and OEID likely would have resulted in confusion and disagreement between trading partners, thereby also likely engendering costs.

At the May 3, 2017 NCVHS hearing, two commenters suggested that HHS consider alternative uses of the HPID, such as placing it on health insurance identification cards to assist with better understanding of patient coverage and benefits (including its use in patient medical records to help clarify a patient's healthcare benefit package). A commenter stated that the HPID could be used for enforcement or certification of compliance of health plans.

As we have noted, the statute requires us to adopt a standard unique health plan identifier. HHS remains open to industry and NCVHS discussion and recommendations for appropriate business case(s) that meet the requirements of administrative simplification and we will explore options for a more effective standard unique health plan identifier.

We did not receive any comments on these proposals, nor were any alternatives offered.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects in 45 CFR Part 162

Administrative practice and procedures, Electronic transactions, Health facilities, Health insurance, Hospitals, Medicaid, Medicare, Reporting, and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR part 162 to read as follows:

PART 162—ADMINISTRATIVE REQUIREMENTS

■ 1. The authority citation for part 162 is revised to read as follows:

Authority: 42 U.S.C. 1320d—1320d–9 and secs. 1104 and 10109 of Pub. L. 111–148, 124 Stat. 146–154 and 915–917.

§ 162.103 [Amended]

■ 2. Section 162.103 is amended by removing the definitions of ''Controlling health plan (CHP)'' and ''Subhealth plan (SHP)''.

Subpart E—[Removed]

■ 3. Subpart E, consisting of §§ 162.502 through 162.514, is removed and reserved.

Dated: October 15, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–23507 Filed 10–25–19; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51, 61, and 69

[WC Docket No. 18–155; FCC 19–94]

Updating the Intercarrier Compensation Regime To Eliminate Access Arbitrage

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission shifts financial responsibility for all interstate and intrastate terminating tandem switching and transport charges to access-stimulating local exchange carriers, and modifies its definition of access stimulation. Under the existing intercarrier compensation regime, carriers enter into agreements with entities offering high-volume calling services, route the calls through interexchange carriers at more expensive rates, and profit from the resulting access charge rates which interexchange carriers are required to pay. With this action, the Commission moves closer toward its goal of intercarrier compensation regime reform by reducing the financial incentives to engage in access stimulation.

DATES:

Effective date: November 27, 2019.

Compliance date: Compliance with the requirements in § 51.914(b) and (e) is delayed. The Commission will publish a document in the **Federal Register** announcing the compliance date.

FOR FURTHER INFORMATION CONTACT: Lynne Engledow, Wireline Competition Bureau, Pricing Policy Division at 202–418–1540 or via email at *Lynne.Engledow@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Modification to Section 214 Authorizations, WC Docket No. 18–155; FCC 19–94, adopted on September 26, 2019, and released on September 27, 2019. The full text copy of this document may be obtained at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-19-94A1.pdf.*

I. Background

1. In the 1980s, after the decision to break up AT&T, the Commission adopted regulations detailing how access charges were to be determined and applied by LECs when IXCs connect their networks to the LECs' networks to carry telephone calls originated by or terminating to the LECs' customers. Those regulations also established a tariff system for access charges that mandates the payment of tariffed access charges by IXCs to LECs. In passing the Telecommunications Act of 1996 (the 1996 Act), Congress sought to establish ''a pro-competitive, deregulatory national policy framework'' for the United States' telecommunications industry in which implicit subsidies for rural areas were replaced by explicit ones in the form of universal service support. In response, the Commission began the process of reforming its universal service and ICC systems.

2. In the 2011 *USF/ICC Transformation Order* (76 FR 73830, Nov. 29, 2011), the Commission took further steps to comprehensively reform the ICC regime and established a bill-and-keep methodology as the ultimate end state for all intercarrier compensation. As part of the transition to bill-and-keep, the Commission capped most ICC access charges and adopted a multi-year schedule for moving terminating end office charges and some tandem switching and transport charges to bill-and-keep.

3. In the *USF/ICC Transformation Order,* the Commission found that the transition to bill-and-keep would help reduce access stimulation, and it also attacked access arbitrage directly. The Commission explained that access stimulation was occurring in areas where LECs had high switched access rates because LECs entering traffic-inflating revenue sharing agreements were not required to reduce their access rates to reflect their increased volume of minutes. The Commission found that, because access stimulation increased access minutes-of-use and access payments (at constant per-minute-of-use rates that exceed the actual average per-minute cost of providing access), it also increased the average cost of long-distance calling. The Commission explained that ''all customers of these long-distance providers bear these costs, even though many of them do not use the access stimulator's services, and, in essence, ultimately support businesses designed to take advantage of . . . above-cost intercarrier compensation rates.'' The Commission, therefore, found that the terminating end office access rates charged by access-

stimulating LECs were ''almost uniformly'' unjust and unreasonable in violation of section 201(b) of the Communications Act of 1934, as amended (the Act).

4. To reduce financial incentives to engage in wasteful arbitrage, the Commission adopted rules that identify those LECs engaged in access stimulation and required that such LECs lower their tariffed access charges. Under our current rules, to be considered a LEC engaged in ''access stimulation,'' a LEC must have a ''revenue sharing agreement,'' which may be ''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 LEC is ''based on the billing or collection of access charges from interexchange carriers or wireless carriers.'' The LEC must also meet one of two traffic triggers. An access-stimulating LEC either has ''an interstate terminating-to-originating traffic ratio of at least 3:1 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.'' An access-stimulating rate-of-return LEC is required by our current rules to reduce its tariffed terminating switched access charges by adjusting those rates to account for its projected high traffic volumes. An access-stimulating competitive LEC must reduce its terminating switched access charges to those of the price cap carrier with the lowest switched access rates in the state.

5. The record makes clear that these rules were an important step toward reducing access stimulation and implicit subsidies in the ICC system. Before the rules were adopted, Verizon estimated that access arbitrage cost IXCs between $330 million and $440 million annually. By contrast, IXCs estimate that access arbitrage currently costs IXCs between $60 million and $80 million annually. In addition, the record shows that the current access stimulation rules have effectively discouraged rate-of-return LEC access stimulation activity. The access-stimulating LECs identified in the record are all competitive LECs. No rate-of-return LECs have been identified as engaging in an access stimulation scheme.

6. Terminating end office access rates have now been transitioned to bill-and-keep for price cap LECs and competitive LECs that benchmark their rates to price cap LECs, and by July 1, 2020, they will transition to bill-and-keep for rate-of-return LECs and the competitive LECs that benchmark to them. Price cap incumbent LEC terminating tandem switching and transport charges likewise have transitioned to bill-and-keep when such a LEC is the tandem provider and it, or an affiliated incumbent LEC, is the terminating end office LEC. As a result, terminating end office charges are no longer driving access stimulation.

7. At issue in this proceeding are arbitrage schemes that take advantage of those access charges that remain in place for those types of terminating tandem switching and transport services which, unlike end office switching charges, have not yet transitioned or are not transitioning to bill-and-keep. Access stimulators typically operate in those areas of the country where tandem switching and transport charges remain high and are causing intermediate access providers, including centralized equal access (CEA) providers, to be included in the call path.

8. CEA providers are a specialized type of intermediate access provider that were formed about 30 years ago to implement long-distance equal access obligations (*i.e.,* permitting end users to use 1+ dialing to reach the IXC of their choice) and to aggregate traffic for connection between rural incumbent LECs and other networks, particularly those of IXCs. Three CEA providers are currently in operation—Iowa Network Services, Inc. d/b/a Aureon Network Services (Aureon), South Dakota Network, LLC (SDN), and Minnesota Independent Equal Access Corporation (MIEAC). When the Commission authorized Aureon's creation as a CEA, it adopted a mandatory use requirement that requires IXCs that deliver traffic to the LECs subtending the Aureon tandem to deliver the traffic to the CEA tandem, rather than indirectly through another intermediate access provider or directly to the subtending LEC. The SDN authorization also includes a similar mandatory use requirement. MIEAC's authorization does not provide for mandatory use.

9. In 2018, to address current access stimulation schemes, the Commission adopted the *Access Arbitrage Notice* (83 FR 30628, June 29, 2018) and proposed to reduce access arbitrage by making the party that chooses the call path responsible for the cost of delivering the call to the access-stimulating LEC. The proposed rules offered a two-prong solution. Under the first prong, an access-stimulating LEC could choose to be financially responsible for calls delivered to its network so it, rather than IXCs, would pay for the delivery of calls to the LEC's end office, or the functional equivalent. Under the second prong, an access-stimulating LEC could choose to accept direct connections either from the IXC or from an intermediate access provider of the IXC's choice, allowing the IXC to bypass intermediate access providers selected by the access-stimulating LEC. The Commission reasoned that, if the access-stimulating LEC were made responsible for paying the costs of delivering calls to its end office, or if the LEC had to accept a more economically rational direct connection to its end office for high volumes of calls, it would be incentivized to move traffic more efficiently. In the *Access Arbitrage Notice,* the Commission also sought comment on possible revisions to the definition of access stimulation as well as on additional alleged ICC arbitrage schemes and ways to reduce them.

II. Eliminating Financial Incentives To Engage in Access Stimulation

10. In this document, we adopt rules aimed at eliminating the financial incentives to engage in access arbitrage created by our current ICC system. Under our existing rules, IXCs must pay tandem switching and transport charges to access-stimulating LECs and to intermediate access providers chosen by the access-stimulating LEC to carry the traffic to the LEC's end office or functional equivalent. This creates an incentive for intermediate access providers and access-stimulating LECs to increase tandem switching and transport charges. The result, as AT&T explains, is that ''*billions* of minutes of long distance traffic are routed through a handful of rural areas, not for any legitimate engineering or business reasons, but solely to allow the collection and dispersal of inflated intercarrier compensation revenues to access-stimulating LECs and their partners, as well as intermediate providers.''

11. Commenters offer evidence that there are at least 21 competitive LECs currently involved in access stimulation. Although there are access-stimulating LECs operating in at least 11 different states, there is wide agreement that the vast majority of access-stimulation traffic is currently bound for LECs that subtend Aureon or SDN. To put the number of access stimulation minutes in perspective, AT&T observes that ''twice as many minutes were being routed per month to Redfield, South Dakota (with its population of approximately 2,300 people and its 1 end office) as is routed to *all* of Verizon's facilities in New York City (with its population of approximately 8,500,000 people and its 90 end

offices).'' Sprint explains, that while Iowa contains less than 1% of the U.S. population, it accounts for 11% of Sprint's long-distance minutes-of-use and 48% of Sprint's total switched access payments across the United States. Similarly, South Dakota contains 0.27% of the U.S. population, but accounts for 8% of Sprint's total switched access payments across the United States.

12. The record shows that CEA providers' tariffed charges for tandem switching and tandem switched transport serve as a price umbrella for services offered on the basis of a commercial agreement by other providers, meaning the commercially negotiated rates need only be slightly under the ''umbrella'' CEA provider rate to be attractive to those purchasing the service(s). As AT&T explains:

Some access stimulation LECs (either directly or via least cost routers) offer commercial arrangements for transport. The rates in these agreements, however, are well above the economic cost of providing transport. Because the only other available alternative is the tariffed transport rate of the intermediate provider selected by the LEC (such as a centralized equal access provider), that tariffed rate acts as a ''price umbrella,'' which permits the access stimulation LEC to overcharge for transport service. The access stimulation LEC or least cost router can attract business merely by offering a slight discount from the applicable tariffed rate for tandem switching and transport. Because the Commission's rules disrupt accurate price signals, tandem switching and transport providers for access stimulation have no economic incentives to meaningfully compete on price.

A. Access-Stimulating LECs Must Bear Financial Responsibility for the Rates Charged To Terminate Traffic to Their End Office or Functional Equivalent

13. To reduce further the financial incentive to engage in access stimulation, we adopt rules requiring an access-stimulating LEC to designate in the Local Exchange Routing Guide (LERG) or by contract the route through which an IXC can reach the LEC's end office or functional equivalent and to bear financial responsibility for all interstate and intrastate tandem switching and transport charges for terminating traffic to its own end office(s) or functional equivalent whether terminated directly or indirectly. These rules effectuate a slightly modified version of the first prong of the access-stimulation rule proposed by the Commission in the *Access Arbitrage Notice* and properly align financial incentives by making the access-stimulating LEC responsible for paying for the part of the call path that it dictates.

14. After reviewing the record, we decline to adopt the second prong of the Commission's proposal that would allow an access-stimulating LEC to avoid paying for tandem switching and tandem switched transport by permitting an IXC to directly or indirectly connect to the LEC and pay for that connection, rather than having the LEC pay the cost of receiving traffic. We are persuaded by the substantial number of commenters that argue that adoption of the first prong of the proposal will better address the problem of access stimulation and that allowing LECs the alternative of permitting direct or indirect connections paid for by the IXC would create a substantial risk of stranded investment.

15. We also modify our definition of access stimulation to capture the possibility of access stimulation occurring even without a revenue sharing agreement between a LEC and a high-volume calling service provider.

