

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

In the Matter of)
) Proceeding No. 20-362
) Bureau ID No. EB-20-MD-005
AT&T Corp., AT&T Services, Inc., and MCI)
Communications Services LLC,)
)
Complainants,)
)
v.)
)
Wide Voice, LLC,)
)
Defendant.)

ORDER ON RECONSIDERATION

Adopted: September 28, 2021

Released: September 28, 2021

By the Commission:

I. INTRODUCTION

1. Wide Voice, LLC (Wide Voice), a competitive local exchange carrier (LEC), asks the Commission to reconsider various aspects of its June 9, 2021, Memorandum Opinion and Order granting several counts of a formal complaint that AT&T Corp., AT&T Services, Inc. (collectively, AT&T) and MCI Communications Services LLC (Verizon) filed against Wide Voice under section 208 of the Communications Act of 1934, as amended (Act).1 AT&T and Verizon are interexchange carriers (IXCs) that purchase tandem services from Wide Voice under tariff. The IXCs alleged, among other things, that Wide Voice violated section 201(b) of the Act by rearranging traffic flows in an effort to circumvent the Commission’s access stimulation rules, causing network congestion and call failure by rerouting large quantities of traffic, and attempting to force the IXCs to deliver traffic to a remote location that created no net public benefit as required by the Commission. The Commission ruled in the IXCs’ favor as to these contentions, granting Counts I, II, III, and V of the Complaint and dismissing the remaining Counts without prejudice. Thereafter, Wide Voice filed a Petition for Reconsideration under section 1.106 of the Commission’s rules.2 The IXCs oppose Wide Voice’s Petition.3 For the reasons explained below, we dismiss the Petition on procedural grounds and, as an independent and alternative basis for this decision, deny it on the merits.

1 AT&T Corp., AT&T Services, Inc., and MCI Communications Services LLC v. Wide Voice LLC, Memorandum Opinion and Order, 2021 WL 2395317 (2021) (Order); Formal Complaint of AT&T Corp., AT&T Services, Inc., and MCI Communications Services LLC, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Jan. 11, 2021) (Complaint).

2 47 CFR § 1.106. See Petition for Reconsideration of Wide Voice, LLC, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed July 8, 2021) (Petition). See also Reply Comments of Wide Voice, LLC, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed July 26, 2021) (Reply).

3 See AT&T Corp, AT&T Services, Inc., and MCI Communications Services LLC’s Opposition to Wide Voice, LLC’s Petition for Reconsideration, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed July 19, 2021) (Opposition).

II. BACKGROUND

2. The *Order* recites in detail the facts underlying this dispute.⁴ To summarize, in 2019, Wide Voice—which admittedly was in the “access stimulation business”—changed its business model to cease providing end-office termination services to high volume voice applications and instead provide tandem services exclusively.⁵ Wide Voice and its closely related entities Free Conferencing Corporation (Free Conferencing) and HD Carrier, LLC (HD Carrier) largely accomplished this by means of rerouting traffic destined for Free Conferencing.⁶ This process involved several steps. To begin, Wide Voice “stop[ped] . . . connecting to end users.”⁷ Around the same time, several other access-stimulating LECs ceased providing service to Free Conferencing, and Free Conferencing moved its traffic to HD Carrier for termination.⁸ HD Carrier then designated Wide Voice as the tandem service provider.⁹ Finally, Wide Voice billed the IXCs under its Tariff F.C.C. No. 3 (Tariff) for terminating tandem switching and tandem switched transport access charges relating to the calls terminating through HD Carrier to Free Conferencing.¹⁰ The IXCs disputed these charges, contending that the Commission’s *Access Arbitrage Order* expressly prohibited such charges being imposed on IXCs.¹¹ After negotiations failed to resolve the parties’ dispute, AT&T and Verizon filed the Complaint, asserting multiple counts against Wide Voice.

3. Based on the voluminous record in the case, the Commission found that Wide Voice violated section 201(b) of the Act in three respects: by restructuring its business operations so it could impose tandem charges that it was not entitled to bill;¹² by causing call congestion and not taking reasonable steps to address it;¹³ and by attempting to require interconnection with the IXCs in Iowa.¹⁴ The *Order* started from the premise that “requiring IXCs to pay the tandem switching and tandem

⁴ See *Order*, 2021 WL 2395317, at *1-5, paras. 3-18.

⁵ *Order*, 2021 WL 2395317, at *1, para. 5, *3, paras. 10-11 (quoting Legal Analysis in Support of Answer to Formal Complaint by Wide Voice, LLC, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Feb. 18, 2021) (Answer Legal Analysis) at 23 (“Wide Voice has pivoted its business model to transition away from the access stimulation business.”). Traditionally, the “practice . . . known as access stimulation” involved LECs charging inefficiently high access rates for terminating calls in certain rural areas and then stimulating call volumes through arrangements with entities that offer high-volume calling services in order to artificially increase their access charge revenues. See *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Report and Order and Modifications of Section 214 Authorizations, 34 FCC Rcd 9035, 9035-36, para. 1 (2019) (*Access Arbitrage Order*), review denied, *Great Lakes Communication Corp. v. FCC*, 3 F.4th 470 (D.C. Cir. 2021). As explained in the *Order*, access stimulation practices have evolved over time. *Order*, 2021 WL 2395317, at *2, para. 9.

⁶ *Order*, 2021 WL 2395317, at *3, para. 13. For ease of reference, the *Order* depicts the relationships among the various entities created by David Erickson (including Wide Voice, Free Conferencing, and HD Carrier) in diagrammatic form. See *Order*, 2021 WL 2395317, at *7, para. 27.

⁷ *Order*, 2021 WL 2395317, at *3, para. 11.

⁸ *Id.* at *3, para. 13.

⁹ *Id.*

¹⁰ *Id.* See Supplemental Joint Statement of Stipulated Facts, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Mar. 29, 2021) (Supplemental Joint Statement) at 14, Stipulated Facts 52, 53.

¹¹ See *Access Arbitrage Order* at 9073-74, para. 92 (“[T]he practice of imposing tandem switching and tandem switched transport access charges on IXCs for terminating access-stimulation traffic . . . is unjust and unreasonable under section 201(b) of the Act and is therefore prohibited.”).

¹² *Order*, 2021 WL 2395317, at *5-10, paras. 21-38, *19, para. 68.

¹³ *Id.* at *10-16, paras. 39-57, *19, para. 68.

