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

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

SECOND REPORT AND ORDER

Adopted: April 20, 2023 **Released: April 21, 2023**

By the Commission: Chairwoman Rosenworcel issuing a statement.

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I. INTRODUCTION

1. For over a decade, the Commission has combated abuse of its access charge regime. Such regulatory arbitrage has taken several forms over the years, all of which center around the artificial inflation of the number of telephone calls for which long-distance carriers (interexchange carriers or IXCs) must pay tariffed access charges to the local telephone companies (local exchange carriers or LECs) that terminate the telephone calls to their end users. Some local telephone companies, often in areas of the country with high access charges, partner with high-volume calling service providers, such as "free" conference calling or chat line services, to inflate the number of calls terminating to the LEC and, in turn, inflate the amount of access charges the LEC can bill IXCs. This practice is inefficient because it often introduces unnecessary entities or charges into a call flow, perverts the intended purpose of access charges (i.e., to cover the LECs' cost of providing the service), and raises costs for IXCs, and ultimately their customers, whether they use the high-volume calling service or not.

2. Despite multiple orders and investigations making clear the Commission will not tolerate access arbitrage, some providers continue to manipulate their call traffic or call flows in attempts to evade our rules. Recently, LECs have inserted Internet Protocol Enabled Service (IPES) Providers[1] into call paths as part of an ongoing effort to evade our rules and to continue to engage in access stimulation. After inserting an IPES Provider into the call flow, the LEC then claims that it is not engaged in access stimulation as currently defined in our rules. The insertion of an additional provider (or providers) into the call flow is inefficient and is aimed at preserving the LEC's ability to charge IXCs terminating switched access charges on access-stimulation traffic—the very practice the Commission found unlawful in 2019.[2]

3. Today, we take additional steps to deter arbitrage of our access charge system. In this Order, we adopt rule revisions to close perceived loopholes in our Access Stimulation Rules[3] that are being exploited by opportunistic access-stimulating entities whose actions ultimately cause IXCs' end-user customers to continue to bear costs for services they do not use.

II. BACKGROUND

4. The access charge regime was designed to compensate carriers for use of their networks by other carriers. Interexchange carriers are required to pay LECs for access to their networks, and in the case of calls to customers located in rural areas, IXCs[4] historically had to pay particularly high access charges to rural LECs to terminate those calls. These higher access charges implicitly subsidized rural LECs' networks to help defray the higher costs those LECs incurred in serving less densely populated areas. In 1996, Congress directed the Commission to eliminate implicit subsidies[5]—a process the Commission has pursued by establishing the Universal Service Fund and by steadily moving access charges to a bill-and-keep framework.[6]

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[1] For purposes of this Order, we consider the term "IPES Provider" to include "VoIP provider," and use the term "IPES Provider" throughout to refer both to VoIP providers and other entities that provide IP-enabled services. See infra Appx. A (47 CFR § 61.3(eee)) (defining "IPES Provider" as "a provider offering a service that: (1) enables communications; (2) requires a broadband connection from the user's location or end to end; (3) requires Internet Protocol-compatible customer premises equipment (CPE); and (4) permits users to receive calls that originate on the public switched telephone network or that originate from an Internet Protocol service.").

[2] The phrase "access-stimulation traffic," as used throughout this Order, is shorthand for traffic that has met or exceeded the ratios in section 61.3(bbb) of the Commission's rules and therefore is properly characterized as access-stimulation traffic. The phrase access-stimulation traffic is not a term defined in our rules, but rather a phrase we use in this Order as a shorthand for traffic bound for a LEC or IPES provider that has met one or more of the access-stimulation triggers in our rules.

[3] Prior to the revisions in this Order, the Commission's Access Stimulation Rules are codified in 47 CFR §§ 51.903(k)-(m), 51.914(a)-(e), 51.917(c), 61.3(bbb)-(ddd), 61.26(g)(3), 61.39(g), 69.3(e)(12)(iv), 69.4(l), and 69.5(b). The Access Stimulation Rule revisions and additions adopted in this Order may be found in Appendix A. *See infra* Appx. A (amending, redesignating and/or adding 47 CFR §§ 51.914, 61.3(bbb)-(ccc), (eee)-(fff), 69.4(l), 69.5(b)).

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

[5] *See* 47 U.S.C. § 254(b)(5), (e). *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17909, para. 747 (2011) (*USF/ICC Transformation Order*), *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (noting the "direction from Congress in the 1996 Act that the Commission should make support explicit rather than implicit"); *see also Updating the Intercarrier* Compensation *Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, 34 FCC Rcd 9035, 9046, para. 26 (2019) (*Access Arbitrage Order*), *aff'd*, *Great Lakes Communications Corp. v. FCC*, 3 F.4th 470 (D.C. Cir. 2021) (*Great Lakes*).

[6] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8780, para. 2 (1997); *USF/ICC Transformation Order*, 26 FCC Rcd at 17676, para. 34 (adopting "a uniform national (continued….)

5. Some LECs took advantage of technological advances to undermine the Commission's access charge regime by engaging in "access arbitrage." These LECs exploited high access charges in rural areas by artificially stimulating terminating "call volumes through arrangements with entities that offer high-volume calling services."[7] The resulting high call volumes with no requirement that such LECs reduce their tariffed switched access rates "almost uniformly ma[d]e the LEC's interstate switched access rates unjust and unreasonable under section 201(b) of the Act."[8]

6. In the 2011 *USF/ICC Transformation Order*, the Commission adopted rules to identify rate-of-return LECs and competitive LECs engaged in access stimulation and required that such LECs lower their tariffed access charges. The rules adopted in 2011 defined "Access Stimulation" as occurring when two conditions were satisfied: (1) a rate-of-return LEC or competitive LEC had entered into an access revenue sharing agreement that, "over the course of the agreement, would directly or indirectly result in a net payment to the other party";[9] and (2) one of two traffic triggers was met: either "an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month" or "more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year."[10] At the same time, the Commission began moving many terminating end-office switched access charges to bill-and-keep.[11]

7. Parties that wanted to continue to engage in access stimulation adapted to these rules by interposing Intermediate Access Providers, that arguably were not subject to the access stimulation rules adopted in 2011,[12] into the call flow because many of these providers were still able to charge tariffed

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bill-and-keep framework as the ultimate end state for all telecommunications traffic exchanged with a LEC"). As the Commission has explained, "[u]nder bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary." *USF/ICC Transformation Order*, 26 FCC Rcd at 17676, para. 34.

[7] *Access Arbitrage Order*, 34 FCC Rcd at 9035-36, para. 1.

[8] *USF/ICC Transformation Order*, 26 FCC Rcd at 17874, para. 657. Most of the costs of providing telephone service are "fixed" network costs, which do not vary based on usage. Access charges for end office switching, tandem switching, and tandem switched transport between the end office and the tandem originally were based on dividing the costs that were attributed to interstate access by the number of interstate access minutes of use the LEC provided for each of these services. *See, e.g.*, *Access Charge Reform et al.*, CC Docket No. 96-262 et al., First Report and Order, 12 FCC Rcd 15982, 15994-96, 16006, paras. 28-31, 63 (1997). As a result, access charges were typically higher in rural areas than in urban areas, as rural providers had relatively high network costs and fewer minutes over which to recover those costs. Rates no longer change based on traffic volumes, so higher traffic volumes result in inflated revenues, particularly in rural areas that historically have had relatively low traffic volumes. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17874-75, paras. 657, 662 ("Commenters agree that the interstate switched access rates being charged by access stimulating LECs do not reflect the volume of traffic associated with access stimulation.").

[9] 47 CFR § 61.3(bbb)(1)(i) (2012). The definition of "Access Stimulation" adopted in 2011 stated that the access revenue sharing agreement could be "express, implied, written or oral," and that in such agreements, payment by the rate-of-return LEC or competitive LEC "is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account." *Id*.

[10] 47 CFR § 61.3(bbb)(1)(ii) (2012); *USF/ICC Transformation Order*, 26 FCC Rcd at 17874, para. 658.

[11] *USF/ICC* Transformation *Order*, 26 FCC Rcd at 17934-36, fig. 9.

[12] *See Access Arbitrage Order*, 34 FCC Rcd at 9036, para. 3. Some terminating tandem charges for price-cap LECs have moved to bill-and-keep, but not the terminating tandem charges for rate-of-return LECs, and for competitive LECs that benchmark to rate-of-return LECs, which are at issue here. *See id*. at 9039, para. 10; *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, fig. 9; *Updating the Intercarrier Compensation Regime to*
(continued….)

tandem switching and transport charges.[13] Interexchange carriers still had to send traffic to LECs serving high-volume calling service providers and pay tariffed tandem switching and transport access charges, that were not transitioning to bill-and-keep, to the terminating LECs or the Intermediate Access Providers the LECs chose. As a result, IXCs and their customers were subsidizing the "free" services offered by high-volume calling service providers, whether IXC customers used those services or not.[14]

8. In response to this ongoing arbitrage, the Commission adopted a Notice of Proposed Rulemaking on the subject.[15] The record received in response to the *Access Arbitrage Notice* confirmed that access arbitrage continued even after adoption of the 2011 rules.[16] Therefore, in 2019, the Commission adopted the *Access Arbitrage Order*, broadening the scope of its Access Stimulation Rules by adopting two additional definitions of "Access Stimulation" unrelated to the existence of a revenue sharing agreement between parties. Competitive LECs with a terminating-to-originating traffic ratio of at least 6:1, absent a revenue-sharing agreement, and rate-of-return LECs with a terminating-to-originating traffic ratio of at least 10:1, absent a revenue-sharing agreement, would be found to be engaged in access stimulation under the rules adopted in 2019.[17] Most significantly, the Commission also found that requiring "IXCs to pay the tandem switching and tandem switched transport charges for access-stimulation traffic is an unjust and unreasonable practice" prohibited by section 201(b) of the Communications Act of 1934, as amended (the Act).[18] The Commission addressed this unjust and unreasonable practice by adopting rules making access-stimulating LECs—rather than IXCs—financially responsible for the tandem switching and tandem switched transport service access charges associated with the delivery of traffic from an IXC to an access-stimulating LEC's end office or its equivalent.[19] The Court of Appeals for the District of Columbia Circuit upheld the *Access Arbitrage Order*.[20]

9. After the rules adopted in 2019 took effect, parties advised Commission staff that access stimulators had adopted new practices designed to evade the updated rules, primarily by inserting IPES Providers into the call flow.[21] For example, some providers began "converting traditional CLEC telephone numbers to [IPES] numbers in order to claim that the 2019 [*Access*] *Arbitrage Reform Order* is not applicable" to the resulting traffic because the calls were bound for telephone numbers obtained by IPES Providers, rather than to LECs serving end users, as required by our rules.[22] LECs and IPES

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Eliminate Access Arbitrage, WC Docket No. 18-155, Notice of Proposed Rulemaking, 33 FCC Rcd 5466, 5468-69, para. 6 (2018) (*Access Arbitrage Notice*).

[13] *Access Arbitrage Notice*, 33 FCC Rcd at 5467, para. 2; *see Access Arbitrage Order*, 34 FCC Rcd at 9036, para. 3. Some terminating tandem charges for price-cap LECs have moved to bill-and-keep, but not the terminating tandem charges for rate-of-return LECs and competitive LECs that benchmark to rate-of-return LECs, which are at issue here. *See Access Arbitrage Order*, 34 FCC Rcd at 9039, para. 10; *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, fig. 9.

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

[15] *Access Arbitrage Notice*.

[16] *Access Arbitrage Order*, 34 FCC Rcd at 9041-42, paras. 14-16.

[17] *Id.* at 9053, para. 43; *infra* App. A (47 CFR § 61.3(bbb)(1)(ii)-(iii)).

[18] *Access Arbitrage Order*, 34 FCC Rcd at 9073, para. 92.

[19] 47 CFR §§ 69.4(l), 69.5(b); *Access Arbitrage Order*, 34 FCC Rcd at 9036-37, para. 4.

[20] *Great Lakes*, 3 F.4th at 474-79.

[21] Letter from Matthew S. DelNero, Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155 et al., Attach. at 1 (filed Jan. 29, 2020) ("Initial impact of new rules, from Inteliquent's observation of traffic flows: No reduction in MOU [(minutes of use)], but traffic is shifting from multiple rural CLECs to a limited number of rural CLECs and IPES providers; Rural CLECs previously identified as access stimulators and still receiving traffic appear to be claiming they are outside the scope of access stimulation rules.").

Providers may obtain telephone numbers directly from numbering authorities, indirectly from a LEC partner,[23] or indirectly via a commercial or leasing arrangement.[24] All companies receiving telephone numbers directly from numbering administrators are assigned a unique Operating Company Number (OCN)[25] that identifies the provider associated with each telephone number.[26]

10. In a 2021 enforcement order against competitive LEC Wide Voice, LLC (Wide Voice), we found that Wide Voice "inserted a VoIP [(Voice over Internet Protocol)] provider into the call path for the sole purpose of avoiding the financial obligations that accompany the Commission's access stimulation rules."[27] Then, in July 2022, we adopted a *Further Notice of Proposed Rulemaking* seeking

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[22] Letter from Mike Saperstein, VP, Strategic Initiatives & Partnerships, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Sept. 22, 2020) (USTelecom Sept. 22, 2020 Ex Parte Letter); see also Letter from Michael Hunseder, Counsel for AT&T, & Scott H. Angstreich, Counsel for Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Mar. 26, 2020) ("These companies claim that traffic routed to or from the PSTN through a LEC to telephone numbers assigned to a VoIP provider should be ignored when applying the Commission's traffic-volume tests for identifying access stimulating LECs."). In an attachment to its ex parte letter, USTelecom makes the point that "[a]lthough IPES providers cannot bill [tariffed] switched access, the tandem provider to the IPES entity can bill [tariffed] tandem switching on originating and terminating traffic." USTelecom Sept. 22, 2020 Ex Parte Letter Attach. at 2.

[23] *Numbering Policies for Modern Communications et al.*, WC Docket No. 13-97 et al., Report and Order, 30 FCC Rcd 6839, 6847, para. 19 n.57 (2015) (*VoIP Direct Access Order*) ("We expect interconnected VoIP providers will continue to use carrier partners in some instances. For example, in areas where the interconnected VoIP provider does not have many customers and thus does not need a block of numbers, it may obtain numbers through a partner rather than directly from a number administrator. This Order does not prohibit those partner relationships."), *appeal dismissed*, *NARUC v. FCC*, 851 F.3d 1324 (D.C. Cir. 2017); *see* 47 CFR § 52.15.

[24] If there is a relevant industry definition applicable to the terms "directly assigned" or "indirectly assigned," we do not invoke those definitions here. Rather, we use the terms "directly assigned" and "indirectly assigned" informally and to differentiate between telephone numbers that have been received by the current user from a numbering administrator as compared to those telephone numbers that have been received by the current user via porting, moving, or changing ownership or usage from one entity to another regardless of how the parties involved refer to the action.

[25] An "Operating Company Number" is a unique four-character code assigned by the National Exchange Carrier Association and used to identify telecommunications service providers, including IPES Providers. *VoIP Direct Access Order*, 30 FCC Rcd at 6843, para. 7 n.20; *see also* Verizon, Industry Codes and Contacts, https://www22.verizon.com/wholesale/business/local/establish/content/est-maint-industrycodescontacts.html (last visited Mar. 13, 2023) (explaining industry standard codes and stating that the "Operating Company Numbers (OCNs) are used like social security numbers to uniquely identify [a] company and are assigned to all telecommunications service providers. They are used in mechanized systems throughout the industry to facilitate the exchange of information").

[26] *VoIP Direct Access Order*, 30 FCC Rcd at 6859, para. 44 (requiring "each interconnected VoIP provider to use its own unique OCN—as opposed to using the OCN of a carrier affiliate or partner—when obtaining numbers directly from the Numbering Administrators. Requiring each interconnected VoIP provider to use its own unique OCN follows the same procedure required for telecommunications carriers already getting direct access to numbers, which must request numbers using their own unique OCNs."); *id.* at 6859, para. 43 (requiring "VoIP providers to give accurate regulatory and numbering contact information to the state commission when they request numbers in that state . . . [and] update this information whenever it becomes outdated").

[27] *AT&T Corp., AT&T Services, Inc., and MCI Communications Services LLC v. Wide Voice, LLC*, Proceeding No. 20-362; Bureau ID No. EB-20-MD-005, Memorandum Opinion and Order, 36 FCC Rcd 9771, 9785, para. 31 (2021) (*AT&T v. Wide Voice Enforcement Order*), *pet. for review denied, Wide Voice, LLC v. FCC*, 61 F.4th 1018 (9th Cir. 2023) (*Wide Voice v. FCC*); *see also id.* at 9781, para. 23 ("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."); *Wide Voice v. FCC,* 61 F.4th at 1021, (continued….)

comment on proposals to prevent companies from leveraging perceived ambiguities in our rules to continue to engage in access arbitrage.[28] In the *Further Notice*, we sought comment on sample call flows and proposed several definitions relevant to our Access Stimulation Rules, as well as rule revisions making clear "that an Intermediate Access Provider shall not charge an IXC tariffed charges for terminating switched access tandem switching and switched access tandem transport for traffic bound to an IPES Provider whose traffic exceeds the [access-stimulation] ratios in sections 61.3(bbb)(1)(i) or 61.3(bbb)(1)(ii) of our Access Stimulation Rules."[29]

11. The following diagrams, which were also included in the *Further Notice*, illustrate sample call flows.[30] Diagram 1 represents a call flow that includes both a LEC and an IPES Provider between an Intermediate Access Provider and an end user that is a high-volume calling service provider. Diagram 2 provides an example of a call where the LEC has been removed from the call flow and there is only an IPES Provider between the Intermediate Access Provider and the high-volume calling service provider that is the end-user recipient of the call.

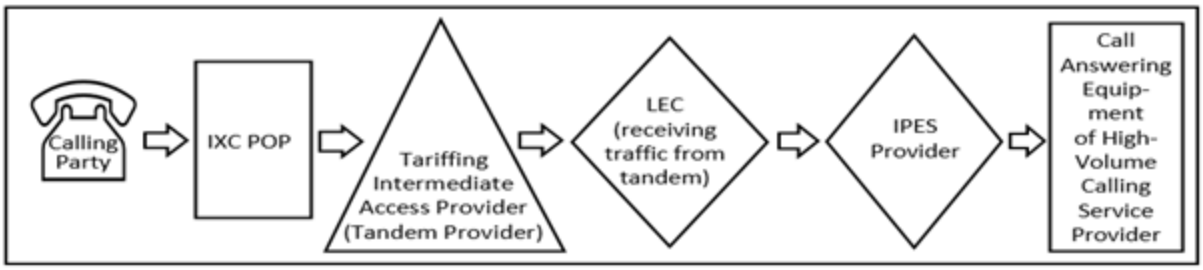

Diagram 1: Showing a hypothetical call path including a LEC and an IPES Provider—to facilitate discussion throughout the remainder of this Order. "POP" refers to point of presence.[31]

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1028-29 (repeatedly affirming the Commission's finding that Wide Voice rearranged its business model to evade the *Access Arbitrage Order* and continue to charge IXCs terminating access charges).

[28] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Further Notice of Proposed Rulemaking, FCC 22-54 (July 15, 2022) (*Further Notice*).

[29] *Id.* at 8, para. 17.

[30] These diagrams were not meant to reflect tacit Commission approval of certain call flows but were included in the *Further Notice* merely to facilitate discussion in the record. *Further Notice* at 6-7, paras. 12-14 & Diagrams 1 & 2. Commenters used those diagrams and provided alternative diagrams to facilitate the discussion as intended. *See, e.g.*, Aureon Sept. 6, 2022 Comments at 7-8; Inteliquent Sept. 6, 2022 Comments at 3-4; HD Carrier Oct. 3, 2022 Reply at 4-5.

[31] A "point of presence" (POP) is a common term used in the telecommunications industry. A point of presence is a "physical place where a carrier has a presence for network access." Newton's Telecom Dictionary 927 (27th ed. 2013). In Diagram 1, an IXC connects with the network of the service provider for the calling party at the "IXC POP." Thus, for example, the term "IXC POP" can refer to the location where an IXC's network connects to a LEC's network. *E.g.*, 47 CFR § 69.703(c).

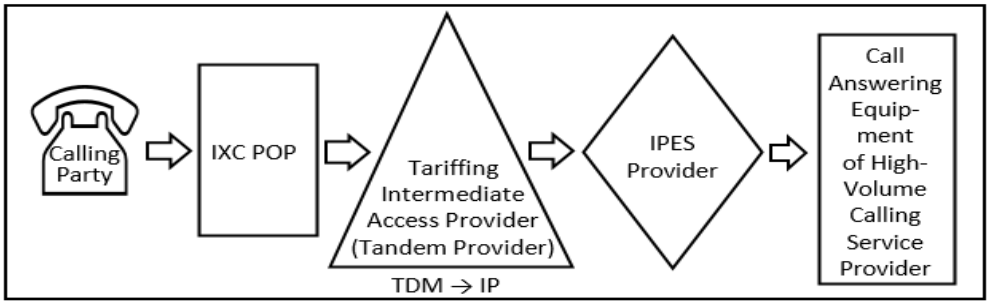

Diagram 2: Showing a hypothetical call path where the Intermediate Access Provider sends traffic directly to the IPES Provider—to facilitate discussion throughout the remainder of this Order. "TDM (time division multiplexing) to IP" refers to a transition that occurs during the transfer of a telephone call between the technologies used by the entities involved in the call flow.

12. In response to the *Further Notice*, we received widespread support for further action to stem access arbitrage.[32] USTelecom confirms that, after the reforms adopted in the 2019 *Access Arbitrage Order* became effective, entities manipulated their business models to continue charging IXCs terminating tandem switching and transport access charges for calls delivered to access stimulators.[33] USTelecom suggests that the "primary difference between the new scheme and the old scheme is not the concept, but the regulatory classification of the entities in the call stream, purposely inserted by arbitrageurs to claim these arrangements are beyond the Commission's reach."[34] Verizon agrees that "access stimulation has not materially decreased, only changed form."[35] AT&T explains that its long-distance network now terminates approximately 400 million minutes of use (MOU) to IPES Providers per month, which is "essentially twice" the MOU it terminated to IPES Providers prior to the 2019 *Access Arbitrage Order*.[36] Thus, the record strongly suggests that instead of ceasing access-stimulation activity—or taking responsibility for paying certain access charges, as required by our Access Stimulation Rules—some providers chose to exploit a perceived loophole in those rules. Commenters also suggested

[32] *E.g.*, AT&T Sept. 6, 2022 Comments at 1; Bandwidth Sept. 6, 2022 Comments at 2; USTelecom Sept. 6, 2022 Comments at 1; AT&T Oct. 3, 2022 Reply at 1; Inteliquent Oct. 3, 2022 Reply at 1; Letter from Michael J. Hunseder, Counsel to AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Jan. 31, 2023) (AT&T Jan. 31, 2023 *Ex Parte* Letter); Letter from Timothy Boucher, Asst. General Counsel, Federal Regulatory Affairs, Lumen, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Feb. 21, 2023) (Lumen Feb. 21, 2023 *Ex Parte* Letter).

[33] USTelecom Sept. 6, 2022 Comments at 2-3 ("With the ink barely dry on publication of the Commission's 2019 rules addressing access stimulation in high-cost areas, USTelecom members began to see the latest scheme emerge to exploit the Commission's access charge system. Gallingly, the latest version of arbitrage made use of the same concept that the Commission had just acted to squelch: using the existing intercarrier compensation system to force IXC payments to LECs that either are, or are partnered with, access stimulators, often in high-cost areas.").

[34] USTelecom Sept. 6, 2022 Comments at 3.

[35] Verizon Sept. 6, 2022 Comments at 6.

[36] AT&T Sept. 6, 2022 Comments at 5; *see also id*. ("[W]hile the Commission's 2019 rules led some entities to exit the access stimulation business, the free conferencing traffic those entities had been stimulating was simply re-routed (with insufficient notice) to IPES providers."); *id*. ("The associated access charges—and anti-consumer subsidies—associated with these IPES-based schemes can be very large, totaling to many millions of dollars per year."); Letter from Michael J. Hunseder, Counsel to AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 n.3 (filed Dec. 14, 2022) (AT&T Dec. 14, 2022 *Ex Parte* Letter). *But see* Letter from Andrew Nickerson, Wide Voice, LLC, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (filed Jan. 10, 2023) (Wide Voice Jan. 10, 2023 *Ex Parte* Letter) (suggesting, that the increase in MOU to IPES Providers reflects "real progress from an antiquated TDM network to IP").

several revisions to the proposed rule language to further strengthen our Access Stimulation Rules and prevent ongoing arbitrage.[37]

III. DISCUSSION

13. We are compelled to act again to fight regulatory arbitrage of the Commission's access charge regime.[38] In this Order, we eliminate any perceived ambiguity in our Access Stimulation Rules that results in parties attempting to circumvent those rules simply by inserting IPES Providers into the call path. This practice directly contravenes the Commission's orders, policies, and Access Stimulation Rules.[39] We adopt narrow and focused changes to our rules that are designed to prevent entities from evading responsibility for their access-stimulation activity. The rules and revisions strike an appropriate balance between addressing harmful access-stimulation conduct on the part of certain entities and avoiding negative effects on providers that are not engaged in such activity. We find these rule revisions will serve the public interest by reducing carriers' incentives and ability to send traffic over the Public Switched Telephone Network (PSTN) for the purpose of collecting inflated, tariffed terminating tandem switching and transport access charges from IXCs, thereby artificially increasing costs to IXCs and harming their end-user customers.

A. Limiting the Imposition of Access Charges when IPES Providers Are Engaged in Access Stimulation

14. We find significant support in the record for our proposal to prohibit Intermediate Access Providers from charging IXCs tariffed terminating tandem switching and transport access charges for traffic bound for IPES Providers engaged in access stimulation as defined in section 61.3(bbb) of our rules.[40] Therefore, we adopt rules providing that, when traffic is delivered to an IPES Provider by a LEC or an Intermediate Access Provider and the terminating-to-originating traffic ratios of the IPES Provider meet or exceed the triggers in the existing Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation.[41] In this case, "any entity that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final Interexchange Carrier in a call path and"[42] an access stimulator is considered an Intermediate Access

[37] Bandwidth Sept. 6, 2022 Comments at 3-4, 7-8, 10-15; Lumen Sept. 6, 2022 Comments at 6-7; USTelecom Sept. 6, 2022 Comments at 1, 4, 8-10; Verizon Sept. 6, 2022 Comments at 2, 16-17, 20; Inteliquent Oct. 3, 2022 Reply at 3-4, 6; NCTA Oct. 3, 2022 Reply at 1; USTelecom Oct. 3, 2022 Reply at 3-5; *see also* AT&T Sept. 6, 2022 Comments at 2 (supporting USTelecom revisions); AT&T Oct. 3, 2022 Reply at 1 (same).

[38] *See* Letter from Tamar E. Finn, Counsel to Bandwidth Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (filed Jan. 26, 2023) (Bandwidth Jan. 26, 2023 *Ex Parte* Letter) ("So long as access charges exist, however, parties that originate and terminate traffic have an incentive to arbitrage the associated economics for themselves, their affiliates, and their carrier partners.").

[39] *Access Arbitrage Order*; *USF/ICC Transformation Order*; *Further Notice.*

[40] *Further Notice* at 8-9, paras. 17-19; *e.g.*, AT&T Sept. 6, 2022 Comments at 5; Verizon Sept. 6, 2022 Comments at 16; USTelecom Sept. 6, 2022 Comments at 2, 4-5; *see infra* Appx. A (47 CFR §§ 51.914(b)-(e), 61.3(bbb), 69.4(l), 69.5(b)). Other commenters also agree with the Commission's proposals to make IPES Providers responsible for access-stimulation traffic by requiring them to calculate terminating-to-originating traffic ratios and to provide notice if they meet or exceed those ratios. Those commenters also advocate that access-stimulating IPES Providers be required to bear financial responsibility on an equal basis with access-stimulating LECs, unlike our proposal and the rules we adopt. Bandwidth Sept. 6, 2022 Comments at 4; Inteliquent Sept. 6, 2022 Comments at 2; Lumen Sept. 6, 2022 Comments at i, 3.

[41] *See infra* Appx. A (47 CFR § 61.3(bbb)). In the *Further Notice*, we referred to the requirements in the Access Stimulation Rules being triggered when an entity's traffic ratios exceed the triggers in section 61.3(bbb). *Further Notice* at 9, para. 19 ("Under our proposal, if the IPES Provider's traffic ratios exceed the applicable rule triggers, it would have to notify the Intermediate Access Provider, the Commission, and affected IXCs."). For clarity and consistency with the text of the rules in section 61.3(bbb), throughout this Order we refer to application of the Access Stimulation Rules when the traffic ratios are met or exceeded.

Provider and shall not impose tariffed terminating tandem switching and transport access charges on IXCs sending traffic to the IPES Provider or the IPES Provider's end-user customer.[43] The Intermediate Access Provider may seek compensation from the IPES Provider for charges the Intermediate Access Provider cannot bill to IXCs.[44] The IPES Provider, if it chooses, may seek reimbursement for these access charges from its end-user customer(s).

