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 AT&T

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TABLE OF CONTENTS

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AT&T Inc. ("AT&T"), on behalf of itself and its affiliates, respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking released by the Federal Communications Commission ("Commission") on June 8, 2018, regarding 8YY access charge reform.[1]

INTRODUCTION AND SUMMARY

There is broad support in the comments for the *Notice*'s proposal to transition originating access charges for 8YY calls to a bill-and-keep regime. Many commenters, including LECs, IXCs, 8YY subscribers (represented by Ad Hoc), and the Toll Free Number Administrator, Somos, agree that the current system inherently facilitates arbitrage and fraud, and that such abuses are growing. Many recognize that the only way to truly eliminate any ability to exploit these arbitrage opportunities is to adopt a system of bill-and-keep that eliminates most intercarrier payments altogether. Indeed, these reforms are so long overdue that a number of commenters agree that the Commission should significantly shorten (or even eliminate) its proposed multi-year, three-step

[1] Further Notice of Proposed Rulemaking, *8YY Access Charge Reform*, WC Docket Nos. 18-156, FCC 18-76 (released June 8, 2018) ("*Notice*").

transition to bill-and-keep. Although a few commenters argue that the Commission should not adopt bill-and-keep at all, their arguments have no merit, as explained below.

As AT&T previously explained, CLECs acting as third-party tandem providers are responsible for some of today's 8YY originating access charge abuses. Many commenters echo AT&T's concerns, however, that third-party tandem services cannot be transitioned to a straight "bill-and-keep" regime, given that these providers have no end-user customers. As AT&T has argued, the Commission should address these issues by adopting the direct interconnection proposal that AT&T recently put forward for both terminating and originating access in the companion *Access Arbitrage* proceeding. AT&T's proposal is the only proposal on the table that would ensure that third-party tandem providers always have a customer (thus meeting these commenters' concerns) while *also* eliminating the opportunities for arbitrage and fraud. The Commission should not adopt any version of its "alternative" tandem proposal, which would continue to force IXCs to pay intercarrier tandem charges and thereby protect significant portions of today's arbitrage.

There is even broader support for the Commission's proposal to cap the rates for 8YY database dip charges. As the commenters recognize, database dip charges present the same arbitrage concern as per-minute rates, because the calling party's originating carrier provides the database dip service but the calling party does not pay the IXC for the call. Many commenters support the Commission's proposal to cap such rates at $0.0015 per database dip or "query" as an interim measure pending the further transition to bill-and-keep. As explained below, the Commission should not adopt a higher cap, such as the national average, because such a cap would simply lock in the excessive, unregulated rates that many carriers charge today. In addition, there

is overwhelming support in the record for a rule that would prevent LECs from charging IXCs more than one dip charge per call.

Finally, a number of commenters support completion of the full transition of *all* originating access charges to a bill-and-keep system. As these commenters note, the Commission put the industry on notice in 2011 that such a transition would occur, and further postponement delays the public interest benefits of bill-and-keep and, indeed, necessitates the creation of two simultaneous, inconsistent regulatory regimes for originating access. Rather than limiting this proceeding to 8YY calls, the Commission should complete the transition of all originating traffic to bill-and-keep.

I. THE COMMISSION SHOULD ADOPT BILL-AND-KEEP ON THE ORIGINATING END OF 8YY CALLS, SUBJECT TO AT&T'S DIRECT INTERCONNECTION PROPOSAL.

There is broad support for the Commission's proposal to transition originating access charges for 8YY calls to bill-and-keep. Although some commenters argue that the Commission should retain access charges, those arguments lack merit, as explained below. The commenters also support a more rapid transition than the three-step transition proposed in the *Notice*.

With respect to third-party tandem services—which account for some of today's abuses—a number of commenters echo AT&T's concerns that such providers should not be transitioned to straight "bill-and-keep," given that such providers have no end-user customer. Instead, the Commission should deal with those situations by combining a bill-and-keep approach with the direct interconnection proposal that AT&T recently put forward in the companion *Access Arbitrage* proceeding.

