result of the *Access Arbitrage Order* will lead to Aureon's demise.[159] Relatedly, Aureon complains that it will be harmed because it relied on the grant of its section 214 authorization in building and maintaining its network.[160] These arguments make little sense for a number of reasons. First, the *Order* does not eliminate the mandatory use requirements as they may apply to traffic terminating at non-access-stimulating LECs. The mandatory use requirements continue to apply to IXCs delivering traffic to dozens of non-access-stimulating LECs that subtend Aureon's and SDN's tandems.[161] Third, although we previously dismissed Aureon's concerns about the financial impact on Aureon in the *Arbitrage Order* because Aureon provided no data to support its claims, Aureon once again failed to provide data supporting its concerns in the Petition.[162]

47. Aureon raised concerns about the "demise" of its network in the underlying rulemaking, and we dismissed those concerns because Aureon provided no data to support its concerns.[163] AT&T points out that merely repeating those arguments without "put[ting] forward any supporting data"[164] does not provide a basis for reconsideration. While Aureon did provide some data in its Reply, it uses the data to spin a tale about the hypothetical removal of access-stimulation traffic. Such speculation cannot justify Aureon's request for reconsideration. Aureon provides three tables showing select information from its

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[156] *Access Arbitrage Order*, 34 FCC Rcd at 9048, para. 32.

[157] Petition at 4; *Access Arbitrage Order*, 34 FCC Rcd at 9079-83, paras. 106-14. Although the modifications apply to the Aureon and SDN networks, they were made to the section 214 authorizations originally granted in the names of Iowa Network Access Division (INAD), a division of Aureon, and South Dakota Network, LLC. *Access Arbitrage Order*, 34 FCC Rcd at 9082, 9084, paras. 113 n.350, 120.

[158] Petition at 6, 15-16; Aureon Comments at 12-13.

[159] Petition at 16.

[160] *Id.* at 8 (describing how many miles of fiber Aureon has deployed); *see also* Aureon May 23, 2019 *Ex Parte* at 9-10.

[161] *See Access Arbitrage Order*, 34 FCC Rcd at 9081, para. 110.

[162] *E.g.*, Petition at 2, 16. AT&T Opposition at 20; Verizon Opposition at 2.

[163] *Access Arbitrage Order*, 34 FCC Rcd at 9081, para. 109 ("Furthermore, neither Aureon nor SDN has provided any data that would show that operating a CEA network without the access-stimulating LECs would be economically unviable.").

[164] Petition at ii, 2, 16; AT&T Opposition at 20; *accord* Verizon Opposition at 6 ("However, the Aureon Petition provides no financial analysis, cost data, or other evidence to support its claim that the measures adopted in the *Access Arbitrage Order* threaten the economic viability of its CEA service.").

most recent tariff filing.[165] It manipulates these tables to show revenue shortfalls if access-stimulation traffic were to leave its network.[166] However, there is evidence in the record that a significant amount of traffic already bypasses Aureon's CEA tandem.[167] In addition, Aureon bases its calculations on data provided by AT&T in a different proceeding, using AT&T's data to calculate the percentage of revenues Aureon may lose in its hypothetical.[168] But Aureon never confirms whether AT&T's data is correct. So it is difficult to determine, on the basis of the data submitted, the actual, verifiable effect of the *Access Arbitrage Order* on Aureon's network. Furthermore, while Aureon appears to claim that the *Access Arbitrage Order* may lead to its demise by taking access-stimulation traffic off its network, Aureon does not even attempt to square that claim with its argument that access stimulation should be banned. If Aureon's proposed ban were successful, Aureon would also stop carrying access stimulation traffic, which would have the same financial impact that Aureon alleges the *Access Arbitrage Order* will have.[169] As Verizon points out, banning access stimulation "would likely cause the same, or even greater, reduction in traffic on CEA providers' networks" as the section 214 modifications.[170]

48. Next, Aureon claims that the Commission "authorized the mandatory use policy to . . . bring advanced services to rural areas" and therefore its mandatory use authority should not be replaced.[171] Aureon is not able to offer support for this claim because the *Aureon Section 214 Order* says nothing about advanced services, which was not a commonly used term when the then-Common Carrier Bureau adopted that Order in the 1980s.[172] Instead, the Common Carrier Bureau found that the mandatory use policy was justified by the revenues that would be generated by requiring Northwestern Bell to use the CEA network for intrastate, intraLATA toll calls in Iowa.[173] And the Iowa Supreme Court relied on

[165] Aureon Reply at 7-8.

[166] *Id.* at 8-9.

[167] *Access Arbitrage Order*, 34 FCC Rcd at 9042, 9080-81, paras. 16 n.48, 109; Aureon Reply Comments at 12 (noting that HD Tandem has "helped IXCs violate the CEA mandatory use policy for traffic routed to 'LECs hosting high volume applications behind'" CEA tandems (citing HD Tandem Comments at 2)); AT&T Opposition at 3-4.

