

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.)

MEMORANDUM OPINION AND ORDER

Adopted: June 9, 2021

Released: June 9, 2021

By the Commission:

I. INTRODUCTION

1. This Memorandum Opinion and Order resolves a formal complaint filed by inter-exchange carriers (IXCs) against Wide Voice, LLC (Wide Voice), a competitive local exchange carrier (LEC).1 The IXCs—AT&T Corp. and AT&T Services, Inc. (collectively, AT&T) and MCI Communications Services LLC (Verizon)—allege that Wide Voice carried out a scheme to preserve profits derived from “access stimulation.” According to the IXCs, Wide Voice rearranged traffic flows in an effort to circumvent the Commission’s access stimulation rules, caused network congestion and call failure by rerouting large quantities of traffic, and attempted to force the IXCs to deliver traffic to a remote location that created no net public benefit as required by the Commission. The IXCs contend that these actions violate section 201(b) of the Communications Act of 1934, as amended (the Act), which prohibits telecommunications carriers from engaging in unjust or unreasonable practices.2

2. We agree. We find 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. This finding affords AT&T and Verizon all the relief to which they are entitled. Accordingly, we need not and do not reach the remaining counts of the Complaint and dismiss them without prejudice.

II. BACKGROUND

3. AT&T Corp. is a New York corporation that provides and purchases communications and other services with its principal place of business in New Jersey.3 AT&T Services, Inc. is a Texas

1 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 U.S.C. § 201(b).

3 Joint Statement of Stipulated Facts, Settlement, Discovery and Scheduling Pursuant to 47 C.F.R. § 1.733(b)(1)(i)-(v), Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Mar. 12, 2021) (Joint Statement) at 3, Stipulated Fact No. 3.

corporation that performs centralized administrative support services, including information technology and billing, real estate, procurement, human resources, training, and finance.⁴

4. Verizon is a Delaware corporation that provides and purchases communications and other services with its principal place of business in New Jersey.⁵

5. Wide Voice is a Nevada limited liability company with its principal place of business in El Segundo, California.⁶ Wide Voice is a competitive LEC that offers access services to IXCs.⁷

6. The Complaint identifies several entities that have some relationship to the call traffic in dispute as relevant non-parties. Four of those entities are “closely related” to Wide Voice: Free Conferencing Corporation (Free Conferencing), CarrierX, LLC d/b/a Free Conferencing (CarrierX); HD Carrier, LLC (HD Carrier); and HDPSTN, LLC d/b/a HD Tandem (HD Tandem).⁸ Most of the call traffic at the center of this dispute flows to numbers associated with Free Conferencing, which provides “free or low-cost calling services . . . through FreeConferenceCall.com.”⁹ Free Conferencing’s Chief Executive Officer, David Erickson, is a founder of Wide Voice.¹⁰ Erickson directly owns approximately 50 percent of CarrierX,¹¹ which owns and operates FreeConferenceCall.com.¹² Erickson also owns and manages HD Carrier (an interconnected VoIP provider),¹³ and he is the founder and CEO of HD Tandem (a provider of “connectivity between originating carriers and terminating carriers, including carriers to

⁴ Joint Statement at 3, Stipulated Fact No. 4.

⁵ Joint Statement at 2, Stipulated Fact No. 2.

⁶ Joint Statement at 2, Stipulated Fact No. 1.

⁷ Joint Statement at 2-3, Stipulated Fact Nos. 1, 5, 7; Supplemental Joint Statement of Stipulated Facts, Proceeding No. 20-362, Bureau ID Number EB-20-MD-005 (filed Mar. 29, 2021) (Supplemental Joint Statement) at 1, Stipulated Fact No. 1.

⁸ See Complaint at 10-12, paras. 25-28.

⁹ See Complaint at 10, para. 25; Wide Voice, LLC’s Answer to Numbered 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) at 9, para. 25.

¹⁰ Complaint at 9-10, paras. 24-25; Answer at 8-9, paras. 24-25. See also 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 (“I was involved in the business creation process for CarrierX, Wide Voice, HD Carrier, and Free Conferencecall.com”).

¹¹ Complaint at 10, para. 26; Answer at 9, para. 26.

¹² Complaint at 10, paras. 25-26; Answer at 9, paras. 25-26. See Erickson Answer Decl. at 1, para. 2 (CarrierX LLC “operates the FreeConferencecall.com application”). Erickson largely owns CarrierX. Besides his direct 50 percent ownership, Erickson owns 77 percent of Free Conferencing, which, in turn, owns 50 percent of CarrierX. Complaint at 10, para. 26 (citing Affidavit of David Erickson, 1 at para. 2, *Inteliquent v. Inc. v. Free Conferencing Corp.*, No. 1:16-cv-06976 (N.D. Ill. Dec. 20, 2019) (*Inteliquent v. Free Conferencing*) Dkt. 619).

¹³ Complaint at 11, para. 27; Answer at 9, para. 27; 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. L, Pages from Wide Voice’s Answers to IXCs’ First Set of Interrogatories, at 11, Wide Voice Response to Interrogatory No. 5. The parties refer to Wide Voice’s non-LEC customers as both voice over internet protocol (VoIP) providers and internet protocol enabled service (IPES) providers. Any distinction is not relevant to our discussion, and we use the terms interchangeably.

terminating applications and to the high-volume application providers”).¹⁴ Wide Voice’s majority owner is a trust whose beneficiaries are {[]}.¹⁵

7. Different forms of terminating access charges are relevant to this case. Historically, IXCs paid terminating end office access charges to the LEC that ultimately delivered calls to the called party.¹⁶ In addition, IXCs paid terminating tandem switching and terminating tandem switched transport access charges to LECs that move traffic between an IXC and the terminating LEC’s end office.¹⁷ Tandem switches “operate much like railway switches, directing traffic” between service providers rather than routing calls directly to end users.¹⁸

A. The Commission’s Access Stimulation Reforms

8. The Commission “has been combating access stimulation for more than a decade.”¹⁹ Traditionally, access stimulation involved LECs artificially inflating their access charge revenue by entering into arrangements to terminate calls on behalf of entities that offer high-volume calling services, such as “free” conference calls or chat lines.²⁰ In 2011, the Commission reformed the intercarrier compensation system, in part, to address inefficiencies and opportunities for wasteful arbitrage, including access stimulation.²¹ The Commission found that “[a]ccess stimulation imposes undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment,” 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.”²² As a result, the Commission established parameters to define when a LEC is engaged in access stimulation and imposed a

¹⁴ Complaint at 12, para. 28; Answer at 9, para. 28. CarrierX owns all of HD Tandem’s outstanding shares, and Erickson, by virtue of his ownership position with CarrierX, is therefore also HD Tandem’s majority owner. Complaint at 12, para. 28; Answer at 9, para. 28.

¹⁵ Complaint at 9, para. 24 and n.17 (citing Free Conferencing Statement of Undisputed Facts at 5, para. 16, *Inteliquent v. Free Conferencing* Dkt. 569 (“A trust established by Mr. [David] Erickson owns 88% of Wide Voice.”)); Wide Voice Supplemental Interrogatory Responses at 14-15, Supplemental Response to Interrogatory No. 12; Wide Voice Supplemental Exhibit Submission, Exh. O (Declaration of Trustee of Wide Voice majority owner Trust) at WV_000663. Material set off by double brackets {[]} is confidential and is redacted from the public version of this document.

¹⁶ *In Re FCC 11-161*, 753 F.3d 1015, 1111 (10th Cir. 2014) (showing call path diagrams and explaining that IXC paid access charge to LEC terminating the call).

¹⁷ *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, 33 FCC Rcd 5466, 5468-69, para. 6 and n.15 (2018) (*Access Arbitrage NPRM*) (describing components of tandem access charges including transport charges “for hauling tandem-switched traffic between the tandem switch and connecting carriers”).

¹⁸ *See Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 490 (2002); *see also Access Arbitrage NPRM*, 33 FCC Rcd at 5469, n.15 (describing components of tandem access charges including transport charges “for hauling tandem-switched traffic between the tandem switch and connecting carriers”).

¹⁹ *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Order on Reconsideration, 35 FCC Rcd 6223, 6224, para. 4 (2020) (*Access Arbitrage Recon Order*).

²⁰ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17874, para. 656 (2011) (*USF/ICC Transformation Order*), *pets. for review denied*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2050, and 135 S. Ct. 2072 (2015).

²¹ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17676, para. 33.

²² *Access Arbitrage Recon Order*, 36 FCC Rcd at 6224, para. 5 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17875, para. 663, 17876, para. 665).

specific “benchmark rule” on the rates for access services provided by those access-stimulating LECs.²³ More generally, the Commission adopted a schedule for transitioning away from terminating end office access charges to bill and keep by 2020.²⁴ The Commission recognized that moving to bill and keep would help curb traditional access arbitrage.²⁵

9. In response to the imposition of the benchmark rule and the transition of terminating end office rates to bill-and-keep, access-stimulating LECs and their non-LEC partners adapted their practices to take advantage of terminating tandem switching and transport charges that were not being reduced to bill-and-keep. To close that loophole, in its 2019 *Access Arbitrage Order*, the Commission further revised its rules to make the access-stimulating LEC responsible for the cost of call delivery to itself because it chooses the call path.²⁶ The Commission reasoned that shifting the financial responsibility for both tandem switching and transport charges from IXC to access-stimulating LECs would “help eliminate access arbitrage,” thereby reducing implicit subsidies for access stimulation traffic and encouraging those LECs to make more efficient call routing decisions.²⁷ The Commission found that “the 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.”²⁸ The Commission also modified the definition of “access stimulation” to apply only to a LEC “serving end user(s).”²⁹

²³ 47 CFR § 61.3(bbb)(1) (providing that a LEC is engaged in access stimulation if it: (1) has an access revenue sharing agreement that directly or indirectly resulted in a net payment, which is based on billing or collection of access charges from IXCs, and (2) either has an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month or has more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month over the same month in the preceding year). If a competitive LEC meets these criteria, it shall not file a tariff at rates above the tariffed rates of the price cap LEC with the lowest switched access rates in the state, and must file a revised tariff accordingly. See 47 CFR § 61.26(g); *USF/ICC Transformation Order*, 26 FCC Rcd at 17874, paras. 657-58.

²⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-35, para. 801.

²⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17873, para. 651, 17879, para. 672, 17890, para. 701.

²⁶ 47 CFR § 51.914(a). See *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Report and Order and Modification of Section 214 Authorization, 34 FCC Rcd 9035, 9042, para. 17, 9043-44, paras. 20-23, 9050, para. 37, 9067, para. 73 (2019); *pet. for rev. pending sub nom. Great Lakes Communications Corp. et al. v. FCC*, No. 19-1233 (Consolidated with No. 19-1244) (D.C. Cir. filed Oct. 29, 2019) (*Access Arbitrage Order*).

²⁷ *Access Arbitrage Order*, 34 FCC Rcd at 9036-37, para. 4, 9050, para. 37, 9067, para. 73. See also *Northern Valley Communications, LLC, Tariff F.C.C No. 3*, Memorandum Opinion and Order, 35 FCC Rcd 6198, 6201, para. 9 (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*).

²⁸ *Access Arbitrage Order*, 34 FCC Rcd at 9073-74, para. 92. Recognizing that carriers with high-volume calling service partners could continue to profit from arbitrage without revenue sharing agreements, the Commission also amended the access stimulation definition to include competitive LECs with terminating-to-originating traffic ratios of 6:1. If a competitive LEC meets this standard, there is no revenue sharing agreement requirement. 47 CFR § 61.3(bbb)(1)(ii). See also *Access Arbitrage Order*, 34 FCC Rcd at 9054, para. 45 (“an access-stimulating LEC that is co-owned with a high-volume calling service provider could retain the stimulated access revenues for itself, while letting the high-volume calling service provider operate at a loss”).

²⁹ 47 CFR § 61.3(bbb)(1). The Commission limited the definition to LECs serving end users to exempt centralized equal access (CEA) providers, who could be unintentionally in the call path of access stimulation traffic from high volume applications like Free Conferencing. See *Access Arbitrage Order*, 34 FCC Rcd at 9103-04, App. B para. 38; see also *id.* at 9060, para. 57 and n.176 (citing comments from a CEA provider “expressing concern that it could somehow be deemed to be engaged in access stimulation if an over-inclusive definition of access stimulation were adopted”). CEA providers operate solely as intermediate providers in rural states and do not serve end users. See *id.* 9039-40, para. 12.

B. Wide Voice's Evolving Business Model

10. Formed in 2010, Wide Voice concedes that it was in the “access stimulation business.”³⁰ From 2012 to 2019, it offered “end-office termination services to high volume voice applications,” specifically, Free Conferencing.³¹ Wide Voice also provided tandem switched services.³²

11. In response to the *Access Arbitrage Order*, which made access-stimulating LECs—rather than IXCs—responsible for tandem switching and transport charges, Wide Voice “decided to stop . . . connecting to end users” and focus on functioning as a “competitive tandem” provider.³³ It ceased providing all end-office service by { [redacted] } months after the effective date of the rules implemented in the *Access Arbitrage Order*.³⁵ As a result, Wide Voice no longer terminates any calls directly to Free Conferencing. Instead, it sends the traffic to HD Carrier, which then “terminates calls to Free Conferencing.”³⁶

12. During the same time frame, several other access-stimulating rural LECs ceased providing service “to high volume applications.”³⁷ These access-stimulating LECs previously “connected calls to telephone numbers used by HD Carrier’s customers, such as [Free Conferencing].”³⁸ When the LECs stopped providing service, HD Carrier’s customers, including Free Conferencing, “had an immediate need to migrate the [access stimulation] traffic.”³⁹

13. To solve this problem, Free Conferencing moved its traffic to HD Carrier for termination.⁴⁰ HD Carrier, in turn, designated Wide Voice as the tandem service provider to which the

³⁰ See Answer, Declaration of Andrew Nickerson, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Feb. 18, 2021) (Nickerson Answer Decl.) at 5, para. 9 (“Wide Voice structured its business [transition] to get out of access stimulation business”); see also 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.”).

³¹ Nickerson Answer Decl. at 2, para. 4, 6, para. 11; Answer Legal Analysis at 11.

³² See Complaint Exh. 61, Tariff at ATTVZ00358, (defining “Switched Access Service” to include both terminating end office and tandem switched services). See also Wide Voice Supplemental Exhibit Submission, Exh. BB, WV_000818- 27 (Tandem Services Traffic Agreement between Wide Voice and Native American Telecom, LLC); 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. 1, 2021) (Wide Voice Interrogatory Responses) at Exh. A, WV-INT-ANS-000002-19 (PSTN Network Hosting Agreement and Master Services Agreement between Wide Voice and HD Carrier, LLC).

³³ Nickerson Answer Decl. at 2-3, paras. 4-5.

³⁴ 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.

³⁵ Joint Stipulation at 3, Stipulated Fact No. 6 (“The Access Arbitrage Order and corresponding CFR provisions took effect on November 27, 2019, except for 47 CFR § 51.914(b) and (e), which became effective June 9, 2020.”).