1. New Requirements for Access-Stimulating LECs

16. The approach we adopt in this document—shifting financial responsibility for all tandem switching and transport services to access-stimulating LECs for the delivery of terminating traffic from the point where the access-stimulating LEC directs an IXC to hand off the LEC's traffic—has broad support in the record. This shift in financial responsibility from IXCs to access-stimulating LECs for intermediate access provider charges and access-stimulating LECs' tandem switching and tandem switched transport charges is aimed at addressing the changes that have occurred in access arbitrage since the adoption of the *USF/ICC Transformation Order.* The record shows that billions of minutes of access arbitrage every year are being directed to access-stimulating LECs using expensive tandem switching providers for conference calling and other services offered for ''free'' to the callers, but at an annual cost of $60 million to $80 million in access charges to IXCs and their customers. Although only a small proportion of consumers call access-stimulating LECs, the costs are spread across an IXC's customers. As a result, long-distance customers are forced to bear the costs of ''free'' conferencing and other services that only some customers use. In attacking this form of cross-subsidization, we follow the lead set by the Commission in the *USF/ICC Transformation Order.*

17. Our new rules eliminate the incentives that access-stimulating LECs have to switch and route stimulated traffic inefficiently, including by using intermediate access providers to do the same. Because IXCs currently pay the LECs' tandem switching and tandem switched transport charges and the intermediate access provider's access charges, the terminating LEC has an incentive to inflate its own charges, and is, at a minimum, insulated from the cost implications of its decision to use a given intermediate access provider. Indeed, in some cases the terminating LEC may not be merely indifferent to what interconnection option is most efficient but may have incentives to select less efficient alternatives if doing so would lead it to benefit, whether directly or on a corporation-wide basis.

18. As AT&T observes, making access-stimulating LECs financially responsible for traffic terminating to their end offices will be effective because it will ''reduce the ability of terminating LECs and access stimulators to force IXCs, wireless carriers, and their customers [to subsidize], via revenues derived from inefficient transport routes, the costs of access stimulation schemes.'' In addition, the costs of access stimulation are not limited to the access charges paid by IXCs and their customers. Costs also are incurred by IXCs in trying to avoid payments to access stimulation schemes whether through litigation or seeking regulatory intervention.

19. Commenters argue that placing the financial responsibility on the access-stimulating LEC for delivery of traffic to its end office, or functional equivalent, will reduce inefficiencies created by access-stimulating LECs that subtend intermediate access providers and choose to work with high-volume calling service providers that locate equipment in remote rural areas without a reason independent of arbitraging the current ICC system. We agree with these commenters. As CenturyLink explains, this change will ''properly recognize[] that the responsibility to pay for the traffic delivery should be assigned to the entity that stimulated the traffic in the first place.''

20. We find unpersuasive arguments that as a result of the *USF/ICC Transformation Order* and the Aureon tariff investigation proceeding (addressing rate setting by CEA providers), there are few to no problems arising from arbitrage that need to be solved today. The record shows that access stimulation schemes are operating in at least 11 states and are costing IXCs between $60 million and

$80 million per year in access charges. The record also shows that access stimulation is particularly concentrated where CEA providers Aureon and SDN received authority from the Commission to construct their CEA networks. In granting that authority, the Commission included a mandatory use requirement that requires IXCs to route telecommunications traffic through the CEA tandems to terminate traffic to the participating LECs that subtend those tandems. The CEA providers' tariffed rates to terminate traffic ''are premised on typical volumes to high-cost rural exchanges.'' We find that these high CEA rates create a price umbrella: A price that other intermediate access providers can ''slightly undercut'' but still make a profit. As a result, ''AT&T and other carriers routinely discover that carriers located in remote areas with long transport distances and high transport rates enter into arrangements with high volume service providers . . . for the sole purpose of extracting inflated ICC rates due to the distance and volume of traffic.'' The record shows that access stimulation also occurs in states not served by CEA providers but to a lesser extent.

21. Nor do we find persuasive arguments that access stimulation is beneficial. The Joint CLECs, for example, allege that more than 5 million people ''enjoy the benefits'' of high-volume services hosted by them on a monthly basis. For its part, HD Tandem claims that ''75 million unique users this year . . . have called voice application services at the rural LECs that HD Tandem terminates to.'' The Joint CLECs argue that ''nonprofit organizations, small businesses, religious institutions, government agencies, and everyday Americans . . . will undoubtedly suffer if these [access stimulation] services are put out of business.'' Other parties, including several thousand individual users of ''free'' conferencing and other high-volume calling services, have filed comments expressing concern that such ''free-to-the-user'' services will be eliminated by this action and urging us to retain the current regulatory system in light of the purported benefits such ''free'' services provide. As commenters explain, these arguments are both self-serving and inconsistent with our goals in reforming the ICC system. The benefits of ''free'' services enjoyed by an estimated 75 million users of high-volume calling services are paid for by the more than 455 million subscribers of voice services across the United States, most of whom do not use high-volume calling services. According to Sprint, for example, less than 0.2% of its subscribers place calls to access stimulation numbers, but 56% of Sprint's access charge payments are paid to access-stimulating LECs—leaving IXC customers paying for services that the vast majority will never use. We find that while ''free'' services are of value to some users, these services are available at no charge because of the implicit subsidies paid by IXCs, and their costs are ultimately born by IXC customers whether those customers benefit from the ''free'' services or not.

22. Access-stimulating LECs also argue that the Commission should find beneficial their use of access-stimulation revenue to subsidize rural broadband network deployment. These implicit subsidies are precisely what the Commission sought to eliminate in the *USF/ICC Transformation Order,* as directed by Congress in the 1996 Act. Indeed, the Commission addressed similar arguments in the *USF/ICC Transformation Order,* where it found that although ''expanding broadband services in rural and Tribal lands is important, we agree with other commenters that how access revenues are used is not relevant in determining whether switched access rates are just and reasonable in accordance with section 201(b).'' As Sprint explains, ''this sort of implicit cross-subsidy is contrary to the principle that access rates should reasonably reflect the cost of providing access service, and that subsidies, including universal service support, be explicit and 'specific.''' Competition also suffers because access-stimulation revenues subsidize the costs of high-volume calling services, granting providers of those services a competitive advantage over companies that collect such costs directly from their customers.

23. Eliminating the implicit subsidies that allow these ''free'' services will lead to more efficient provision of the underlying services and eliminate the waste generated by access stimulation. After the implicit subsidies are eliminated, customers who were using the ''free'' services, and who value these services by more than the cost of providing them, will continue to purchase these services at a competitive price. Thus, the value of the services purchased by these customers will exceed the cost of the resources used to produce them, which implies both that customers benefit from purchasing these services and that network resources are used efficiently. Further, users who do not value these services by as much as the cost of providing them, including those who undertook fraudulent usages designed only to generate access charges, will no longer purchase them in the competitive market. Thus, valuable network resources that were used to provide services that had little or no value will no longer be assigned to such low-value use, increasing efficient utilization of network resources.

24. We find misplaced or, in other cases, simply erroneous, the arguments offered by the Joint CLECs in an expert report by Daniel Ingberman that argues economic efficiency is enhanced when access-stimulated traffic is brought to a network with otherwise little traffic volume because this allows the small network to obtain scale economies. The result, Ingberman claims, would be substantially lower prices for local end users, producing relatively large increases in consumer surplus. In contrast, if the traffic were placed on a network that already carries substantial traffic volumes, the scale effects are minimal, and so the benefits to end users of lower prices are also minimal. Thus, according to Ingberman, siting new traffic on smaller (rural) networks, as access stimulators do, must raise economic well-being.

25. We reject Ingberman's claim that lower consumer prices from siting new traffic on a smaller network are likely to be significant, if they arise at all. The Commission's high cost universal service program provides support to carriers in rural, insular, and high cost areas as necessary to ensure that consumers in such areas pay rates that are reasonably comparable to rates in urban areas. Thus, smaller rural carrier rates for end users will always be comparable to larger carrier rates whether the smaller carrier is a rural incumbent LEC that receives universal service support or is a competitive LEC that does not receive such support but competes on price against a rural incumbent LEC that does. Given reasonably comparable rates, siting new traffic on a smaller network is not likely to significantly lower, and may make no difference to, rates charged to end users of the smaller network.

26. Ingberman also fails to establish the validity of his claim that increased access traffic on a LEC network would result in lower prices to its end-user customers. In particular, he has not established that as a practical matter, increasing access traffic on a LEC's network lowers the LEC's cost of serving its end-user customers. Without lowering such costs, a LEC would have no incentive to lower prices to its end-user customers. The access-stimulating LEC would simply continue to charge its profit-maximizing price to its retail

customers, while pocketing the windfall from access arbitrage.

27. We find several other fundamental problems with the Ingberman Report. Although Ingberman acknowledges that IXCs pay terminating switched access charges (which are often paid both to intermediate access providers and access-stimulating LECs), his model assumes bill-and-keep pricing. That is, Ingberman assumes away the central issue this proceeding must deal with: The use of intercarrier compensation charges to fund access stimulators' operations. Consequently, his analysis does not take into account the cost that access stimulators impose on larger networks and their subscribers. It also fails to model access-stimulating services, beyond assuming they bring traffic to the smaller network. But these services are delivered in highly inefficient ways, relying on unusually expensive calling paths. These services also are sold in highly inefficient ways, almost always below the efficient cost of delivery of such services. Nor does Ingberman's model account for the time and effort taken to generate traffic, often fraudulent, for access stimulation, and to develop the complex schemes and contracting relationships that generate access-stimulating LEC profits. Moreover, there is no recognition of the cost of IXCs engaging in otherwise unnecessary, and hence, wasteful, efforts to identify fraudulent traffic or to find ways to avoid the abuses of our tariffing regime perpetrated by access stimulators. Similarly, the model provides no means for estimating the efficiency costs of allowing terminating switched access charges that not only exceed marginal cost, but also total costs. These are all significant costs for which any model should account.

28. Further, we find misplaced arguments by some commenters that there is no evidence that IXCs' customers will benefit from reduced access arbitrage. Reducing the costs created by access arbitrage by reducing the incentives that lead carriers to engage in such arbitrage is a sufficient justification for adopting our rules, regardless of how IXCs elect to use their cost savings. The Commission has recognized for many years that long-distance service is competitive, and we generally expect some passthrough of any decline in costs, marginal or otherwise. To the extent passthrough does not occur, IXC shareholders are presently subsidizing users of access-stimulating services, which distorts economic efficiency in the supply of those services. Even if we cannot precisely quantify the effects of past reforms (given the many simultaneously occurring technological and marketplace developments), as a matter of economic theory, we expect some savings to flow through to IXCs' customers or the savings to be available for other, beneficial purposes. For example, IXCs will no longer have to expend resources in trying to defend against access-stimulation schemes, and consumers will be provided with more-accurate pricing signals for high-volume calling services. More fundamentally, these commenters fail to explain how a policy that enables a below-cost (sometimes zero) price for services supplied by high-volume calling service providers and general telephone rates that subsidize these high-volume calling services could be expected to produce efficient production and consumption outcomes.

29. We also find no merit to arguments that IXCs will be able to seize new arbitrage opportunities as a result of the rules we adopt in this document. Aureon, for example, argues that IXCs will be ''incentivized to increase arbitrage traffic volume,'' without explaining how IXCs would accomplish such a task. The Joint CLECs argue that if the new rules decrease the use of ''free'' conference calling services, IXCs will realize greater use of their own conference calling products and greater revenue while also benefiting from reduced access charges. If our amended rules force ''free'' service providers to compete on the merits of their services, rather than survive on implicit subsidies, that outcome is to be welcomed because it would represent competition driving out inefficient suppliers in favor of efficient ones. Nothing we do in this document shifts arbitrage opportunities to the IXCs or to any provider; we are attacking implicit subsidies that allow high-volume calling services to be offered for free, sending incorrect pricing signals and distorting competition. In addition, as AT&T explains, IXCs have engaged in a decade-long campaign to end the practice of access arbitrage because they and their customers are the targets of such schemes.

30. AT&T expresses concern that IXCs will be obligated to deliver access-stimulated traffic to remote tandem locations and to pay the related excessive transport fees for connecting to that remote tandem if access-stimulating LECs decide to build new end office switches in remote areas, and their affiliates decide to deploy new tandem switches in similarly remote locations. AT&T therefore suggests that we limit the IXCs' delivery obligations to only those tandem switches in existence as of January 1, 2019. AT&T does not point to any existing legal requirements that an IXC must agree to a new point of interconnection designated by an access-stimulating LEC should the access-stimulating LEC unilaterally attempt to move the point of interconnection. As such, we decline to address AT&T's hypothetical concern at this time.

31. Various commenters have described a practice wherein calls routed to an access-stimulating LEC are blocked or otherwise rejected by the high-volume calling service provider served by the access-stimulating LEC and/or the terminating LEC, but then successfully completed when rerouted. We make clear 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.

32. We also reject several suggestions that we should not move forward with this rulemaking. For example, commenters suggest that we issue a further notice of proposed rulemaking to seek additional comment on the issues raised in the proceeding, decline to adopt changes to address access arbitrage, refocus the proceeding to ensure that tandem switching and tandem switched transport access charges remain available to subsidize their access stimulation-fueled operations, or ''revisit'' the rule's trigger and explore a different, mileage-based mechanism. The Joint CLECs, a set of access-stimulating LECs, go as far as arguing that we should close this docket without taking action. For its part, T-Mobile suggests that we address ongoing arbitrage and fraud by enforcing current rules without further rulemaking. We disagree with these suggestions; the record shows that access arbitrage schemes have adapted to the reforms adopted in 2011. We will not postpone adoption of amendments to our rules that address the way today's access arbitrage schemes use implicit subsidies in our ICC system to warp the economic incentives to provide service in the most efficient manner.