[168] Aureon Reply at 6-8. Again, Aureon tries to convert this reconsideration proceeding into a rate proceeding.

[169] Petition at 3 (asking for a complete ban); AT&T Opposition at 19-20. *But see* Petition at 3 (requesting that the Commission reinstitute Aureon's original section 214 authorization); Aureon Reply Comments at 6-7 (stating that it wants access stimulation traffic on its network); *Access Arbitrage Order*, 34 FCC Rcd at 9080, para. 108 (stating that Aureon wants to carry access-stimulation traffic on its network and declining to prohibit access-stimulating LECs from subtending CEA providers).

[170] Verizon Opposition at 5.

[171] Petition at 5-6, 14; *see* Aureon Comments at 13 (discussing the use of Aureon's network to provide advanced services).

[172] *Aureon Section 214 Order*, 3 FCC Rcd at 1468 (showing a release date of February 29, 1988). The Bureau twice explained that the proposed Aureon network could make "available more competitive, varied, high quality interstate services." *Id.* at 1468, 1473, paras. 4, 38. In both situations, the Bureau was referring to the fostering of competition among interexchange carriers for the provision of long distance service as a result of the provision of equal access services (which is not affected by the *Access Arbitrage Order*). *See id.* at 1471, para. 21. The term "advanced services," by contrast, was first defined by the Commission more than 10 years later in *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, Appx. B (1999) (defining "advanced services" as "high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality voice, data, graphics or video telecommunications using any technology").

[173] *Aureon Section 214 Order*, 3 FCC Rcd at 1473, para. 32. Indeed, these revenues were so important to the financial viability of the CEA network that the Bureau's grant of the section 214 authorization was conditioned on the appropriate state agencies adopting orders that did not substantially change the projected intrastate revenues. *Id*.

the same justification when it upheld the Iowa Utilities Board's authorization for the CEA network.[174] We also reject as a reason for reconsideration Aureon's assertion that our modification to the mandatory use policy is contrary to the Commission's original intent in establishing the mandatory use policy—to ensure that tariffed CEA rates would remain affordable for AT&T's smaller IXC competitors.[175] To the contrary, IXCs carrying terminating access-stimulation traffic should be paying less now because they will not be paying tandem switching and transport charges for access-stimulation traffic. Moreover, Aureon also fails to acknowledge that CEAs were created to facilitate rural customers' ability to *originate* calls through the long-distance carrier of their choice.[176] Our changes to Aureon's section 214 authorization should not have any effect on its ability to provide centralized equal access service.[177]

49. Aureon goes on to claim that we erred in modifying its section 214 authorization because the mandatory use provisions were in the public interest.[178] While we acknowledge that the then-Common Carrier Bureau determined that those provisions were in the public interest in 1988,[179] we also recognize that, at the time, the Common Carrier Bureau and others envisioned that the majority of the traffic traversing the CEA network would be *intrastate*.[180] As we explained in the *Access Arbitrage Order*, however, "[a]ccess stimulation has upended the original projected interstate-to-intrastate traffic ratios carried by the CEA networks."[181] SDN and Aureon ended up acting as a price umbrella that allowed access-stimulating LECs and the intermediate access providers with which they partnered to overcharge for transport, as long as they offered a rate that was slightly under the CEA rate.[182] And, "because the Commission's rules disrupt[ed] accurate price signals, tandem switching and transport providers for access stimulation [had] no economic incentives to meaningfully compete on price."[183] The result was that "'AT&T and other carriers routinely discover that carriers located in remote areas with long transport distances and high transport rates enter into arrangements with high volume service providers . . . for the sole purpose of extracting inflated intercarrier compensation rates due to the distance and volume of traffic.'"[184] Based on these changed circumstances, we find that we properly determined

[174] *Id.*; *Iowa Network Access Division, Division of Iowa Network Services*, Docket No. RPU-88-2, Final Decision and Order, 1988 Iowa PUC LEXIS 1 (Iowa Util. Bd. Oct. 18, 1988), *subsequent appeal sub nom. Northwestern Bell Telephone Co. v. Iowa Utilities Board*, 477 N.W.2d 678, 684 (Iowa 1991) (acknowledging that the Iowa Utilities Board "noted that, if [Aureon] were not the exclusive provider of terminating access for the [participating telephone companies], this might jeopardize FCC approval of the INS network by materially affecting the ratio of interstate to intrastate usage of the system.").

[175] Petition at 5-6, 15, 24.

[176] Aureon's express intent in applying for its section 214 authorization was to provide equal access and Feature Groups B and D service to the participating telephone companies. *Aureon Section 214 Order*, 3 FCC Rcd at 1468, para. 2. Similarly, "the purpose of establishing [SDN] as a CEA provider . . . was to provide equal access functions and to bring the benefit of equal access to rural areas with low volumes of traffic." SDN Comments at 4.

[177] *Access Arbitrage Order*, 34 FCC Rcd at 9081, para. 110 (finding that the modifications to Aureon's section 214 authorization "will not impact Aureon's ability to serve rural areas"); *see also* Verizon Opposition at 5.

