

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

COMMENTS OF TELIAX, INC.

I. Introduction

Teliix, Inc., d/b/a Teliix Colorado ("Teliix"), through counsel, respectfully files its comments in response to the Federal Communications Commission's ("FCC" or "Commission") public notice requesting interested parties refresh the record regarding 8YY access charge reform.¹ The trigger for the *8YY PN* was the May 18, 2017 *ex parte* meeting between the FCC and the Ad Hoc Telecommunications Users Committee ("Ad Hoc").² Ad Hoc urged the FCC to change the treatment of access charges for 8YY calls, such that terminating access would apply to the dialing party's end of the call, and originating access would apply to the toll free subscriber's end of the call.³ The immediate effect of Ad Hoc's proposal would be to reduce LEC revenues for originating toll free traffic to, or near to, zero because the rate for terminating end office switching in all the largest markets has been

¹ Public Notice, "Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform," DA 17-631 (rel. June 29, 2017) ("*8YY PN*").

² Ad Hoc *ex parte* filing in WC Docket No. 10-90, *et al.* (filed May 19, 2017) ("*Ad Hoc Letter*").

³ *See id.*

reduced to zero.⁴ That, in turn, could create pressure for LECs and Interconnected VoIP ("I-VoIP") providers either to seek Section 214 authority to discontinue the provision of interstate toll free calls or to inform their end user customers that they must pay higher local rates in order to continue the ability to make toll free calls. Further, as explained below, there are only three providers of wholesale 8YY query service: AT&T, Transaction Network Services ("TNS") and Teliix. Given the size differences between AT&T and its smaller competitors, Ad Hoc's proposal to eliminate access revenues for the other competitors would all but guarantee AT&T a position as the monopoly provider of wholesale services. Such a situation would inevitably and negatively impact Ad Hoc's members, many of which are toll free subscribers, because Ad Hoc's members will have fewer choices for 8YY services.

II. Summary

Teliix is a Denver-based competitive local exchange carrier ("CLEC") that provides a variety of services, including wholesale 8YY origination service. Its wholesale customers deliver traffic to Teliix without applying access charges. Teliix has made substantial investments to provide high-quality wholesale service. Its investments allow it to query the 8YY database to identify the serving interexchange carrier ("IXC") and to perform the tariff-defined first point of originating end office switching to deliver that call to the serving IXC for completion to its toll free subscriber. Teliix's rates are in compliance with Commission Rules and its interstate tariff. Teliix works with the Industry to identify and stop fraudulent toll free calls.

AT&T has refused to pay Teliix either tariff or contract rates for 8YY calls, even though it expects these calls be delivered to its network for completion to its toll free subscribers. Instead, AT&T had paid Teliix "national average rates," calculated by AT&T without regard to Teliix's costs. Teliix has sued AT&T in Colorado federal court, where the case is pending.

⁴ 47 C.F.R. § 51.907. As the Commission is well aware, AT&T has also petitioned the Commission to eliminate terminating tandem switching and transport charges, along with the rate for 8YY database query ("DBQ"). WC Docket No. 16-363.

Ad Hoc's effort to eliminate access charges on toll free calls will backfire and could result in fewer providers of 8YY origination service, likely leading to higher prices for Ad Hoc's members. Charging all end users more for local service to recover revenues previously derived from access charges for toll free calls is anti-consumer. Depriving small competitors of access revenues while requiring them to provide access services is bad public policy.

8YY calling through the PSTN is complex and outdated. It is time for toll free traffic to migrate on a voluntary basis from TDM to IP networks. Teliax has made substantial investments in an information service that allows participating Responsible Organizations ("RespOrgs")⁵ handling an 8YY dialed call to obtain an 8YY database query to identify the RespOrg serving the toll free subscriber, e.g., a hotel reservations center, and then to route the call directly to the serving RespOrg via IP transport, bypassing the IXC and its charges. Teliax's service is not a telecommunications service and relies on private contracts rather than on tariffs.

III. Teliax, Inc.

Teliax is a Colorado corporation headquartered in Denver and founded in 2004 to provide "hosted PBX services" on an IP basis. In 2012, Teliax became a registered CLEC, and since then Teliax has had a tariff on file with the FCC.⁶ Teliax does not have a Colorado intrastate tariff. Over time, Teliax's services have shifted from TDM-based to largely IP-based services. Teliax has equipment and a network operations center in Denver, using Session Initiated Protocol ("SIP") trunking for its services. It offers points of interconnection in the Denver and Colorado Springs LATAs but continues to operate significant physical plant to serve TDM-based customers.