15. Commenters widely agree with our proposal to use the same terminating-to-originating traffic ratio triggers for IPES Providers that we currently use for LECs.[45] Thus, we apply to IPES Providers the 3:1 terminating-to-originating traffic ratio plus revenue-sharing agreement trigger in section 61.3(bbb)(1)(i), and the 6:1 terminating-to-originating traffic ratio trigger, absent a revenue-sharing agreement, in section 61.3(bbb)(1)(ii).[46] We find no need, based on the record, to reconsider the existence of revenue-sharing arrangements between parties in the context of our rules.[47] At the same time, we do not apply to IPES Providers the 10:1 terminating-to-originating traffic ratio applicable to rate-of-return carriers. IPES Providers' rates are not subject to rate-of-return regulation and no commenters suggested that their network configurations or call flows are in any way similar to rate-of-return regulated LECs' networks or call flows. No commenter suggested applying the 10:1 ratio to IPES Providers, and no information in the record justifies expanding the applicability of the 10:1 ratio in such a manner.[48]

16. We reject Teliax's unsupported assertion that price-cap incumbent LECs should be subject to the same traffic ratio reporting requirements as competitive LECs, rate-of-return LECs, and IPES Providers.[49] The Commission has previously explained that "complaints regarding access

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[42] 47 CFR § 61.3(ccc).

[43] *See infra* Appx. A (47 CFR §§ 51.914(c), (e), 69.4(l)). If a LEC or a LEC partner provides a portion of the tandem services (with an Intermediate Access Provider providing the other portion of the necessary tandem services) in the call path from an IXC to an IPES Provider engaged in access stimulation, the LEC would be an Intermediate Access Provider and both the LEC and the Intermediate Access Provider would be prohibited from imposing tariffed terminating tandem access charges on IXCs sending traffic to the access-stimulating IPES Provider. *See infra* Appx. A (47 CFR §§ 61.3(ccc)(3), 69.4(l)).

[44] *See infra* Appx. A (47 CFR § 51.914(c), (e)). We make several edits to section 51.914(c)(1) as it was proposed in the *Further Notice* so that the wording flows better grammatically. *See infra* Appx. A (47 CFR § 51.914(c)) (e.g., removing "it shall" from the initial clause, and adding "The IPES Provider shall" to the beginning of section 51.914(c)(1)). These changes are conforming and non-substantive edits which will help strengthen our Access Stimulation Rules against potential loopholes and prevent further arbitrage. *See Further Notice* at 17-18, para. 45.

[45] *Further Notice* at 8, para. 17; *e.g.*, Bandwidth Sept. 6, 2022 Comments at 4; Inteliquent Sept. 6, 2022 Comments at 3.

[46] *See infra* Appx. A (47 CFR § 61.3(bbb)(1)(i)-(ii)). We also adopt our proposal to change the word "part" to "rule," in section 61.3(bbb)(1)(i)(A). *Further Notice* Appx. A (proposed 47 CFR § 61.3(bbb)(1)(i)(A)). This change corrects the nomenclature for reference to revenue sharing. No commenters opposed the change.

[47] *Further Notice* at 12, paras. 27-28. No commenters discussed ongoing revenue sharing, but several reiterated their opposition to the practice or discussed their lack of insight into whether entities continue to engage in revenue sharing. Aureon Sept. 6, 2022 Comments at 9; Bandwidth Sept. 6, 2022 Comments at 5.

[48] 47 CFR § 61.3(bbb)(1)(iii).

[49] Letter from Robert H. Jackson, Counsel to Teliax, Inc., to Lynne Engledow, Deputy Chief, Pricing Policy Division, Wireline Competition Bureau, FCC, WC Docket No. 18-155, Attach. at 10-11 (filed Nov. 25, 2022) (Teliax Nov. 25, 2022 *Ex Parte* Letter). Teliax repeats its claims in a filing submitted to the Commission on April 13, 2023 and available on the Commission's Electronic Comment Filing System (ECFS): https://www.fcc.gov/ecfs/document/10413215067724/1. This filing is not signed as required by section 1.52 of our rules and is not labeled as an *ex parte* filing as required by section 1.1206(b)(2) of our rules. 47 CFR §§ 1.52, 1.1206(b)(2). Although this filing is procedurally deficient under our rules, we also find it unavailing on the merits as it essentially repeats the argument that Teliax raised in its comments, i.e., that price-cap LECs should be subject to the same traffic ratio reporting requirements as competitive LECs, rate-of-return LECs, and IPES Providers. We explain our (continued….)

stimulation activities have not directly involved price cap carriers."[50] The record in this proceeding provides no evidence that this has changed. Nor is there any evidence that supports Teliax's assertion that any price-cap LECs are engaged in access stimulation.[51] Even if Teliax's proposal had merit, it is beyond the scope of this current rulemaking as we did not seek comment on expanding our Access Stimulation Rules to encompass price-cap LECs. For these reasons, we lack any basis for expanding our Access Stimulation Rules as Teliax proposed.

17. According to HD Carrier, an IXC or its wireless affiliate has an incentive to send traffic over TDM, and then assert that it does not need to pay access charges by claiming a provider later in the call path is engaged in access stimulation.[52] HD Carrier provides no support for its claims, however. To the contrary, HD Carrier's arguments rely on several incorrect assumptions which we correct here: (a) IXCs cannot unilaterally enter in to interconnection agreements and for that reason, they may still have to use the tariffed, TDM path to terminate traffic;[53] (b) the terminating carrier, not the originating carrier, dictates the call path possibilities at the terminating end of the call, and any Intermediate Access Providers, through call routing instructions detailed in the LERG Routing Guide (LERG);[54] and (c) not all wireless companies have IXC affiliates.

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basis for rejecting that argument in the text above. *See also* Letter from David Erickson, Founder of FreeConferenceCall.com, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 n.1 (filed Apr. 13, 2023) (HD Carrier Apr. 13, 2023 *Ex Parte* Letter).

[50] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4760, para. 642 (2011) (*USF/ICC Transformation Notice*) ("As the Commission observed in the *Access Stimulation NPRM*, as a general matter, complaints regarding access stimulation activities have not directly involved price cap carriers.") (citing *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, 18033, para. 33 (2007)).

[51] *See* AT&T Dec. 14, 2022 *Ex Parte* Letter at 2.

[52] HD Carrier Oct. 3, 2022 Reply at 2-3 ("The [Further Notice's] proposed rules would create a perverse outcome that enables an originating provider to choose a TDM, multi-party, call-degrading call path that *preserves* antiquated access charges—charges that are then forced upon the terminating IPES Provider.") (emphasis in original); Letter from David Erickson, Founder, FreeConferenceCall.com, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Oct. 3, 2022) (HD Carrier Oct. 3, 2022 *Ex Parte* Letter); Letter from David Erickson, Founder of FreeConferenceCall.com, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 3 (filed Feb. 17, 2023) (HD Carrier Feb. 17, 2023 *Ex Parte* Letter); Letter from David Erickson, Founder of FreeConferenceCall.com, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1-2 (filed Jan. 9, 2023) (HD Carrier Jan. 9, 2023 *Ex Parte* Letter) ("HD Carrier has offered, and continues to offer, a direct, IP, bill-and-keep connection to any originating service provider. If, for example, AT&T Wireless has traffic destined for a conference end user, it does not need to send that traffic to its IXC affiliate which then routes it to an intermediate provider and then to a terminating LEC. By sending the traffic down the direct IP path—every issue raised in this proceeding is fully addressed."); HD Carrier Apr. 13, 2023 *Ex Parte* Letter at 1-2, Attach. at 1-4. The rules we adopt do not force any charges "upon the terminating IPES Provider," and HD Carrier makes no showing that any wireless carrier is in fact sending calls to an IXC affiliate to avoid access charges.

[53] Letter from Diana Eisner, VP, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Feb. 13, 2023) (USTelecom Feb. 13, 2023 *Ex Parte* Letter); *id*. at 1-2 ("Moreover, the ability of carriers and IPES providers involved in arbitrage to quickly rearrange traffic can turn direct IP interconnection and traffic exchange negotiations into a game of whack-a-mole—as soon as an agreement is reached with one carrier or IPES provider, that traffic might move to another carrier or IPES provider where access charges might again be extracted.").

[54] The LERG is "an industry guide generally used by carriers in their network planning and engineering and numbering administration. It contains information regarding all North American central offices and end offices." *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Notice of Proposed Rulemaking, 34 FCC Rcd 12562, 12576, para. 34 n.131 (2019); *e.g.*, Iconectiv, TruOps Telecom Routing Administration (TRA) LERG Routing Guide; General Information at 5-6 (June 1, 2020),

(continued….)

18. The record confirms that the rules we adopt serve the public interest because they are essential to deterring access stimulation.[55] These new rules, similar to those adopted in the *Access Arbitrage Order*, will prohibit Intermediate Access Providers and LECs from requiring IXCs to pay tandem switching and tandem transport charges for access-stimulation traffic that the Commission has found to be unjust and unreasonable in violation of section 201(b) of the Act.[56] Under the rules we adopt, an IPES Provider will be responsible for calculating its traffic ratios at each end office or end office equivalent and providing the required notifications of access-stimulation activity to the Commission and affected entities.[57] These rules are consistent with other public interest requirements imposed on VoIP providers, such as universal service, E911, and other reporting obligations.[58]

19. Some commenters ask us to go a step further, and not only apply the access-stimulation triggers and notification requirements to IPES Providers, but also impose on IPES Providers the same financial responsibility for access-stimulation traffic as LECs have under the current rules.[59] Bandwidth,

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https://trainfo.iconectiv.com/sites/trainfo/files/2022-06/LERG-General-Information-Document-060122.pdf (Iconectiv LERG Routing Guide) (describing the data in the LERG, including homing arrangements that map tandems to switches); Letter from Matthew S. DelNero and Thomas G. Parisi, Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (filed Apr. 30, 2021) (Inteliquent/Lumen Apr. 30, 2021 *Ex Parte* Letter) ("[T]the IPES provider . . . designates an access tandem in the LERG, the purpose of which is for IXCs to deliver long distance traffic from anywhere outside the local area."); Inteliquent Sept. 6, 2022 Comments at 5-6 ("IPES Providers . . . [m]ake their own choices as to call processing."). *See generally Further Notice* at 9, para. 19 (referring to the IPES Provider or its LEC partner as determining the call path).

[55] *Further Notice* at 6, para. 11 (explaining our rules "will serve the public interest by reducing carriers' incentives and ability to send traffic over the Public Switched Telephone Network (PSTN) solely for the purpose of collecting tariffed tandem switching and transport access charges from IXCs to subsidize high-volume calling services, which the Commission has found to be an unjust and unreasonable practice"); *e.g.*, *AT&T v. Wide Voice Enforcement Order*, 36 FCC Rcd at 9785-86, paras. 31, 36 (finding that Wide Voice's "insert[ion of] a VoIP provider into the call path" was part of a "sham arrangement" to evade financial responsibility and instead "to continue and to create new opportunities to bill IXCs for tandem services relating to access stimulation traffic"); USTelecom Sept. 6, 2022 Comments at 4 ("Just as in prior access stimulation arbitrage schemes, a public interest problem emerges when the call flow is designed and implemented inefficiently, inserting an IPES Provider in the call flow, to maximize access revenues and create an arbitrage scheme."); AT&T Sept. 6, 2022 Comments at 4.

[56] *Access Arbitrage Order*, 34 FCC Rcd at 9073, para. 92 (citing 47 U.S.C. § 201(b)).

[57] *See infra* Appx. A (47 CFR § 51.914(d)); 47 CFR § 61.3(bbb). We slightly change the wording in new section 51.914(d)(3) from what was in the *Further Notice* Appendix A. As proposed, section 51.914(d)(3) requires that an IPES Provider will notify the Commission, affected Intermediate Access Providers or Interexchange Carriers "[t]hat the IPES Provider may pay for those services as of that date." *Further Notice* Appx. A (proposed 47 CFR § 51.914(d)(3)). To eliminate any ambiguity about the information IPES Providers must provide to the Commission, affected Intermediate Access Providers, or Interexchange Carriers, we modify the language to say that the IPES Provider will notify the Commission, affected Intermediate Access Providers, or Interexchange Carriers "[w]hether the IPES Provider will pay for those services as of that date." *Infra* Appx. A (47 CFR § 51.914(d)(3)). These changes are conforming and non-substantive edits which will help strengthen our Access Stimulation Rules against potential loopholes and prevent further arbitrage. *See Further Notice* at 17-18, para. 45.

[58] *Further Notice* at 9, para. 18 (citing 47 CFR § 1.7001(b) (requiring interconnected VoIP providers serving end users to file FCC Form 477), and 47 CFR § 64.604 (requiring interconnected VoIP providers to contribute to the Telecommunications Relay Service Fund)). The Commission requires interconnected VoIP service providers to contribute to the Universal Service Fund as a means of ensuring a level playing field among direct competitors. 47 CFR § 54.706(a); *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7541, paras. 44-45 (2006) (*Universal Service Contribution Order*); *IP-Enabled Servs. E911 Requirements for IP-Enabled Serv. Providers*, 20 FCC Rcd 10245 (2005) (E911 requirements applicable to VoIP providers); *IP-Enabled Servs. et al.*, WC Docket No. 04-36 et al., Report and Order, 22 FCC Rcd 11275, 11293-97, paras. 36-41 (2007) (*IP-Enabled Services*) (FCC Form 499 reporting requirements apply to VoIP providers.).

for example, proposes that, "[r]ather than stating an IPES Provider 'may' pay for terminating switched access tandem switching and terminating switched access tandem transport services where the IPES Provider is engaged in access stimulation, the rule should ***require*** the IPES Provider . . . to assume financial responsibility for the services."[60]

20. Although our Access Stimulation Rules require access-stimulating LECs to assume financial responsibility for tandem services used to deliver access-stimulation traffic, as proposed in the *Further Notice*, we decline to impose the same mandatory condition on access-stimulating IPES Providers.[61] Instead, the IPES Provider "may" assume financial responsibility.[62] We do, however, make clear that IXCs shall not be billed by Intermediate Access Providers for terminating tandem and transport charges to deliver traffic to an IPES Provider engaged in access stimulation.[63] Under the rules we adopt here, an Intermediate Access Provider will have an option and may seek compensation from an access-stimulating IPES Provider,[64] or it shall seek compensation from the IPES Provider's LEC partner (if that LEC had directly assigned numbers that it transferred to the IPES Provider that then used those numbers to receive access-stimulated traffic) for the tariffed terminating tandem switching and transport access charges related to traffic bound for an IPES Provider engaged in access stimulation.[65] In short, Intermediate Access Providers, LECs, and IPES Providers may determine their own billing arrangements among themselves when an IPES Provider is engaged in access stimulation but tariffed terminating switched access charges may not be imposed on IXCs in those situations.[66] We find that this approach

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[59] Lumen agreed with our proposal to make IPES Providers responsible for access-stimulation traffic, like LECs, by requiring them to calculate terminating-to-originating traffic ratios and provide notice if they meet or exceed those triggers. But Lumen also argued that once an IPES Provider was found to be engaged in access stimulation, financial responsibility for the terminating switched access tandem switching or transport charges should shift to the IPES Provider, as it does for LECs, which differs from our proposal in the *Further Notice*. Lumen Sept. 6, 2022 Comments at i, 3-4. *Cf. Further Notice* at 9, para. 19 ("Under our proposal, if the IPES Provider's traffic ratios exceed the applicable rule triggers, it would have to notify the Intermediate Access Provider, the Commission and affected IXCs. The Intermediate Access Provider would then be prohibited from billing IXCs tariffed rates for terminating switched access tandem switching or terminating switched access transport charges. Instead, the Intermediate Access Provider *could* recover the costs from the IPES Provider, or the IPES Provider's LEC partner.") (emphasis added).

[60] Bandwidth Sept. 6, 2022 Comments at 4 (emphasis in original); *see also* Inteliquent Sept. 6, 2022 Comments at 2 ("[T]he Commission should specify that IPES Providers are accountable for their own traffic and thus *must* pay the charges associated with delivering traffic to the IPES Provider if the terminating-to-originating traffic ratio for the IPES Provider exceeds the triggers established in the Commission's rules.") (emphasis added); Lumen Sept. 6, 2022 Comments at 3 (arguing that if an IPES Provider engages in access stimulation, there should be a "shifting [of] responsibility for tariffed terminating tandem switching and transport access charges . . . to the IPES Provider" but mistakenly referring to this as the Commission's proposal); Letter from Tamar E. Finn, Counsel to Bandwidth Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, Appx. B at 2 (filed Dec. 23, 2022) (Bandwidth Dec. 23, 2022 *Ex Parte* Letter) (suggesting edits to proposed 47 CFR § 51.914(c)(1) and 51.914(d)(3) stating that the IPES Provider "*shall* pay" for tariffed access services if it meets the definition of an access-stimulating IPES Provider) (emphasis added).

[61] *Further Notice* at 9, para. 19 & Appx. A (proposed 47 CFR § 51.914(c)(2), (e)).

[62] *See infra* Appx. A (47 CFR § 51.914(c)(2), (e)). In contrast, our rules require a LEC that engages in access stimulation to assume financial responsibility for any applicable Intermediate Access Provider's charges. *See infra* Appx. A (47 CFR § 51.914(a)(3)).

[63] *See infra* Appx. A (47 CFR §§ 51.914(c)(3), (e), 69.4(l)).

[64] *See infra* Appx. A (47 CFR § 51.914(c)(2)).

[65] *See infra* Appx. A (47 CFR §§ 51.914(a)(3), (b)(3), (e)). In this case, the partner LEC would also be an access-stimulating LEC because it would be required to count the traffic going to and from its directly assigned phone numbers in its traffic ratio and would have met the access-stimulation trigger. As a result, the Intermediate Access Provider shall bill the LEC partner for the Intermediate Access Provider's tandem services.

recognizes the difference in regulatory treatment between LECs and IPES Providers while also advancing our goal of curbing access stimulation.[67] And under this approach, if access is being stimulated and an IXC is unlawfully charged for tariffed terminating tandem switching or transport, the IXC may file a complaint against the LEC if the stimulated traffic is being sent to numbers that were directly assigned to the LEC, or it may bring a court action against the IPES Provider if the stimulated traffic is being sent to numbers that were directly assigned to the IPES Provider.

21. In addition, we decline Bandwidth's request to expand the Access Stimulation Rules to "require [a]ccess [s]timulators to pay any tariffed charges associated with stimulated originating and terminating traffic."[68] Bandwidth suggests that its proposal would prevent access-stimulating entities

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[66] *Further Notice* at 9, para. 19 ("The Intermediate Access Provider would . . . be prohibited from billing IXCs tariffed rates for terminating switched access tandem switching or terminating switched access transport charges. Instead, the Intermediate Access Provider could recover the costs from the IPES Provider, or the IPES Providers' LEC partner. Thus, the entities choosing the call path—the IPES Provider or its partner—should only be willing to generate traffic that creates more value than the costs these tariffed access charges are intended to recover. As a result, they would have an economic incentive to make efficient call routing decisions and little, if any, incentive to artificially stimulate traffic."). In the event an Intermediate Access Provider does not already have, or is unable to reach, a commercial agreement relating to compensation with a subtending IPES Provider that is engaged in access stimulation, the Intermediate Access Provider may be justified in refusing to deliver calls bound for that IPES Provider that have been sent to the Intermediate Access Provider's tandem. We do not encourage any refusal to deliver traffic but also do not sanction tandem services being used without compensation. Letter from Timothy M. Boucher, Asst. General Counsel, Federal Regulatory Affairs, Lumen, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, Attach. (filed Apr. 12, 2023) (Lumen Apr. 12, 2023 *Ex Parte* Letter); *see also* Letter from Tamar E. Finn and Patricia Cave, Counsel to Bandwidth Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 2 (filed Apr. 13, 2023) (Bandwidth Apr. 13, 2023 *Ex Parte* Letter) (supporting additional language to address the possible non-payment for Intermediate Access Provider services). Common carriers may revise their federally filed tariffs as they deem appropriate in accordance with the Act and our rules. *See* Bandwidth Apr. 13, 2023 *Ex Parte* at 1 ("Bandwidth intends (following adoption of the *Draft Second R&O*) to revise its tariff as necessary to ensure that Bandwidth is not forced to provide services to IPES Providers without compensation. Bandwidth submits imposing such charges by tariff or contract is consistent with the rules permitting Bandwidth the option to seek compensation from an access-stimulating IPES Provider.").

[67] We also decline to adopt Inteliquent and Lumen's proposal that we issue a declaratory ruling that IPES Providers are to be treated like LECs for purposes of the current Access Stimulation Rules. *Further Notice* at 13, para. 34 (citing Inteliquent/Lumen Apr. 30, 2021 *Ex Parte* Letter at 2 (arguing that when IPES Providers are inserted into the call flow, they function as a LEC)); *see also* Inteliquent Sept. 6, 2022 Comments at 8-9; Letter from Timothy M. Boucher, Asst. General Counsel, Lumen, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, Attach. at 2; Lumen Reply, WC Docket No. 13-97 et al., at 6 (rec. June 15, 2022). First, there is no support for this proposal in the record. Second, we interpret this suggestion to include requiring IPES Providers to be financially responsible for tariffed terminating switched access charges and, for the reasons discussed here, we reject that approach. This decision is consistent with Commission precedent of applying requirements to VoIP providers in a targeted manner designed to address specific, fundamental regulatory obligations when necessary and in the public interest. *E.g.*, 47 CFR § 54.706(a); *Universal Service Contribution Order*, 21 FCC Rcd at 7541, para. 44 (extending contribution obligations to interconnected VoIP service providers). Although the Commission did not address the regulatory classification of interconnected VoIP services under the Act, the Commission concluded that interconnected VoIP service providers are "providers of interstate telecommunications" for purposes of universal service contributions. *Universal Service Contribution Order*, 21 FCC Rcd at 7537, para. 35 (citing 47 U.S.C. § 254(d)).

[68] Bandwidth Sept. 6, 2022 Comments at 15; Letter from Tamar E. Finn, Counsel to Bandwidth Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 4 (filed Dec. 2, 2022) (Bandwidth Dec. 2, 2022 *Ex Parte* Letter); Bandwidth Dec. 23, 2022 *Ex Parte* Letter Appx. B at 1 (for proposed 47 CFR § 51.914(a)(1)-(2), proposing the deletion of references to "terminating" access charges; and for proposed 47 CFR § 69.5(b)(1)-(2), proposing the addition of references to originated traffic). We address Bandwidth's concern about the potential for multiple tandem charges in the Adopting Additional Rule Revisions Section below. *Infra* Section III.C – Adopting Additional Rule Revisions.

from charging any originating access charges and would make them, instead of IXCs, financially responsible for all tandem service charges—including dedicated tandem charges—for both terminating and originating traffic heading to or from access stimulators[69] and argues that not incorporating its proposal would create a loophole in our Access Stimulation Rules.[70]

22. As AT&T acknowledges, however, we did not seek comment on expanding the current Access Stimulation Rules to encompass originating traffic or dedicated tandem service charges.[71] Although Bandwidth correctly points out that the *Further Notice* included certain questions regarding originating 8YY traffic,[72] we only asked about "issues regarding the treatment of originating 8YY traffic for purposes of calculating the traffic ratios related to the triggers in our Access Stimulation Rules."[73] Those questions were focused on whether we needed to refine the existing methodology for calculating traffic ratios used to determine whether an entity is engaged in terminating access stimulation. They were not designed to elicit comments about potential reforms to our originating access or 8YY access charge rules, and we thus lack a full record on which to consider such reforms. Indeed, any changes to our rules governing originating traffic would have far-reaching implications that are best addressed in other docketed proceedings, such as the 8YY Access Charge Reform and Intercarrier Compensation reform dockets.[74]

23. Bandwidth and AT&T also raised concerns about the potential practice of carriers imposing additional, improper access charges on IXCs to make up for tandem switching and switched access transport revenue which terminating carriers lost as a result of the rules adopted in the *Access Arbitrage Order* and the *8YY Access Charge Reform Order*.[75] To the extent there are any concerns that providers may be imposing charges for terminating switched access tandem switching or terminating switched access transport services that are precluded by our Access Stimulation Rules, we find that our existing rules adequately address that issue.[76] The definition of "tandem-switched transport and tandem charge" in section 69.111 of our rules includes charges for the following services: tandem switched transport facility, common transport multiplexing, tandem switched transport termination, and tandem

[69] Bandwidth Sept. 6, 2022 Comments at 15-17 (identifying four dedicated tandem service charges—trunk port, dedicated multiplexing, direct trunked transport, and entrance facility); *see also* AT&T Oct. 3, 2022 Reply at 4-5 (describing Bandwidth's proposals and agreeing that "they raise an important issue that should be brought to the Commission's attention and addressed by further proceedings").

[70] Bandwidth Jan. 26, 2023 *Ex Parte* Letter at 2.

[71] AT&T Oct. 3, 2022 Reply at 4 ("While such proposals are well-intentioned, AT&T recognizes they may be outside of the scope of the Further Notice.").

[72] Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 4; *Further Notice* at 19, para. 47. The term "8YY traffic" refers to toll-free calls.

[73] *Further Notice* at 19, para. 47.

[74] *8YY Access Charge Reform*, WC Docket No. 18-156; *Connect America Fund et al*., WC Docket No. 10-90 et al.

[75] Bandwidth Sept. 6, 2022 Comments at 16 ("While the Commission thinks it has precluded 'all' tandem charges in cases of access stimulation, in Bandwidth's experience, Intermediate Access Providers often impose by tariff additional charges such as tandem switched transport facility, common transport multiplexing, trunk port, dedicated multiplexing, direct trunked transport, and entrance facility fees to make up for lost tandem switching and switched transport revenue."); AT&T Oct. 3, 2022 Reply at 5; *8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594 (2020) (*8YY Access Charge Reform Order*); *see also* Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 4; Bandwidth Dec. 23, 2022 *Ex Parte* Letter at 1, Attach. A.

[76] The Access Stimulation Rules apply to "terminating switched access tandem switching" and "terminating switched access transport charges" for calls between the "local exchange carrier's terminating end office or equivalent and the associated access tandem switch." 47 CFR § 51.914(a)(1); *see infra* para. 83 (discussing the language change from "terminating switched access tandem switching *and* terminating switched access transport charges" to "terminating switched access tandem switching *or* terminating switched access transport charges" in several rules).

switching.[77] Thus, pursuant to our Access Stimulation Rules, Intermediate Access Providers and LECs are not permitted to charge IXCs tariffed rates for any of those four rate elements or services, if the LEC (under either the current rules or the new and revised rules) or the IPES Provider (under the new and revised rules) is engaged in access stimulation. Our rules apply to access-stimulating entities that provide tariffed services with rate elements that are equivalent to those described here, even if they are offered under different names. We will scrutinize any tariff modifications filed by LECs or Intermediate Access Providers that improperly attempt to shift recovery of precluded terminating switched access tandem switching or terminating switched access transport costs to other charges in a provider's tariff.[78] We will also be vigilant in looking for any attempts carriers may make to impose tariffed charges for functions they do not actually perform.[79]

24. *Definition of "End Office Equivalent."* We adopt our proposal that IPES Providers be required to calculate their traffic ratios in each end office or equivalent at which they receive traffic for purposes of determining whether they meet or exceed the traffic ratios in our Access Stimulation Rules.[80] Contrary to claims in the record, this is consistent with how the Access Stimulation Rules have been applied.[81] First, however, we dispel concerns in the record that IPES Providers may attempt to evade responsibility for calculating their traffic ratios by claiming their traffic should not be counted because it does not transit an "end office or equivalent," as the present rules require.[82]

25. To make clear how providers' traffic ratio calculations should be made, we adopt two new rules. We add a definition of "End Office Equivalent" to our rules to ensure that our Access Stimulation Rules are specifically applicable to IPES Providers that do not have a traditional "end office," as well as to LECs that do have an "end office."[83] We also adopt a rule that clarifies the methodology that

[77] The four rate elements are defined in section 69.111 of the Commission's rules. 47 CFR § 69.111. The tandem switched transport facility rate element, as defined in section 69.111(e)(2)(i) of our rules, is the per MOU per-mile (distance-sensitive) charge for the common transport facility connecting the tandem switch and the end office. *Id.* § 69.111(e)(2)(i) (price-cap and rate-of-return LECs). The common transport multiplexing rate element is multiplexing provided in conjunction with common transport between the end office and the tandem switch. *Id.* §§ 69.4(j)(4) (rate-of-return LECs), 69.111(l)(1) (price-cap LECs). Both of those rate elements were raised by Bandwidth. Bandwidth Sept. 6, 2022 Comments at 16. Two other rate elements are included under the Access Stimulation Rules: (a) tandem switched transport termination, which is a per-MOU (non-distance sensitive) charge for use of the circuit equipment at the ends of a common transport facility, 47 CFR § 69.111(e)(2)(ii); and (b) tandem switching, 47 CFR § 69.111(a)(2)(ii).

[78] *See, e.g.*, Bandwidth Sept. 6, 2022 Comments at 16.

[79] Bandwidth Apr. 13, 2023 *Ex Parte* Letter at 2.

[80] *Further Notice* at 9-11, paras. 19-20, 22-25; *see also* Bandwidth Sept. 6, 2022 Comments at 6 ("Bandwidth agrees that calculating traffic ratios based on traffic measurements 'in an end office' is the right approach."), 8 ("Bandwidth does not support AT&T's proposal to eliminate the phrase 'in an end office' in a calendar month from section 61.3(bbb)(1)(ii)."); Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 3.

[81] *Further Notice* at 10, para. 23 ("The Access Stimulation Rules currently require traffic ratios to be calculated on the basis of traffic 'in an end office' for purposes of determining whether the 6:1 or 10:1 traffic ratios are exceeded."). *But see* Lumen Apr. 12, 2023 *Ex Parte* Letter at 2-3 (arguing that calculating traffic 'in the end office' for purposes of the Access Stimulation definition "is not how the industry has interpreted the counting obligation to-date" and thus advocating for the removal of the "in the end office" phrase in the revised Access Stimulation Rules to allow for traffic ratio calculation on a less granular, company-wide basis). The industry has not exhibited confusion over the plain language of the Access Stimulation definition. *See, e.g.*, Request of Onvoy, LLC d/b/a Inteliquent for Renewal of Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission's Rules, WC Docket No. 18-155, at Exhs. A & B (filed Aug. 18, 2020), https://www.fcc.gov/ecfs/document/10818669205172/1 (providing data to support its waiver request on a less than company-wide basis).