A. The Comments Broadly Support A Prompt Transition To Bill-And-Keep.

There is broad support for the Commission's fundamental conclusions that arbitrage and fraud have become rampant under the current system for 8YY originating access, and that the best

solution is to replace that system with a bill-and-keep rule.[2] The current system inherently facilitates arbitrage and fraud because of a basic mismatch in pricing signals: as Ad Hoc explains (at 4), "the party who *chooses* the product does not *pay* for it and thus creates no competitive market pressure on the provider."[3] Many commenters agree that, as a result of these inherent flaws, arbitrage and fraud in connection with 8YY calling have become widespread and are growing.[4]

Equally important, many commenters recognize that bill-and-keep would be the best way to eliminate these abuses. As Ad Hoc aptly sums it up: "The legitimacy of the use of bill and keep as a mechanism for access traffic has not been the subject of serious debate for quite some time.

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[2] *See, e.g.*, Comments of GCI Communication Corp., *8YY Access Charge Reform*, WC Docket No. 18-156, at 8 (Sept. 4, 2018) ("GCI Comments"); Comments of the Ad Hoc Telecommunications Users Committee, *8YY Access Charge Reform*, WC Docket No. 18-156, at 5 (Sept. 4, 2018) ("Ad Hoc Comments"); Comments of Verizon, *8YY Access Charge Reform*, WC Docket No. 18-156, at 1-2 (Sept. 4, 2018) ("Verizon Comments"); Comments of CenturyLink, *8YY Access Charge Reform*, WC Docket No. 18-156, at 8 (Sept. 4, 2018) ("CenturyLink Comments"); Comments of Comcast Corporation, *8YY Access Charge Reform*, WC Docket No. 18-156, at 4-5 (Sept. 4, 2018) ("Comcast Comments").

[3] *See also* Ad Hoc Comments at 4 ("Because the choosing party has no incentive to select the provider with the lowest access charges, there is no competitive pressure on those charges"); GCI Comments at 7 ("IXCs can choose to offer service in areas without excessive originating access charges, but IXCs cannot do that for 8YY traffic. They must get traffic to their 8YY customers, even if that traffic originates in areas with high originating access charges").

[4] *See, e.g.*, Verizon Comments at 2 ("The disparity between terminating access (which has transitioned to bill-and-keep) and originating access has fueled uneconomic arbitrage schemes, leading to harassing calls to 8YY customers, devaluation of 8YY services, and many intercarrier compensation disputes"); Ad Hoc Comments at 4 ("there are powerful incentives for unscrupulous actors to take advantage of this broken market by generating traffic to 8YY numbers for no purpose other than to inflate the access charge revenues that are ultimately paid by toll free service customers"); CenturyLink Comments at 4 ("CenturyLink generally concurs in the fundamental conclusion of the *NPRM* that a variety of different forms of arbitrage and fraud have become prevalent in the ICC regime currently applicable to 8YY traffic"); Reply Comments of Somos, Inc., *8YY Access Charge Reform*, WC Docket No. 18-156, at 2 (Sept. 4, 2018) ("Somos Comments") ("high 8YY originating traffic costs are, in part, responsible for the traffic pumping in Toll-Free as higher rates always attract bad actors").

It is economically [rational], cost-based, in keeping with Commission policy, and it will put an immediate stop to the traffic pumping problem that is plaguing the industry."[5] And as others note, bill-and-keep would also encourage the transition to next-generation IP networks.[6]

The comments also provide strong evidence that bill-and-keep will not have any negative impact on legitimate 8YY calling. Notably, the companies that rely on 8YY numbers to promote their businesses—represented here by Ad Hoc—strongly *support* bill-and-keep.[7] As Ad Hoc makes clear, the current access charge regime causes far more harm, in the form of fraud and arbitrage, than can be justified by any subsidy to local service inherent in access charges.[8] Indeed, as Ad Hoc explains, "the unnecessary and uneconomic expenses incurred by toll free subscribers go beyond the per minute charges associated with usage generated by traffic pumpers," and also "include the costs of increased network facilities on the toll free subscriber's end of the call and increased call center capacity and expenses."[9] In short, the companies that want their customers

[5] Ad Hoc Comments at 5; *see also* GCI Comments at 8 ("The Commission has already made the decision that bill-and-keep fosters more competition, is simpler to administer, and prevents arbitrage and marketplace distortions," citing *Transformation Order* ¶¶ 742-43, 745, 752); Verizon Comments at 1-2 ("Quickly moving originating access charges to bill-and-keep and reducing per-call 8YY database query charges would eliminate financial incentives fueling the schemes [of arbitrage and fraud]"); CenturyLink Comments at 8 (end office charges should go to bill and keep for 8YY traffic); Comcast Comments at 3-4 (bill and keep would eliminate arbitrage opportunities).