¹⁴ *Id.* at *16-18, paras. 58-66, *19, para. 68.

switched transport charges for access-stimulation traffic is an unjust and unreasonable practice”¹⁵ and explained that the Commission has authority under section 201(b) to address such practices through the section 208 complaint process.¹⁶ Noting that non-arm’s length transactions are a “hallmark of access stimulation schemes that the Commission has held violate section 201(b),”¹⁷ the Commission examined the relationships among Wide Voice, HD Carrier, and Free Conferencing. It concluded that they were closely related and that, with regard to the rearrangement of traffic at issue here, did not operate independently.¹⁸ Considering these conclusions, the Commission found that Wide Voice “may not bill AT&T and Verizon in connection with the traffic at issue in the Complaint and must refund any amounts the IXCs already have paid with respect thereto.”¹⁹ Because that finding affords AT&T and Verizon all the relief to which they are entitled, the Commission did not reach the remaining counts of the Complaint and dismissed them without prejudice.²⁰ Wide Voice challenges several aspects of the *Order*. None of Wide Voice’s arguments persuades us that we should grant the Petition.

III. DISCUSSION

A. We Dismiss Wide Voice’s Petition on Procedural Grounds

4. The Petition repeats many arguments that the Commission has already fully considered and rejected. These include Wide Voice’s assertions that (1) the *All American* and *Total Tel* decisions are inapposite;²¹ (2) the evidence does not support a finding of a “sham relationship”;²² (3) the Commission must make a finding under the access stimulation rules in order to “penalize” Wide Voice for charging for access stimulation traffic;²³ (4) a coordinated wholesale relationship between Verizon and AT&T

¹⁵ *Order*, 2021 WL 2395317, at *5, para. 19 (citing *Access Arbitrage Order*, 34 FCC Rcd at 9073-74, para. 92). See also *Northern Valley Communications, LLC, Tariff F.C.C No. 3*, Memorandum Opinion and Order, 35 FCC Rcd 6198, 6209, para. 25 (2020), *pet. for review filed and held in abeyance, Northern Valley Commc’ns, LLC v. FCC*, No. 20-187 (D.C. Cir. Oct. 20, 2020) (*Northern Valley Tariff Order*).

¹⁶ The complaint process, the *Order* noted, is “especially well-suited to cases like this one—where a carrier has modified its business practices to engage in unjust and unreasonable charges and practices not specifically addressed by the Commission’s rules.” *Order*, 2021 WL 2395317, at *5, para. 21.

¹⁷ *Order*, 2021 WL 2395317, at *6, para. 24.

¹⁸ *Id.*

¹⁹ *Order*, 2021 WL 2395317, at *1, para. 2, *18, para. 67.

²⁰ *Id.*

²¹ See *AT&T Corp. v. All American Telephone Co.*, Memorandum Opinion and Order, 28 FCC Rcd 3477 (2013) (*All American*), *pets. for review granted in part and denied in part, All American Tel. Co., Inc. v. FCC*, 867 F.3d 81 (D.C. Cir. 2017); *Total Telecommunications Service, Inc. and Atlas Telephone Company, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5726, (2001) (*Total Tel*), *pets. for review granted in part and denied in part, AT&T Corp. v. FCC*, 217 F.3d 227 (D.C. Cir. 2003). Compare Answer Legal Analysis at 51-52 and Petition at 5-6 with *Order*, 2021 WL 2395317, at *9, para. 36. See also *Order*, 2021 WL 2395317, at *6, para. 22.

²² Compare Answer Legal Analysis at 23-24, 48-51; Wide Voice, LLC’s Answer to Number Paragraphs of Formal Complaint of AT&T Corp., AT&T Services, Inc. and MCI Communications Services LLC, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Feb. 18, 2021) (Answer), Declaration of Andrew Nickerson (Nickerson Answer Decl.) at 2-5, paras. 3-9 and Petition at 2-4 with *Order*, 2021 WL 2395317, at *7-8, paras. 29-30, 32 (addressing Wide Voice’s business “pivot”) and Answer Legal Analysis at 11-12, 19, 48-53, Nickerson Answer Decl. at 8-9, para. 18, Petition at 7-10 with *Order*, 2021 WL 2395317, at *6-10, paras. 23-38 (addressing traffic rearrangement to preserve ability to impose tandem charges).

²³ Compare Answer Legal Analysis at 54-72, Petition at 10-12 and Reply at 2-3 with *Order*, 2021 WL 2395317, at *5, para. 20, *7-8, paras. 29-30.

perpetuated the exponential growth of the wholesale traffic Verizon transmitted to Wide Voice;²⁴ (5) the *Order* “unjustifiably allows the IXCs to send calls down a single path;”²⁵ (6) AT&T, unlike every other IXC in the industry, forced Wide Voice to pay for all connections to its tandems;²⁶ (7) the evidence demonstrates that blocking occurred at Wide Voice’s tandems far longer than 60 days;²⁷ and (8) the IXCs “rigged” the proceeding to avoid disclosing their internal efforts to block traffic.²⁸ Wide Voice’s repetition of the same arguments here does not provide grounds for reconsideration.²⁹

5. Wide Voice’s other arguments do not warrant our consideration because they “[f]ail to identify any material error, omission, or reason warranting reconsideration.”³⁰ First, Wide Voice’s claims concerning the “punitive” effect of the *Order* are not ripe for review.³¹ In the *Order*, the Commission granted the IXCs’ request to bifurcate the complaint proceeding.³² The *Order* neither settles on a method for calculating damages nor applies such a method to determine the amount of such damages.³³ Second, Wide Voice’s contention that it is barred from charging for these calls *ad infinitum* is too speculative to address because we have no basis for determining the legality of Wide Voice’s future actions with regard

²⁴ *Compare* Answer Legal Analysis at 20, 29, 32-35, 40, 44, 47, 85 and Petition at 14-15 *with Order*, 2021 WL 2395317, at *15, para. 56 & n.242.

²⁵ *Compare* Answer Legal Analysis at 28-34 and Petition at 14 *with Order*, 2021 WL 2395317, at *14-15, paras. 53-54.

²⁶ *Compare* Answer Legal Analysis at 36, 38, 39, 41-44 and Petition at 15 *with Order*, 2021 WL 2395317, at *11, 13, para. 40 & n.149, *13, n.194.

²⁷ *Compare* Answer Legal Analysis at 28-47 and Petition at 14 *with Order*, 2021 WL 2395317, at *14, para. 50 & nn.210, 211 (addressing the IXCs’ actions to accommodate the increased traffic over a 12-month period from January 2020 and January 2021).

²⁸ *Compare* Wide Voice, LLC’s Motion to Compel, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (dated Apr. 8, 2021) (Motion to Compel) at 4-7 and Petition at 15-16 *with* Letter Ruling from Lisa B. Griffin, FCC, EB, MDRD, to Michael J. Hunseder, Counsel for AT&T, Scott H. Angstreich, Counsel for Verizon, and Lauren Coppola, Counsel for Wide Voice, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (dated Apr. 14, 2021) (Motion to Compel Letter Ruling).

