C. Removal of Expired Rule

Idaho submitted Docket 58–0101–1602 that repealed IDAPA 58.01.01.582 ''Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM–10'' (section 582) because it was outdated and no longer applicable. Section 582 was promulgated in 2001 as a temporary measure that was necessary only until a required maintenance plan could be developed to address CAA transportation conformity requirements for the PM_{10} Ada County nonattainment area. Idaho has since developed and adopted the required maintenance plan and EPA approved the maintenance plan on October 27, 2003 (68 FR 61106), effective November 26, 2003. Idaho repealed the expired section 582 (state effective March 28, 2017) and submitted the revision to EPA. EPA is therefore proposing to remove section 582 from Idaho's SIP as requested by Idaho in its April 12, 2018 SIP submittal.

III. Proposed Action

EPA is proposing to approve, and incorporate by reference where appropriate, in Idaho's SIP all revisions to IDAPA 58.01.01.107 *Incorporations by Reference,* except .03.f through .p (state effective March 28, 2018) as requested by Idaho on March 20, 2018, and as described in Section II.B. above.

EPA is also proposing, as requested by Idaho on April 12, 2018, to remove IDAPA 58.01.01.582 *Interim Conformity Provisions for Northern Ada County Former Nonattainment Area for PM 10* from the Idaho SIP because it expired in 2003 and Idaho has repealed it as a matter of state law (state effective March 29, 2017). See Section II.C. (above).

We have made the preliminary determination that the submitted SIP revisions are consistent with section 110 and part C of Title I of the CAA.

IV. Incorporation by Reference

In this rule, EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the provisions described above in Section III. Also in this rule, EPA is proposing to remove, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to remove the incorporation by reference of IDAPA 58.01.01.582 as described in Section III. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Orders Review

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The proposed SIP would not be approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 20, 2018.

Michelle L. Pirzadeh,

Regional Administrator, Region 10.

[FR Doc. 2018–14096 Filed 6–28–18; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[WC Docket No. 18–155; FCC 18–68]

Updating the Intercarrier Compensation Regime To Eliminate Access Arbitrage

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposed to adopt rules to curb the financial incentive to engage in access stimulation by giving access-stimulating LECs two choices for receiving calls. The access-stimulating LEC can choose either: To be financially responsible for the delivery of calls to its network, in which case intermediate access providers would charge the access-stimulating LEC for the delivery of calls; or to accept direct connections from long distance carriers seeking to terminate telephone calls to the LEC or from intermediate access providers of the long distance carriers' choosing, which would allow the long distance carriers to bypass intermediate access providers chosen by the access-stimulating LEC. This document seeks comment on several alternatives, including requiring LECs engaged in access stimulation to immediately transition their terminating access

charges to bill-and-keep. This document also seeks comment on the effect the proposed rules will have on specific arbitrage schemes described in the record. Finally, it seeks comment on how to curb other arbitrage schemes.

DATES: Comments are due on or before July 20, 2018; reply comments are due on or before August 3, 2018.

ADDRESSES: You may submit comments, identified by WC Docket No. 18–155, by any of the following methods:

- *Federal Communications Commission's website: http://apps.fcc.gov/ecfs//.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 888–835–5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Edward Krachmer, FCC Wireline Competition Bureau, Pricing Policy Division at 202–418–1525, or at *Edward.Krachmer@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), WC Docket No. 18–155; FCC 18–68, adopted on June 4, 2018 and released on June 5, 2018. The full text of this document may be obtained at the following internet address: *https://www.fcc.gov/document/fcc-proposes-reforms-eliminate-intercarrier-compensation-arbitrage.*

I. Background

A. The Current Access Stimulation Rules

1. To reduce access stimulation, as part of the *USF/ICC Transformation Order,* 76 FR 73860, FCC 11–161, the Commission defined ''access stimulation'' as occurring when two conditions are met. First, the involved 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.'' Second, the LEC must also meet one of two traffic tests. An access-stimulating LEC either has ''an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, 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.'' Even if a LEC no longer meets either of these traffic tests, once it is considered to have engaged in access stimulation, this regulatory classification persists so long as the LEC maintains any revenue sharing agreement.

2. A LEC that is engaged in access stimulation is required by our rules to reduce its access charges either by adjusting its rates to account for its high traffic volumes (if a rate-of-return LEC) or to reduce its access charges to those of the price cap LEC with the lowest switched access rates in the state (if a competitive LEC). These reduced rates lower the cost to interexchange carriers (IXCs) and the amount received by the LEC and the provider of high call volume services with which it has a revenue sharing agreement.

B. Arbitrage Schemes After the USF/ICC Transformation Order

3. Last year, the Wireline Competition Bureau (Bureau) issued a public notification, 82 FR 44754, seeking to refresh the record on ICC issues raised by the Commission in the *USF/ICC Transformation Order.* In response to that public notification, commenters argue that, notwithstanding prior Commission action, arbitrage continues as ''companies engaged in access stimulation use a variety of tactics to prevent interexchange carriers from avoiding their excessive charges.'' The record indicates that today's access arbitrage schemes are often enabled by the use of intermediate access providers selected by the terminating LECs. When an intermediate access provider is in the call path, the IXC pays access charges on a per-minute-of-use (MOU) basis to the intermediate access provider and to the terminating LEC. This tactic evades existing Commission rules intended to stop access stimulation to the extent that an intermediate access provider is not captured by the definition of ''access stimulation,'' and thus, is not subject to those rules.