[6] *See, e.g.*, Comcast Comments at 4-5 (noting that "[t]he additional consumer benefits that the completion of the IP transition would produce – including facilitating Nationwide Number Portability, authenticating calls via SHAKEN/STIR, and making interconnection more efficient and cost-effective – have been well-documented").

[7] *See* Ad Hoc Comments at 8; *see also id*. at 3 ("Ad Hoc members are also some of the country's largest users of toll free service and therefore have a substantial stake in ensuring that the Commission's rules and policies prevent fraudulent activity by unscrupulous network service providers and discourage uneconomic 'traffic pumping' to toll free numbers").

[8] *Id.* at 8 (8YY customers are the parties that are "harmed the *most* by perpetuation of the existing access charge plan").

[9] *Id*.

to call them using 8YY numbers clearly believe that bill-and-keep will not reduce the number of *legitimate* 8YY calls.[10]

Nonetheless, some parties oppose any change to bill-and-keep for originating 8YY calls. These commenters' objections fall into four categories; none have merit.

First, some commenters argue that the Commission could better address fraud and abuse by retaining all access charges and simply targeting and punishing the abusive practices.[11] As AT&T has explained, experience has shown time and again that *ex ante* prohibitions will not deter bad actors from pursuing traffic-pumping or other arbitrage schemes, and the result of any such system will inevitably be extensive *ex post* litigation and billing disputes.[12] In addition, the alternative rules these commenters propose—such as requiring CLECs to benchmark access rates to the locality where the call originated—would often be impractical and unworkable as a matter of day-to-day implementation.[13]

Second, other commenters try to argue that the access charge system is not actually the source or cause of the arbitrage or abuse. These arguments—that the calling party is not a cost-

[10] Notably, Somos, the neutral Toll Free Number Administrator, also believes the current access charge regime is harming toll-free number usage, although it takes no position on bill-and-keep. *See* Somos Comments at 1-2 ("The industry is concerned that the long-term effect of this fraudulent use of Toll-Free will drive up the cost of, and users away from, Toll-Free service").

[11] *See, e.g.*, Comments of ITTA – The Voice of America's Broadband Providers, *8YY Access Charge Reform*, WC Docket No. 18-156, at 4 (Sept. 4, 2018) ("ITTA Comments"); Comments of West Telecom Services, LLC, *8YY Access Charge Reform*, WC Docket No. 18-156, at 2, 10-13 (Sept. 4, 2018) ("West Comments"); Comments of The Nebraska Rural Independent Companies, *8YY Access Charge Reform*, WC Docket No. 18-156, at 6-8 (Sept. 4, 2018) ("NRIC Comments").

[12] *See, e.g.*, Verizon Comments at 2 ("Setting rates at bill-and-keep eliminates the financial arbitrage incentives better than targeted measures").

[13] *See, e.g.*, Comments of Teliax, Inc. and Peerless Network, Inc., *8YY Access Charge Reform*, WC Docket No. 18-156, at 12 (Sept. 4, 2018) ("Teliax Comments") (noting that it would be too difficult to determine where an 8YY call originated).

causer, that IXCs are actually driving the arbitrage, and that "options exist" for IXCs if they do not like the originating access charges they are paying—are completely counter to the facts.[14] Indeed, one of these parties (ITTA) explains why when it concedes (at 8) that "the choice to utilize the originating carrier's network to initiate a call is made exclusively by the caller by exercising his choice to place the 8YY call in the first instance." Yes, precisely: the fact that the calling party chooses the LEC but not the IXC, and the IXC has no choice but to pay the LEC's charges to complete the call, is what *inherently* creates the opportunity for arbitrage and fraud.[15] And the solution is a bill-and-keep rule, under which the LEC would recover its costs from its end user, which would subject those charges to competition, rather than through intercarrier charges.[16]