²⁹ *See* 47 CFR § 1.106(p)(3) (providing that petitions for reconsideration of a Commission action that “[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding” are among those that “plainly do not warrant consideration by the Commission” and that a bureau may therefore dismiss). *See also Qwest Commc’ns Co. v. N. Valley Commc’ns, LLC*, Order on Reconsideration, 26 FCC Rcd 14520, 14522–23, paras. 5–6 (2011) (“It is ‘settled Commission policy that petitions for reconsideration are not to be used for the mere reargument of points previously advanced and rejected.’”) (*citing S&L Teen Hosp. Shuttle*, Order on Reconsideration, 17 FCC Rcd 7899, 7900, para. 3 (2002) (citations omitted)); *All American v. AT&T*, Order on Reconsideration, 28 FCC Rcd 3469, 3471–72, para. 6 (same). *See also* 47 CFR §§ 1.106(c)(1), (p)(1)–(2). *Cf. Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Order on Reconsideration, 35 FCC Rcd 6223, 6229, para. 17 (2020), *review denied*, *Great Lakes Communication Corp. v. FCC*, 3 F.4th 470 (D.C. Cir. 2021).

³⁰ 47 CFR § 1.106(p)(1).

³¹ Petition at 12-13. *See also* Reply at 4-5.

³² *Order*, 2021 WL 2395317, at *5, para. 18 & n.77, *18, para. 67 n.277. *See also* Opposition at 9-10.

³³ *Order*, 2021 WL 2395317, at *5, para. 18 & n.77, *18, para. 67 n.277. *See also* Opposition at 10 (*citing Verizon Tel. Cos. v. FCC*, 269 F.3d 1098, 1112 (D.C. Cir. 2001) (if Commission bifurcates complaint proceedings, damages issues are not final when “the amount that the [carriers] will ultimately have to pay, and the time period that those payments will cover, remain for determination. . . . Only after the Commission both commits itself to a method for calculating the proper amount of the award, and concretely applies that method to the [carrier], will [an appellate] court be in a position to evaluate the arguments regarding damages. By bifurcating the proceedings as it did, the FCC left those decisions for another day.”).

to this traffic.³⁴ Finally, Wide Voice argues that it is being treated too harshly because the “*Access Arbitrage Order* allows even access stimulating CLECs to charge other rate elements such as entrance facility charges, dedicated tandem trunk port charge (‘DTTP’), and dedicated multiplexing charges (‘DMUX’).”³⁵ This contention is barred because Wide Voice did not sufficiently raise the issue in the underlying case.³⁶ As such, we will not hear it on reconsideration.³⁷

B. We Deny the Petition on the Merits

6. As an independent and alternative basis for our decision, we also deny the Petition on the merits. As detailed below, the Petition offers no basis that warrants altering the Commission’s findings.

1. The Commission Reasonably Determined that Wide Voice Cannot Lawfully Charge for Calls to HD Carrier

7. Wide Voice’s claim that the rearranged traffic flows at issue are the product of arms-length business decisions is contradicted by the overwhelming weight of the evidence in the record and is simply not credible. Contrary to Wide Voice’s argument that the *Order* ignored “evidence that contradicts the Commission’s findings of a ‘sham relationship,’”³⁸ the Commission considered the three declarations to which Wide Voice cites,³⁹ but it reached a different conclusion based on countervailing record evidence, including statements in those same declarations.⁴⁰ Wide Voice does not contest the

³⁴ In any event, nothing prevents Wide Voice from assessing access charges if it ceases its unreasonable practices and complies with the relevant Commission rules.

³⁵ Petition at 13.

³⁶ See 47 CFR § 1.726(b), (c) (answers must advise the complainant and the Commission “fully and completely of the nature of any defense” and must include a legal analysis “relevant to the claims and arguments set forth therein”). Wide Voice’s Answer consisted of the same declarative statement that is in the Petition and a citation to a footnote in the *Access Arbitrage Order*. See Answer at 34, para. 98, Answer Legal Analysis at 83-84 n.375 (citing *Access Arbitrage Order*, 34 FCC Rcd at 9042, para. 17 n.49 (“These access services may be referred to using different terms in a LEC’s tariff or applicable contracts. For example, a LEC may have rate elements for tandem switched transport termination and tandem switched transport facility or may have a rate element called ‘common transport’ as part of its tandem switched transport offering.”)). The footnote does not address how DTTP and DMUX charges are to be treated in the access stimulation context, and Wide Voice’s Answer offered no analysis pertaining to that issue.

³⁷ See 47 CFR § 1.106(p)(2) (providing that petitions for reconsideration of a Commission action that “[r]ely on facts or arguments which have not previously been presented to the Commission” and do not fall within one of the exceptions articulated by the rule are among those that “plainly do not warrant consideration by the Commission” and may therefore be dismissed by a bureau). Cf. *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order, 17 FCC Rcd 8520, 8527, para. 19 (2002) (citing *Time Warner Entertainment Co. v. FCC*, 144 F.3d 75, 79 (D.C. Cir. 1998) (“even where an issue has been ‘raised’ before the Commission, if it is done in an incomplete way . . . the Commission has not been afforded a fair opportunity [to pass on the issue]”)); *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 279-80 (D.C. Cir. 1997) (Commission “‘need not sift pleadings and documents’ to identify arguments that are not ‘stated with clarity’”).

³⁸ See Petition at 7-10

³⁹ *Id.* at 7-9 (referencing Nickerson’s declaration stating that “David Erickson does not control Wide Voice,” Wide Voice’s Trustee’s declaration describing Erickson’s limitations as to the Trust that is majority owner of Wide Voice, and Erickson’s declaration that Nickerson “took over in 2014, operating the business since that time, without my involvement or control”).