4. Recent complaint activity suggests that much of the post-*USF/ICC Transformation Order* access arbitrage activity specifically involves LECs that use centralized equal access (CEA) providers to connect to IXCs. CEA providers are a specialized type of intermediate access provider that were formed in the 1980s to implement long distance equal access obligations (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. There are currently three CEA providers, and the LECs that use them (subtending LECs) have traditionally been reliant on CEA providers for this equal access implementation as well as traffic measurement and billing.

II. Discussion

5. We propose solutions to the persistent, costly, and inefficient access stimulation arbitrage scheme described here and seek comment on how to prevent other types of arbitrage. We are mindful of the fact that practices adjust to regulatory change; therefore we invite comment on how to avoid introducing incentives for new types of arbitrage to arise.

A. Requiring Access-Stimulating LECs Either To Be Financially Responsible for Calls Delivered to Their Networks or To Accept Direct Connections

6. To rid the ICC system of the inefficiencies caused by access stimulation relating to intermediate access providers, we propose to require access-stimulating LECs to choose either to: (i) Bear the financial responsibility for the delivery of terminating traffic to their end office, or functional equivalent, or; (ii) accept direct connections from either the IXC or an intermediate access provider of the IXC's choice.

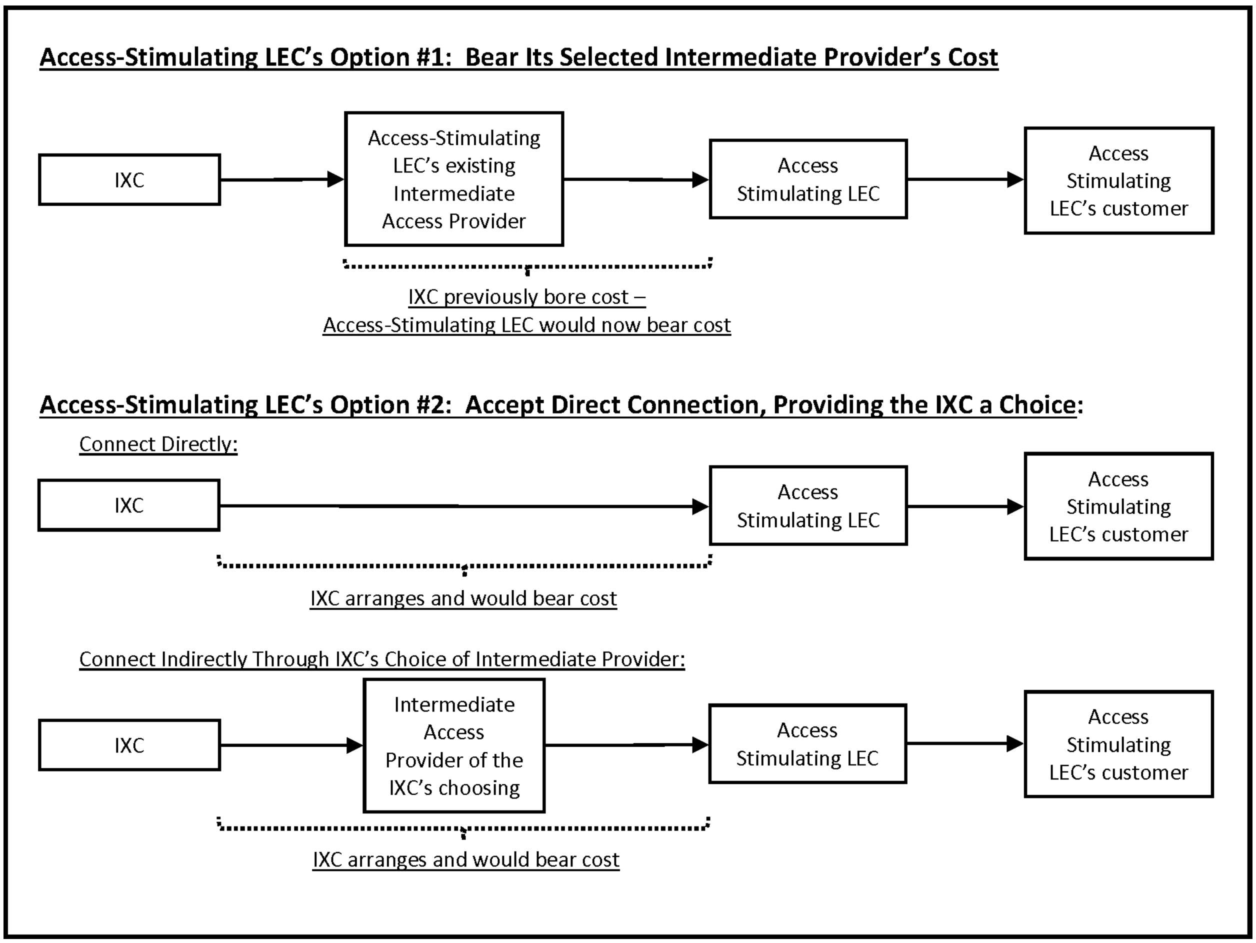
7. *Revised Financial Responsibility.* We seek comment on the first prong of our proposal and the impact it will have on access stimulation schemes. Under this prong, an access-stimulating LEC that does not offer direct connections to IXCs would bear all financial responsibility for applicable intermediate access provider terminating charges normally assessed to an IXC (from the point of indirect interconnection to the access-stimulating LEC's end office or functional equivalent), and would be prohibited from assessing transport charges for any portion of transport between the intermediate access provider and the LEC's end office or functional equivalent that the LEC, itself, provides. What are the advantages of placing the financial responsibility for delivery of traffic to its end office, or functional equivalent, on the access-stimulating LEC? Are there disadvantages?