Third, yet other commenters claim that bill-and keep would be improper for 8YY calls because it would mean such calls are no longer "free."[17] This is nonsense. As the *Notice* itself

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[14] *See, e.g.*, NRIC Comments at 9-10 (suggesting that "options exist for that IXC to respond to alleged arbitrage"); *id*. at 5 (bill-and-keep "cannot possibly comply with common sense and rational cost causation principles (*i.e.*, in the absence of the 8YY service ordered by the IXC, no originating exchange access related to that service could be made)"); West Comments at 3-6, 14 & n.13, 22 (suggesting that IXCs are in fact driving the arbitrage); ITTA Comments at 8-11.

[15] GCI Comments at 7 ("IXCs can choose to offer service in areas without excessive originating access charges, but IXCs cannot do that for 8YY traffic. They must get traffic to their 8YY customers, even if that traffic originates in areas with high originating access charges"). For the same reason, contrary to Charter's contention, the calling party is one of the two cost-causers of an 8YY call and properly bears the costs of the local service. *Notice* ¶ 39; *Transformation Order* ¶¶ 737, 744; *cf*. Comments of Charter Communications, Inc., *8YY Access Charge Reform*, WC Docket No. 18-156, at 4 (Sept. 4, 2018) ("Charter Comments").

[16] The notion that bill-and-keep would improperly "subsidize" 8YY calling is also backwards. *See* Charter Comments at 4; West Comments at 23. Access charges have always existed to subsidize local service. *See, e.g.*, GCI Comments at 6 ("originating access charges" are "implicit subsidies to the LECs that assess them").

[17] ITTA Comments at 7, 9-10; Teliax Comments at 30-31; West Comments at 23; NRIC Comments at 15; Charter Comments at 2-3; Comments of Windstream Services, LLC, Frontier Communications Corporation, and NTCA-The Rural Broadband Association, *8YY Access Charge Reform*, WC Docket No. 18-156, at 2-6 (Sept. 4, 2018) ("Windstream Comments").

explains, in a *toll*-free call, the customer pays no "toll"—*i.e.*, no long-distance charge. Under a bill-and-keep system, that would remain true.[18] Here again, one of these commenters (here, Charter) concedes, "[t]he average customer considers 8YY calls to be 'free,' generally, *other than the cost of local service*."[19] Bill-and-keep does not change that: the end user will continue to pay the cost of local service and will pay no toll charge for long-distance service.[20] The fact that bill-and-keep may shift some incremental local network costs to end-users is neither relevant nor unprecedented; the Commission has been steadily shifting access costs from IXCs to end-users for decades,[21] but no one would claim that any of these changes had anything to do with whether 8YY calls were toll-free.[22]

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[18] *Notice* ¶ 92 ("Under our proposal, 8YY calls will remain 'toll free' because originating callers will not be charged for the long-distance portion of the call").

[19] Charter Comments at 3 (emphasis added). In that regard, Windstream's claim (at 2) that "the 8YY caller does not pay for the cost of originating and routing 8YY calls—the 8YY subscriber does" in incorrect; the calling party does pay (and has always paid) the cost of *originating* the call over the local network.

[20] *See also* Ad Hoc Comments at 6 (8YY calls will remain toll free, and "despite multiple opportunities over many years to provide evidence to support their concerns, opponents have failed to present any evidence that such harm will occur (and, to Ad Hoc's knowledge, no party has claimed that it has plans to separately charge callers for the costs associated with 8YY originating access)").

[21] For example, the Commission shifted most common line costs over time from intercarrier charges to end-user charges. *See also* Ad Hoc Comments at 5 ("the FCC has worked to remove implicit subsidies from access charges since it established its first access charge regime in 1984").