⁴⁰ *Order*, 2021 WL 2395317, at *6-7, paras. 24-27. To summarize, HD Carrier and Free Conferencing share the same majority owner, David Erickson. *Order*, 2021 WL 2395317, at *7, para. 25. Erickson was also involved in the “business creation process” for four companies that each play a substantial role in the practices at issue here: CarrierX, Wide Voice, HD Carrier, and Free Conferencing. *Order*, 2021 WL 2395317, at *7, paras. 25, 27. See

(continued....)

evidence that supports the Commission’s holding.⁴¹ Similarly, the Commission did not ignore “substantial countervailing evidence of Wide Voice’s business planning and compliance with the access stimulation rules.”⁴² Rather, the timing of Wide Voice’s business transition,⁴³ which coincided with the move of Free Conferencing access stimulation traffic,⁴⁴ as well as Andrew Nickerson’s testimony about

Answer, Declaration of David Erickson, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Feb. 18, 2021) (Erickson Answer Decl.) at 2, para. 4. Wide Voice’s majority owner now is an irrevocable family trust created by Erickson, whose {{ }} are the sole beneficiaries, and Erickson {{ }}. *Order*, 2021 WL 2395317, at *6, para. 24; *see also* Reply at 4, n.6 (describing trust as “family trust”). One of the {{ }} apparently works for Free Conferencing. *See* Supplemental Brief of AT&T Corp., AT&T Services, Inc., and MCI Communications Services LLC, Proceeding Number 20-362, Bureau ID No. EB-20-MD-005 (filed Apr. 5, 2021) at 4-5; Complainants’ Exh. 81 at ATTVZ00613-614. Wide Voice does not dispute this claim. Prior to the creation of the trust, Erickson was an owner of Wide Voice. Erickson Answer Decl. at 1, para. 2, 2, para. 4. Contrary to Wide Voice’s claim, the Commission did not ignore the Trustee’s statements or suggest that the Trustee was in “breach of its [fiduciary] duties.” Petition at 8. Rather, in considering evidence of the interrelationship among the companies, the Commission gave more weight to Erickson’s statements about his personal knowledge of Wide Voice’s operations and other record evidence on their relationship than the Trustee’s statements. *Order*, 2021 WL 2395317, at *6-10, paras. 23-38; *see also* Erickson Answer Decl. at 1, para. 2, 3, para. 8, 4, para. 11, 7, para. 20. Material set off by double brackets {{ }} is confidential and is redacted from the public version of this document.

⁴¹ *See Order*, 2021 WL 2395317, at *7, para. 26 (citing to additional connections among the several entities), *7-8, paras. 29-30 (explaining the rearrangement of access stimulation traffic among the closely related companies). *See* Opposition at 5-6 n.22 (citing Memorandum Opinion, *HD Carrier, LLC v. AT&T Corp.*, No. 2:20-cv-06509, 2020 WL 7059202 at *8 & n.41 (C.D. Cal. Dec. 2, 2020) (noting the close relationship between Wide Voice and HD Carrier and “David Erickson’s ownership of both companies”); *see also* Reply in Support of Formal Complaint of AT&T Corp., AT&T Services, Inc., and MCI Communications Services LLC, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Mar. 1, 2021) at 8 n.22 (same).

⁴² Petition at 2-4. Wide Voice posited four reasons for its pivot to providing solely tandem service. Petition at 3 (“the NPRM demonstrated that there would be reforms to ‘access stimulation’ and Wide Voice therefore intended to focus its efforts on its tandem services”; “the Commission’s November 2019 order in an enforcement action held that Wide Voice was not entitled to bill for calls transmitted from its tandem to its own end office;” “Wide Voice saw an opening in the market to sell its costly network infrastructure to other CLEC and VoIP providers, as it was not profitable for CLECs to continue to pay rapidly increasing dedicated interconnection costs to ILECs”; and “Wide Voice determined it would be more profitable long term to invest in IP technologies and provide TDM-IP conversion services to its customers rather than termination services to end users.”). The first two reasons specifically relate to the loss of access revenues, but the latter two do not.

⁴³ *Order*, 2021 WL 2395317, at *3, para. 11, *7, para. 29; *see also* Wide Voice, LLC’s Objections and Answers to IXCs’ First Set of Interrogatories, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Feb. 2, 2021) at 3, Wide Voice’s Response to Interrogatory No. 3 (claiming it completed its transition to solely a tandem provider in {{ }}); Wide Voice, LLC’s Objections and Supplemental Answers to IXCs’ Interrogatories, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Mar. 29, 2021) (Wide Voice Supplemental Interrogatory Responses) at 5, Supplemental Response to Interrogatory 3 (claiming it ceased providing all end-office services by {{ }}). Regardless of the exact date, Wide Voice completed its transition within roughly {{ }} of the effective date of the rules adopted in the *Access Arbitrage Order*. *Order*, 2021 WL 2395317, at *3, para. 11.

⁴⁴ *Order*, 2021 WL 2395317, at *3, paras. 11-12, *7, para. 29.

the detrimental impact the *Access Arbitrage Order* had on Wide Voice's business model,⁴⁵ led the Commission to discount the reasons unrelated to the loss of access revenue that Wide Voice posited.⁴⁶

8. Wide Voice maintains that *Total Tel* and *All American* do not support the *Order*'s conclusion.⁴⁷ We disagree. Those decisions stand for the proposition that even in the absence of an applicable rule violation the Commission may find a violation of section 201(b) when a carrier acts through sham or artifice to obtain charges that it is not entitled to bill.⁴⁸ Wide Voice clearly did that. Based on the entire record,⁴⁹ the *Order* reasonably determined that "Wide Voice acted in concert with HD Carrier and Free Conferencing to reroute access stimulation traffic in order to impose tandem charges that are otherwise prohibited by the *Access Arbitrage Order*."⁵⁰ Wide Voice's attempts to draw factual distinctions between its relationships with HD Carrier and Free Conferencing and those in *Total Tel* and *All American* are beside the point.⁵¹ Even assuming, *arguendo*, that Wide Voice has business relationships independent of HD Carrier and Free Conferencing, that Wide Voice's relationships with HD Carrier and Free Conferencing predate the Commission's NPRM on access stimulation, and that HD

⁴⁵ *Order*, 2021 WL 2395317, at *3, para. 11, *7, para. 29; *see also* Nickerson Answer Decl. at 2-3, paras. 4-5 ("Wide Voice understood the Commission was focused on eliminating access stimulation As the policy environment clarified, I led a strategic review to determine how Wide Voice was to respond to the forthcoming changes to the Commission's access stimulation rules During the NPRM's public comment period that spanned an entire calendar year, Wide Voice decided to stop selling telephone numbers and connecting to end users."). Discrepancies in Nickerson's declaration led the Commission to rely more on other record evidence about Wide Voice's business transition. For example, Wide Voice claimed in its interrogatories, signed by Nickerson, that it has no "overlapping officers, directors, or employees with any other non-LEC." Yet Nickerson has an email address at Free Conferencing, *see Order*, 2021 WL 2395317, at *7, para. 26, and he recently appeared before the Commission on behalf of CarrierX, which owns and operates Free Conferencing. *See* Letter from Lauren Coppola, Counsel, CarrierX, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155 et al., at 1 (filed May 19, 2021). *See also Order*, 2021 WL 2395317, at *1, para. 6.