[82] Letter from Brett Farley, Assistant Vice President – Senior Legal Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1-2 (filed Nov. 8, 2022) (AT&T Nov. 8, 2022 *Ex Parte* Letter); Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 4; USTelecom Sept. 6, 2022 Comments at 10 n.30.

IPES Providers and other providers are required to use in calculating their access-stimulation traffic ratios.[84]

26. The term "end office" is already defined in our rules and is a common term used to mean "the telephone company office from which the end user receives exchange service."[85] We now adopt a new term, "End Office Equivalent," as section 61.3(fff), solely for purposes of our Access Stimulation Rules, which is defined as follows:

> *End Office Equivalent*. For purposes of this part and §§ 51.914, 69.3(e)(12)(iv) and 69.4(l) of this chapter, an End Office Equivalent is the geographic location where traffic is delivered to an IPES Provider for delivery to an end user. This location shall be used as the terminating location for purposes of calculating terminating-to-originating traffic ratios, as provided in this section. For purposes of the Access Stimulation Rules, the term "equivalent" in the phrase "end office or equivalent" means End Office Equivalent.[86]

27. AT&T expresses concern that arbitrageurs might "claim[] that certain IP terminating arrangements do not transit an end office 'equivalent' at all."[87] In response, Bandwidth argues that IPES Providers with authority to receive direct numbering assignments do, in fact, have an end office equivalent in which they can determine their terminating-to-originating traffic ratios for purposes of our Access Stimulation Rules.[88] The new definition we adopt requires a geographic location. In addition, as Bandwidth suggests, a possible geographic location for an "End Office Equivalent" applicable to IPES Providers could be a switch POI (point of interconnection) CLLI (Common Language Location Identifier).[89] Bandwidth explains that both an end office and switch POI CLLI are associated with a geographic rate center making the switch POI CLLI the equivalent of an end office.[90] We do not specify that an IPES Provider must use a switch POI CLLI as the geographic location of termination for the calculation of traffic ratios, but the definition of "End Office Equivalent" we adopt acknowledges that

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[83] *See infra* Appx. A (47 CFR § 61.3(fff)); *see also Further Notice* at 10-11, para. 23 ("To apply these requirements to an IPES Provider, what guidance should we provide as to what would be considered 'equivalent' to a LEC's end office?"); Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 4 (stating that "an IPES Provider cannot provide the equivalent of an end office function because the Commission has determined that function requires physical loop connections that an IPES Provider typically does not connect to its switching equipment").

[84] *See infra* Appx. A (47 CFR § 61.3(bbb)(5)).

[85] 47 CFR § 69.2(pp).

[86] *See infra* Appx. A (47 CFR § 61.3(fff)).

[87] AT&T Nov. 8, 2022 *Ex Parte* Letter at 1-2; *see also* USTelecom Sept. 6, 2022 Comments at 10 n.30 (arguing that under the VoIP symmetry rule, "over-the-top (OTT) VoIP providers do not have 'functionally equivalent' end offices," so if "'functionally equivalent'" were inserted in the arbitrage rules, OTT providers would be exempt from the traffic ratio calculations).

[88] Bandwidth Jan. 26, 2023 *Ex Parte* Letter at 1.

[89] *Id.* A POI is the location where two service providers interconnect to exchange traffic. Iconectiv LERG Routing Guide at 40. A CLLI Code is an "11 character, globally unique code that represents a physical location for a network site." Iconectiv, TruOps Common Language; Location Information Services CLLI at 2, https://iconectiv.com/sites/default/files/2021-07/TruOps_Common_Language_Brochure_clli.pdf (last visited Mar. 10, 2023).

[90] Bandwidth Jan. 26, 2023 *Ex Parte* Letter at 1 ("In the case of an IPES provider with authority to receive direct numbering assignments, telephone numbers typically are assigned to a switch Point of [Interconnection] ("POI") CLLI. That switch POI CLLI is associated with a geographic rate center. Although IP telephony can be non-geographic, LERG rules require telephone numbers to be associated with rate centers. Therefore, an IPES provider should be able to determine an inbound/outbound traffic ratio for each switch POI CLLI, which is the equivalent of an end office for a LEC.").

every IPES Provider has one or more End Office Equivalent locations and that each one shall be used as a terminating location for purposes of calculating traffic ratios under our Access Stimulation Rules. Therefore, the definition of "End Office Equivalent" makes clear that, for purposes of our Access Stimulation Rules, the definition of "Access Stimulation" in section 61.3(bbb) unquestionably applies to IPES Providers.

28. *Calculating Traffic Ratios*. We also adopt a rule that incorporates our proposal that IPES Providers be required to calculate their terminating-to-originating traffic ratios and provides the methodology for how such traffic ratios should be calculated for purposes of our Access Stimulation Rules.[91] Most commenters agree that the IPES Provider is in the best position to calculate its own traffic ratios, because it "necessarily has visibility into its own access traffic,"[92] is "the entity that chooses how it will send or receive its traffic," and tracks its calls for billing purposes.[93] Accordingly, we decline to adopt our alternative proposal that would have required Intermediate Access Providers to calculate IPES Providers' traffic ratios.[94] We agree with commenters that such a requirement would unduly burden Intermediate Access Providers and is unworkable because Intermediate Access Providers do not possess the information needed to compute the relevant traffic ratios.[95] We find that requiring IPES Providers to count their own traffic for purposes of the access-stimulation triggers is necessary to thwart the latest efforts to evade our Access Stimulation Rules by inserting IPES Providers into the call flow.[96] As a result of the actions we take today, entities will no longer be able to "claim that the [*Access Arbitrage Order*] is inapplicable because the traffic is bound for telephone numbers obtained by IPES Providers and not bound for LECs serving end users."[97]

29. At the same time, in response to concerns raised in the comments, it is important for us to provide a clear methodology of how IPES Providers and LECs should calculate their terminating-to-originating traffic ratios. Otherwise, there may be confusion that could lead to the miscalculation of traffic ratios, disputes between providers, or potential new arbitrage opportunities.[98] Above we detail *where* traffic should be calculated (for LECs at each of their end offices, and for IPES Providers at each of their "End Office Equivalents") for purposes of our Access Stimulation Rules. Here we detail *how* a LEC or IPES Provider must calculate its traffic ratios; that is, based on MOU to and from telephone numbers directly assigned to that LEC or IPES Provider, respectively. Presently, certain commenters

[91] *Further Notice* at 8-9, paras. 17-18.

[92] Inteliquent/Lumen Apr. 30, 2021 *Ex Parte* Letter at 2.

[93] Bandwidth Sept. 6, 2022 Comments at 5 ("Only the entity that chooses how it will send or receive its traffic is in the best position to calculate and determine traffic ratios. The IPES Provider has the commercial relationship with its customer . . . and . . . will track the traffic it delivers through billings or detailed traffic records in order to manage its commercial relationship. The IPES Provider also is in the best position to understand if it is part of a revenue sharing agreement."); *see also* Inteliquent Oct. 3, 2022 Reply at 1-2; Lumen Sept. 6, 2022 Comments at 5-6; USTelecom Sept. 6, 2022 Comments at 4.

[94] *Further Notice* at 9-10, para. 20.

[95] *E.g.*, Aureon Sept. 6, 2022 Comments at 6, 9 ("Obtaining the information needed to calculate traffic ratios and bill appropriate charges to IPES Providers with which Aureon has no relationship would create more uncertainty and lead to more disputes between Intermediate Access Providers, IXCs, and IPES Providers, and inhibit the ability of Intermediate Access Providers to provide the services needed by IXCs to provide services to rural customers. Additionally, the impossibility of the task proposed to be imposed on Intermediate Access Providers such as Aureon weighs heavily against its adoption."); Lumen Sept. 6, 2022 Comments at 5.

[96] *See, e.g.*, *Further Notice* at 4, para. 8.

[97] *Id.* (explaining various scenarios designed to evade the rules).

[98] *E.g.*, Inteliquent Oct. 3, 2022 Reply at 1 (noting "some confusion and potential disagreement [in the record] over important details" regarding "the methodology for determining the party to whom traffic is attributed for purposes of calculating terminating-to-originating traffic ratios").

explain, when an Intermediate Access Provider delivers traffic to an IPES Provider (for delivery to telephone numbers leased or bought by the IPES Provider from a LEC that then indirectly assigns those numbers to the IPES Provider), those calls are still counted in the LEC's traffic ratios because LECs calculate their ratios on traffic to and from telephone numbers directly assigned to their OCNs, including when a LEC provides those telephone numbers to another entity via indirect assignment.[99]

30. Given the ongoing attempts by some entities to misapply or exploit perceived loopholes in our current Access Stimulation Rules and concerns expressed in the record,[100] we agree that we must specify how carriers calculate their traffic ratios for purposes of our Access Stimulation Rules. Accordingly, we adopt a new rule, consistent with how LECs in the industry already count traffic,[101] for compliance with our Access Stimulation Rules, requiring each competitive LEC, rate-of-return LEC, or IPES Provider to include in its terminating-to-originating traffic ratio, to be counted separately at each end office or End Office Equivalent, all traffic "going to and from any telephone number associated with an Operating Company Number that has been issued" to such LEC or IPES Provider.[102] Under this rule, IPES Providers will be required to include in their traffic ratios all calls made to and from telephone numbers they receive directly from a numbering administrator, but not calls made to and from telephone numbers obtained indirectly from a LEC.[103]

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[99] *E.g.*, Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 2 ("The traffic associated with telephone numbers and supporting interconnection services that VoIP providers obtain from LECs . . . is included in LEC traffic ratios and subject to the access stimulation rules via the LEC."); Letter from Matthew S. DelNero and Jocelyn G. Jezierny, Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1-2 (filed Dec. 2, 2022) (Inteliquent Dec. 2, 2022 *Ex Parte* Letter) (stating that when traffic is exchanged with a VoIP provider using numbers supplied by a LEC today, "those minutes are counted towards the traffic ratio of the LEC from which the VoIP provider leased or bought its numbers"). No commenter disagreed with this characterization of how traffic ratios are currently calculated for purposes of our Access Stimulation Rules.

[100] *E.g.*, Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 2 (stating that "Bandwidth calculates its ratios on traffic to and from [telephone] numbers assigned to Bandwidth OCNs" whether or not it uses those telephone numbers itself or provides them to other entities via indirect assignment, and that its billing system is not designed to separate out its indirectly assigned numbers). When a numbering administrator issues a telephone number to a provider's OCN, that telephone number has been "directly assigned" to that provider. New section 61.3(bbb)(5) requires that ratios be calculated for all traffic "going to and from any telephone number associated with an Operating Company Number" issued to a provider, that is, a telephone number that has been directly assigned to that provider. *Infra* Appx. A (47 CFR § 61.3(bbb)(5)).

[101] Inteliquent Oct. 3, 2022 Reply at 4 (noting that today "if a CLEC provides its OCN-listed telephone number to a VoIP Provider, the CLEC includes in its ratios the traffic that ultimately terminates to or is originated from those numbers").

[102] New section 61.3(bbb)(5) reads as follows:

> In calculating the interstate terminating-to-originating traffic ratio at each end office or equivalent under this paragraph (bbb), each Competitive Local Exchange Carrier, rate-of-return local exchange carrier or IPES Provider shall include in such calculation only traffic traversing that end office or equivalent and going to and from any telephone number associated with an Operating Company Number that has been issued to such Competitive Local Exchange Carrier, rate-of-return local exchange carrier or IPES Provider. The term "equivalent" in the phrase "end office or equivalent" means "End Office Equivalent," as defined in this section.

Infra Appx. A (47 CFR § 61.3(bbb)(5)); *see also* Inteliquent Oct. 3, 2022 Reply at 5.

[103] *See infra* Appx. A (47 CFR § 61.3(bbb)(5)). The rule we adopt will not "exempt . . . IPES providers that lease or purchase [telephone] numbers from other carriers, as opposed to owning the telephone number outright, which could result in companies attempting to avoid application of the triggers by obtaining numbers indirectly." AT&T Nov. 8, 2022 *Ex Parte* Letter at 2; *see also* AT&T Oct. 3, 2022 Reply at 4.

31. Similarly, in the case where one LEC supplies another LEC with telephone numbers (indirectly assigning numbers to the second LEC), the first LEC that was directly assigned the telephone numbers by a numbering administrator is required to calculate its ratios by counting the calls to and from those directly assigned telephone numbers, even though that first LEC has assigned those telephone numbers to a second LEC.[104] The clarity this rule provides will prevent confusion and potential double-counting of calls—once by the LEC that was assigned the numbers directly and again by the IPES Provider, or LEC, that received those numbers indirectly from a LEC.[105]

32. We also reject other methods for calculating traffic, particularly by state, specific end user, or Intermediate Access Provider, or some other manner, instead of at the end office or End Office Equivalent.[106] There was some discussion in the record about calculating traffic ratios at the state level.[107] Calculating traffic ratios at the state level would make traffic manipulation easier—a result or potential loophole we do not want to allow. Several other parties suggested alternative ways to calculate traffic, such as at the network or aggregate level.[108] None of these parties provided sufficient support for these suggestions, however, and we find these proposals would allow for even easier traffic manipulation contrary to our goal of deterring access stimulation. For example, if traffic were counted in the aggregate, as some parties suggest, access-stimulating LECs or IPES Providers could send terminating traffic to one or a few end offices, or End Office Equivalents, of an unrelated LEC or IPES Provider such that the original LEC's or IPES Provider's ratios over the totality of their network, would not meet or exceed the traffic ratio triggers in the rules, meaning IXCs would have to pay for all terminating access charges even though if the traffic had not been shifted the traffic ratio triggers would have been met. Under our new rules, traffic ratio calculations must be made at each end office or End Office Equivalent for telephone numbers directly assigned to the provider's OCN. As under the current rules applicable to LECs, if an IPES Provider is deemed to be engaged in access stimulation because it meets or exceeds the traffic ratio triggers in an End Office Equivalent, then it must comply with the Access Stimulation Rules and IXCs would not be charged for terminating tandem switching or transport.[109] This takes into account the possibility that entities have more than one end office or End Office Equivalent and will discourage traffic manipulation, whether between end offices or End Office Equivalents of the same provider, or between different companies' end offices or End Office Equivalents, to stay under the traffic ratio triggers.

33. We find that the methodology we adopt—calculating a provider's traffic ratios at each end office or End Office Equivalent based on calls to and from telephone numbers assigned to that provider's OCN—provides a simple-to-administer, bright-line test that eliminates confusion in determining which entity is responsible for counting traffic and will deter potential future access-stimulation arbitrage.[110] Counting traffic based on which entity is assigned a particular telephone number

[104] *See infra* Appx. A (47 CFR § 61.3(bbb)(5)).

[105] Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 2 (suggesting traffic might "be counted twice, once by a VoIP provider and again by the LEC assigning telephone numbers indirectly to the VoIP provider"); Inteliquent Oct. 3, 2022 Reply at 1, 4-6.

[106] *Further Notice* at 11, para. 24.

[107] *E.g.*, Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 3 (requesting that traffic ratios be calculated at the end office level, "not states or regions"); *cf.* AT&T Jan. 31, 2023 *Ex Parte* Letter at 5 ("Accordingly it is appropriate to calculate the traffic ratio at the OCN and state level . . . ."). In response to this statement from AT&T, Lumen says that "[t]he Commission's [access stimulation] rules specify that its [access stimulation] ratios are to be calculated on a provider-wide basis." Lumen Feb. 21, 2023 *Ex Parte* Letter at 3 n.6. This is incorrect. Lumen cites no rule provision containing such a requirement, and Lumen ignores the requirement in sections 61.3(bbb)(1)(ii)-(iii) that the ratios be determined "in an end office."

[108] Teliax Nov. 25, 2022 *Ex Parte* Letter Attach. at 14 (suggesting reporting "at the network level"); Wide Voice Jan. 10, 2023 *Ex Parte* Letter at 3 (suggesting that ratios should be "measured in aggregate (if used at all)").

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

not only identifies the responsible entity, it also ensures that all calls are accounted for in calculating the access-stimulation traffic ratios and that no calls are double-counted.[111] In addition, even though the networks of IPES Providers and LECs may route traffic differently, the common denominator of our methodology is that providers have a bright-line test for calculating ratios on the basis of calls routed to and from telephone numbers associated with an end office or equivalent and an OCN that identifies that provider.[112]

34. We conclude that the benefits of this methodology overcome any potential risks it may pose to a LEC that sells or leases telephone numbers to IPES Providers or to other LECs.[113] It is true that, under new section 61.3(bbb)(5), a LEC, for example, is held responsible if it has directly assigned numbers that it then indirectly assigns to an IPES Provider that uses those telephone numbers it receives from that LEC to stimulate traffic, even though the LEC may have limited visibility into, or control over, the IPES Provider's traffic flow.[114] The relationship by which a LEC indirectly assigns numbers to an IPES Provider, however, is a business arrangement that the parties enter into voluntarily. As such, each party can contractually protect itself from the possibility that one of them may engage in access stimulation and can, for example, require that each party hold the other harmless from any financial responsibility for such activities and expressly provide that such numbers will not be used to violate our Access Stimulation Rules. Under the new rule we adopt today, LECs "would have a strong incentive to take corrective steps to avoid being deemed an access stimulator—up to and including ending the relationship with the stimulating customer."[115] Indeed, competitive LECs took such steps to terminate their agreements with providers shortly after the Commission adopted rules in 2019 to make access-

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[110] We agree with Inteliquent that, if we were instead to adopt rules attributing traffic to an IPES Provider when the IPES Provider obtained telephone numbers from a LEC that were assigned to the LEC's OCN, it would be more difficult for IXCs to verify the traffic ratios for IPES Providers—which could lead to increased arbitrage opportunities. Inteliquent Dec. 2, 2022 *Ex Parte* Letter at 3. AT&T also expresses concerns that any rule we adopt should not adversely affect its ability to verify traffic ratios of providers that obtain telephone numbers from LECs. AT&T Dec. 14, 2022 *Ex Parte* Letter at 1-2. The approach we adopt addresses AT&T's concern that "[i]t is potentially unclear how this definition might apply to (i) telephone numbers ported to an IPES provider or (ii) a provider that obtains some, but not all, of its telephone numbers directly." AT&T Jan. 31, 2023 *Ex Parte* Letter at 6 n.13; *see also* AT&T Jan. 31, 2023 *Ex Parte* Letter at 7.

[111] We also agree with commenters that if we were to allow an IPES Provider to use traffic that is not associated with its OCN in its ratio calculations, it could use wholesale originated traffic to inflate its originating traffic volumes, thereby offsetting stimulated terminating traffic and making it easier to evade classification as an access stimulator. Inteliquent Oct. 3, 2022 Reply at 6.

[112] *See* Bandwidth Jan. 26, 2023 *Ex Parte* Letter at 1 ("In the case of an IPES provider with authority to receive direct numbering assignments, telephone numbers typically are assigned to a switch Point of [Interconnection] ('POI') CLLI. That switch POI CLLI is associated with a geographic rate center. Although IP telephony can be non-geographic, LERG rules require telephone numbers to be associated with rate centers. Therefore, an IPES provider should be able to determine an inbound/outbound traffic ratio for each switch POI CLLI, which is the equivalent of an end office for a LEC.").

[113] *Cf.* Lumen Feb. 21, 2023 *Ex Parte* Letter at 2 ("[A]dopting an alternative approach that would, for example, make CLECs responsible for IPES provider traffic would potentially make a CLEC's status as a non-access-stimulator precarious.").

[114] *See infra* Appx. A (47 CFR § 61.3(bbb)(5)); AT&T Jan. 31, 2023 *Ex Parte* Letter at 6 (acknowledging that when IPES Providers receive telephone numbers indirectly from a LEC then IXCs would see the volume of traffic to and from the LEC because it is the entity listed in the number portability database).

[115] Inteliquent Dec. 2, 2022 *Ex Parte* Letter at 2. Bandwidth agrees that a "LEC has an incentive to maintain balanced traffic ratios to avoid triggering the access stimulation rules and therefore has an incentive to monitor and manage any VoIP provider customer engaged in traffic pumping." Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 2; *see also* Inteliquent Oct. 3, 2022 Reply at 5-6.

stimulating LECs, rather than IXCs, financially responsible for tandem switching and transport service access charges in the delivery of traffic.[116]

35. In cases where an IPES Provider obtains telephone numbers from a LEC, the LEC that indirectly assigns numbers to the IPES Provider will include calls to those numbers in the LEC's own ratio calculations. Thus, IXCs can easily ascertain from LERG databases, available to the public, which telephone numbers are assigned to which provider (the LEC or the IPES Provider) to evaluate the traffic ratios based on the OCN associated with any particular group of telephone numbers. Otherwise, as Inteliquent explains, IXCs:

> will have no visibility into the identity of this provider or providers because the associated traffic will not be assigned to the provider(s) OCNs in the LERG. Without a public record demonstrating which phone numbers belong to the provider, the interexchange carrier[s] will have no visibility as to their inbound or outbound traffic, meaning that there will be no independent or objective way to evaluate the traffic ratios of the party using numbers supplied to it by a LEC.[117]

Without the use of public databases, it would be easier for a LEC, possibly one that is presently deemed an access stimulator under the current rules, to evade responsibility for stimulated traffic by claiming the traffic is the responsibility of the other provider.

36. To conclude, our new rule 61.3(bbb)(5) makes explicit that a competitive LEC, rate-of-return LEC, or an IPES Provider is required to calculate its traffic ratios on calls that traverse its end office or End Office Equivalent and go to and from telephone numbers directly assigned to that provider's OCN.[118] And if that LEC or IPES Provider meets or exceeds the relevant traffic ratio trigger, then an IXC shall not be charged terminating access charges for the delivery of that traffic.[119] Thus, the addition of this rule will minimize providers' ability to skirt responsibility for access stimulation.

37. *Notification Requirements.* We next amend our rules to require that an IPES Provider notify Intermediate Access Providers, IXCs, and the Commission if it is engaged in access stimulation as defined in our revised rules, similar to the obligations that already apply to LECs.[120] An IPES Provider

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[116] *See* Inteliquent Oct. 3, 2022 Reply at 5 (citing letters by competitive LECs notifying the Commission that they were ceasing business activity that could categorize them as an access stimulator); *see, e.g.*, Letter from Ronald Laudner, Jr., CEO, Interstate Cablevision, LLC, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Jan. 9, 2020) (Interstate Cablevision Jan. 9, 2020 *Ex Parte* Letter) (as of December 29, 2019, the company terminated end-user relationships with high-volume calling providers); Letter from Randy Foor, General Manager, Louisa Communications, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Dec. 27, 2019) (Louisa Communications, Inc., Dec. 27, 2019 *Ex Parte* Letter) (notifying the Commission that the company terminated its end-user relationships with high-volume calling providers as of December 25, 2019).

[117] Inteliquent Dec. 2, 2022 *Ex Parte* Letter at 3; *see also id*. ("[I]f there is a belief that a LEC is engaging in access stimulating behavior, the IXC examines the total traffic that flows to that LEC and that flows from that LEC's phone numbers. This provides the basis for the IXC's estimate of the LEC's traffic ratio . . . . [If the Commission were to adopt a rule whereby a LEC provided numbers to another entity and access-stimulation traffic was counted in that entity's traffic ratios rather than by the LEC, then] if the IXC approaches the LEC concerning its ratios, the LEC could claim that the traffic does not belong to the LEC but rather to one (or more) of the LEC's VoIP customers. The IXC will now face the nearly impossible task of identifying the correct VoIP and assessing their traffic ratios.").

[118] *See infra* Appx. A (47 CFR § 61.3(bbb)(5)). Wide Voice questions whether "*all* IPES traffic [will] be part of the ratio [calculation] or just IPES traffic that traverses the PSTN." Wide Voice Jan. 10, 2023 *Ex Parte* Letter at 3 (emphasis in original). By requiring LECs and IPES Providers to calculate the traffic to and from telephone numbers assigned by a numbering administrator to their OCNs, we make clear that all traffic is to be calculated for purposes of our Access Stimulation Rules.

[119] *See infra* Appx. A (47 CFR §§ 51.914(a)(1), (c), (e), 61.3(bbb), 69.4(l)).

engaged in access stimulation as defined in sections 61.3(bbb)(1)(i)-(ii) of our rules shall satisfy its notice and reporting requirement to the Commission by filing a record of its access-stimulating status in WC Docket No. 18-155 on the same day that it issues such notice to affected IXCs and Intermediate Access Providers.[121] We find that these requirements are necessary to enable Intermediate Access Providers to determine whether they can lawfully charge IXCs tariffed rates for interstate and intrastate terminating tandem services in connection with calls terminating to, or through, an IPES Provider, and to help IXCs determine if the charges are appropriate.[122]

38. We disagree with Bandwidth's proposal to change the present notice and reporting requirements. Bandwidth suggests that a "more prominent, public disclosure" is necessary, and that the Commission should publish public filings in its Daily Digest to "provide all IXCs (and consumers) with notice of where access stimulation occurs."[123] The Commission has already established a disclosure requirement that is both well understood by the industry and available to the public through the Commission's Electronic Comment Filing System.[124] There is no indication that the present filing procedure is insufficient for providing effective notice of access-stimulation activity to all affected or interested parties.[125]

39. We take seriously concerns that IXCs may be using improper self-help to withhold payment for services they have obtained pursuant to tariffs.[126] We caution IXCs against improperly using our rules to engage in the wrongful withholding of payments. We continue to discourage providers from engaging in self-help except to the extent that such self-help is consistent with the Act, our rules, and applicable tariffs.[127] Moreover, we would expect and encourage any IXC with evidence of unlawful

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[120] *See infra* Appx. A (47 CFR § 51.914(b), (d)); *see Further Notice* at 8-9, para. 18 ("Under our proposal, the IPES Provider would be responsible for calculating its traffic ratios and for making the required notifications to the Commission and affected carriers, just as LECs are responsible for these activities under the current rules."); *Further Notice* at 9, 19-20, paras. 19, 49. No party objected to this notification requirement.

[121] *See Access Arbitrage Order*, 34 FCC Rcd at 9068, para. 75 (establishing this procedure for access-stimulating LECs).

[122] *See infra* Appx. A (47 CFR § 51.914).

[123] Bandwidth Sept. 6, 2022 Comments at 6.

[124] *Access Arbitrage Order*, 34 FCC Rcd at 9068, para. 75; *see Further Notice* at 8-9, para. 18. The Electronic Comment Filing System (ECFS) "serves as the repository for official records in the FCC's docketed proceedings . . . . The public can use ECFS to retrieve any document in the system, including selected pre-1992 documents." FCC, Welcome to the FCC's Electronic Comment Filing System, https://www.fcc.gov/ecfs/search/search-filings (last visited Mar. 14, 2023).

[125] *See Further Notice* at 8-9, para. 18 ("After the rules adopted in the *Access Arbitrage Order* became effective, some carriers satisfactorily notified the Commission that they were stopping their access stimulation activities by filing letters in docket 18-155."); *see also* Letter from G. David Carter, Counsel to Northern Valley Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-155 and 20-11 (filed Apr. 8, 2020) (providing notice that Northern Valley engages in access stimulation).

[126] Although some commenters complain that IXCs are using self-help as a "tactic" against competitors or as a means of discrimination, they have offered no support for their anti-competition and unlawful discrimination claims. Aureon Oct. 3, 2022 Reply at 2; HD Carrier Oct. 3, 2022 Reply at 4; HD Carrier Oct. 3, 2022 *Ex Parte* Letter Attach. at 4; Teliax Nov. 25, 2022 *Ex Parte* Letter Attach. at 10; *see also* Letter from David Erickson, Founder of FreeConferenceCall.com, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Nov. 18, 2022).

[127] *See, e.g.*, *Access Arbitrage Order*, 34 FCC Rcd at 9065, para. 68; *8YY Access Charge Reform Order*, 35 FCC Rcd at 11614, para. 48. "Disallowing self-help . . . [c]ould be inconsistent with existing tariffs, some of which permit customers to withhold payment under certain circumstances." *Access Arbitrage Order*, 34 FCC Rcd at 9065, para. 68. We do not depart from a prior finding that the Commission "has never held that a failure to pay tariffed charges violates the Act itself." *All Am. Tel. Co., E-Pinnacle Commc'ns, Inc., and Chasecom v. AT&T Corp.*, File No. EB-10-MD-003, Memorandum Opinion and Order, 26 FCC Rcd 723, 728, para. 13 (2011). We also do not (continued….)

conduct on the part of a LEC or Intermediate Access Provider to bring a complaint proceeding under section 208 of the Act for damages to deter such conduct in the future.

40. We decline to adopt Verizon's proposal that we add a rule defining the financial liability of an IPES Provider that engages in access stimulation but fails to provide timely notice of that activity to affected parties. Verizon requests that we amend section 51.914 of our rules "to make clear that, where an IPES [P]rovider does not timely self-identify and the Commission or a court later holds that the IPES [P]rovider should have self-identified . . . the obligation to bear tandem switching and transport charges applies retroactively to when the IPES [P]rovider should have self-identified" and that the IPES Provider "must then reimburse long-distance carriers for any amounts improperly billed."[128] We find that such a rule is unnecessary to achieve its intended purpose.

41. Under the rules we adopt today, an IPES Provider that meets or exceeds the access-stimulation triggers but fails to provide the proper notice would violate our rules.[129] If a LEC or an IPES Provider is engaged in access stimulation and fails to notify the Intermediate Access Provider or IXC, for whatever reason, an IXC's recourse is against the LEC or IPES Provider, not the Intermediate Access Provider.[130] Our rules and the Act permit an IXC to bring proceedings before the Commission or the courts and recover full damages, including any retroactive damages, if the IXC is improperly billed by another carrier.[131] Complaints involving IPES Providers, which are not common carriers, may be brought in the courts for adjudication.