8. What implementation issues does this part of our proposal raise? What steps would intermediate access providers need to take to bill access-stimulating LECs for terminating access

and to not bill IXCs? How much time do access-stimulating LECs and intermediate access providers need to make modifications necessary to accomplish this proposed change in financial responsibility? We propose to require carriers to come into compliance with these requirements within 45 days of the effective date of any revised rule. Is that timeframe sufficient? For example, is it possible to implement necessary billing system changes within that time frame? We similarly propose to require any carriers that newly qualify as access-stimulating LECs to come into compliance with these requirements within 45 days of such qualification.

9. For purposes of this proposal, we propose to define ''intermediate access provider'' as ''any entity that carries or processes traffic at any point between the final interexchange carrier in a call path and the carrier providing end office access service.'' We seek comment on the use of this definition in this context. Does it adequately capture the types of intermediate access providers currently benefiting from access stimulation schemes? Is it too narrow or too broad?

10. *Direct Connection.* Commenters have argued that the volume of traffic bound for access-stimulating LECs justifies direct connections, but allege that access-stimulating LECs currently refuse to accept such connections. Direct connections do not pass through intermediate switches and are offered on a capacity basis at monthly-recurring rates, as opposed to a per-MOU rate. If there is a sufficient volume of traffic, the monthly charges for direct connections can often be substantially lower than per-MOU rates for an equivalent amount of traffic. As the second prong of our proposal, we propose to provide access-stimulating LECs the option to offer to connect directly to the IXC or an intermediate access provider of the IXC's choice as an alternative to bearing financial responsibility for intermediate access provider charges and ceasing to bill their own transport charges. Under this proposal, IXCs would have the option of selecting an intermediate access provider that would bill the IXC for transport to the access-stimulating LEC on a dedicated basis. We seek comment on this proposal and on how best to implement it. We note that as a result of this election, an IXC would have the choice to connect with an access-stimulating LEC directly or indirectly through the LEC's existing intermediate access provider or another IXC directly connecting to the access-stimulating LEC.



11. For direct connections between an IXC (or an intermediate access provider of the IXC's choosing) and an access-stimulating LEC to be established, not only must the access-stimulating LEC be willing and able to accept direct connections, but arrangements need to be made between the IXCs seeking to avail themselves of such connections and the LEC. If we adopt the approach we propose today, how long should we give existing access-stimulating LECs to indicate their willingness to accept direct connections and how long should we give them to implement those direct connections? How detailed a timeline should we adopt for this process? Should we adopt rules regarding the

conduct of any negotiations for direct connections? For example, should we adopt a timeframe within which negotiations must be concluded before the LEC must assume financial responsibility for the delivery of traffic or the impasse submitted to arbitration? Similarly, if, at some later date, an access-stimulating LEC decides to offer direct connections, what process should the access-stimulating LEC need to follow to cease bearing the financial obligation for the intermediate access providers' charges? How should we address LECs that meet the definition of access-stimulating LEC after adoption of our rules? If they chose to offer direct connections, what time frame should we provide for making and implementing that decision?

12. We propose to adopt a rule that makes clear that allowing access-stimulating LECs to accept direct connection as a means of not bearing financial responsibility for intermediate access provider charges does not carry with it an obligation for such LECs to extend their networks absent a request and an independent obligation to do so. Is this a reasonable limitation? Are there any other limitations or exceptions we should apply? Are there other rules we should adopt to help providers implement the option to accept direct connections if a provider makes that choice? For example, because IXCs are not currently directly connected to access-stimulating LECs in the scenario to which our proposal applies, a third-party vendor may need to connect the two networks via dedicated transport such as, perhaps, the current intermediate access provider. Are there any rules that we should adopt to facilitate such arrangements?

