

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

In the Matter of)	
)	
8YY Access Charge Reform)	WC Docket No. 18-156
)	

REPLY COMMENTS OF INTELIGENT, INC.

Intelligent, Inc. (“Intelligent”), by counsel, files these reply comments in response to the Commission’s *8YY Access Charge Reform Further Notice of Proposed Rulemaking* (“*FNPRM*”), which the Commission adopted in the above-captioned proceeding.¹

Intelligent supports the Commission’s efforts to curb 8YY-related arbitrage committed by a relatively small number of players. Comments in the record make clear, however, that some of the proposals in the *FNPRM*—such as a transition of all 8YY-related charges to bill-and-keep and a capping of database query charges at a rate below the weighted national average—go beyond what is necessary to curb arbitrage and, in the process, would have unintended and harmful consequences to consumers, particularly in rural areas.

Intelligent makes two principal recommendations based on the record before the Commission. First, the Commission should not reduce 8YY originating end office and tandem switching and transport charges to bill-and-keep. Doing so would simply shift the costs of 8YY calls to originating carriers and their customers, an outcome inconsistent with the very purpose of 8YY calling. To the extent the Commission moves forward with a transition to bill-and-keep for some 8YY-related charges, at a minimum it should exclude tandem charges and instead

¹ *8YY Access Charge Reform*, WC Docket No. 18-156, Further Notice of Proposed Rulemaking, FCC 18-76 (rel. June 8, 2018) (*FNPRM*).

subject them to capped rates. Second, and in any event, the Commission should adopt a cap on database query charges based on the National Weighted Average of these charges of \$0.004248, while also limiting the number of queries per call to one. Taking these steps will reduce opportunities for arbitrage while preserving the benefits of toll-free calling to consumers and businesses around the country.

I. THE COMMISSION SHOULD NOT MOVE 8YY-RELATED CHARGES TO BILL-AND-KEEP, PARTICULARLY WITH RESPECT TO 8YY TANDEM SWITCHING AND TRANSPORT CHARGES

Multiple commenters raised concerns that the proposal to move all 8YY-related access charges to bill-and-keep would be an overly-broad reaction to address harms caused by a handful of arbitrageurs. This substantial reversal from the traditional toll-free regime is not necessary to achieve the Commission’s goals. As Windstream, Frontier, and NTCA explained in their joint comments, under bill-and-keep “LECs will be forced to bear the costs of originating 8YY calls and then to bill their subscribers—which include both 8YY and non-8YY callers—to recover such costs,” notwithstanding the fact that the essence of “toll-free” service is payment by the 8XX customer.² The result will be to raise costs on originating carriers, and those costs will likely be passed on to end users in the form of increased rates. As a result, the end users of originating carriers—the parties who are supposed to be the beneficiaries of toll free calling—will end up bearing the burden.

If, despite these risks, the Commission decides to transition 8YY originating access elements to bill-and-keep, it should adopt its alternative proposal to “move 8YY tandem

² *8YY Access Charge Reform*, WC Docket No. 18-156, Comments of Windstream Services, LLC, Frontier Communications Corporation, and NTCA—The Rural Broadband Association at 5 (filed Sept. 4, 2018) (*Windstream et al. Comments*).

switching and transport to bill-and-keep only where the originating carrier also owns the tandem.”³ This approach, although not the *optimal* approach from a consumer welfare perspective (given harms to originating carriers and their customers of moving originating end office 8YY-related charges to bill-and-keep), would at least allow competitive tandem providers, who perform critical call completion functions, to provide their services.

If these tandem charges instead move to bill-and-keep, tandem providers would be deprived of compensation for 8YY-related services altogether, given that they have no end-user customers to whom they can look to recoup costs in a bill-and-keep environment.⁴ Eliminating this compensation would have the follow-on effect of limiting the benefits tandem services provide to the entire public switched network. These benefits include, for example, reducing unlawful robocalls and other fraudulent traffic, and facilitating the industrywide IP transition.⁵

As part of this alternative proposal, the Commission appropriately suggests capping 8YY-related tandem switching and transport mileage as well as tandem switching and transport rates.⁶ Inteliquent previously has suggested two methods for implementing this alternative proposal. First, tandem rates could be benchmarked to those of the incumbent local exchange carrier where the call originates, and the query and end office charges could be set at national

³ *FNPRM* at para. 49.

