Access Stimulation: The Issue and FCC Actions to Address It

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Disclaimer:

- The views I will express in this presentation are my own – they do not reflect the view of the Commission, its staff, or any Commissioner.
Introduction: Topics and Presenter

Topics:

- Access Stimulation
  - The Issue
  - FCC Actions to Address it

Presenter:

- Randy Clarke: Deputy Chief in the Pricing Policy Division of the FCC’s Wireline Competition Bureau.
  - The Pricing Policy Division handles pricing and tariffing matters and works with other divisions to create and implement the Commission’s interconnection policies.
    - At the Commission for nearly 9 years.
    - Worked on telecommunications rate cases for the state of Illinois before joining the Commission.
Access Stimulation: The Issue

- “In broad terms, access stimulation is an arbitrage scheme employed to take advantage of intercarrier compensation rates by generating elevated traffic volumes to maximize revenues.”

- “Access stimulation occurs when, for example, a LEC enters into an arrangement with a provider of high call volume operations such as chat lines, adult entertainment calls, and “free” conference calls.” (FCC 11-13 at para. 636)

- Projections indicate that the annual impact to the industry from access stimulators is significant. Estimates range from $66 to $88 million billed by access stimulators in 2010 to $2.3 billion spent industry wide between 2005 and 2010. (FCC 11-13 para. 637).

- “Access stimulation occurs against the backdrop of a legal framework governing access charges that has facilitated such activity in several ways.” (FCC 11-13 para. 637).
Initially, and especially between 2005 and 2007, most allegations of access stimulation involved rate-of-return ILECs.

Rate of Return LECs had tariffing options that allowed them to retain revenues if actual traffic volumes differed from projected or historical traffic volumes.

“The ability of carriers... to retain revenues generated from higher than projected ... or historical ... traffic volumes ... provides an incentive to engage in access stimulation activity.”

“In particular, some rate-of-return LECs... could leave the NECA pool and establish rates based on historical demand when their demand was low, thus resulting in high rate....”

“[Then] LECS could enter into access stimulation arrangements,... resulting in vastly higher traffic volumes than were used to set the rates and [achieve] earnings far in excess of the authorized rate-of-return.”

“At the end of that two-year period, the LEC would reenter the NECA pool to avoid basing its individual rates for the next two years on the high demand realized as a result of the access stimulation. ” (FCC 11-13 at para. 648)
Access Stimulation: The Issue – Competitive LECs

- As a result of initial FCC actions that I will discuss in a few minutes, after 2007, allegations of access stimulation shifted to CLECs.
- CLECs base their tariffed access rates on the rates of ILECs or on NECA rates, not on their own costs.
- “Rural competitive LECS ‘benchmark’ to the access rates prescribed in the NECA access tariff.”
- “[CLEC A]ccess stimulation activities ... exploit the lack of connection between the rates charged by the CLEC ... (which are not affected by changes in demand) and the rates that would be charged by a rural incumbent LEC ... (which are determined on the basis of a projected demand...).” (FCC 11-13 at para. 650)
“Since 2007, access stimulation activity by rate-of-return LECs has decreased, but [C]LEC now conduct a significant amount of access stimulation, either by benchmarking to a particular rate-of-return LEC or relying on the rural exemption to benchmark to NECA rates.” (FCC 11-13 at para. 657)
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Access Stimulation: FCC Actions

- June 28, 2007: Access Tariff Suspension Order: (22 FCC Rcd. 11619)
  - “In this Order, we suspend for one day and set for investigation the switched access rates contained in the 2007 annual access tariffs of the carriers listed...” (at para. 2)

- June 28, 2007: Declaratory Ruling and Order: (22 FCC Rcd. 11629)
  - “[W]e issue this Declaratory Ruling to remove any uncertainty about the scope of the Commission's general prohibition on call blocking and to clarify the obligation [of]...[IXCs] and ...(CMRS) providers (collectively carriers) to complete their customers' interexchange calls.” (at para. 1)
  
  - “Because the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the ...Act, 3 we reiterate here that Commission precedent does not permit unreasonable call blocking by carriers.” (at para. 1)
Access Stimulation: FCC Actions

• August 24, 2007: Tariff Investigation Designation Order: (22 FCC Rcd. 16109)

  - “In this order, we designate for investigation issues regarding the switched access rates contained in the 2007 annual access tariff filings of ... local exchange carriers (LECs) exiting the [NECA] traffic-sensitive tariff ...”(at para. 1)

  - “For purposes of managing this investigation and reducing the burdens on carriers ..., we establish safe harbor mechanisms for carriers subject to this investigation.”