13. One result of permitting access-stimulating LECs that subtend CEA providers to connect with IXCs directly (or an intermediate access provider of an IXC's choice) would be to end the ''mandatory use'' policy applicable to some CEA providers, at least with respect to access-stimulating LECs. Historically, this mandatory use policy has permitted the CEA providers in Iowa and South Dakota to require IXCs to connect to LECs that subtend the CEA provider indirectly through the CEA provider's tandem switch rather than indirectly through another intermediate access provider or directly to the subtending LEC. In initially permitting this practice almost thirty years ago, the Commission concluded that it ''[did] not believe that the mandatory termination requirement for interstate traffic is unreasonable or differs substantially from the normal way access is provided, as both an originating and terminating service by the local exchange company.''

14. It appears that access stimulation, particularly when practiced by competitive LECs, which were formed well after CEA providers were established, presents a reasonable circumstance for departing from the policy of permitting mandatory use requirements because delivery of such traffic, particularly in the pertinent volumes, was not the purpose for which CEA providers were formed. We seek comment on this assumption, and on the impact of this proposal on CEA providers, on the LECs that subtend CEA providers, and on the customers of such subtending LECs. For example, to the extent that creating the opportunity for access-stimulation traffic to bypass CEA providers threatens the viability of CEA providers, we seek comment on whether and how this potential effect should be addressed. Are there other companies that can perform the traditional functions of CEA providers, including equal access implementation and traffic measurement and billing? Recognizing that most states do not have CEA providers, are there ways that equal access and traffic identification and measurement are handled by small LECs in those states that can inform our decision making in this proceeding?

15. *Notice Requirement.* We propose to require access-stimulating LECs to notify affected IXCs and intermediate access providers of their intent to accept financial responsibility for calls delivered to their networks or to accept direct connections from IXCs or intermediate access providers of the IXCs' choosing. Should we also require the access-stimulating LEC to provide public, written notice of its choice to the Commission? Should we provide specific requirements regarding the form and content of such notice? For example, should we require an access-stimulating LEC to accept direct connections at current points of interconnection (POI) with intermediate access providers, as well as at the LECs' end office, and to provide notice of those locations? Or, should we allow an access-stimulating LEC to choose where to provide POIs and to specify those locations in its notice? Should access-stimulating LECs also provide notice to the Commission and state commissions of their choice to accept direct connections and of the location of their POIs? To ensure that the investment made by an IXC to extend its network to directly interconnect with an access-stimulating LEC is not stranded, should an access-stimulating LEC be prohibited from ending its election of direct connections once made? Should such a prohibition be permanent or for a specified period of time?

16. *Impact of this Proposal.* We seek comment on the costs and benefits of our proposal. To what extent will our two-pronged proposal alleviate market distortions created by the ability of access-stimulating LECs to bill for switched transport services at rates that our rules have not required to be reduced below 2011 interstate levels? Will the incentives created by our proposal for access-stimulating LECs to accept direct connections (to avoid bearing intermediate access provider charges imposed by a provider of the access-stimulating LEC's choosing) alleviate the problem of IXCs paying relatively-high tandem-switched transport rates by giving IXCs more options to reach end users?

17. How will our proposal affect incentives for carriers to migrate their services to IP? To what extent do parties expect that direct connections would be provided in time division multiplexed (TDM) format rather than IP? Are there circumstances under which an access-stimulating LEC should be required, upon request, to interconnect using IP rather than TDM and bear any costs necessary to do so? Are calls bound for high call volume service providers ultimately converted to IP for delivery? Would requiring IP interconnection obviate the need to convert TDM traffic to IP for delivery?

18. *NTCA et al. Proposal.* NTCA et al. has recommended that we adopt rules similar to the first prong of our proposal, but without providing an access-stimulating LEC the option of electing to accept direct connections as a means of avoiding bearing intermediate access provider charges. Under the NTCA et al. proposal, within 45 days of the effective date of the implementing rules, access-stimulating LECs would be required to revise their tariffs to remove any terminating interstate tandem switching and tandem transport charges of their own and also begin to assume financial responsibility for all intermediate switched access provider interstate tandem switching and transport charges for traffic bound for such access-stimulating LECs. The NTCA et al. proposal would also require access-stimulating LECs to provide written notice to all affected providers, including intermediate access providers, of the substance of these tariff revisions at the time that such tariff revisions are filed, as well as the fact that such access-stimulating LECs will be bearing financial responsibility for pertinent intermediate switched access provider interstate tandem switching and transport charges.

19. Although the NTCA et al. proposal does not preclude an access-stimulating LEC from avoiding incurring intermediate access provider charges by beginning to accept direct connections, it also does not provide IXCs any incentive to accept offers of direct connection from such LECs. By permitting access-stimulating LECs to elect to accept direct connections, our proposal seeks to provide a formal means by which access-stimulating LECs may eventually avoid incurring intermediate access provider charges. We seek comment on the NTCA et al. proposal both as an independent proposal and also as it relates to our proposal above.