33. We also decline to adopt Wide Voice's alternative suggestions that we either cap transport miles charged by access-stimulating LECs to 15 miles or hold access-stimulating LECs responsible only for transport mileage charges, not switching charges. In support of these positions, Wide Voice

alleges, without offering any support, that transport charges are the primary driver of access stimulation. Nor does Wide Voice explain how a mileage cap would reduce access arbitrage. By contrast, the record demonstrates that reversing the financial responsibility for both transport and tandem switching charges will help eliminate access arbitrage. Either of these proposals would, however, benefit Wide Voice which does not charge for transport.

34. We also decline to adopt Aureon's suggestion that would allow IXCs to charge their subscribers an extra penny per minute for calls to access stimulators. There is no evidence that access-stimulating calls currently cost a penny per minute, so the proposal would simply trade one form of inefficiency for another. We are also concerned that adopting such an overbroad proposal to address the stimulation of tandem switching and transport charges would confuse consumers and unnecessarily spill into, and potentially negatively affect, the operation of the more-competitive wireless marketplace and the choices consumers have made when selecting wireless calling plans.

35. At the same time, we remain unwilling to adopt an outright ban on access stimulation. As the Commission concluded in the *USF/ICC Transformation Order,* prohibiting access stimulation in its entirety or finding that revenue sharing is a *per se* violation of section 201 of the Act would be an overbroad solution ''and no party has suggested a way to overcome this shortcoming.'' Instead, the Commission chose to prescribe narrowly focused conditions for providers engaged in access stimulation. We adhere to that view in this document because there is still no suggestion as to how a blanket prohibition could be tailored to avoid it being overbroad. We believe the rules we adopt in this document strike an appropriate balance between addressing access stimulation and the use of intermediate access providers while not affecting those LECs that are not engaged in access stimulation. The rules adopted in this document are not overbroad. They are consistent with the policies adopted in the *USF/ICC Transformation Order* and are the product of notice and record support.

36. Having concluded that a modified version of the first prong of the Commission's proposal in the *Access Arbitrage Notice* will adequately address current access arbitrage practices, we decline to adopt the second prong of the proposal. Prong 2 of that proposal would have provided access-stimulating LECs an opportunity to avoid financial responsibility for the delivery of traffic from an intermediate access provider to the access-stimulating LEC's end office or functional equivalent by offering to accept direct connections from IXCs or an intermediate access provider of the IXC's choice. The record offers no support for the adoption of Prong 2 as drafted, and we agree with various concerns raised in the record that access-stimulating LECs could nullify any benefits of this approach. For example, Prong 2 could allow access-stimulating LECs to avoid financial responsibility by operating in remote locations where direct connections would be prohibitively expensive or infeasible and alternative intermediate access providers may be nonexistent or prohibitively expensive. Under such circumstances, Prong 2 would be ineffective at curbing the practice while increasing disputes over the terms of direct connections before the courts and the Commission.

37. Likewise, even where establishing a direct connection may initially appear cost-effective, the ease with which access stimulation traffic may be shifted from one carrier to another undermines the value of making the investment. After a direct connection premised on high traffic volume has been established at an access-stimulating LEC's original end office, the access-stimulating LEC or providers of access-stimulating services could move traffic to a different and more distant end office, thus stranding the financial investment to build that direct connection with minuscule traffic volume after the access stimulation activity has shifted locations. We conclude that requiring a shift in financial responsibility for the delivery of traffic from the IXC to the access-stimulating LEC end office or its functional equivalent is sufficient, at this time, to address the inefficiencies caused by access stimulation relating to intermediate access providers. The attractiveness of these schemes will necessarily wane once the responsibility of paying for any intermediate access provider's charges is shifted to access-stimulating LECs. As a general matter, we acknowledge that companies can currently, and will continue to be able to, negotiate individual direct connection agreements and leave the possibility of a policy pronouncement regarding direct connections for consideration as part of our broader intercarrier compensation reform efforts.

38. In the *Access Arbitrage Notice,* the Commission sought comment on moving to a bill-and-keep regime all terminating tandem switching and tandem switched transport rate elements for access-stimulating LECs or the intermediate access providers they choose. Contrary to the claims of some commenters, the rules we adopt in this document are consistent with our goal of moving toward bill-and-keep. They prohibit access-stimulating LECs from recovering their tandem switching and transport costs from IXCs, leaving access-stimulating LECs to recover their costs from high-volume calling service providers that use the LECs' facilities. Likewise, the rules we adopt treat access-stimulating LECs as the customers of the intermediate access providers they select to terminate their traffic and allow those intermediate access providers to recover their costs from access-stimulating LECs. Thus, we allow intermediate access providers to continue to apply their tandem switching and transport rates to traffic bound for access-stimulating LECs, but those rates must be charged to the access-stimulating LEC, not the IXC that delivers the traffic to the intermediate access provider for termination.

2. Redefining ''Access Stimulation''

39. In recognition of the evolving nature of access-stimulation schemes, we amend the definition of ''access stimulation'' in our rules to include situations in which the access-stimulating LEC does not have a revenue sharing agreement with a third party. In so doing, we leave the current test for access stimulation in place. That test requires, first, that the involved LEC has a revenue sharing agreement and, second, that it meets one of two traffic triggers. The LEC must either have an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month or have had more than a 100% growth in interstate originating and/or terminating switched access minutes-of-use in a month compared to the same month in the preceding year. We add two, alternate tests that require no revenue sharing agreement. First, under our newly amended rules, competitive LECs with an interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month will be defined as engaging in access stimulation. Second, under our newly amended rules, we define a rate-of-return LEC as engaging in access stimulation if it has an interstate terminating-to-originating traffic ratio of at least 10:1 in a three calendar month period and has 500,000 minutes or more of interstate terminating minutes-of-use per month in an end office in the same three calendar month period. These factors will be measured as an average over the same three calendar-month period. Our

decision to adopt different triggers for competitive LECs as compared to rate-of-return LECs reflects the evidence in the record that there are structural barriers to rate-of-return LECs engaging in access stimulation, and at the same time, a small but significant set of rate-of-return LECs can experience legitimate call patterns that would trip the 6:1 trigger.

40. We adopt these alternate tests for access stimulation because, as one commenter explains, as terminating end office access charges move toward bill-and-keep, ''many entities engaged in access stimulation have re-arranged their business to circumvent the existing rules by reducing reliance on direct forms of revenue sharing.'' Or, as another commenter explains, the revenue sharing trigger is creating incentives for providers to ''become more creative in how they bundle their services to win business and evade'' the rules. We also are concerned about a prediction in the record that if we were to adopt the rules originally proposed in the *Access Arbitrage Notice,* without more, access-stimulating LECs will cease revenue sharing in an effort to avoid triggering the proposed rules, even while continuing conduct that is equivalently problematic.

41. A number of commenters describe ways that carriers and their high-volume calling service partners may be profiting from arbitrage where their actions may not appear to fit the precise provisions of our revenue sharing requirement. For example, T-Mobile reports that some LECs create ''shell companies to serve as their intermediate provider, and then force carriers to send traffic to that intermediate provider, who charges a fee shared with the ILEC.'' Aureon posits that tandem provider HD Tandem could receive payment from a LEC or an IXC to provide intermediate access service and then share its revenues directly with its high-volume calling service affiliate without sharing any revenue with the terminating LEC. Also, an access-stimulating LEC that is co-owned with a high-volume calling service provider could retain the stimulated access revenues for itself, while letting the high-volume calling service provider operate at a loss. In those situations, the LEC would not directly share any revenues. Likewise, Inteliquent suggests that there would be no revenue sharing if the same corporate entity that owns a high-volume calling service provider also owns an end office, or if switch management is outsourced to a high-volume calling platform or its affiliate. In those cases, the revenue would remain under the same corporate entity and not come from separate entities sharing ''billing or collection of access charges from interexchange carriers or wireless carriers.'' Because of these concerns, we find it reasonable and practical to adopt additional triggers in our rules that define access stimulation to exist when a LEC has a highly disproportionate terminating-to-originating traffic ratio. We, therefore, keep the revenue sharing requirement of § 61.3(bbb)(1)(i) as is, and adopt two alternative prongs of the definition of access stimulation that do not require revenue sharing.

42. Some commenters have ''no objection if the revenue sharing aspect of the definition is eliminated'' and if the Commission were to rely solely on traffic measurement data. However, the record shows that the current definition has accurately identified LECs engaged in access stimulation. We therefore find that the better course is to leave the current test in place and add two alternate tests for access stimulation that do not include revenue sharing, and have higher traffic ratios.

43. *A Higher Traffic Ratio Is Justified When No Revenue Sharing Agreement Is in Place.* In adopting two alternative tests for access stimulation that do not include a revenue sharing component, we are mindful of the importance of identifying those LECs engaging in access stimulation while not creating a definition that is overbroad, resulting in costly disputes between carriers and confusion in the market. First, in an effort to be conservative and not overbroad, we adopt an alternative test of the access-stimulation definition for competitive LECs, which requires a higher terminating-to-originating traffic ratio than the 3:1 ratio currently in place. We find that a 6:1 or higher terminating-to-originating traffic ratio for competitive LECs provides a clear indication that access stimulation is occurring, even absent a revenue sharing agreement. We could establish a smaller ratio; however, we agree with Teliax that tightening the ratio ''would most certainly catch normal increases in traffic volumes,'' and thus be overinclusive. We also want to protect non-access-stimulating LECs from being misidentified. We have selected a 6:1 ratio, which is twice the existing ratio and is the ratio recommended by Inteliquent. The 6:1 ratio should help to capture any access-stimulating competitive LECs that decide to cease revenue sharing, as well as any access-stimulating competitive LECs that already may have ceased revenue sharing, or that currently are not doing so.

44. This larger ratio is sufficient to prevent the definition from ensnaring competitive LECs that have traffic growth solely due to the development of their communities. We do not find compelling Wide Voice's suggestion that an access-stimulating LEC that exceeds the 6:1 ratio would have an incentive to try to game the system by obtaining more originating traffic, such as 8YY traffic, to stay below the 6:1 ratio or move traffic to other LECs to avoid tripping the trigger. All LECs, not just access-stimulating LECs, should have an incentive to obtain more traffic, whether it's originating 8YY traffic or terminating traffic. However, there is no evidence that access-stimulating LECs are currently able to avoid the 3:1 trigger by simply carrying more originating traffic or moving traffic, and Wide Voice offers no evidence that doing so will be a simple matter for LECs seeking to avoid the 6:1 ratio that we are adding to capture LECs engaging in this scheme without a revenue sharing agreement. We do not include a threshold for number of minutes of interstate traffic carried by a competitive LEC to meet the test for an access-stimulating competitive LEC because there is no justification in the record for a specific number.

45. We adopt a separate alternative test for determining whether a rate-of-return LEC is engaged in access stimulation in part to address NTCA and other commenters' concerns that ''eliminating the revenue sharing component of the definition of access stimulation . . . could immediately have the inadvertent effect of treating innocent RLECs as access stimulators when they do not engage in that practice at all.'' In adopting a second alternate access-stimulation definition applicable only to rate-of-return LECs we recognize that the majority of those carriers are small, rural carriers with different characteristics than competitive LECs. For example, unlike access-stimulating LECs that only serve high-volume calling providers, rate-of-return carriers, which serve small communities and have done so for years, would not be able to freely move stimulated traffic to different end offices. In addition, as NTCA explains, such carriers also may have traffic ratios that are disproportionately weighted toward terminating traffic because their customers have shifted their originating calls to wireless or VoIP technologies. This trend is reflected in the Commission's *Voice Telephone Services Report–June 2017.* We also agree with NTCA that small rate-of-return LECs' traffic may be more sensitive to seasonal changes in the ratio of their terminating-to-originating access minutes because of

the unique geographical areas they serve and thus may have spikes in call volume with a greater impact on traffic ratios than would be experienced by carriers with a larger base of traffic spread over a larger, more populated, geographical area.

46. The second alternate definition we adopt strikes an appropriate balance. It recognizes the potential that small, non-access-stimulating, rate-of-return carriers may have larger terminating-to-originating traffic ratios than competitive LECs and ''avoid[s] penalizing innocent LECs that may have increased call volumes due to new economic growth,'' for example. NTCA shows that application of a 6:1 ratio to rate-of-return LECs would identify as access-stimulating LECs approximately 4% of rate-of-return LECs that participate in the National Exchange Carrier Association (NECA) pool even though they are not actually engaged in access stimulation. NTCA and AT&T therefore recommend that, for rate-of-return carriers, we adopt a second test for access stimulation that is based on a 10:1 traffic ratio combined with traffic volume that exceeds 500,000 terminating interstate minutes per end office per month averaged over three months. We agree with NTCA and AT&T that their proposed 10:1 trigger is reasonable given that a small but significant number of rate-of-return LECs that are apparently not engaged in access arbitrage would trip the 6:1 trigger; the structural disincentives for rate-of-return LECs to engage in access stimulation; and the lack of evidence that rate-of-return LECs are currently engaged in access stimulation. We also think that a threshold of 500,000 terminating interstate minutes per month is a reasonable trigger for rate-of-return LECs. By its very nature, access stimulation involves termination of a large number of minutes per month, as such, excluding the smallest rate-of-return carriers from the definition is a sensible approach. Thus, for rate-of-return LECs, we adopt a 10:1 ratio as demonstrating access stimulation activity when combined with more than 500,000 interstate terminating minutes-of-use per month, per end office, averaged over three calendar months.