42. The determination of liability and the award of specific damages involving access-stimulation traffic is a fact-intensive inquiry requiring analysis of the functions of multiple carriers in transmitting, and billing for, calls in a particular call path.[132] Thus, the Commission or a court, in an adjudicatory proceeding, is best suited to determine issues of liability and damages, including whether, based on the facts at hand, "the obligation to bear tandem switching and transport charges applies retroactively to when the IPES [P]rovider should have self-identified."[133] Indeed, Verizon's proposed rule could have the unintended effect of inappropriately pre-judging liability and damages.

43. *When an IPES Provider Is No Longer Engaged in Access Stimulation*. We received no comments regarding our proposal that IPES Providers conform to the same requirements as LECs for determining when an IPES Provider that was engaged in access stimulation is no longer deemed to be engaged in access stimulation.[134] Thus, we adopt our proposal to extend those same requirements to IPES Providers. Accordingly, if an IPES Provider has an access charge revenue-sharing agreement and is engaged in access stimulation because it meets or exceeds the 3:1 interstate terminating-to-originating

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depart here from a prior Commission finding that it is unlawful for a tariff to require payment of disputed amounts while those amounts are in dispute. *Sprint Commc'ns Co. L.P. v. Northern Valley Commc'ns, LLC*, File No. EB-11-MD-003, Memorandum Opinion and Order, 26 FCC Rcd 10780, 10786-87, para. 14 (2011).

[128] Verizon Sept. 6, 2022 Comments at 20; 47 CFR § 51.914.

[129] *See infra* Appx. A (47 CFR § 51.914(d)).

[130] *See* Aureon Oct. 3, 2022 Reply at 1-2; Lumen Sept. 6, 2022 Comments at 6-7; *see also Access Arbitrage Order*, 34 FCC Rcd at 9071-72, para. 86.

[131] 47 U.S.C. §§ 206 (liability of carriers for damages), 207 (recovery of damages), 208 (complaints to the Commission), 209 (orders for payment of money); 47 CFR § 51.914; *see also* AT&T Oct. 3, 2022 Reply at 3 n.8 ("[S]uch a carrier is *already* liable on a retroactive basis to pay 'full' damages 'sustained in consequence' of its violation, [(47 U.S.C. § 206)] which would include tandem and transport charges that the carrier should have paid but that were improperly billed to IXCs because the carrier failed to provide the required certification.").

[132] *See, e.g.*, *AT&T v. Wide Voice Enforcement Order*.

[133] Verizon Sept. 6, 2022 Comments at 20.

[134] *See Further Notice* at 10, para. 21.

traffic ratio at an end office or equivalent in a calendar month, as described in section 61.3(bbb)(1)(i) of our rules, it would no longer be deemed to be engaged in access stimulation if it terminates all revenue sharing agreements and its traffic ratio is below 6:1.[135] In the case of an IPES Provider that has no revenue-sharing agreement and is engaged in access stimulation because it meets or exceeds the 6:1 traffic ratio established by section 61.3(bbb)(1)(ii) of our rules, it would no longer be deemed to be engaged in access stimulation if its traffic ratio falls below 6:1 for six consecutive months, similar to the current rule applicable to competitive LECs.[136] Additionally, once an IPES Provider terminates its engagement in access stimulation, it would be required to notify the Commission and any affected Intermediate Access Providers and IXCs of its changed status, similar to the current rule applicable to LECs.[137]

44. *Implementation and Effective Dates*. In the *Further Notice*, we proposed that providers should be required to comply with the new and revised rules adopted in this Order within 45 days following their effective date.[138] This is the same timeframe that the Commission found to be reasonable when it adopted the current Access Stimulation Rules.[139] We asked parties if this timeframe posed any challenges or difficulties. We did not receive any comments in response and have no reason to believe this timeframe is insufficient, as there have been no complaints about this timeframe since it was first adopted for the existing rules. Thus, we give providers 45 days to come into compliance with our new and revised rules once they become effective. The effective date of the rules that do not require Paperwork Reduction Act (PRA) review is 30 days after publication in the Federal Register.[140] Several of the rules we adopt may require Office of Management and Budget (OMB) review pursuant to the PRA. A separate notice will be published in the Federal Register detailing the effective dates and compliance dates for those rules.[141]

B. Declining to Adopt Commenters' Proposals That Are Unnecessary or Insufficiently Supported

45. Commenters submitted several additional proposals not addressed in the *Further Notice* that, for the reasons discussed below, we decline to adopt. We find that these proposals are duplicative of our existing processes, lack sufficient support in the record to allow us to adopt them, or have already been rejected by the Commission.

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[135] *See infra* Appx. A (47 CFR § 61.3(bbb)(2)).

[136] *See infra* Appx. A (47 CFR § 61.3(bbb)(2)). We also adopt the proposed language to be added to section 61.3(bbb)(2)—"that has engaged in Access Stimulation" and continue to be "deemed to be engaged"—to which no commenters objected. *See infra* Appx. A (47 CFR § 61.3(bbb)(2)). Both phrases ensure that section 61.3(bbb)(2) applies to competitive LECs and IPES Providers that engage in Access Stimulation. Further, we adopt the proposal in the *Further Notice* for similar phrases to be added to section 61.3(bbb)(3). *Further Notice* at Appx. A (proposed 47 CFR § 61.3(bbb)(3)); *infra* Appx. A (47 CFR § 61.3(bbb)(3)). No commenters objected to these changes. In sections 61.3(bbb)(2) and 61.3(bbb)(3), we retain the "(bbb)" portion of the paragraph references, contrary to what we proposed in the *Further Notice* Appendix A. This change is a conforming or non-substantive edit and is made to ensure compliance with rule drafting guidelines applicable to the Code of Federal Regulations and consistency in our Access Stimulation Rules. *See Further Notice* at 17-18, para. 45.

[137] *See infra* Appx. A (47 CFR § 51.914(g)). Current section 51.914(e) has been renamed as new section 51.914(g) (because other sections were added above it), and "IPES Provider" has been added as an entity subject to the rule. 47 CFR § 51.914(e); *infra* Appx. A (47 CFR § 51.914(g)). Both changes were proposed in the *Further Notice*. *Further Notice* at Appx. A (proposed 47 CFR § 51.914(g)). No commenter objected to these changes.

[138] *Further Notice* at 11-12, para. 26.

[139] *Access Arbitrage Order*, 34 FCC Rcd at 9068, para. 75; *see Further Notice* at 11-12, para. 26.

[140] *Infra* para. 104 (discussing the effective date for rules requiring review by the Office of Management and Budget (OMB) pursuant to the PRA).

[141] *Infra* para. 104 (discussing the effective date for rules requiring review by OMB pursuant to the PRA).

46. *Formally Establish a Rebuttable Presumption and an Access-Stimulation Specific Complaint Process*. We received several comments requesting clarification of, or changes to, our current informal and formal complaint processes targeted to access stimulation.[142] Because these suggestions do not materially differ from our current enforcement processes, and are moot with regard to IPES Providers because our section 208 complaint process does not apply to IPES Providers, we reject them as duplicative and unnecessary.

47. Several commenters request that we make clear that the rebuttable presumption process outlined in the *USF/ICC Transformation Order* applies to IPES Providers.[143] These commenters explain that IXCs lack access to access stimulators' (and their partners') traffic and call routing information.[144] Therefore, these commenters argue that a complaining carrier should be permitted to rely on its own internal data to show that an IPES Provider's traffic with the complaining carrier meets or exceeds the access-stimulation triggers, shifting the burden to the IPES Provider or its LEC partner to rebut the presumption with its own traffic data.[145] These parties propose that if the LEC or IPES Provider is unable to rebut this presumption, or chooses not to provide data, then Intermediate Access Providers or LECs could not charge IXCs for terminating tandem switching and transport service for the delivery of traffic to that LEC or IPES Provider.[146]

48. We confirm that IXCs remain able to initiate a complaint with the Commission by using their traffic data to assert that a LEC is engaged in access stimulation, with the burden then shifting to the LEC to use its traffic data to confirm or refute the IXC's allegations, and that this process will remain in place after this Order takes effect.[147] A complaining IXC may rely on its own data, for example data calculated at a LEC or IPES Provider's company-wide level,[148] about the traffic it exchanges as the basis for filing a complaint or a court action.[149] Lumen and USTelecom provide examples of information that

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[142] USTelecom Sept. 6, 2022 Comments at 7-8; Verizon Sept. 6, 2022 Comments at 20-21; AT&T Oct. 3, 2022 Reply at 2.

[143] AT&T Sept. 6, 2022 Comments at 6; USTelecom Sept. 6, 2022 Comments at 6; Verizon Sept. 6, 2022 Comments at 17-18; USTelecom Oct. 3, 2022 Reply at 3; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17889, para. 699 (explaining that a "complaining carrier may rely on the 3:1 terminating-to-originating traffic ratio and/or the traffic growth factor for the traffic it exchanges with the LEC as the basis for filing a complaint. This will create a rebuttable presumption that revenue sharing is occurring and the LEC has violated the Commission's rules. The LEC then would have the burden of showing that it does not meet both conditions of the definition. . . . If the LEC challenges that it has met either of the traffic measurements, it must provide the necessary traffic data to establish its contention.").

[144] AT&T Sept. 6, 2022 Comments at 6-7; USTelecom Sept. 6, 2022 Comments at 7; Verizon Sept. 6, 2022 Comments at 18-19; USTelecom Oct. 3, 2022 Reply at 3-4. AT&T explains that "[a] long distance carrier would usually have data showing the overall amount of its traffic (including, *e.g.*, terminating-to-originating traffic) that is ultimately routed to a VoIP provider (*e.g.*, by examining traffic to and from the telephone numbers associated with the VoIP provider). A long distance carrier would also have information from the Local Exchange Routing Guide showing that calls to telephone numbers associated with a VoIP provider are to be routed via a particular LEC or LECs. However, a long distance carrier would not necessarily know the volumes routed to each of the LECs." AT&T Sept. 6, 2022 Comments at 7 n.9.

[145] AT&T Sept. 6, 2022 Comments at 7-8; Verizon Sept. 6, 2022 Comments at 18; USTelecom Sept. 6, 2022 Comments at 7; *see also* Bandwidth Sept. 6, 2022 Comments at 5. Aureon opposes the creation of a rebuttable presumption based solely on IXC data due to IXCs' lack of traffic visibility. Aureon Oct. 3, 2022 Reply at 2-3.

[146] *USF/ICC Transformation Order*, 26 FCC Rcd at 17889, para. 699; AT&T Sept. 6, 2022 Comments at 6-8; USTelecom Sept. 6, 2022 Comments at 8; AT&T Jan. 31, 2023 *Ex Parte* Letter at 3, 7; 47 CFR § 51.914.

[147] *USF/ICC Transformation Order*, 26 FCC Rcd at 17889, para. 699.

[148] Verizon Sept. 6, 2022 Comments at 17-18.

[149] *USF/ICC Transformation Order*, 26 FCC Rcd at 17889, para. 699; USTelecom Sept. 6, 2022 Comments at 6; Verizon Sept. 6, 2022 Comments at 17-18. *Cf.* HD Carrier Feb. 17, 2023 *Ex Parte* Letter at 3 (HD Carrier expresses (continued….)

may be used to support (for example, traffic ratio data calculated at the company-wide level rather than in an end office or equivalent) or rebut (for example, showing that traffic associated with certain telephone numbers should be attributed to an IPES Provider rather than the LEC) a claim of access stimulation.[150] We do not dictate the type or amount of information that may be effective to support or rebut an IXC's claim of access stimulation and acknowledge that a court will manage any complaints presented before it as it deems appropriate. The LEC (or IPES Provider) would then have the burden of showing that it is not engaged in access stimulation by providing the necessary traffic data rebutting the IXC's allegation.[151] We rely on the industry to self-police this issue, and we find that our current complaint processes or appropriate court proceedings have been effective in addressing violations of our Access Stimulation Rules. We also expect that the rule we adopt today detailing how LECs and IPES Providers are to calculate their traffic ratios will, by use of publicly available information, provide greater transparency into entities' traffic ratios which will help resolve disputes about whether an entity is engaged in access stimulation.[152] To the extent commenters request that our enforcement process be extended to IPES Providers, IPES Providers are not subject to complaints made pursuant to section 208 of the Act because IPES Providers are not common carriers under Title II of the Act.[153] We therefore must decline proposals to extend our enforcement process to IPES Providers.

49. Verizon offers a similar proposal for streamlining the process for bringing access-stimulation complaints, calling for us to establish a new "hybrid informal-formal" complaint process "to lower the [transaction] costs" for identifying access stimulators.[154] Verizon proposes that we modify our complaint processes to allow an IXC to initiate a complaint by presenting sufficient evidence that an alleged access stimulator (LEC or IPES Provider) meets or exceeds the traffic ratios in our rules.[155] Unlike the current enforcement rules, Verizon proposes that the primary burden of producing data would be on the entity alleged to be engaged in access stimulation, and that an alleged access stimulator could meet that burden by, for example, submitting to the Commission its complete switched access call detail records.[156] Under this proposal, the responding LEC or IPES Provider would also be required to provide "a certification that the records are complete and accurate."[157] Then the Commission could conduct an

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concern that by using its own data, AT&T will misidentify HD Carrier as an access stimulator.). The Commission or reviewing court, as applicable, will review all data provided in any subsequent complaint or court review process, not just that provided by an IXC.

[150] *See* Lumen Feb. 21, 2023 *Ex Parte* Letter at 3 (proposing criteria to satisfy a rebuttal); Letter from Diana Eisner, VP, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1-2 (filed Apr. 12, 2023) (USTelecom Apr. 12, 2023 *Ex Parte* Letter) (proposing information to support a complaint alleging access stimulation); Letter from Timothy M. Boucher, Asst. General Counsel, Federal Regulatory Affairs, Lumen, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 3 (filed Apr. 14, 2023).

[151] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17889, para. 699.

[152] *See infra* Appx. A (47 CFR § 61.3(bbb)(5)); *supra* paras. 28-36 (how to calculate traffic).

[153] 47 U.S.C. §§ 201 (applying the Commission's Title II authority to common carriers), 208(a) (specifying that parties may file complaints against "any common carrier subject to this [Act]"), 153(11) (defining "common carrier" as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier").

[154] Verizon Sept. 6, 2022 Comments at 3, 21; AT&T Oct. 3, 2022 Reply at 2; AT&T Jan. 31, 2023 *Ex Parte* Letter at 1.

[155] Verizon Sept. 6, 2022 Comments at 21; USTelecom Sept. 6, 2022 Comments at 7-8.

[156] Verizon Sept. 6, 2022 Comments at 21. AT&T supports Verizon's proposal to create a hybrid, access stimulation specific process, calling the Commission's current process "burdensome and resource-taxing." AT&T Oct. 3, 2022 Reply at 2.

independent evaluation of the traffic data.[158] According to Verizon, the Commission's evaluation would enable the filing of a formal complaint if the alleged access stimulator refuses to self-identify as an access stimulator regardless of what the call detail records indicate.[159]

50. We decline to adopt Verizon's proposal to create a new "hybrid" process to adjudicate an IXC's claims of access stimulation. Verizon's proposal does not differ appreciably from our already-established informal and formal complaint processes as applied to Title II carriers.[160] For example, as AT&T acknowledges, our rules currently require written responses to informal complaints.[161] Although Verizon proposes mandating that parties certify that their records are complete and accurate, our rules already require parties to respond to discovery requests fully in writing under oath or affirmation.[162] Likewise, Verizon's proposal that discovery be subjected to an "independent evaluation"[163] is currently required by section 208(a) of the Act, which confirms that it is "the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper."[164] Thus, we find that Verizon's proposal is already substantially captured by our current enforcement rules and processes.[165] For these reasons, we reject proposals that we create a special process to resolve access-stimulation complaints.[166]

51. *No Direct Connection Mandate or Section 61.26(f) Clarification*. We next reject Lumen's proposal that we "should mandate that VoIP provider applicants for direct access [to numbers] certify that their CLEC partners will allow IXCs to have direct connection in terminating switched access routing."[167] Aureon opposes this proposal, noting that it is outside the scope of this proceeding,[168] and that the Commission has already considered and rejected Lumen's proposal.[169] It also explains that Lumen's

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[157] Verizon Sept. 6, 2022 Comments at 21.

[158] *Id.*

[159] *Id.*

[160] *E.g.*, 47 CFR §§ 1.716, 1.721, 1.722, 1.726, 1.728.

[161] 47 CFR § 1.717; AT&T Oct. 3, 2022 Reply at 2 n.6.

[162] 47 CFR § 1.730; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17889, para. 699.

[163] Verizon Sept. 6, 2022 Comments at 21.

[164] 47 U.S.C. § 208(a).

[165] Not only would there be no appreciable value served by creating the proposed "hybrid" complaint procedure specifically designed for access stimulation oversight, but it also would set an undesirable precedent. Parties could be emboldened to claim that other regulatory issues under the Commission's authority should have their own unique enforcement processes, which would impose an onerous undertaking for the Commission when, in fact, our current complaint procedures are sufficient to adjudicate the issues. Finally, Verizon does not address how such a hybrid informal-formal complaint process would apply to non-Title II providers such as IPES Providers.

[166] *See, e.g.*, USTelecom Apr. 12, 2023 *Ex Parte* Letter at 2-3 (requesting additions to draft rule 61.3(bbb)(5) to provide how an IXC may support a complaint of access stimulation). We do not make USTelecom's requested additions to our rule language because we have decided not to provide an access-stimulation specific complaint process but the types of information USTelecom suggests may be useful to support a complaint filing in the appropriate forum.

[167] Lumen Sept. 6, 2022 Comments at 7. Lumen has previously raised this proposal in another proceeding, WC Docket No. 13-97. Lumen Comments, WC Docket No. 13-97 et. al, at 7-9 (rec. Oct. 14, 2021) (Lumen Oct. 14, 2021 Numbering Policies Comments). Subsequently, Lumen submitted an *ex parte* letter that included these comments as an attachment to incorporate the comments in this proceeding, WC Docket No. 18-155. Letter from Timothy M. Boucher, Assistant General Counsel, Lumen, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, Attach. at 23 (June 15, 2022) (Lumen June 15, 2022 *Ex Parte* Letter).

[168] Aureon Oct. 3, 2022 Reply at 4.

proposal would be ineffective, and cautions that direct connections would result in access stimulators moving their traffic, leading to stranded costs for LECs and IXCs.[170]

52. We also reject Lumen's request that we clarify the applicability of section 61.26(f) of our rules, which addresses the rates a competitive LEC may charge for switched exchange access services,[171] because, according to Lumen, there is a "lack of uniformity in the industry when it comes to the billing capability afforded" by that rule.[172] Lumen suggests that this issue is directly within the scope of the *Further Notice*.[173] AT&T argues that such a clarification would be contrary to the Commission's goal of transitioning to bill-and-keep by expanding "situations in which access charges could be billed."[174]

53. Lumen's proposals are outside the scope of this proceeding, and we therefore decline to consider them here.[175] We emphasize, however, that the Commission has previously rejected suggestions to mandate direct connections, and note that Lumen has not provided good reason for us to reconsider that decision.[176] Likewise, any requirement for direct connection would be counter to the Commission's long-standing policy that parties determine their best means of interconnection.[177] Furthermore, we disagree with Lumen's suggestion that section 61.26(f) of our rules is unclear or needs modification. Even if we agreed with Lumen, we find that its arguments are better addressed in our existing proceeding on direct access to numbers, not in the context of addressing the access stimulation of terminating switched tandem

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[169] *Id.* at 5 (citing *Access Arbitrage Order*, 34 FCC Rcd at 9051-52, paras. 40-41, 62).

[170] *Id*. at 6. Aureon also claims that "Lumen determined that because traffic stimulators can shift traffic with ease, an IXC may find it impossible to avoid high access charges because the stimulators could simply move their activities to a different area where the IXC does not have direct connections." *Id.* (citing CenturyLink (now Lumen) Comments, WC Docket No. 18-155, at 2 (filed July 20, 2018) (responding to the *Access Arbitrage Notice*)).

[171] 47 CFR § 61.26(f).

[172] Lumen Sept. 6, 2022 Comments at 8; *see also* Lumen Oct. 14, 2021 Numbering Policies Comments at 9; Letter from Timothy M. Boucher, Assistant General Counsel, Lumen, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-97, at 3-4 (May 20, 2022). Both filings were originally submitted in WC Docket No. 13-97 and subsequently refiled and incorporated in this proceeding. Lumen June 15, 2022 *Ex Parte* Letter Attach. at 2, 23.

[173] Lumen Sept. 6, 2022 Comments at 8.

[174] AT&T Oct. 3, 2022 Reply at 3-4.

[175] *See* 5 U.S.C. § 553; Aureon Oct. 3, 2022 Reply at 4; AT&T Oct. 3, 2022 Reply at 3-4.

[176] *Access Arbitrage Order*, 34 FCC Rcd at 9051, 9062-63, paras. 40, 62 (rejecting, over concerns of stranded investment, the proposal in the *Access Arbitrage Notice* to allow access-stimulating LECs to offer direct connections to IXCs to avoid financial responsibility for terminating tandem switching and transport access charges).

[177] The Commission has long been committed to efficient interconnection. In the *USF/ICC Transformation Order*, the Commission sought to ensure that the entities choosing the network and traffic path would have the appropriate incentives to make efficient decisions, and recognized that intercarrier compensation rates above cost enable arbitrage. *USF/ICC Transformation Order*, 26 FCC Rcd at 17875, 17905-06, paras. 663, 742. In considering telecommunications carriers' interconnection obligations, the Commission has specified that carriers should be permitted to employ direct or indirect interconnection to satisfy their obligations under section 251(a)(1) of the Act "based upon their most efficient technical and economic choices." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, 15991, para. 997 (1996). Similarly, in the case of LEC-CMRS interconnection under section 332 of the Act, the Commission has anticipated that the type of interconnection can depend upon "the best engineering or cost effective approach," and thus, for example, "[t]he particular point of interconnection of a given cellular system will be dependent upon the design of the system and other factors which may vary from case to case." *An Inquiry into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*; *and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, CC Docket No. 79-318, Report and Order, 86 F.C.C.2d 469, 496, para. 55 (1981).

and transport charges, and we note that Lumen has already made similar arguments in the Direct Access to Numbers proceeding.[178]

54. HD Carrier suggests that we "provide an 'access-stimulating' IPES the option to offer to connect directly in IP on a bill-and-keep basis to the originating service provider to avoid the shifting of financial responsibility that may otherwise occur under [the Commission's Access Stimulation Rules] if the IPES exceeded certain traffic ratios."[179] Wide Voice agrees that we have "other tools at [our] disposal, such as IP reciprocal, bill and keep interconnection arrangements to stomp out the so-called abuse of access charges."[180] As discussed here, the Commission has not, and we do not now, mandate how entities interconnect for the exchange of traffic—in IP or TDM. If parties wish to enter into contractual agreements for the exchange of traffic using IP technology at mutually beneficial terms, perhaps bill-and-keep, they have been, and remain, free to do that; i.e., they have the "option" to do so. No action we take in this Order affects that ability. Consistent with precedent, we expressly limit the requirements of IPES Providers, adopted in this Order, to measures targeted to address the arbitrage of terminating tandem switching and transport switched access charges.[181]

55. *We Do Not Require IPES Providers with Direct Access to Numbers to Certify They Will Not Use Numbering Resources to Evade or Violate Our Access Stimulation Rules*. We reject proposals that we require IPES Providers with direct access to numbers to certify annually that they will not use numbering resources to evade the Access Stimulation Rules.[182] We have already sought comment on this issue in our Direct Access to Numbers proceeding.[183] The Direct Access to Numbers docket is a separate proceeding with a separate record. To make a decision on this proposal here would introduce confusion and unnecessarily complicate the Direct Access to Numbers proceeding. Additionally, we received a more comprehensive record on the certification proposal in the Direct Access to Numbers proceeding where related questions were asked and discussed.[184] We therefore decline to adopt an annual certification requirement here and leave any final decision on that issue for the Direct Access to Numbers proceeding.

56. *Proposals for Which the Commission Has Already Provided a Decision*. In its comments, Inteliquent describes an arbitrage practice whereby calls routed to a LEC or an IPES Provider

[178] *Numbering Policies for Modern Communications et al.*, WC Docket No. 13-97 et al.; Lumen Oct. 14, 2021 Numbering Policies Comments, at 9-11; Lumen Reply, WC Docket No. 13-97 et al., at 8 (rec. Nov. 15, 2021).

[179] HD Carrier Jan. 9, 2023 *Ex Parte* Letter at 1; HD Carrier Oct. 3, 2022 Reply at 2-5. The company also advocates that we adopt a "requirement for IP providers to offer an IP, bill-and-keep option." HD Carrier Jan. 9, 2023 *Ex Parte* Letter at 2-3; *see also* HD Carrier Apr. 13, 2023 *Ex Parte* Letter at 3 (speculating about why IXCs may not accept offers of direct IP interconnection at bill-and-keep).

[180] Wide Voice Jan. 10, 2023 *Ex Parte* Letter at 1-2.

[181] *See infra* Section III.D – Legal Authority; *Access Arbitrage Order*, 34 FCC Rcd at 9039, 9052, paras. 11, 42.

[182] Verizon Sept. 6, 2022 Comments at 19 (proposing that "IPES providers with direct access should acknowledge and affirmatively agree to observe the Commission's access stimulation rules, including the rules the Commission is considering adopting in this proceeding," and suggesting that IPES Providers that have previously obtained direct access to numbers be required to make the same certification); *see also* AT&T Oct. 3, 2022 Reply at 3.

[183] *Numbering Policies for Modern Communications et al*., WC Docket No. 13-97 et al., Further Notice of Proposed Rulemaking, 36 FCC Rcd 12907, 12915-16, para. 17 (2021) (seeking comment on whether to adopt changes to the VoIP direct access rules to require that interconnected VoIP providers receiving direct access to numbers certify that their numbering resources will not be used to evade our Access Stimulation Rules). In that proceeding, the Commission is considering possible changes to the rules governing VoIP providers' direct access to numbers and is not considering changes to the Access Stimulation Rules.

[184] In the *Further Notice* we asked, for example, whether we should condition the ability of an IPES Provider to obtain direct access to numbers on an agreement by the provider to voluntarily subject itself to our Access Stimulation Rules but did not receive much comment in response. *Further Notice* at 14, para. 34.

are blocked or otherwise rejected when transmitted via a regulated path to the high-volume calling service provider served by the terminating LEC or IPES Provider.[185] Inteliquent claims that when the calls are rerouted through unregulated providers, they are completed.[186] Inteliquent asks that we address this issue by clarifying that "traffic will be attributed to the [traffic ratios of the] terminating IPES Provider or LEC whenever an IXC attempts to deliver that traffic over the path specified by the IPES Provider/LEC in the LERG, but the call is rejected over that path," so the IPES Provider/LEC is not able "to escape designation as an access stimulating provider" by diverting some traffic over an unregulated path.[187] We decline to act as Inteliquent requests because traffic traversing the non-regulated path is outside the scope of our Access Stimulation Rules, which are tied to tariffed services. Also, the Commission has already explicitly explained that, in the case of traffic destined for an access-stimulating LEC, an IXC or Intermediate Access Provider may consider its call completion duties satisfied once it has delivered the call to the tandem.[188] For similar reasons, such a limitation on the scope of call completion duties would be reasonable to apply to traffic destined for an access-stimulating IPES Provider in the calling scenario Inteliquent describes.[189]

57. Teliax questions whether "[a] ratio alone could prove to be overly inclusive by encompassing LECs that had realized access traffic growth through general economic development—as well as changes in technology and markets."[190] On the other hand, AT&T and Verizon express concerns that because the traffic ratio triggers are bright-line rules, then "traditionally those 'triggers are necessarily under-inclusive.'"[191] We have seen no evidence in the industry that our ratios are not working as intended, nor, as discussed, is there evidence in the record to support establishing different traffic ratios to apply to IPES Providers than those in the existing rules.[192] Indeed, the Commission purposely decided

[185] Inteliquent Sept. 6, 2022 Comments at 6-9 ("[A]ccess stimulation and call blocking have come together to form a newer method of arbitrage in which high-volume calling platforms and/or their LEC partners resort to intentionally rejecting the very high traffic that they have stimulated when that traffic is delivered over the regulated path (i.e., via a tandem). This practice causes that traffic to be route advanced to an intermediate provider owned by the calling platform.").

[186] *Id.* at 7 ("When a carrier such as Inteliquent hands off the call to the [centralized equal access provider (CEA)], this traffic is intentionally rejected by the calling platform connected to the LEC end-office. When the same call is then re-routed to an IXC or other provider that has a direct route into the calling platform's affiliated intermediate provider, the call completes successfully. Accordingly, the call completely bypasses the CEA tandem and the LEC end-office, and the calling platform's affiliated network provider charges a fee to the IXC for terminating the call over its network. The terminating LEC then does not include the rejected calls when calculating its traffic ratios, which can enable the LEC to evade triggering the rules that apply when the ratios are exceeded.").

[187] *Id.* at 6-8 (requesting that the Commission clarify via a declaratory ruling "that traffic will be attributed to the terminating IPES Provider or LEC whenever an IXC attempts to deliver that traffic over the path specified by the IPES Provider/LEC in the LERG, but the call is rejected over that path" and that IPES Providers which exceed the access-stimulation ratios "should be forced to pay the IXC's cost of route-advancing the traffic.").

[188] *Access Arbitrage Order*, 34 FCC Rcd at 9049, para. 35 (explaining that, "in the case of traffic destined for an access-stimulating LEC, when the access-stimulating LEC is designating the route to reach its end office and paying for the tandem switching and transport, the IXC or intermediate access provider may consider its call completion duties satisfied once it has delivered the call to the tandem designated by the access-stimulating LEC, either in the LERG or in a contract").

[189] Inteliquent Sept. 6, 2022 Comments at 7-8 (including a diagram of call paths).

