

**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 PUBLIC KNOWLEDGE

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I. INTRODUCTION AND SUMMARY

Public Knowledge submits these Reply Comments in response to the Federal Communications Commission (“FCC” or “Commission”) June 8, 2018 *Further Notice of Proposed Rulemaking* (“FNPRM”) regarding the intercarrier compensation system (“ICC”) for telephone calls made to toll free (“8YY”) numbers.¹

The FNPRM explains that the current ICC system for telephone calls made to 8YY numbers is “rife with opportunities for arbitrage and fraud” as robocallers artificially inflate prices for subscribers.² Due to concerns about alleged abuses in the 8YY ICC regime, the Commission proposed to revise its rules to change incentives leading to these abuses. The record included four categories by which carriers may be exploiting the current ICC regime: (1) “Benchmarking Abuse,” (2) “Mileage Pumping,” (3) “Traffic Pumping,” and (4) Abuse of “Database Queries” costs, as well as “Other Abuses” related to 8YY access charges.³

The Commission’s proposal aims to address these potential abuses in the ICC system. The proposal includes three steps: (1) Transition, over a three-year period, all interstate and intrastate originating end office and tandem switching and transport access charges related to 8YY calls to bill-and-keep; (2) Cap 8YY database query rates nationwide to the lowest rate currently charged by any price cap LEC (\$.0015 per query); and (3) Limit charges by carriers to one database query charge per 8YY call.⁴

While the FNPRM explains its goal is to address fraud and abuse in the 8YY system, the likely harms that will result from switching to bill-and-keep for 8YY calls far outweigh the

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

² *Id.* at 2 ¶ 1.

³ *Id.* at 10-11 ¶¶ 25-29.

⁴ *Id.* at 2 ¶ 3.

benefits of the proposals. The Commission should not move to bill-and-keep because this proposal will harm consumers as well as carriers that serve rural communities, widening the digital divide. Moreover, the Commission has provided little, if any, of its own evidence, data, or cost-benefit analysis to justify its proposals. The abuse and fraud in the 8YY system should be fixed, but there are other solutions besides moving to bill-and-keep that would not be as harmful to consumers, rural carriers, and to the 8YY system as we know it.

II. TRANSITIONING TO BILL-AND-KEEP FOR 8YY CALLS WILL HARM CONSUMERS AND REDUCE ACCESS TO TOLL FREE SERVICES.

The FCC sets the rules for getting and using toll free numbers.⁵ Toll free numbers are telephone numbers with distinct three-digit codes that can be dialed from landlines with no charge to the person placing the call.⁶ Even with advances in communication technology, the demand for 8YY numbers continues to grow.⁷ Toll free numbers are popular because they allow callers to reach the 8YY subscribing service without being charged for a long-distance fee for the call.⁸ Rather the subscriber/owner of the 8YY number pays the interexchange carrier (“IXC”) that connected the call. As a result, 8YY numbers are extremely helpful for businesses because potential customers are more inclined to contact your business if there is no cost associated with dialing.⁹

⁵ Federal Communications Commission, *What is a Toll-Free Number and How Does it Work?*, <https://www.fcc.gov/consumers/guides/what-toll-free-number-and-how-does-it-work>.

⁶ *Id.*

⁷ *FNPRM* at 3 ¶ 6.

⁸ Federal Communications Commission, *supra* note 5.

⁹ *See e.g.*, United World Telecom, *How Do Toll Free Numbers Work*, https://www.uwtcallback.com/call_forwarding/tollfree_numbers/how_it_works.html (last visited Oct. 1, 2018).

When a wireline caller dials an 8YY number, the caller's local exchange carrier ("LEC") carries the call to the LEC's end office switch.¹⁰ From there, the LEC can conduct the database query from the end office switch to the regional service control point ("SCP") to obtain the routing information, or it may route the call to a tandem switch, which may not be owned by the same LEC.¹¹ The LEC may also rely on a third-party tandem provider instead to perform the database query.¹² After the LEC receives the routing information, it routes the call to the IXC, either directly or through an intermediary provider, and then to the 8YY subscriber.¹³ Because database queries can originate from an LEC's end office or a tandem office, tandem providers can also charge the IXC for database queries.¹⁴ 8YY subscribers then pay the cost of originating and routing the 8YY call from the customer to the subscriber.¹⁵ Throughout this whole process, customers obtain the service free of charge.¹⁶

Under the current system, the originating LEC can assess access charges to the IXC that terminates the 8YY call.¹⁷ The amount of access charges depends on the switching and transport rates, including the number of miles of the transported call.¹⁸ As a result, the FNPRM claims that carriers involved in routing 8YY calls to IXCs have incentives to do so in a way that maximizes what they can charge, which in turn raises charges for IXCs and 8YY subscribers.¹⁹ The Commission claims that the current system leads to toll free subscribers being burdened by

¹⁰ *FNPRM* at 7 ¶ 15.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *FNPRM* at 8 ¶ 16.