³⁶ Nickerson Answer Decl. at 6-7, para. 11; Answer Legal Analysis at 11.

³⁷ Answer Legal Analysis at 19; see Nickerson Answer Decl. at 8-9, para. 18; Answer at 17-18, para. 45. See also Answer Exh. 9, 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.).

³⁸ Nickerson Answer Decl. at 8-9, para. 18; see Answer Legal Analysis at 19.

³⁹ Answer Legal Analysis at 19; see Nickerson Answer Decl. at 8-9, para. 18.

⁴⁰ Nickerson Answer Decl. at 8-9, para. 18; Answer Legal Analysis at 19. Notwithstanding its name, HD Carrier claims it is not a telecommunications carrier. We express no opinion on that issue.

IXCs were to deliver the traffic.⁴¹ Wide Voice claims that HD Carrier is not a LEC.⁴² Wide Voice is a LEC but purportedly no longer serves end users. Wide Voice contends that this arrangement, therefore, falls outside the ambit of the Commission's definition of "access stimulation."⁴³ Through this arrangement, Wide Voice has billed the IXCs for tandem switching and transport access charges on calls delivered to HD Carrier, despite the *Access Arbitrage Order*.⁴⁴

C. Escalation of Call Volume

14. To accommodate this new arrangement, the IXCs had to expand greatly their capacity to deliver calls at Wide Voice's tandem switches. Traffic between the IXCs and Wide Voice had flowed without incident prior to November 2019.⁴⁵ AT&T and Verizon exchanged traffic with Wide Voice at two locations—Wide Voice's tandem switches in Los Angeles and Miami.⁴⁶ Between May 2019 and November 2019, AT&T delivered 27-31 million minutes of use each month to Wide Voice at its switches in Los Angeles and Miami.⁴⁷ Verizon delivered 3-4 million minutes of use per month.⁴⁸ To manage traffic exchanged with Wide Voice in 2019, Verizon had two DS3 circuits in Los Angeles and three DS3 circuits in Miami.⁴⁹ AT&T had roughly three DS3 circuits each in Los Angeles and Miami.⁵⁰ These facilities were sufficient to handle the call volumes between the parties as of October 2019.⁵¹ In fact, in mid-2019, after determining that Wide Voice was underutilizing AT&T's existing facilities,⁵² AT&T notified Wide Voice that it was reducing the number of trunks on its side of the meet point with Wide Voice.⁵³ AT&T accomplished this by removing the assignment on the facilities to Wide Voice and not by

⁴¹ Nickerson Answer Decl. at 7, para. 14 ("HD Carrier began designating additional codes (new Iowa codes) to Wide Voice's tandems as early as August, 2019 in the LERG database."), 8-9, para. 18 ("When the [LECs] changed their businesses, the end users ported their telephone numbers to HD Carrier. HD Carrier had already designated Wide Voice and Peerless . . . as tandem providers for traffic that formerly was routed to the rural LECs."). *See also* Answer Legal Analysis at 27.

⁴² Answer Legal Analysis at 48; Answer at 7, para. 10.

⁴³ 47 CFR § 61.3(bbb); Answer Legal Analysis at 50 (stating that Wide Voice no longer serves end users and HD Carrier is not a CLEC).

⁴⁴ *See* Complaint at 39, para. 98; Answer at 34, para. 98.

⁴⁵ *See* Complaint at 19, para. 44; Answer at 17, para. 44. The parties generally agree on the call path of the traffic AT&T and Verizon exchanged with Wide Voice. *See* Complaint Exh. 73; Answer Exh. 48.

⁴⁶ Complaint at 18, para. 40; Answer at 16, para. 40. Verizon exchanged traffic with Wide Voice under the Tariff. *See* Complaint at 2, n.2. *See, e.g.,* Joint Statement at 3-4, Stipulated Fact Nos. 7-9. AT&T exchanged traffic with Wide Voice first under a negotiated agreement and then, when the agreement ended, under the Tariff. Complaint at 18-19, para. 43; Complaint, Declaration of Kim Meola, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Jan. 11, 2021) (Meola Complaint Decl.) at 5, para. 12. AT&T and Wide Voice disagree when their agreement terminated, but we need not address that issue to resolve this dispute. *See* Complaint at 19, n.71.

⁴⁷ Meola Complaint Decl. at 6, para. 15.

⁴⁸ Joint Statement at 4, Stipulated Fact No. 15.

⁴⁹ Complaint at 18, para. 41; Answer at 16, para. 41; Complaint, Declaration of Robert Mullins, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Jan. 11, 2021) (Mullins Complaint Decl.) at 2, paras. 3, 5. A DS1 is estimated to handle approximately 250,000 MOUs, and a DS3 is comprised of 28 DS1s. *See id.* at 6, para. 15.

⁵⁰ Complaint at 18, para. 42; Answer at 16, para. 42; Meola Complaint Decl. at 6-7, paras. 14, 18.

⁵¹ Complaint at 19, para. 44; Answer at 17, para. 44.

⁵² Complaint at 18, para. 42; Meola Complaint Decl. at 6-7, paras. 14, 18. Wide Voice's monthly traffic volumes with AT&T decreased from 31 million minutes of use in May 2019 to approximately 27 million minutes of use in December 2019. *See* Meola Complaint Decl. at 6, para. 15.

⁵³ Complaint at 18, para. 42; Answer at 16-17, para. 42. A "meet point" is a predetermined location where carriers' networks meet. *See* Reply in Support of Formal Complaint of AT&T Corp., AT&T Services, Inc. and MCI

(continued....)

removing the actual physical facilities.⁵⁴ In response to AT&T's notice, Wide Voice disconnected the actual physical facility on its side of the meet point.⁵⁵

15. Things changed in 2020. Due to the migration of access stimulation traffic from some LECs in response to the *Access Arbitrage Order*,⁵⁶ the volume of AT&T and Verizon traffic destined for Wide Voice's tandem switches increased dramatically beginning in January 2020. Wide Voice notified AT&T and Verizon of the expected traffic volume increase in a series of traffic forecasts.⁵⁷ Between October 2019 and February 2020, Wide Voice provided AT&T with four forecasts that projected additional traffic volumes increasing to 262 million minutes of use per month in 2020.⁵⁸ Wide Voice also provided two forecasts to Verizon, one each in January and February 2020, that projected additional traffic volumes increasing to 304 million minutes of use per month in 2020.⁵⁹ This massive and sudden increase in traffic flowing to Wide Voice's tandem switches caused significant call congestion.⁶⁰

16. To accommodate the increased traffic to Wide Voice's tandems, AT&T and Verizon significantly augmented their facilities throughout 2020. Between January and September 2020, AT&T increased its capacity at Wide Voice's Los Angeles and Miami tandems by adding approximately 17 DS3s.⁶¹ On September 9, 2020, Wide Voice told AT&T that "[t]he installation of the facilities ordered for Miami and Los Angeles have alleviated call failures at the moment."⁶² Wide Voice further noted, however, that it "has significant customer demand . . . which it cannot meet due to the limited capacity AT&T has installed."⁶³ As of January 11, 2021, AT&T had connected to Wide Voice's Los Angeles and Miami switches using 12 DS3s in each location for a total of 24 DS3s.⁶⁴ Between January and July 2020, Verizon augmented its capacity at Wide Voice's two tandems by adding approximately 12 DS3s.⁶⁵ As of July 2020, Verizon had connected to Wide Voice's Los Angeles tandem using six DS3s and to its Miami

Communications Services LLC, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Mar. 1, 2021) (Reply), Reply Declaration of Kim Meola (Meola Reply Decl.) at 3, para 7. *See also* Mullins Complaint Decl. at 7, para. 16.

⁵⁴ Meola Decl. at 17, para. 48.

⁵⁵ Meola Decl. at 17, para. 48.

⁵⁶ *See supra* paragraph 12.

⁵⁷ Complaint at 20-26, paras. 46-61; Meola Complaint Decl. at 8-10, paras. 23-27, 12-14, paras. 35-37, 19-20, para. 52; Mullins Complaint Decl. at 3-5, paras. 9-11; Complaint Exhs. 11, 12, 13, 31, 32, 35, 36.

⁵⁸ Wide Voice Interrogatory Responses at 15-16, Response to Interrogatory No. 8.

⁵⁹ Joint Statement at 8, Stipulated Facts Nos. 32 and 33.

⁶⁰ *See* Complaint at 20, para. 45; *see generally* Answer at 17-18, para. 45; Answer Legal Analysis at 36.

⁶¹ *See* Joint Statement at 10-12, Stipulated Fact Nos. 39-42 (stipulating that AT&T added 11,232 lines to Wide Voice's two tandems).

⁶² Joint Statement at 12, Stipulated Fact No. 44; Complaint Exh. 41 at ATTVZ00173.

⁶³ Joint Statement at 12, Stipulated Fact No. 44; Complaint Exh. 41 at ATTVZ00173.

⁶⁴ Meola Complaint Decl. at 23, para. 59; Wide Voice Supplemental Submission, Exh. J, Pages from DeCosta Answer Decl. at 10, para. 32.

⁶⁵ *See* Joint Statement at 9-10, Stipulated Fact Nos. 37-38 (stipulating that Verizon added 7,728 lines to Wide Voice's two tandems).

tandem using nine DS3s.⁶⁶ By mid-2020, the additional facilities were able to handle the increased traffic with few issues.⁶⁷

D. Designation of New Point of Interconnection

17. Wide Voice updated the Local Exchange Routing Guide (LERG)⁶⁸ in December 2019 with a new tandem switch in Rudd, Iowa, a rural town of about 350 people.⁶⁹ Wide Voice did not notify AT&T or Verizon before updating the LERG, and AT&T and Verizon had no facilities in Rudd.⁷⁰ Wide Voice previously switched traffic destined for the rate centers associated with the new Rudd tandem at its tandems in Miami and Los Angeles,⁷¹ but asserts it designated the new Rudd tandem switch to be geographically close to its high-volume calling service provider customers.⁷² Ultimately, neither AT&T nor Verizon delivered any traffic to the Rudd tandem, and Wide Voice abandoned its efforts to expand its tandem services in Iowa.⁷³

E. The Dispute Before the Commission

18. Wide Voice has billed the IXC's under its Tariff F.C.C. No. 3 for terminating tandem switching and tandem switched transport access charges.⁷⁴ The IXC's dispute these charges.⁷⁵ AT&T and Verizon filed an informal complaint against Wide Voice on April 24, 2020, and Wide Voice submitted a response on May 27, 2020. Despite negotiations, the parties were unable to resolve their dispute and, on January 11, 2021, the IXC's filed their Complaint.⁷⁶ They assert eleven counts against Wide Voice that can be grouped into four general categories: access stimulation, call congestion, unilateral change in point of interconnection, and tariff and rule violation issues. We discuss the first three issues below, resolving the IXC's' claims in their favor because we find that Wide Voice has violated section 201(b) of

⁶⁶ See Complaint at 18, para. 41, Answer at 16, para. 41; Joint Statement at 9, Stipulated Fact No. 36; Complainant MCI Communications Services LLC's Answer to Commission Staff Questions Pursuant to 47 CFR § 1.732(c), Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Mar. 27, 2021) at 3.

⁶⁷ Joint Statement at 12, Stipulated Fact No. 44; Meola Complaint Decl. at 18, para. 50; Complaint Exh. 41.

⁶⁸ The LERG is a database used by the telecommunications industry to identify NPA-NXX or "blocks" of telephone numbers and contains information that carriers use for call routing over the public switched telephone network. See Supplemental Joint Statement at 2, Stipulated Fact No. 9.

⁶⁹ Complaint at 20, para. 47; Answer at 18, para. 47; Meola Complaint Decl. at 9, para. 24; Mullins Complaint Decl. at 11, para. 28.

⁷⁰ Complaint at 20, para. 47; Answer at 18, para. 47; Meola Complaint Decl. at 9, para. 24; Mullins Complaint Decl. at 11, para. 28; Supplemental Joint Statement at 10, Stipulation Fact No. 29.

⁷¹ Complaint at 20, para. 47; Answer at 18, para. 47; Meola Complaint Decl. at 9, para. 24; Mullins Complaint Decl. at 11, para. 28; Supplemental Joint Statement at 10, Stipulation Fact No. 29.

⁷² Answer Legal Analysis at 85. See Answer at 31, para. 90, 33, para. 93.

⁷³ Answer Legal Analysis at 85.

⁷⁴ See Joint Statement at 3, Stipulated Fact Nos. 5-7; see also Complaint Exh. 61 (Wide Voice, LLC, Tariff F.C.C. No. 3, effective Dec. 28, 2019) (Tariff).

⁷⁵ See Joint Statement at 3, Stipulated Fact Nos. 7-8; see also Complaint at 2, para. 2, 74, paras. 203-05, 75, paras. 208-11, 76, paras. 214-16, 77-78, paras. 219-21.

⁷⁶ The Commission granted the parties' request to extend the relation-back deadline in 47 CFR § 1.718 until January 11, 2020. See Grant Stamped Consent Motion for Wavier and to Extend the Deadline to Convert AT&T and Verizon's Informal Complaint Against Wide Voice to a Formal Complaint, Informal Complaint File No. EB-20-MDIC-0004 (Nov. 19, 2020). Because the IXC's converted their informal complaint into a formal complaint by that date, the formal complaint "relate[s] back to the filing date of the informal complaint." See 47 CFR § 1.718.

the Act. We need not and do not address the tariff and rule violation issues. At the IXCs' request, we defer consideration of damages until a subsequent phase of this proceeding.⁷⁷

III. DISCUSSION

19. The Commission has tried twice through rulemaking to address the practice of access stimulation. Most recently, in the *Access Arbitrage Order*, the Commission found that “requiring IXCs to pay the tandem switching and tandem switched transport charges for access-stimulation traffic is an unjust and unreasonable practice that we have authority to prohibit pursuant to section 201(b) of the Act.”⁷⁸ Wide Voice admits that it was in the access stimulation business, and it continues to serve the same high volume customer (Free Conferencing), via HD Carrier. Nonetheless, Wide Voice claims that because it no longer directly serves end users, it can continue to charge AT&T and Verizon for tandem switching and tandem switched transport charges for access stimulation traffic.

20. We find that Wide Voice has violated section 201(b) of the Act in three respects: by restructuring its business operations so that it could impose tandem charges that it otherwise was not entitled to bill (Count V); by intentionally causing call congestion in an effort to force the IXCs into commercial arrangements that required the payment of tandem charges (Count I); and, for the same purpose, by unilaterally declaring a new interconnection point that does not create a net public benefit (Counts II and III). We discuss each in turn.