47. We also agree with NTCA that ''any access stimulation trigger be based on *actual* minutes of use as measured by the LEC traversing the switch, rather than by reference to billing records.'' This is how the ratio is currently calculated and it should remain the case that when calculating the current 3:1 terminating-to-originating traffic trigger, or the 6:1 or 10:1 triggers adopted in this *Order,* carriers must look to the actual minutes traversing the LEC switch. This combination of a traffic ratio and a minutes-of-use threshold for rate-of-return carriers is consistent with the Commission's approach in the *USF/ICC Transformation Order* to ensure that the definition is not over-inclusive but is enforceable. In addition, we find that measuring this ratio and the average monthly minutes-of-use threshold over three months will adequately account for the potential seasonal spikes in calling volumes identified by NTCA.

48. Although no party has raised concerns about how the existing 3:1 traffic ratio is calculated, we received specific questions about calculating the 6:1 ratio. We clarify that all traffic should be counted regardless of how it is routed. Contrary to Wide Voice's assertions, originating traffic using tariffed access services counts as does originating traffic using a ''least cost router under negotiated billing arrangements outside of the access regime.'' All originating and terminating interstate traffic should be counted in determining the interstate terminating-to-originating traffic ratio. This also means that all terminating traffic from all sources, not just one IXC, should be counted in determining a traffic ratio.

49. We recognize the possibility that a LEC may experience significant traffic growth and if, for example, such customers include one or more inbound call centers, the result could be that its traffic exceeds one of the new traffic ratio triggers we adopt. We are not aware of any similar problems occurring with the existing 3:1 ratio and the record contains no evidence of that happening. Nonetheless, consistent with the Commission's decision in the *USF/ICC Transformation Order,* should a non-access-stimulating LEC experience a change in its traffic mix such that it exceeds one of the ratios we use to define access-stimulating LECs, that LEC will have ''an opportunity to show that they are in compliance with the Commission's rules.'' In addition, as Sprint correctly points out if a LEC, not engaged in arbitrage, finds that its traffic will exceed a prescribed terminating-to-originating traffic ratio, the LEC may request a waiver. We find these alternatives will protect non-access-stimulating LECs from false identification as being engaged in access stimulation.

50. *Identifying When a LEC Is No Longer Engaged in Access Stimulation.* Because we are adding two alternate bases for identifying access stimulation, we also must modify the rule that defines when a LEC is no longer engaged in access stimulation. The existing rule provides that a LEC is no longer engaged in access stimulation when it ceases revenue sharing. We amend our rules to provide that a competitive LEC that has met the first set of triggers for access stimulation will continue to be considered to be engaging in access stimulation until it terminates all revenue sharing arrangements and does not meet the 6:1 terminating-to-originating traffic ratio; and a competitive LEC that has met the 6:1 ratio will continue to be considered to be engaging in access stimulation until it falls below that ratio for six consecutive months, and it does not qualify as an access-stimulating LEC under the first set of triggers.

51. We amend our rules to provide that a rate-of-return LEC that has met the first set of triggers for access stimulation will continue to be considered to be engaging in access stimulation until it: (1) Terminates all revenue sharing arrangements; (2) does not meet the 10:1 terminating-to-originating traffic ratio; and (3) has less than 500,000 minutes of average monthly interstate terminating traffic in an end office (measured over the three-month period). A rate-of-return LEC that has met the 10:1 ratio and 500,000 minutes-per-month threshold will continue to be considered to be engaging in access stimulation until its traffic balance falls below that ratio and that monthly traffic volume for six consecutive months, and it does not qualify as an access-stimulating LEC under the first set of triggers. We find that a six-month time frame will accurately signal a change in either a competitive LEC's or a rate-of-return LEC's business practices rather than identify a short-term variation in traffic volumes that may not repeat in the following months.

52. We also make a minor modification to § 61.3(bbb)(4) which states that LECs engaged in access stimulation are subject to revised interstate switched access rates. When the rule was adopted in the *USF/ICC Transformation Order,* the Commission stated that revised interstate switched access rates applied to both rate-of-return LECs and competitive LECs. However, the rule adopted in that Order, § 61.3(bbb)(2), refers to the rate regulations applicable only to rate-of-return carriers. In the *Access Arbitrage Notice,* we asked for comments on the rules, and received no comments on this issue. We therefore modify (now relabeled) § 61.3(bbb)(4) to refer to the rate regulations for competitive LECs as well as rate-of-return LECs. The revised § 61.3(bbb)(4) therefore specifies that a LEC engaging in access stimulation is subject to revised interstate switched

access charge rules under § 61.26(g) (for competitive LECs), or §§ 61.38 and 69.3(e)(12) (for rate-of-return LECs).

53. In response to comments, the rule we adopt specifically states that a LEC that is not itself engaged in access stimulation, but is an intermediate access provider for a LEC engaged in access stimulation, shall not itself be deemed a LEC engaged in access stimulation. In addition, some commenters express concern that the breadth of the proposed rules may pose adverse consequences for non-access-stimulating LECs. NTCA cautions that ''LECs that do not qualify as access stimulators under the Commission's rules but which subtend the same CEA as those who do [may] be inadvertently affected by the Commission's reforms.'' We do not foresee such an issue with the rules. The rules we adopt in this document do not alter the financial responsibilities of any LEC that is not engaged in access stimulation regardless of whether it subtends the same CEA provider as an access-stimulating LEC. We are nevertheless concerned about arguments that high-volume calling providers may not be considered end users. Thus, we make clear that, for purposes of the definition of access stimulation, a high-volume calling provider, such as a ''free'' conference calling provider or a chat line provider, is considered an end user regardless of how that term is defined in an applicable tariff. Thus, a LEC that provides service to such a high-volume calling provider will be considered a rate-of-return local exchange carrier serving end user(s), or a Competitive Local Exchange Carrier serving end user(s).

54. Having amended our access stimulation rules as they relate to the relationship among access-stimulating LECs, ''interexchange carriers,'' and ''intermediate access providers'' for the delivery of access-stimulated traffic, we agree with AT&T on the need to define those terms to provide clarity. We therefore define ''interexchange carrier'' to mean ''a *retail or wholesale* telecommunications carrier that uses the exchange access or information access services of another telecommunications carrier for the provision of telecommunications'' (emphasis added). We define ''intermediate access provider'' to mean ''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 by § 61.3(bbb).'' In adopting this definition, we recognize the Joint CLECs' concern that there may be more than one intermediate access provider in a call path. The use of the phrases ''any entity'' and ''any point'' is broad enough to allow for more than one intermediate access provider between the final IXC and the LEC even though we question the likelihood of this hypothetical. And the access-stimulating LEC will choose the intermediate access provider(s) to deliver the traffic to the LEC. The adopted definitions are slightly different than those proposed in the *Access Arbitrage Notice* to help ensure clarity going forward. We have amended our rules under part 51-Interconnection and have also added conforming rules applicable to access-stimulating LECs to the relevant tariffing sections since these rules will require tariff changes. We believe these changes to the rules proposed in the *Access Arbitrage Notice* will allow better ease of reference.

55. Moreover, we encourage self-policing of our access-stimulation definition and rules among carriers. IXCs and intermediate access providers, including CEA providers, likely will have traffic data to demonstrate infractions of our rules, such as a LEC meeting the conditions for access stimulation but not filing a notice or revised tariffs as discussed in the Implementation section below. If an IXC or intermediate access provider has evidence that a LEC has failed to comply with our access-stimulation rules, it could file information in this docket, request that the Commission initiate an investigation, file a complaint with the Commission, or notify the Commission in some other manner.

56. Finally, we reject several arguments from commenters regarding the definition of access stimulation. First, we reject Wide Voice's suggestion that we abandon the current definition of access stimulation entirely because its usefulness has ''largely expired with the sunsetting of the end office.'' This sentiment is belied by commenters that confirm the current definition has worked as intended to identify LECs engaged in access stimulation. We likewise reject Wide Voice's proposed alternative, which would define access stimulation as ''traffic originating from any LEC behind a CEA tandem with total minutes (inbound + outbound) in excess of 1000 times the number of its subscribers in its service area.'' We agree with commenters that Wide Voice's ''comments are obviously intended to further arbitrage activities, rather than stop them.'' Wide Voice is certified as a competitive LEC in dozens of states, but has not built out facilities in Iowa, South Dakota, and Minnesota. By suggesting that we abandon our current definition of access stimulation in favor of one that applies only in the states with CEA tandems, Wide Voice and others would be free to stimulate access charges without federal regulatory restraint in the 47 states that do not have CEA tandems. Furthermore, the mathematical formula proposed by Wide Voice is too broad because by including originating minutes in the formula, it is not focused on eliminating terminating access stimulation.

57. Second, FailSafe and Greenway suggest that the current access-stimulation definition be made more restrictive. They both argue that the existing traffic growth trigger in the access-stimulation definition—which requires that there is 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''—could have the unintended consequence of labelling competitive LECs as engaged in access stimulation ''simply by beginning to provide services'' and thus presumably increasing their volume of traffic from no traffic to some traffic. This suggestion and the concern these parties raise fail for at least two reasons. First, the 100% traffic growth trigger compares a month's switched access minutes with the minutes-of-use from the same month in the previous year. A competitive LEC that was not in business the previous year would not qualify because the absence of any monthly demand in the prior year renders this comparison inapposite, and the requisite calculation to satisfy the trigger cannot be performed. Second, the 100% traffic growth trigger is only one part of that portion of the definition. The competitive LEC must also have a revenue sharing agreement, which presumably a new non-access-stimulating competitive LEC in Greenway's hypothetical would not have. Neither Greenway nor FailSafe cites any LEC that has been misidentified as engaged in access stimulation under the current definition using the traffic growth trigger. They also do not suggest how they would revise the current access-stimulation definition to restrict its possible application and avoid the misidentification they suggest might result. We find that this hypothetical concern is already addressed by the existing rule. FailSafe is similarly concerned that this rule would identify emergency traffic to its cloud service as access stimulation traffic. This concern is unwarranted: our rules do not define types of traffic, but rather define certain LECs as being engaged in access

stimulation. Additionally, LECs that suffer legitimate traffic spikes from events such as natural disasters will have the opportunity to present relevant evidence if they file waiver requests with the Commission.

58. Third, HD Tandem takes the opposite view and argues that the access-stimulation definition should be broadened ''to apply to any carrier with a call path that assesses access charges of any kind (shared or not) and unreasonably refuses to direct connect, or its functional equivalent, with other carriers with reciprocity.'' Similarly, CenturyLink proposes that we shift financial responsibility to any LEC, including those not engaged in access stimulation, that declines a request for direct connection for terminating traffic. Both of these suggestions go beyond the issue of access stimulation and the current record does not provide a sufficient basis to evaluate the impact of either proposal on LECs that are not engaged in access stimulation. And, as discussed above, we do not adopt the Commission's direct connection proposal, at this time, and also find that nothing in the record would justify HD Tandem's suggested expansion of the access-stimulation definition.

59. Fourth, we reject Inteliquent's and HD Tandem's suggestions that we add a mileage cap to the access-stimulation definition. When Inteliquent proposed the 6:1 ratio, it also proposed that the access stimulation definition should require that ''[m]ore than 10 miles [be] billed between the tandem and the serving end office,'' and that the end office have interstate terminating minutes-of-use of ''at least 1 million in one calendar month.'' We are including a minutes-of-use trigger with the new alternate 10:1 traffic ratio for rate-of-return LECs. However, we decline to add a cap on transport mileage because as HD Tandem admits, a mileage cap ''would not eliminate the use of intercarrier compensation to subsidize 'free' or 'pay services.'' In supporting a mileage cap of 15 miles, Wide Voice claims that such a cap would reduce the estimated $80 million cost of access stimulation by about $54 million. However, Wide Voice's calculations appear to assume that all transport costs are eliminated not just those that exceed 15 miles, and assumes that access-stimulating LECs and the intermediate access providers that serve them would not simply adjust their business practices to take into account such a cap.

60. Indeed, a mileage cap would invite access stimulation because a LEC could avoid being designated as an access-stimulating LEC and incurring the corresponding financial responsibly by limiting its transport charges to avoid tripping the mileage cap trigger. For example, a definition of access stimulation that included a requirement that to fit the definition a LEC bill for 10 miles or more of transport would allow a LEC to bill for just under 10 miles of transport while having a terminating-to-originating traffic ratio of 1000:1. Furthermore, a mileage cap would not deter access-stimulating LECs that receive transport from intermediate access providers that do not charge mileage, such as Wide Voice and HD Tandem.

61. We also reject arguments that there was insufficient notice for the addition of additional triggers for the definition of access stimulation. The *Access Arbitrage Notice* clearly sought comment on changing the definition of access stimulation. Indeed, there was express notice that the Commission could adopt a rule ''remov[ing] the revenue sharing portion of the definition'' of access stimulation, leaving a definition triggered by either a 3:1 traffic ratio or 100% year-over-year traffic growth alone. We are not persuaded that commenters have identified concerns about a rule relying on the 6:1 or 10:1 traffic ratios that they should not already have recognized the need to raise in response to that express notice.

62. Some commenters have complained that not enough data was submitted in the record in this proceeding. However, in the *Access Arbitrage Notice,* the Commission asked whether there are ''additional, more-current data available to estimate the annual cost of arbitrage schemes to companies, long distance rate payers, and consumers in general''; whether there are ''data available to quantify the resources being diverted from infrastructure investment because of arbitrage schemes''; whether ''consumers are indirectly affected by potentially inefficient networking and cost recovery due to current regulations and the exploitation of those regulations''; and whether there are ''other costs or benefits'' the Commission should consider. The Commission asked for the costs and benefits of its two-prong approach, and the ''costs and benefits of requiring a terminating provider that requires the use of a specific intermediate access provider to pay the intermediate access provider's charges.'' The Commission could not have been more clear in its request for data. If the commenters are dissatisfied with the amount of data provided to the Commission, it certainly was not due to the Commission not asking for it.