⁴⁶ Wide Voice takes issue with the *Order*'s conclusion that "Wide Voice stopped serving end users" and that this "coincided with the decision by several LECs to cease providing services to 'high volume applications' such as Free Conferencing in late 2019." Petition at 4 (citing *Order*, 2021 WL 2395317, at *7, para. 29). These two facts are uncontroverted. *See Order*, 2021 WL 2395317, at *3, para. 11. The Commission did not refer to Wide Voice's alleged "long planned business transition to stop serving end users" in this discussion, because, as explained below, it found that evidence not to be credible. Petition at 4 n.10.

⁴⁷ Petition at 5 ("The Commission's ruling that Wide Voice is engaging in sham relationships with Free Conferencing . . . and HD Carrier . . . is made without support under the case law it relies upon" and "[t]o support its sham finding, the Commission relies upon the *Total Tel* and *All American* Orders as legal precedent. Both cases are factually distinguishable from the record in this matter.").

⁴⁸ *See Total Tel*, 16 FCC Rcd at 5726, para. 1, 5733, para. 16, 5734, para. 18; *All American*, 28 FCC Rcd at 3487-88, para. 24, 3490-91, paras. 29-30. *See also Order*, 2021 WL 2395317, at *5, para. 21 n.81 (citing *AT&T Corp. v. YMAX Communications Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 5742, 5761, paras. 52-53 & n.147 (2011); *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16141, para. 363 (1997)). Nothing in these orders suggests that the Commission limited its concerns with arbitrage schemes only to instances where there is a sham company involved.

⁴⁹ *See supra* paragraph 7 and *infra* paragraphs 9-11. *Order*, 2021 WL 2395317, at *6-7, paras. 23-28.

⁵⁰ *Order*, 2021 WL 2395317, at *10, para. 38.

⁵¹ As the Commission has acted to address inefficiencies and opportunities for wasteful access arbitrage, including access stimulation, companies have responded by shifting and evolving their practices to retain access revenues. *See e.g.*, *Access Arbitrage Order*, 34 FCC Rcd at 9035-36, paras. 1-2, 9037-39, paras. 7-11, 9053-54, paras. 44-45 (explaining that access stimulation schemes have evolved over time). Section 201(b) is a tool the Commission can use to investigate the conduct of a carrier—like Wide Voice—that has attempted to construct a means of evading the Commission's rules.

Carrier has business relationships independent of Wide Voice,⁵² the totality of the evidence supported the Commission's section 201(b) finding.⁵³

9. Wide Voice claims that its transition to a tandem provider was a “long planned strategic decision” based on “four different business related reasons.”⁵⁴ Importantly, two of those reasons directly relate to Wide Voice's loss of access revenues⁵⁵ and clearly reflect Wide Voice's desire to continue to collect tandem switching and transport charges.⁵⁶ Wide Voice does not explain how its other two business objectives necessitate rerouting traffic to avoid the *Access Arbitrage Order*,⁵⁷ and nothing in the Commission's *Order* prevents Wide Voice from lawfully pursuing those objectives.

10. Wide Voice's remaining evidentiary claims are without merit. According to Wide Voice, the Commission's finding of a sham arrangement is “based on the flawed finding that Erickson tried to coerce the IXCs to enter commercial arrangements to alleviate call congestion (and admitted as much in his affidavit).”⁵⁸ What the *Order* in fact said was that Erickson had personal knowledge “regarding *Wide Voice's* current business, including *Wide Voice's* . . . attempts to convince the IXCs to enter into commercial arrangements to alleviate call congestion.”⁵⁹ The Commission considered Erickson's knowledge to be relevant, but it did not find that Erickson directly participated in such “coercion.”⁶⁰ Wide Voice also chides the Commission for “fault[ing] Wide Voice, HD Carrier and Free Conferencing

⁵² Petition at 6.

⁵³ See, e.g., *All American*, 28 FCC Rcd at 3487, para. 24 (finding “based on the totality of the record”).

⁵⁴ Petition at 2-4. Wide Voice also notes that it does not charge the IXCs for calls to self-identified access stimulating LEC, Northern Valley Communications (Northern Valley). This fact, Wide Voice claims, proves that it did not transition to solely a tandem provider “for the purpose of finding a loophole such that [it] could charge IXCs for access stimulation traffic.” Petition at 4; see also Reply at 4. We disagree. Even assuming that, in some circumstances, Wide Voice provides tandem service in a way that is not intended to evade our access stimulation rules, that is not the case with respect to calls at issue in this case (i.e., those involving Wide Voice and its various related entities, HD Carrier and Free Conferencing).

⁵⁵ See *supra* paragraph 7 and n.42.

⁵⁶ Petition at 3 (“[T]he NPRM demonstrated that there would be reforms to ‘access stimulation’ and Wide Voice therefore intended to focus its efforts on its tandem services”; “[T]he Commission's November 2019 order in an enforcement action held that Wide Voice was not entitled to bill for calls transmitted from its tandem to its own end office”). See *MCI Communications Services, Inc. v. Wide Voice, LLC*, Memorandum Opinion and Order, 34 FCC Rcd 11010 (2019), *pet. for review granted in part and denied in part, Wide Voice v. FCC*, 2021 WL 3235760 (9th Cir. 2021).

⁵⁷ Petition at 3 (“Wide Voice saw an opening in the market to sell its costly network infrastructure to other CLEC and VoIP providers, as it was not profitable for CLECs to continue to pay rapidly increasing dedicated interconnection costs to ILECs”; and “Wide Voice determined it would be more profitable long term to invest in IP technologies and provide TDM-IP conversion services to its customers rather than termination services to end users.”).

⁵⁸ Petition at 9.

⁵⁹ *Order*, 2021 WL 2395317, at *6, para. 24 (emphasis added).