20. *CenturyLink Proposal.* CenturyLink suggests that we consider an approach similar to our proposal, but with broader applicability. Rather than focusing on access-stimulating LECs, CenturyLink recommends shifting financial responsibility to any LEC that declines to accept a request for direct interconnection for the purpose of terminating access traffic. We seek comment on this recommendation. What would be the impact of such an approach on the affected companies and their customers?

B. Requiring All Access-Stimulating LECs To Transition to Bill-and-Keep

21. If we do not adopt rules requiring access-stimulating LECs to either choose to accept financial responsibility for the delivery of calls or to accept direct connections, should we reduce all terminating tandem switching, common transport, and tandem-switched transport rate elements for access stimulators to bill-and-keep? Moving these access charges to bill-and-keep would be consistent with our overarching goals of discouraging arbitrage, in particular access stimulation, and ultimately transitioning all traffic to bill-and-keep. It would also be consistent with the Commission's finding in the *USF/ICC Transformation Order* that with respect to terminating traffic, the LEC's end user is the cost causer and therefore the LEC should look first to its subscribers to recover the costs of it network. To what extent would this approach resolve the access arbitrage concerns identified in this NPRM? We also seek comment on how this approach fits with the other proposals in this NPRM. For example, if we reduce all terminating access charges to bill-and-keep is there any remaining incentive for carriers to stimulate traffic? We also seek comment on any implementation issues or concerns related to the proposal. Should we provide for a transition period to bill-and-keep for access stimulators? If so, how long should the transition last and what steps should it include?

22. We also seek comment on whether to require an access-stimulating LEC to transition its dedicated transport and originating rates to bill-and-keep. The only potential access arbitrage scheme of which we are aware regarding originating access concerns 8YY traffic, which we leave for separate consideration. Outside the 8YY context, are there arbitrage schemes involving originating access about which we should be concerned? Can they be addressed by a transition to bill-and-keep or by other proposals in this NPRM?

C. Defining Access Stimulation

23. Given evidence that access stimulation schemes are still being perpetrated notwithstanding our existing rules, we seek comment on whether, and if so how, to revise the current definition of access stimulation to more accurately and effectively target harmful access stimulation practices. What has been the impact of the current definition over the last seven years? Has it proved effective at identifying actors that are distorting the ICC system for their own gain? If not, how can we revise the definition to more accurately identify these types of harmful practices? Should we, for example, modify the ratios or triggers in the definition? If so, how should those ratios or triggers be modified? Should we adopt triggers that relate to the stimulation of tandem and transport services? If so, what should those triggers be? Is the current revenue sharing agreement requirement in our rules sufficiently broad or should it be revised, and if so how? Or, should we remove the revenue sharing portion of the definition, because access stimulation seems to be occurring in some instances even in the absence of revenue sharing? Do commenters believe that revenue sharing alone is an indication of access stimulation? If so, should we revise our rules so that the existence of a revenue sharing agreement triggers the access stimulation rule? How will we know if parties are engaged in revenue sharing? Should we require these parties to self-report? If so, we seek comment on how to implement a self-reporting requirement.

24. Alternatively, based on parties' experience with our existing access stimulation rules, is there reason to find that access stimulation itself is unjust and unreasonable because of the imposition of excess charges on IXCs, wireless carriers, and their customers? Or, is there a subset of such activities that we should separately identify as unlawful?

25. To address specific concerns identified in the record, commenters should also consider the extent to which the access stimulation definition should be revised to address intermediate access providers. Do intermediate access providers that are not engaged in access stimulation as defined in our current rules nevertheless benefit from access stimulation schemes? To remove incentives for intermediate access providers to enable access arbitrage schemes, aside from the proposals discussed above, should we adopt new access stimulation rules, or modify our existing rules, to apply specifically to intermediate access providers? Would doing so be unduly burdensome to intermediate access providers or small LECs who subtend them? Are there technical obstacles that would make it infeasible for intermediate access providers to comply with the Commission's current, or any modified, access stimulation rules? Would a requirement that access-stimulating subtending LECs notify the intermediate access provider that they are engaged in access stimulation and identify the traffic that is being stimulated provide a practical solution?

D. Addressing Other Arbitrage Schemes, and Alternative Approaches to Arbitrage

26. The record indicates the existence of at least three other types of arbitrage schemes. We seek comment on the prevalence and impact of these types of schemes described in more detail below. Will any of the rules we propose today help retard these schemes? Are there other rules we should adopt to prevent these schemes?

27. First, parties describe an access arbitrage scheme involving a revenue sharing or other type of agreement between an intermediate access provider and a terminating carrier that may not meet the definition of access stimulation under our rules, such as a Commercial Mobile Radio Service (CMRS) carrier. CMRS carriers are prohibited from tariffing access charges. However, intermediate access providers that transport traffic from an IXC to CMRS carriers can charge for access services through filed tariffs or negotiated agreements. Some IXCs claim that certain CMRS carriers that previously offered direct connections between their networks and the IXCs' networks have begun to use intermediate access providers to terminate their traffic from IXCs, to reap the benefit of alleged revenue sharing

agreements with the intermediate access providers. Should we adopt rules that discourage all revenue sharing agreements between terminating providers and intermediate access providers? If a terminating provider requires that some or all traffic be routed through an intermediate access provider, should we require the terminating provider to pay the intermediate access provider's charges? Or are there instances where it is most efficient or beneficial in other ways for a carrier to require traffic be routed through an intermediate access provider? What would be 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? And would the cost-benefit analysis change if we focused any such rules on large terminating providers—*i.e.,* those with 100,000 or more ''lines'' at the holding company level?