63. Contrary to several parties' assertions, the Commission's adoption of the 6:1 traffic trigger is not arbitrary and capricious. This section of the *Order* reviews the numerous viewpoints expressed by the parties to this proceeding and explains our rationales for our decisions. We have considered and provided reasons for rejecting a mileage cap, despite the fact that Peerless and West's emphasis on the mileage cap arguably is self-serving. Likewise, Peerless and West's alleged concern for the impact of our decision on ''innocent LECs'' has been addressed several times in this *Order.* Our concern about ''innocent rate-of-return LECs'' and our review of the data submitted by parties such as NTCA, AT&T, and Inteliquent supports the adoption of the 6:1 and 10:1 traffic ratios. We also have explained ways that ''innocent LECs,'' that have traffic patterns that would cause them to surpass the traffic ratios, may seek assistance from the Commission. As Peerless and West admit, a court's review of an agency's action is a narrow one. Peerless and West cannot discount our extensive review and consideration of the numerous viewpoints expressed in this proceeding, and our explanation for rejecting or accepting each viewpoint. The fact that Peerless and West may disagree with this agency's decision is not dispositive. The Commission has gone to great lengths to explain the facts found and to articulate a rational connection with the choices made.

3. Additional Considerations

64. *Self-Help.* Our focus here is on reducing access stimulation, and no commenters have argued that limiting self-help remedies will further that goal. As the Commission did in the *USF/ICC Transformation Order,* we caution parties to be mindful ''of their payment obligations under the tariffs and contracts to which they are a party.'' We discourage providers from engaging in self-help except to the extent that such self-help is consistent with the Act, our regulations, and applicable tariffs. Intercarrier compensation disputes involving payment for stimulated traffic have become commonplace, with IXCs engaging in self-help by withholding payment to access-stimulating LECs. As a result, several commenters request that we address self-help remedies in access arbitrage disputes, and others would like us to disallow self-help more broadly. We decline those requests. Disallowing self-help, whether in the access stimulation context or not, would be inconsistent with existing tariffs,

some of which permit customers to withhold payment under certain circumstances.

65. We also decline to adopt other tariff-related recommendations made by commenters. AT&T, for example, suggests that we ''eliminate tariffing of tandem and transport access services on access stimulation traffic.'' We believe this suggested solution is unnecessary in light of the more narrowly drawn solutions to access stimulation that we adopt in this document. Furthermore, there are protections provided by tariffs—such as the ability to dispute charges described above—that should not be eliminated as a result of an unexplored suggestion made in passing in this proceeding. AT&T also suggests that we ''make clear that LECs can include in their tariffs reasonable provisions that allow the LECs to decline to provide [telephone lines and/or access services] to a chat/conference provider.'' We decline to suggest tariff language changes in this proceeding beyond those necessary to implement our rule changes. Each carrier is responsible for its own tariffs and tariff changes are subject to the tariff review process.

66. *Mileage Pumping and Daisy Chaining.* ''Mileage pumping'' occurs when a LEC moves its point of interconnection, on which its mileage-based, per-minute-of-use transport charges are based, further away from its switch for no reasonable business purpose other than to inflate mileage charges. ''Daisy chaining'' occurs when a provider adds superfluous network elements so as to reclassify certain network functions as tandem switching and tandem switched transport, for which terminating access is not yet scheduled to be moved to bill-and-keep. Because there is nothing in the record to indicate that mileage pumping and daisy chaining are significant issues outside of the access stimulation context, we decline to adopt a new rule specifically addressing these issues. We believe that placing the financial obligation for tandem switching and tandem switched transport charges on the access-stimulating LEC should eliminate the practices of mileage pumping and daisy chaining.

67. Because our new rules will encourage access-stimulating LECs to make more efficient decisions, the rules should negate the need for T-Mobile's proposal that would establish multiple interconnection points nationwide where providers could choose to connect either directly or indirectly, and HD Tandem's suggestion that LECs engaged in access stimulation be required to offer what HD Tandem terms an ''internet Protocol Homing Tandem.'' Both proposals would require us to decide what would be efficient for affected providers without the benefit of specific, relevant information about their networks. Therefore, we decline to adopt these proposals. Any remaining abuses of illegitimate mileage pumping or daisy chaining activities after the implementation of our new and modified access-stimulation rules can be addressed on a case-by-case basis in complaints brought pursuant to section 208 of the Act.

68. Finally, we do not address the merits of several other issues raised in the record because they are outside the scope of this proceeding or are insufficiently supported with data and analysis. For example, some parties used this proceeding as an opportunity to air grievances related to a dispute that was twice before the South Dakota Public Utilities Commission. We agree with the South Dakota 9–1–1 Coordination Board and SDN that it is not appropriate to raise a state dispute regarding efforts to implement next generation 911 service in this rulemaking proceeding in the hope that the Commission will include language in this *Order* to address that particular dispute.

69. A few parties argue that we should adopt rules regarding the rates providers charge for certain services. For example, the Joint CLECs suggest that we adopt a ''uniform rate for access-stimulating traffic.'' Yet those carriers provide no justification for adopting a specific rate, nor does the record otherwise provide a basis to fill that void. The Commission previously adopted rate caps for access-stimulating LECs and the result was a reduction in the cost of arbitrage but not its elimination. We therefore take a different approach in this *Order.* The rules we adopt in this document do not affect the rates charged for tandem switching and transport. HD Tandem and Wide Voice's arguments that we do not address ''rate disparities'' or ''equalize compensation'' are misplaced. Our goal is to eliminate the incentive for access-stimulation schemes to take advantage of rate disparities and unequal compensation opportunities, and we do so by reversing the financial responsibility for paying tandem switching and transport, from IXCs to access-stimulating LECs, but the rates for those services are unaffected. We find that by reversing the financial responsibility, customers will receive more accurate price signals and implicit subsidies will more effectively be reduced. We are not persuaded that continuing to allow access-stimulating LECs to collect revenues from access charges, even if ''equalized,'' would eliminate the arbitrage problem. To the contrary, such action would provide access-stimulating LECs with a protected revenue stream and thus encourage arbitrage. HD Tandem also suggests that ''it would be problematic for the Commission to involve itself in consumer pricing.'' We agree, and the rules we adopt in this document do not require any changes to consumer prices.

B. Implementation Issues

70. We amend our part 51 rules governing interconnection and our part 69 rules governing tariffs to effectuate the requirements that: (1) Access-stimulating LECs assume financial responsibility for terminating interstate or intrastate tandem switching and tandem switched access transport for any traffic between the LEC's terminating end office or equivalent and the associated access tandem switch; and (2) access-stimulating LECs provide notice of their assumption of that financial responsibility to all affected parties. To ensure that parties have enough time to come into compliance with our rules, we adopt a reasonable transition period for parties to implement any necessary changes to their tariffs and to adjust their billing systems. This *Order* and the rules adopted herein, except the notice provisions which require approval from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act (PRA), will become effective 30 days after publication of the summary of this *Order* in the **Federal Register**. We give access-stimulating LECs and affected intermediate access providers an additional 45 days to come into compliance with those rules.

71. With respect to the new notice provisions in our rules, which require OMB approval pursuant to the PRA, within 45 days of PRA approval, each existing access-stimulating LEC must provide notice to the Commission and to any affected IXCs and intermediate access providers that the LEC is engaged in access stimulation and accepts financial responsibility for all applicable terminating tandem switching and transport charges. As proposed in the *Access Arbitrage Notice,* notice to the Commission shall be accomplished by filing a record of its access-stimulating status and acceptance of financial responsibility in the Commission's *Access Arbitrage* docket on the same day that the LEC issues such notice to the IXC(s) and intermediate access provider(s). This 45-day tariffing and notice time period will begin to run for new access-stimulating LECs from the time they meet the

definition of a LEC engaged in access stimulation.

72. Some commenters have suggested that a longer transition for the transfer of financial responsibility is warranted. We disagree. There is no reason to allow access-stimulating LECs and the intermediate access providers that they choose to use to continue to benefit from access arbitrage schemes. A transition period of 45 days after the effective date of the rules—or, in the case of a LEC that is newly deemed to meet the definition of a LEC engaged in access stimulation, 45 days after that date—is sufficient time for access-stimulating LECs and the affected intermediate access providers to amend their billing practices and to make any tariff changes deemed necessary, and to prepare to close out then-current billing cycles under previous arrangements at that billing cycle's natural end. Commenters have argued that a mid-cycle billing change would not be administrable, but a mid-cycle change is not required by these rules.

73. In particular, several commenters argue the draft *Order* leaves too little time for access-stimulating LECs to come into compliance, suggesting that an 18–24 month period is warranted to allow them to change their business models and avoid the definitional triggers. We first note that there is a distinction between how much time it will take for an entity to come into compliance with the rules and how much time it will take to change their business model in light of the change in the rules. There is contrary evidence in the record, suggesting that access-stimulating LECs are able to relocate their traffic in days, if not hours, rather than weeks and months. Further, nothing in this *Order* either requires or impedes an access-stimulating LEC's ability to make changes to their business model should they choose to do so in light of the rules we adopt in this document. In addition, the rules provide a clear process by which an access-stimulating LEC can transition out of being categorized as such. We also reject FailSafe's request for a three-year phaseout of access charges due to independent telephone companies' provision of services related to emergency communication. FailSafe has not identified any concrete examples under which a carrier's provision of services related to emergency communication would have or will trip the new definition(s) of access stimulation, and the record is devoid of any support of FailSafe's concern.

74. The Joint CLEC's further claim that the 45 day time period for implementation leaves ''LECs with no other option but to flash cut their primary revenue stream, going from having a lawful means of earning profits to having a significant cost center in a matter of days.'' As a result, the Joint CLECs argue that the new access stimulation rules violate the Takings Clause of the Fifth Amendment of the Constitution because they ''eliminate[] access stimulation as a revenue stream for the CLECs and provide[] no realistic alternative means of compensation for them.'' We consider the precedent on government takings and find that this argument is without merit. In the *Penn Central* case, the Supreme Court explained that in evaluating regulatory takings claims, three factors are particularly significant: (1) The economic impact of the government action on the property owner; (2) the degree of interference with the property owner's investment-backed expectations; and (3) the ''character'' of the government action. Those factors do not support a regulatory takings argument here.

75. First, we are not persuaded by the record here that the economic impact of our rules is likely to be so significant as to demonstrate a regulatory taking. Our rules leave carriers free to respond in a number of ways—including in combination—such as by changing end-user rates to account for the access-stimulating LEC assuming financial responsibility for the intermediate access providers' charges for delivering traffic under our rules; or by self-provisioning or selecting an alternative intermediate access provider or route for traffic where that would be a less costly option, or by seeking revenue elsewhere, for example, through an advertising-supported approach to offering free services or services provided at less than cost. Although certain commenters cite declarations purporting to demonstrate that the new rules would ''both wipe out the value of [prior] investments and prevent the CLECs from operating as financially viable enterprises,'' we find them unpersuasive. The declarations do not meaningfully grapple with the viability of the range and potential combination of alternatives for responding to the new rules through any analysis of the details of cost data or other information associated with such scenarios, instead simply asserting that customers inevitably will shift to other providers. Insofar as the declarations also express other concerns about the administration of the rules without justification for, or quantification of, the likely effects, we likewise find them unpersuasive. These shortcomings are particularly notable given ''the heavy burden placed upon one alleging a regulatory taking.'' In addition, we are not persuaded that declarations from three access-stimulating competitive LECs and three ''free'' conference calling providers would call into question our industry-wide rules in any event. Should a given carrier actually be able to satisfy the ''heavy burden'' of demonstrating that the rule would result in a regulatory taking as applied to it, it is free to seek a waiver of the rules.

76. Second, our actions do not improperly impinge upon investment-backed expectations of carriers that engaged in access stimulation under the 2011 rules. The Commission has been examining how best to address problems associated with access stimulation for years, taking incremental steps to address it as areas of particular concern arise and evolve. This has included seeking comment even on proposals that would declare access stimulation *per se* unlawful, at least in certain scenarios. Indeed, the record reveals that under the existing rules many disputes have arisen regarding intercarrier compensation obligations in the scenarios our new rules are designed to directly address. In light of this context, we are not persuaded that any reasonable investment-backed expectations can be viewed as having been upset by our actions here.

77. Finally, consistent with the reasoning of *Penn Central,* we find the character of the governmental action here cuts against a finding of a regulatory taking, given that it ''arises from [a] public program adjusting the benefits and burdens of economic life to promote the common good,'' rather than involving a ''physical invasion'' by government. In particular, our action in this document substantially advances the legitimate governmental interests under the Act of discouraging inefficient marketplace incentives, promoting efficient communications traffic exchange, and guarding against implicit subsidies contrary to the universal service framework of section 254 of the Act.

78. Turning to the other implementation issues. No commenter opposed the proposed notice requirements, and others agreed that having access-stimulating LECs notify the Commission at the same time they notify affected intermediate access providers and IXCs will provide transparency and also address concerns raised in the record about confusion over whether a LEC is an access-stimulating LEC. Affected carriers have had ample notice of these changes, and the PRA approval process will provide

additional time for carriers to prepare before the notice requirement comes into effect.