⁶⁰ Wide Voice also argues that Erickson's statement does not specifically reference Wide Voice's actions regarding “commercial agreements,” but speaks to Wide Voice's “offering an IP (instead of TDM) connection” to the IXCs. Petition at 9. The specific type of connection that Erickson's statement addresses is not material to our decision, because the Commission considered Erickson's personal knowledge of Wide Voice's business. *Order*, 2021 WL 2395317, at *6, para. 24. We note, however, that the Commission concurred with the IXCs and found “based on the record, that Wide Voice's acceptance of massive volumes of access stimulation traffic onto its network when it did not have sufficient capacity to handle that traffic was intended to force the IXCs into commercial arrangements with Wide Voice or entities closely connected to Wide Voice or Erickson.” *Order*, 2021 WL 2395317, at *12, para. 45 n.178.

for their relatedness.”⁶¹ To be clear, Wide Voice’s relatedness to other companies does not contravene section 201(b). The violation, rather, is based on Wide Voice’s use of those relationships to reroute traffic and charge the IXCs for tandem services in contravention of the *Access Arbitrage Order*. Finally, Wide Voice claims there is no evidence that it “inserted itself in the call flow from the IXCs to the other ‘closely related companies’ as a means of exploiting its ‘sham’ relationships.”⁶² Although Wide Voice claims it was simply pursuing its “normal function” as a “nationwide tandem provider,” the Commission concluded that Wide Voice took on that role, with respect to the massive quantities of traffic previously destined for access-stimulating LECs, in order to evade the Commission’s rules.⁶³

11. In sum, the Commission carefully considered the interrelationships among Wide Voice, HD Carrier, and Free Conferencing; the timing of, and reasons for, Wide Voice’s shift in its self-described “business model”; and the timing and rearrangement of the Free Conferencing traffic.⁶⁴ This evidence reasonably led the Commission to conclude that Wide Voice undertook action to avoid the access stimulation rules so that it could continue to charge the IXCs for tandem services. The Commission exercised its broad discretion to weigh the record,⁶⁵ and its findings were entirely consistent with section 201(b) precedent.⁶⁶

2. The Commission Was Not Required to Find that Wide Voice Violated the Access Stimulation Rules

12. Access stimulation, Wide Voice asserts, is “defined by regulation,” and “[w]hether or not a carrier is entitled to charge for terminating ‘access stimulation’ is determined by that regulation—namely, a carrier’s traffic ratio.”⁶⁷ Wide Voice claims that the Commission improperly failed to “look at the regulatory definition of access stimulation or apply it to the traffic at issue.”⁶⁸ Wide Voice admits that the “calls at issue are calls to high volume applications.”⁶⁹ But it argues that “calls to free or low cost voice applications is not *per se* access stimulation,”⁷⁰ and the Commission “has never made the determination that transmitting calls to such platforms is unjust and unreasonable.”⁷¹ According to Wide Voice, the Commission’s finding that Wide Voice would not have been able to charge for the calls at

⁶¹ Petition at 9-10.

⁶² *Id.* at 10. For clarity, we note that we found, based on the record, that “Wide Voice inserted a VoIP provider into the call path for the sole purpose of avoiding the financial obligations that accompany the Commission’s access stimulation rules.” *Order*, 2021 WL 2395317, at *8, para. 32.

⁶³ *Order*, 2021 WL 2395317, at *6-10, paras. 23-38.

⁶⁴ *Id.*

⁶⁵ *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987). See also *Rejoynetwork, LLC*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 14917, 14922, para. 10 (2008) (citing *Quatron Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 4749, 4754, para. 15 (2000)).

⁶⁶ See e.g., *All American*, 28 FCC Rcd at 3487, para. 24; *North County Communications Corp v. Cricket Communications*, Memorandum Opinion and Order, 31 FCC Rcd 10739, 10747, para. 16, 10748, para. 19 (Enf. Bur. 2016).

⁶⁷ Petition at 11.

⁶⁸ *Id.* at 12.

⁶⁹ *Id.* at 11.

⁷⁰ *Id.*

⁷¹ *Id.*

issue but for the sham is unfounded” because the Commission has made no specific determination that the calls are access stimulation.⁷²

13. Wide Voice is correct that the *Order* did not apply section 61.3(bbb) of the Commission’s rules to determine whether Wide Voice was engaging in access stimulation.⁷³ However, Wide Voice is wrong that failing to do so renders the *Order* invalid. The Commission explicitly did not decide the IXCs’ claim that Wide Voice violated the access stimulation rules.⁷⁴ Instead, it decided the IXCs’ claim under section 201(b), analyzing the record before it and concluding that Wide Voice acted unreasonably by restructuring its business operations so it could impose tandem charges that it was not entitled to bill.⁷⁵ But there is no dispute that (1) the traffic at issue largely flowed to numbers associated with Free Conferencing,⁷⁶ (2) Free Conferencing migrated the traffic to HD Carrier after several rural LECs ceased providing service to “high volume applications”,⁷⁷ (3) the traffic would have been access stimulation traffic under the Commission’s rules had it not been moved from the LECs previously serving Free Conferencing,⁷⁸ and (4) Wide Voice began handling—and billing for—this same traffic.⁷⁹ Indeed,

⁷² *Id.* at 12 (“The Order states that ‘Wide Voice would have triggered the access stimulation rule,’ but does not (and cannot) explain how.”).

⁷³ *See* 47 CFR § 61.3(bbb).

⁷⁴ *Order*, 2021 WL 2395317, at *18, para. 67 (stating that, in light of the section 201(b) finding, which afforded the IXCs “all the relief to which they are entitled,” the Commission did not need to reach the claims stated in the remaining counts of the Complaint, including the IXCs’ claim that Wide Voice violated the access stimulation rules).

⁷⁵ *Order*, 2021 WL 2395317, at *5-10, paras. 21-38.

⁷⁶ *Order*, 2021 WL 2395317, at *1, para. 6. *See also* Complaint at 10, para. 25; Answer at 9, para. 25.

⁷⁷ *Order*, 2021 WL 2395317, at *3, paras. 12-13, *7-8, paras. 29-30 n.119. *See also* Nickerson Answer Decl. at 8-9, para. 18; Answer Legal Analysis at 19.

⁷⁸ *Order*, 2021 WL 2395317, at *8, para. 30 & n.119. *See also* Answer Legal Analysis at 18-19 (acknowledging that five rural LECs decided to stop serving high volume end users, including Free Conferencecall.com); Nickerson Answer Decl. at 8-9 (“HD Carrier’s migration of traffic homed to Wide Voice tandems in early January 2020 was accelerated by five rural LECs deciding to give up their business with calling applications *due to the regulatory changes enacted through the Access Arbitrage Order.*”) (emphasis added). Answer Exh. 9 at WV_000103-114 (Letters submitted in WC Docket No. 18-155 from Goldfield Access Network, BTC, Inc., Louisa Communications, Inc., Interstate Cablevision, LLC, and OmniTel Communications, Inc., all stating that these rural LECs “terminated [their] participation in access stimulation as defined in the [*Access Arbitrage Order*]” and that they terminated their end user relationships with “high volume calling providers” and were working “diligently to transition stimulated traffic off of [their] networks”).

⁷⁹ *Order*, 2021 WL 2395317, at *8, para. 30 & n.119. *See also* Nickerson Answer Decl. at 8-9; Answer at 15, para. 39 (acknowledging that updated traffic forecast of “127 million additional minutes of traffic in January 2020 for HD Carrier due to the fact that 5 rural LEXs declared that they would no longer be hosting applications.”). Wide Voice does not deny that it handled the same access stimulation traffic that the five rural LECs previously delivered to Free Conferencing.