A. Wide Voice Violated Section 201(b) by Restructuring Its Business Operations So It Could Impose Tandem Charges That It Was Not Entitled to Bill

21. The Commission has several tools at its disposal to curb the misconduct of carriers that seek to continue to bill IXCs in connection with access stimulation. There are, of course, rules regarding access stimulation, which the Commission promulgated in 2011 and revised in 2019.⁷⁹ But they are not the only means by which the Commission can act. Through the section 208 complaint process,⁸⁰ the Commission may investigate a specific carrier's conduct and determine whether that conduct is unjust or unreasonable in violation of section 201(b) of the Act.⁸¹ The complaint process 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. It is well

⁷⁷ AT&T and Verizon requested that the Commission first determine liability and then decide any damages in a separate proceeding. See Complaint at 6, para. 13 (citing 47 CFR § 1.723(c) and (d)). The IXCs may file a supplemental complaint for damages. See 47 CFR § 1.723(e).

⁷⁸ *Access Arbitrage Order*, 34 FCC Rcd at 9073-74, para. 92. See also *Northern Valley Tariff Order*, 35 FCC Rcd at 6209, para. 25.

⁷⁹ See *supra* paragraphs 8-9.

⁸⁰ See 47 U.S.C. § 208(b) (giving the Commission authority to “investigate the matters complained of [in a complaint against a common carrier] in such manner and by such means as it shall deem proper”).

⁸¹ See, e.g., *AT&T Corp. v. All American Telephone Co.*, Memorandum Opinion and Order, 28 FCC Rcd 3477, 3490 at para. 29 (2013) (*All American Order*), *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) (Commission may ensure compliance with section 201(b) through section 208); *AT&T Corp. v. YMAX Communications Corp.*, Memorandum Opinion and Order, 26 FCC Rcd 5742, 5761, paras. 52-53 & n. 147 (2011) (*YMax Communications Order*); *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16141, para. 363 (1997) (“[I]f an access provider's service offerings violate section 201 . . . of the Act, we can address any issue of unlawful rates through the exercise of our authority to investigate and adjudicate complaints under section 208.”).

established that the Commission has discretion to proceed by adjudication to address such practices as well as by rulemaking.⁸²

22. The Commission has issued several orders finding unreasonable carrier efforts to impose charges through sham arrangements and other forms of regulatory arbitrage. For example, in the *Total Tel Order*, the Commission found a violation of section 201(b) when two “highly intertwined” competitive LECs acted in concert to serve a chat line customer for the sole purpose of “extract[ing] inflated access charges from the IXCs.”⁸³ Calling the arrangement a sham, the Commission said it would not permit a carrier “to charge indirectly, through a sham arrangement, rates that it could not charge directly through its existing tariff.”⁸⁴ Similarly, in the *All American Order*, the Commission considered a complaint in which an incumbent LEC “masterminded” a sham arrangement with competitive LECs and free chat line and conferencing service providers for the purpose of generating access charges for which it could bill AT&T.⁸⁵ Describing the scheme as a sham designed to “capture access revenues that could not otherwise be obtained by lawful tariffs,” the Commission concluded that the conduct constituted an unjust and unreasonable practice in violation of section 201(b).⁸⁶ Finally, in the *Alpine Order*, five Iowa LECs unilaterally moved their points of interconnections to significantly increase the transport charges they could bill to IXCs. The Commission found the tariff by which the LECs sought to impose the charges “unjust and unreasonable in violation of Section 201(b) to the extent it allows the Iowa LECs’ admitted manipulation of [points of interconnection] undertaken with the intent and effect of ‘pumping’ mileage charges.”⁸⁷

23. Here, the record establishes that Wide Voice, in concert with closely related companies, acted to evade the Commission’s access stimulation rules by rearranging traffic flows to preserve the ability to impose tandem access charges on IXCs that it otherwise could not charge. Based on the record in this proceeding, we have little trouble concluding that Wide Voice’s conduct is unreasonable and violates section 201(b) of the Act, and, accordingly, grant Count V of the Complaint.

1. Wide Voice, HD Carrier, and Free Conferencing are Closely Related

24. Non-arm’s length relationships are a hallmark of access stimulation schemes that the Commission has held violate section 201(b). Wide Voice seeks to minimize the connections among the parties involved in delivery of the IXCs’ traffic to end users, arguing that neither David Erickson nor HD Carrier controls Wide Voice.⁸⁸ But there is substantial evidence the common enterprise at issue here is broader than the relationship between HD Carrier and Wide Voice, and evidence supports a finding that the closely knit entities do not, in fact, operate independently. Erickson was involved in the “business creation process” for four companies that each play a substantial role in the practices at issue here:

⁸² See, e.g., *Conference Group, LLC v. FCC*, 720 F.3d 957, 966 (D.C. Cir. 2013); *US West Communications, Inc. v. FCC*, 177 F.3d 1057, 1061 (D.C. Cir. 1999). See generally *Shalala v. Guernsey Mem’l Hosp.*, 514 U.S. 87, 96 (1995).

⁸³ *Total Telecommunications Service, Inc. and Atlas Telephone Company, Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 5726, 5727, para. 3, 5733, para. 16 (2001) (*Total Tel Order*), *pets. for review granted in part and denied in part, AT&T Corp. v. FCC*, 317 F.3d 227 (D.C. Cir. 2003).

⁸⁴ *Total Tel Order*, 16 FCC Rcd at 5734, para. 18.

⁸⁵ *All American Order*, 28 FCC Rcd at 3488, para. 26.

⁸⁶ *All American Order*, 28 FCC Rcd at 3487-88, para. 24.

⁸⁷ *AT&T Corp. v. Alpine Communications, LLC*, Memorandum Opinion and Order, 27 FCC Rcd 11511, 11529, para. 45 (2012) (*Alpine Order*).

⁸⁸ Answer Legal Analysis at 11, 51-52; Nickerson Answer Decl. at 6, para. 10, 7, para. 12.

CarrierX, Wide Voice, HD Carrier, and [Free Conferencing].”⁸⁹ The controlling (88%) owner of Wide Voice is an irrevocable trust that Erickson established.⁹⁰ {[]} are the trust’s sole beneficiaries.⁹¹ Although an independent third-party professional trustee manages the trust,⁹² the record contains no evidence that the Trustee has any personal knowledge of, or has a substantive role in, the management or control of Wide Voice.⁹³ Not so with Erickson, who has “personal knowledge” regarding Wide Voice’s current business, including Wide Voice’s strategic direction⁹⁴ and attempts to convince the IXCs to enter into commercial arrangements to alleviate call congestion.⁹⁵ What is more, Erickson {[]}.⁹⁶ In sum, nothing in the record suggests that Erickson is limited in his ability to act, indirectly and through other entities, to benefit the companies he created, including Wide Voice.

25. Erickson’s ties to the other entities he created—CarrierX, Free Conferencing, and HD Carrier—are substantial. He is a 77% shareholder of Free Conferencing, and he and Free Conferencing, in turn, are the sole shareholders of CarrierX.⁹⁷ Erickson is also CarrierX’s Chief Executive Officer.⁹⁸ Finally, he owns and manages HD Carrier.⁹⁹

⁸⁹ Erickson Answer Decl. at 2, para. 4; *see also id.* at 1, para. 2 (“I have personal knowledge of the business model and strategic direction of CarrierX, Wide Voice, HD Carrier . . . I am the CEO of CarrierX, LLC, which operates the Freeconferencecall.com application . . . I am the manager of HD Carrier, LLC”).

⁹⁰ Complaint at 9, para. 24 and n.17 (citing Free Conferencing Statement of Undisputed Facts at 5, para. 16, *Inteliquent v. Free Conferencing* Dkt. 569 (“A trust established by Mr. [David] Erickson owns 88% of Wide Voice.”)); Wide Voice Supplemental Interrogatory Responses at 14-15, Supplemental Response to Interrogatory No. 12; Wide Voice Supplemental Exhibit Submission, Exh. O at WV_000663.

⁹¹ Wide Voice Supplemental Exhibit Submission, Exh. O at WV_000663.

⁹² Nickerson Answer Decl. at 6, para. 10. Wide Voice states that Erickson

]]. Wide Voice Supplemental Exhibit Submission, Exh. O at WV_000663.

⁹³ *See* Supplemental Brief of AT&T Corp., AT&T Services, Inc., and MCI Communications Services LLC, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 at 5 (filed Apr. 5, 2021) (IXCs’ Brief). We note that Erickson appears to acknowledge some direct relationship with Wide Voice. Erickson Answer Decl. at 4, para. 11 (“AT&T and Verizon have undermined Wide Voice’s transition and engaged in a campaign that – at its worst – feels entirely too personal and intended to force Wide Voice (and me) to exit its chosen market.”).

⁹⁴ Erickson Answer Decl. at 1, para. 2 (“I have personal knowledge of the business model and strategic direction of . . . Wide Voice”).

⁹⁵ *See* Erickson Answer Decl. at 7, para. 20 (attesting to Wide Voice’s efforts to convince the IXCs to enter into a commercial arrangement or deliver traffic via an IP-connection). *See also id.* at 3, para. 8 (attesting to Wide Voice “never charg[ing] distance-sensitive trunking rates in connection with its tandem switching business”).

⁹⁶ Wide Voice Supplemental Exhibit Submission, Exh. O at WV_000663.

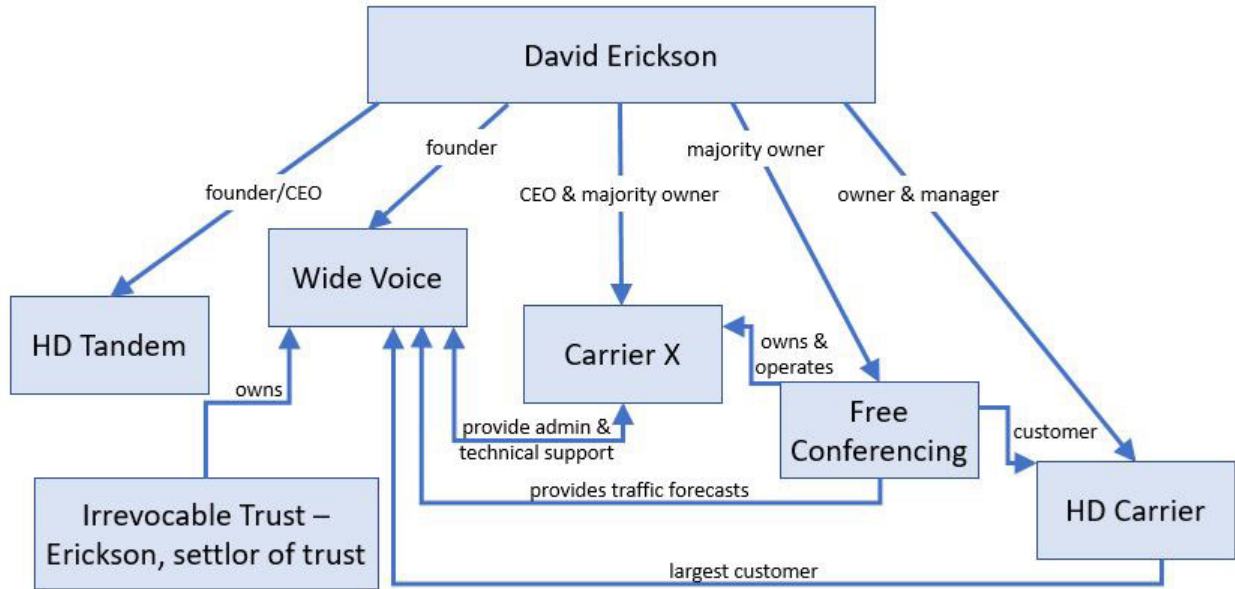
⁹⁷ Complaint at 10, paras. 25-26 (citing Affidavit of David Erickson, at 1, para. 2, *Inteliquent v. Free Conferencing* Dkt 619); Answer at 9, paras. 25-26. Specifically, Erickson owns 77 percent of Free Conferencing, which in turn, owns 50 percent of CarrierX. Erickson directly owns the other 50 percent of CarrierX. Complaint at 10, para. 26; (citing Affidavit of David Erickson, at 1, para. 2, *Inteliquent v. Free Conferencing Corp.*, Dkt. 619). As a result of a corporate restructuring, Free Conferencing contributed its assets and liabilities to CarrierX, including FreeConferencingCall.com, in exchange for an equity interest in CarrierX. Free Conferencing Statement of Undisputed Material Facts, *Inteliquent v. Free Conferencing*, Dkt. 569 at para. 14.

⁹⁸ Erickson Answer Decl. at 1, para. 2.

⁹⁹ Complaint at 11, para. 27; Answer at 9, para. 27; Wide Voice Supplemental Exhibit Submission, Exh. L, Pages from Wide Voice’s Answers to IXCs’ First Set of Interrogatories, at 11, Wide Voice Response to Interrogatory No. 5 (“HD Carrier is owned by David Erickson.”).

26. There are additional connections among the several entities. Andrew Nickerson, Wide Voice’s Chief Executive Officer, has an email address at both Wide Voice and Free Conferencing,¹⁰⁰ notwithstanding Wide Voice’s claim that it has no “overlapping officers, directors, or employees with any other non-LEC.”¹⁰¹ Similarly, although Wide Voice states that it does not share access revenues { [] },¹⁰² Wide Voice and CarrierX “from time to time provide each other with administrative or technical support services.”¹⁰³ And, HD Carrier’s customers include some of Wide Voice’s former customers.¹⁰⁴

27. The diagram below shows the entities Erickson created, his relationship to them, and their relationships to each other.



2. Wide Voice and Closely Related Companies Re-Routed Traffic to Evade the Access Stimulation Rules

28. In the *Access Arbitrage Order*, the Commission enacted rules requiring access-

¹⁰⁰ Wide Voice Supplemental Exhibit Submission, Exh. N at WV_000504-507 (Nickerson copied on email traffic between Free Conferencing and Wide Voice at “Andrew Nickerson”<anickerson@widevoice.com” and “Andy Nickerson<andy@freeconferencecall.com”).

¹⁰¹ Wide Voice Supplemental Interrogatory Responses at 12, Supplemental Response to Interrogatory No. 5; *see also* Answer at 8-9, para. 24 (“Wide Voice does not share personnel, resources or network support with HD Carrier, Free Conferencing, CarrierX or HD Tandem.”).

¹⁰² Wide Voice Interrogatory Responses at 6-7, Response to Interrogatory No. 3. The Commission’s rules define an access revenue sharing agreement broadly to include any arrangement that benefits the sharee based on the LEC’s recovery of access charges, regardless of whether access revenues are shared. *See* 47 CFR § 61.3(bbb)(i)(A).

¹⁰³ Wide Voice Supplemental Interrogatory Responses at 12, Supplemental Response to Interrogatory No. 5. *See also* Free Conferencing Statement of Undisputed Material Facts, para. 16, *Inteliquent v. Free Conferencing Corp.*, Dkt. 569 (“Until the restructuring in January 2016, Free Conferencing Corporation provided certain services to Wide Voice, HD Tandem, and what are now subsidiaries of CarrierX, including accounting and network support. Since the restructuring, CarrierX provides these services.”). Notably, the record is devoid of the terms, including any pricing for the provision of such services, under which Wide Voice and CarrierX provide “administrative or technical support services” to each other.