79. We further amend our rules to require that when a LEC ceases engaging in access stimulation in accordance with § 61.3(bbb), the LEC must also notify affected IXCs and intermediate access providers of its status as a non-access-stimulating LEC and of the end of its financial responsibility. We also require that an access-stimulating LEC publicly file a record of the end of its access-stimulating status and the end of its financial responsibility in the Commission's *Access Arbitrage* docket on the same day that the LEC issues such notice to the IXC(s) and intermediate access provider(s). We decline to further prescribe the steps necessary to reverse the financial responsibility and leave it to the parties to work with each other to make the necessary changes in a reasonable period of time.

80. We believe these changes will reduce complications that could arise from coterminous dates for giving notice and for shifting financial responsibility. We decline to further prescribe any elements of this notice obligation and instead leave it to the parties to clearly and publicly manifest their status and intent when providing the requisite notice.

81. *Implementation Concerns Are Surmountable.* We are not persuaded that there are implementation concerns significant enough for us to reject the Commission's proposal regarding the shifting of financial responsibility as an undue burden on providers. In its comments, SDN correctly observes that our rules may well require SDN to amend its tariff so that SDN can bill access-stimulating LECs for its services. There is no reason to believe that this will be onerous, and SDN has not provided evidence of material incremental costs of making the necessary changes to implement billing arrangements with subtending access-stimulating LECs.

82. SDN expresses concern that disputes may arise about whether certain traffic is access-stimulation traffic. However, traffic will be classified based on the status of the terminating LEC—if the terminating LEC is an access-stimulating LEC, all traffic bound for it will be subject to the changed financial responsibility. We expect that the new requirements for such carriers to self-identify will prevent the vast majority of potential disputes between IXCs and intermediate access providers concerning whether the LEC to which traffic is bound is engaged in access stimulation. An intermediate access provider's duty to cease billing an IXC for tandem switching and transport services attaches only after receiving written notice from an access-stimulating LEC. Thus, if a LEC engaged in access stimulation fails to notify the intermediate access provider (either due to a good faith belief that it does not meet the definition of being an access-stimulating LEC or simply failing to provide the notice, for whatever reason), an IXC's recourse is against the LEC, not the intermediate access provider.

83. In their comments, the Joint CLECs assert that the explanation in the *Access Arbitrage Notice* of the intermediate access provider's costs that must be borne by an access-stimulating LEC is vague. We disagree. The Joint CLECs appear primarily to take issue with the use of the word ''normally'' in such an explanation but fail to recognize that the explanation that they quote is from the text of the *Access Arbitrage Notice,* not the proposed rule. The proposed rule refers to ''the applicable Intermediate Access Provider terminating tandem switching and terminating tandem switched transport access charges relating to traffic bound for the access-stimulating local exchange carrier.'' It is a relatively simple matter to determine the charges applicable to intermediate access service being provided by an intermediate access provider, particularly when the relevant service has already been provided for years (albeit with a different billed party).

84. We are similarly unpersuaded that the implementation issues raised by the Joint CLECs create issues of real concern. The issues raised by the Joint CLECs include: (1) Identifying the relevant intermediate access provider when an access-stimulating LEC connects to IXCs through multiple such providers; (2) determining how financial responsibility should be split when an intermediate access provider provides more than the functional equivalent of tandem switching and tandem switched transport in the delivery of the call; and (3) the CEA providers' rates. We nonetheless clarify that an access-stimulating LEC is responsible for all of the charges for tandem switching and tandem switched transport of traffic from any intermediate access provider(s) in the call path between the IXC and the access-stimulating LEC.

C. Legal Authority

85. The Commission last attacked access arbitrage in the 2011 *USF/ICC Transformation Order,* as part of comprehensive reform of the ICC system. The Commission undertook ICC reform informed by three principles and interrelated goals, all of which inform the *Order* we adopt in this document. First, the Commission sought to ensure that the entities choosing what network to use would have appropriate incentives to make efficient decisions. In that regard, in the *USF/ICC Transformation Order,* the Commission found that ''[b]ill-and-keep brings market discipline to intercarrier compensation because it ensures that the customer who chooses a network pays the network for the services the subscriber receives. . . . Thus, bill-and-keep gives carriers appropriate incentives to serve their customers efficiently.'' As one of the first steps toward bill-and-keep, the Commission adopted a multi-year transition period to move terminating end office access charges to bill-and-keep.

86. Second, the Commission endeavored to eliminate implicit subsidies, consistent with the mandates of section 254 of the Act. The Commission recognized the historical role access charges played in advancing universal service policies, finding that ''bill-and-keep helps fulfill the direction from Congress in the 1996 Act that the Commission should make support explicit rather than implicit'' by requiring any such subsidies, if necessary, be provided explicitly through policy choices made by the Commission under section 254 of the Act.

87. Third, the Commission weighed the regulatory costs of the steps it took in reforming the ICC regime. In so doing, it recognized that ''[i]ntercarrier compensation rates above incremental cost'' were enabling ''much of the arbitrage'' that was occurring. The Commission adopted rules aimed at reducing an access-stimulating LEC's ability to unreasonably profit from providing access to high-volume calling services. Although the Commission concluded that it might theoretically have been possible to establish some reasonable, small intercarrier compensation rate based on incremental cost, it rejected that approach because doing so would lead to significant regulatory burdens to identify and establish the appropriate rate(s), an approach the Commission sought to avoid in adopting a move toward a bill-and-keep methodology. Instead, to address access stimulation, the Commission capped the end office termination rates access-stimulating LECs could charge.

88. Based on our review of the record, we find that requiring IXCs to pay the tandem switching and tandem switched transport charges for access-stimulation

traffic is an unjust and unreasonable practice that we have authority to prohibit pursuant to section 201(b) of the Act. In 2011, when the Commission adopted the access-stimulation rules, its focus was on terminating end office access charges and it found that the high access rates being collected by LECs for access-stimulation traffic were unjust and unreasonable under section 201(b) of the Act. Building on that legal authority and the Commission's goals for ICC reform in the *USF/ICC Transformation Order* here, we extend that logic to the practice of imposing tandem switching and tandem switched transport access charges on IXCs for terminating access-stimulation traffic. We find that that practice is unjust and unreasonable under section 201(b) of the Act and is therefore prohibited.

89. 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 ICC rates above cost enable arbitrage. The Commission also sought to eliminate implicit subsidies allowed by arbitrage, consistent with section 254 of the Act. Given changes in the access-stimulation ''market'' after 2011, the access-stimulation rules adopted as part of the broader intercarrier compensation reforms in the *USF/ICC Transformation Order* now fail to adequately advance those goals. Allowing access-stimulating LECs to continue to avoid the cost implications of their decisions regarding which intermediate access providers IXCs must use to deliver access-stimulated traffic to the LECs drives inefficiencies and leaves IXCs to pass the resultant inflated costs on to their customer bases. The rules we adopt in this *Order,* requiring the access-stimulating LEC to be responsible for paying those charges, counter the perverse incentives the current rules create for LECs to choose expensive and inefficient call paths for access-stimulation traffic and better advance the goals and objectives articulated by the Commission in the *USF/ICC Transformation Order.*

90. Of course, the Commission's focus on the importance of efficient interconnection did not begin with the *USF/ICC Transformation Order.* It can also be found, for example, in the initial Commission Order implementing the 1996 Act. In that Order, in considering telecommunications carriers' interconnection obligations, the Commission 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.'' The focus on efficient interconnection is consistent with Congressional direction to the Commission in, for example, section 256 of the Act which requires the Commission to oversee and promote interconnection by providers of telecommunications services that is not only ''effective'' but also ''efficient.'' By adopting rules crafted to encourage terminating LECs to make efficient choices in the context of access stimulation schemes, the rules are thus consistent with longstanding Commission policy and Congressional direction.

91. Likewise, the record reveals that the incentives associated with access stimulation lead to artificially high levels of demand, often in rural areas where such levels of demand are anomalous and largely unaccounted-for by existing network capabilities. This, in turn, can result in call completion problems and dropped calls. For a number of years, the Commission has sought to address concerns about rural call completion problems—a concern that Congress recently reinforced through its enactment of section 262 of the Act. Adopting rules that help mitigate call completion problems in rural (and other) areas thus also harmonizes our approach to access stimulation under section 201(b) with those broader policies.

92. We also conclude that our new rules are more narrowly targeted at our concerns regarding the terminating LECs' reliance on inefficient intermediate access providers in circumstances that present the greatest concern—those involving access stimulation—compared to other alternatives suggested in the record, such as adopting rules that would regulate the rates of access-stimulating LECs or of the intermediate access providers they rely on. The record does not reveal any rate benchmarking mechanism that would effectively address our concerns, and establishing regulatory mechanisms to set rates based on incremental cost, as some parties have suggested, would implicate the same administrability concerns that dissuaded the Commission from embarking on such an approach in the *USF/ICC Transformation Order.* We also are guided by past experience where attempts to address access stimulation through oversight of rate levels have had short-lived success that quickly was undone through new marketplace strategies by access-stimulating LECs.

93. 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. Specifically, Congress directed that universal service support ''should be explicit and sufficient to achieve the purposes'' of section 254. Congress established a framework in section 254 for deciding not only how to provide support—*i.e.,* explicitly, rather than implicitly—but also for deciding what to support. 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.

94. These same considerations also independently persuade us that it is in the public interest to adopt the access stimulation rules in this *Order* under section 251(b)(5) of the Act. The *USF/ICC Transformation Order* already ''br[ought] all traffic within the section 251(b)(5) regime.'' In other words, under that precedent ''when a LEC is a party to the transport and termination of access traffic, the exchange of traffic is subject to regulation under the reciprocal compensation framework'' of section 251(b)(5). And it clearly is traffic exchanged with LECs that is at issue here. Our rules govern financial responsibility for access services that traditionally have been considered ''exchange access,'' and providers of such services meet the definition of a LEC.

95. In particular, just as we conclude that our rules reasonably implement the ''just and reasonable'' framework of section 201(b) of the Act as workable rules to strengthen incentives for efficient marketplace behavior and advance policies in sections 251, 254, and 256 of the Act, we likewise conclude that they are in the public interest as rules implementing section 251(b)(5). The Commission explained in the *USF/ICC Transformation Order* that section 201(b)'s statement that ''[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act'' gives the Commission broad ''rulemaking authority to carry out the 'provisions of this Act,' which include § [ ] 251.'' Indeed, the Commission elaborated at length on the theory of its legal authority to implement section 251(b)(5) in the *USF/ICC Transformation Order,* which applies to our reliance on that authority here, as well.

96. We reject arguments that section 251 of the Act does not provide authority for our action here. Although the Joint CLECs contend the action here falls outside the scope of ''reciprocal compensation'' under section 251(b)(5) because it ''deprives [certain] carriers of access revenues without providing any reciprocal benefit,'' they approach the issue from an incorrect perspective. In evaluating whether a new approach to reciprocal compensation is in the public interest, the Act does not require us to ensure that each carrier receives some benefit from the change relative to the *status quo.* Furthermore, our actions here are one piece of a broader system of intercarrier compensation that takes the form of reciprocal arrangements among carriers. As part of this overall framework, carriers have packages of rights and obligations that, in some defined cases allow them to recover revenues from other carriers and in other cases anticipate recovery from end users. By this *Order,* we simply modify discrete elements of that overall framework. We thus reject claims that our actions here are not part of reciprocal compensation arrangements for purposes of section 251(b)(5).

97. Nor are we persuaded by arguments that section 251(b)(5) authority is absent here because the Commission ''promised a bill-and-keep regime that is 'technologically' and 'competitively neutral' '' and our rules here allegedly fall short. As a threshold matter, this *Order* does not purport to adopt a bill-and-keep regime for access-stimulation traffic, but continues the Commission's efforts to address arbitrage or other concerns on an interim basis pending the completion of comprehensive intercarrier compensation reform. Agencies are free to proceed incrementally, ''whittl[ing] away at them over time, [and] refining their preferred approach as circumstances change and they develop a more nuanced understanding of how best to proceed'' rather than attempting to ''resolve massive problems in one fell regulatory swoop.'' Further, although this *Order* cites illustrative examples of the types of traffic and types of carriers that have been the focus of many access stimulation disputes, the rules we adopt apply by their terms whenever they are triggered, without regard to the content or type of traffic (*e.g.,* conference calling traffic or otherwise) and regardless of the size or location of the access-stimulating carrier.

98. Finally, 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 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). 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.

99. We also find unpersuasive arguments that the proposed and existing access-stimulation rules are ''discriminatory'' because they treat access-stimulating LECs differently than other LECs. Section 202(a) of the Act prohibits carriers from ''unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.'' It is neither unjust nor unreasonable to treat access-stimulating LECs differently from non-access-stimulating LECs. Section 202(a) does not apply to actions carriers take in compliance with requirements adopted by the Commission, particularly where, as here, the Commission finds those rules necessary under an analysis of what is ''just and reasonable.'' More generally, actions by the Commission are subject to the Administrative Procedure Act requirement that they must not be arbitrary and capricious, and courts have found only that the Commission ''must provide adequate explanation before it treats similarly situated parties differently.'' The existing access-stimulation rules adopted by the Commission in 2011, which treat access-stimulating LECs differently than other LECs, have been reviewed and approved by the Tenth Circuit Court of Appeals, which specifically held that the rules were not arbitrary and capricious and that the Commission had explained its rationale for the differing treatment. The rules we adopt in this document, treating access-stimulating LECs differently from other LECs, are similarly well-reasoned and justified.