Erickson, Wide Voice's own declarant, judged the traffic to be access stimulation traffic.⁸⁰ The traffic may have been rerouted, but its fundamental nature remained the same.⁸¹

14. Wide Voice wrongly claims that we were compelled to apply the "definition" of access stimulation from our rules to reach our decision under section 201(b).⁸² Wide Voice maintained throughout this proceeding that neither it nor HD Carrier was subject to the access stimulation rules,⁸³ stating that it "did not produce the traffic ratios . . . because a tandem provider cannot be an access stimulator by definition . . . [and] it is unclear how a tandem provider could calculate its traffic ratios."⁸⁴ Yet Wide Voice, which has asserted that section 61.3(bbb) is inapplicable, now claims that the Commission erred by not applying the rule as part of its section 201(b) analysis.⁸⁵ Regardless, the Commission did observe, based on the record, that had the traffic at issue terminated to Wide Voice's end office, it "would have triggered the revised access stimulation rule."⁸⁶ That observation was not a finding that the traffic at issue was access stimulation under the rules.⁸⁷ Rather, the support for that statement—provided in footnote 119 of the *Order*—was Wide Voice's admissions that "rural LECs left the business rather than comply with the new access stimulation rules" and that it "now handles the same access stimulation traffic that the five rural LECs previously delivered to Free Conferencing."⁸⁸ We have

⁸⁰ In discussing call failure issues, Erickson stated that he "decided to absorb business losses on HD Carrier traffic by not pursuing non-access stimulation business." Erickson Answer Decl. at 6, para. 17. Stripped of the double negative, Erickson appears to characterize the traffic flowing to HD Carrier through Wide Voice as access stimulation traffic.

⁸¹ We agree with Wide Voice that the "Commission has never made the determination that transmitting calls to [high volume voice applications offering free, 'freemium,' and paid services] is unjust and unreasonable." Petition at 11; Reply at 3. And the Commission did not reach that conclusion in the *Order*.

⁸² Reply at 2 ("Access Stimulation is defined by regulation Whether or not a carrier is entitled to charge for terminating 'access stimulation' is determined by that regulation – namely, a carrier's traffic ratio Section 201(b) may supply the Commission with some conceptual authority to declare unreasonable practices *per se* however the determination that Wide Voice would not otherwise be entitled to charge for the calls at issue is an assumption the Commission makes, rather than a finding based on logic, reason, and most importantly, evidence of the Commission's own ratio-based test."). See also Petition at 11-12.

⁸³ *Order*, 2021 WL 2395317, at *3, para. 13; Answer Legal Analysis at 50.

⁸⁴ Wide Voice's Response to the IXCs' Supplemental Brief, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Apr. 12, 2021) at 6.

⁸⁵ Petition at 11-12; Reply at 2-3.

⁸⁶ *Order*, 2021 WL 2395317, at *8, para. 30. Tellingly, Wide Voice's projected traffic volumes with AT&T and Verizon ballooned to 262 and 304 million minutes of use (MOU) per month, respectively. *Id.* Ultimately, Wide Voice billed AT&T and Verizon for over 100 million MOUs each month in almost every month of 2020. *Order*, 2021 WL 2395317, at *1, para. 6, *3, para. 13. See also Exhibits in Support of Wide Voice, LLC's Submissions Dated March 29, 2021, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Mar. 29, 2021) (Wide Voice Supplemental Exhibit Submission), Exh. R (Summary of Wide Voice Invoices to AT&T and Verizon – 2020) (showing minutes of use exceeding 100 million in every month of 2020 except January and February). Wide Voice also stated that it provides no outbound, i.e., originating, services to its customers. Nickerson Answer Decl. at 5, para. 8 ("Wide Voice has plans to offer outbound tandem services to its CLEC and VoIP customer, but has been unable to do so as the IXCs willingly refuse to provide enough capacity to Wide Voice to provide these services.").

⁸⁷ Wide Voice takes issue with the Commission's statement that it had "insufficient evidence on the record on which to evaluate the significance of [HD Carrier's designation of other tandem providers for Free Conferencing traffic]." Petition at 6 n.22 (citing *Order*, 2021 WL 2395317, at *7, para. 29 n.116). Wide Voice claims that "this information is not within Wide Voice's possession, custody or control," and it instead resides "[o]nly [with] HD Carrier, who is not a party to this proceeding." Even if the information is not within Wide Voice's control, the Commission's statement merely explained that Wide Voice failed to substantiate a claim it made.

⁸⁸ *Order*, 2021 WL 2395317, at *8, para. 30 n.119.

authority to find practices unjust and unreasonable under section 201(b) without determining that a particular rule has been violated.⁸⁹ The Commission reasonably exercised that authority based on the record in this case—i.e., the interrelationships among Wide Voice, HD Carrier, and Free Conferencing; the timing of, and reasons for, Wide Voice’s shift in its self-described “business model” solely to a tandem provider; and the timing and rearrangement of the Free Conferencing traffic. These facts substantiate our conclusion that Wide Voice attempted to evade the access stimulation ratios set forth in section 61.3(bbb).

3. Wide Voice’s Challenge to the Commission’s Call Congestion Ruling is Unfounded

15. Wide Voice disagrees with the *Order*’s conclusion on the call congestion claim, but does not identify any material error, omission, or reason warranting a change in the *Order*’s conclusion.⁹⁰ Nevertheless, we address Wide Voice’s specific arguments in turn.⁹¹

16. To begin, Wide Voice mischaracterizes the *Order* by contending that it grants the IXCs an “indefinite right to block [calls].”⁹² The *Order* does no such thing. The Commission found that Wide Voice acted in an unjust and unreasonable manner by restructuring its business operations so that it could impose tandem charges that it was not entitled to bill.⁹³ It further concluded that Wide Voice could not bill the IXCs for such traffic and must refund any amounts the IXCs already have paid.⁹⁴ The *Order* also determined that Wide Voice’s conduct resulted in call congestion⁹⁵ and that the IXCs made reasonable efforts to upgrade their facilities in response.⁹⁶ Nothing in the *Order* gives the IXCs a right to block calls.

17. Wide Voice argues that, although the *Order* found that it typically takes the IXCs 30-60 days to add and activate new DS3 circuits, the *Order* failed to address the evidence that blocking occurred because of the failure to add capacity at Wide Voice’s tandems longer than 60 business days.⁹⁷ On the contrary, the Commission found that the IXCs reasonably responded to the call congestion that Wide Voice caused⁹⁸ and that “[t]here is no evidence supporting Wide Voice’s claim that, after receiving traffic forecasts, the IXCs refused or failed to expand capacity to the best of their ability in a timely manner.”⁹⁹ The Commission further determined that the parties worked together *throughout 2020* to add additional capacity to alleviate call failures and were successful doing so.¹⁰⁰ The process by which the parties added

⁸⁹ See *supra* paragraph 8.