¹⁰⁴ *Compare* Wide Voice Supplemental Interrogatory Responses at 5, Supplemental Response to Interrogatory 3 (customers include { [] } with Answer Legal Analysis at 12 (listing customers of HD Carrier).

stimulating LECs to take responsibility for tandem switching and tandem switched transport charges previously borne by IXCs.¹⁰⁵ The rules, by their terms, apply to LECs “serving end users.”¹⁰⁶ AT&T and Verizon contend that, if the Commission finds that Wide Voice’s conduct does not violate the express terms of the rules, its actions nonetheless are unreasonable and violate section 201(b). According to the IXCs, Wide Voice “has interposed its tandem switching charges . . . for the purpose of obtaining improper, anti-consumer subsidies for its partners’ free or low cost-calling services.”¹⁰⁷ In particular, the IXCs assert that Wide Voice “unreasonably seeks to insert itself as an intermediate routing step” between the IXCs and HD Carrier and thus force the IXCs to pay Wide Voice’s tandem and transport charges.¹⁰⁸ Wide Voice’s arrangement with HD Carrier, Free Conferencing, and its other partners is, in the IXCs’ view, an “unreasonable sham arrangement designed to attempt to circumvent the Commission’s access stimulation rules.”¹⁰⁹

29. The evidence supports the IXCs’ claim.¹¹⁰ In response to the *Access Arbitrage Order*, Wide Voice stopped serving end users and focused instead on functioning as a “competitive tandem” provider.¹¹¹ This coincided with the decision by several LECs to cease providing service to “high volume applications,” such as Free Conferencing in 2019.¹¹² Wide Voice—acting in concert with Free Conferencing and HD Carrier—quickly seized the opportunity to fill the vacuum created by the LECs and began handling traffic that otherwise would have terminated at those LECs.¹¹³ To begin, Free Conferencing (one of the former access-stimulating LECs’ largest customers) migrated the calls to HD

¹⁰⁵ See 47 CFR § 61.3(bbb) (defining access-stimulating LECs); 47 CFR § 51.914(a) (prohibiting access-stimulating LECs from billing IXCs terminating switched access tandem switching or terminating switched access transport charges for traffic between the access-stimulating LEC’s end office or equivalent and the associated access tandem switch); *Access Arbitrage Order* 34 FCC Rcd at 9042, para. 17, 9043-44, paras. 20-23, 9050, para. 37, 9067, para. 73.

¹⁰⁶ 47 CFR § 61.3(bbb).

¹⁰⁷ Complaint at 48, para. 122; see also Complaint Legal Analysis at 43-44.

¹⁰⁸ Complaint at 48-49, para. 123; see also Complaint Legal Analysis at 44-45.

¹⁰⁹ Complaint at 49, para. 124; see also *id.* at 72-73, paras. 195-96, 199; Complaint Legal Analysis at 42-43, 45-46. See also Reply at 1 (“Wide Voice has superficially re-configured its access stimulation schemes in an effort to circumvent the Commission’s 2019 anti-arbitrage rules, but it has *not* transition[ed] away from an access stimulation model”) (emphasis in original).

¹¹⁰ Because we conclude, under section 201(b), that Wide Voice acted unreasonably and cannot bill the IXCs for tandem switching and tandem switched transport charges for access stimulation traffic, we do not address the IXCs’ claim that Wide Voice violated the access stimulations rules. 47 CFR §§ 51.914(a), 61.3(bbb). See Complaint at 39-48, paras. 98-120 and 70-72, paras. 187-93; Complaint Legal Analysis at 29-39.

¹¹¹ Nickerson Answer Decl. at 2-3, paras. 4, 5; Answer Legal Analysis at 10.

¹¹² Answer Legal Analysis at 19; Nickerson Answer Decl. at 8-9, para. 18 (“HD Carrier’s migration of traffic . . . 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*.”); Answer Exh. 9, 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.).

¹¹³ Wide Voice worked with both Free Conferencing and HD Carrier to continue the flow of access stimulation traffic, even in the face of inadequate facilities for carrying the traffic. Notably, though Wide Voice now ostensibly sends traffic to HD Carrier (and would otherwise have no reason to communicate with the end user), it continues to receive traffic forecasts from Free Conferencing. Wide Voice Supplemental Exhibit Submission, Exh. N at WV 000504-661 (emails from Free Conferencing employee to Wide Voice providing traffic forecast that includes {{ }}). This underscores the fact that, regardless of their rearrangement, these entities work together in a common enterprise. See also Nickerson Answer Decl. at 7, para. 14 (“ . . . in mid-2019, Wide Voice agreed to take on additional business from HD Carrier.”).

Carrier for completion.¹¹⁴ HD Carrier—which purportedly is not a LEC that can require IXCs to interconnect under section 251¹¹⁵—then designated Wide Voice as the tandem provider to which the IXCs were to deliver these calls.¹¹⁶ Wide Voice—now specifically acting solely as a tandem provider—billed AT&T and Verizon tandem charges, claiming that the new arrangement does not run afoul of the Commission’s access stimulation rules because a non-LEC terminated the calls to the end user, and the relevant rules expressly apply only to LECs.¹¹⁷ In this way, Wide Voice and its closely related companies sought to circumvent the Commission’s access stimulation rules and inflate billings to the IXCs.

30. Following the release of the *Access Arbitrage Order*, Wide Voice’s projected traffic volumes with AT&T and Verizon ballooned over a period of a few months to 262 and 304 million minutes of use per month, respectively.¹¹⁸ The charges associated with this level of traffic volume totaled over \$5 million and \$6 million annually. Had Wide Voice, in conjunction with its closely allied entities, not reorganized operations so that the traffic terminates to HD Carrier instead of Wide Voice’s end offices, the traffic would have triggered the revised access stimulation rule,¹¹⁹ and Wide Voice would have been prohibited from charging the IXCs for the traffic. Instead, Wide Voice itself would have been responsible for the charges under the revised rule. Under these circumstances, we conclude that Wide Voice’s arrangement with Free Conferencing and HD Carrier was a sham created for the purpose of enabling Wide Voice to continue to impose access charges—indeed, to drastically increase such charges—that it could no longer impose under the revised rules.

3. Wide Voice’s Counter Arguments are Unavailing

31. Wide Voice maintains that because the Commission has sanctioned arrangements between carriers and VoIP providers terminating calls, Wide Voice cannot have acted unreasonably by sending calls to HD Carrier for termination.¹²⁰ We agree with Wide Voice that, as a general matter, there is nothing untoward about Wide Voice serving as an intermediary between a VoIP provider and IXCs.¹²¹ We recognize that a number of companies may provide tandem access services in this or a similar

¹¹⁴ Nickerson Answer Decl. at 8-9, para. 18; Answer Legal Analysis at 27.

¹¹⁵ See 47 U.S.C. § 251(a)(requiring carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers); see also Complaint Legal Analysis at 44, n.156 (“Indeed, HD Carrier elsewhere alleges that it elects to partner with entities like Wide Voice in order to obtain the interconnection that it otherwise could not obtain by law.”).

¹¹⁶ Nickerson Answer Decl. at 8-9, para. 18. Wide Voice states that HD Carrier also designated Peerless and Level 3 as tandem providers for traffic. Answer Legal Analysis at 31. Wide Voice claims that “significant portions of this traffic also moved to Level 3 and Peerless.” *Id.* (citing to Answer DeCosta Decl. at 3-4, para. 11). However, the record does not support that claim. Answer DeCosta Decl. at 3-4, para.11 (stating that “HD Carrier designated Level 3 and Peerless as tandems for *portions* of the traffic migrating from the LECs to HD Carrier”) (emphasis added). We thus have insufficient evidence in the record on which to evaluate the significance of this designation as it relates to the Complaint.

¹¹⁷ Answer at 34-39, paras. 98-120; Answer Legal Analysis at 54-68.

¹¹⁸ See *supra* paragraph 15.

¹¹⁹ Wide Voice concedes that the rural LECs left the business rather than comply with the new access stimulation rules. See Answer Legal Analysis at 18-19; see also Nickerson Answer Decl. at 8-9; 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 [] participation in access stimulation as defined in the [*Access Arbitrage Order*]” and terminated end user relationships with “high volume calling providers”). And Wide Voice does not deny that it now handles the same access stimulation traffic that the five rural LECs previously delivered to Free Conferencing. See Answer Legal Analysis at 54-68; Answer at 34, para. 98.

¹²⁰ See Answer 41, para. 123; Answer Legal Analysis at 48-51, 55.

¹²¹ See Answer Legal Analysis at 51.

structural manner.¹²² The record before us, however, demonstrates 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. Wide Voice's deliberate effort to avoid triggering the access stimulation rules through manipulation of "highly intertwined" entities—not the technology it used—is what violates section 201(b).¹²³

32. Wide Voice's claim that it modified its business to *comply* with the access stimulation rules is disingenuous.¹²⁴ The goal of the *Access Arbitrage Order* was to discourage access stimulation – not to incentivize carriers to restructure access stimulation arrangements among related business entities to avoid the intended effects of the new rules. Wide Voice admits that it altered its business following the *Access Arbitrage Order* because, as a service provider to high volume calling voice applications it could no longer force IXCs to pay tandem switching and transport charges and instead would itself be responsible for those charges.¹²⁵ Rather than abide by the Commission's directive that IXCs should not bear the access cost of access stimulation traffic, Wide Voice devised a workaround. This workaround was clearly designed to evade the Commission's rules and allow Wide Voice and the related companies to continue to profit from access stimulation.

33. Wide Voice's representation that it does not share access charge revenues with { [] }, Free Conferencing, or HD Carrier does not undermine our holding.¹²⁶ Evidence of a revenue sharing agreement is not required to find a violation under section 201(b). Wide Voice violated section 201(b) by charging the IXCs millions for services that it would have been prohibited from billing under the Commission's rules had Wide Voice and closely related companies not deliberately reorganized operations to evade the rules.

34. Wide Voice claims that it did not violate the Commission's access stimulation rules because it does not serve end users.¹²⁷ Thus, according to Wide Voice, the Commission's authority under section 201 is limited to promulgating rules and cannot be used to proscribe conduct outside the scope of the rules.¹²⁸ Not so. Section 201(b) provides that "any practice . . . that is unjust or unreasonable is hereby declared to be unlawful."¹²⁹ It affords the Commission an independent basis to find conduct unreasonable even in the absence of a rule violation.¹³⁰

¹²² See Answer Legal Analysis at 51 ("this is the very same arrangement used by companies that AT&T does not attack, such as Inteliquent, Level 3, Peerless, and Intrado, tandem carriers that 'host' IPES entities and connect them to the PSTN"). Answer at 41, para. 123.

¹²³ *Total Tel Order*, 16 FCC Rcd at 5734, para. 18 (section 201(b) prohibits a carrier from charging "indirectly, through a sham arrangement, rates that it could not charge directly through its existing tariff").

¹²⁴ See Answer Legal Analysis at 49; Nickerson Answer Decl. at 3, para. 5.

¹²⁵ See Nickerson Answer Decl. at 3, para. 5. See also *id.* at 6-7, para. 11. As discussed above, access-stimulating LECs shifted focus from end office access charges to tandem switching and transport access charges because the former have been zeroed out by the bill-and-keep transition, which itself was intended partly to prevent arbitrage. See *supra* paragraph 9.

¹²⁶ See Answer at 38, para. 110 (claiming it "does not share revenue with any end user"); Answer Legal Analysis at 53 ("[HD Carrier and Wide Voice] have separate telecommunications equipment, separate employees and do not share revenue."); Wide Voice, LLC's Brief Concerning Evidence Produced in Case, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed April 5, 2021) (Wide Voice Brief) at 15 (denying revenue sharing with Free Conferencing); Wide Voice's Interrogatory Responses, at 6-7, Response to Interrogatory No. 3.

¹²⁷ Answer Legal Analysis at 50 ("Wide Voice has no end users and cannot be an access stimulator.").

¹²⁸ See Answer Legal Analysis at 50.

¹²⁹ 47 U.S.C. § 201(b).

¹³⁰ See *supra* paragraph 21; Reply at 46. See also *City of Arlington, Texas v. FCC*, 569 U.S. 290, 307 (2013) (affirmatively stating that "Congress has unambiguously vested the FCC with general authority to administer the

(continued....)

35. Recently, in the *Northern Valley Tariff Order*, the Commission found that tariff provisions designed to increase Northern Valley’s access stimulation revenues violated section 201(b).¹³¹ The Commission explained that carriers cannot claim their tariffs are just and reasonable under section 201(b) “merely by showing that they have not violated explicit regulatory provisions.”¹³² On the contrary, carriers must affirmatively show that their tariffed charges are just and reasonable.¹³³ And in the *Access Arbitrage Order*, the Commission has stated unequivocally that requiring IXCs to pay tandem switching and tandem switched transport charges for access stimulation traffic “is an unjust and unreasonable practice that we have authority to prohibit pursuant to section 201(b) of the Act.”¹³⁴

36. Further, the Commission has found arbitrage schemes similar to this one to be unlawful under section 201(b) of the Act.¹³⁵ Long-standing precedent makes clear that even where a particular practice arguably does not violate a codified rule, it may nonetheless be an unreasonable practice that violates 201(b).¹³⁶ Wide Voice attempts to distinguish the *Total Tel Order* and *All-American Order* because the sham arrangements there involved entities created solely to extract inflated access charges, whereas Wide Voice has been in business for more than a decade and has “dozens of different business relationships with carriers and voice applications.”¹³⁷ Although Wide Voice may not be a newly-created company, it fundamentally changed its operations to continue and to create new opportunities to bill IXCs for tandem services relating to access stimulation traffic. By “charg[ing] indirectly, through a sham arrangement, rates it could not charge directly,”¹³⁸ Wide Voice has violated section 201(b).

4. Wide Voice Had Fair Notice that the Scheme was Unlawful

37. Finally, citing *FCC v. Fox Television Stations, Inc.* and *Christopher v. SmithKline Beecham Corp.*, Wide Voice argues that finding its conduct unlawful under section 201(b) would deprive it of fair notice in violation of its right to due process.¹³⁹ Both *Fox* and *SmithKline* stand for the proposition that an agency’s abrupt change in its interpretation of a rule or statute may deprive a party of

Communications Act through rulemaking and adjudication”); *SEC v. Chenery Corp.* 332 U.S. 194, 202-03 (1947) (agencies have broad discretion to proceed by adjudication or rulemaking); *All American Order*, 28 FCC Rcd at 3490, para. 29 (Commission has authority to award damages under section 208 for violations of section 201(b), “even where no independent violation of a particular rule was found”).

¹³¹ *Northern Valley Tariff Order*, 35 FCC Rcd at 6207-08, paras. 22-23.

¹³² *Northern Valley Tariff Order*, 35 FCC Rcd at 6207-08, para. 23 n.72 (internal quotation marks omitted).