28. Second, because LECs and intermediate access providers receive greater compensation from IXCs the further the LEC or intermediate access provider carries the traffic to reach a POI with the IXC, some commenters allege that LECs have changed their POI with IXCs for the sole purpose of artificially inflating their per-MOU, per-mile transport rates and revenue. This scheme is often referred to as mileage pumping. Shortly after the *USF/ICC Transformation Order,* the Commission released an order addressing this practice finding such network changes were merely sham arrangements and that the LECs did not have the unilateral right under their tariffs to make such changes. Nevertheless, allegations of mileage pumping continue. We seek comment on the prevalence of this practice, its impact in the market, and the likely effect of the rules proposed in this NPRM on this concern. What more can we do to prevent these practices?

29. Third, some commenters raise concerns about the addition of superfluous network facilities for which the LEC can bill switched access charges, but the rates for which are not subject to the current transition to bill-and-keep. This practice is sometimes referred to as ''daisy chaining.'' This practice may inefficiently inflate per-mile charges and insert unnecessary facilities to justify assessment of additional rate elements, such as remote switches that subtend end offices. What actions can we take to prevent daisy chaining?

30. Would the CenturyLink suggestion of shifting financial responsibility to LECs that decline to accept direct connections eliminate or reduce the three types of inefficient routing schemes described above? Even if an IXC chose not to seek a direct connection, would the risk of IXCs seeking direct connections provide a disciplining counterweight to some providers' incentives to engage in mileage pumping or daisy-chaining? What would be the impact on affected parties?

E. Other Issues

31. We recognize that any action we take to address access arbitrage may affect the costs to carriers and their customers and the choices they make, as they provide and receive telecommunications services. Consumers that enjoy high call volume services could be affected by regulatory adjustments targeting arbitrage. Are there efficiencies that are in the public's interest in what some describe as arbitrage? Would addressing the arbitrage described here unfairly advantage any particular competitor or class of competitors? If so, are there alternative means to address the arbitrage issues described here and presented in the record? How would the changes proposed herein affect small businesses?

32. In the *USF/ICC Transformation Order,* the Commission considered direct costs imposed on consumers by arbitrage schemes. The Commission also found that access stimulation diverts ''capital away from more productive uses such as broadband deployment.'' We believe this continues to be true. Are there additional, more-current data available to estimate the annual cost of arbitrage schemes to companies, long distance rate payers, and consumers in general? Likewise, are there data available to quantify the resources being diverted from infrastructure investment because of arbitrage schemes? To what degree are consumers indirectly affected by potentially inefficient networking and cost recovery due to current regulations and the exploitation of those regulations? Are there other costs or benefits we should consider?

F. Legal Authority

33. The proposals in this NPRM, targeted to address the particular issues described in the record, continue the work the Commission began in the *USF/ICC Transformation Order* to stop economically wasteful arbitrage activity and the damage it causes in telecommunications markets. Therefore, we rely on the legal authority the Commission set forth in the *USF/ICC Transformation Order,* as support for modifications to rules we propose in this NPRM. The Commission made clear that its rules to address access arbitrage would result in interstate access rates ''consistent with section 201(b) of the Act.'' The Commission likewise found that ''[o]ur statutory authority to implement bill-and-keep as the default framework for the exchange of traffic with LECs flows directly from sections 251(b)(5) and 201(b) of the Act.'' We seek comment on whether additional statutory authority is available, or necessary, to support the actions proposed here.

III. Rule Revisions

34. We seek comment on the rule changes proposed at the end of this document. What, if any, other rule additions or modifications should we make to codify these proposals? Are there any conforming rule changes that commenters consider necessary? For example, we intend for any rules that we adopt to apply not only to interstate traffic, but also intrastate traffic. Do our proposed rules adequately address this? Are there any conflicts or inconsistencies between existing rules and those proposed herein? We ask commenters to provide any other proposed actions and rule additions or modifications we should consider to address the access arbitrage schemes described in this NPRM including updates to any relevant comments or proposals made in response to the *USF/ICC Transformation FNPRM,* 76 FR 78383.