[190] Teliax Nov. 25, 2022 *Ex Parte* Letter Attach. at 7, 13. To the extent that Teliax is seeking to relitigate the traffic ratios in the current Access Stimulation Rules, this is an untimely effort to reconsider settled law. The *Access Arbitrage Order* was adopted in 2019 and affirmed on appeal by the D.C. Circuit in 2021. *Access Arbitrage Order*; *Great Lakes*. If Teliax is commenting solely on the traffic ratios as specifically applied to IPES Providers, we respond here.

[191] AT&T Jan. 31, 2023 *Ex Parte* Letter at 2 (citing Verizon Sept. 6, 2022 Comments at 12).

[192] *See supra* para. 15 (We received no comments opposing the use of the current traffic ratios.).

to err on the side of caution and adopted conservative triggers in an effort to avoid the chance that a company might be wrongly identified as engaging in access-stimulation activity.[193] Further, as is already the case with LECs, if an IPES Provider, "not engaged in arbitrage, finds that its traffic will meet or exceed a prescribed terminating-to-originating traffic ratio," the provider may request a waiver and demonstrate special circumstances that warrant a deviation from our rules.[194] The traffic ratios in section 61.3(bbb) of our rules are the bright-line tests the Commission has established for determining when an entity is engaged in access stimulation and for enforcing our rules to prevent it. We do not expect our rules to capture any entities that are not actively engaged in access stimulation. But we do expect that the rules adopted today will capture additional entities engaged in access stimulation, strengthen our existing rules, close perceived loopholes, and enhance the overall enforceability of our Access Stimulation Rules.

C. Adopting Additional Rule Revisions

1. Definition of "IPES Provider"

58. To implement the rules adopted in this Order, we add a definition of "IPES Provider" in section 61.3(eee) that applies only in the context of the Access Stimulation Rules.[195] In the *Further Notice*,[196] we proposed a definition of "IPES Provider" based on the existing definition of "Interconnected VoIP service" in our rules,[197] but we make changes to that proposed definition, based on comments we received in the record.[198]

59. First, we remove the proposed requirement that an IPES Provider support real-time, "two-way voice" communications.[199] We sought comment on USTelecom's proposal to remove "two-way voice" from the definition of "IPES Provider" in the *Further Notice*, and several commenters supported this modification, arguing that the definition should be broader.[200] For example, Verizon

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[193] *Access Arbitrage Order*, 34 FCC Rcd at 9055, para. 47 (adopting a new traffic ratio test of 6:1 without a revenue sharing agreement in "an effort to be conservative and not overbroad," thereby helping to avoid the possibility of "costly disputes between carriers and confusion in the market"); *see also* Teliax Nov. 25, 2022 *Ex Parte* Letter Attach. at 7.

[194] *Access Arbitrage Order*, 34 FCC Rcd at 9058-59, para. 53; 47 CFR § 1.3 (waivers may be granted for good cause). The Commission has granted limited waivers related to increases in traffic due to remote work and schooling during the COVID-19 pandemic. *E.g.*, *Petition of Onvoy d/b/a Inteliquent, Inc., for Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission's Rules*, WC Docket No. 18-155, Order, 35 FCC Rcd 14570 (WCB 2020).

[195] *See infra* Appx. A (47 CFR § 61.3(eee)).

[196] *Further Notice* at 15, para. 38 & Appx. A (proposed 47 CFR § 61.3(eee)).

[197] 47 CFR § 9.3.

[198] In the *Further Notice*, we asked if the service providers that we are now referring to as "IPES Providers," should be referred to as "interconnected VoIP" providers. *Further Notice* at 16, para. 40. No commenter argued in favor of using the "interconnected VoIP" provider nomenclature instead of creating a specific definition of "IPES Provider." Indeed, Bandwidth specifically asked us to refer just to "IPES Providers" and not to refer to "VoIP" and "IPES" Providers interchangeably. Bandwidth Sept. 6, 2022 Comments at 12. Inteliquent suggested that we add a definition of both "IPES Provider" and "Interconnected VoIP Service" to the Access Stimulation Rules. Inteliquent Oct. 3, 2022 Reply at 3-4.

[199] *Further Notice* at 15-16, paras. 38-39 & Appx. A (proposed 47 CFR § 61.3(eee)); 47 CFR § 9.3 (defining "Interconnected VoIP service" as one that "[e]nables real-time, two-way voice communications").

[200] *Further Notice* at 16, para. 39 (citing Letter from Diana Eisner, VP, Policy & Advocacy, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (filed June 30, 2022); USTelecom Sept. 6, 2022 Comments at 8-9; Verizon Sept. 6, 2022 Comments at 16 & Appx. A (proposing to delete "two-way voice" from the proposed definition of "IPES Provider"); Inteliquent Oct. 3, 2022 Reply at 3 (agreeing with Verizon and other commenters that we should not limit the definition of "IPES Provider" to "entities providing a two-way VoIP service"); AT&T (continued….)

discusses a "call-to-listen" service, whereby a user can make a long-distance telephone call to listen to a radio station.[201] Verizon explains that a "call-to-listen" service uses only a simplex channel—"one that sends voice communications in one direction (to the listener)."[202] Verizon argues that such services should be covered by our Access Stimulation Rules, but is concerned that they may not be considered "two-way voice communications."[203] We do not need to determine whether a "call-to-listen" service, or other similar services mentioned in the comments, are two-way services, or one-way services.[204] We agree, however, that we should not limit the definition of "IPES Provider" to encompass only entities that provide two-way voice services. Instead, we eliminate the phrase "two-way voice" from our final rule to avoid any ambiguity and close what could have been a potential loophole in our definition of "IPES Provider."[205] No commenter objected to the removal of "two-way voice."

60. Second, we eliminate language in the proposed "IPES Provider" definition referring to "real-time" communications.[206] In the *Further Notice*, we asked whether the proposed definition of "IPES Provider" would "capture all providers that could be used to try to circumvent the Access Stimulation Rules."[207] One commenter suggested the deletion of the requirement for the provision of "real-time communications."[208] We are concerned that arbitrageurs could develop services that do not provide "real time" communications in an effort to evade our Access Stimulation Rules.[209] Like our decision to delete the phrase "two-way voice" from the definition of "IPES Provider," the elimination of the term "real-time" will also help advance our goal of eliminating arbitrage of our access charge regime. Furthermore, similar to our decision to eliminate the "two-way voice" phrase, we need not determine whether a service provides "real-time" communications. By deleting the term "real-time" from the definition of "IPES Provider," we eliminate another potential loophole in the proposed rules by capturing more providers that may try to circumvent the Access Stimulation Rules. No commenter opposed the elimination of the term "real-time." With this change, and the above change to eliminate the phrase "two-way voice," the phrase "enables real-time two-way voice communications" in the proposed definition of "IPES Provider" is changed to simply "enables communications" in the final definition we adopt in this Order.[210]

(Continued from previous page)
Oct. 3, 2022 Reply at 4 (supporting USTelecom's position); *see* Bandwidth Sept. 6, 2022 Comments at 12 (noting that some "one-way service providers engage in access stimulation").

[201] Verizon Sept. 6, 2022 Comments at 16.

[202] *Id.* at 2, 16.

[203] *Id.*

[204] *E.g.*, USTelecom Sept. 6, 2022 Comments at 8-9 (describing a foreign radio calling service that only terminates calls and is listen-only).

[205] USTelecom Sept. 6, 2022 Comments at 8 (explaining that the deletion of "two-way voice" would close a loophole in the proposed definition that is "reflected in the arbitrage schemes that USTelecom members are already seeing today"); Inteliquent Oct. 3, 2022 Reply at 3 (agreeing with Verizon that "applying the Access Stimulation Rules to one-way service will ensure that parties cannot skirt the rules by providing only inbound or outbound VoIP service").

[206] *Further Notice* at 15, para. 38 & Appx. A (proposed 47 CFR § 61.3(eee)).

[207] *Id.* at 16, para. 40.

[208] Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 2-3 (proposing that we eliminate the requirement that an IPES Provider "[e]nable[] real-time communications"); Bandwidth Dec. 23, 2022 *Ex Parte* Letter Appx. B at 5 (same).

[209] For example, if we were to leave the phrase "real-time" in the "IPES Provider" definition, an arbitrageur might promote a service that allows callers to dial in and to listen to recordings of people reading books. Callers would not engage in conversation with another live person, but would simply listen to a recording, thereby stimulating terminating access charges for a service that, arguably, does not offer "real-time" communication.

[210] *See infra* Appx. A (47 CFR § 61.3(eee)).

61. Third, we define "IPES Provider" to include those entities that receive terminating traffic, regardless of whether they also originate traffic.[211] In the proposed definition of "IPES Provider," the requirement to originate traffic was given in the following text: "a provider offering a service that . . . permits users . . . to terminate calls to the public switched telephone network or . . . terminate to an Internet Protocol service or an Internet Protocol application."[212] Commenters objected to the proposed definitional language arguing that the inclusion of such language could create potential loopholes in our Access Stimulation Rules. For example, commenters asserted that if we required an IPES Provider to both originate and terminate traffic, an arbitrageur could separate terminating and originating traffic, and provide just terminating services and claim that it was not subject to the Access Stimulation Rules because it did not also originate traffic.[213] We agree. Accordingly, we eliminate the text in the proposed definition of "IPES Provider" in our Access Stimulation Rules that would have applied those rules only to providers that transmit both originating and terminating traffic; no commenters requested that we require IPES Providers to originate traffic. Additionally, because our definition of "IPES Provider" applies to section 51.914 of our rules, we do not adopt proposed section 51.903(q).[214] The sole purpose of proposed section 51.903(q) was to define "IPES Provider" for section 51.914, but that definition is not needed because section 51.914 now references the definition of IPES Provider in section 61.3(eee).[215] No commenters addressed proposed section 51.903(q).

62. Finally, both Bandwidth and Inteliquent suggest that the definition of "IPES Provider" should include a requirement that the IPES Provider acquire the telephone numbers it uses directly from a numbering administrator.[216] Bandwidth argues that this would provide a clear definition and "capture more potential access stimulators in the marketplace."[217] Alternatively, Bandwidth proposes that we modify either the Access Stimulation definition or the IPES Provider definition in our rules to account for possible "wholesale IPES Providers."[218] We find that Bandwidth's concerns are better addressed by our rule governing the calculation of traffic ratios, rather than in the definition of "IPES Provider." In our new rule governing the calculation of traffic ratios for purposes of our Access Stimulation Rules, we require LECs and IPES Providers to include in their ratio calculations all traffic going through their end

[211] *See infra* Appx. A (47 CFR § 61.3(eee)).

[212] *Further Notice* at 15, para. 38 & Appx. A (proposed 47 CFR § 61.3(eee)).

[213] Verizon Sept. 6, 2022 Comments at 17 (suggesting that "some IPES providers 'offer[] purportedly separate "outbound-only" and "inbound-only" calling services'"); *see also* USTelecom Sept. 6, 2022 Comments at 9 ("[A]n IPES provider that hosts a foreign radio calling service could, by the very nature of the service, only terminate calls—it will not originate them; nor will it provide two-way traffic—the service is listen-only. Without modification, an IPES provider hosting these services could claim that it is beyond the scope of the Commission's rules because the service is not two-way and the provider does not originate traffic.").

[214] *Further Notice* at Appx. A (proposed 47 CFR § 51.903(q)).

[215] *Id.*; *see infra* Appx. A (47 CFR §§ 51.914, 61.3(eee)).

[216] Bandwidth Sept. 6, 2022 Comments at 11 ("The Commission should define IPES Providers for purposes of the Rules to include all entities that have direct access to numbers tied to a company code ('IPES OCN') as assigned by NECA."); Inteliquent Oct. 3, 2022 Reply at 2-3 (Inteliquent proposes the following rule language: "IPES Provider means . . . a provider of an interconnected VoIP service using numbers that the provider has obtained directly via the process under 47 C.F.R. § 52.15(g)(3).").

[217] Bandwidth Sept. 6, 2022 Comments at 11.

[218] Bandwidth Apr. 13, 2023 *Ex Parte* Letter at 3-4. Bandwidth raises a concern of another perceived loophole that may occur when a "wholesale IPES Provider" is inserted in the call flow. We cannot anticipate every action providers may take in an effort to continue to engage in access arbitrage but, as detailed in the *AT&T v. Wide Voice Enforcement Order*, any attempt to circumvent our Access Stimulation Rules may be an unjust and unreasonable practice under section 201(b) of the Act. *See generally AT&T v. Wide Voice Enforcement Order*; *Wide Voice v. FCC*.

office or equivalent to and from any telephone number associated with an Operating Company Number issued to that LEC or IPES Provider (that is, numbers directly assigned to that LEC or IPES Provider).[219]

2. Definition of "Intermediate Access Provider"

63. As proposed in the *Further Notice*,[220] we amend the definition of "Intermediate Access Provider" in section 61.3(ccc) of our rules to include IPES Providers as entities that may receive traffic from an Intermediate Access Provider, and to specify the type of service being provided by the Intermediate Access Provider.[221] One commenter supported, and no commenters opposed, the proposed addition of IPES Providers to the definition of "Intermediate Access Provider."[222] As discussed below, we incorporate minor edits to the definition that we proposed in the *Further Notice*.[223]

64. We make a total of four changes to our definition of "Intermediate Access Provider" in section 61.3(ccc). First, as proposed in the *Further Notice*, we amend section 61.3(ccc) to specify two additional types of entities that may receive traffic from the final IXC in the call path.[224] The amendment we adopt adds the phrase "IPES Provider" to section 61.3(ccc) in two circumstances: (a) where a LEC delivers traffic to an IPES Provider engaged in access stimulation; and (b) where an Intermediate Access Provider delivers calls directly to an IPES Provider engaged in access stimulation.[225] Second, as proposed in the *Further Notice* (with one exception), we modify the phrase "any entity that carries or processes traffic at any point between the final Interexchange Carrier . . ." in current section 61.3(ccc)[226] to specify the access service being provided, as follows: "any entity that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final Interexchange Carrier . . . ."[227] This change makes section 61.3(ccc) clearer and more consistent with our other Access Stimulation Rules, such as revised section 69.4(l).[228]

65. Third, we amend the list of sections to which the revised definition of "Intermediate Access Provider" applies.[229] Currently, the definition begins with: "[t]he term means, for purposes of this

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[219] *Supra* paras. 28-36 (how to calculate traffic); *infra* Appx. A (47 CFR § 61.3(bbb)(5)) (describing how to calculate interstate terminating-to-originating traffic ratios). *See generally Further Notice* at 5-6, para. 9 (citing USTelecom Sept. 22, 2020 *Ex Parte* Letter at 2 (describing claims that the Access Stimulation Rules do not apply to traffic terminating at "IPES numbers")).

[220] *Further Notice* at 16-17, paras. 41-42 & Appx. A (proposed 47 CFR § 61.3(ccc)).

[221] *See infra* Appx. A (47 CFR § 61.3(ccc)).

[222] Bandwidth Sept. 6, 2022 Comments at 12-13 (supporting the proposed addition of IPES Providers in the definition of "Intermediate Access Provider," and requesting an expansion of the definition to include originating traffic); Bandwidth Dec. 23, 2022 *Ex Parte* Letter Appx. B at 5 (suggesting language for a definition of "Intermediate Access Provider" that would include originating traffic).

[223] *Further Notice* at Appx. A (proposed 47 CFR § 61.3(ccc)).

[224] *See infra* Appx. A (47 CFR § 61.3(ccc)).

[225] *See infra* Appx. A (47 CFR § 61.3(ccc)).

[226] 47 CFR § 61.3(ccc).

[227] *See infra* Appx. A (47 CFR § 61.3(ccc)). We note that the draft rule language in proposed section 61.3(ccc) in Appendix A of the *Further Notice* mistakenly referred to "terminating switched access tandem switching *and* terminating switched access tandem transport services." *Further Notice* at Appx. A (proposed 47 CFR § 61.3(ccc)). For consistency in the Access Stimulation Rules, we change the "and" in the phrase to "or." *E.g.*, 47 CFR § 51.914(a)(1) (using "or"); *see Further Notice* at 17-18, para. 45. The change also broadens the definition to help capture all providers that could be used to try to circumvent our rules, and is consistent with the use of "or" in the existing definition. 47 CFR § 61.3(ccc).

[228] *See infra* Appx. A (47 CFR § 69.4(l)).

[229] *See infra* Appx. A (47 CFR § 61.3(ccc)).

part and §§ 69.3(e)(12)(iv) and 69.5(b) of this chapter."[230] We now add sections 51.914 and 69.4(l) to this list, because they also reference "Intermediate Access Provider."[231] We remove the reference to section 69.3(e)(12)(iv), because that section does not reference "Intermediate Access Provider."[232] Thus, the revised definition of "Intermediate Access Provider" begins with "[t]he term means, for purposes of §§ 51.914, 69.4(l), and 69.5(b) of this chapter."[233] Although we did not specifically propose this amendment in the *Further Notice*, we did seek comment on conforming edits and non-substantive edits to our rules.[234] These edits to section 61.3(ccc) are conforming or non-substantive edits made to ensure consistency in our Access Stimulation Rules.[235] Finally, we change the reference to "Intermediate Access Provider" in the last clause of section 61.3(ccc) in the proposed definition in the *Further Notice*[236] to "the entity," so that the definition is not self-referential.[237] We consider this edit also to be a conforming or non-substantive edit.[238]

66. Bandwidth suggests that we go further and broaden the definition of "Intermediate Access Provider" to include the possibility that there may be more than one Intermediate Access Provider in a call flow, and to prohibit all Intermediate Access Providers in the call flow from imposing any tariffed access charges when the LEC (or, with the other rule revisions adopted today, the IPES Provider) is engaged in access stimulation.[239] We find that we do not need to broaden the definition as Bandwidth suggests, but we take this opportunity to emphasize that the definition of "Intermediate Access Provider" in section 61.3(ccc) of our rules includes *any entity* "that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final Interexchange Carrier in a call path" and the LEC or IPES Provider, as discussed above.[240] The reference to "any entity" was in section 61.3(ccc) prior to the revisions adopted today.[241] Section 61.3(ccc), read in combination with sections 51.914, 69.4(1), and 69.5(b), prohibits IXCs from being charged for terminating tandem switching or tandem transport charges provided by *any entity* that meets the definition of "Intermediate

[230] 47 CFR § 61.3(ccc).

[231] *Id.* §§ 51.914, 69.4(l).

[232] *Id.* § 69.3(e)(12)(iv).

[233] *See infra* Appx. A (47 CFR § 61.3(ccc)).

[234] *See Further Notice* at 17-18, para. 45.

[235] *See id.* In addition, the Commission gave notice that it proposed to modify section 61.3(ccc). *Further Notice* at 16-17, paras. 41-42 & nn.88, 90 & Appx. A (proposed 47 CFR § 61.3(ccc)).

[236] *Further Notice* at Appx A (proposed 47 CFR § 61.3(ccc)).

[237] *See infra* Appx. A (47 CFR § 61.3(ccc)). We also delete the reference to § 61.3 in section 61.3(ccc)(1), as proposed in the *Further Notice*. *Further Notice* at Appx. A (proposed 47 CFR § 61.3(ccc)(1)); *infra* Appx. A (47 CFR § 61.3(ccc)(1)). This deletion makes it clear that the Access Stimulation definition is contained in § 61.3(bbb). No commenters opposed this proposal.

[238] *See Further Notice* at 17-18, para. 45.

[239] Bandwidth Sept. 6, 2022 Comments at 12-13; Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 4 ("Bandwidth explained that access stimulation rules should prevent multiple (double, triple or more) tandem charges for calls to/from access stimulators. . . . If the definition of an Intermediate Access Provider is not broad enough to require the access stimulator to pay for all access charges assessed on the call path between the IXC and the stimulating party (LEC or IPES Provider), there will be a financial incentive to stimulate traffic.").

[240] *See infra* Appx. A (47 CFR § 61.3(ccc)).

[241] "*Intermediate Access Provider.* The term means, for purposes of this part and §§ 69.3(e)(12)(iv) and 69.5(b) of this chapter, any entity that carries or processes traffic at any point between the final Interexchange Carrier in a call path and a local exchange carrier engaged in Access Stimulation, as defined in paragraph (bbb) of this section." 47 CFR § 61.3(ccc) (2020).

Access Provider" in the call flow. The definition is broad enough to include more than one entity as an Intermediate Access Provider in a call flow. Thus, the rule addresses the concerns raised by Bandwidth.

67. Bandwidth also suggests not including references to terminating switched access tandem switching or terminating switched access tandem transport services in the proposed definition of "Intermediate Access Provider," and elsewhere in our Access Stimulation Rules, and replacing it with the more general term "tariffed access services."[242] Bandwidth argues that these changes are necessary to ensure that Intermediate Access Providers do not improperly impose additional tariffed charges to make up for access charge revenue they may lose as a result of our Access Stimulation Rules.[243] As described above, section 69.111 of our rules, which defines "tandem-switched transport and termination charge," specifies the four rate elements or services that will become the financial responsibility of an access-stimulating LEC or IPES Provider and addresses Bandwidth's concerns.[244] Accordingly, we find no reason to make the additional rule changes Bandwidth proposes to address this issue.

68. Bandwidth also seems to suggest that we should expand the definition of "Intermediate Access Provider" to include Intermediate Access Providers on the originating side of the telephone call by adding the phrase "or the first Interexchange carrier in an originating call path" to the "Intermediate Access Provider" definition.[245] We decline to consider the changes Bandwidth proposes, as they are outside the scope of this proceeding. This proceeding is focused on addressing arbitrage of terminating access charges.[246] The service providers and charges involved in the arbitrage of originating access have been addressed in a separate Commission proceeding.[247]

69. Finally, we reject Bandwidth's suggestion that we eliminate proposed section 61.3(ccc)(2) from the "Intermediate Access Provider" definition.[248] Bandwidth provides no explanation for this change. The call path provided in the rule that Bandwidth seeks to remove corresponds to many situations described in the record where a LEC is located in the call path between an Intermediate Access Provider and an access-stimulating IPES Provider.[249] We retain such call paths in the Intermediate Access Provider definition to ensure that the definition applies to entities in such call paths.

[242] Bandwidth Sept. 6, 2022 Comments at 13; Bandwidth Dec. 23, 2022 *Ex Parte* Letter Appx. B at 5 (proposed revisions to section 61.3(ccc)).

[243] Bandwidth Sept. 6, 2022 Comments at 16-17.

[244] *Supra* para. 23 (discussing section 69.111); *see also* 47 CFR § 69.111 (definition of "Tandem-switched transport and termination charge").

[245] Bandwidth Sept. 6, 2022 Comments at 13; *see* Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 4 (suggesting a revision to encompass "tandem charges for calls to/from access stimulators"); Bandwidth Dec. 23, 2022 *Ex Parte* Letter Appx. B at 5 (proposing rule revisions to delete "terminating").

[246] *See, e.g.*, *Access Arbitrage Order*, 34 FCC Rcd at 9039, para. 11 ("At issue in this proceeding are arbitrage schemes that take advantage of . . . access charges . . . for . . . terminating tandem switching and transport services . . . .").

[247] *8YY Access Charge Reform Order*, 35 FCC Rcd at 11594-95, paras. 1-4.

[248] Bandwidth Dec. 23, 2022 *Ex Parte* Letter Appx. B at 5 (proposed revisions to section 61.3(ccc) which eliminate proposed section 61.3(ccc)(2)).

[249] *Further Notice* at 6, Diagram 1; Aureon Sept. 6, 2022 Comments at 8; Inteliquent Sept. 6, 2022 Comments at 5; HD Carrier Oct. 3, 2022 Reply at 5; Inteliquent Dec. 2, 2022 *Ex Parte* Letter at 4; Bandwidth Dec. 23, 2022 *Ex Parte* Letter Attach A.

3. Calculating Traffic Ratios at the "End Office or Equivalent" and the Requirement That an Access Stimulator Serve End Users

70. *End Office or Equivalent.* As proposed in the *Further Notice*,[250] we amend many of our Access Stimulation Rules to apply to traffic ratios counted at the "end office or equivalent."[251] As discussed above, we also add a definition of "End Office Equivalent" to ensure that our Access Stimulation Rules are also specifically applicable to IPES Providers.[252]

71. Some commenters would prefer that we remove the phrase "end office or equivalent" wherever that phrase currently appears in our Access Stimulation Rules.[253] These commenters assert that the phrase "end office or equivalent" complicates the calculation of traffic ratios.[254] None of these commenters provide any examples or explanations of how our amendments would complicate the relevant calculations, nor do they explain what alternative location should be used for purposes of calculating traffic ratios, if not at each "end office or equivalent." Indeed, the commenters do not explain where the calculations are made now.[255]

72. Commenters also assert that the phrase "end office or equivalent" could create new potential loopholes in our rules. AT&T, USTelecom, and NCTA posit that arbitrageurs could shift traffic between end offices to keep from meeting or exceeding the traffic ratio triggers in the Access Stimulation Rules.[256] But these commenters do not show whether carriers allegedly engaged in access stimulation have more than one end office (or an equivalent location, in the case of IPES Providers) to move traffic between, or if they are moving traffic to another entity, or if there is some other traffic manipulation.[257]

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[250] *Further Notice* at 10, para. 23 & Appx. A (proposed 47 CFR § 61.3(bbb)).

[251] *See infra* Appx. A (47 CFR §§ 51.914(c)(2), 61.3(bbb)(1)(i)(B), (ii)-(iii), (2)-(3)).

[252] *Supra* paras. 24-27 (definition of "End Office Equivalent"); *infra* Appx. A (47 CFR § 61.3(fff)); Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 4 (stating that "an IPES Provider cannot provide the equivalent of an end office function because the Commission has determined that function requires physical loop connections that an IPES Provider typically does not connect to its switching equipment"); *see* USTelecom Sept. 6, 2022 Comments at 10 n.30 (arguing that under the VoIP symmetry rules, "over-the-top (OTT) VoIP providers do not have 'functionally equivalent' end offices," so if "'functionally equivalent'" were inserted in the arbitrage rules, OTT providers would be exempt from the traffic ratio calculations).

[253] USTelecom Sept. 6, 2022 Comments at 10 (requesting the removal of the phrase but not explaining what the potential loopholes were that allegedly arose with the "insertion of the 'end office' language"); NCTA Oct. 3, 2022 Reply at 1 (agreeing with USTelecom); *see also* AT&T Dec. 14, 2022 *Ex Parte* Letter at 2.

[254] USTelecom Sept. 6, 2022 Comments at 10 & n.31 (asserting that "by adding 'end office or equivalent' throughout," the Commission "could create . . . additional burdens on complaining carriers and the Commission by complicating trigger calculations"—but not explaining what that complexity would be, and admitting "there were disputes under the 3:1 trigger regarding what traffic counted"); NCTA Oct. 3, 2022 Reply at 1 (arguing that inserting "end office or equivalent" in section 61.3(bbb)(1)(i)(B) "will make it more difficult for providers to calculate traffic ratios" but not explaining why it would be more difficult); *see* AT&T Dec. 14, 2022 *Ex Parte* Letter at 2 (similarly asserting that adding the "end office or equivalent" language "could create added complexity" without explaining what that complexity is).

[255] Teliax suggests that "[t]he reason ILECs/IXCs do not want end office level reporting is because their ratios would signal access stimulation." Teliax Nov. 25, 2022 *Ex Parte* Letter Attach. at 11. As explained above, however, there is no evidence that any price-cap incumbent LECs are engaged in access stimulation. *Supra* para. 16 (discussing Teliax's argument).

[256] AT&T Nov. 8, 2022 *Ex Parte* Letter at 1-2; USTelecom Sept. 6, 2022 Comments at 10; NCTA Oct. 3, 2022 Reply at 1.

[257] Verizon's comments purportedly show that HD Carrier has moved traffic from one local telephone company to another, but do not provide evidence that HD Carrier has shifted traffic between end offices of the same company. Verizon Sept. 6, 2022 Comments at 8; *see also* USTelecom Oct. 3, 2022 Reply at 4.

73. In sum, we include the phrase "end office or equivalent" in new section 51.914(c) and add it to sections 61.3(bbb)(1)(i)(B), (ii)-(iii), (2)-(3) for consistency, to make the rules applicable to both LECs and IPES Providers equally, and to clearly designate where the traffic ratio calculations shall be made.[258] We add the definition of "End Office Equivalent" as new section 61.3(fff) to avoid any ambiguity about the meaning of the word "equivalent" in the phrase "end office or equivalent," as that phrase is used in our Access Stimulation Rules.[259]

74. *Serving End User(s)*. As proposed in the *Further Notice*,[260] we retain the phrase "serving end user(s)" in the rule defining when a LEC, and now an IPES Provider, engages in Access Stimulation.[261] We also add the phrase "serving end user(s)" to the rules defining when a LEC and, now, an IPES Provider will be deemed to continue to be engaging in Access Stimulation.[262] Although AT&T expresses concern that this language may hinder enforcement of our Access Stimulation Rules,[263] AT&T did not provide any explanation supporting these concerns, and acknowledged that "[i]f IPES Providers are brought directly within the [Access Stimulation Rules], then this language may in theory become less problematic."[264] The other rule revisions we make today bring IPES Providers within our Access Stimulation Rules.[265]

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[258] *See infra* Appx. A (47 CFR §§ 51.914(c)(2), 61.3(bbb)(1)(i)(B), (ii)-(iii), (2)-(3)). Additional changes are made to the same sections as described elsewhere in this Order.

[259] *See infra* Appx. A (47 CFR § 61.3(fff)).

[260] *Further Notice* at 13, para. 31 & Appx. A (proposed 47 CFR § 61.3(bbb)(1)).

