

Changes to existing rules stemming from 2011 CAF Order:

§ 61.3 [amended]

47 CFR § 61.3

5. Amend § 61.3 by revising paragraph (bbb) Access Stimulation as follows:

(bbb) Access stimulation.

- (1) A rate-of-return local exchange carrier or a Competitive Local Exchange Carrier (including CLEC affiliates of such Competitive Local Exchange Carrier), engages in access stimulation Access Stimulation when, within a continuous thirty day period, it satisfies either of the following two scenario conditions:

A. Scenario 1 -

- (i) It Hh 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 rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account; and
- (ii) 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.

B. Scenario 2 -

- (i) It has terminated at least 1 million minutes of interstate switched exchange access traffic in the aggregate; and,
- (ii) It has an interstate terminating-to-originating switched exchange access traffic ratio of at least 3:1 either in the aggregate or with any Interexchange Carrier.

Sprint rationale: The edits in the introductory section (1) text are intended to make clear that a given CLEC includes all of its affiliated CLECs in the aggregate when applying these rules; capitalization of the Access Stimulation term consistent with Commission's amendment to that effect elsewhere; and provide the continuous 30-day time component, which is important in applying any traffic ratio trigger component. **Scenario 1** maintains the existing Access Stimulation definition. Item (i) is commonly referred to as the "revenue sharing" component of the existing trigger. The existence / non-existence of "revenue sharing" invites litigation as to any ROR LEC /

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CLEC that seeks to avoid the definition by 1) refusing to self-identify and /or create a labyrinth of entity arrangements. Sprint's experience is that high-terminating traffic volumes coupled with a significantly out-of-balance ratio terminating to originating traffic ratio are objective indicia that a LEC/CLEC is engaging in traffic pumping. **Scenario 2** proposes an alternative "bright line" high-terminating traffic volume / traffic ratio trigger that, if met, creates a rebuttable presumption the ROR LEC/CLEC is engaged in Access Stimulation. Sprint proposes the million-minute volume as a floor that provides safe-harbor protection to an innocent ROR LEC / CLEC; and, the more significant of the two triggers is the traffic ratio. Sprint is open to reasonable modification of the terminating-to-originating traffic ratio, e.g. Inteliquent' 6:1. The ratio is intended to apply the traffic ratio to the ROR LEC / CLEC (and CLEC affiliates – to also avoid "spreading" traffic across multiple entities to thwart traffic ratio) aggregate traffic, as to either all IXC's or any individual IXC. Limiting application of the traffic ratio to only aggregate traffic applied to all IXC's renders it difficult, if not impossible, for any given IXC to determine when the traffic ratio component is ever met.

- (2) A local exchange carrier commences engaging in Access Stimulation as of the earliest switch-record supported date establishing the traffic ratio and volume conditions, as applicable, in paragraph (bbb) (1) were met, as identified by either:

(i) The local exchange carrier; or,

(ii) An Interexchange Carrier that provides written notice to A) the local exchange carrier and B) the Intermediate Access Provider.

Sprint rationale: The above proposed additions require objective supporting information and identification as of a specified date when Access Stimulation is considered to have commenced. It also supports the concepts that an IXC should not be required to rely upon ROR LEC / CLEC self-identification to invoke application of these rules.

- (3) ~~(2)~~ The local exchange carrier will continue to be engaging in ~~access stimulation~~ Access Stimulation until its terminating-to-originating traffic ratio calculated pursuant to § 61.3 (bbb)(1)(ii) is less than 3:1 for at least twelve (12) consecutive calendar months. ~~es all revenue sharing arrangements covered in paragraph (a)(1)(i) of this section.~~ A local exchange carrier engaging in ~~access stimulation~~ Access Stimulation is subject to revised interstate switched access charge rules under § 61.38 and § 69.3(e)(12) of this chapter.

Sprint rationale: As to a ROR LEC / CLEC engaged in Access Stimulation, the above proposed edits change the trigger that identifies when the LEC has ceased being engaged in Access Stimulation *from the requirement that all revenue sharing arrangements are eliminated to the requirement that the LEC's traffic ratio be less than the 3:1 [or, 6:1] for at least twelve consecutive calendar months.*

Changes to rules proposed in June 5, 2019 NPRM:

FCC18-68 NPRM Adopted 6-4-2018 / Released 6-5-2018, pages 17 - 18

PART 51—INTERCONNECTION

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

AUTHORITY: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–

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05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 note, unless otherwise noted.

§ 51.903 [amended]

47 CFR § 51.903

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

Sprint rationale: Identifies apparent NPRM draft omission of reference to new definition in paragraph “m.”

§ 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 or information service provider for the provision of telecommunications.

Sprint rationale: The proposed edit is intended to prevent a carrier/provider entity from attempting to evade the rules by categorizing itself or the traffic it handles as something other than being involved in the handling of exchange access traffic.

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 the Commission’s rules, as of [the effective date of this rule] if a local exchange carrier is engaged in Access Stimulation, it shall ~~within 45 days of commencing Access Stimulation, or within 45 days of [the effective date of this rule], whichever is later~~

Sprint rationale: The above proposed edit is intended to facilitate immediate implementation once the rule is effective.

- ~~(+)~~ (i) not bill any affected Interexchange Carrier or any Intermediate Access Provider for any charges, including but not limited to 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 or equivalent; and

Sprint rationale: The above proposed edit is intended to prevent a carrier/provider from attempting to evade the rule based upon how it may characterize or otherwise label its termination-related charges as something other than terminating switched access tandem switching and/or terminating switched access transport.

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(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]] of such a request.~~

Sprint rationale: Sprint supports elimination of prong 2. As currently written, there are no restrictions against a LEC taking any actions that could impose further expense on IXC's (e.g., drive up transport costs by re-locating its switch / direct connection point to a remote location - commonly referred to as mileage pumping). Sprint does, however, remain open to discussing an alternative direct interconnection approach that would be consistent with accomplishing the Commission's IP-transition goals, including bill and keep IP interconnection arrangements at mutually agreed third-party carrier hotel locations.

- (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 within 45 days of [the effective date of this 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, and the date that such Access Stimulation commenced;~~

~~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~~

~~(2) to the extent that the local exchange carrier engaged in Access Stimulation intends to comply with § 51.914(a) through electing the option described in § 51.914(a)(2), designate where on its network it will accept the requested direct connection.~~

Sprint rationale: The above edits are consistent with Sprint's position that the commencement date of Access Stimulation should be identified, and prong 2 should be eliminated at this time.

- (c) Nothing in this § 51.914 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 § 51.914(b) ~~or § 61.3 (bbb) (2) (ii)~~ that a local exchange carrier is 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 any Interexchange Carriers terminating tandem switching and terminating switched transport access or other equivalents for traffic bound for such local exchange carrier but, instead bill such local exchange carrier for such services. Any amounts billed by an Intermediate Access Provider to an Interexchange Carrier after the date the local exchange carrier commenced engaging in Access Stimulation for any traffic bound for such local exchange shall be refunded or credited by the Intermediate Access Provider to the Interexchange Carrier, and such refunded amounts may be recouped by the Intermediate Access Provider from the local exchange carrier.

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Sprint rationale: The above edits are intended to clearly and immediately implement the cost-shifting components of the rule as to Access Stimulation traffic and eliminate any benefit to an Access Stimulation ROR LEC / CLEC that may engage in efforts to delay such implementation.

- (e) Notwithstanding any provision of this § 51.914, any carrier that is not itself engaged in Access Stimulation, as that term is defined in § 61.3(bbb), 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 § 51.914(d).

§ 51.917 [amended]

47 CFR § 51.917

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

Remove “access stimulation” and add, in its place, “Access Stimulation”.

<i>Changes to existing tariff rules:</i>

§ 69.3 [amended]

5. Amend § 61.3 by revising paragraph (e)(12) as follows:

47 CFR § 69.3 Filing of access service tariffs.

(e)

(12)

(i) A local exchange carrier, or a group of affiliated carriers in which at least one carrier is engaging in ~~a~~Access ~~s~~Stimulation, as that term is defined in § 61.3(bbb) of this chapter, shall file its own access tariffs within forty-five (45) days of commencing ~~a~~Access ~~s~~Stimulation, as that term is defined in § 61.3(bbb) of this chapter, or within forty-five (45) days of December 29, 2011 if the local exchange carrier on that date is engaged in ~~a~~Access ~~s~~Stimulation, as that term is defined in § 61.3(bbb) of this chapter.

(ii) Notwithstanding paragraphs (e)(6) and (e)(9) of this section, a local exchange carrier, or a group of affiliated carriers in which at least one carrier is engaging in ~~a~~Access ~~s~~Stimulation, as that term is defined in § 61.3(bbb) of this chapter, must withdraw from all interstate access tariffs issued by the association within forty-five (45) days of engaging in ~~a~~Access ~~s~~Stimulation, as that term is defined in § 61.3(bbb) of this chapter, or within forty-five (45) days of December 29, 2011 if the local exchange carrier on that date is engaged in ~~a~~Access ~~s~~Stimulation, as that term is defined in § 61.3(bbb) of this chapter.

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(iii) Any such carrier(s) shall notify the association when it begins ~~a~~Access ~~s~~Stimulation, or on December 29, 2011 if it is engaged in ~~a~~Access ~~s~~Stimulation, as that term is defined in § 61.3(bbb) of this chapter, on that date, of its intent to leave the association tariffs within forty-five (45) days.

(iv) An Intermediate Access Provider that receives notice from a local exchange carrier under § 51.914(b) of this chapter, or from an Interexchange Carrier under § 61.3 (bbb) (2) (ii) of this chapter, that a local exchange carrier is engaged in Access Stimulation as that term is defined in § 61.3 (bbb) of this chapter, shall file its own access tariff within forty-five (45) days of receiving such notice, and include provisions to comply with the obligations imposed on an Intermediate Access Provider pursuant to § 51.914 (d) of this chapter.

Sprint rationale: The above edits to subsections (i) through (iii) are simply capitalization of the term “Access Stimulation” to be consistent with Commission’s amendment to 47 CFR § 51.917 (c) to likewise capitalize the term. The proposed edit to add a new subsection (iv) is intended to facilitate timely, effective implementation of the Commission’s new rules as applied to Intermediate Access Providers by requiring such providers to file a tariff (or amend its existing tariff, if any) to correctly reflect its new billing relationship as to Access Stimulation ROR LECs / CLECs, once the Intermediate Provider has received the triggering notice from a LEC or IXC.