IV. Procedural Matters

35. *Filing Instructions.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

36. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

37. *Ex Parte Requirements.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

38. *Paperwork Reduction Act Analysis.* This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

39. *Initial Regulatory Flexibility Act Analysis.* Pursuant to the Regulatory Flexibility Act (RFA), we have prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this NPRM. The Commission prepared an IRFA to accompany the first Further Notice of Proposed Rulemaking in this docket, *USF/ICC Transformation FNPRM.* The questions asked in this NPRM are different than those the Commission sought comment on previously. Therefore, we have prepared a new IRFA to reflect the substance of this NPRM. The text of the IRFA is set forth in section V of this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

40. *Contact Person.* For further information about this proceeding, please contact Edward Krachmer, FCC Wireline Competition Bureau, Pricing Policy Division, Room 5–A230, 445 12th Street SW, Washington, DC 20554, (202) 418–1525, *Edward.Krachmer@fcc.gov.*

V. Initial Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), we have prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). We request written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the NPRM. We will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objective of, the Proposed Rules

42. In the *USF/ICC Transformation FNPRM,* the Commission sought comment on additional steps to implement the bill-and-keep regime as well as possible communications network definitional changes, the appropriate recovery mechanisms going forward and VoIP and IP-to-IP related intercarrier compensation issues. In this NPRM we propose to adopt rules to address access arbitrage schemes that persist despite previous Commission action. We propose to adopt rules to give access-stimulating LECs two choices about how they connect to IXCs. First, an access-stimulating LEC can choose to be financially responsible for calls delivered to its networks so it, rather than IXCs, pays for the delivery of calls to its end office or the functional equivalent. Or, second, instead of accepting this financial responsibility, an access-stimulating LEC can choose to accept direct connections from either the IXC or an intermediate access provider of the IXC's choosing. In the alternative, we seek comment on moving all traffic bound for an access-stimulating LEC to bill-and-keep. The NPRM also seeks comment on potential revisions to the definition of access stimulation, in particular to address intermediate access providers. The record in this proceeding suggests additional access arbitrage activities are occurring, including: (1) Use of intermediate access providers by Commercial Mobile Radio Carriers; (2) mileage pumping; and (3) daisy chaining. Comment is sought on how best to address these activities. The

NPRM seeks comment on the costs and benefits of these proposals.

B. Legal Basis

43. The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1, 2, 4(i), 201–206, 214, 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), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), and 403.

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

44. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. 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 SBA.

45. *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 comprehensive small entity size standards 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. 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). Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, 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.''

46. *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.

47. *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 and under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of that total, 3,083 operated with fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

48. *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 (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.

49. *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.

50. 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.

51. *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.

52. *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.

53. *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.

54. *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.

55. *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.

56. *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.

57. 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 today. 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.

58. *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.

59. *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.

60. *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.

61. *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.

62. *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.

63. *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.

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

64. The NPRM proposes and seeks comment on rule changes that will affect LECs and intermediate access providers, including CEA providers. The NPRM proposes rules to further limit or eliminate the occurrence of access arbitrage, including access stimulation, which could reduce potential reporting requirements. One possible result of the proposed rules would be greater availability of direct connections between IXCs and access-stimulating LECs to avoid the use of intervening third parties, including CEA providers, and thus create more efficient and economical network connections. Direct connections would also likely reduce recordkeeping requirements. Specifically, we propose amending our rules to allow access-stimulating LECs to choose either to be financially responsible for the delivery of calls to their networks or to accept direct connections from IXCs or from intermediate access providers of the IXC's choosing. The proposed rules also contain notification requirements for access-stimulating LECs, which may impact small entities. Some of these requirements may also involve tariff changes.

65. The NPRM also seeks comment on other actions the Commission could take to further discourage or eliminate access arbitrage activity. Rules which achieve these objectives could potentially affect recordkeeping and reporting requirements.

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

66. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed 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 rules 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.

67. This NPRM invites comment on a number of proposals and alternatives to modify or adopt access arbitrage rules and on the legality of access stimulation generally. The Commission has found these arbitrage practices inefficient and to ultimately increase consumer telecommunications rates. The NPRM proposes rules to further limit or eliminate the occurrence of access stimulation as well as other access arbitrage in turn promoting the efficient function of the nation's telecommunications network. We believe that if companies are able to operate with greater efficiency this will benefit the communications network as a whole, and its users, by allowing companies to increase their investment in broadband deployment. Thus, we propose to adopt rules to give access-stimulating LECs two choices about how they connect to IXCs. First, an access-stimulating LEC can choose to be financially responsible for calls delivered to its networks so it, rather than IXCs, pays for the delivery of calls to its end office or the functional equivalent. Or, second, instead of accepting this financial responsibility, an access-stimulating LEC can choose to accept direct connections from either the IXC or an intermediate access provider of the IXC's choosing. In the alternative, we seek comment on moving all traffic bound for an access-stimulating LEC to bill-and-keep. The NPRM also seeks comment on potential revisions to the definition of access stimulation, in particular to address intermediate access providers. The record in this proceeding suggests additional access arbitrage activities are occurring, including: (1) Use of intermediate access providers by Commercial Mobile Radio Carriers; (2) mileage pumping; and (3) daisy chaining. Comment is sought on how best to address these activities. The NPRM seeks comment on the costs and benefits of these proposals. Providing carriers, especially small carriers, with options will enable them to best assess the financial effects on their operation allowing them to determine how best to respond.