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

[262] *See infra* Appx. A (47 CFR § 61.3(bbb)(2)-(3)). Although the proposed rules in the *Further Notice* refer to "serving end users" in several locations, the current section 61.3(bbb)(1) of our rules refers to "serving end user(s)"—with the "(s)." No commenters mentioned the use of the "(s)." We will maintain "serving end user(s)" in the current rule, and use the same spelling in this Order and wherever we insert "serving end user(s)" (instead of "serving end users") in our rules. This spelling with the "(s)" will include situations where a LEC or IPES Provider may serve just one end user, such as when an IPES Provider serves one high-volume calling service provider. This change is a conforming edit which will help strengthen our Access Stimulation Rules against potential loopholes and prevent further arbitrage. *See Further Notice* at 17-18, para. 45.

[263] AT&T may be expressing concern about Wide Voice's actions that AT&T complained about in the AT&T v. Wide Voice enforcement proceeding. For example, in the *AT&T v. Wide Voice Enforcement Order*, we found that "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." *AT&T v. Wide Voice Enforcement Order*, 36 FCC Rcd at 9779, para. 19.

[264] AT&T Dec. 14, 2022 *Ex Parte* Letter at 3. AT&T originally proposed a definition of "serving end user(s)" to "'ensure that LECs' traffic ratios include traffic carried directly to called or calling parties, as well as traffic carried for a partnered VoIP provider that has been inserted into the call routing.'" *Further Notice* at 12-13, paras. 30-31 & n.60 (citing AT&T Comments, WC Docket No. 13-97, at 7 (rec. Oct. 14, 2021), and seeking comment on AT&T's proposal); *see also* Bandwidth Sept. 6, 2022 Comments at 7 (suggesting changes to AT&T's proposal); Bandwidth Dec. 23, 2022 *Ex Parte* Letter Attach. B at 4 (same). "Although AT&T had . . . proposed a specific set of revisions to the rules"—including its definition of "serving end user(s)"—AT&T abandoned its proposals "in order to reach a solution that reflects broader industry consensus," and instead supported "the approach set forth in the *NPRM*, as modified by USTelecom." AT&T Sept. 6, 2022 Comments at 2; *see* AT&T Oct. 3, 2022 Reply at 1 (reiterating its support for the proposed rules in the *Further Notice* with modifications provided by USTelecom).

[265] *See, e.g.*, Bandwidth Jan. 26, 2023 *Ex Parte* Letter at 2 ("If the trigger is based on measuring ratios at an end office, and an IPES switch POI CLLI is defined at the equivalent of an end office, counting all traffic associated with telephone numbers assigned to an end office for LECs, or a switch POI CLLI for IPES providers, should obviate the need to include 'serving end users' language in the rule."); *see also infra* Appx. A (47 CFR § 61.3(bbb)(5), (fff)).

75. We also decline to adopt AT&T's proposed language to define the meaning of "serving end users" on which we sought comment in the *Further Notice*.[266] AT&T had proposed that we define a LEC to be "serving end users" when "it provides service to a called or calling party, either directly or through arrangements with one or more VoIP providers or other entities that serve called or calling parties," except if the LEC is an Intermediate Access Provider.[267] Bandwidth suggested edits to AT&T's proposed rule language, but also acknowledged that "bringing IPES [P]roviders with direct numbering resources within the scope of the [Access Stimulation Rules] may make the 'serving end users' language unnecessary."[268] AT&T also acknowledged that the inclusion of the phrase "serving end user(s)" in our Access Stimulation Rules indicates that it is not appropriate to calculate ratios of "originating-to-terminating traffic for a LEC or IPES entity that includes aggregated originating traffic placed by end users not served by the LEC or IPES [P]rovider."[269] This practical result would deter arbitrage and provides another reason to retain and add, where appropriate, the phrase "serving end user(s)" to our Access Stimulation Rules. No other commenters specifically addressed our proposed uses of the phrase "serving end user(s)." We find that the changes to our rules will allow for greater consistency in the Access Stimulation Rules. We also find that AT&T's and Bandwidth's proposed revisions are rendered moot by the other reforms we adopt in this Order.[270] Accordingly, we adopt the proposed modifications and reject other proposals to define our use of the term "serving end user(s)."[271]

4. Interstate/Intrastate Language

76. As proposed in the *Further Notice*,[272] we amend sections 51.914(a)(1), 69.4(l), 69.5(b)(1), and 69.5(b)(2) of our rules to include the phrase "interstate or intrastate" to reflect language in the *Access Arbitrage Order* making clear that the rules adopted in that *Order* apply to the charges for both interstate and intrastate access services.[273] We also include the phrase "interstate or intrastate" in new section 51.914(e) (which is the new designation for current section 51.914(c), because other sections have been added above it).[274] No commenter objected to these proposed changes.[275]

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[266] *Further Notice* at 12-13, paras. 30-31.

[267] *Id.* at 12, para. 30.

[268] Bandwidth Jan. 26, 2023 *Ex Parte* Letter at 2 (citing Bandwidth Dec.23, 2022 *Ex Parte* Letter Attach. B at 4 (supporting the retention of the phrase "serving end users" as we proposed in the *Further Notice*)).

[269] AT&T Jan. 31, 2023 *Ex Parte* Letter at 5-6.

[270] For example, our determination of how to calculate traffic ratios eliminates the need for a rule defining "serving end user(s)," because each LEC or IPES Provider will calculate its own traffic ratios using calls placed to telephone numbers that are issued to that provider by a numbering administrator and are thus associated with that provider's OCN. *Supra* paras. 28-36 (how to calculate traffic).

[271] We adopt the changes indicated in the *Further Notice* Appendix A. We also add "serving end user(s)" after "Competitive Local Exchange Carrier" in section 61.3(bbb)(1) to provide language construction that is parallel to that used in section 61.3(bbb)(2). *Infra* Appx. A (47 CFR § 61.3(bbb)(1)-(2)). This change is a conforming edit which will help strengthen our Access Stimulation Rules against potential loopholes and further arbitrage. *See Further Notice* at 17-18, para. 45.

[272] *Further Notice* at 15, para. 37 & Appx. A (proposed 47 CFR §§ 51.914(a)(1), 69.4(l), 69.5(b)(1)-(2)).

[273] *See infra* Appx. A (47 CFR §§ 51.914(a)(1), 69.4(l), 69.5(b)(1)-(2)).

[274] *See infra* Appx. A (47 CFR § 51.914(e)); 47 CFR § 51.914(c)). We also modify new section 51.914(e) to state "paragraphs (b) or (d) of this section." *Infra* Appx. A (47 CFR § 51.914(e)). The current rule states "paragraph (b) of this section." 47 CFR § 51.914(c) (Current paragraph (c) is redesignated as new paragraph (e) in this Order.). The reference to paragraph (d) was placed in the proposed rule to refer to the notice requirements for IPES Providers, but "of this section" was inadvertently omitted. *Further Notice* at Appx. A (proposed 47 CFR § 51.914(e)). Thus, our modification ensures that paragraph (d) is included, and that the reference is to "this section." No commenter objected to our proposed addition of the reference to paragraph (d). These changes are

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77. In the *Access Arbitrage Order*, the Commission made clear that the rules it was adopting to combat access stimulation were intended to prohibit providers of tandem switching and transport from billing IXCs for interstate and intrastate terminating switched access tandem switching or terminating switched access tandem transport, for traffic bound for access-stimulating LECs.[276] The Commission explained that applying the rules "equally to interstate and intrastate traffic will discourage gamesmanship related to the geographic classification of the traffic; i.e., carriers creating ways to move access-stimulation schemes to intrastate service."[277] The reference to intrastate traffic was not reflected in the text of the rules, however. As proposed in the *Further Notice*,[278] we now amend sections 51.914(a)(1), 69.4(l), 69.5(b)(1), and 69.5(b)(2) of our rules to make clear that competitive LECs, rate-of-return LECs, and Intermediate Access Providers shall not charge IXCs for interstate or intrastate terminating switched access tandem switching and terminating switched access tandem transport when the terminating traffic is destined for a competitive LEC, rate-of-return LEC, or IPES Provider engaged in access stimulation, as defined in section 61.3(bbb) of our rules.[279]

78. We reject, however, Bandwidth's suggestion that we add the term "intrastate" to the definition of "Access Stimulation" in section 61.3(bbb) of our rules or delete references to "interstate" throughout that section.[280] Bandwidth briefly comments that this will make the section "consistent with [the] proposal [in the Further Notice] that [the] rules address intrastate access."[281] We disagree. Bandwidth's proposed changes would result in providers having to include both interstate and intrastate traffic in calculating their ratios of terminating traffic to originating traffic. That is not consistent with our intent in this Order or with the Commission's actions in the *Access Arbitrage Order*. Bandwidth is correct that we proposed rule amendments reflecting language in the *Access Arbitrage Order* indicating that when a LEC or IPES Provider is engaged in access stimulation, the IXC shall not be charged interstate or intrastate terminating switched access tandem switching and terminating switched access tandem transport charges.[282] That is different, however, than requiring that both intrastate and interstate traffic be included in the traffic ratio calculations described in section 61.3(bbb) of our rules. Not only is Bandwidth's proposal contrary to the language in the *Access Arbitrage Order* and *Further Notice*,[283] but

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conforming and non-substantive edits which will help strengthen our Access Stimulation Rules against potential loopholes and prevent further arbitrage. *See Further Notice* at 17-18, para. 45.

[275] *See* Bandwidth Sept. 6, 2022 Comments at 10 (supporting the addition of "intrastate" in sections 69.4(l) and 69.5(b)).

[276] *Access Arbitrage Order*, 34 FCC Rcd at 9076, para. 98 n.302. *See generally* 47 U.S.C. § 251(b)(5); *USF/ICC Transformation Order*, 26 FCC Rcd at 17916-18, paras. 764-67.

[277] *Access Arbitrage Order*, 34 FCC Rcd at 9076, para. 98 n.302.

[278] *Further Notice* at Appx. A (proposed 47 CFR §§ 51.914(a), 69.4(l), 69.5(b)(1)-(2)).

[279] *See infra* Appx. A (47 CFR §§ 51.914(a), 69.4(l), 69.5(b)(1)-(2)). Although proposed sections 69.4(l), 69.5(b)(1), and 69.5(b)(2) in the *Further Notice* Appendix A used the phrase "local exchange carrier," we amend that phrase to indicate that the rules apply to competitive LECs and rate-of-return LECs to be consistent with the definition of "Access Stimulation." 47 CFR § 61.3(bbb)(1) (applying the definition of "Access Stimulation" to competitive LECs and rate-of-return LECs). At the same time, we remove an "a" before the list of services provided and add an "s" to "charge," in sections 69.5(b)(1) and 69.5(b)(2) as proposed in the *Further Notice*. We make these minor terminology amendments to ensure conformity in our other Access Stimulation Rules. *See Further Notice* at 17-18, para. 45 (seeking comment on making conforming edits and non-substantive edits to our rules).

[280] *E.g.*, Bandwidth Dec. 23, 2022 *Ex Parte* Letter at Appx. B at 3-4 (proposed revisions to section 61.3(bbb)).

[281] *E.g.*, *id.* at 3 (comment bubble to proposed revisions to rule 61.3(bbb)).

[282] *Further Notice* at 15, para. 37.

[283] In fact, we did not seek comment, in the *Further Notice*, on adding intrastate traffic volumes to the traffic ratio calculations.

Bandwidth does not provide any justification for us to adopt this significant change to our Access Stimulation Rules. We therefore reject Bandwidth's proposed modifications to section 61.3(bbb) of our Access Stimulation Rules.[284]

5. Conforming Edits to Our Rules

79. We amend sections 51.914(a)(2), 51.914(b)(2), 69.4(l), 69.5(b)(1), and 69.5(b)(2) of our rules to eliminate inconsistencies among sections of the Access Stimulation Rules that are meant to be consistent.[285] We received no comment opposing these proposed rule revisions and therefore adopt the rules as proposed.[286] New sections 51.914(c)(1) and 51.914(d)(2) are consistent with our amendments to section 51.914(a)(2).[287]

80. We amend section 51.914(a)(2) of our rules to remove any ambiguity about its mandatory requirement.[288] The unrevised section 51.914(a)(2) requires that an access-stimulating LEC shall designate, "if needed," the Intermediate Access Provider that will provide certain terminating access services to the LEC.[289] This designation applies in cases where an Intermediate Access Provider is different from the end office LEC.[290] However, the current wording may lead to a misconception that a LEC may subjectively decide on its own when this designation is needed.[291] Therefore, as we proposed in

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[284] We do not make any changes to section 61.3(bbb)(4). That section was listed in the proposed rules without any changes. *Further Notice* at Appx. A (proposed 47 CFR § 61.3(bbb)(4)). Bandwidth is the only party that commented on that section, suggesting that we eliminate the word "interstate." Bandwidth Dec. 23, 2022 *Ex Parte* Letter at Appx. B (proposed revisions to section 61.3(bbb)). For the reasons provided here, we reject Bandwidth's suggestion.

[285] *See infra* Appx. A (47 CFR §§ 51.914(a)(2), 69.4(l), 69.5(b)(1)-(2)).

[286] *See* Bandwidth Sept. 6, 2022 Comments at 4 n.7 (supporting the proposed changes to sections 69.4(l) and 69.5(b)(2)); AT&T Sept. 6, 2022 Comments at 7 n.7 (supporting the proposed edit to section 51.914(a)(2)).

[287] *See infra* Appx. A (47 CFR § 51.914(c)(1), (d)(2)); *Further Notice* at 17, para. 43. The released version of the *Further Notice* correctly states our proposed amendments to sections 51.914(a) and 51.914(b), which specify the compliance deadline as: "within 45 days of commencing Access Stimulation, or within 45 days of ~~November 27, 2019~~ [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], whichever is later." *Further Notice* at Appx. A (proposed 47 CFR § 51.914(a)-(b)). Similarly, our proposed new sections 51.914(c) and 51.914(d) contain that same phrase for the corresponding compliance deadlines. *Further Notice* at Appx. A (proposed 47 CFR § 51.914(c)-(d)). These compliance deadlines correspond to the text of the *Further Notice* where we proposed "a 45-day period for compliance after the effective date of the rules." *Further Notice* at 11, para. 26. In the Federal Register summary of the *Further Notice*, proposed section 51.914(a) through section 51.914(d) each indicate that compliance is required "within 45 days of commencing Access Stimulation, or within 45 days of September 6, 2022, whichever is later." FCC, Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, 87 Fed. Reg. 47673, 47686-87 (Aug. 4, 2022) (Further Notice Federal Register Publication). This mention of "September 6, 2022" is a drafting error. Because that date occurred before the end of the comment cycle for the *Further Notice*, it was not correct. Further Notice Federal Register Publication, 87 Fed. Reg. at 47688 (specifying the comment cycle). No commenters mentioned this error, and no commenters mentioned the 45-day period for compliance. We therefore have amended sections 51.914(a) and 51.914(b) as proposed in the released version of the *Further Notice*, and included the correct text in new sections 51.914(c) and 51.914(d). *Infra* Appx. A (47 CFR § 51.914(a)-(d)).

[288] *See infra* Appx. A (47 CFR § 51.914(a)(2)). We also capitalize the term "Access Stimulation" in section 51.914(a)(2) to reflect that this is a defined term in our rules. *See infra* Appx. A (47 CFR § 61.3(bbb)). This conforming edit was in the *Further Notice* at Appx. A. We received no comment on this proposed change.

[289] 47 CFR § 51.914(a)(2).

[290] *Further Notice* at 17, para. 43.

[291] *Id.*; *see Northern Valley Communications, LLC, Tariff F.C.C. No. 3*, WC Docket No. 20-11, Memorandum Opinion and Order, 35 FCC Rcd 6198, 6219, para. 48 (2020) (The Commission found Northern Valley's tariff unlawful, in part, because of Northern Valley's mistaken belief that section 51.914(a)(2) gave it the right to

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the *Further Notice*, we change the phrase "if needed" to "if any."[292] We similarly use the phrase "if any" in new sections 51.914(c)(1) and 51.914(d)(2) which apply to an access-stimulating IPES Provider and its designation of an Intermediate Access Provider.[293] We received no comment about ensuring that new sections 51.914(c)(1) and 51.914(d)(2) conform with the proposed edit to section 51.914(a)(2),[294] and we adopt the rule language as proposed.[295] We also amend section 51.914(b)(2) by adding the phrase "if any" and similarly require the designation of an Intermediate Access Provider "if any" that will provide service to an access-stimulating LEC.[296] This addition is a conforming edit intended to ensure consistency in our Access Stimulation Rules.[297]

81. We amend current section 51.914(d), which applies when traffic is bound for a LEC engaged in access stimulation, to also apply when traffic is bound for an IPES Provider engaged in access stimulation, consistent with our intent to conform our Access Stimulation Rules to apply equally to IPES Providers, as well as to LECs, and redesignate the section as 51.914(f).[298] We do not add the phrase "or receives traffic from an Intermediate Access Provider destined for an IPES Provider engaged in Access Stimulation," as we proposed in the *Further Notice*, because we find it redundant and unnecessary.[299] We received no comments addressing specific terms in this proposed rule.[300] The rule is now section 51.914(f), because other rules were added that precede it.[301]

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"unilaterally [] shift the location at which IXCs are responsible for delivering traffic destined for Northern Valley."). We delete the word "Shall" at the beginning of section 51.914(a)(2), and the phrase "that the local exchange carrier shall" at the beginning of section 51.914(a)(3), because the phrase "it shall" appears at the beginning of section 51.914(a). 47 CFR § 51.914(a)(2)-(3); *infra* Appx. A (47 CFR § 51.914(a)(2)-(3)). Both of these changes were proposed in the *Further Notice*. *Further Notice* at Appx. A (proposed 47 CFR § 51.914(a)(2)-(3)). We received no comment opposing the changes.

[292] *Further Notice* at 17, para. 43; *see infra* Appx. A (47 CFR § 51.914(a)(2)); *see also* AT&T Sept. 6, 2022 Comments at 7 n.7 (supporting the proposed edit).

[293] *See infra* Appx. A (47 CFR § 51.914(c)(1), (d)(2)).

[294] *Further Notice* at 17, para. 43.

[295] *See infra* Appx. A (47 CFR § 51.914(c)(1), (d)(2)); *Further Notice* at 17, para. 43.

[296] *See infra* Appx. A (47 CFR § 51.914(b)(2)). We also capitalize the term "Access Stimulation" in section 51.914(b)(2) to reflect that this is a defined term in our rules. *See infra* Appx. A (47 CFR § 61.3(bbb)). This conforming edit was in the *Further Notice* at Appx. A. We received no comment on this proposed change. Further, we replace the phrase "that it" in section 51.914(b)(3) with "That the local exchange carrier," to emphasize that it is the LEC that pays for the services. This change was proposed in the *Further Notice*. *Further Notice* at Appx. A (proposed 47 CFR § 51.914(b)(3)). We received no comment opposing the change.

[297] *See Further Notice* at 17-18, para. 45.

[298] 47 CFR § 51.914(d); *see infra* Appx. A (47 CFR § 51.914(f)).

[299] *Further Notice* at Appx. A (proposed 47 CFR § 51.914(f)). A LEC that receives traffic from an Intermediate Access Provider destined for an IPES Provider engaged in Access Stimulation, would itself be an Intermediate Access Provider, because it would be providing a portion of the requisite terminating tandem access services between the final IXC in a call path and the IPES Provider engaged in Access Stimulation. *See infra* Appx. A (47 CFR § 61.3(ccc)) (definition of "Intermediate Access Provider"); *supra* para. 66 (discussing the "any entity" language in the "Intermediate Access Provider" definition). Thus, such a LEC would be "serv[ing] as an Intermediate Access Provider with respect to traffic . . . bound for an IPES Provider engaged in Access Stimulation"—the phrase that appears earlier in proposed rule 47 CFR § 51.914(f)—thereby eliminating the need for the final phrase about a LEC receiving traffic from an Intermediate Access Provider.

[300] We address Lumen's comments about the proposed rule language, including new section 51.914(d), above. *See supra* paras. 20-21 (detailing the proposals we adopt and those we do not).

[301] *See infra* Appx. A (47 CFR § 51.914(f)).

82. We amend section 69.4(l) of our rules to ensure that the requirement to not bill certain carriers is mandatory.[302] Section 69.4(l) currently requires that a LEC engaged in access stimulation "may not bill" IXCs terminating switched access tandem switching or terminating switched access tandem transport charges for access-stimulation traffic.[303] However, in the *Access Arbitrage Order*, the Commission made clear that it is unlawful for a LEC engaged in access stimulation to charge an IXC terminating switched access tandem switching or terminating switched access tandem transport charges.[304] As we proposed in the *Further Notice*, we change the phrase "may not bill" to "shall not bill," in section 69.4(l) to eliminate any ambiguity that a LEC engaged in access stimulation "shall not bill" IXCs terminating switched access tandem switching or terminating switched access tandem transport charges for access-stimulation traffic.[305]

83. We also make consistent where appropriate in the Access Stimulation Rules the references to "terminating switched access tandem switching or terminating switched access transport" services. Currently, some of the Access Stimulation Rules refer to "terminating switched access tandem switching *or* terminating switched access transport,"[306] and some refer to "terminating switched access tandem switching *and* terminating switched access transport."[307] This primarily is an inadvertent error which results in an inconsistency in the rules that may be exploited by entities engaged in access stimulation or that want to engage in access stimulation. For example, with the use of the "and" in section 51.914(b)(2), we are concerned that a LEC engaged in access stimulation may claim that it does not use an Intermediate Access Provider that provides both tandem switching *and* transport, and argue that it, therefore, does not need to provide the notifications required in section 51.914(b)(2).[308] Such an outcome would be contrary to our rules and policies against arbitrage. We have indicated our intention to remove potential loopholes in our Access Stimulation Rules, reduce opportunities for arbitrage, and minimize unintended consequences.[309] In furtherance of those goals, we change "terminating switched access tandem switching *and* terminating switched access transport" to "terminating switched access tandem switching *or* terminating switched access transport" in sections 51.914(a)(2) and 51.914(b)(2), and the word "or" is used in new sections 51.914(c)(1) and 51.914(d)(2)[310] to make clear that the rules apply to either, or both, terminating switched access tandem switching and terminating switched access transport.[311]

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[302] *See infra* Appx. A (47 CFR § 69.4(l)). Other amendments to section 69.4(l) are discussed elsewhere in this Order.

[303] 47 CFR § 69.4(l).

[304] *Access Arbitrage Order*, 34 FCC Rcd at 9073-74, para. 92.

[305] *Further Notice* at 17, para. 44; *see infra* Appx. A (47 CFR § 69.4(l)). We did not receive any comments on these proposed rule revisions.

[306] *E.g.*, 47 CFR §§ 51.914(a)(1), (c), 69.4(l), 69.5(b)(1)-(2).

[307] *E.g.*, *id.* § 51.914(a)(2), (b)(2).

[308] *Id.* § 51.914(b)(2).

[309] *Further Notice* at 17-18, para. 45.

[310] *See infra* Appx. A (47 CFR § 51.914(a)(2), (b)(2), (c)(1), (d)(2)). A conforming edit to section 61.3(ccc) is discussed above. *See supra* para. 64 (discussion of the "Intermediate Access Provider" definition, describing the adoption of the "terminating switched access tandem switching *or* terminating switched access transport" rule language).

[311] Two exceptions to this change to the use of "or" are sections 61.26(g)(3)(i) and 69.3(e)(12)(iv)(A)—both requiring carriers to remove tandem switching *and* transport services from tariffs in specific situations. We retain the "and" in both of those rules to emphasize that both services should be removed from tariffs. 47 CFR §§ 61.26(g)(3)(i), 69.3(e)(12)(iv)(A).

84. We adopt our proposed amendments to section 69.5(b)(2) to: (a) correct the inadvertent omission of the word "not"; (b) change the word "may" to "shall" to be consistent with other uses in these rules; and (c) make clear that it is "IXCs" and not "LECs" that are not being charged access charges under our Access Stimulation Rules.[312] We make similar amendments to section 69.5(b)(1) to be consistent with section 69.5(b)(2). Thus, we correct "may not" to "shall not."[313] We also make a wording clarification by adding "of this part" to the two references to "§ 69.4(b)(5)" in sections 69.5(b)(1) and 69.5(b)(2).[314] Finally, we edit text in sections 69.5(b)(1) and 69.5(b)(2), for consistency between those sections. Thus, the middle of both sections now refers to traffic that is destined "for a competitive local exchange carrier, or a rate-of-return local exchange carrier, or is destined, directly or indirectly, for an IPES Provider, where such carrier or Provider is engaged in Access Stimulation."[315] These are conforming and non-substantive edits made to ensure consistency in our Access Stimulation Rules.[316] These amendments are shown in Appendix A.[317]

D. Legal Authority

85. We conclude that sections 201, 251, and 254 of the Act provide us with the authority needed to adopt the definitions, rule changes, and rule additions contained in this Order.[318] Several commenters support our tentative conclusion in this regard in the *Further Notice* and the use of ancillary authority pursuant to section 4(i) of the Act.[319] Commenters also point out that the rules we adopt in the Order are similar to other requirements the Commission has imposed on IP providers.[320] Although the

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[312] *Further Notice* at 17, para. 44 & Appx. A (proposed 47 CFR § 69.5(b)(2)); *see infra* Appx. A (47 CFR § 69.5(b)(2)).

[313] These proposed changes to section 69.5(b)(1) are shown in Appendix A of the *Further Notice*. *Further Notice* at Appx. A (proposed 47 CFR § 69.5(b)(1)); *see infra* Appx. A (47 CFR § 69.5(b)(1)).

[314] *See infra* Appx. A (47 CFR § 69.5(b)(1)-(2)). We proposed to add "of this chapter" to section 69.5(b)(1), but "in this part" is the proper nomenclature; thus, we add "in this part." *Further Notice* at Appx. A (proposed 47 CFR § 69.5(b)(1)). Similarly, we add "of this part" to the references to § 69.3(e)(12)(iv) in sections 69.5(b)(1) and 69.5(b)(2), because that is the proper nomenclature. Although we did not include the addition of "of this chapter" (or "in this part") to section 69.5(b)(2) in the *Further Notice* Appendix A, and did not include "of this part" at the ends of sections 69.5(b)(1) and 69.5(b)(2) in the *Further Notice* Appendix A, we did seek comment on making conforming edits and non-substantive edits to our rules. *Further Notice* at 17-18, para. 45. The additions of "in this part" to rule 69.5(b)(2), and "of this part" at the ends of sections 69.5(b)(1) and 69.5(b)(2), are conforming or non-substantive edits and are made to ensure consistency and clarity in our Access Stimulation Rules. We also add "as defined in § 61.3(bbb) of this chapter" after the term "Access Stimulation" in new section 51.914(e) and section 69.5(b)(2). These amendments are conforming or non-substantive edits, and are made to ensure clarity and consistency in our Access Stimulation Rules. *See Further Notice* at 17-18, para. 45. We do not adopt any amendments to section 61.3(ddd), the definition of "interexchange carrier." In the *Further Notice*, we did not propose any amendments to that section, and no commenters requested changes. *Further Notice* at Appx. A (proposed 47 CFR § 61.3(ddd)).

[315] *See infra* Appx. A (47 CFR § 69.5(b)(1)-(2)).

[316] *See Further Notice* at 17-18, para. 45.

[317] *See infra* Appx. A (47 CFR § 69.5(b)(1)-(2)).

[318] 47 U.S.C. §§ 201, 251, 254.

[319] *Further Notice* at 19-20, paras. 48-51; Inteliquent Dec. 2, 2022 *Ex Parte* Letter at 4-5; USTelecom Sept. 6, 2022 Comments at 11 (suggesting that "section 201, when combined with ancillary authority, provides the Commission with adequate authority"); Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 5 (suggesting that our Title I ancillary jurisdiction is sufficient legal authority).

[320] USTelecom Sept. 6, 2022 Comments at 11 ("It is not unusual for the Commission to apply certain Title II obligations to VoIP providers without classifying the services they provide as Title II services. It has done so, for example, in extending disability access requirements [(citing *IP-Enabled Services*)], emergency calling capabilities [(citing *IP-Enabled Services*; *E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 05-

(continued….)

Commission has never asserted expansive jurisdiction over IP providers, it has consistently adopted rules to address specific issues and serve the public interest.[321] The rules we adopt today are consistent with that practice. Our new rules directed at IPES Providers are narrowly tailored to address specific concerns related to access arbitrage.[322] For example, although we require IPES Providers to calculate their traffic ratios and comply with the Access Stimulation Rules' reporting requirements, we do not require an access-stimulating IPES Provider to pay an Intermediate Access Provider's tandem and transport access charges.

86. *Section 201 of the Act*. In the *Access Arbitrage Order*, the Commission determined that imposing tariffed tandem switching and tandem switched transport access charges on IXCs for terminating access-stimulation traffic is an unjust and unreasonable practice under section 201(b) of the Act.[323] In rejecting challenges to the *Access Arbitrage Order*, the United States Court of Appeals for the D.C. Circuit held that "[o]n its face, Section 201(b) gives the Commission broad authority to define and prohibit practices or charges that it determines unreasonable. Fees intentionally accrued by artificially stimulating and inefficiently routing calls would appear to fall within that wide authority."[324] Thus, we find that we have ample authority to adopt the limited rule revisions in this Order.

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196, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 (2005))], Customer Proprietary Network Information (CPNI) rules [(citing *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*; *IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, 22 FCC Rcd 6927 (2007))], and universal service contribution requirements [(citing *Universal Service Contribution Methodology Order*)]."); Inteliquent Dec. 2, 2022 *Ex Parte* Letter at 5 ("Also of note, the Commission cited Section 251(e)(1) of the Act when it extended both the numbering rights and obligations to interconnected VoIP providers that chose to obtain direct access to numbers in 2015. Adding the access arbitrage rules to the scope of obligations that an IPES Provider accepts along with the benefits of direct access is a natural application of that legal authority under Section 251(e)(1) or, alternatively, its ancillary authority to carry out its responsibilities under Section 251(e)(1)." (footnote omitted)).