⁵ A "RespOrg" or "Responsible Organization" is defined as entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber. 47 C.F.R. § 52.101(b).

⁶ Teliax Colorado, LLC Tariff F.C.C. No. 1.

A. Wholesale 8YY Origination Services

Teliax offers an array of CLEC services, including a wholesale 8YY origination service that Teliax provides to other CLECs and I-VoIP providers. As part of this service, Teliax's customers outsource to Teliax the technical 8YY origination service, as well as regulatory and compliance matters and billing and collection. Teliax's customers made a "build or buy" decision, choosing to obtain services from Teliax, instead of making internal investments to self-provision toll free calling capabilities for their end user customers. Teliax and its wholesale customers enter into an agreement for covering this 8YY traffic.

The wholesale customer can deliver toll free dialed calls from its end user to Teliax in Denver (or Colorado Springs) via IP transport, private line or switched TDM transport and does not charge any access to any IXC.⁷ There is no double billing with Teliax's wholesale 8YY origination service. Teliax uses its software to query the 8YY database to identify the serving IXC and to perform the tariff-defined first point of originating end office switching to deliver that call to the serving IXC for completion to its toll free subscriber, such as a hotel reservation center or a software support center.

Teliax bills the IXC originating end office switching, common trunk port and database query ("DBQ") rates. Teliax's originating end office switching and common trunk port rates are equal to those of CenturyLink Colorado, as per FCC rules⁸ and Teliax's tariff. Teliax's DBQ rate is set based on factors, including internal costs, external demand and DBQ rates of competitors and is filed in Teliax's tariff. Teliax also has reached agreements with many IXCs and Commercial Mobile Radio Service ("CMRS") providers for the exchange of traffic, including 8YY originating traffic, at negotiated rates.⁹

⁷ While there are nine owner-operators of the SOMOS 8YY database, only three, AT&T, Transaction Network Services ("TNS") and Teliax, offer toll free database queries to third party carriers and service providers. The remaining owner-operators, such as Verizon, perform queries for only their own customers and those of their affiliates, *e.g.* Verizon Wireless.

⁸ 47 C.F.R. § 61.26(b).

⁹ Teliax compensates its wholesale customers based on negotiated traffic agreements, which also include requirements not to send fraudulent or call-stimulation traffic (i.e. such as rapidly repeated, autodialed toll free calls lasting only a few seconds.)

Thus, Teliax's interstate tariff rates serve as "rack rates" unless and until another carrier or service provider enters into a traffic exchange or interconnection agreement with Teliax.

B. Teliax Has Made Major Investments in Technology and Its Network to Provide Better 8YY Origination Service

Teliax has incurred considerable costs to grow its 8YY origination business and to provide excellent service to customers and end users alike. It is the smallest owner-operator of the SOMOS toll free database.¹⁰ Teliax makes this expensive monthly investment to provide both better service to existing wholesale customers and to have access to advanced features and functions desired by the market. Teliax has also invested heavily in the development of software to integrate the SOMOS capabilities into Teliax's network.

C. Teliax Fights Toll Free Calling Fraud

Teliax actively participates in Industry efforts to identify and block fraudulent toll free calls from being delivered to the downstream IXC's, *e.g.*, robodialed calls that often last only seconds. The Company's executives regularly join Industry calls to identify and stop fraud.

Teliax's wholesale 8YY contracts require customers (other CLECs and I-VoIP providers) to adopt anti-fraud measures. Teliax does not bill for identified fraudulent calls, and with the exception of fraudulent calls, Teliax has never been requested by IXC's to block any 8YY dialed calls intended for the IXC's Carrier Identification Code ("CIC").

D. AT&T's Attempt to Get Free Service

As Teliax has already advised the Commission,¹¹ AT&T does not pay tariff or contract rates for both retail and wholesale 8YY traffic delivered by Teliax to AT&T, despite admitting it wants all toll free calls delivered (except for those fraudulent calls specifically identified by AT&T). When Teliax first entered the market, AT&T verified Teliax's services and then paid tariff rates billed by Teliax.

¹⁰ See *Certify as a Service Control Point Owner/Operator (SCP O/O)*, Somos, <https://www.somos.com/become-scp-owneroperator>.