[22] Several commenters suggest that bill-and-keep would open 8YY subscribers to charges of false advertising before the FTC or truth-in-billing claims before the FCC. *See, e.g.*, Teliax Comments at 30-31; Windstream Comments at 6; Comments of WTA – Advocates for Rural Broadband, *8YY Access Charge Reform*, WC Docket No. 18-156, at 2 (Sept. 4, 2018) ("WTA Comments"). None of these commenters offers any basis for such a claim; 8YY calls are advertised as toll-free, and under bill-and-keep, 8YY calls will continue to carry no toll. Indeed, under these commenters' theory, wireless customers (who have always understood that they pay for originating minutes) could have brought such claims at any time over the last two decades. *See* Ad Hoc Comments at 6 ("[c]onsumers routinely make 8YY calls over their wireless devices with no cries of fraudulent representation or harm").

Fourth, NRIC suggests that the Commission's legal authority to adopt bill-and-keep for originating traffic has not been established.[23] That is incorrect. Petitioners in *In re FCC 11-161* specifically argued that the Commission had no authority under Section 251(b)(5) to cap or regulate originating access charges.[24] The FCC argued in response that "[i]f § 251(b)(5) authorizes arrangements for reciprocal compensation involving transport and termination, the omission of origination charges must have meant that LECs are *unable to charge access fees for origination*."[25] The Tenth Circuit held that "the FCC's interpretation reflects a reasonable approach."[26] Accordingly, the Commission has ample authority to include originating access in its end-state bill-and-keep regime.[27]

Finally, there is striking support in the comments for a shorter transition than the three-year transition proposed in the *Notice*. As Verizon notes (at 2), "[e]ven if the Commission were

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[23] *See* NRIC Comments at 10-12.

[24] *See In re FCC 11-161*, 753 F.3d 1015, 1153 (10th Cir. 2014).

[25] *Id*. at 1123 (emphasis added) (citing *Transformation Order* ¶ 1042).

[26] *Id*. (the "omission" of origination from Section 251(b)(5) "could suggest that Congress intended to exclude 'origination' from the duty to provide compensation. Because the FCC's interpretation of § 251(b)(5) is reasonable, it is entitled to deference under *Chevron.* Thus, we reject the Petitioners' challenge to FCC regulation of origination charges").

[27] *See also* CenturyLink Comments at 20 (Commission "clearly possesses ample legal authority" to apply bill-and-keep to many originating access arrangements). NRIC (at 11 & n.39) points to a passage later in the opinion, in which the court declined to address a more specific claim as to why the "prohibition on origination charges applies where the originating LEC receives no further compensation from its end-user." *In re FCC 11-161*, 753 F.3d at 1124. The Commission merely capped originating charges in the *Transformation Order*; it did not prohibit any originating charges in any circumstances, much less "where the originating LEC receives no further compensation from its end-user." Accordingly, this more specific challenge was "unripe," *id*., but that holding does not call into question the court's more fundamental holding that Section 251(b)(5) supports an extension of bill-and-keep to originating charges. In all events, NRIC has not explained on what grounds it could claim a statutory right to intercarrier charges, as opposed to end-user charges. *Transformation Order* ¶ 757 (right to recover costs "does not entitle each carrier to recover those costs from another carrier, so long as it can recover those costs from its own end users and explicit universal service support where necessary").

to move quickly and adopt next year its proposed three-year transition, 8YY originating access rates would not be at bill-and-keep until 2022." AT&T advocated a two-step transition, but Ad Hoc (at 7-8) asks for immediate bill-and-keep, and Verizon (at 3) asks for "one year (or less)." The commenters seeking longer transitions (such as six years) provide no good reason for a further delay.[28] The Commission first indicated its intention to move originating access charges to bill-and-keep in the *Transformation Order* in 2011, seven years ago.[29] There has already been an enormous delay in dealing with the follow-on elements of the transition to bill-and-keep, and carriers have had many years to prepare themselves for bill-and-keep for originating access.[30] The Commission should shorten its proposed transition.[31]

[28] *See, e.g.*, Charter Comments at 7.

[29] *See* Ad Hoc Comments at 7 ("The Commission originally proposed this change seven years ago in the *Transformation Order* and proposed doing so in a single step, not over a three-year transition period").