¹³³ *Northern Valley Tariff Order*, 35 FCC Rcd at 6207-08, paras. 22-23.

¹³⁴ *Northern Valley Tariff Order*, 35 FCC Rcd at 6209, para. 25 (citing *Access Arbitrage Order*, 34 FCC Rcd at 9073-74, para. 92).

¹³⁵ See *All American Order*, 28 FCC Rcd at 3487-91, paras. 24-30; *Alpine Order*, 27 FCC Rcd at 11526-30, paras. 39-48; *Total Tel Order*, 16 FCC Rcd at 5732-34, paras. 14-18.

¹³⁶ *All American Order*, 28 FCC Rcd at 3490, para. 29; *YMax Communications Order*, 26 FCC Rcd at 5761, paras. 52-53 & n.147.

¹³⁷ Answer Legal Analysis at 52.

¹³⁸ *Total Tel Order*, 16 FCC Rcd at 5734, para. 18. We also note that, although Wide Voice may have been in business for several years, its business admittedly has been structured to service access stimulation traffic. Nickerson Answer Decl. at 5, para 9 (acknowledging Wide Voice’s business transitioning away from providing end user services was “to get out of access stimulation business”); Answer Legal Analysis at 28. Also, Wide Voice’s evidence regarding its different business relationships shows that {

} See Wide Voice’s Supplemental Interrogatory Responses at 6, 9, Responses to Interrogatories 3, 4.

¹³⁹ Answer Legal Analysis at 53-55 (citing *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012) (*Fox*); *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012) (*SmithKline*)).

fair notice in violation of due process.¹⁴⁰ Nothing about our ruling is a change of course (much less an abrupt one). Our finding that Wide Voice and its closely related entities engaged in a scheme to evade the access stimulation rules comports with prior precedent involving sham arrangements dating back two decades, and such precedent makes clear that even where a particular change in business practice arguably does not violate a codified rule, it may nonetheless be an unreasonable practice that violates section 201(b).¹⁴¹ Moreover, the Commission could not have been clearer in 2019 that it did not want IXCs (and, in turn, their customers) to bear the costs of access stimulation,¹⁴² and nothing in the *Access Arbitrage Order* indicated that we would not continue to use section 201(b) as authority to police unreasonable conduct. Wide Voice has been given ample notice that the Commission will not tolerate actions to evade its access stimulation rules.¹⁴³

38. Accordingly, we find that Wide Voice ultimately serves the same type of traffic that it did prior to restructuring its business, that Wide Voice is not independent of HD Carrier and Free Conferencing, and 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*. Wide Voice's conduct is unjust and unreasonable in violation of section 201(b) of the Act, and it may not bill AT&T and Verizon tandem switching and transport charges for the traffic.

B. Wide Voice Violated Section 201(b) by Causing Call Congestion and Not Taking Reasonable Steps to Address It

39. Because the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Act, Commission precedent prohibits unreasonable call blocking by carriers.¹⁴⁴ Accordingly, the Commission has held that it is a violation of section 201(b) of the Act for carriers to choke, block, reduce or otherwise restrict call traffic, or to engage in routing

¹⁴⁰ *Fox*, 567 U.S. at 254 (finding that respondents lacked fair notice when the Commission "changed course" regarding what constituted indecency after the broadcasts in question had aired); *SmithKline*, 567 U.S. at 156-57 (Court declining to defer to agency's new interpretation of ambiguous statutes and rules, with an emphasis on the agency's clear and decades-long acquiescence to industry-wide noncompliance). See also Reply at 48-49.

¹⁴¹ See *All American Order*, 28 FCC Rcd at 3487-91, paras. 24-30; *Alpine Order*, 27 FCC Rcd at 11526-30, paras. 39-48; *Total Tel Order*, 16 FCC Rcd at 5732-5734, paras. 14-18. See also *USF/ICC Transformation Order*, 26 FCC Rcd at 17874, para. 657 (finding that access stimulation schemes "almost uniformly" result in rates that are unjust and unreasonable under section 201(b)).

¹⁴² See *Northern Valley Tariff Order*, 35 FCC Rcd at 6209-10, para. 25. See *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."); *id.* at 9038, para. 8 (In 2011, "the Commission adopted rules that identify those LECs engaged in access stimulation and required that such LECs lower their tariffed access charges."); *id.* at 9042, para. 17 ("To reduce further the financial incentive to engage in access stimulation, we adopt rules requiring an access-stimulating LEC to designate in the Local Exchange Routing Guide (LERG) or by contract the route through which an IXC can reach the LEC's end office or functional equivalent and to bear financial responsibility for all interstate and intrastate tandem switching and transport charges for terminating traffic to its own end office(s) or functional equivalent whether terminated directly or indirectly."); *id.* at 9043, para. 20.

¹⁴³ We also reject Wide Voice's claim that, if the Commission intended to enforce the access stimulation rules "more broadly," the *Access Arbitrage Order* is "unconstitutionally vague." See Answer Legal Analysis at 54-55 (citing *Libertarian Party of Ohio v. Husted*, 751 F.3d 403 (6th Cir. 2014)). We are not enforcing the access stimulation rules against Wide Voice. We are applying section 201(b) of the Act. As noted above, the Commission found that "requiring IXCs to pay the tandem switching and tandem switched transport charges for access-stimulation traffic is an unjust and unreasonable practice." *Access Arbitrage Order*, 34 FCC Rcd at 9073-74, para. 92.

¹⁴⁴ *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629, 11631-32, paras. 5-7 (Wireline Comp. Bur. 2007) (*2007 Declaratory Ruling*).

practices that have the effect of blocking, choking, reducing or otherwise restricting traffic.¹⁴⁵ AT&T and Verizon allege that Wide Voice caused call congestion by having hundreds of millions of minutes of access stimulation traffic routed to it despite lacking sufficient capacity to receive the traffic.¹⁴⁶ The IXCs contend that Wide Voice knew that existing facilities at its tandem switches were insufficient to carry the access stimulation traffic and that the IXCs could not augment those facilities quickly enough to do so.¹⁴⁷ The record supports the IXCs' assertions. As explained below, we find that Wide Voice's actions resulted in call congestion and call failures. Accordingly, we grant Count I of the Complaint because Wide Voice's conduct was unjust and unreasonable in violation of section 201(b) of the Act.

1. Wide Voice's Conduct Resulted in Call Congestion

40. Prior to January 2020, the parties exchanged traffic without experiencing capacity problems, using Wide Voice's tandem switches in Los Angeles and Miami.¹⁴⁸ The parties' networks interconnect with each other at meet points at these two locations,¹⁴⁹ and those facilities were more than sufficient to handle the traffic volumes in 2019.¹⁵⁰ Between May and November 2019, Verizon delivered between 3 and 4 million total minutes of use (MOUs) each month to Wide Voice,¹⁵¹ and AT&T delivered on average 29 million total MOUs each month to Wide Voice.¹⁵² There was no call congestion in 2019.¹⁵³

41. But 2020 was a different story. Beginning in January of that year, the volume of AT&T and Verizon traffic destined for Wide Voice grew significantly, caused primarily by the rerouting of access stimulation traffic through Wide Voice tandem switches to HD Carrier's customers, most notably,

¹⁴⁵ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd 17903, 18028-29, paras. 734, 973; *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16169, para. 29 and n.89 (2013); *Developing a Unified Inter-carrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling, 27 FCC Rcd 1355-57, paras. 11-13 (Wireline Comp. Bur. 2012); *2007 Declaratory Ruling*, 22 FCC Rcd at 11631-32, paras. 5-7; *Telecommunications Action Center and Consumer Action v. Central Corp. Int'l Telecharge, Inc.*, Memorandum, Opinion and Order, 4 FCC Rcd 2157, 2159, para. 12 (Common Car. Bur. 1989). Although some of the Commission's discussions of its call blocking precedents were in the context of rural call completion, they illustrate how the Commission interprets its general call blocking prohibition. See *Rural Call Completion*, Fourth Report and Order, 34 FCC Rcd 1781, 1789, para. 23 (2019) ("As we found in the Third [Rural Call Completion] Order, the provisions of the [Improving Rural Call Quality and Reliability Act of 2017] are not limited to rural areas; therefore, we apply the general duty discussed above to all covered voice communications, regardless of their destination.") (footnote omitted).

¹⁴⁶ Complaint Legal Analysis at 6-10, 12-14, 16-21; Reply at 1, 3-8.

¹⁴⁷ Complaint Legal Analysis at 6-10; Reply at 1, 4-5.

¹⁴⁸ Complaint at 18, para. 40; Answer at 16, para. 40.

¹⁴⁹ Verizon delivers traffic to Wide Voice at a third-party Point of Presence, and the companies rely on the third-party vendor to provide the physical connection between their networks. In Miami, Wide Voice is responsible for organizing the third-party cross-connect so Verizon can deliver the calls, and Verizon must issue a Letter of Authority and Customer Facility Assignment (LOA/CFA) giving Wide Voice permission for the cross-connect. In Los Angeles, Verizon is responsible for organizing the third-party cross-connect, and Wide Voice must provide the LOA/CFA. See Mullins Complaint Decl. at 7, para. 16. AT&T and Wide Voice connect to each other's networks through "meet points" in Los Angeles and Miami. Reply at 19. A "meet point" is a predetermined location where carriers' networks meet. See Meola Reply Decl. at 3, para. 7. To reach those meet points, AT&T and Wide Voice must each connect trunks from their individual Points of Presence to the meet points. See Reply at 19; Meola Reply Decl. at 3-5, paras. 7-8.

¹⁵⁰ Complaint at 19, para. 44; Answer at 17, para. 44. See Meola Complaint Decl. at 5, para. 12; Mullins Complaint Decl. at 2, para. 5; Supplemental Joint Statement at 10, Stipulated Fact. No. 32.

¹⁵¹ Joint Statement at 4, Stipulated Fact No. 15.

¹⁵² See Meola Complaint Decl. at 6, para. 15.

¹⁵³ Complaint at 19, para. 44, 20, para. 46; Answer at 17, para. 44, 18, para. 46.

Free Conferencing.¹⁵⁴ Several terminating LECs had been carrying that traffic, but they ceased supporting high-volume calling services after the Commission's access stimulation rules took effect.¹⁵⁵ HD Carrier's customers, high-volume calling service providers, including Free Conferencing, ported the telephone numbers they had used for their high-volume calling services business from other LECs to HD Carrier, and the traffic to these telephone numbers was then routed through Wide Voice.¹⁵⁶ The rerouting precipitated significant and preventable call congestion.¹⁵⁷

42. Wide Voice gave the IXC's four forecasts about the volume of traffic associated with the HD Carrier telephone numbers that would be routed through Wide Voice's tandems.¹⁵⁸ The first forecast, sent to AT&T on October 21, 2019, estimated that there would be 800,000 additional MOUs for that month, increasing to approximately 1.4 million additional MOUs by September 2020.¹⁵⁹ Six weeks later, Wide Voice provided AT&T a new forecast for traffic to its new tandem in Rudd, Iowa.¹⁶⁰ That forecast projected 1.6 million additional MOUs in January 2020, increasing to 17.2 additional million MOUs per month by December 2020.¹⁶¹ On January 2, 2020, Wide Voice updated its forecast to AT&T again, stating that it anticipated traffic for January 2020 *alone* would increase by more than 127 million MOUs, with similarly large volumes of traffic projected for each month of 2020.¹⁶²

43. On January 3, 2020, Wide Voice gave its first forecast to Verizon,¹⁶³ advising that the volume of calls would "increase substantially."¹⁶⁴ Specifically, Wide Voice projected 134 million MOUs for January 2020, 130 million MOUs for February 2020, and similarly large volumes for each month in 2020, all in excess of 95 million MOUs—roughly 30 times the monthly MOUs that Verizon had delivered to Wide Voice in 2019.¹⁶⁵

44. Under typical circumstances, it takes Verizon more than 30 calendar days to add a new

¹⁵⁴ Nickerson Answer Decl. at 8-9, para. 18. Wide Voice concedes that this was access-stimulation traffic. *See* Answer Legal Analysis at 19 ("After the release of the *Access Arbitrage Order*, five rural LECs decided to stop serving high volume applications that relied upon those LECs telephone numbers [and] . . . the applications ported these telephone numbers away from the rural LECs and to HD Carrier . . . HD Carrier's customers, like FreeConferenceCall.com, had an immediate need to migrate the traffic at these rural LECs."). *See also supra* paragraph 29.

¹⁵⁵ *See* Complaint at 21, para. 50; Nickerson Answer Decl. at 8-9, para. 18.

¹⁵⁶ *See* Complaint at 21, para. 50; Nickerson Answer Decl. at 8-9, para. 18.

¹⁵⁷ *See* Complaint at 20, para. 45. *See generally* Answer Legal Analysis at 36-40.

¹⁵⁸ *See* Complaint at 20-22, paras. 46, 49, 51; Answer at 18-19, paras. 46, 49, 51. Free Conferencing provided Wide Voice the traffic information used to prepare the forecasts to AT&T and Verizon. *See* Wide Voice Supplemental Exhibit Submission, Exh. N at WV_000504, WV_000505, WV_000507, WV_000613. This fact underscores the interrelatedness among the various Erickson entities, notwithstanding Wide Voice's claim that HD Carrier is its customer (and that Free Conferencing, in turn, is HD Carrier's customer). *See* Answer Legal Analysis at 11; Nickerson Answer Decl. at 6, para. 11.

¹⁵⁹ Complaint at 20, para. 46; Answer at 18, para. 46. The parties agree that the existing capacity at Wide Voice's Los Angeles and Miami tandems was more than sufficient to handle these traffic volumes. *Id.*

¹⁶⁰ Joint Statement at 6, Stipulated Fact No. 22.

¹⁶¹ Joint Statement at 6, Stipulated Fact No. 22.

¹⁶² *See* Complaint at 22, para. 51; Answer at 19, para. 51; Joint Statement at 6, Stipulated Fact No. 23.

¹⁶³ *See* Wide Voice Interrogatory Responses at 15, Response to Interrogatory No. 8.

¹⁶⁴ *See* Complaint at 22, para. 52; Answer at 19, para. 52.

¹⁶⁵ Complaint at 22, para. 52; Answer at 19, para. 52; Joint Statement at 8, Stipulated Fact No. 32. The IXC's maintain that these forecasts were extremely large. Complaint at 22, para. 53. By way of comparison, AT&T notes that it is only billed about 22 million minutes per month in New York City by Verizon, the largest local carrier there. Meola Complaint Decl. at 10, para. 29.