¹¹ See, *e.g.*, Teliax Opposition to AT&T's Petition for Forbearance, WC Docket No. 16-363, filed December 2, 2016, at 7-9; Teliax "A Road not to Be Taken," *ex parte* in WC Docket No. 16-363, July 5, 2017.

After several years of paying Teliix's tariff rates, AT&T unilaterally substituted AT&T-calculated "national average" tandem and DBQ rates. After fruitless negotiations, Teliix sued AT&T in Colorado Federal District Court. *Teliix, Inc. d/b/a Teliix Colorado, LLC v. AT&T Corp.*, Civil Action No. 1:15-cv-01472-RBJ (D. Colo.). That case is pending.

AT&T has engaged in two types of self-help by substituting AT&T-generated rates for Teliix's deemed lawful rates and by engaging in a "claw-back" scheme where AT&T deducted the difference between its made-up "national average" rates and the full tariff rates previously paid by AT&T. The Fifth Circuit Court of Appeals just concluded that a similar "claw-back" plan executed by Sprint against CenturyLink constituted an "unjust and unreasonable act" in violation of Section 201(b) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 201(b). *CenturyTel of Chatham, LLC v. Sprint Commc'ns Co.*, No. 16-30634, slip op. (5th Cir. June 27, 2017). It is not fanciful to believe that, with an appropriate factual showing, another court or the FCC could find AT&T's "claw-back" scheme to constitute a similar violation of Section 201(b).

E. National Average Rates That Do not Accommodate Actual Costs Are Unlawful

The recent case of *Global Tel*Link v. FCC*, No. 15-1461, slip op. (D.C. Cir. June 13, 2017) rejected the Commission's use of nationwide average costs for prison inmate calling when there was insufficient justification in the record. As part of its reform of inmate calling, the FCC ignored evidence that some carriers' actual costs exceeded calculated average costs and that were reasonable in type and amount and required by various operators of correctional institutions as a condition of providing inmate calling services. The court found those actions to be arbitrary and capricious.

Had AT&T respected the Act and its requirements sufficiently to have filed a petition to prescribe access rates for 8YY wholesale calls, AT&T would have been required to submit data showing the costs for providing the first point of switching and a toll free database query.¹² And the Commission would be required to look at ILECs' and CLECs' actual costs. Any LEC in the position of

¹² In the *Teliix v. AT&T* case, AT&T has refused to provide data supporting its rate calculations.

Teliax that has invested heavily in its network to integrate the SOMOS 8YY database with custom software and to have owner-operator access to such database must be given a fair opportunity to recover those costs in its rates, just as the court held the prison calling providers must be given the right to recover their costs, including the costs of mandatory commissions paid to prison operators.

IV. Ad Hoc's Effort to Eliminate Access Charges on Toll Free Calls Will Backfire

Teliax fully understands Ad Hoc's concerns regarding fraud. Toll free subscribers should not receive and be billed for robodialed 8YY calls that are extremely short in length and that are not associated with a bona fide end user customer, but designed simply to increase access billing. As explained earlier, Teliax works with government officials and the Industry to identify and stop fraudulent calls. Aggrieved toll free subscribers need to file complaints about 8YY fraud with the Commission and to help identify the bad actors. The FCC's Enforcement Bureau, along with law enforcement agencies, must use their investigative powers to identify and seek prosecution, both civil and, as appropriate, criminal.¹³ But making 8YY traffic "access charge free" will cause toll free subscribers and the general public more harm than good.

A. Charging All End Users More for Local Service to Recover Access Charges for Toll Free Calls is Anti-Consumer

Ad Hoc and other big telecommunications companies have advocated passing on the costs of access charges formerly charged to IXCs to consumers in the form of higher rates for local service.¹⁴ While many consumers subscribe to bundled packages of local and toll service, there are still many consumers who do not buy bundles that include long distance calling. Yet, many of these consumers

¹³ See 18 U.S.C. § 1343. That law provides, in applicable part, "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both."

¹⁴ See *Ad Hoc Letter*, *supra* note 2, at 1; *In re Petition of AT&T Services, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain Rules For Switched Access Services and Toll Free Database Dip Charges*, WC 16-363 (Sept. 30, 2016), at 21-22.

do make toll free calls from time to time. Therefore, sound economics and ratemaking principles suggest the price for bundled local and toll services not be raised to recover foregone access charges for 8YY traffic. Instead, according to these principles, affected carriers and service providers should just raise the price of local service or the local service portion of calling packages.