[30] *See* Ad Hoc Comments at 1-2 ("[i]n light of the multi-year delay in implementing those reductions due to inaction by prior Commissions, Ad Hoc urges this Commission to make the revised rules effective immediately or, at a minimum, in time for the 2019 annual access filing rather than further delaying relief for a three-year transition period as proposed in the NPRM"); *see also id*. at 8 ("Adopting any delay or deferral of a bill and keep regime will simply allow perpetrators of fraud and traffic pumping to eke out another three years of illicit revenues. The Commission should instead foreclose the fraudulent revenue opportunity immediately").

[31] Teliax continues to complain that IXCs sometimes withhold payment for access charges that have been billed improperly. *See* Teliax Comments at 7-10. AT&T is one of the very largest payors of switched access service, and it has fully complied with the statute and the Commission's rules. Where a LEC has properly tariffed, provided, and billed rates consistent with the Commission's rules, or if AT&T has negotiated a commercial agreement with which the service provider has complied, AT&T pays the billed charges. However, when a LEC has violated its tariffs or the Commission's rules, then AT&T properly disputes the charges, pays any undisputed amounts, and in some cases withholds disputed amounts pending judicial resolution of the dispute. AT&T's policy on these issues is entirely consistent with the Communications Act, the Commission's rules and orders, and the filed tariff doctrine under well-settled law. *See* Reply Comments of AT&T On CenturyLink Petition For Declaratory Ruling, at 15-22, WC Docket No. 10-90, *et al*. (filed July 3, 2018).

B. The Commission Should Deal With Third-Party Tandem Charges By Adopting AT&T's Interconnection Proposal.

Many commenters recognize that there are legitimate concerns about how to treat third-party tandem services under a bill-and-keep regime. For example, as CenturyLink notes (at 7-8), "the underlying rationale for bill-and-keep (*i.e.*, that a provider's end users should ultimately bear the network costs) does not carry-over cleanly to intermediate services" like third-party tandem services. Third-party tandem providers have no end user, and therefore, as AT&T previously explained, applying "bill-and-keep" to such providers (as the *Notice* proposes) would strand such providers in the middle of the call flow with no customer.[32]

The best solution to these commenters' concerns is to adopt AT&T's interconnection proposal. Under AT&T's proposal, the Commission would clarify that, in situations where the IXC is financially responsible for calls to or from a LEC or CMRS carrier, the IXC has the right to choose to directly connect with the LEC's or CMRS carrier's end office (or the equivalent) or to utilize the intermediate access provider—based upon justifiable transport costs and the IXC's routing and economic preferences. Equally important, if the IXC requests direct connection with the LEC or CMRS carrier, and that request is denied, the Commission's rules would clarify that the financial responsibility for delivering and terminating that traffic would shift to the LEC or CMRS carrier. This rule would best fulfill the Commission's stated principle that "each carrier should be responsible for the costs of the parts of the call path which it has discretion to choose."[33] And, AT&T's interconnection proposal is the only proposal on the table that would *both* (1)

[32] *See also* West Comments at 6-8; Teliax Comments at 25.

[33] *Notice* ¶ 34.

address all commenters' legitimate concerns about ensuring that a third-party tandem provider will be paid for its services but *also* (2) eliminate the opportunities for arbitrage and fraud.[34]

Most commenters advocate some form of the Commission's "alternative" proposal, while arguing for different variations of mileage or other rate caps.[35] The key point, however, is that all variations of the "alternative" proposal would retain all or almost all third-party tandem charges as intercarrier charges. As AT&T and others have shown, some of the fraud and arbitrage today occurs in connection with third-party CLEC tandem charges.[36] Therefore, leaving all such charges intact, even if capped, would perpetuate that fraud and arbitrage (and that this rulemaking was intended to address). The Commission should adopt AT&T's interconnection proposal, rather than any form of the "alternative" tandem proposal.[37]

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[34] Several commenters, in advocating other proposals, articulate *principles* that are similar to AT&T's proposal and that would be better implemented via AT&T's more holistic interconnection proposal. For example, GCI, in proposing a rule for Alaska (where there are no tandems), argues that "[i]f the carrier refuses to offer direct interconnection to a requesting carrier at the default network edge [*i.e.*, the end office], then it may not charge originating transport to the requesting carrier to any point outside of its local service area for that exchange." GCI Comments at 10. *See also* Comcast Comments at 2 ("Comcast agrees with the Commission that compensation for all originating 8YY end office, tandem switching, and transport access charges should be phased down to bill-and-keep *whenever the originating service provider controls the call path to the appropriate IXC*" (emphasis added); Comments of NCTA – The Internet & Television Association, *8YY Access Charge Reform*, WC Docket No. 18-156, at 4 (Sept. 4, 2018) ("NCTA Comments") ("Where the originating access provider has control of the choice of call path and chooses to route traffic through a tandem, that provider should be responsible for the costs of that choice").