⁴ See, e.g., *8YY Access Charge Reform*, WC Docket No. 18-156, Comments of AT&T at 6 (filed Sept. 4, 2018) (“Imposing ‘bill-and-keep’ on third-party tandem providers that do not serve the end-user would strand those providers in the middle of the call flow with no customer. That could have major implications for the viability of third-party tandem providers in general, with possible unintended consequences for the overall efficiency of the system.”).

⁵ See *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Comments of Inteliquent at 7-8 (filed July 20, 2018).

⁶ *FNPRM* at para. 49.

average rates.⁷ Second, the Commission could set nationwide average rates and charges for 8YY-related tandem traffic at either (a) \$0.0017, exclusive of nonrecurring and recurring interconnect charges, or (b) \$0.002814, inclusive of nonrecurring and recurring interconnect charges.⁸ As Inteliquent has previously explained, adopting one of the two proposals above, the Commission will prevent excessive dip charges, so-called ‘mileage pumping’ schemes, and excessive end office and tandem charges—all without causing significant disruption to the fundamental toll-free nature of 8YY calls or diminishing competition in the marketplace for tandem and other carrier services.⁹ Inteliquent accordingly agrees with ITTA—The Voice of America’s Broadband Providers (“ITTA”) that adopting a series of caps on tandem charges would “more than adequately address abuses in the 8YY marketplace, including benchmarking abuse and mileage pumping,”¹⁰

Moreover, to the extent that the Commission transitions any 8YY-related charges to bill and keep, it should provide a transition¹¹ of at least four years. This transition is especially important to minimize the harm to smaller companies as they investigate ways to best prepare for reduced revenues. In fact, ITTA explains that “[i]n contrast to the transition period for

⁷ See Letter from Gerard J. Waldron, Counsel to Inteliquent, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, *et al.* at 3 (filed Dec. 21, 2017) (*Inteliquent’s December 21, 2017 Ex Parte*). Inteliquent’s letter of Dec. 21, 2017 provides further detail on how the proposed rates could be calculated, including for rate-of-return and non-rate of return carriers.

⁸ *Id.* As Inteliquent has explained, these proposed rates include tandem usage charges related to tandem switching, tandem termination, tandem facility, and common multiplexing, assuming 10 miles of tandem facility mileage. These rates do not include tandem charges for traffic from rate-of-return carrier end offices.

⁹ *Id.*

¹⁰ See, e.g., *8YY Access Charge Reform*, WC Docket No. 18-156, Comments of ITTA—The Voice of America’s Broadband Providers at 86 (filed Sept. 4, 2018) (*ITTA Comments*).

¹¹ *FNPRM* at paras. 51-53 (proposing a transition).

terminating access charges, here the Commission is proposing to move all tandem switching and transport to bill-and-keep. This would make the *FNPRM*'s already severely-limited proposed three-year duration even more puzzling.”¹² A transition period of four years would also reduce the burden on consumers, because as providers look to their end users to make up lost revenue, costs for consumers, particularly those in rural areas, will also increase. Absent a sufficient transition period, customers would feel immediate effects from these price increases, with little time to adjust to the higher costs.

II. THE COMMISSION SHOULD CAP DATABASE QUERY CHARGES AT THE NATIONAL WEIGHTED AVERAGE OF \$0.004248 AND LIMIT SUCH CHARGES TO ONE PER CALL

Inteliquent agrees with the Commission's concerns regarding “excessive and irrationally priced rates for database query charges.”¹³ Limiting the arbitrage that can stem from these query charges involves two steps. First, a cap on the amount that can be charged for a database query will prevent excessive charges that are wholly unrelated to the actual costs of providing the service. Second, limiting the number of charges to one per call will ensure that there is actually a call completion-related reason that justifies assessing the fee.

In establishing the cap on database query charges, the Commission should establish a rate that provides adequate compensation for the service provided, but is not so high as to permit arbitrage. Inteliquent recommends that the Commission use the National Weighted Average of \$0.004248 (as calculated by Inteliquent and referenced in the *FNPRM*).¹⁴ This modest charge compensates for the services provided. Particularly if query charges are also limited to one per

¹² See, e.g., *ITTA Comments* at 16.

¹³ *FNPRM* at para. 69.

¹⁴ *FNPRM* at para. 74, n. 157.

call, this charge level should foreclose opportunities for arbitrage because such schemes would no longer be profitable.

ITTA, Windstream, Frontier, and NTCA, among others, cited Inteliquent's proposal of \$0.004248 for the query charge as worthy of serious consideration.¹⁵ Commenters point out that various factors can affect the level of query charges, such as "differences in geography, relative subscription levels, and general line loss trends,"¹⁶ and reiterate that higher rates for one component of a call may be offset by lower rates for another component.¹⁷ These factors must be taken into consideration when determining the appropriate cap; otherwise, there is a substantial risk that the cap could be set below cost. For these reasons, a National Weighted Average of \$0.004248 is a reasonable approximation of the cost of performing the database query throughout the country.