DS3 with Wide Voice, plus additional time to activate the circuits on each DS3.¹⁶⁶ And by Wide Voice's own admission, the process through which it interconnects to AT&T's point of presence takes more than 60 days.¹⁶⁷ Yet, Wide Voice's January forecasts afforded the IXCs less than a week to coordinate with Wide Voice under the parties' interconnection arrangements to add capacity sufficient to accept hundreds of millions of HD Carrier's MOUs.¹⁶⁸ Moreover, Wide Voice at the time insisted that the IXCs utilize new tandems in remote locations where the IXCs had no facilities.¹⁶⁹ Wide Voice demanded that AT&T and Verizon accommodate this increased traffic within a matter of days¹⁷⁰ even though it generally took much longer to add capacity even where the IXCs already had facilities in place.¹⁷¹

45. The IXCs cautioned Wide Voice that the parties' existing facilities in Miami and Los Angeles could not handle the rapidly increasing volumes of traffic. After receiving the January 2, 2020, forecast, AT&T promptly advised Wide Voice that AT&T did not have facilities at the Rudd, Iowa, tandem.¹⁷² Although Wide Voice subsequently agreed that AT&T and Verizon could instead deliver the traffic to its Los Angeles and Miami tandems,¹⁷³ AT&T warned Wide Voice that the facilities at those tandems "will not handle the volume[s] forecasted"¹⁷⁴ and that Wide Voice's actions would cause "blocking."¹⁷⁵ Rather than heed these warnings, Wide Voice chose not only to accept the traffic forecasted for January 2020, but also to accept twice that amount of traffic beginning in February 2020.¹⁷⁶ Wide Voice could have refused to accept traffic when, for instance, the traffic would disrupt its network.¹⁷⁷ Nevertheless, Wide Voice did nothing to stop or slow HD Carrier from rerouting hundreds of

¹⁶⁶ Mullins Complaint Decl. at 7, para. 16; Complaint Exh. 7.

¹⁶⁷ See DeCosta Answer Decl. at 8, para. 26.

¹⁶⁸ We do not countenance Wide Voice's suggestion that it had no obligation to provide the IXCs advance notice of the additional traffic. See Answer at 2, para. 2; Nickerson Answer Decl. at 7, para. 14. In the absence of any notice to the IXCs, there would have been no reasonable opportunity for the parties to coordinate with each other and their interconnection vendors to augment their facilities. Under such a scenario, even greater congestion problems would have ensued.

¹⁶⁹ See Complaint Exh. 11 at ATTVZ00036; Complaint Exh. 33 at ATTVZ00142. Based upon statements made by HD Carrier and Free Conferencing, Wide Voice assumed that AT&T and Verizon would terminate HD Carrier's traffic in Iowa via a commercial arrangement or in the same manner they did with the rural LECs that stopped carrying access stimulation traffic. See Answer Legal Analysis at 31; Nickerson Answer Decl. at 12-13, para. 28. Wide Voice, however, knew that the IXCs had previously delivered traffic to Wide Voice at its Los Angeles and Miami tandems. Wide Voice did not have any reasonable expectation that, nor did it confirm prior to the HD Carrier traffic being routed to Wide Voice, the IXCs would route HD Carrier's customer traffic to Wide Voice any differently than they routed all other traffic to Wide Voice. See Nickerson Answer Decl. at 12, para. 28.

¹⁷⁰ Complaint Exh. 11 at ATTVZ00036 (Wide Voice email dated January 3, 2020, advising Verizon to expect traffic "[w]ithin the next 7-10 days"); Complaint Exh. 33 at ATTVZ00142 (Wide Voice email dated January 8, 2020, advising AT&T that "ALL TRAFFIC WILL BE SHIFTED COMPLETELY BY JANUARY 10th 2020.").

¹⁷¹ See Mullins Complaint Decl. at 7, para. 17; Complaint Exh. 7; DeCosta Answer Decl. at 8, para. 26.

¹⁷² See Complaint Exh. 34 at ATTVZ00146; Meola Complaint Decl. at 11, para. 31.

¹⁷³ Answer at 32, para. 91; Answer Legal Analysis at 85.

¹⁷⁴ Complaint Exh. 34 at ATTVZ00146.

¹⁷⁵ Complaint Exh. 33 at ATTVZ00143.

¹⁷⁶ See Complaint at 24, paras. 57-58 (describing monthly traffic forecasts ranging from 74% to 187% more each month compared to Wide Voice's January forecast); Answer at 20-21, paras. 57-58.

¹⁷⁷ Wide Voice includes such provisions in its access tariff. See Reply Exh. 80 at ATTVZ00611, Wide Voice Tariff No. 3, §§ 2.3.2-2.3.4 (eff. Jan. 20, 2012) ("The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and equipment and is limited to the capacity of [Wide Voice's] facilities as well as facilities [Wide Voice] may obtain from other carriers, from time to time, to furnish service as required at the sole discretion of [Wide Voice].").

millions of minutes of access stimulation traffic that exceeded the existing capacity of Wide Voice's connections with the IXC's at Wide Voice's tandems. Simply put, the call congestion was a problem of Wide Voice's own making.¹⁷⁸

46. Wide Voice faults the IXC's for presenting a "false narrative" that Wide Voice rerouted traffic and caused the call blocking.¹⁷⁹ Wide Voice claims its actions were "a reasoned response to ensure that its customers' legitimate calls were completed."¹⁸⁰ The facts belie this assertion. Wide Voice not only continued to support the very same access stimulation businesses that it had in the past—CarrierX, Free Conferencing, and HD Carrier—it took on even more of their access stimulation traffic.¹⁸¹ Wide Voice and these closely related entities acted in lockstep to perpetuate their access stimulation scheme.¹⁸² Wide Voice claims that it did not do anything to "reroute" traffic that HD Carrier routed in the first instance. As explained above, however, Wide Voice and HD Carrier are not independent actors, but rather closely related entities operating in concert. Further, Wide Voice admits that it wanted HD Carrier's business,¹⁸³ and that it worked with HD Carrier to ensure that access stimulation traffic continued to flow—at the IXC's expense—when other LECs stopped carrying those calls.¹⁸⁴ Wide Voice and HD Carrier worked together to get HD Carrier's traffic onto Wide Voice's network rather than relinquishing it to competitors.¹⁸⁵ And Wide Voice was well aware that the increased traffic would cause problems.¹⁸⁶ Wide Voice acted unreasonably and violated section 201(b) by accepting the increased traffic despite knowing that doing so would create call congestion.

2. The IXC's Made Reasonable Efforts to Upgrade Facilities

47. We reject Wide Voice's claim that the IXC's caused the call congestion.¹⁸⁷ None of Wide Voice's assertions are persuasive,¹⁸⁸ and most relate to matters that happened after the onset of call

¹⁷⁸ The IXC's argue that Wide Voice and its access stimulation partners "have incentives to cause call congestion to exert pressure on IXC's to begin or continue using 'commercial' agreements – and thus continue to pay fees on [access stimulation] calls." Complaint Legal Analysis at 14-15. The IXC's point to Wide Voice's repeated requests for the IXC's to enter into commercial agreements as evidence of their argument. Wide Voice counters that this argument is "baseless and nonsensical" and should be rejected by the Commission. Answer Legal Analysis at 44-46; Nickerson Answer Decl. at 18-19, paras. 37-41. We concur with the IXC's and find, 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 IXC's into commercial arrangements with Wide Voice or entities closely connected to Wide Voice or Erickson, including HD Tandem.

¹⁷⁹ See Answer Legal Analysis at 27.

¹⁸⁰ Answer Legal Analysis at 27, 39-44.

¹⁸¹ Nickerson Answer Decl. at 6-7, paras. 10-12.

¹⁸² See *supra* paragraphs 19-36.

¹⁸³ See Answer Legal Analysis at 28; Nickerson Answer Decl. at 8-9, para. 18.

¹⁸⁴ See Nickerson Answer Decl. at 7, para. 14 ("... in mid-2019, Wide Voice agreed to take on additional business from HD Carrier.").

¹⁸⁵ See Nickerson Answer Decl. at 8-9, para. 18; Answer Legal Analysis at 27.

¹⁸⁶ See DeCosta Answer Decl. at 6, paras. 18-19 (noting on January 7, 2020, that AT&T's Miami trunks were full and calls to it would be blocked); Answer Exh. 33 at WV_000224-25 (same).

¹⁸⁷ See Answer Legal Analysis at 24-25, 28-38.

¹⁸⁸ After the Commission adopted its revised access stimulation rules in 2019, CarrierX and Free Conferencing sought to have them stayed "to alleviate call blocking." Answer Legal Analysis at 20. Free Conference Call requested that the Commission grant it an expedited waiver of the *Access Arbitrage Order's* implementation period. See Free Conferencing Corporation Petition for Expedited Waiver of Access Arbitrage Order, *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155 (Jan. 7, 2020). Free Conference Call subsequently withdrew its petition. Wide Voice, CarrierX, and HD Carrier then sought a stay of

(continued....)

congestion resulting from Wide Voice's conduct. Wide Voice contends that the IXCs have deliberately engaged in the following tactics to make calls delivered to Wide Voice's tandems fail: AT&T unilaterally removed connections to Wide Voice in [2019] even though Wide Voice was bearing the cost of such connectivity; (2) AT&T refused to provision sufficient capacity for traffic to Wide Voice; (3) AT&T changed its routing of calls to HD Carrier numbers; and (4) AT&T and Verizon crammed their direct connections to Wide Voice with traffic.¹⁸⁹ We address each of these issues in turn.

48. *Deactivating Trunks.* AT&T deactivated underutilized trunks in 2019.¹⁹⁰ Wide Voice maintains that AT&T unilaterally disconnected these trunks "even though Wide Voice was bearing the cost of such connectivity" and that this contributed to call congestion in 2020.¹⁹¹ The record tells a different story. After determining in mid-2019 that Wide Voice was underutilizing existing facilities, AT&T notified Wide Voice in July and September 2019 that AT&T was reducing the number of trunks on its side of the meet point with Wide Voice.¹⁹² AT&T accomplished this not by removing the actual physical facilities, but by removing the assignment on the facilities to Wide Voice.¹⁹³ Wide Voice took no action to stop AT&T from deactivating these trunks.¹⁹⁴ To the contrary, Wide Voice responded by disconnecting the actual physical facilities on its side of the meet point,¹⁹⁵ and it did not ask AT&T to keep the facilities in place.¹⁹⁶ AT&T completed deactivating the trunks at issue by October 11, 2019,¹⁹⁷ and the parties have stipulated that the remaining capacity at the Miami and Los Angeles tandems was sufficient to handle the then-forecasted traffic.¹⁹⁸ After receiving Wide Voice's January 2, 2020, forecast,

the *Access Arbitrage Order* in the D.C. Circuit, but the Court denied their request. *See Wide Voice, LLC, CarrierX, LLC, et al. v. FCC*, Emergency Motion for Stay Until Carriers Can Complete Calls, No. 19-1233 (D.C. Cir. filed Jan. 9, 2020); *see also Great Lakes Commc'n Corp. v. FCC*, No. 19-1233, Order, (D.C. Cir. Jan. 29, 2020). Although Wide Voice now says that "it sought to avoid the possibility of the *Access Arbitrage Order* causing call blocking months before it occurred by asking . . . to extend the proposed . . . implementation period," Answer Legal Analysis at 25-27, we need not revisit those arguments again in this proceeding.

¹⁸⁹ Answer Legal Analysis at 29-36.

¹⁹⁰ *See* Joint Statement at 5-6, Stipulated Fact No. 20; Complaint at 18, para. 42; Answer at 16-17, para. 42. The record reflects that Wide Voice was underutilizing the capacity from AT&T's facilities. *See* Meola Complaint Decl. at 6, para. 15. *See also* Supplemental Responses of AT&T Corp. and AT&T Services, Inc. to Wide Voice, LLC's First Set of Interrogatories, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Mar. 29, 2021) (AT&T Supplemental Interrogatory Responses) at 5-7, Response to Interrogatory No. 1 and Attachment A at ATT-01025, ATT-01026, ATT-01029.

¹⁹¹ *See* Answer Legal Analysis at 29-30. Although Wide Voice disputes that the trunks were underutilized it has offered no support to refute the traffic volumes provided by AT&T.

¹⁹² Meola Complaint Decl. at 7, para. 18; Complaint at 18, para. 42; Answer at 16-17, para. 42. *See* Answer Exh. 6 (July 19, 2019 disconnect notice); Exh. 7 (Sept. 18, 2019 disconnect notice); Exh. 8 (Sept. 20, 2019 disconnect notice).

¹⁹³ Meola Complaint Decl. at 17, para. 48.

¹⁹⁴ Meola Complaint Decl. at 7, para. 18. Wide Voice claims that AT&T improperly required Wide Voice to pay for all connectivity from AT&T's switch at Wide Voice's tandem. This mischaracterizes how the parties' networks connect which is at a meet point. *See supra* footnote 149. In such circumstances, each party has always been responsible for constructing and paying for the facilities on its own ends of the meet points. *See* Reply at 19; Meola Reply Decl. at 3-5, paras. 7-9. Nothing in the record suggests that this arrangement contravenes industry norms or had any bearing on the call congestion here. *See* Answer Legal Analysis at 29-30, 42, 48; DeCosta Answer Decl. at 2, para. 5, 5, para. 16.

¹⁹⁵ Meola Complaint Decl. at 17, para. 48.

¹⁹⁶ Meola Complaint Decl. at 7, para. 18.

¹⁹⁷ Answer Legal Analysis at 29-30; *see* Answer Exh. 6 at WV_000025, Answer Exh. 7 at WV_000042.

¹⁹⁸ *See* Supplemental Joint Statement at 10, Stipulated Fact No. 32.

AT&T took timely steps to reactivate these trunks.¹⁹⁹ But because Wide Voice had physically removed the facilities on its side of the meet point, it had to hire someone to reinstall them.²⁰⁰ That process took longer than expected because of various problems with Wide Voice's interconnection vendor.²⁰¹

49. *Expanding Capacity.* Wide Voice correctly notes that it provided the IXC's with forecasts of the increasing call volumes.²⁰² It maintains that it provided the traffic forecasts as soon as it received the information from HD Carrier.²⁰³ The record shows, however, that Wide Voice waited two weeks to provide AT&T with updated traffic projections for January 2020.²⁰⁴ What is more, cascading forecasts and the huge increases in projected traffic volumes gave the IXC's little time to respond.²⁰⁵ There is no evidence supporting Wide Voice's claim that, after receiving traffic forecasts, the IXC's refused or failed to expand capacity to the best of their ability in a timely manner.²⁰⁶

50. The IXC's took actions throughout 2020 to accommodate the increased traffic to Wide Voice's tandems. Specifically, between January and September 2020, AT&T increased its capacity at Wide Voice's Los Angeles and Miami tandems by adding approximately 17 DS3s.²⁰⁷ On September 9, 2020, Wide Voice told AT&T that "[t]he installation of the facilities ordered for Miami and Los Angeles have alleviated call failures at the moment."²⁰⁸ Wide Voice further noted, however, that it "has significant customer demand . . . it cannot meet due to the limited capacity AT&T has installed."²⁰⁹ As of January 11, 2021, AT&T had connected to Wide Voice's Los Angeles and Miami switches using a total of 24 DS3s—twelve in each location.²¹⁰ Between January and July 2020, Verizon augmented its capacity at Wide Voice's two tandems by adding approximately 12 DS3s.²¹¹ Verizon's efforts in the first quarter of 2020 resulted in it installing enough capacity to deliver 11 times as much traffic to Wide Voice

¹⁹⁹ See Meola Complaint Decl. at 17, para. 47; Complaint at 29, para. 73; Complaint Legal Analysis at 11.