[35] *See, e.g.*, CenturyLink at 8-10; ITTA at 14-15; *see also* Teliax at 15 (arguing that the Commission has not produced statistically valid traffic studies that would support mileage caps).

[36] *See, e.g.*, Comments of AT&T, *8YY Access Charge Reform*, WC Docket No. 18-156, at 4-7 (Sept. 4, 2018) ("AT&T Comments").

[37] AT&T's interconnection proposal has the added benefit of making difficult decisions about how to design and justify rules such as a mileage cap unnecessary.

CenturyLink makes the more extreme argument that all tandem charges be fully retained, so as to maintain perfect parity among all carriers, with no disparities between carriers as to the network edge.[38] AT&T's interconnection proposal, however, establishes the same sort of parity: each LEC can choose for itself whether it wants to offer a direct connection or whether it would rather pay another intermediate carrier to deliver traffic at a different point. Notably, CenturyLink's tandem proposal for originating 8YY traffic, which would protect a significant portions of today's arbitrage, is inexplicably at odds with its own interconnection proposal for *terminating* access stimulation traffic, which is much more similar to AT&T's interconnection proposal than what CenturyLink is proposing here.[39] As AT&T has shown, AT&T's interconnection proposal would apply equally effectively in the context of originating traffic.[40]

II. THE COMMENTS BROADLY SUPPORT RULES LIMITING DATABASE QUERY CHARGES FOR 8YY CALLS.

The comments also broadly support reform of database dip charges. As the commenters recognize, database dip charges present the same arbitrage issues as originating access charges. As CenturyLink explains (at 6),"[g]iven that the originating carrier who hires the 8YY database query service provider does not pay for the query charges, uneconomic hiring decisions and relationships have been established." This dynamic creates the same opportunities for fraud and arbitrage that we see with originating 8YY charges: "the IXC offering the toll-free service has no choice but to accept that charge at the LEC's tariffed rate."[41]

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[38] CenturyLink Comments at 10.

[39] *See Ex Parte* Letter to Marlene H. Dortch, Secretary, FCC, from Timothy M. Boucher, CenturyLink, CC Docket No. 01-92, *et. al.* (May 21, 2018) ("*CenturyLink Direct Connect Proposal*").

[40] *See* Comments of AT&T, *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, at 21-24 (filed July 20, 2018).

[41] Verizon Comments at 4.

Accordingly, many commenters support a nationwide cap on database dip charges, with a number of commenters supporting the Commission's proposed rate of $0.0015.[42] Other commenters propose a higher cap—typically the national average of around $0.0043—but these commenters have offered no compelling reason to permit higher rates.[43] As AT&T previously explained, many CLEC database dip charges are excessive (because they have never been regulated), and therefore adopting the national average as the cap would effectively lock-in those excessive rates for the foreseeable future. Database dip charges represent a substantial portion of today's 8YY arbitrage, and if the Commission is not going to adopt bill-and-keep for these charges, it should minimize the potential rewards from fraud and arbitrage to the maximum extent possible by adopting the lowest feasible cap.[44]

Finally, there is overwhelming support in the record for prohibiting LECs from charging IXCs for more than one database dip per call.[45] A small number of commenters suggest that multiple dip charges could still be appropriate if the originating LEC does not have the means to

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[42] *See, e.g.*, Verizon Comments at 4-5; WTA Comments at 5 (supports $0.0015 cap).

[43] *See, e.g.*, NCTA Comments at 6 (national average); Charter Comments at 9; Windstream Comments at 10-12 (picking lowest rate is arbitrary).