¹⁵ Comments of Windstream Services, LLC, Frontier Communications Corporation, and NTCA – The Rural Broadband Association, WC Docket No. 18-156, at 4 (filed Sept. 4, 2018) ("Windstream et al. Comments").

¹⁶ *Id.* at 5.

¹⁷ *FNPRM* at 7 ¶ 16.

¹⁸ *Id.* at 7-8 ¶ 16.

¹⁹ *Id.* at 8 ¶ 17.

uncontrollable fraudulent calls in order to inflate the associated charges to IXC's.²⁰ As a solution, the Commission proposes to move originating 8YY end office, tandem switching, and transport access to bill-and-keep in order to "eliminate wasteful arbitrage."²¹

The Commission's claim that the transition to bill-and-keep for 8YY calls "will ultimately benefit consumers," is incorrect and unsupported by the record.²² Instead, the proposed changes will allow IXC's to "double dip" by charging 8YY subscribers fees to own an 8YY number as well as charging LEC's that route the 8YY calls. The result would be a windfall for IXC's and will cause LEC's to be burdened by the cost of 8YY calls. This means that LEC's will recover these costs from their consumers, which include 8YY callers. The purpose of toll free numbers is that 8YY subscribers pay for the service in order for their callers to be connected toll free, but if these costs are passed on to consumers, they will ultimately make fewer 8YY calls,²³ which will have a chilling effect of reducing access to toll free services.

8YY numbers are useful and may even be critical in some instances, such as toll free crisis hotlines. However, a move to bill-and-keep will harm consumers trying to access these services. It will disproportionately help IXC's by shifting the cost of originating 8YY calls from the 8YY subscriber to callers.²⁴ The proposed changes will completely change how consumers view 8YY numbers. Under a bill-and-keep framework, consumers will have to pay to use toll free service—essentially an oxymoron. Moreover, this proposed change may also affect

²⁰ *Id.* at 12 ¶ 32.

²¹ *Id.* at 12-13 ¶¶ 33, 35.

²² *Id.* at 14 ¶ 42.

²³ Windstream et al. Comments at 2-3.

²⁴ *Id.* at 4.

subscribers' liability under consumer protection laws if they market their numbers as "toll free" when in reality consumers will have to pay for the service.²⁵

III. TRANSITIONING TO BILL-AND-KEEP WILL BURDEN RURAL PROVIDERS AND RISKS WIDENING THE DIGITAL DIVIDE.

The Commission should take special care not to harm providers serving rural communities, and the bill-and-keep framework runs the risk of harming these rural providers. In Chairman Pai's first speech as Chairman of the FCC, he highlighted the digital divide in this country, stating: "I believe one of our core priorities going forward should be to close that divide . . . [w]e must work to bring the benefits of the digital age to all Americans."²⁶ Throughout his time as Commissioner Chairman Pai has reiterated this idea.²⁷

Congress has also shown its dedication to ensuring rural Americans do not get left behind. For example, the bipartisan *Rural Reasonable and Comparable Wireless Access Act of 2018*, which passed through the Senate Committee on Commerce, Science, and Transportation, "directs the FCC to develop regulations that would establish a national standard for determining whether mobile service, mobile data service, and broadband Internet service in rural areas are

²⁵ *Id.* at 3.

²⁶ Ajit Pai, Chairman, Federal Communications Commission, Remarks to the Federal Communications Commission (Jan. 24, 2017).

²⁷ See Connect America Fund, *et al.*, WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No. 07-135, CC Docket No. 01-92, *Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking*, Statement of Chairman Ajit Pai, FCC 18-29, at 106 (rel. March 23, 2018) ("But too many rural Americans have waited long enough for digital opportunity to countenance yet further delay."); See also Testimony of Ajit Pai, Chairman, Federal Communications Commission, U.S. Senate Committee on Commerce, Science, and Transportation, Hearing on "Oversight of the Federal Communications Commission" (Aug. 16, 2018) ("From the beginning of my tenure as head of the agency, I've made clear that my top priority would be to close the digital divide."); Ajit Pai, Chairman, Federal Communications Commission, Remarks at the Maine Heritage Policy Center (Sept. 14, 2018) ("Now, I'm not saying that broadband will solve all of rural America's problems, but connectivity can help . . . That's why my mission and the FCC's top priority is closing the digital divide and maximizing the benefits of broadband for the American people.").

reasonably comparable to the services provided in urban areas.”²⁸ If rural development is truly a motivating factor behind the Commission and Congress’ policy choices, the FCC should reject the FNPRM’s proposal to move to bill-and-keep for 8YY calls.