However, raising local service rates for residential consumers hardly seems consistent with the goals of competition—lower prices, better quality and greater options. Indeed, Teliax struggles to imagine how the FCC could explain the public interest behind lowering rates for big carriers, such as AT&T, and for large toll free users, many of which are Fortune 500 companies, while at the same time increasing residential service rates. A service provider that raises end user rates could well lose customers and revenues.

While consumers do receive value from being able to make 8YY calls, in an age of flat-rated calling packages of local and interexchange calls the bulk of the benefits go to the toll free subscribers that continue to use toll free numbers. Indeed, SOMOS data shows that the consumption of toll free number use continues to rise even in the face of “all-you-can-eat” toll plans. Businesses, nonprofits and government agencies that make extensive use of 8YY services due to benefits received need to pay the lion’s share of the costs for setting up and delivering those calls. The fundamental notion behind toll free service remains the same today as it did 30 years ago, when the service was called “800 service” or “INWATS.”¹⁵

¹⁵ “800 service (or INWATS) is an interexchange service in which the called party, rather than the calling party, subscribes to the service and pays for calls. The service provides businesses and other organizations a means of providing potential customers, or other persons with whom they wish to communicate, a convenient and free method of contacting them. An 800 service subscriber may choose to pay for incoming calls from any telephone in the country or may decide to limit its coverage to telephones in one or more of five concentric geographic bands around the subscriber's receiving location. 800 service is one of the fastest growing telephone services, with revenues that were in excess of \$3 billion in 1983 and were increasing at the rate of 15-20% per year.” *Provision of Access for 800 Service*, Notice of Proposed Rulemaking, 102 FCC2d 1387, at ¶ 2 (1987), citing petition of Bell Atlantic n/k/a Verizon.

B. Depriving Small Competitors of Access Revenues While Requiring Them to Provide Access Services Is Bad Public Policy

Depriving small competitors of access charge revenues while requiring them to perform exchange access functions will reduce their ability to maintain and enhance their networks and to provide high-quality services to customers – both end user customers and carrier or service provider customers. Many small competitors, including Teliax, do not have debt or venture capital funding. They grow their businesses by providing services for compensation and investing profits back into the business, including network and technology improvements.

Ad Hoc's proffered solution of forcing end user customers to pay higher rates for telecommunications services because they can make toll free calls is equally unfair. One must remember that those dialing toll free calls are not the beneficiaries of the toll-free service; toll free subscribers are, as they pay extra to let consumers reach them without paying toll charges even in today's market of flat-rated toll calling. Moreover, end user customers have fewer privacy protections with toll free calls. End users are not able to block their Caller ID information for these calls. Consumers should not have to pay for toll free calls, especially when they do not have the same rights as with toll calls. Such a result would certainly be difficult to explain to the public or in a congressional hearing.

In the long run, Ad Hoc's recommendations could lead smaller competitors to exit all or part of the market. All and all, this would result in less competition and choice for customers big and small, including Ad Hoc's members. CLECs and I-VoIP providers may need to file Section 214 applications to discontinue the provision of retail toll free calling.

Additionally with a large 8YY market exit by CLECs and I-VoIP providers, those IXCs offering 8YY service may need to establish and pay for a new entity that can perform database queries that are currently paid for by the benefiting carriers. A CLEC or I-VoIP provider, upon seeing its customer dial 8YY-NXX-XXXX, would simply route the call to the new entity's point of interconnection in each

LATA. At which point and at the IXCs' expense, the call would be queried to identify the serving IXC's CIC and then further routed to that carrier's local point of interconnection.

But the Commission, the Industry, Ad Hoc's members and the general public need not travel this dangerous and uncertain road. Rather, it is time to redefine 8YY service by removing it from the Public Switched Telephone Network ("PSTN") and the control of large IXCs. It is time for an IP-based toll free network and lower rates.

V. The Toll Free Exchange

A. 8YY Calling through the PSTN Is Complex and Outdated

As the Commission is well aware, the PSTN is complex and outdated. Network augmentation is slow and costly. Facilities are static (carriers must maintain enough capacity for peak periods). There is no difference for 8YY calls on the PSTN. Each toll free call has many links in the chain, often including LECs, IXCs, CMRS operators, I-VoIP providers, CIC holders and RespOrgs. With the use of least cost routing, each entity type may be repeated several times in the call flow. And, of course, a chain is only as strong as its weakest link.