[44] For many of the same reasons, there is no need for a multi-year transition to the nationwide cap, as some commenters propose, which would also needlessly prolong today's arbitrage and fraud. *See, e.g.*, CenturyLink Comments at 12-14 (advocating three-year transition to $0.0015 starting from the current industry average of $0.0043).

[45] *See, e.g.*, Comcast Comments at 6 ("There is no plausible economic basis for imposing more than one charge for an 8YY database dip to route the call to the proper toll-free service provider"); NCTA Comments at 5-6; Charter Comments at 8 & n.20 ("To avoid necessitating a second query, the originating carrier should be expected to forward the routing information received from that query to other providers in the call path"); Somos Comments at 3 ("Somos agrees with the Commission that multiple dip charges are unnecessary and increase the cost of a call to a [toll-free number]. . . . There is no technical reason that Somos knows of to have multiple dips in a single call"); WTA Comments at 5; West Comments at 18 (supports one-per-call, "provided that there is an exception for calls that lack adequate call information for completion of the call transmitted downstream to an intermediate provider").

pass the relevant information to an intermediate carrier before the call is handed off to the IXC.[46] The better solution in such a situation, however, is to permit only the carrier that hands the call to the IXC to assess the charge.[47] If an originating carrier has not invested in the technology necessary to pass the necessary routing information to intermediate carriers, then it should recover the cost of the dip from its own end-users.

III. THE COMMENTS ALSO SUPPORT COMPLETION OF THE FULL TRANSITION TO BILL-AND-KEEP FOR ALL ORIGINATING CHARGES.

Finally, there is significant support in the comments for completing the full transition to bill-and-keep for all originating access charges, rather than just 8YY originating access.[48] As NCTA argues (at 1), "[e]ven if the Commission does not address all of the remaining intercarrier compensation transition issues from the 2011 [*Transformation Order*] at this time, at the very least it should address all originating access charges together, rather than adopting a disparate regime for only the toll-free (8YY) subset of originating access charges."[49] Indeed, as NCTA explains, the Commission already recognized in 2011 that "'failure to take action promptly on these elements could perpetuate inefficiencies, delay the deployment of IP networks and IP-to-IP

[46] *See* GCI Comments at 14 (suggesting that multiple LECs could assess the dip charge if the originating carrier has not implemented SS7); WTA Comments at 5 ("This proposal differs somewhat from that in the *FNPRM* in that wholly separate, non-affiliated carriers along the route of an 8YY call should continue to be able to make and recover the costs of 8YY database queries that are necessary to complete an 8YY call").

[47] *See* AT&T *Ex Parte*, *Connect America Fund*, WC Docket No. 10-90, Att. at 12 (filed Dec. 4, 2017).

[48] *See* Comcast Comments at 1 (Commission should "consider and resolve *all* of the intercarrier compensation ("ICC") issues that have remained unresolved since the 2011 *Transformation Order*"); NCTA Comments at 1-4; Charter Comments at 5-6.

[49] *See also* NCTA Comments at 2 ("Rather than taking piecemeal action to address only one of the pending issues in this proceeding, NCTA encourages the Commission to take action promptly to address all of the remaining rate elements in a comprehensive manner").

interconnection, and maintain opportunities for arbitrage.'"[50] The industry has been on notice for more than seven years that all originating access charges will be transitioned to bill-and-keep, but addressing only 8YY traffic is likely to "ensure that arbitrage schemes shift from 8YY to non-8YY originated toll calls."[51] As AT&T previously explained, given that 8YY calls represent such a large share of originating access overall, the Commission should go ahead and complete the full reform of all originating access services to bill-and-keep (in conjunction with AT&T's direct interconnection proposal), rather than attempt to maintain two parallel regimes for originating access and thereby invite further arbitrage.

CONCLUSION

For the foregoing reasons, and those in AT&T's opening comments, the Commission should immediately update the intercarrier compensation rules for 8YY traffic in the manner described herein, and the Commission should promptly complete the comprehensive update of all intercarrier compensation rules.

Respectfully Submitted,

/s/

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[50] NCTA Comments at 3 (quoting *Transformation Order* ¶ 1297).

[51] *Id.* at 4