68. The NPRM also seeks comment on other actions we can take to further discourage or eliminate access arbitrage activity. Comment is sought on alternatives to our proposal that could be considered to achieve our objectives with potentially less impact on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

69. None.

VI. Ordering Clauses

70. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201–206, 218–220, 251, 252, 254, 256, 303(r), and 403, and § 1.1 of the Commission's rules, 47 CFR 1.1, this Notice of Proposed Rulemaking *is adopted.*

71. *It is further ordered* that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before July 20, 2018 and reply comments on or before August 3, 2018.

72. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Common carriers, Communications.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 51 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, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302.

■ 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* means any entity that carries or processes traffic at any point between the final Interexchange Carrier in a call path and the carrier providing End Office Access Service.

(m) *Interexchange Carrier* means a telecommunications carrier that uses the exchange access or information access services of another telecommunications carrier for the provision of telecommunications.

■ 3. Add § 51.914 to read as follows:

§ 51.914 Additional provisions applicable to Access Stimulation traffic.

(a) Notwithstanding any other provision of the Commission's rules, if a local exchange carrier is engaged in Access Stimulation, it shall within 45 days of commencing Access Stimulation, or by [date 45 days after the effective date of the final rule], whichever is later:

(1)(i) Not bill any affected Interexchange Carrier or any Intermediate Access Provider for the terminating switched access tandem switching or any 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

(ii) Assume financial responsibility for the applicable Intermediate Access Provider terminating tandem switching and terminating switched transport access charges relating to traffic bound for the access-stimulating local exchange carrier; or

(2) Upon request of an Interexchange Carrier for direct-trunked transport service, provision and enable direct-trunked transport service to either the Interexchange Carrier or an Intermediate Access Provider of the Interexchange Carrier's choosing within [period of time to be determined] of such a request.

(b) Notwithstanding any other provision of the Commission's rules, if a local exchange carrier is engaged in

Access Stimulation, it shall within 45 days of commencing Access Stimulation, or by [date 45 days after effective date of the final rule], whichever is later, notify in writing all Intermediate Access Providers which 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;

(2) That it will either:

(i) Obtain and pay for terminating access services from Intermediate Access Providers for such traffic as of that date; or

(ii) Offer direct-trunked transport service to any affected Interexchange Carrier (or to an Intermediate Access Provider of the Interexchange Carrier's choosing); and

(3) To the extent that the local exchange carrier engaged in Access Stimulation intends to comply with paragraph (a) of this section through electing the option described in paragraph (a)(2) of this section, designate where on its network it will accept the requested direct connection.

(c) Nothing in this section creates an independent obligation for a local exchange carrier to construct new facilities other than, as necessary, adding switch trunk ports.

(d) In the event that an Intermediate Access Provider receives notice under paragraph (b) of this section that a local exchange carrier engaged in Access Stimulation will be obtaining and paying for terminating access service from such Intermediate Access Provider, an Intermediate Access Provider shall not bill Interexchange Carriers terminating tandem switching and terminating switched transport access for traffic bound for such local exchange carrier but, instead bill such local exchange carrier for such services.

(e) Notwithstanding any provision of this section, any 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 an access-stimulating local exchange carrier, shall not itself be deemed a local exchange carrier engaged in Access Stimulation or be affected by this rule other than paragraph (d) of this section.

■ 4. Amend § 51.917 by revising paragraph (c) to read 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.

* * * * *

[FR Doc. 2018–13699 Filed 6–28–18; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 07–42 and 17–105; FCC 18–80]

Leased Commercial Access; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks to update its leased access rules as part of its Modernization of Media Regulation Initiative. First, the Commission tentatively concludes that it should vacate its *2008 Leased Access Order,* which the U.S. Court of Appeals for the Sixth Circuit has stayed for a decade in conjunction with several judicial appeals of the order. Second, the Commission seeks input on the state of the leased access marketplace generally and invites comment on ways to modernize its existing leased access rules.

DATES: Comments are due on or before July 30, 2018; reply comments are due on or before August 13, 2018.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 18–80 and 17–105, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's website: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Diana Sokolow, *Diana.Sokolow@fcc.gov,* of the Policy Division, Media Bureau, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking, FCC 18–80, adopted on June 7, 2018 and released on June 8, 2017. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek to update our leased access rules as part of the Commission's Modernization of Media Regulation Initiative. In response to the public notice initiating the media modernization proceeding, some commenters made proposals related to the Commission's leased access rules, which require cable operators to set aside channel capacity for commercial use by unaffiliated video programmers.[1] By addressing these proposals in this FNPRM, we advance our efforts to modernize our media regulations and remove unnecessary requirements that can impede competition and innovation in the media marketplace.

2. We tentatively conclude that we should vacate the *2008 Leased Access Order,* including the Further Notice of Proposed Rulemaking issued in conjunction with that order. This action would enable the Commission to clean up a longstanding backlog and position us to freshly consider new revisions to

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[1] The leased access rules are in Subpart N of Part 76, which was listed in the *Media Modernization Public Notice* as one of the principal rule parts that pertains to media entities and that is the subject of the media modernization review.