⁹⁰ See 47 CFR § 1.106(p)(1).

⁹¹ Contrary to Wide Voice’s contention, the Commission did not ignore evidence relating to (1) the exponential growth of Verizon’s wholesale traffic and its wholesale relationship with AT&T; (2) traffic being transmitted over historical call paths; and (3) the payment responsibilities associated with Wide Voice’s interconnection arrangement with AT&T. The *Order* addressed Wide Voice’s assertions on these claims (see *supra* footnotes 24, 25, and 26), and we therefore deny them as repetitive and unsubstantiated.

⁹² Petition at 13.

⁹³ See *Order*, 2021 WL 2395317, at *7, para. 29, *9, para. 36, and *19, para. 68.

⁹⁴ *Id.* at *18, para. 67.

⁹⁵ *Id.* at *11-12, paras. 40-46.

⁹⁶ *Id.* at *13-16, paras. 47-57.

⁹⁷ Petition at 13-14. There is no doubt that Wide Voice and HD Carrier would have carried additional traffic if AT&T agreed to use non-regulated paths to connect with Wide Voice. See Petition at 14 (citing Erickson’s declaration).

⁹⁸ *Order*, 2021 WL 2395317, at *15, para. 54 n.224.

⁹⁹ *Id.* at *13, para. 49.

¹⁰⁰ See *Order*, 2021 WL 2395317, at *14, paras. 50-51 (emphasis added).

capacity to their carry out interconnection arrangements involved efforts on both sides,¹⁰¹ and the Commission determined that, in some instances, Wide Voice did not complete its tasks in a timely manner.¹⁰² Indeed, Wide Voice has yet to respond to the IXCs' requests, dating back to March 2020, to add additional capacity.¹⁰³

18. Wide Voice asks the Commission to “make clear that IXCs must take all reasonable measures to connect calls.”¹⁰⁴ Commission precedent clearly prohibits carriers from unreasonably blocking calls,¹⁰⁵ and the record amply demonstrates that the IXCs acted reasonably to expand capacity to handle Wide Voice's cascading, increasing traffic forecasts. Indeed, there is no evidence in the record that AT&T and Verizon refused to connect calls because they were access stimulation.¹⁰⁶

19. Finally, Wide Voice contends that the Commission ignored bad faith discovery tactics by the IXCs, arguing that such tactics warrant an adverse inference against IXCs.¹⁰⁷ The Commission, however, addressed—and rejected—the very same alleged discovery issues when Wide Voice raised them in a Motion to Compel during the discovery phase of the case.¹⁰⁸ Wide Voice's Petition is based upon those same allegations. We this deny this argument as repetitive and unsubstantiated.

20. Commission staff denied Wide Voice's Motion to Compel discovery on the ground that AT&T and Verizon had provided an adequate response.¹⁰⁹ As the IXCs correctly noted in their Opposition, they had “produced more than six thousand pages of documents, including 867 purely internal emails,” compared to Wide Voice's production of “only four email chains, which included zero internal emails and zero emails with HD Carrier and Free Conferencing, despite these entities' entangled business relationships.”¹¹⁰ Moreover, staff found that, to the extent AT&T and Verizon did not have documents responsive to a specific Wide Voice request, they had so stated in their pleadings, which their counsel signed under oath.¹¹¹ Staff further denied the Motion to Compel because it sought to compel responses to requests not included in the parties' Joint Statement, where the parties were directed to “[detail] their positions on any outstanding discovery disputes and the basis for those positions.”¹¹²

¹⁰¹ See *Order*, 2021 WL 2395317, at *12-14, paras. 44, 48-51 and nn.149 & 218.

¹⁰² See *id.* at *13-14, paras. 48, 51.

¹⁰³ See *id.* at *14, para. 50 nn.210 & 211; Opposition at 8.

¹⁰⁴ Petition at 14. Wide Voice's request exceeds the scope of the complaint proceeding, in which the Commission was asked to decide whether Wide Voice caused the call congestion.

¹⁰⁵ See *Order*, 2021 WL 2395317, at *10, para. 39 (citing *Call Blocking Declaratory Ruling*, 22 FCC Rcd at 11631-32, paras. 5-7).

¹⁰⁶ Petition at 14-15. As explained above, the Commission did not need to decide whether Wide Voice violated the access stimulation rules, because the *Order* resolved the case under section 201(b) of the Act. See *supra* paragraph 13. Thus, Wide Voice is incorrect that the *Order* is flawed because “there was no finding that Wide Voice is an access stimulator or that the traffic is indeed ‘access stimulation.’” Petition at 14-15. In addition, there is no dispute that Wide Voice did not have enough capacity to handle the volume of traffic at issue, and whether the traffic was access stimulation traffic is irrelevant to the finding about who caused the call congestion.

¹⁰⁷ Petition at 15-16.

¹⁰⁸ Motion to Compel Letter Ruling at 2. To the extent that Wide Voice's challenge based upon bad faith discovery tactics is a request that the Commission review the Bureau's Letter Ruling denying its Motion to Compel, it is untimely filed. See 47 CFR § 1.115(d).

¹⁰⁹ Motion to Compel Letter Ruling at 2.

¹¹⁰ See Opposition at 9 (citing AT&T Opposition at 1 and Verizon Opposition at 1).

¹¹¹ Motion to Compel Letter Ruling at 2. See 47 CFR § 1.721(m).

¹¹² Motion to Compel Letter Ruling at 2.

21. The Petition does not present any evidence of bad faith discovery tactics.¹¹³ Wide Voice again asserts—without any support—that the IXCs improperly hid documents and falsely claimed that such documents do not exist.¹¹⁴ Wide Voice has not identified any documents listed on the IXCs’ privilege logs that purportedly should not have been included on the logs. Nor has Wide Voice presented any facts calling into question the veracity of the IXCs’ attestation that no other documents exist.

IV. ORDERING CLAUSE

22. Accordingly, **IT IS HEREBY ORDERED**, pursuant to sections 4(i), 4(j), 201, 203, 204, 208, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201, 203, 204, 208, 405, and section 1.106 of the Commission’s rules, 47 CFR § 1.106, that Wide Voice’s Petition for Reconsideration is **DISMISSED** on procedural grounds and, as an independent and alternative basis, **DENIED** for the reasons stated herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹¹³ Petition at 16.

¹¹⁴ *Id.* at 15.