The Commission should consider the harmful effects of a bill-and-keep system on rural local exchange carriers (“RLECs”). Under the proposed changes, RLECs would not receive any originating access compensation from IXC’s using their networks for 8YY service, and in many instances RLECs would have to pay database dip charges for 8YY calls.²⁹ As a result, RLECs would have to charge their customers indirectly for these 8YY services.³⁰ While the bill-and-keep framework will largely benefit dominant IXC’s, the roughly 1,000 RLECs will feel the effect of at least \$40-\$45 million of their originating 8YY access charge revenues reduced to zero.³¹ The Commission should seriously consider WTA’s warning that “[a]t some point, if one keeps on increasing the costs and reducing the revenues of already struggling small RLECs, they will no longer be able to meet the broadband needs of their rural customers.”³² Broadband availability is already scarce in rural communities, and a move to bill-and-keep will likely increase the digital divide.

IV. THE RECORD IS INSUFFICIENT TO SUPPORT OVERHAULING THE CURRENT 8YY SYSTEM WITH BILL-AND-KEEP.

There is not enough evidence in the Commission’s record to overhaul the current 8YY system. The evidence in the record is severely limited and almost exclusively provided by AT&T

²⁸ Rural Reasonable and Comparable Wireless Access Act of 2018, S.2418, 115th Cong. (2018) (Cong. Research Serv. Summary), <https://www.congress.gov/bill/115th-congress/senate-bill/2418>.

²⁹ Comments of WTA – Advocates for Rural Broadband, WC Docket No. 18-156, at 2 (filed Sept. 4, 2018) (“WTA Comments”).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 8.

(and in one section echoed by Verizon and Sprint).³³ Before moving forward, the Commission should conduct a data collection from the major IXC's to produce all relevant information they have regarding their claims in this proceeding that have informed the proposals in the FNPRM and put that information in the public record. Under the current model, dominant providers have the relevant data and can selectively decide what to put in the record. As a result, the public cannot challenge the accuracy of the information without access to it, nor can the Commission's new Office of Economics and Analytics conduct appropriate and necessary analysis to determine the possible benefits and likely costs of the FNPRM's proposal. While Chairman Pai claims that the proposed changes "will mean lower prices for consumers and fewer annoyances in our daily lives,"³⁴ the record lacks an explanation of how this would occur. In reality, the new system would likely only decrease robocalls for 8YY subscribers, not residential telephone consumers. Overall, the Commission should not move forward with these proposed changes until the data and evidence it used become available for public scrutiny.

There is consensus that any fraud or arbitrage that is occurring should be fixed.³⁵ However, there are other solutions to combat these issues. It is not clear why the solution has to be as drastic as a move to a bill-and-keep framework. 8YY arbitrage should be addressed, but not in a way that mounts to an unjustified wealth transfer from RLECs to IXC's, deepens the digital divide for rural communities, and ultimately increases costs on consumers. There are other paths forward. The record includes proposals for alternative, less drastic methods. As Windstream

³³ *FNPRM* at 8-9 ¶ 20.

³⁴ *Id.* at 47.

³⁵ See e.g., Dissenting Statement of Commissioner Jessica Rosenworcel, *FNPRM* at 50 ("Over time, this system has been the subject of gaming and abuse . . . [t]his is wasteful. It deserves to be fixed."); Windstream et al. Comments at 1 ("Windstream, Frontier, and NTCA support the Commission's ongoing efforts to address fraud and abuse in the intercarrier compensation system."); WTA Comments at 10 ("WTA supports targeted Commission action to punish and deter fraud and arbitrage abuses against 8YY services and service providers . . .").

Services, LLC, Frontier Communications Corporation, and NTCA – The Rural Broadband Association suggested, the Commission can adopt measures to target only the handful of LECs involved in fraudulent 8YY schemes, such as traffic pumping.³⁶ As WTA suggested, the Commission could initiate enforcement actions against the limited number of LECs engaging in fraud rather than targeting thousands of innocent carriers.³⁷ Inteliquent, Inc. proposed benchmarking tandem rates to the incumbent LEC where the call originates and setting the query and end-office charges at the national average rates, or setting nationwide average rates and charges for 8YY-related tandem traffic.³⁸ Moreover, the Commission can eliminate the problem of 8YY arbitrage through investigating fraud on a case-by-case basis, or IXC's can use the normal complaint process if they detect fraud. Overall, there are many other innovative and simpler ways for the Commission to combat 8YY fraud rather than moving to a bill-and-keep system that will upend the toll free system. The focus must be on targeting the fraud, not on a solution that will ultimately harm consumers.

V. CONCLUSION

For the foregoing reasons, the Commission should not move forward with its proposal to transition to bill-and-keep for 8YY calls.

Respectfully submitted,

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³⁶ Windstream et al. Comments at 10.

³⁷ WTA Comments at 7.

³⁸ *Ex parte* submission of Inteliquent, Inc., WC Docket Nos. 10-90, 07-135, CC Docket No. 01-92 (filed Dec. 21, 2017).