100. Contrary to the Joint CLECs' claim, making the access-stimulating LEC, rather than the IXC, responsible for paying intermediate access provider(s)' terminating tandem access charges simply changes the party responsible for paying the CEA, or other intermediate access provider(s), for carrying that traffic. We make the party responsible for selecting the terminating call path responsible for paying for its terminating tandem switching and tandem switched transport. The act of stimulating traffic to generate excessive access revenues requires that we treat that traffic differently than non-stimulated traffic to address the unjust and unreasonable practices it fosters, as well as the implicit subsidies access stimulation creates. Further, we are not failing to recognize the potential impacts on CEA providers if access-stimulation traffic is removed from their networks. If a CEA provider's demand changes, the existing tariff rules, applicable to the calculation of a CEA provider's tariffed charges, will apply—on a nondiscriminatory basis.

101. Equally meritless is the Wide Voice claim that sections 201(b) and 251(b)(5) of the Act ''permit the Commission to establish rate uniformity, not rate disparity, which is what would result were the Commission to make access stimulators switched access *purchasers* rather than switched access *providers.* . . . '' Nothing in the text of those provisions requires rates to be uniform, however. And, more fundamentally, shifting the responsibility for paying a rate does not change the rate. In addition, we are moving toward the stated goal of a bill-and-keep methodology, not toward establishing a rate for access-stimulation traffic. We make no changes to rates here and sections 201(b) and 251(b)(5) of the Act support our adoption of the modified access-stimulation rules in this *Order.* The Joint CLECs also argue that making access-stimulating LECs financially responsible for the terminating tandem switching and transport of traffic delivered to their end offices by adopting the Commission's Prong 1 proposal would violate the Tenth Circuit Court of Appeals' holding that section 252(d) of the Act reserves to the states the determination of carriers' network ''edge.'' Shifting the financial responsibility for the delivery of traffic to access-stimulating LEC end offices does not move the network edge or affect a state's ability to determine that edge. The Joint CLECs' argument is

misguided. Section 252(d) governs ''agreements arrived at through negotiation.'' Just as the Commission's adoption of bill-and-keep as the ultimate end state for intercarrier compensation shifts the recovery of costs from carriers to end users, here we shift the recovery of costs associated with the delivery of traffic to an access-stimulating LEC's end office from IXCs to the LEC. Our determination to shift the recovery of costs associated with the delivery of traffic to an access-stimulating LEC's end office from IXCs to the LEC does not interfere with ''agreements arrived at through negotiation'' and therefore does not affect a state's rights or responsibilities under section 252 of the Act with respect to voluntarily negotiated interconnection agreements.

III. Modification of Section 214 Authorizations for Centralized Equal Access Providers

102. To facilitate the implementation of the rules we adopt in this document, we modify the section 214 authorizations for Aureon and SDN—the only CEA providers with mandatory use requirements—to permit traffic terminating at access-stimulating LECs that subtend those CEA providers' tandems to bypass the CEA tandems. By eliminating the mandatory use requirements, we enable IXCs to use whatever intermediate access provider an access-stimulating LEC that otherwise subtends Aureon or SDN chooses. Eliminating the mandatory use requirements for traffic bound for access-stimulating LECs will also allow IXCs to directly connect to access-stimulating LECs where such connections are mutually negotiated and where doing so would be more efficient and cost-effective.

103. Historically, IXCs delivering traffic to LECs that subtended the CEA tandems were required to use Aureon's and SDN's tandems, because terminating traffic to those LECs was subject to mandatory use requirements contained in the CEA providers' section 214 authorizations. Wide Voice suggests that we ''[b]reak[ ] the CEA monopoly'' to the extent needed so that other providers can serve the access-stimulating LECs. This *Order* does that. Sprint suggests that we eliminate the CEA mandatory use requirements for the termination of *all* traffic. There is no evidence that doing so would be in the public interest, or even that there are other tandem switching and transport providers available to serve other LECs subtending the CEA providers. This proceeding is focused on access stimulation. We, therefore, adopt rules that are narrowly focused on access stimulation.

104. Aureon and SDN present seemingly opposing views. Aureon wants to continue to carry access-stimulation traffic on its CEA network because it believes the traffic volumes will drive down its rates to a point where arbitrage will not be profitable. At the outset, we note there is nothing preventing a CEA provider from voluntarily reducing its rates to keep such traffic on its network rather than completely forgoing the revenue opportunity. Unlike Aureon, SDN wants the Commission to prohibit access-stimulating LECs from using SDN's tandem. Because we expect that our adopted rules will effectively remedy the incentives associated with the differences in tandem switching and tandem switched transport rates between CEA providers and other intermediate access providers, we decline to prohibit access-stimulating LECs from subtending CEA providers.

105. Aureon complains that if the subtending LECs use direct connections instead of the CEA network, there will be increased arbitrage, and it would put Aureon out of business. However, evidence in the record shows that much of the access-stimulation traffic is currently bypassing Aureon's and SDN's networks. Also, intermediate access providers, such as the CEA providers, remain free to collect payment for their tandem switching and transport services if the access-stimulating LEC chooses to use their services. In that situation, the intermediate access provider will receive payment from the access-stimulating LEC, and may not collect from IXCs. If access-stimulating LECs decide to move their traffic off of a CEA network and the CEA provider has significantly less traffic on its network, the CEA provider may file tariffs with higher rates provided that such tariff revisions are consistent with our rules applicable to CEA providers. Furthermore, neither Aureon nor SDN has provided any data that would show that operating a CEA network without the access-stimulating LECs would be economically unviable.

106. Aureon and SDN ask us to reject any proposals that would modify their section 214 authorizations. Aureon voices concern that requiring access-stimulating LECs to pay for the use of the CEA tandem would be a drastic modification to its section 214 authorization. Aureon does not explain what would need to change in its section 214 authorization, and we are not aware of any change that needs to be made in this regard. Aureon expresses concern that a modification to its section 214 authorization will impact its ability to provide competitive services to rural areas, and to maintain its investment in its fiber-optic network. Our decision to permit traffic being delivered to an access-stimulating LEC to be routed around a CEA tandem does not affect traffic being delivered to non-access-stimulating LECs that remain on the CEA network, and will not impact Aureon's ability to serve rural areas, contrary to Aureon's concern. Similarly, Aureon argues that if LECs pay for the terminating traffic, Aureon would need to make ''significant changes to the compensation arrangements for CEA service, which would render it financially infeasible for the CEA network to remain operational.'' But Aureon provides no supporting detail for these claims.

107. When the section 214 authorizations were granted three decades ago, there were no individual LECs subtending these CEA providers exchanging traffic, particularly terminating traffic, with IXCs at close to access-stimulation levels—and no reports of subtending LECs that would be sharing excess switched access charge revenue with anyone. In fact, the original applications of the Iowa and South Dakota CEA providers stated that the majority of their revenues would be for intrastate calls. Now, AT&T reports that ''twice as many minutes were being routed per month to Redfield, South Dakota (with its population of approximately 2,300 people and its 1 end office) as is routed to *all* of Verizon's facilities in New York City (with its population of approximately 8,500,000 people and its 90 end offices).'' Access stimulation has upended the original projected interstate-to-intrastate traffic ratios carried by the CEA networks.

108. The Commission may modify or revoke section 214 authority to address abusive practices or actions when necessary. In this document, we find that the public interest will be served by changing any mandatory use requirement for traffic bound to access-stimulating LECs to be voluntary usage. We determine that access stimulation presents a reasonable circumstance for departing from the mandatory use policy.

109. In sum, it is in the public convenience and necessity that we modify the section 214 authorizations for Aureon and SDN to state: ''The mandatory use requirement does not apply to interexchange carriers delivering terminating traffic to a local exchange carrier engaged in access stimulation, as that term is defined in section 61.3(bbb) of the Commission's

rules.'' We find that this modification is an appropriate exercise of our authority under sections 4(i), 214 and 403 of the Act. Only those LECs engaged in access stimulation and IXCs delivering traffic to access-stimulating LECs will be affected by these changes to Aureon's and SDN's section 214 authorizations. Our methodology reflects the ''surgical approach'' that GVNW Consulting requested the Commission to use to address access stimulation. We remind Aureon and SDN that all other relevant section 214 obligations remain.

110. *Legal Authority.* In addition to our broad legal authority to adopt our rules applicable to access stimulation traffic, we have specific legal authority to modify the section 214 authorizations for Aureon and SDN to eliminate any mandatory use requirements that may be applicable to traffic bound for access-stimulating LECs. The Common Carrier Bureau (Bureau) adopted the original section 214 certificates for Aureon and SDN pursuant to section 214 of the Act. Indeed, whether section 214 of the Act was applicable to Aureon's application (which preceded SDN's application) was an issue in that proceeding. In the end, the Bureau agreed with Aureon's ''view that [Aureon] requires Section 214 authority prior to acquiring and operating any interstate lines of communications.'' Our modifications to the Aureon and SDN section 214 authorizations are an appropriate exercise of the Commission's authority under section 214, which gives the Commission authority to ''attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require,'' as well as our authority under sections 4 and 403 of the Act.

IV. Procedural Matters

111. *Paperwork Reduction Act Analysis.* This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the 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.

112. In this *Order,* we have assessed the effects of requiring an access-stimulating LEC to take financial responsibility for the delivery of traffic to its end office or the functional equivalent and find that the potential modifications required by our rules are both necessary and not overly burdensome. We do not believe there are many access-stimulating LECs operating today but note that of the small number of access-stimulating LECs in existence, many will be affected by this *Order.* We believe that access-stimulating LECs are typically smaller businesses and may employ less than 25 people. However, we find the benefits that will be realized by a decrease in the problematic consequences associated with access stimulation outweigh any burden associated with the changes (such as submitting a notice and making tariff or billing changes) required by this *Report and Order and Modification of Section 214 Authorizations.*

113. *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 *Report and Order and Modification of 214 Authorization* to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

114. *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 *Report and Order and Modification to Section 214 Authorizations.*

V. Final Regulatory Flexibility Analysis

115. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice of proposed rulemaking for the access arbitrage proceeding (83 FR 30628, June 29, 2018). The Commission sought written public comments on the proposals in the *Access Arbitrage Notice,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Order

116. Although the Commission's earlier rules, adopted in the *USF/ICC Transformation Order,* made significant strides in reducing access stimulation, arbitragers have reacted to those reforms by revising their schemes to take advantage of access charges that remain in place for tandem switching and transport services. New forms of arbitrage now command significant resources and create significant costs, which together raise costs for consumers. In general, the intercarrier compensation regime allows access-stimulating local exchange carriers (LECs) to shift the costs of call termination to interexchange carriers (IXCs) and their customers via tandem switching and transport rates, creating perverse incentives for access-stimulating LECs to route network traffic inefficiently in a manner that maximizes those rates. IXCs are obligated to pay these charges but are left without any choice about how the traffic is routed, and pass those inflated costs along to their customers in turn, raising the price for consumers generally.

117. In this *Order,* to reduce the incentives to engage in the latest iteration of access stimulation, as well as to continue the reforms of the *USF/ICC Transformation Order,* we adopt rules making access-stimulating LECs, rather than IXCs, financially responsible for the tandem switching and transport service access charges associated with the delivery of traffic from the IXC to the access-stimulating LEC end office or its functional equivalent.

118. The rules adopted in this *Order* will thus require switched tandem and transport costs to be charged to the carrier that chooses the transport route. This change will encourage cost-efficient network routing and investment decisions, and remove the incentives that lead to inefficient interconnection and call routing requirements. We also modify the definition of access stimulation to include two additional traffic volume triggers. We add two higher ratios to capture access-stimulating LECs that do not have a revenue sharing agreement, which would have escaped our current definition.

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

119. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA. FailSafe Communications, Inc., a self-described ''end-user'' and small business ''disaster recovery'' service provider, articulated related concerns elsewhere. It requested an exemption from our rules ''for CABS access traffic associated with bona-fide SMB [small and medium-sized businesses] end users with less than 24 phone lines,'' arguing it and its ''Independent

Telephone Company'' and competitive LEC partners would be adversely affected by the *Order* and the requirements for access-stimulating LECs, but failing to propose a less burdensome alternative that would mitigate their concerns. FailSafe offers no evidence in support of its concern nor any explanation for why the exemption it proposes would resolve its concerns. We thus decline to grant such an exemption at this time, but note here, as we do in the *Order,* that affected rate-of-return LECs and competitive LECs may seek a waiver of our rules, particularly in compelling cases that may implicate the provision of emergency services.

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

120. 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 for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.

121. The Chief Counsel did not file any comments in response to this proceeding.

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

122. 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 rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

123. *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 here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry-specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

124. 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.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

125. 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.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

126. *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. 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. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

127. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

128. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

129. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S.

Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

130. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

131. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

132. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. 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. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

133. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. 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. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

134. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the *Access Arbitrage Notice.*

135. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

136. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there

were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

137. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that may be affected by our actions in this document. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

138. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

139. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

140. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

141. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards 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. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

142. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 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.'' There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, 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.

143. *All Other Telecommunications.* The ''All Other Telecommunications'' industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. 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. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for ''All Other Telecommunications,'' which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus a majority of ''All Other Telecommunications'' firms potentially may be affected by our action can be considered small.

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

144. *Recordkeeping and Reporting.* The rule revisions adopted in the *Order* include notification requirements for access-stimulating LECs, which may impact small entities. Those LECs engaged in access stimulation are required to notify affected intermediate access providers and affected IXCs of their status as access stimulators and of their acceptance of financial responsibility for the tandem and transport switched access charges IXCs used to bear. An access-stimulating LEC must also publicly file a record of its access-stimulating status and

acceptance of financial responsibility in the Commission's *Access Arbitrage* docket on the same day that it issues notice to IXC(s) and/or intermediate access provider(s).