[321] As USTelecom explains, "[m]ost recently, the Commission used its ancillary authority to adopt rules addressing rural call completion issues in the rural call completion proceeding." USTelecom Sept. 6, 2022 Comments at 11 (citing *Rural Call Completion*, WC Docket No. 13-39, Second Report and Order and Third Further Notice of Proposed Rulemaking, 33 FCC Rcd 4199, 4224, para. 56 (2018) (citing *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16169-74, paras. 28-39 (2013) (*First Rural Call Completion Order*))). "The Commission relied on its prior holding that 'if we do not apply these [rural call completion] requirements to providers of VoIP service, telecommunications carriers could evade the rules by partnering with a VoIP provider in a way that allows . . . the carrier to circumvent the requirements we adopt today and undermine the purpose of those rules.'" *Id.* (citing *First Rural Call Completion Order*, 28 FCC Rcd at 16173, para. 38). "The same logic applies here, as the Commission proposes to use its Section 201(b) authority, buttressed by ancillary authority to protect the public interest and enforce its access arbitrage rules." *Id.* at 11-12. USTelecom further observes that "section 201, when combined with ancillary authority, provides the Commission with adequate authority to prescribe rules addressing access stimulation involving IPES providers." *Id.* at 12 n.39.

[322] Despite suggestions to the contrary, we continue to encourage the transition to all-IP networks and to bill-and-keep. *See* HD Carrier Oct. 3, 2022 Reply at 5; *see also* HD Carrier Jan. 9, 2023 *Ex Parte* Letter at 2; Wide Voice Jan. 10, 2023 *Ex Parte* Letter at 2. Nothing in this Order detracts from those goals. Rather, this Order, and the accompanying rules, serve to mitigate some of the harms that are occurring while the transition to bill-and-keep continues. Wide Voice also claims, without support, that in an enforcement decision, made pursuant to section 208 of the Act, the "FCC determined it had no authority over IPES." Wide Voice Jan. 10, 2023 *Ex Parte* Letter Attach. at 1 (referring to the *AT&T v. Wide Voice Enforcement Order*). We made no such finding, nor could we, as no IPES Provider was a party to that proceeding. *Wide Voice v. FCC*, 61 F.4th at 1030-31 ("[T]he FCC found that Wide Voice, not HD Carrier, violated § 201(b) by using its knowledge that the FCC *currently* does not subject VoIP providers to the *Access Arbitrage Order* to devise a workaround of the rules." (emphasis in original)).

[323] *Access Arbitrage Order*, 34 FCC Rcd at 9073-74, para. 92.

[324] *Great Lakes*, 3 F.4th at 475; *see id*. at 474-76 (rejecting an argument that the FCC lacked authority under section 201(b) to adopt the *Access Arbitrage Order*).

87. Providers' attempts to assess tandem switching or tandem switched transport access charges on IXCs for delivering traffic to access-stimulating IPES Providers are virtually indistinguishable from practices the Commission has already found to be unjust and unreasonable. Section 201(b) of the Act gives us the authority to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[325] This language provides us with the authority to prohibit Intermediate Access Providers or other LECs from charging IXCs tariffed tandem switching and transport access charges for traffic routed to an access-stimulating IPES Provider, or an access-stimulating LEC. Furthermore, section 201(b) grants us authority to ensure that all charges and practices "in connection with" a common carrier service are "just and reasonable."[326] This authority encompasses a situation, such as here, where an IPES Provider is receiving traffic from Intermediate Access Providers and/or LECs for the purpose of engaging in access arbitrage. Thus, section 201(b) grants us authority to require IPES Providers to designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching and transport services, and to require IPES Providers to calculate their traffic ratios and notify Intermediate Access Providers, IXCs, and the Commission if the IPES Provider is engaged in access stimulation. Intermediate Access Providers will then be able to determine whether they can lawfully charge IXCs for interstate and intrastate tandem switching and transport services (and IXCs can determine if such charges are appropriate).[327]

88. *Sections 251 and 254 of the Act*. Our authority to adopt these rule revisions is also rooted in other sections of the Act on which the Commission relied in the *Access Arbitrage Order*. First, section 251(b)(5) of the Act gives us authority to regulate exchange access and providers of exchange access, during the transition to bill-and-keep.[328] Indeed, the Commission "br[ought] all traffic within the section 251(b)(5) regime" years ago, as part of the reforms adopted in the *USF/ICC Transformation Order*.[329] Second, section 251(g) of the Act provides us with the authority to address problematic conduct that occurs during the ongoing transition to bill-and-keep.[330] Third, section 254 of the Act provides the Commission with the authority to eliminate implicit subsidies.[331] To the extent that the access charges

[325] 47 U.S.C. § 201(b).

[326] *Id*.

[327] *See also* USTelecom Sept. 6, 2022 Comments at 11-12.

[328] 47 U.S.C. § 251(b)(5); *see, e.g.*, *Access Arbitrage Order*, 34 FCC Rcd at 9076, para. 98.

[329] 47 U.S.C. § 251(b)(5); *USF/ICC Transformation Order*, 26 FCC Rcd at 17916, para. 764. The rules we adopt today are applicable to all traffic, including intrastate traffic, bound for access-stimulating LECs and IPES Providers. As in the *Access Arbitrage Order*, "[w]e believe that making clear that our rules apply equally to interstate and intrastate traffic will discourage gamesmanship related to the geographic classification of the traffic; i.e., carriers creating ways to move access-stimulation schemes to intrastate service. This approach will also help prevent the possible undoing of our rules which address the unjust and [un]reasonable practice of charging IXCs for the tandem switching and tandem switched transport access charges necessary to terminate access-stimulation traffic, the inefficiencies and network unreliability created by such schemes, and the implicit subsidies underlying those schemes." *Access Arbitrage Order*, 34 FCC Rcd at 9076 n.302; *see supra* paras. 76-78 (discussing the applicability of the Access Stimulation Rules to intrastate charges).

[330] 47 U.S.C. § 251(g); *see Access Arbitrage Order*, 34 FCC Rcd at 9077, para. 102 (explaining that "even assuming *arguendo* that the specific Commission rules adopted to address access stimulation here were viewed as falling outside the scope of section 251(b)(5), our action would, at a minimum, fall within the understanding of the Commission's role under section 251(g) reflected [in] the *USF/ICC Transformation Order*. As the Commission stated there, section 251(g) grandfathers historical exchange access requirements 'until the Commission adopts rules to transition away from that system,' including through transitional rules that apply pending the completion of comprehensive reform moving to a new, permanent framework under section 251(b)(5). [*USF/ICC Transformation Order*, 26 FCC Rcd at 17923, para. 778.] The access stimulation concerns raised here arise, in significant part, because of ways in which the Commission's planned transition to bill-and-keep is not yet complete and, in that context, we find it necessary to address problematic conduct that we observe on a transitional basis until that comprehensive reform is finalized.").

paid by IXCs for access-stimulation traffic continue to subsidize LEC networks, section 254 gives us the authority to adopt the rules in this Order to eliminate those implicit subsidies. The rules we adopt are intended to encourage terminating LECs and IPES Providers to make efficient interconnection choices in the context of access-stimulation schemes and are thus consistent with longstanding Commission policy and Congressional direction. Accordingly, sections 201, 251, and 254 of the Act give us the authority to adopt the rules described in this *Order*.[332]

89. *Section 4(i) of the Act.* Although we conclude that the statutory sections identified above provide us sufficient authority to adopt our revised rules, we also conclude that our ancillary authority pursuant to section 4(i) of the Act[333] provides an additional, independent basis to adopt limited rules with respect to IPES Providers.[334] Commenters agreed with this conclusion; no commenters disagreed.[335] Section 4(i) of the Act gives the Commission the authority to perform acts, adopt rules, and issue orders, as necessary in the execution of its functions.[336] The D.C. Circuit has determined that the Commission's exercise of its ancillary authority is appropriate when "'(1) the Commission's general jurisdictional grant under Title I [of the Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.'"[337] The requirements we adopt today, that are applicable to IPES Providers, are "reasonably ancillary to the Commission's effective performance of [its] responsibilities."[338] Specifically, IPES Providers interconnected with the PSTN and exchanging IP traffic clearly provide "interstate . . . communication by wire or radio" pursuant to section 152(a) of the Act.[339] The rules we adopt, that are applicable to IPES

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[331] 47 U.S.C. § 254(e) (requiring universal service support to be "explicit"); *see Access Arbitrage Order*, 34 FCC Rcd at 9075-76, para. 97 ("To the extent that access stimulation activities have the effect of subsidizing certain end-user services—allowing providers to offer the services to their customers at no charge in many instances—we also conclude that regulatory reforms that eliminate those implicit subsidies better accord with the objectives of section 254 of the Act . . . . Any implicit subsidies resulting from access stimulation are based solely on the whims of the individual service providers, which are no substitute for the considered policy judgments the Commission makes consistent with the framework Congress established in section 254." (footnotes omitted)).

[332] 47 U.S.C. §§ 201, 251, 254; *see Access Arbitrage Order*, 34 FCC Rcd at 9073-79, paras. 89-105.

[333] 47 U.S.C. § 154(i).

[334] *See generally United States v. Sw. Cable Co.*, 392 U.S. 157, 178 (1968) (*Sw. Cable Co.*) (agreeing with the Commission's use of ancillary authority to regulate cable television).

[335] USTelecom Sept. 6, 2022 Comments at 12 ("The Commission may adopt rules pursuant to its ancillary authority when "'(1) the Commission's general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities."' Clearly IPES service is 'interstate . . . communication by wire or radio' satisfying the first prong of the test. For part two, it is an express part of the Commission's duty to prevent unjust or unreasonable charges or practices by carriers.") (quoting *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (quoting *Am. Library Ass'n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)), and 47 U.S.C. § 201); *see also* Bandwidth Dec. 2, 2022 *Ex Parte* Letter at 5 ("The Commission has clear and sufficient legal authority to apply the Access Stimulation Rules to IPES Providers under its Title I ancillary jurisdiction.").

[336] 47 U.S.C. § 154(i). *See generally Sw. Cable Co.*, 392 U.S. at 178.

[337] *Comcast Corp.*, 600 F.3d at 646 (quoting *Am. Library Ass'n*, 406 F.3d at 691-92).

[338] *Sw. Cable Co.*, 392 U.S. at 178; *see also, e.g.*, *First Rural Call Completion Order*, 28 FCC Rcd at 16562, para. 35 ("Ancillary authority may be employed, at the Commission's discretion, when the Act covers the regulated subject and the assertion of jurisdiction is reasonably ancillary to the effective performance of [the Commission's] various responsibilities." (footnotes omitted)).

[339] 47 U.S.C. § 152(a); *see* Inteliquent Dec. 2, 2022 *Ex Parte* Letter at 5 ("[Inteliquent] agreed that requiring IPES Providers to comply with the access arbitrage rules is reasonably ancillary to the Commission's performance of the foregoing statutory responsibilities, particularly given that—as the Access Arbitrage FNPRM explains—IPES

(continued….)

Providers, are reasonably ancillary to our established authority to deter access arbitrage. For example, the Commission has found it to be an unjust and unreasonable practice under section 201(b) of the Act for IXCs to pay terminating tandem switching and tandem switched transport charges for the delivery of access-stimulation traffic.[340] The record indicates that IPES Providers have been inserted into the call flow in an effort to evade this holding and for parties to continue to engage in access stimulation. Therefore, we are justified in asserting our ancillary authority in adopting rule revisions applicable to IPES Providers to help deter access arbitrage and ensure just and reasonable practices under our statutory responsibilities provided in section 201(b) of the Act.[341]

90. Similarly, as the Commission has repeatedly made clear, it may, pursuant to section 251(b)(5), require the transition of access charges to a bill-and-keep framework.[342] And, the Commission has recognized that section 251(g) grandfathers the historical exchange access system "until the Commission adopts rules to transition away from the system."[343] In the *Access Arbitrage Order* the Commission found that access stimulation arises, "in significant part, because of ways in which the Commission's planned transition to bill-and-keep is not yet complete, and in that context, we find it necessary to address problematic conduct that we observe on a transitional basis until that comprehensive reform is finalized."[344] In this Order, we have found that IPES Providers are inserted into the call flow for the purpose of collecting inflated, tariffed terminating tandem switching and transport access charges from IXCs.[345] This practice is contrary to the Commission's stated goal of transitioning to bill-and-keep; that is, reducing the access charges carriers pay one another. Taking action to deter the insertion of IPES Providers into a call flow, in direct contravention of Commission precedent, orders and rules, is reasonably ancillary to our statutory mission to ensure just and reasonable rates and practices under section 201(b) of the Act.

91. Finally, as relevant here, the Commission has previously applied the statutory requirements of section 254 to VoIP providers pursuant to its ancillary authority. Specifically, the Commission found that its statutory requirement to establish "specific, predictable and sufficient mechanisms . . . to preserve and advance universal service"[346] necessitated that VoIP providers contribute to the Universal Service Fund.[347] As discussed above, section 254 also requires the elimination of implicit subsidies. Asserting ancillary authority over IPES Providers will help ensure that LEC networks are not

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Providers interconnected with the [public switched telephone network] and exchanging IP traffic clearly constitutes 'communication by wire or radio.'").

[340] *Access Arbitrage Order*, 34 FCC Rcd at 9073-74, para. 92.

[341] *Universal Service Contribution Methodology Order*, 21 FCC Rcd at 7541-43, paras. 46-49 (using ancillary jurisdiction to extend universal service contribution obligations to interconnected VoIP providers). The Commission has similarly invoked its ancillary jurisdiction to impose outage reporting requirements to interconnected VoIP providers, explaining that the provision of interconnected VoIP is communication by wire or radio within the general jurisdictional grant of section 2 of the Act, and is "'reasonably ancillary'" to ensuring interconnected VoIP providers can satisfy their statutorily-mandated E911 obligations. *Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice over Internet Protocol Service Providers and Broadband Internet Service Providers*, PS Docket No. 11-82, Report and Order, 27 FCC Rcd 2650, 2651, 2678, paras. 1, 66 n.144 (2012).

[342] *Access Arbitrage Order*, 34 FCC Rcd at 9076, para. 98; *USF/ICC Transformation Order*, 26 FCC Rcd at 17915, para. 762.

[343] *USF/ICC Transformation Order*, 26 FCC Rcd at 17923, para. 778; 47 U.S.C. § 251(g).

[344] *Access Arbitrage Order*, 34 FCC Rcd at 9077, para. 102.

[345] *Supra* para. 13 (additional action taken to deter access stimulation is in the public interest).

[346] 47 U.S.C. § 254(d).

[347] *Universal Service Contribution Methodology Order*, 21 FCC Rcd at 7542-43, para. 48.

implicitly subsidized by access charges for access-stimulation traffic. This action will help close a perceived loophole in our rules that has been exploited by those interested in continued arbitrage of our access charge regime and the improper use of access charges to fund "free," or no-cost to the consumer, high-volume calling services. For these reasons, we conclude that requiring IPES Providers, as defined for the purposes of our Access Stimulation Rules, to comply with our limited revised rules is reasonably ancillary to the Commission's effective performance of its statutory responsibilities as described above.

E. Cost Benefit Analysis

92. *Harms of Access Arbitrage*. Access arbitrage exploits our intercarrier compensation regime by requiring the payment of terminating switched access tandem switching and switched access transport charges for activities and to providers that our policies are not intended to benefit.[348] As Bandwidth explains, "[s]o long as access charges exist, . . . parties that originate and terminate traffic have an incentive to arbitrage the associated economies for themselves, their affiliates, and their carrier partners. The purpose of this proceeding is to reduce the arbitrage and fraud based on that incentive."[349] Parties pursue access arbitrage opportunities by artificially stimulating traffic, and then routing that traffic along more expensive, and/or less efficient, call paths.[350] We first outline how the actions we take today will reduce the various harms caused by access arbitrage. We then show that the expected benefits from reducing just one of the harms—reducing the burden on IXCs to avoid being exploited—exceed the estimated costs of our actions.

93. The record does not allow us to fully quantify the cost of artificial traffic stimulation and inefficient routing, but given that tens of millions of dollars of payments are made to access arbitrageurs, these costs are likely high.[351] The waste of inefficient traffic routing is acute because the party that chooses the call path does not pay the relevant intercarrier compensation charges, and instead typically gains from them.[352] The costs of access stimulation are also likely large because the costs of these traffic-generating activities are not fully paid for by the users of the high-volume calling services, who often pay nothing for these services.[353] This means some consumers use such services even though they value them less than the cost of supply. It also means consumers who do not use the high-volume calling services effectively pay for them when they purchase other telecommunications services at rates that are higher because they are based on recovering the costs of artificially inflated access charges their carriers must pay to deliver access-stimulation traffic.[354] These rates unnecessarily and inefficiently curtail demand for those other telecommunications services. If providers of high-volume calling services were to charge prices that wholly recovered the costs of arbitrage (rather than a portion of those costs being borne by consumers who do not use high-volume calling services), then purchases of the high-volume calling services would decline, leaving only purchases where the consumer values the service at more than its

[348] *See supra* Section II - Background.

[349] Bandwidth Jan. 26, 2023 *Ex Parte* Letter at 2.

[350] *See supra* Section I – Introduction.

[351] AT&T Sept. 6, 2022 Comments at 5 ("The associated access charges—and anti-consumer subsidies—associated with these IPES-based schemes can be very large, totaling to many millions of dollars per year."); *Wide Voice v. FCC*, 61 F.4th at 1023 ("Meanwhile, because other LECs had left the market, the volume of calls that Wide Voice transferred to HD Carrier for delivery to Free Conferencing significantly increased, causing call congestion and leading to charges totaling over $5 and $6 million annually."); *see Access Arbitrage Order*, 34 FCC Rcd at 9038-39, para. 9 ("IXCs estimate that access arbitrage [then] cost[] IXCs between $60 million and $80 million annually.").

[352] *See generally supra* Section II – Background; USTelecom Feb. 13, 2023 *Ex Parte* Letter at 1 ("[T]he availability of legacy access charges on TDM networks, and the arbitrage schemes they can enable, can prevent [arguably more efficient direct IP interconnection] agreements from being reached.").

[353] *See generally supra* Section II – Background.

[354] *See generally supra* Section II – Background.

cost. Every call minute so reduced would help eliminate waste or create value equal to the difference between the cost-covering prices and these low-demand consumers' valuations of the service. At the same time, a reduction in the costs paid by other consumers due to a decrease in arbitrage would efficiently expand the use of telecommunications services, to the benefit of the general public by, for example, reducing call congestion and service disruptions caused by access stimulation.[355]

94. Behavior driven by access arbitrage also threatens the Commission's mandate to ensure that telecommunications services are provided at just and reasonable rates.[356] The telecommunications network depends on carriers being able to exchange vast quantities of traffic every minute in an efficient and reasonable manner at just and reasonable rates absent the artificial inflation of costs due to arbitrage.[357] Without the actions we take today, this process of exchanging traffic—fundamental to personal and business interactions across our nation—would be undermined, thereby threatening the longer-term viability of the network. We are not able to quantify this harm with a specific cost in dollars, but any threat to the long-term viability of the nationwide communications network is intolerable and subject to our legislative mandate to ensure just and reasonable rates and practices for consumers.[358]

95. Lastly, service providers seeking to avoid being exploited by access arbitrageurs must engage in costly defensive measures that would be unnecessary in the absence of access arbitrage. Examples of these wastes include:

- disputes over questionable demands for payment by tandem service providers that send calls to apparent access stimulators;
- attempts by IXCs to identify the sources of traffic that appears to have been arbitraged; and
- time and money spent by parties seeking to protect against or reduce access arbitrage opportunities, as in this proceeding.[359]

96. Evidence from AT&T allows us to demonstrate the costs parties incur in seeking to avoid being exploited by access arbitrageurs would vastly exceed the costs parties would incur as a result of the

[355] *See* USTelecom Feb. 13, 2023 *Ex Parte* Letter at 1 ("Arbitrage from IPES providers continues to create inefficiencies in the marketplace to the detriment of consumers."); *Great Lakes*, 3 F.4th at 477 "([A]rtificial network stimulation harms consumers by distorting the market."); *Further Notice* at 4 n.21 (referencing specific inefficiencies detailed in the record in this proceeding). After the Access Stimulation Rules became effective, access-stimulation traffic formerly destined to several LECs that had exited the business was rerouted through Wide Voice to HD Carrier which "precipitated significant and preventable call congestion." *AT&T v. Wide Voice Enforcement Order*, 36 FCC Rcd at 9788-89, para. 41; *see Wide Voice v. FCC*, 61 F.4th at 1023 (call congestion caused by Wide Voice and HD Carrier rerouting traffic).

[356] 47 U.S.C. § 201(b).

[357] In 2021, nearly 40 billion interstate switched access minutes were carried by incumbent LECs alone. FCC, Federal-State Joint Board Monitoring Reports, 2022 Monitoring Report, Supplementary Material, S.6.4. ILEC Interstate Switched Access Minutes of Use - by State, https://fcc.gov/file/24828/download (last visited Mar. 13, 2023) (To obtain the report, use the link to download the .zip file for 2022, extract the file folder "Supplementary Material," select "Section 6," and then select "S.6.4," an Excel spreadsheet.). (Incumbent LECs are a subset of all LECs. *See* 47 U.S.C. § 251(h).) That is over 100 million minutes a day.

[358] 47 U.S.C. § 201(b).

[359] *See* Aureon Oct. 3, 2022 Reply at 1-3 ("Some IXCs continue to wrongfully allege that Aureon is engaged in access stimulation . . . ."); Verizon Sept. 6, 2022 Comments at 6 (noting that "access stimulators and their IPES provider partners have gotten better at hiding their traffic, by routing it so that it is intermingled with legitimate traffic," and describing the need to be vigilant of tariff filings which may be withdrawn after "long-distance carriers spend the time and resources to identify and challenge those tariffs"), 21 (complaining about the cost of "bring[ing] access stimulators to the Commission's attention"); AT&T Jan. 31, 2023 *Ex Parte* at 3 n.6.

rules we adopt today. For example, AT&T reported spending 15,000 employee-hours over three years to identify and combat access stimulation.[360] Applying an hourly rate of $50,[361] the annual expense of this labor for AT&T alone would come to $250,000.[362] If the Commission takes no action, AT&T would incur similar annual costs every year. Even if, being conservative, our actions were to save AT&T just half of the costs it may incur in only three years, this would be a benefit of approximately $300,000.[363] The actual cost savings will be much higher, however: AT&T will save costs every year well beyond just a three-year period. In addition, AT&T is only one of many IXCs that are harmed by access arbitrage. Every IXC that delivers traffic to access stimulators will also realize savings. These estimates do not even count the gains from reducing the unquantified, but likely much more significant, harms discussed above.

97. *Costs of Our New Rules*. When the 2019 *Access Arbitrage Order* was adopted, at least 21 carriers were identified as allegedly engaging in access stimulation.[364] At least five former access-stimulating LECs have notified the Commission that they have left the access-stimulation business.[365]

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[360] AT&T Jan. 31, 2023 *Ex Parte* Letter at 3 n.6 ("Since the *Access Arbitrage Order* went into effect in January 2020, AT&T conservatively estimates it has spent upwards of 15,000 employee-hours identifying and combating access stimulation, not including hours spent by outside counsel and experts."); *see also* USTelecom Feb. 13, 2023 *Ex Parte* Letter at 1 ("USTelecom members have incurred significant intercarrier compensation and personnel costs in fighting these abuses.").

[361] For comparison's sake, the median hourly wage for computer programmers is $44.71, and for accountants and auditors it is $37.14. Bureau of Labor Statistics, *Economic News Release, Table 1. National Employment and Wage Data from the Occupational Employment and Wage Statistics Survey by Occupation*, May 2021 (Mar. 31, 2022), https://www.bls.gov/news.release/ocwage.t01.htm. These rates do not include non-wage compensation or work-related overhead. In September 2022, non-wage compensation for the private sector was 29.5% of total compensation. Bureau of Labor Statistics, *Economic News Release, Employer Costs for Employee Compensation Summary* (Dec. 15, 2022), https://www.bls.gov/news.release/ecec.nr0.htm (entitled "September 2022"; described as "benefit costs"). Non-wage compensation can be accounted for by marking up the wage compensation by 41.8% (= ((non-wage compensation) / (1 – non-wage compensation)) = 0.295 / 0.705). To account for expenses related to office space and equipment, we apply a further markup of 20%. The results are hourly rates for computer programmers of $76.08 (= ((hourly wage for computer programmers) * (41.8% markup for non-wage compensation) * (20% markup for office space and equipment)) = $44.71 * 1.418 * 1.2), and for accountants and auditors of $63.20 (= ((hourly wage for accountants and auditors) * (41.8% markup for non-wage compensation) * (20% markup for office space and equipment)) = $37.14 * 1.418 * 1.2). Because these are estimates and we want to avoid overstating the benefits of our actions, we round these down to an hourly rate of $50.

[362] The net present value of an annual expense of $250,000 over three years, discounted at a rate of 7%, would be $656,079 (half of which is $328,040). The discount rate of 7% follows the guidelines of the OMB, Circular A-4, Regulatory Analysis at 33 (Sept. 17, 2003), https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf, and OMB, Circular A-94, Guidelines for Discount Rates for Benefit-Cost Analysis of Federal Programs at 9 (Oct. 29, 1992), https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A94/a094.pdf.

[363] The calculation of the benefit over three years is: ($250,000 cost per year) * 0.5) * 3 years = $375,000. To be conservative, we round down to $300,000.

[364] *Access Arbitrage Order*, 34 FCC Rcd at 9041, para. 15 & n.42.

[365] Interstate Cablevision Jan. 9, 2020 *Ex Parte* Letter at 1 (noting that as of December 29, 2019, the company terminated end-user relationships with high-volume calling providers); Letter from Ronald Laudner, Jr., CEO, OmniTel Communications, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Jan. 9, 2020) (notifying the Commission that as of October 29, 2019, the company terminated end-user relationships with high-volume calling providers); Louisa Communications, Inc., Dec. 27, 2019 *Ex Parte* Letter at 1 (notifying the Commission that the company terminated its end-user relationships with high-volume calling providers as of December 25, 2019); Letter from Jared C. Johnson, General Manager, Goldfield Access Network, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Dec. 27, 2019) (providing notice that as of December 25, 2019, the company terminated its end-user relationships with high-volume calling providers); Letter from Jeff (continued….)

That suggests 16 LECs are engaged in access stimulation today.[366] We assume a similar number of IPES Providers engage in access stimulation.[367] In that case, our Access Stimulation Rules would impact approximately 30 providers.[368] Our existing, modified and new Access Stimulation Rules will require those providers to: (1) perform traffic studies; (2) calculate traffic ratios to determine if they are engaged in access stimulation under the traffic ratios in our Access Stimulation Rules; (3) notify Intermediate Access Providers, IXCs, and the Commission if they are engaged in access stimulation; and (4) notify Intermediate Access Providers, IXCs, and the Commission if they are no longer engaged in access stimulation.[369] Those access-stimulating providers that file tariffs may also have to: (1) adjust their billing systems to no longer bill IXCs; and (2) modify their tariffs to ensure that IXCs are not billed for tandem switching or tandem transport access charges for calls delivered to access-stimulating LECs or IPES Providers.[370] As the Commission did in the 2019 *Access Arbitrage Order*, we estimate that the required effort for each firm (here, a LEC or IPES Provider) would be unlikely to exceed 100 hours of work.[371] By applying an hourly rate of $100,[372] the present value of the costs that all access-stimulating LECs or IPES Providers may incur would not exceed $300,000.[373]

(Continued from previous page)
Roiland, CEO, BTC, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Dec. 27, 2019) (indicating that as of December 25, 2019, the company terminated its end-user relationships with high-volume calling providers); Letter from David Schornack, Director of Sales & Business Development, Tekstar Communications, Inc. dba Arvig, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed Dec. 11, 2019) (notifying the Commission that its revenue sharing agreements would be terminated on or before January 10, 2020).

[366] Our estimate that there may be 16 LECs engaged in access stimulation is based on: (21 carriers identified in 2019) – (5 former access-stimulating LECs that notified the Commission) = 16 LECs. Verizon, a single IXC, provided a list of nine LECs for which it has traffic data showing traffic ratios exceeding the applicable triggers. Verizon Sept. 6, 2022 Comments Appx. B. An estimate of nine LECs engaged in access stimulation from one IXC suggests that there are more LECs engaged in access stimulation that other IXCs may do business with.

[367] The prevalence of IPES providers is demonstrated by AT&T's information that its long-distance network "sees approximately 400 million minutes of traffic terminating to IPES carriers per month, essentially twice the number of IPES minutes AT&T saw prior to the 2019 *Access Arbitrage Order*." AT&T Sept. 6, 2022 Comments at 5. "Wide Voice sees this statistic as real progress," showing a "meaningful transition to IP." Wide Voice Jan. 10, 2023 *Ex Parte* Letter at 2 (citation omitted) (referring to AT&T's data).

[368] Prior to the rule amendments adopted in this Order, access-stimulating IPES Providers have had no requirement to report their status to the Commission. Therefore, we hypothesize, for purposes of our cost benefit analysis, that the number of access-stimulating IPES Providers is similar to the estimated number of access-stimulating LECs. Thus, if there are about 16 access-stimulating LECs and a similar number of access-stimulating IPES Providers, there are a total of approximately 30 access-stimulating providers.

[369] *See infra* Appx. A (47 CFR §§ 51.914, 61.3(bbb)).

[370] *See infra* Appx. A (47 CFR § 51.914).