Some commenters note that the rate of \$0.0015 advocated by some larger providers is far below the National Weighted Average, and thus the Commission could not rationally impose it

¹⁵ See, e.g., *ITTA Comments* at 6 ("One alternative cap the Commission should consider is the National Weighted Average 8YY database dip query charge of \$0.004248 as calculated by Inteliquent."); *Windstream et al. Comments* at 10 (stating that "[w]hile Windstream, Frontier, and NTCA would not oppose reforms to the database queries, we do not support arbitrarily pointing to a single tariffed rate as the basis for reform," and citing the \$0.004248 rate from *Inteliquent's December 21, 2017 Ex Parte* as an example of a "reform[]" to the database queries").

¹⁶ *Windstream et al. Comments* at 11.

¹⁷ *8YY Access Charge Reform*, WC Docket No. 18-156, Comments of West Telecom Service, LLC at 21 (filed Sept. 4, 2018) (*West Telecom Comments*) (quoting *Inteliquent's December 21, 2017 Ex Parte* "Rate structures between incumbent local exchange carriers trade off non-recurring setup charges, monthly recurring interconnect charges, 8YY query charge, per minute of use switching charges, and per minute per mile transport charges. For example, although some carriers charge a materially higher non-recurring set up charge or monthly recurring interconnect charge, those higher rates typically are offset by a lower per minute of use switching charge. Similarly, the 8YY DIP query charge may be high because the switched per minute of use charge is low, and vice versa.").

upon all providers.¹⁸ Inteliquent agrees with Windstream, Frontier and ITTA that “[s]imply adopting the lowest rate charged by a price cap carrier—a rate roughly one-third that of the average nationwide rate—fails to account for, or even adequately consider, relevant factors influencing the level of database query charges.”¹⁹ While a cap on the dip query rate is certainly justified, providers must be adequately compensated for facilitating the call.

Inteliquent also agrees with comments endorsing the Commission’s proposal to limit the number of database query charges per call to only one.²⁰ As commenters such as ITTA explained, there is no basis to justify more than one database query per call.²¹ CenturyLink likewise correctly stated that “[i]f industry standards and practices are followed, there should only be a need once in an originating 8YY call path to associate the 8YY number dialed with the responsible IXC.”²² The Commission should implement its sensible proposal because it will foreclose opportunities for frivolous and unnecessary charges. Since one database query should be all that is needed to route the call, preventing further query charges will help combat arbitrage. Together, limiting the amount that can be assessed for database query charges to \$0.004248, and restricting the number of charges that may be assessed per call to only one, will combat arbitrage, while ensuring appropriate compensation for legitimate call functions.

¹⁸ See, e.g., *8YY Access Charge Reform*, WC Docket No. 18-156, Comments of Comcast at 6 (filed Sept. 4, 2018) (*Comcast Comments*) (“[T]he national weighted average 8YY database dip query charge is almost three times as high as the rate the Commission proposes.”).

¹⁹ See, e.g., *Windstream et al. Comments* at 11.

²⁰ See FNPRM at para. 77.

²¹ See, e.g., *ITTA Comments* at 6 (“The *FNPRM* seeks comment on whether there is any legitimate reason that an IXC should reasonably be expected to pay for multiple database queries in connection with a single 8YY call. ITTA cannot conjure any.”) (internal citation omitted).

²² *8YY Access Charge Reform*, WC Docket No. 18-156, Comments of CenturyLink at 13 (filed Sept. 4, 2018).

CONCLUSION

Inteliquent supports the Commission's efforts to combat arbitrage in the 8YY access charge context. The Commission's goals can be achieved with a measured approach that forecloses arbitrage opportunities, while preventing unintended harm to consumers. Specifically, Inteliquent respectfully suggests that the Commission should 1) refrain from reducing 8YY originating end office and tandem switching and transport charges to bill-and-keep, or at a minimum exclude tandem charges from the transition to bill-and-keep, and instead cap such charges; and 2) adopt a cap of \$0.004248 for database query charges, while also limiting the number of queries per call to one. This outcome will promote consumer welfare while combatting 8YY-related abuses.

Respectfully submitted,

INTELIQUENT, INC.

By: /s/ Matthew S. DelNero

Matthew S. DelNero
Thomas G. Parisi
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001

Counsel for Inteliquent, Inc.

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