LATA/OCN (Operating Company Number, which is issued by the National Exchange Carrier Association ("NECA") to identify a specific LEC) (or Location Routing Number or "LRN")¹⁶ billing based on Automatic Number Identification ("ANI")¹⁷ does not always reflect the true cost of originating a call. It is unnecessarily complex given the general ubiquity of the Internet. While voice technology has advanced with HD voice and video availability, many TDM networks simply cannot provide the necessary service quality for customers to get full value from the technology. Hence, customer experience is often diminished with TDM legacy networks.

¹⁶ A LRN is "a unique 10-digit telephone number assigned to each switch" and is used to provide Local Number Portability. *How LNP Works*, National Portability Administration Center, <https://www.npac.com/number-portability/how-lnp-works>.

¹⁷ ANI is "[a] service feature in which the directory number or equipment number of a calling station is automatically obtained. Note: ANI is used in message accounting. 2. The code that provides the billing number of the line or trunk that originated a call. ... 3. A system that identifies the billing account for a call." *Automatic Number Identification*, ATIS, <http://www.atis.org/glossary/definition.aspx?id=5613>.

Similarly, carriers and service providers face difficulty under the old regime. The legacy CABS (Carrier Access Billing System) billing is cumbersome and often leads to carrier disputes, which often wind up before the FCC, state public utility commissions ("PUCs") and courts. Money that could be spent on new technology and innovation too often goes to litigation and regulatory advocacy.

B. The Toll Free Exchange

It is time for toll free traffic to migrate on a voluntary basis from TDM to IP networks. Teliix has spent considerable effort and investment in a new system that allows willing participants to do just that—move their toll free traffic off the PSTN and onto the Internet. Teliix's platform known as the "Toll Free Exchange" or TFE¹⁸ incorporates a complete Service Control Point ("SCP") containing the SOMOS 8YY database. A participating RespOrg simply establishes a SIP trunk connection with the TFE. A DBQ occurs to identify the RespOrg serving the dialed toll free number. Once that RespOrg is identified, the call is routed by the originating RespOrg over the Internet to the terminating RespOrg and then to the toll free subscriber. The following figures show the existing PSTN method of handling 8YY calls and the streamlined, less expensive IP-based method of handling those calls with the TFE.

¹⁸ Toll Free Exchange, <https://tollfree.exchange/>.