145. Rule changes may also necessitate that affected carriers make various revisions to their billing systems. For example, intermediate access providers that serve access-stimulating LECs will now charge terminating tandem switched access rates and transport rates to the corresponding LECs, whereas IXCs that serve access-stimulating LECs will no longer be required to pay such charges. As intermediate access providers cease billing IXCs, and instead bill access-stimulating LECs, they will likely need to make corresponding adjustments to their billing systems.

146. This *Order* may also require access-stimulating LECs to file tariff revisions to remove any tariff provisions they have filed for terminating tandem switched access or terminating switched access transport charges. Although we decline to opine on whether this *Order* requires carriers to file further tariff revisions, affected carriers may nonetheless choose to file additional tariff revisions to add provisions allowing them to charge access-stimulating LECs, rather than IXCs, for the termination of traffic to the access-stimulating LEC. These revisions may necessitate some effort to revise the rates (and who pays them), including terminating tandem switching rates and transport rates. The requirement to remove related provisions, and the choice to make any additional revisions, would apply to all affected carriers, regardless of entity size. The adopted rule revisions will facilitate Commission and public access to the most accurate and up-to-date tariffs as well as lower rates paid by the public for the affected services.

147. Existing access-stimulating LECs, or LECs who later become access-stimulating LECs, will also face similar reporting and recordkeeping requirements should they later choose to cease access stimulation. These steps are virtually identical as the steps discussed above that are required or may be necessary when commencing access stimulation, including providing third-party notice, filing a notice with the Commission, potential billing system changes, removing tariff provisions, and potentially preparing and filing a revised tariff.

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

148. The RFA requires an agency to describe any significant alternatives that it has considered in developing 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 and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

149. *Transition Period.* To minimize the impact of the changes affected carriers may need to make under this *Order,* we implement up to a 45 day transition period for the related recordkeeping and reporting steps. To give effect to the financial shift of responsibility, we require that access-stimulating LECs remove any existing tariff provisions for terminating tandem switching or terminating tandem switched transport access charges within the same period, *i.e.,* within 45 days of the effective date of the *Order* (or, for those carriers who later engage in access stimulation, within 45 days from the date it commences access stimulation). 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 notify affected IXCs and intermediate access providers of their access-stimulating status and their acceptance of financial responsibility within 45 days of PRA approval (or, for a carrier who 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. The Commission announced the notice aspects of the transition period in the proposed rule in the *Access Arbitrage Notice,* and while several commenters voiced support, none cited any specific problems nor concerns associated with these notice requirements. These notice requirements for such carriers to self-identify will help parties conserve resources by limiting potential disputes between IXCs and intermediate access providers concerning whether the LEC to which traffic is bound is engaged in access stimulation. Such changes are also subject to the Paperwork Reduction Act approval process which allows for additional notice and comment on the burdens associated with the requirement. 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 carriers adhere to a specific notice format. Instead, we allow each responding carrier 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 carrier's 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, we mitigate the filing burden on affected carriers.

150. We recognize that intermediate access providers may need to revise their billing systems to reflect the shift in financial responsibility and may also elect to file revised tariffs. Though we believe the potential billing system changes to be straightforward, to allow sufficient time for affected parties to make any adjustments, we also grant them 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 carriers who later engage in access stimulation, within 45 days from the date such carriers 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 carriers make an orderly, less burdensome, transition.

151. These same considerations were taken into account for LECs 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.

152. In comments not identified as IRFA-related, centralized equal access (CEA) providers Aureon and SDN argued that the potential billing changes and tariff revisions that would arise from making LECs financially responsible constitute an undue burden that ''would render it financially infeasible for the CEA network to remain operational.'' Aureon's sole

support for this assertion is that this change would ''necessitate significant changes to the compensation arrangements for CEA service.'' We have considered these costs but are not persuaded that these costs are significant enough to rise to an undue burden on affected carriers. We believe these changes to be straightforward, particularly because the identities of the relevant parties will already be known to one another because of existing relationships between them, and because they have previously charged others for the same services. There is no reason to believe that these changes will be onerous and the record is bereft of evidence of material incremental costs of making the necessary changes to implement billing arrangements with subtending access-stimulating LECs. We find no further evidence in the record of financial difficulties that CEAs would experience from this switch. In addition, we revise the definition of access stimulation to apply only to LECs that serve end users. This definitional change will narrow the providers who will be deemed access stimulators by excluding CEA providers, as they do not serve end users. We also adopt two alternate triggers in the access stimulation definition, one for competitive LECs and one for rate-of-return LECs, which should further limit the applicability of these new rules to small providers.

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

VI. Ordering Clauses

154. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 201–206, 218–220, 251, 252, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–206, 218–220, 251, 252, 254, 256, 303(r), 403 and § 1.1 of the Commission's rules, 47 CFR 1.1, this *Report and Order and Modification of Section 214 Authorizations is adopted.*

155. *It is further ordered,* pursuant to sections 4(i), 214, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 403 and §§ 1.47(h), 63.01 and 64.1195 of the Commission's rules, 47 CFR 1.47(h), 63.10, 64.1195, that the section 214 authorizations held by Iowa Network Access Division and South Dakota Network, LLC, are modified such that the mandatory use requirement contained in the authorizations does not apply to interexchange carriers delivering terminating traffic to a local exchange carrier engaged in access stimulation. These modifications are effective 30 days after publication of this *Report and Order and Modification of Section 214 Authorizations* in the **Federal Register**.

156. *It is further ordered* that a copy of this *Order* shall be sent by U.S. mail to Iowa Network Access Division and South Dakota Network, LLC, at their last known addresses. In addition, this *Report and Order and Modification of Section 214 Authorizations* shall be available in the Commission's Office of the Secretary.

157. *It is further ordered* that the amendments of the Commission's rules *are adopted,* effective 30 days after publication in the **Federal Register**. Compliance with § 51.914(b) and (e), which contain new or modified information collection requirements that require review by OMB under the PRA, is delayed. The Commission directs the Wireline Competition Bureau to announce the compliance date for those information collections in a document published in the **Federal Register** after OMB approval, and directs the Wireline Competition Bureau to cause § 51.914 to be revised accordingly.

158. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order and Modification of Section 214 Authorizations,* including the Final Regulatory Flexibility Analysis, to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

159. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order and Modification of Section 214 Authorizations,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 51, 61, and 69 as follows:

PART 51—INTERCONNECTION

■ 1. 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.

■ 2. Amend § 51.903 by adding paragraphs (k), (l), and (m) to read as follows:

§ 51.903 Definitions.

* * * * *

(k) *Access Stimulation* has the same meaning as that term is defined in § 61.3(bbb) of this chapter.

(l) *Intermediate Access Provider* has the same meaning as that term is defined in § 61.3(ccc) of this chapter.

(m) *Interexchange Carrier* has the same meaning as that term is defined in § 61.3(ddd) of this chapter.

■ 3. Section 51.914 is added to read 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 November 27, 2019, whichever is later:

(1) Not bill any Interexchange Carrier for 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) Shall designate, if needed, the Intermediate Access Provider(s) that will provide terminating switched access tandem switching and terminating switched access tandem transport services to the local exchange carrier engaged in access stimulation and that the local exchange carrier shall 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 November 27, 2019, 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) that will provide the terminating switched access tandem switching and terminating switched access tandem transport services to the local exchange carrier engaged in access stimulation and that it shall pay for those services as of that date.

(c) In the event that an Intermediate Access Provider receives notice under paragraph (b) 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 and that local exchange carrier shall pay for such terminating access service from such Intermediate Access Provider, the Intermediate Access Provider shall not bill Interexchange Carriers for terminating switched access tandem switching or terminating switched access tandem transport service for traffic bound for such local exchange carrier but, instead, shall bill such local exchange carrier for such services.

(d) Notwithstanding paragraphs (a) and (b) 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, shall not itself be deemed a local exchange carrier engaged in Access Stimulation or be affected by paragraphs (a) and (b).

(e) Upon terminating its engagement in Access Stimulation, as defined in § 61.3(bbb) of this chapter, the local exchange carrier 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.

(f) Paragraphs (b) and (e) of this section contain new or modified information-collection and recordkeeping requirements. Compliance with these information-collection and recordkeeping requirements will not be required until after approval by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing that compliance date and revising this paragraph (f) accordingly.

■ 4. Amend § 51.917 by revising paragraph (c) as follows:

§ 51.917 Revenue recovery for Rate-of-Return Carriers.

* * * * *

(c) *Adjustment for Access Stimulation activity.* 2011 Rate-of-Return Carrier Base Period Revenue shall be adjusted to reflect the removal of any increases in revenue requirement or revenues resulting from Access Stimulation activity the Rate-of-Return Carrier engaged in during the relevant measuring period. A Rate-of-Return Carrier should make this adjustment for its initial July 1, 2012, tariff filing, but the adjustment may result from a subsequent Commission or court ruling.

* * * * *

PART 61—TARIFFS

■ 5. 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.

■ 6. Amend § 61.3 by revising paragraph (bbb) and adding paragraphs (ccc) and (ddd) to read as follows:

§ 61.3 Definitions.

* * * * *

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

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

(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 or Competitive Local Exchange Carrier 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 part, 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; and

(B) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 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.

(ii) A Competitive Local Exchange Carrier has an interstate terminating-to-originating traffic ratio of at least 6:1 in an end office 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 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 will continue to be engaging 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)(ii) of this section; and for a carrier engaging in Access Stimulation as defined in paragraph (bbb)(1)(ii) of this section, its interstate terminating-to-originating traffic ratio 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 will continue to be engaging 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 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.

(4) A local exchange carrier engaging in Access Stimulation is subject to

revised interstate switched access charge rules under § 61.26(g) (for Competitive Local Exchange Carriers) or § 61.38 and § 69.3(e)(12) of this chapter (for rate-of-return local exchange carriers).

(ccc) *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.

(ddd) *Interexchange Carrier.* The term means, for purposes of this part and §§ 69.3(e)(12)(iv) and 69.5(b) of this chapter, a retail or wholesale telecommunications carrier that uses the exchange access or information access services of another telecommunications carrier for the provision of telecommunications.

■ 7. Amend § 61.26 by adding paragraph (g)(3) to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

* * * * *

(g) * * *

(3) Notwithstanding any other provision of this part, if a CLEC is engaged in Access Stimulation, as defined in § 61.3(bbb), it shall:

(i) Within 45 days of commencing Access Stimulation, or within 45 days of November 27, 2019, whichever is later, file tariff revisions removing from its tariff terminating switched access tandem switching and terminating switched access tandem transport access charges assessable to an Interexchange Carrier for any traffic between the tandem and the local exchange carrier's terminating end office or equivalent; and

(ii) Within 45 days of commencing Access Stimulation, or within 45 days of November 27, 2019, whichever is later, the CLEC shall not file a tariffed rate that is assessable to an Interexchange Carrier for terminating switched access tandem switching or terminating switched access tandem transport access charges for any traffic between the tandem and the local exchange carrier's terminating end office or equivalent.

■ 8. Amend § 61.39 by revising paragraph (g) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings by incumbent local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

* * * * *

(g) *Engagement in Access Stimulation.* A local exchange carrier otherwise eligible to file a tariff pursuant to this section may not do so if it is engaging in Access Stimulation, as that term is defined in § 61.3(bbb). A carrier so engaged must file interstate access tariffs in accordance with § 61.38 and § 69.3(e)(12) of this chapter.

PART 69—ACCESS CHARGES

■ 9. 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.

■ 10. Amend § 69.3 by adding paragraph (e)(12)(iv) and removing the authority citation at the end of the section to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(12) * * *

(iv) Notwithstanding any other provision of this part, if a rate-of-return local exchange carrier is engaged in Access Stimulation, or a group of affiliated carriers in which at least one carrier is engaging in Access Stimulation, as defined in § 61.3(bbb) of this chapter, it shall:

(A) Within 45 days of commencing Access Stimulation, or within 45 days of November 27, 2019, whichever is later, file tariff revisions removing from its tariff terminating switched access tandem switching and terminating switched access tandem transport access charges assessable to an Interexchange Carrier for any traffic between the tandem and the local exchange carrier's terminating end office or equivalent; and

(B) Within 45 days of commencing Access Stimulation, or within 45 days of November 27, 2019, whichever is later, the local exchange carrier shall not file a tariffed rate for terminating switched access tandem switching or terminating switched access tandem transport access charges that is assessable to an Interexchange Carrier for any traffic between the tandem and the local exchange carrier's terminating end office or equivalent.

* * * * *

■ 11. Amend § 69.4 by adding paragraph (l) to read as follows:

§ 69.4 Charges to be filed.

* * * * *

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

■ 12. Amend § 69.5 by revising paragraph (b) and removing the authority citation at the end of the section 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) Local exchange carriers may not assess a terminating switched access tandem switching or terminating switched access tandem transport charge described in § 69.4(b)(5) on Interexchange Carriers when the terminating traffic is destined for a local exchange carrier 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).

(2) Intermediate Access Providers may assess a terminating switched access tandem switching or terminating switched access tandem transport charge described in § 69.4(b)(5) on local exchange carriers when the terminating traffic is destined for a local exchange carrier 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).

* * * * *

[FR Doc. 2019–22447 Filed 10–25–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–XG925

Pacific Island Pelagic Fisheries; 2019 U.S. Territorial Longline Bigeye Tuna Catch Limits for American Samoa

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.