²⁰⁰ See Meola Complaint Decl. at 17, para. 48.

²⁰¹ See Meola Complaint Decl. at 18, para. 51; Complaint Exh. 42 at ATTVZ00184.

²⁰² Answer Legal Analysis at 18. See *supra* paragraph 42.

²⁰³ DeCosta Answer Decl. at 3, para. 7.

²⁰⁴ On December 19, 2019, Free Conferencing provided Wide Voice with forecasts for projected AT&T traffic to Wide Voice, but Wide Voice did not share that information with AT&T until January 2, 2020. Compare Wide Voice Supplemental Exhibit Submission, Exhibit N at WV_000504 with Complaint Exh. 32 at ATTVZ00135.

²⁰⁵ See *supra* paragraph 42-44.

²⁰⁶ Answer Legal Analysis at 42; DeCosta Answer Decl. at 8, para. 26.

²⁰⁷ See Joint Statement at 10-12, Stipulated Fact Nos. 39-42 (stipulating that AT&T added 11,232 lines to Wide Voice's two tandems).

²⁰⁸ Complaint Exh. 41 at ATTVZ00173.

²⁰⁹ Complaint Exh. 41 at ATTVZ00173.

²¹⁰ Complaint at 35, para. 88. On December 1, 2020, AT&T requested an additional two DS3s in Los Angeles and an additional four DS3s in Miami. Complaint Exh. 45 at ATTVZ00203; Meola Complaint Decl. at 23, para. 58. Wide Voice has not yet approved this request. See Meola Complaint Decl. at 23, para. 58; Answer at 31, para. 88.

²¹¹ See Joint Statement at 9-10, Stipulated Fact Nos. 37-38 (stipulating that Verizon added 7,728 lines to Wide Voice's two tandems). Verizon augmented its capacity beginning in January 2020, which resulted in its adding eight DS3s worth of additional capacity to Wide Voice in the first quarter of 2020. Verizon delivered between 67 and 197 million engineering MOUs to Wide Voice between January and September 2020. Engineering MOUs are often slightly higher than billable MOUs because they also include the time to set up the call and unanswered calls, not just the time a call is connected. See Mullins Complaint Decl. at 12-13, para. 34. On March 30, 2020, Verizon requested an additional two DS3s in Los Angeles. Mullins Complaint Decl. at 9, para. 23; Complaint Exh. 17 at ATTVZ00074. Wide Voice has not yet approved this request. See Mullins Complaint Decl. at 9, para. 23, 12, para. 29; Answer at 31, para. 88.

as it had in December 2019.²¹² As of July 8, 2020, Verizon had connected to Wide Voice's Los Angeles tandem switch using six DS3s and to Wide Voice's Miami tandem switch using nine DS3s.²¹³ Eventually, the additional facilities were able to handle the increased traffic with few issues.²¹⁴

51. AT&T and Verizon generally managed to add capacity well within their standard time frames. Although the record reflects that between 30 to 60 days are required for AT&T and Verizon to provision new services,²¹⁵ the evidence demonstrates that, on average, Verizon took only 15 days to provision new DS3s at the Wide Voice tandems.²¹⁶ AT&T provisioned circuits on its DS3s within an average of 22 days in Los Angeles and 20 days in Miami from the date it received the proper authorization from Wide Voice.²¹⁷ In some instances, delays in receiving the necessary paperwork or approvals from Wide Voice slowed the IXCs' efforts to install additional facilities.²¹⁸

52. Wide Voice also contends that the number of failed calls is unknown and faults the IXCs for the uncertainty.²¹⁹ Given the increase in the number of MOUs and the indisputably inadequate facilities to deliver them, we infer that the number of call failures was significant. Wide Voice caused the call congestion.²²⁰

53. *Call Routing Issues.* Wide Voice faults AT&T and Verizon for limiting their connection to Wide Voice to the direct connection arrangements that the parties historically had used to exchange traffic.²²¹ According to Wide Voice, the IXCs made an "intentional decision to send the traffic" down only one of the "many roads to reach Wide Voice's tandem."²²² Wide Voice contends that, instead, the IXCs either should have entered into an agreement with HD Tandem or Wide Voice to use commercial routes or should have delivered the traffic using session initiation protocol (SIP) connections, even on a temporary basis.²²³ Contrary to this assertion, the IXCs are under no obligation to route their traffic in

²¹² See, e.g., Mullins Complaint Decl. at 13, para. 35. In April 2020, Verizon delivered at least 173 million MOUs – significantly more than the 122 MOUs Wide Voice had initially forecasted in January 2020. *Id.*

²¹³ See Complaint at 18, para. 41, Answer at 16, para. 41; Complainant MCI Communications Services LLC's Answer to Commission Staff Questions Pursuant to 47 CFR § 1.732(c), Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Mar. 29, 2021) at 3.

²¹⁴ See Joint Statement at 12, Stipulated Facts Nos. 43, 44; Complaint Exh. 41. See also Mullins Complaint Decl. at 12-13, paras. 34-35.

²¹⁵ See *supra* paragraph 44. See also Wide Voice Supplemental Exhibit Submission, Exh. G at WV_000475 (noting Lumen's standard interval for a trunk order is 22 business days).

²¹⁶ Mullins Complaint Decl. at 7, para. 17; Complaint Exh. 7 at ATTVZ00028.

²¹⁷ Meola Complaint Decl. at 18-19, para. 51; Complaint at 30-31, para. 77.

²¹⁸ Wide Voice disputes that it delayed any paperwork, but the evidence shows that there were problems with providing some LOAs and with Wide Voice's interconnection vendor. See Complaint Exh. 42 at ATTVZ00184, Answer Exh. 30 at WV_000210.

²¹⁹ See Wide Voice Supplemental Brief Regarding New Verizon Data, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Apr. 16, 2021) at 2-4.

²²⁰ See *supra* paragraph 40-46.

²²¹ See Answer Legal Analysis at 28-34.

²²² Wide Voice, LLC's Brief Concerning Evidence Produced in Case, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Apr. 5, 2021) at 1. Wide Voice maintains that the IXCs' approach to augment their capacity reflects that they put cost before call completion. *Id.* at 2.

²²³ See Answer Legal Analysis at 28, 42; DeCosta Answer Decl. at 7-8, paras. 23-26. See also Mullins Complaint Decl. at 12, paras. 31-33; Meola Complaint Decl. at 16, para. 44, 22, para. 56.

any specific manner.²²⁴ AT&T and Verizon delivered traffic to Wide Voice in the same manner that they had historically exchanged traffic at Wide Voice's tandem switches in Los Angeles and Miami.²²⁵ Neither IXC delivered traffic in SIP, and neither IXC used commercial routes to deliver traffic to Wide Voice.²²⁶ AT&T and Wide Voice had a commercial arrangement for some time and, when the agreement expired, they continued to interconnect the same way—at meet points in Miami and Los Angeles.²²⁷ There is no evidence that Verizon and Wide Voice ever had a commercial arrangement. Wide Voice does not explain what a commercial arrangement would have entailed or how it would be different from how the IXCs currently deliver traffic to Wide Voice. And, as the IXCs correctly note, proceeding as Wide Voice proposed effectively would have created a version of the access stimulation “price umbrella” that the Commission sought to eliminate through the *Access Arbitrage Order*.²²⁸ The Commission found in the *Access Arbitrage Order* that tariffed transport charges “serve as a ‘price umbrella’ for services offered on the basis of a commercial agreement . . . meaning the commercially negotiated rates need only be slightly under the ‘umbrella’ of the [regulated] rate to be attractive to those purchasing the service.”²²⁹ By entering into commercial arrangements with Wide Voice, AT&T and Verizon could have contractually bound themselves to pay Wide Voice only slightly less than the tariffed rates when Wide Voice was not entitled to charge them anything.

54. Similarly, we find unpersuasive Wide Voice's attempt to fault AT&T for not utilizing least-cost routes that AT&T purportedly used with other carriers when routing Free Conferencing's access stimulation traffic in the past.²³⁰ AT&T has not used least-cost routes to send traffic to Wide Voice in Miami or Los Angeles.²³¹ AT&T attempted to alleviate call congestion by offering HD Tandem and Free Conferencing to have their access stimulation traffic carried over least cost routes if HD Carrier and Free Conferencing paid for that traffic.²³² This proposal would have required Free Conferencing to bear the financial expense of its access stimulation traffic consistent with the *Access Arbitrage Order*, which shifted responsibility for access stimulation charges away from IXCs.²³³ Even if AT&T previously had used those routes at its own expense when Free Conferencing's traffic was handled by the terminating LECs that stopped supporting access stimulation business—as Wide Voice contends—that would have no bearing on the issues before us. AT&T's previous actions occurred before the *Access Arbitrage Order*,

²²⁴ See *Developing an Unified Inter-carrier Compensation Regimes*, Declaratory Ruling, 27 FCC Rcd 1351, 1355-56, para. 12 (Wireline Comp Bur. 2012) (noting that the Commission was not dictating how carriers must route their traffic). See also *Northern Valley Tariff Order*, 35 FCC Rcd at 6210-11, paras. 27-28 (rejecting arguments regarding the reasonableness of commercially available options to deliver traffic). IXC routing decisions are subject to the constraints of section 201(b), and we find that the IXCs' response to the call congestion Wide Voice caused was reasonable.

²²⁵ Complaint at 18, para. 40; Answer at 16, para 40.

²²⁶ See Meola Complaint Decl. at 27, para. 73; see Greenfield Reply Decl. at 2, paras. 3-4, 3, para. 6.

²²⁷ See Joint Statement at 5, Stipulated Fact No. 16.

²²⁸ See Complaint Legal Analysis at 14-16. See also *Northern Valley Tariff Order*, 35 FCC Rcd at 6211, para. 28.

²²⁹ Complaint Legal Analysis at 14 (citing *Access Arbitrage Order*, 35 FCC Rcd at 9042, para. 16).

²³⁰ See Answer Legal Analysis at 31-32; Nickerson Answer Decl. at 12-14, paras. 28-29.

²³¹ Reply at 28. Although Wide Voice does not complain that Verizon did not use least-cost routes for traffic to Wide Voice, Verizon confirms that it did not use least-cost routes to send traffic to Wide Voice's tandems at Los Angeles or Miami. Verizon routes calls to Wide Voice according to the LERG, subject to the fact that as agreed by Wide Voice, calls that are shown subtending Wide Voice's Rudd, Iowa and Sioux Falls, South Dakota switches are routed to Wide Voice's Miami and Los Angeles switches. See Greenfield Reply Decl. at 2, para. 5.

²³² See Answer Exh. 39 at WV000258-9.

²³³ See *supra* paragraph 9. See also *Access Arbitrage Order*, 34 FCC Rcd at 9042-44, paras. 17, 20-23, 9050, para. 37, 9067, para. 73; *Northern Valley Tariff Order*, 35 FCC Rcd at 6201, para. 9.

and once the new access stimulation rules took effect AT&T was well within its rights to stop bearing the financial burden associated with their access stimulation traffic.

55. There also is no credible evidence that AT&T had been deliberately capping its trunks since January 2020 or that this caused call congestion.²³⁴ Wide Voice bases this claim on an unsupported statement by an unidentified AT&T engineer.²³⁵ As such, the assertion carries little evidentiary weight.²³⁶ In any event, AT&T's configuration of its trunks at its meet points with Wide Voice appears to have been in place throughout the parties' interconnection arrangement, and AT&T did not alter the configuration in any way to restrict traffic in response to the deluge of traffic Wide Voice sent its way.²³⁷ On the contrary, AT&T expanded its capacity.²³⁸

56. *Cramming Traffic on Direct Connections.* Contrary to Wide Voice's contention, AT&T and Verizon did not cause "call blocking by cramming AT&T's limited connections to Wide Voice with wholesale traffic and Verizon's retail traffic."²³⁹ { },²⁴⁰ and the configuration of their interconnection points with Wide Voice has been the same throughout.²⁴¹ There is no evidence that, after January 2020, the IXC's modified their wholesale or retail practices to route traffic differently so as to increase the traffic between them.²⁴² Rather, AT&T and Verizon worked throughout 2020 to augment their connection facilities with Wide Voice to manage the increased traffic volumes.²⁴³

57. Based on the totality of the circumstances, we find that Wide Voice's decision to allow hundreds of millions of MOUs onto its network before it had sufficient capacity and facilities in place to handle that traffic had the effect of blocking, choking, reducing, or otherwise restricting traffic and is therefore unjust and unreasonable in violation of section 201(b) of the Act.

C. Wide Voice Violated Section 201(b) and the *Access Arbitrage Order* When It Attempted to Require Interconnection in Iowa

58. On October 29, 2019, Wide Voice designated in the LERG a new tandem switch in Rudd, Iowa.²⁴⁴ Rudd is a rural town with a population of approximately 350 people.²⁴⁵ AT&T and Verizon do not have any facilities in Rudd.²⁴⁶ The IXC's assert that Wide Voice's unilateral attempt to require interconnection in Rudd violates section 201(b) of the Act and the *Access Arbitrage Order*.²⁴⁷ Wide Voice denies these allegations and further maintains that we need not address them because the "issue is

²³⁴ See Answer Legal Analysis at 32-35, 40, 44.

²³⁵ See Answer Legal Analysis at 33; Nickerson Answer Decl. at 13-14, para 29.

²³⁶ See 47 CFR § 1.721(d) ("Averred facts . . . must be supported by relevant evidence.").

²³⁷ See Meola Complaint Decl. at 28-29, paras. 75-76.

²³⁸ See *supra* paragraphs 49-51.

²³⁹ Answer Legal Analysis at 33.

²⁴⁰ Reply at 30; Meola Reply Decl. at 7, para. 12; Young Reply Decl. at 3-5, paras. 10-16.

²⁴¹ See Meola Complaint Decl. at 28-29, paras. 75-76.

²⁴² Verizon notes that traffic increases between January and July 2020 are consistent with the massive increases in Wide Voice's traffic volumes and increases in wholesale traffic more generally. Reply at 30-31. Wide Voice had similar increases attributable to the pandemic. See Answer Legal Analysis at 32, n.167.

²⁴³ See *supra* paragraphs 49-51.

²⁴⁴ Joint Statement at 5, Stipulated Fact No. 18.

²⁴⁵ Supplemental Joint Statement at 10, Stipulated Fact No. 28.

²⁴⁶ Supplemental Joint Statement at 10, Stipulated Fact No. 29.

²⁴⁷ Complaint Legal Analysis at 21-29.

moot.”²⁴⁸ We agree with AT&T and Verizon and find that Wide Voice violated section 201(b) of the Act and the *Access Arbitrage Order* when it unilaterally attempted to require interconnection in Rudd.