    ▶ “First ..., we will not require any carrier to respond ... if that carrier ... commit[s] ... to filing a revised switched access tariff within 60 days of the end of the month in which its interstate local switching demand increases to a level that is more than 100 percent over the interstate local switching demand in the same month in the previous year.”

    ▶ “Second, we will not require any carrier to respond ... if that carrier ... join[s] the NECA traffic-sensitive tariff.” (at para. 28)
October 2nd, 2007: Access Stimulation NPRM (22 FCC Rcd. 17989)

- “The Access Stimulation NPRM sought comment on a variety of related issues including:

1. Whether switched access rates were becoming unjust and unreasonable due to excessive earnings;

2. Whether any shared revenues are properly included in a rate-of-return LEC’s revenue requirement;

3. The possible use of triggers and tariff language to require the refilling of tariffs upon certain events occurring;

4. The use of LEC certifications that access stimulation was not being engaged in; and

5. Possible modification of the benchmarking rules for CLECs.”

(FCC 11-13 at n. 1019 (Describing the Access Stimulation NPRM))
November 30, 2007: Tariff Investigation Termination Order: (22 FCC Rcd. 21261)

- “In this order, we terminate the investigation regarding the switched access rates contained in the 2007 annual access tariff filings that were suspended by the Wireline Competition Bureau (Bureau) on June 28, 2007. ...[W]e conclude that the switched access rates of the carriers whose rates were suspended are just and reasonable, and therefore lawful.” (at para. 1)

- “By September 21, 2007, the date on which Direct Cases in response to the Designation Order were due, each LEC whose tariff had been suspended had elected to adopt one of these safe harbors.” (at para. 2)
Access Stimulation: FCC Actions

• February 8, 2011: Notice of Proposed Rulemaking (26 FCC Rcd. 4605)

  - “seek[s] comment on specific revisions to our interstate access rules to address access stimulation, a form of arbitrage that, by some estimates, is impacting hundreds of millions of dollars in intercarrier compensation.” (at para. 635)

  - Proposed Triggers:
    ‣ “[W]e propose to adopt a trigger based on the existence of access revenue sharing arrangements. [These] arrangements commonly are used to facilitate access stimulation activity....
    ‣ [T]he sharing of significant amounts of interstate access revenues with another entity (whether a third party or an entity affiliated with the LEC), raises questions about whether the underlying access rates remain just and reasonable....” (FCC 11-13 at para. 659)
November 18, 2011: ICC Transformation Order: (26 FCC Rcd. 17663)

- “We adopt a definition to identify when an access stimulating LEC must refile its interstate access tariffs at rates that are presumptively consistent with the Act.”
  
  ‣ “The first condition is that the LEC has entered into an access revenue sharing agreement, and we clarify what types of agreements qualify as ‘revenue sharing.’”

  ‣ “The second condition is ... where the LEC either has had

  - a three-to-one interstate terminating-to-originating traffic ratio in a calendar month,

  - or has had a greater than 100 percent increase in interstate originating and/or terminating switched access MOU in a month compared to the same month in the preceding year.” (para. 667)

- “If a LEC meets both conditions of the definition, it must file a revised tariff ... .

  ‣ A ... rate-of-return LEC must file its own cost-based tariff and may not or participate in the NECA traffic-sensitive tariff.

  ‣ A competitive LEC ... must benchmark its tariffed access rates to the rates of the price cap LEC with the lowest interstate switched access rates in the state.” (at para. 679)