[371] *See, e.g.*, FCC, OMB Control No. 3060-0298, Supporting Statement at 6-8 (Feb. 2020), https://www.reginfo.gov/public/do/PRAMain (Under "Current Inventory, Select Agency," select "Federal Communications Commission," and click Submit; scroll down to and click on "OMB Control Number: 3060-0298"; click on "202001-3060-005"; click on "View Supporting Statement and Other Documents"; and click on "3060-0298 Supporting Statement_1.31.2020.docx.") (for the Information Collection Review by the Office of Management and Budget, and showing the annual burdens for compliance with several Access Stimulation Rules).

[372] Above, in estimating the cost of the harms we are trying to reduce, we rounded our hourly rate down to $50. *Supra* note 361. Here, in estimating the costs our actions will impose, we round the hourly rate up to $100.

[373] The calculation is: (100 hours) * ($100 per hour) * (30 LECs and IPES Providers) = $300,000. This calculation assumes that all costs are incurred in the first year, which increases their present value. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2021 National Occupational Employment and Wage Estimates (Mar. 31, 2022), https://www.bls.gov/oes/current/oes_nat.htm (showing the median hourly wage for computer

(continued….)

98. *The Benefits of Our New and Revised Rules Outweigh Their Costs*. The rules we adopt today promote the integrity of tariffed rates for tandem switching and tandem switched transport services, and hence the goal of connectivity—the ability of consumers to connect with each other across the entire U.S. telecommunications network—at just and reasonable rates.[374] By meeting our legislative responsibility to ensure IXCs do not pay tariffed tandem switching and transport rates for access-stimulation traffic, which the Commission has found to be an unjust and unreasonable practice,[375] we help to protect the policies that underlie our intercarrier compensation rules, and the widespread willingness of carriers to interconnect and deliver calls across the network. Although the bulk of the benefits of maintaining the ability to connect with each other cannot be quantified, as we have shown, even the quantifiable components are significant and likely are vastly greater than $300,000—our present value estimate of the costs of our actions.[376]

IV. PROCEDURAL MATTERS

99. *Paperwork Reduction Act Analysis*. This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such new or modified information collection requirements will be submitted to OMB for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.[377]

100. In this Order, we have assessed the effects of requiring IPES Providers to keep necessary records, calculate applicable ratios, and provide required third-party disclosure of certain information to the Commission, parties they do business with and the public, and find that IPES Providers likely keep this information and perform these responsibilities in the normal course of business. Therefore, these additional requirements should not be overly burdensome. We do not believe there are many access-stimulating IPES Providers operating today but note that of the small number of access-stimulating IPES Providers in existence, most, if not all, will be affected by this Order. We believe that access-stimulating IPES Providers are typically smaller businesses and may employ fewer than 25 people. We sought comment on the potential effects of the information collection rules we adopt today in the *Further Notice*,[378] and we received no comment specifically addressing burdens on small business concerns either in response to this request or on our Initial Regulatory Flexibility Act Analysis.[379] We find the benefits that will be realized by a decrease in the uneconomic effects of access stimulation outweigh any burden associated with the changes required by this Second Report and Order.

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programmers is $44.71, and for accountants and auditors it is $37.14, as used above in calculating hourly wages); *supra* note 361.

[374] 47 U.S.C. § 201(b); *see, e.g.*, *USF/ICC Transformation Notice*, 26 FCC Rcd at 4763, para. 654 (explaining that "the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the goals of the Act").

[375] *Access Arbitrage Order*, 34 FCC Rcd at 9073-74, para. 92.

[376] *See also* AT&T Nov. 8, 2022 *Ex Parte* Letter at 2 ("The ability of providers to collect excessive, anti-consumer access charges through traditional TDM traffic exchange is one of the primary stumbling blocks to reaching IP interconnection agreements.").

[377] *Further Notice* at 24, para. 60.

[378] *Id.* at 24, para. 61.

[379] *Id.* at Appx. B.

101. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Second Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

102. *Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Second Report and Order.[380] The FRFA is contained in Appendix B.

V. ORDERING CLAUSES

103. Accordingly, **IT IS ORDERED** that, pursuant to sections 1, 2, 4(i), 201, 251, 254, and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201, 251, 254, and 303(r), and section 1.1 of the Commission's rules, 47 CFR § 1.1, this Second Report and Order IS ADOPTED.

104. **IT IS FURTHER ORDERED** that, pursuant to sections 1.4, 1.103 and 1.427 of the Commission's Rules, 47 CFR §§ 1.4, 1.103, 1.427, the amendments to the Commission's rules as set forth in Appendix A ARE ADOPTED, effective 30 days after publication in the Federal Register, except that the amendments to sections 51.914(d) and 51.914(g) of the Commission's rules, 47 CFR § 51.914(d), (g), which may contain new or modified information collection requirements, will not become effective until the Office of Management and Budget completes review of any information collection requirements that the Wireline Competition Bureau determines is required under the Paperwork Reduction Act. Compliance with the amendments to the Commission's rules as set forth in Appendix A will be required 45 days following the effective date. The Commission directs the Wireline Competition Bureau to announce the effective dates and the compliance dates for sections 51.914(d) and 51.914(g) by subsequent Public Notice.

105. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance Evaluation and Records Management, SHALL SEND a copy of this Second Report and Order, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

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

APPENDIX A

Final Rules

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

PART 51—INTERCONNECTION

The authority citation for part 51 continues to read as follows:

Authority: 47 U.S.C. 151-55, 201-05, 207-09, 218, 225-27, 251-52, 271, 332 unless otherwise noted.

1. Amend § 51.914 by revising paragraphs (a) and (b), redesignating paragraphs (c), (d), and (e) as paragraphs (e), (f), and (g), with revisions, and adding paragraphs (c) and (d) as follows:

§ 51.914 Additional provisions applicable to Access Stimulation traffic.

(a) Notwithstanding any other provision of this part, if a local exchange carrier is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later:

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

(2) Designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching or terminating switched access tandem transport services to the local exchange carrier engaged in Access Stimulation; and

(3) Assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such local exchange carrier's terminating end office or equivalent and the associated access tandem switch.

(b) Notwithstanding any other provision of this part, if a local exchange carrier is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business of the following:

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

(2) That it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching or terminating switched access tandem transport services to the local exchange carrier engaged in Access Stimulation; and

(3) That the local exchange carrier shall pay for those services as of that date.

(c) Notwithstanding any other provision of the Commission's rules, if an IPES Provider, as defined in § 61.3(eee) of this chapter, is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter,

then within 45 days of commencing Access Stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later:

(1) The IPES Provider shall designate the Intermediate Access Provider(s), if any, that will provide terminating switched access tandem switching or terminating switched access tandem transport services to the IPES Provider engaged in Access Stimulation; and further

(2) The IPES Provider may assume financial responsibility for any applicable Intermediate Access Provider's charges for such services for any traffic between such IPES Provider's terminating end office or equivalent and the associated access tandem switch; and

(3) The Intermediate Access Provider shall not assess any charges for such services to the Interexchange Carrier.

(d) Notwithstanding any other provision of the Commission's rules, if an IPES Provider, as defined in § 61.3(eee) of this chapter, is engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall, within 45 days of commencing Access Stimulation, or within 45 days of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], whichever is later, notify in writing the Commission, all Intermediate Access Providers that it subtends, and Interexchange Carriers with which it does business of the following:

(1) That it is an IPES Provider engaged in Access Stimulation; and

(2) That it shall designate the Intermediate Access Provider(s), if any, that will provide the terminating switched access tandem switching or terminating switched access tandem transport services directly, or indirectly through a local exchange carrier, to the IPES Provider engaged in Access Stimulation; and

(3) Whether the IPES Provider will pay for those services as of that date.

(e) In the event that an Intermediate Access Provider receives notice under paragraphs (b) or (d) of this section that it has been designated to provide terminating switched access tandem switching or terminating switched access tandem transport services to a local exchange carrier engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, or to an IPES Provider engaged in Access Stimulation, directly, or indirectly through a local exchange carrier, and that local exchange carrier engaged in Access Stimulation shall pay or the IPES Provider engaged in Access Stimulation may pay for such terminating access service from such Intermediate Access Provider, the Intermediate Access Provider shall not bill Interexchange Carriers for interstate or intrastate terminating switched access tandem switching or terminating switched access tandem transport service for traffic bound for such local exchange carrier or IPES Provider but, instead, shall bill such local exchange carrier or may bill such IPES Provider for such services.

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

(g) Upon terminating its engagement in Access Stimulation, as defined in § 61.3(bbb) of this chapter, the local exchange carrier or IPES Provider engaged in Access Stimulation shall provide concurrent,

written notification to the Commission and any affected Intermediate Access Provider(s) and Interexchange Carrier(s) of such fact.

PART 61 – TARIFFS

The authority citation for part 61 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201-205, 403, unless otherwise noted.

2. Amend § 61.3 by revising paragraphs (bbb)(1), (2), and (3), and (ccc), and adding paragraphs (bbb)(5), (eee) and (fff) to read as follows:

§ 61.3 Definitions.
* * * * *

(bbb) Access Stimulation.

(1) A Competitive Local Exchange Carrier serving end user(s) or an IPES Provider serving end user(s) engages in Access Stimulation when it satisfies either paragraphs (bbb)(1)(i) or (bbb)(1)(ii) of this section; and a rate-of-return local exchange carrier serving end user(s) engages in Access Stimulation when it satisfies either paragraphs (bbb)(1)(i) or (bbb)(1)(iii) of this section.

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

(A) Has an access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider is based on the billing or collection of access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier, Competitive Local Exchange Carrier, or IPES Provider to the other party to the agreement shall be taken into account; and

(B) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 in an end office or equivalent in a calendar month, or has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year for such end office or equivalent.

(ii) A Competitive Local Exchange Carrier or IPES Provider has an interstate terminating-to-originating traffic ratio of at least 6:1 in an end office or equivalent in a calendar month.

(iii) A rate-of-return local exchange carrier has an interstate terminating-to-originating traffic ratio of at least 10:1 in an end office or equivalent in a three-calendar month period and has 500,000 minutes or more of interstate terminating minutes-of-use per month in the same end office in the same three-calendar month period. These factors will be measured as an average over the three-calendar month period.

(2) A Competitive Local Exchange Carrier serving end user(s), or an IPES Provider serving end user(s), that has engaged in Access Stimulation will continue to be deemed to be engaged in Access Stimulation until: For a carrier or provider engaging in Access Stimulation as defined in paragraph (bbb)(1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (bbb)(1)(i) of this section and does not engage in Access Stimulation as defined in paragraph (bbb)(1)(ii) of this section; and for a carrier or provider engaging in Access Stimulation as defined in paragraph (bbb)(1)(ii) of this section, its interstate terminating-to-originating traffic ratio for an end office or equivalent falls below 6:1 for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (bbb)(1)(i) of this section.

(3) A rate-of-return local exchange carrier serving end user(s) that has engaged in Access Stimulation will continue to be deemed to be engaged in Access Stimulation until: For a carrier engaging in Access Stimulation as defined in paragraph (bbb)(1)(i) of this section, it terminates all revenue sharing agreements covered in paragraph (bbb)(1)(i) of this section and does not engage in Access Stimulation as defined in paragraph (bbb)(1)(iii) of this section; and for a carrier engaging in Access Stimulation as defined in paragraph (bbb)(1)(iii) of this section, its interstate terminating-to-originating traffic ratio falls below 10:1 for six consecutive months and its monthly interstate terminating minutes-of-use in an end office or equivalent falls below 500,000 for six consecutive months, and it does not engage in Access Stimulation as defined in paragraph (bbb)(1)(i) of this section.

* * *

(5) In calculating the interstate terminating-to-originating traffic ratio at each end office or equivalent under this paragraph (bbb), each Competitive Local Exchange Carrier, rate-of-return local exchange carrier or IPES Provider shall include in such calculation only traffic traversing that end office or equivalent and going to and from any telephone number associated with an Operating Company Number that has been issued to such Competitive Local Exchange Carrier, rate-of-return local exchange carrier or IPES Provider. The term "equivalent" in the phrase "end office or equivalent" means "End Office Equivalent," as defined in this section.

(ccc) *Intermediate Access Provider*. The term means, for purposes of this part and §§ 51.914, 69.4(1), and 69.5(b) of this chapter, any entity that provides terminating switched access tandem switching or terminating switched access tandem transport services between the final Interexchange Carrier in a call path and:

(1) A local exchange carrier engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or

(2) A local exchange carrier delivering traffic to an IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section; or

(3) An IPES Provider engaged in Access Stimulation, as defined in paragraph (bbb) of this section, where the entity delivers calls directly to the IPES Provider.

* * *

(eee) *IPES (Internet Protocol Enabled Service) Provider*. The term means, for purposes of this part and §§ 51.914, 69.4(l) and 69.5(b) of this chapter, a provider offering a service that: (1) enables communications; (2) requires a broadband connection from the user's location or end to end; (3) requires Internet Protocol-compatible customer premises equipment (CPE); and (4) permits users to receive calls

that originate on the public switched telephone network or that originate from an Internet Protocol service.

(fff) End Office Equivalent. For purposes of this part and §§ 51.914, 69.3(e)(12)(iv) and 69.4(l) of this chapter, an End Office Equivalent is the geographic location where traffic is delivered to an IPES Provider for delivery to an end user. This location shall be used as the terminating location for purposes of calculating terminating-to-originating traffic ratios, as provided in this section. For purposes of the Access Stimulation Rules, the term "equivalent" in the phrase "end office or equivalent" means End Office Equivalent.

* * * * *

PART 69 – ACCESS CHARGES

The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

3. Amend § 69.4 by revising paragraph (l) to read as follows:

§ 69.4 Charges to be filed.
* * * * *

(l) Notwithstanding paragraph (b)(5) of this section, a competitive local exchange carrier or a rate-of-return local exchange carrier engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, the Intermediate Access Provider it subtends, or an Intermediate Access Provider that delivers traffic directly or indirectly to an IPES Provider engaged in Access Stimulation, as defined in § 61.3(bbb) of this chapter, shall not bill an Interexchange Carrier, as defined in § 61.3(bbb) of this chapter, for interstate or intrastate terminating switched access tandem switching or terminating switched access tandem transport charges for any traffic between such competitive local exchange carrier's, such rate-of-return local exchange carrier's, or such IPES Provider's terminating end office or equivalent and the associated access tandem switch.

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

§ 69.5 Persons to be assessed.
* * * * *

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

(1) Competitive local exchange carriers and rate-of-return local exchange carriers shall not assess terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges described in § 69.4(b)(5) of this part on Interexchange Carriers when the terminating traffic is destined for a competitive local exchange carrier, or a rate-of-return local exchange carrier, or is destined, directly or indirectly, for an IPES Provider, where such carrier or Provider is engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter, consistent with the provisions of § 61.26(g)(3) of this chapter and § 69.3(e)(12)(iv) of this part.

(2) Intermediate Access Providers shall not assess terminating interstate or intrastate switched access tandem switching or terminating switched access tandem transport charges described

in § 69.4(b)(5) of this part on Interexchange Carriers when the terminating traffic is destined for a competitive local exchange carrier, or a rate-of-return local exchange carrier, or is destined, directly or indirectly, for an IPES Provider, where such carrier or Provider is engaged in Access Stimulation, as that term is defined in § 61.3(bbb) of this chapter, consistent with the provisions of § 61.26(g)(3) of this chapter and § 69.3(e)(12)(iv) of this part.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* for the access arbitrage proceeding.[2] We sought written public comments on the proposals in the *Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Final Rules

2. For over a decade, the Commission has combatted arbitrage of its access charge regime, which ultimately raises the rates consumers pay for telecommunications service. In the 2011 *USF/ICC Transformation Order*, the Commission adopted rules identifying local exchange carriers (LECs) engaged in access stimulation and requiring that such LECs lower their tariffed access charges.[4] In 2019, to address access arbitrage schemes that persisted despite prior Commission action, the Commission adopted the *Access Arbitrage Order*, in which it revised its Access Stimulation Rules to prohibit LECs and Intermediate Access Providers from charging interexchange carriers (IXCs) for terminating tandem switching and transport services used to deliver calls to access-stimulating LECs.[5]

3. Since the 2019 rules were implemented, the Commission has received information about new ways entities are manipulating their businesses to continue their arbitrage schemes in the wake of the new rules. In this Order, we adopt rule revisions to close perceived loopholes in our Access Stimulation Rules that are being exploited by opportunistic access-stimulating entities whose actions ultimately cause consumers to continue to bear costs for services they do not use.[6]

4. We modify our Access Stimulation Rules to address access arbitrage that takes place when an Internet Protocol Enabled Service (IPES) Provider is incorporated into the call flow.[7] When a LEC or Intermediate Access Provider delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider meet or exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation.[8] In such cases, a LEC or an Intermediate Access Provider will be prohibited from charging an IXC tariffed charges for terminating switched access tandem switching and switched access transport for traffic bound to an IPES Provider whose traffic meets or exceeds the ratios in sections 61.3(bbb)(1)(i) or 61.3(bbb)(1)(ii) of our Access

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

[2] *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Further Notice of Proposed Rulemaking, FCC 22-54 (July 15, 2022) (*Further Notice*).

[3] *See* 5 U.S.C. § 604.

[4] *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17874-90, paras. 656-701 (2011) (*USF/ICC Transformation Order*), *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[5] *See generally Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, 34 FCC Rcd 9035 (2019) (*Access Arbitrage Order*), *aff'd*, *Great Lakes Communications Corp. v. FCC*, 3 F.4th 470 (D.C. Cir. 2021). *See also Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, 33 FCC Rcd 5466 (2018).

[6] *See* Second Report and Order (Order), *supra* Sections III.A, C.

[7] *See* Order, *supra* Sections III.A, C.

[8] *See* Order, *supra* Section III.A.

Stimulation Rules.[9] The IPES Provider will be responsible for calculating its traffic ratios and for making the required notifications to the affected IXC(s), Intermediate Access Provider(s) and the Commission.[10] We likewise modify the definition of Intermediate Access Provider to include entities delivering traffic to an IPES Provider.[11] The rules we adopt will serve the public interest by reducing the incentives and ability to send traffic over the Public Switched Telephone Network for the purpose of collecting tariffed tandem switching and transport access charges from IXCs to fund high-volume calling services, which the Commission has found to be an unjust and unreasonable practice.[12]

5. The reforms adopted in this Order apply the same framework that we currently use for competitive LECs that have engaged in access stimulation to determine when an IPES Provider that was engaged in access stimulation no longer is considered to be engaged in access stimulation.[13] The Access Stimulation Rules currently require traffic ratios to be calculated at the end office. The rules adopted today apply this manner of traffic calculations to IPES Providers as well. Affected entities must comply with the final rules no later than 45 days after their effective date.[14] The effective date is 30 days after publication in the Federal Register except for certain rule revisions which contain information collection requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.[15] The effective date for these latter rules will be announced separately by the Commission.

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

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

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

7. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.[16]

8. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

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

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[17] The RFA generally defines the term ”small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”[18] In addition, the term “small business” has the

[9] *See* Order, *supra* Section III.A.

[10] *See* Order, *supra* Section III.A.

[11] *See* Order, *supra* Section III.C.

[12] *See* Order, *supra* Section III; *Access Arbitrage Order*, 34 FCC Rcd at 9073, para. 92 (citing 47 U.S.C. § 201(b)).

[13] *See* Order, *supra* Section III.A.

[14] *Supra* Appx. A; *see* Order, *supra* Section V.

[15] *Supra* Appx. A; *see* Order, *supra* Section V.

[16] 5 U.S.C. § 604(a)(3).

[17] 5 U.S.C. § 603(b)(3).

[18] *See id.* § 601(6).

same meaning as the term "small business concern" under the Small Business Act.[19] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; (3) satisfies any additional criteria established by the Small Business Administration (SBA).[20]

10. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[21] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[22] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.[23]

11. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[24] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[25] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[26]

12. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[27] U.S. Census Bureau data from the 2017 Census of Governments[28] indicate there were 90,075 local governmental jurisdictions consisting of general

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[19] *See id.* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632).

[20] *See* 15 U.S.C. § 632.

[21] *See* 5 U.S.C. § 601(3)-(6).

[22] *See* SBA, Office of Advocacy, Frequently Asked Questions, "What is a small business?," https://cdn.advocacy.sba.gov/wp-content/uploads/2023/03/07121547/Frequently-Asked-Questions-About-Small-Business-March-2023-508c.pdf (Mar. 2023).

[23] *Id*.

[24] *See* 5 U.S.C. § 601(4).

[25] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[26] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[27] *See* 5 U.S.C. § 601(5).

[28] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

purpose governments and special purpose governments in the United States.[29] Of this number, there were 36,931 general purpose governments (county,[30] municipal, and town or township[31]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[32] with enrollment populations of less than 50,000.[33] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[34]

13. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[35] Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.[36] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[37] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[38]

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[29] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[30] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[31] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[32] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[33] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[34] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

[35] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[36] *Id.*

[37] *Id.*

[38] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

14. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[39] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[40] Of this number, 2,964 firms operated with fewer than 250 employees.[41] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.[42] Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.[43] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers[44] is the closest industry with an SBA small business size standard.[45] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[46] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[47] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[48] Of this number, 2,964 firms operated with fewer than 250 employees.[49] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.[50] Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.[51] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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[39] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[40] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[41] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[42] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[43] *Id.*

[44] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[45] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[46] Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[47] *Id.*

[48] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[49] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[50] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[51] *Id.*

16. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[52] is the closest industry with an SBA small business size standard.[53] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[54] U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[55] Of this number, 2,964 firms operated with fewer than 250 employees.[56] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.[57] Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.[58] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

17. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[59] Wired Telecommunications Carriers[60] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[61] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[62] Of this number, 2,964 firms operated with fewer than 250 employees.[63] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers.[64] Of these providers, the Commission estimates that 3,808 providers have

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[52] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[53] *See* 13 CFR § 121.201, NAICS Code 517311.

[54] *Id.*

[55] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[56] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[57] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[58] *Id.*

[59] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[60] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[61] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[62] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[63] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

1,500 or fewer employees.[65] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[66] is the closest industry with a SBA small business size standard.[67] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[68] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[69] Of this number, 2,964 firms operated with fewer than 250 employees.[70] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.[71] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

19. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.[72] The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households.[73] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[74] Mobile virtual network operators (MVNOs) are included in this industry.[75] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[76] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[77] Of that number, 1,375

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[64] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[65] *Id.*

[66] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[67] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[68] *Id.*

[69] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[70] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[71] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[72] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

firms operated with fewer than 250 employees.[78] Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.[79] Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.[80] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[81] Based on industry data, there are about 420 cable companies in the U.S.[82] Of these, only seven have more than 400,000 subscribers.[83] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[84] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[85] Of these, about 639 have more than 15,000 subscribers.[86] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

21. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[87] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.[88] Based on industry data, only six cable system operators have more than 677,000 subscribers.[89]

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[77] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[78] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[79] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[80] *Id.*

[81] 47 CFR § 76.901(d).

[82] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[83] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[84] 47 CFR § 76.901(c).

[85] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited May 26, 2022).

[86] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022).

[87] 47 U.S.C. § 543(m)(2).

[88] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id.* We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 58.1 million. *See Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, 36 FCC Rcd 2945, 3049, para. 156 (2020) (*2020 Communications Marketplace Report*). However, because

(continued….)

Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[90] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

22. *All Other Telecommunications*. This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[91] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[92] Providers of Internet services (e.g., dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[93] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[94] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[95] Of those firms, 1,039 had revenue of less than $25 million.[96] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

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

23. The rule revisions adopted in the Order will affect LECs, Intermediate Access Providers, and IPES Providers. This Order modifies our Access Stimulation Rules to address arbitrage which takes place when an IPES Provider is incorporated into the call flow. In this Order, we adopt rules to further limit or eliminate the occurrence of access arbitrage, including access stimulation, which could affect potential reporting requirements. The adopted rules also contain recordkeeping, reporting, and third-party

(Continued from previous page)
the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN,* the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR § 76.901(e)(1).

[89] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited May 26, 2022); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[90] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

[91] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[92] *Id.*

[93] *Id*.

[94] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[95] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[96] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

notification requirements for access-stimulating LECs and IPES Providers, which may impact small entities. Some of the requirements may also involve tariff changes.[97]

24. The rules adopted in the Order require that when an Intermediate Access Provider or a LEC delivers traffic to an IPES Provider and the terminating-to-originating traffic ratios of the IPES Provider meet or exceed the triggers in the Access Stimulation Rules, the IPES Provider will be deemed to be engaged in access stimulation.[98] In those cases, the IPES Provider will be responsible for calculating its traffic ratios and for making the required third-party notifications. As such, providers may need to modify their in-house recordkeeping to comply with the new rules. If the IPES Provider's traffic ratios meet or exceed the applicable rule triggers, it must notify the Intermediate Access Providers it subtends, the Commission, and affected IXCs.[99] The Intermediate Access Provider is then prohibited from charging IXCs tariffed rates for terminating switched access tandem switching or terminating switched access transport charges.[100]

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

25. The RFA requires an agency to describe any significant, specifically small business alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for such small entities."[101]

26. The actions taken by the Commission in the Order were considered to be the least costly and minimally burdensome for small and other entities impacted by the rules. As such, the Commission does not expect the adopted requirements to have a significant economic impact on small entities. Below we discuss actions we take in the Order to minimize any significant economic impact on small entities and some alternatives that were considered.

27. *Transition Period to Assist Small Entity Compliance*. To minimize the impact of changes that may affect entities, we implement up to a 45-day transition period for compliance. We expect that transition period will allow even small business entities adequate time to amend their tariffs and recordkeeping, reporting and third-party notification practices, if needed, to meet the requirements in the adopted rules. This will also allow time if parties choose to make additional changes to their operations as a result of our reforms to further reduce access stimulation. To ensure clarity and increase transparency, we require that access-stimulating LECs and IPES Providers notify affected IXCs, Intermediate Access Providers, and the Commission of their access-stimulating status within 45 days of PRA approval (or, for an entity that later engages in access stimulation, within 45 days from the date it commences access stimulation), and file a notice in the Commission's Access Arbitrage docket on the same date and to the same effect.[102]

28. We announced aspects of the transition period in the *Further Notice*, and received no related comments.[103] Such changes are also subject to the Paperwork Reduction Act approval process

[97] *Supra* Appx. A (47 CFR §§ 51.914(b), (d), (g), 69.4(l), 69.5(b)).

[98] *See* Order, *supra* Section III.A.

[99] *See* Order, *supra* Section III.A.

[100] *See* Order, *supra* Section III.A.

[101] 5 U.S.C. § 604(a)(6).

[102] *Supra* Appx. A (47 CFR § 51.914(b), (d), (g)).

[103] *Further Notice* at 11-12, para. 26.

which allows for additional notice and comment on the burdens associated with the requirements.[104] This process will occur after adoption of this Order, thus providing additional time for parties to make the changes necessary to comply with the newly adopted rules. Also, being mindful of the attendant costs of any reporting obligations, we do not require that affected entities adhere to a specific notice format. Instead, we allow each responding entity to prepare third-party notice and notice to the Commission in the manner they deem to be most cost-effective and least burdensome, provided the notice announces the entities' access-stimulating status and acceptance of financial responsibility. Furthermore, by electing not to require carriers to fully withdraw and file entirely new tariffs and requiring only that they revise their tariffs to remove relevant provisions, if necessary, we mitigate the filing burden on affected carriers.

29. We consider any potential billing system changes to be straightforward, but to allow sufficient time for affected parties, including small business entities, to make any adjustments. We grant small entities the same period from the effective date for implementing such changes. Thus, affected Intermediate Access Providers have 45 days from the effective date of this rule (or, with respect to those entities that later engage in access stimulation, within 45 days from the date such entities commence access stimulation) to implement any billing system changes or prepare any tariff revisions which they may see fit to file. The time granted by this period should help small business entities affected make an orderly, less burdensome, transition.

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

G. Report to Congress

31. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[105] In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the Federal Register.[106]

[104] *Supra* Appx. A; *see* Order, *supra* Section IV.

[105] *See* 5 U.S.C. § 801(a)(1)(A).

[106] *See id.* § 604(b).

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Second Report and Order (April 20, 2023).

For decades, a Byzantine system of hidden subsidies helped keep prices down and phone service available for consumers in rural areas—but its complexity also created opportunities for gaming the system. In 1996, Congress passed the Telecommunications Act and directed this agency to update the system. That meant making once-implicit subsidies explicit, moving to a bill-and-keep regime where carriers' own customers support networks, and supporting carriers in expensive-to-serve rural areas with the universal service high-cost program.

If that sounds complicated, well, it is. Because the agency has been hard at work on that task ever since. We have come a long way, but there are still some entities determined to exploit this system. In particular, some companies artificially pump phone traffic to remote locations where they receive extra fees for terminating calls. Now that we have identified this loophole, we need to shut it down—and that is exactly what we do here. As complex as this is, our goal is simple: to make the system fairer and more efficient for everyone who pays a phone bill.

Thank you to the staff responsible for this effort, including Susan Bahr, Allison Baker, Ahuva Battams, Callie Coker, Lynne Engledow, Trent Harkrader, Heather Hendrickson, Edward Krachmer, Albert Lewis, Jodie May, Michael Nemcik, Jordan Marie Reth, Marvin Sacks, Michelle Slater, Gil Strobel, and Raphael Sznajder from the Wireline Competition Bureau; Stacy Jordan, Eugene Kiselev, Richard Kwiatkowski, Giulia McHenry, Eric Ralph, Michelle Schaefer, and Shane Taylor from the Office of Economics and Analytics; James Carr, Sarah Citrin, Michele Ellison, Andrea Kearney, Richard Mallen, William Richardson, William Scher, Jeffrey Steinberg, and Derek Yeo from the Office of General Counsel; Anthony DeLaurentis, Loyaan Egal, Lisa Griffin, and Rosemary McEnery from the Enforcement Bureau; and Cara Grayer and Joy Ragsdale from the Office of Communications Business Opportunities.