The old way

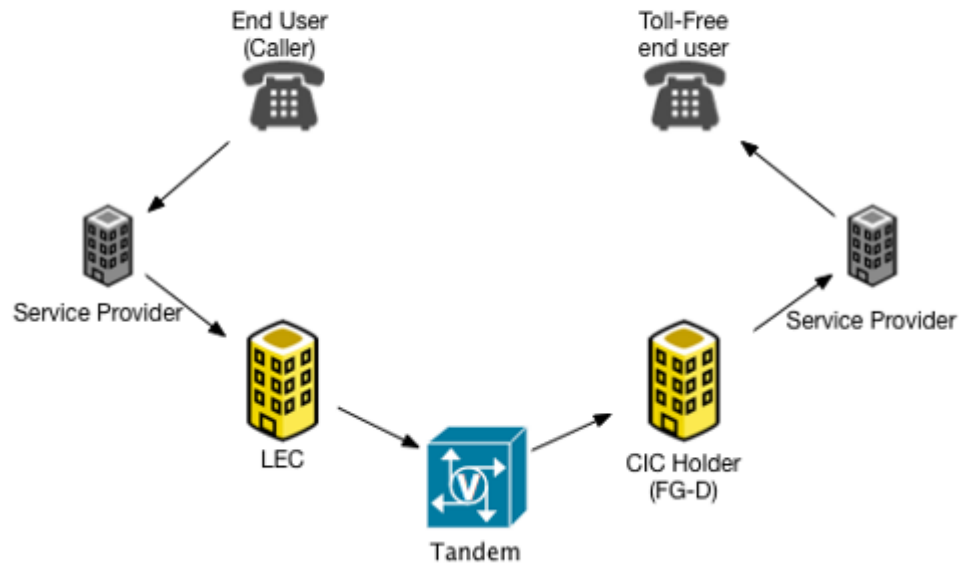


Figure 1¹⁹

A Better Way

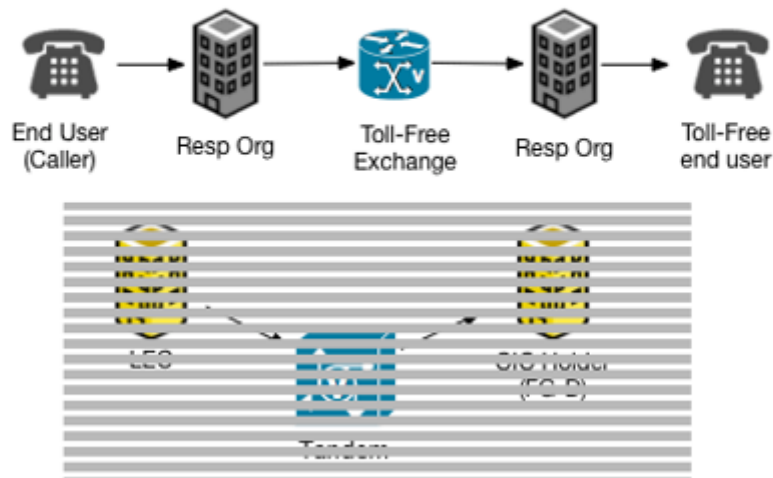


Figure 2

¹⁹ In Figure 1, the CIC Holder is the serving IXC.

Operating control of the toll free market moves from the IXCs to RespOrgs, which are often LECs, I-VoIP providers or wireless operators. Moreover, RespOrgs can also be large users of toll free calls, such as airline reservation centers or government agencies. For example, instead of purchasing 8YY service from a big IXC, a national hotel reservation center can buy it from its serving CLEC or I-VoIP provider operating as a RespOrg, cutting out the “middle man” and saving money. Large users of toll free service can potentially save even more by adding RespOrg expertise to their telecommunications department and “self-provisioning” 8YY service.

The terminating RespOrg compensates the originating RespOrg, either based on the TFE contract rate or through individual contracts. Tariffs disappear. Both end user customers and toll free subscribers can access advanced quality services (HD voice and video) on any call.

The elimination of mid-call transport and other PSTN relics can lower the cost for providing 8YY service and the price to subscribers. Much telecommunications competition to date has focused on bypassing ILECs and, sometimes, CLECs. The TFE takes this a step further and allows customers to cut out interexchange carriers and their charges for 8YY calls. Rather than multiple trunks, a single SIP trunk is needed for TFE participation. Fewer networks means fewer chances for network failures. These changes also eliminate the need for least cost routing and could help fix the rural call completion problems for toll free calls.

C. The Toll Free Exchange Is not a Telecommunications Service

The TFE is not a communications service. The TFE is a computer on a cloud-based private network that is accessible by public Internet transit. As such, the TFE is an “information service”²⁰ consisting of a neutral peering platform operated by participating RespOrgs for the exchange of information. Actual call routing takes place outside the TFE. And, of course, parties can elect not to participate in the TFE and continue to use the PSTN for 8YY calls.²¹

²⁰ Section 3(24) of the Act, 47 U.S.C. § 153(24).

²¹ In the event the TFE receives a toll free call from a non-exchange member, it “kicks back” the call to the PSTN.

Since the TFE is not a telecommunications service, much less a common carrier service, there is no requirement for a tariff. Any entity that can qualify to become a RespOrg can participate in the TFE. Teliix has made a commitment that it will collect and remit Universal Service Fund ("USF") contributions on its charges in the event that a participating RespOrg does not.

The TFE is a better way for toll free providers to provide service in an IP-based market. It allows 8YY service to be provided without IXCs in the middle. In fact, high-volume users of 8YY service can self-provision toll free service. Moreover, the TFE allows 8YY service to be provided on an unregulated basis, with private contracts, rather than through tariffs. The time for the TFE is now.

VI. Conclusion

The Commission should take account of the updated record in WC Docket Nos. 10-90 & 07-135 and CC Docket No. 01-92, including Teliix's comments. For the reasons set forth herein, the Commission should not grant the relief requested by Ad Hoc. Changing the access charge rules for an obsolete TDM-based service is a waste of time and money. Rather, the FCC should allow technology and market forces to replace its Part 69- and tariff-driven 8YY regulatory regime with an IP- and carrier-contract-based system, such as the Toll Free Exchange.

Respectfully submitted,
Teliix, Inc.

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