[178] Petition at 16 (arguing that amending the section 214 authorization is "directly contrary to the public interest policy" established in the *Aureon Section 214 Order*); Aureon Reply at 15.

[179] *Aureon Section 214 Order*, 3 FCC Rcd at 1471, para. 21.

[180] *Access Arbitrage Order*, 34 FCC Rcd at 9081-82, para. 111; *Aureon Section 214 Order*, 3 FCC Rcd at 1468-69, 1473, paras. 6, 32.

[181] *Access Arbitrage Order*, 34 FCC Rcd at 9082, para. 111.

[182] *Access Arbitrage Order*, 34 FCC Rcd at 9042, para. 16 (citation omitted).

[183] *Id.* (citing Letter from Matthew Nodine, Assistant Vice President, Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 et al., at 2 n.3 (filed June 12, 2019)).

[184] *Id.* at 9045, para. 24 (quoting Letter from Matthew Nodine, Assistant Vice President, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 5 (filed Feb. 5, 2019)).

"that the public interest will be served by changing any mandatory use requirement for traffic bound to access-stimulating LECs to be voluntary usage" and "that access stimulation presents a reasonable circumstance for departing from the mandatory use policy."[185] Thus, although the mandatory use policy requiring IXCs to use SDN and Aureon for traffic terminating at participating telephone companies may have been in the public interest in 1988, it is not in the public interest today with respect to traffic terminating at access-stimulating LECs.[186]

50. Aureon also claims that the Commission should have used a "less restrictive and less burdensome" measure when it modified the section 214 authorizations.[187] We disagree. Rather than eliminating the mandatory use provisions altogether, an option that we considered, we modified them only with respect to traffic terminating at access-stimulating LECs and only because doing so was necessary to effectuate our other access stimulation rules. As such, we adopted an approach that is narrowly tailored and well suited to the problem of the price umbrellas created by mandatory use that access-stimulating intermediate providers and their partners were using to their benefit. In the *Access Arbitrage Order*. we found that the "vast majority" of access-stimulation traffic was routed to LECs that subtend Aureon and SDN.[188] Given that finding, we decided to modify Aureon's and SDN's section 214 authorizations to enable IXCs to use whatever intermediate access provider an access-stimulating LEC that otherwise subtends Aureon or SDN chooses.[189] We reasoned that doing so will allow IXCs to choose more efficient and cost-effective routing options—such as direct connections—to reach access-stimulating LECs.[190] We do not see—and Aureon has not suggested—a "less restrictive" mechanism for achieving our goal.

51. Finally, Aureon's assertions regarding the importance of the mandatory use provision are belied by information in the record indicating that traffic often bypasses its network.[191] Thus, we find no merit in Aureon's request that we reconsider our decision to modify its section 214 authorization.

## IV. PROCEDURAL MATTERS

52. *Paperwork Reduction Act Analysis*. This *Order on Reconsideration* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. Thus, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

53. *Congressional Review Act.* The Commission will not send a copy of this *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A), because no rule was adopted or amended.

54. *Regulatory Flexibility Act Analysis*. In the *Access Arbitrage Order*, the Commission provided a Final Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act of 1980, as amended (RFA).[192] We received no petitions for reconsideration of that Final Regulatory Flexibility

[185] *Access Arbitrage Order*, 34 FCC Rcd at 9082, para. 112.

[186] *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 57 (requiring a "reasoned analysis" for an agency to change its course).

[187] Petition at 14 (citing *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752 (6th Cir. 1995), which is inapposite).

[188] *Access Arbitrage Order*, 34 FCC Rcd at 9041, para. 15.

[189] *Id.* at 9079-80, para. 106.

[190] *Id.*

[191] *Id.* at 9042, 9080-81, paras. 16 n.48, 109; Aureon Reply Comments at 12 (noting that HD Tandem has "helped IXCs violate the CEA mandatory use policy for traffic routed to 'LECs hosting high volume applications behind'" CEA tandems (citing HD Tandem Comments at 2)); AT&T Opposition at 3-4.

[192] *Access Arbitrage Order*, 34 FCC Rcd at 9084, 9092-9104, para. 118, Appx. B.

Analysis. In this present *Order on Reconsideration*, the Commission promulgates no additional final rules. Our present action is, therefore, not an RFA matter.

## V. ORDERING CLAUSES

55. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201, 214, 218-220, 251, 252, 403 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201, 214, 218-220, 251, 252, 403, 405, and sections 1.47(h), 1.429, 63.10 and 64.1195 of the Commission's rules, 47 CFR §§ 1.47(h), 1.429, 63.10 and 64.1195, this *Order on Reconsideration* IS ADOPTED.

56. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Iowa Network Services, Inc. d/b/a Aureon Network Services, IS DISMISSED and, on alternate and independent grounds, it is DENIED.

57. IT IS FURTHER ORDERED that, pursuant to section 1.103 of the Commission's rules, 47 CFR § 1.103, this *Order on Reconsideration* SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary