



151 Southhall Lane, Ste 450
Maitland, FL 32751
P.O. Drawer 200
Winter Park, FL 32790-0200
www.inteserra.com

January 8, 2020
Via ECFS Filing

Secretary, Federal Communications Commission
Washington, DC 20554
ATTN: Wireline Competition Bureau

RE: Free Conferencing Corporation
WC Docket No. 18-155 - Petition for Expedited Waiver of Access Arbitrage Order

Dear Secretary:

Enclosed for filing, please find the Petition for Expedited Waiver of Access Arbitrage Order submitted on behalf of Free Conferencing Corporation under WC Docket No. 18-155.

Any questions you may have regarding this filing should be directed to my attention at 407-740-3006 or via email to croesel@inteserra.com. Thank you for your assistance in this matter.

Sincerely,

/s/ Carey Roesel

Carey Roesel
Consultant

cc: David Erickson – Free Conferencing Corporation (via email)
Lauren Coppola – Robins Kaplan LLP (via email)
tms: FCCx1901

CR/gs

**Before The
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Updating the Intercarrier Compensation Regime to
Eliminate Access Arbitrage,

WC Docket No. 18-155

**PETITION FOR EXPEDITED WAIVER BY FREE CONFERENCING
CORPORATION OF ACCESS ARBITRAGE ORDER**

Free Conferencing Corporation (the “Company” or “Free Conferencing”), by counsel and pursuant to 47 C.F.R. § 1.3, respectfully requests an expedited waiver of the order of the Federal Communications Commission (“Commission”) titled *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, FCC 19-94 (rel. Sept. 27, 2019), published at 84 Fed. Reg. 57629 (October 28, 2019) (“Access Stimulation Order” or “Order”). Without the requested waiver, Free Conferencing will suffer immediate and irreparable harm. For the reasons provided herein, Free Conferencing respectfully submits that good cause exists for an expedited grant of this waiver request, and that such action will serve the public interest by ensuring that millions of consumers’ telephone calls are not blocked and Free Conferencing’s services are not eliminated.

I. BACKGROUND

On June 5, 2018, the Commission released the Notice of Proposed Rulemaking that led to the Order.¹ During the comment period, many interested parties submitted comments to the Commission concerning the time period for implementation of the changes proposed in the NPRM, specifically the time period to impose the cost shifting of tandem-switching and transport to “access stimulating” LECs. HD Tandem, an intermediate provider that transmits some of Free Conferencing’s traffic, informed the Commission that the contemplated changes should provide a sufficient transition period that enables LECs time to achieve compliance. Specifically, HD Tandem stated:

Actual implementation of any of the triggers under a proposed Prong 1 framework, for example, would require significant time to avoid the unintended but likely immediate shift in huge traffic volumes numbering in the billions of minutes, with dire consequences to the millions of consumers and businesses who rely on affected voice applications as part of their daily lives. Specifically, hosting LECs that are perhaps vulnerable to being deemed an “Access Stimulating” LEC may choose to re-home to a new tandem provider. To do so, they would need to recontract, provision, test, and possibly augment network capacity, in addition to terminating their current tandem arrangements. Centralized Equal Access (“CEA”) tandems, such as Aureon, may require their LEC customers to be exclusive as a condition of partnership. The ramifications for the implications of this potential condition for LECs contracted to Aureon that wish to avoid being an Access Stimulating LEC are very real but unknown. Each of the IXCs and transit carriers will need to update the new tandem information in the local exchange routing guide (“LERG”), which can be an immensely time-consuming process. On the other side, LECs will need to recontract with hosted voice applications, based on any new economics introduced in such a proposed Prong 1. The issue of capacity management will also come into play, as traffic shifts based on the new market economics influenced by the adoption of any new rules. In HD Tandem’s opinion, then, the only realistic timeframe for actual implementation of any rule that would necessitate the above business changes would be an eighteen to twenty-four-month time period.²

¹ WC Docket No. 18-155, Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage, Notice of Proposed Rulemaking, FCC 18-68, 33 FCC Rcd. 5466 (2018) (“NPRM”).

² HD Tandem Ex Parte at 2-3 (September 3, 2019).

Only days after HD Tandem submitted these comments and met with the Commission to discuss this issue, among others, the Commission released its draft Order.³ The Draft Order required access-stimulating LECs to obtain and pay for tandem switching and tandem transport without exception. It also adopted an alternative “access stimulation” definition, solely based upon traffic ratios. The Draft Order proposed 45 days for implementation. Many comments were submitted before the FCC’s Sunshine Rules closed the docket about the timing for compliance in the Draft Order. West and Peerless informed the Commission that the Draft Order’s new definition of “access stimulation” would “cause tremendous and widespread confusion in the industry” resulting in “tremendous shifts in the routing of a LEC’s terminating traffic” that takes “much more than 3 months.”⁴ CLEC Wide Voice, LLC informed the Commission that the timeline for compliance is “impossible” and that the Commission must provide time for carriers to adapt their business models.⁵ Moreover, multiple rural CLECs jointly informed the Commission that “such a short time period for implementing these rules is unreasonable and will result in significant call disruptions.”⁶

Despite these numerous and specific warnings that a substantial volume of calls would be disrupted and disconnected, the Commission adopted the Order on September 26, 2019 with the 45-day time period for implementation.⁷ The Order notes that, “several commenters argue the draft *Order* leaves too little time for access-stimulating LECs to come into compliance, suggesting that an 18-24 month period is warranted to allow them to change their business models and avoid

³ WC Docket No. 18-155, Draft Report and Order and Modification of Section 214 Authorizations, FCC-CIRC 1909-02 (Sept. 5, 2019) (“Draft Order”).

⁴ Peerless and West Ex Parte at 2-3 (September 18, 2019)

⁵ Wide Voice Ex Parte Attach at 9 (September 11, 2019).

⁶ Joint CLEC Ex Parte at 9 (September 19, 2019)

⁷ Order, Appendix A, *see changes to* 47 CFR 51, 61 and 69.

the definitional triggers.”⁸ The Order then cites statements by HD Tandem, Wide Voice, Peerless, West and a number of other CLECs. However, the Commission dismissed these concerns by relying solely on an AT&T submission dated February 5, 2019, in which AT&T claimed that a CLEC increased its traffic by 20,000,000 minutes of use per month “seemingly overnight.” AT&T told the Commission that it “immediately took steps to increase the capacity between AT&T’s POP and the intermediate carrier to resolve the network congestion issues.” *See* WC Docket No. 18-155, Comments of AT&T at 9 (Feb. 5, 2019). Thus, based solely on AT&T’s comments, the Commission felt the compliance period was appropriate.

The time for compliance is imminent and the predictions of many commenters have come true, necessitating the requested waiver. Call disruption and failure has already begun and will rapidly increase as the days progress. Free Conferencing has taken extensive measures to transition with the Order and is ready, willing and able to transition. It will do so in every way it can. However, it is unable to effectuate complete transition because IXCs, including AT&T, Verizon and Level, and other rural CLECs leaving the “access stimulation” business are not prepared to transition in a manner that will preserve the integrity of millions of calls and Free Conferencing’s entire business.

Free Conferencing, working with a variety of connection partners, has made arrangements to transition its traffic away from carriers that are either no longer engaging in the “access stimulation” business or would not have balanced traffic ratios such that they would comply with the Order. In so doing, various carriers and connection partners have taken steps to accept Free Conferencing’s traffic. However, IXCs are making Free Conferencing’s transition impossible in two ways. First, several IXCs are ignoring additional routes and switches in the LERG. Certain

⁸ Order ¶77.

LERG changes were made with the proper notices by carriers many weeks ago. Despite proper notice, IXC's are intentionally refusing to function by the rules and routing guides governing the public switched telephone network. Their failures to route under the LERG designations are causing calls to fail and inhibiting Free Conferencing's transition to new providers. Furthermore, it is impossible for the transition to occur without call completion issues until all carriers follow PSTN routing guidelines.

Second, in instances where IXC's are acknowledging the new codes properly added to the LERG, IXC's are not provisioning additional capacity required to handle the transition. The carriers and connection partners with whom Free Conferencing is working with on this transition provided IXC's with multiple traffic forecasts weeks in advance of this week's deadline and have offered alternate accommodations to accept the large volume of traffic that will be migrating. Also, counsel contacted IXC's' counsel to ensure that all steps are taken to ensure proper capacity is provisioned such that calls are not blocked. All requests for such assurances have been ignored and calls are starting to fail. At the same time, CLECs have terminated relationships with Free Conferencing in advance of this week's deadline to comply with the Order, leaving Free Conferencing with no ability to conduct its business. Free Conferencing is thus left with no choice but to seek this waiver.

II. GOOD CAUSE EXISTS FOR AN EXPEDITED GRANT OF THIS WAIVER AND WILL, IN TURN, ADVANCE THE PUBLIC INTEREST

The Commission can waive the requirements of its rules upon a finding of "good cause."

The courts agree:

Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (Northeast Cellular). In addition, the Commission may take into account considerations of hardship, equity, or more effective

implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-28 (D.C. Cir. 2008), *Northeast Cellular*, 897 F.2d at 1166. The party seeking waiver of the Commission's rules bears the burden of demonstrating good cause. *Thomas Radio v. FCC*, 716 F.2d 921, 924 (D.C. Cir. 1983).

Good cause exists here as AT&T and Verizon are already blocking Free Conferencing calls and millions more telephone calls will be blocked. Without action, Free Conferencing will suffer irreparable harm to its business.

Free Conferencing, a provider of free and paid voice application services, devotes enormous resources to creating and supporting a base of more than 5 million registered users and a network capable of handling 3,750,000 conferences per month with as many as 1,000 participants on a single conference. Free Conferencing has over 20,000,000 participants on calls every month and almost 100,000 new registered users every month. It has more than 65 full-time engineers and software developers, more than 45 customer support personnel, a network operations team that operates, monitors, and maintains a network serving 190 countries 24 hours per day 7 days per week. Its users include governmental agencies, non-profits, most of the Fortune 500 companies, small businesses and millions of individual consumers across the country and world.

If Free Conferencing is not granted a waiver until IXCs are willing and able to ensure proper connections with sufficient capacity, millions of calls will fail, undermining the single most important tenet of the Commission and modern telecommunications policy. Free Conferencing expended an incredible amount of time and resources racing to comply with the unrealistic demands of the Order. Now, in complete contrast to the statements made by AT&T on the timing of the transition, and relied on by the Commission, AT&T and other IXCs are not prepared for the transition and are refusing to act in good faith, making it impossible for Free Conferencing to

transition. These circumstances are unique and warrant a waiver of the Order. Without the ability to complete these calls and provide services to its users, Free Conferencing will suffer irreparable harm to its business. Moreover, a waiver will serve the public interest by preventing millions of telephone calls from being dropped or blocked. Thus a waiver for any and all providers that transmit calls to Free Conferencing must be granted until IXCs can provide assurances that all calls will be properly routed.

III. CONCLUSION

Based on the foregoing circumstances, Free Conferencing respectfully requests an expedited grant of this waiver request, action that will advance the public interest, stop the failure of calls and protect a business that is otherwise complying with the Order.

January 7, 2020

Respectfully submitted,

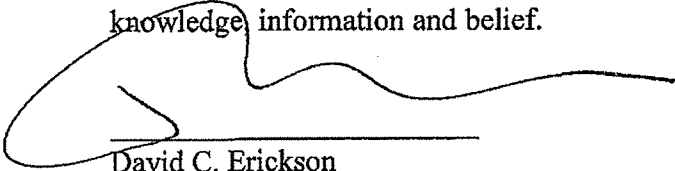
Free Conferencing Corporation

By: /s/ Lauren J. Coppola

Lauren J. Coppola
Robins Kaplan LLP
800 Boylston Street
Suite 2500
Boston, MA 02199
T: 617 267 2300
F: 617 267 8288
lcoppola@robinskaplan.com

DECLARATION

I, David C. Erickson, Chief Executive Officer of Free Conferencing Corporation (the "Company"), do hereby declare under penalties of perjury that I have read the foregoing "Petition for Expedited Waiver by Free Conferencing Corporation of Access Arbitrage Order" and the information contained therein regarding the Company is true and accurate to the best of my knowledge, information and belief.



David C. Erickson
Chief Executive Officer

Dated: 01-07-2020