59. We address mootness first. In support of its position, Wide Voice notes that (1) neither AT&T nor Verizon nor any other IXC has transmitted traffic to the Rudd tandem; (2) Wide Voice has permitted AT&T and Verizon at all times to route calls through Miami and Los Angeles; and (3) Wide Voice has abandoned its “efforts to expand its tandem services in Iowa.”²⁴⁹

60. Although section 208 complaints are not governed by Article III “case or controversy” standards,²⁵⁰ the Commission nevertheless can and does “dismiss complaints when the issues raised therein have become moot.”²⁵¹ Accordingly, we consider “whether there is any remaining controversy in this case, and whether effective relief can be granted.”²⁵² We believe there is, and we can.

61. The parties have stipulated that, on January 2, 2020, HD Carrier designated Wide Voice’s Rudd tandem in the LERG for five CLLI codes.²⁵³ Nothing in the record indicates that the designation has been removed, and as long as it is there, Wide Voice could attempt to insist that traffic be routed to HD Carrier through Rudd. Indeed, Wide Voice suggested as much in December 2019 and January 2020, when it advised AT&T that, if “AT&T wants to send this traffic to [Wide Voice’s] tandem in Miami,” AT&T should “arrange some type of an agreement” with Wide Voice, as “all of [Wide Voice’s] codes are routed via the LERG and normally would not get accepted to another tandem that is not listed in the LERG.”²⁵⁴ Because the Rudd LERG designation remains a legitimate concern to the IXCs, we find there is still a controversy between the parties.

62. We turn now to the merits of the IXCs’ argument. AT&T and Verizon historically have routed traffic bound for Wide Voice via tandems located in Miami and Los Angeles.²⁵⁵ Neither they, nor any other IXC, have “facilities in place to carry to Rudd the volumes of traffic at issue.”²⁵⁶ According to

²⁴⁸ Answer Legal Analysis at 85.

²⁴⁹ Answer Legal Analysis at 85. *See also* Answer at 31-32, paras. 89-91.

²⁵⁰ *APCC Servs., Inc. v. IDT Corp.*, Memorandum Opinion and Order, 21 FCC Rcd 7817, 7820, para. 10 (Enf. Bur. 2006) (*APCC v. IDT*) (citing *North Carolina Utilities Comm. v. FCC*, 537 F.2d 787, 791 (4th Cir. 1976) (holding that federal administrative agencies are not restricted to adjudication of matters that are “cases and controversies” within the meaning of Article III of the Constitution)).

²⁵¹ *APCC v. IDT*, 21 FCC Rcd at 7820, para. 10 (citing *Total Tel Order*, 16 FCC Rcd 5726 (dismissing claims as moot because there was no additional relief that could be granted), *remanded*, 317 F.3d 227 (to explain dismissal of claim as “moot, without prejudice” (emphasis added); *Transglobal Telecom, Inc. v. E-Tel, Inc.*, Order, 16 FCC Rcd 21576 (Enf. Bur. 2001) (dismissing complaint as moot where challenged action had ceased and plaintiff had not requested damages); *National Wireless Resellers Ass’n v. AirTouch Communications, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 13826 (Wireless Tel. Bur. 2000) (dismissing complaint as moot where the challenged program had been discontinued); *see also AT&T v. BellSouth*, Memorandum Opinion and Order, 19 FCC Rcd 23898 (2004) (dismissing certain counts of a complaint on grounds that no additional relief could be afforded even if the Commission ruled in the complainant’s favor)).

²⁵² *APCC v. IDT*, 21 FCC Rcd at 7820, para. 10.

²⁵³ Joint Statement at 5, Stipulated Fact No. 18. Common Language Location Identifier (CLLI) Code is used by the telecommunications industry and the LERG to specify the location and function of telecommunications equipment or a relevant location, such as a point of interconnection, manhole, or pole. *See* Complaint at 40, para. 101; Complaint, Declaration of Traci Morgan, Proceeding No. 20-362, Bureau ID No. EB-20-MD-005 (filed Jan. 11, 2021) at 3-4, para. 7. *See also* Supplemental Joint Statement at 2, Stipulated Fact No. 8.

²⁵⁴ Complaint, Exhs. 31 at ATTVZ00127 and 34 at ATTVZ00147.

²⁵⁵ Supplemental Joint Statement at 10, Stipulated Fact No. 29.

²⁵⁶ Complaint Legal Analysis at 24; Supplemental Joint Statement at 10, Stipulated Fact No. 29.

the IXCs, Wide Voice had no legitimate reason to send traffic to Rudd.²⁵⁷ Rather, they believe the “only rationale for doing so was to open a new chapter of access arbitrage – by enabling [Wide Voice’s] associated companies to extort payment from long distance companies that had no presence in this remote area.”²⁵⁸ AT&T and Verizon claim that Wide Voice wanted to “force IXCs to use non-regulated pathways: specifically, HD Tandem and other companies closely connected to Wide Voice.”²⁵⁹ By doing so, Wide Voice allegedly attempted to shift the financial cost of transporting access stimulation traffic onto the IXCs and “evade responsibility for the cost implications of [Wide Voice’s] decisions to locate in a remote, expensive-to-serve area and to choose inefficient call paths at inefficiently high prices that force all IXC customers to [subsidize] access stimulation.”²⁶⁰ The attempted unilateral shift to Rudd, the IXCs contend, violates section 201(b) because it serves no net public benefit and perpetuates the harms the Commission identified in the *Access Arbitrage Order*.²⁶¹ We agree.

63. As the Commission recently emphasized, carriers “must make reasonable decisions about interconnection and carriage.”²⁶² In assessing whether a carrier has done so, the Commission’s “overriding concern” is the “public interest.”²⁶³ That is, when determining whether a carrier’s unilateral change in the location to which IXCs are responsible for delivering traffic satisfies section 201(b) of the Act, the Commission considers the totality of the relevant circumstances and evaluates the overall net public benefits.²⁶⁴ Employing this balancing test, we find that Wide Voice’s unilateral change is unjust and unreasonable.

64. The record reflects that the redirection of traffic to Rudd would be burdensome to the IXCs, which have no facilities there,²⁶⁵ because it would increase their operating costs and the costs to their customers.²⁶⁶ Wide Voice identifies no public benefits arising from the change—for example, significant increases in service choices or benefits to subscribers—that would offset the added burden on

²⁵⁷ Complaint Legal Analysis at 21.

²⁵⁸ Complaint Legal Analysis at 21.

²⁵⁹ Complaint Legal Analysis at 28.

²⁶⁰ Complaint Legal Analysis at 28-29 (citing *Northern Valley Tariff Order*, 35 FCC Rcd at 6208, para. 22).

²⁶¹ Complaint Legal Analysis at 22-25.

²⁶² *Northern Valley Tariff Order*, 35 FCC Rcd at 6207-08.

²⁶³ *Application of Indiana Switch Access Div.*, Memorandum Opinion and Order, 1 FCC Rcd 634, 635, para. 5 (1986) (*Indiana Switch*).

²⁶⁴ See *Northern Valley Tariff Order*, 35 FCC Rcd at 6207-08, para. 21. See also *id.* at 6208-09, para. 24 (“Commission precedent makes clear that the reasonableness of a unilateral change in the location to which IXCs are responsible for delivering traffic . . . must be evaluated based on the overall, net public benefits of that shift.”); *Alpine Order*, 27 FCC Rcd at 11526, para. 29 (citing the LECs’ stipulation that “moving their POIs to Des Moines had no benefits for their end user customers or IXCs, yet substantially increased access charges billed to IXCs”); *Indiana Switch*, 1 FCC Rcd at 635, para. 5 (holding that if a LEC’s proposed unilateral shift in a point of interconnection “significantly increases IXCs’ operating costs without significant increases in service choices or benefits to subscribers, or unreasonably designates . . . points of interconnection with IXCs,” the Commission could find that unjust and unreasonable under section 201(b)); *North County Communications Corp. v. Cricket Communications, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 10739, 10746-47, para. 16 (Enf. Bur. 2016) (concluding that section 201(b) “requires carriers to make ‘reasonable’ decisions about interconnection and carriage,” evaluated under the “totality of the relevant circumstances”).

²⁶⁵ Supplemental Joint Statement at 10, Stipulated Fact No. 29.

²⁶⁶ See Meola Complaint Decl. at 24, para. 63 (“Establishing such connections [to Rudd] would be prohibitively expensive.”). See also *Northern Valley Tariff Order*, 35 FCC Rcd at 6209, para. 25 (citing *Indiana Switch*, 1 FCC Rcd at 635, para. 5).

the IXCs.²⁶⁷ Rather, Wide Voice's sole justification for attempting to establish the new Iowa tandem is its claim that the tandem would be geographically proximate to new customer traffic involving calls to Iowa telephone numbers.²⁶⁸ But Wide Voice makes no attempt to explain how the geographic proximity of a tandem to new traffic benefits the public.²⁶⁹ On the contrary, the attempted relocation appears to benefit only Wide Voice and its access-stimulating partners, because the change would result in the IXCs continuing to be saddled with the cost of transporting access stimulation traffic.

65. Wide Voice's remaining defenses have no merit. First, Wide Voice characterizes its decision as reasonable and consistent with standard industry practice.²⁷⁰ Wide Voice offers no evidence that unilaterally designating a new tandem in a remote area where IXCs lack facilities is standard industry practice. Second, Wide Voice contends that "it is not an access-stimulating LEC and, if traffic had been delivered to the Iowa tandem it would not have been so-called 'access stimulation traffic.'"²⁷¹ Consequently, it claims that designation of the Rudd tandem was not an attempt to avoid charges imposed under the *Access Arbitrage Order*.²⁷² But, as we found above, Wide Voice is participating in an access stimulation scheme designed for the purpose of avoiding the access stimulation rules. Finally, although Wide Voice correctly notes that it allowed the IXCs to transmit Iowa-bound traffic to its tandems in Miami and Los Angeles and states that it has no plans to disconnect connections to those tandems,²⁷³ the record supports the IXCs' contention that Wide Voice was attempting to force them to deliver traffic to the Rudd switch instead.²⁷⁴

66. Wide Voice attempted to evade the Commission's access stimulation rules through an artifice that is fundamentally at odds with the routing efficiency and cost-avoidance principles that led the Commission to adopt the *Access Arbitrage Order*.²⁷⁵ Its attempted unilateral shift of traffic to Rudd, Iowa, is one piece of that plan. Considering the totality of the circumstances, then, we find that there is no net public benefit to the Rudd designation and, therefore, that Wide Voice's conduct violated section 201(b) of the Act.

IV. WE DISMISS THE REMAINING COUNTS OF THE COMPLAINT WITHOUT PREJUDICE

67. We find that Wide Voice violated section 201(b) of the Act by imposing tandem switching and tandem switched transport access charges by means of sham arrangements designed to circumvent the principles established in the Commission's *USF/ICC Transformation Order* and continued

²⁶⁷ Reply at 33. *Northern Valley Tariff Order*, 35 FCC Rcd at 6209, para. 24 (citing *Indiana Switch*, 1 FCC Rcd at 635, para. 5).

²⁶⁸ Answer Legal Analysis at 85. See Answer at 31, para. 90, 32-33, paras. 92-93.

²⁶⁹ See *Northern Valley Tariff Order*, 35 FCC Rcd at 6213, para. 32.

²⁷⁰ Answer Legal Analysis at 85.

²⁷¹ Answer Legal Analysis at 86. See also Answer at 32, para. 91, 33-34, paras. 94-97.

²⁷² Answer Legal Analysis at 86. See also Answer at 32, para. 91, 33-34, paras. 94-97.

²⁷³ Answer Legal Analysis at 86. See also Answer at 32, para. 91, 33-34, paras. 94-97.

²⁷⁴ See *supra* paragraph 58.

²⁷⁵ See *Northern Valley Tariff Order*, 35 FCC Rcd at 6214, para. 32. Reply at 32. See Complaint Legal Analysis at 26-27 (arguing that Wide Voice "makes no effort to explain how the tandem in Rudd is 'needed' within the meaning of the Commission's rules"); *id.* at 28-29 (alleging that Wide Voice is attempting to evade responsibility for the cost implications of its decisions to select a remote point of interconnection location and to use expensive and inefficient call paths). See also Complaint Legal Analysis at 22-29; *Northern Valley Tariff Order*, 35 FCC Rcd at 6217, para. 43 (describing the "express intent throughout the *Access Arbitrage Order*" as being to reduce access-stimulating LECs' ability to force IXCs, wireless carriers, and their customers to subsidize – through revenues derived from inefficient transport routes – the costs of access stimulation); *Access Arbitrage Order*, 34 FCC Rcd at 9044, para. 22, 9046, para. 27.

in the *Access Arbitrage Order*; by causing call congestion; and by unilaterally declaring a new point of interconnection that does not create a net public benefit.²⁷⁶ Therefore, we grant Counts I, II, III, and V of the Complaint, to the extent specified herein. We further hold that Wide Voice may not bill AT&T and Verizon in connection with the traffic at issue in this Complaint and must refund any amounts AT&T and Verizon already have paid.²⁷⁷ Because our finding affords AT&T and Verizon all the relief to which they are entitled, we need not, and do not, reach the claims stated in the remaining counts of the Complaint.²⁷⁸ We dismiss those remaining counts without prejudice.

V. ORDERING CLAUSES

68. Accordingly, **IT IS HEREBY ORDERED**, pursuant to sections 1, 4(i), 4(j), 201, 203, 204, 208, and 415 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 203, 204, 208, and 415, and sections 1.720-1.740, of the Commission's rules, 47 CFR §§ 1.720-1.740, that Counts I, II, III, and V are **GRANTED** as described herein.

69. **IT IS FURTHER ORDERED**, pursuant to sections 1, 4(i), 4(j), 201, 203, 204, 208, and 415 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 203, 204, 208, and 415, and sections 1.720-1.740, of the Commission's rules, 47 CFR §§ 1.720-1.740, that Counts IV, VI, VII, VIII, IX, X, and XI are **DISMISSED WITHOUT PREJUDICE** as described herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

²⁷⁶ We dismiss Wide Voice's affirmative defenses—set out at pages 57-58 of its Answer—because Wide Voice failed to provide supporting relevant evidence and legal analysis contrary to the Commission's rules. 47 CFR §§ 1.721(b), (d), (e). Wide Voice also failed to comply with the filing requirement to set out these defenses in numbered paragraphs. 47 CFR § 1.721(d).

²⁷⁷ As noted above, the IXCs have asked that any damages be addressed in a supplemental complaint. *See supra* footnote 77.

²⁷⁸ *See YMax Communications Order*, 26 FCC Rcd at 5761, paras. 52-53 and n.147 (concluding that Commission's finding that carrier charges were unlawful under sections 203(c) and 201(b) obviated the need to reach claims stated in remaining counts of complaint alleging violations of particular Commission rules and orders).