

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 an Unified Intercarrier Compensation Regime)	WC Docket No. 01-92

**COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES IN
RESPONSE TO JUNE 29, 2017 PUBLIC NOTICE**

The Nebraska Rural Independent Companies (“NRIC”),¹ each of which is an incumbent and rural local exchange carrier (“ILEC” and “RLEC”) and an Eligible Telecommunications Carrier (“ETC”), hereby provide these comments in response to the June 29, 2017 Public Notice² issued by the Federal Communications Commission (“FCC” or the “Commission”). Among other things, the *June 2017 8YY Public Notice* seeks to refresh the record on various 8YY issues.³ As provided for herein, NRIC respectfully submits updated 8YY *interstate* originating

¹ The NRIC companies submitting these Comments are: Arlington Telephone Company, Blair Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Company, Inc., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco.

² See *Public Notice*, WC Docket Nos. 10-90 *et al.*, DA 17-631, released June 29 2017 (the “*June 2017 8YY Public Notice*”).

³ See *id.* at 1-2; see also *In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90 *et al.*, 26 FCC Rcd 17663 (2011), *aff’d* In Re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014), *pet. for cert. denied* (the “*2011 ICC/USF Transformation FNPRM*”) at 18111 (¶¶ 1303-1304). For purposes of these comments, the FCC’s decisions reached in the initial portion of the *2011 ICC/USF Transformation FNPRM* will be referenced as the “*ICC/USF Transformation Order*.”

call data. This call data confirms that the 8YY traffic generated by such calling remains significant for a number of the NRIC member companies. In addition to and fully consistent with the positions taken by NRIC in response to the 8YY issues raised in the *2011 ICC/USF Transformation FNPRM*,⁴ it is again abundantly clear that any resolution posited by the FCC must be specifically tailored to the 8YY environment, particularly in light of how 8YY service is provisioned. Any concerns regarding arbitration referenced in *June 2017 8YY Public Notice* need not and should not be of decisional significance because:

- (1) The FCC has made clear that arbitration is subject to the FCC's continuing monitoring;⁵
- (2) No specific facts have been provided to demonstrate that, if 8YY arbitration exists, there is a need for an industry-wide resolution of the treatment of originating *interstate* 8YY traffic; and
- (3) No demonstration has been made that any such *interstate* 8YY arbitration (if it occurs) cannot be resolved via alternative Commission procedures – such as complaints or rulemakings – in an effort to address whatever AT&T claims to be *interstate* 8YY arbitration issues.⁶

⁴ See Comments of [NRIC] in Response to Sections XVII. L through R of the Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 *et.al.* filed February 24, 2012 (the “*NRIC FNPRM 8YY Comments*”) at 8-13; *see also* Reply Comments of [NRIC] in Response to Sections XVII. L through R of the Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90 *et.al.* filed March 30, 2012 (the “*NRIC FNPRM 8YY Reply Comments*”) at 2-5. NRIC incorporates these portions of the previously filed comments in their entirety herein.

⁵ The Commission has made clear that the “access stimulation rules” it adopted in the *ICC/USF Transformation Order* “are part of [its] comprehensive intercarrier compensation reform” and that such “reform will, as the transition unfolds, address remaining incentives to engage in access stimulation.” *ICC/USF Transformation Order* at ¶ 672; *accord* Comments of [NRIC], WC Docket No. 16-363, filed December 2, 2016 (“*NRIC AT&T Forbearance Comments*”) at 6. In mentioning arbitration issues raised by AT&T, the Ad Hoc Telecommunications Users Committee (“Ad Hoc”) cites to WC Docket No. 16-363. *See* Letter from Colleen Boothby, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* at 2, filed May 19, 2017 (the “*May 2017 Ad Hoc Ex Parte*”) at 2, n.2. WC Docket No. 16-363 addresses AT&T’s 2016 petition for forbearance seeking, regardless of claims to the contrary, industry-wide originating access charge reductions. *See Public Notice*, WC Docket No. 16-363, DA 16-1239, issued November 2, 2016.

⁶ In this regard, NRIC notes that, in the context of AT&T’s pending petition for forbearance (as discussed *infra* at p. 8), “broad, unsupported allegations of why the statutory criteria are met” are

In all events, however, any modification to the compensation regime for resolution of the 8YY originating *interstate* usage must provide carriers that are legitimately originating traffic from their local end-users the opportunity for recovery of their costs. Should the FCC decide to establish an external recovery device rather than continuation of the current framework for originating *interstate* switched exchange access charges, the establishment of such a cost recovery mechanism similar to the “CAF-ICC” mechanism⁷ may very well be problematic from an FCC budget perspective. Specifically, any new externally funded recovery levels would merely compound the on-going dilemma faced by the FCC to meet the congressionally mandated directives for sufficient and predictable federal Universal Service Fund (“USF”) levels and mechanisms established in Section 254 of the 1996 revisions of the Communications Act of 1934 (as amended) (the “Act”).⁸

I. BACKGROUND

The *June 2017 8YY Public Notice* presumably was issued based on two (2) ex partes filed by Ad Hoc. The Commission summarized these ex partes as “urging the Commission to ‘restore the historic treatment of 8YY traffic for access charge purposes, pursuant to which carriers are

insufficient to justify a decision to forbear. *In the Matter of Forbearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, First Report and Order*, WT Docket No. 98-100, 15 FCC Rcd 17414 (2000) at ¶ 13 (quotations to other documents omitted).

⁷ See, e.g., 47 C.F.R. § 51.917. The establishment of the CAF-ICC mechanism was not made in a vacuum but rather was based on the various presumptions. See, e.g. *ICC/USF Transformation Order* at ¶ 39 and Appendix I at ¶¶ 10-15; see also 47 C.F.R. §§ 51.917(b)(3) and (d). The CAF-ICC mechanism was previously referenced as the “Recovery Mechanism” (“RM”) by the FCC. See, e.g., *ICC/USF Transformation Order* at ¶ 39.

⁸ See 47 U.S.C. § 254(b)(5) (“There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”) and § 254(d)(Contributions are to be made “to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”)

required to apply the per minute charges for terminating traffic to the originating or ‘open’ end of 8YY calls”⁹ and, thereafter, that “Ad Hoc also notes AT&T’s recent observation that arbitrage and access stimulation schemes are increasingly shifting to 8YY service.”¹⁰ In light of these statements, the FCC queried whether it “should adopt a distinct resolution for 8YY originating traffic and how such a resolution would be implemented,”¹¹ and encouraged “commenters to submit updated data on the relative proportion of 8YY originated minutes to traditional originated minutes to support any proposed resolution” as well as update the record on “other 8YY-related intercarrier compensation issues raised” by the *2011 ICC Transformation FNPRM*.¹²

II. NRIC’S RESPONSE TO THE JUNE 2017 8YY PUBLIC NOTICE

As noted above, NRIC has previously commented on the 8YY issues raised by the Commission in the *2011 ICC Transformation FNPRM*. In the *NRIC FNPRM 8YY Comments*, NRIC stated that its volume of 8YY originating traffic for 2011 was “significant,” adding “that the percentage of originating traffic to an 8YY number currently ranges from 20 to 36 percent for the companies that comprise NRIC.”¹³ As requested by the Commission, NRIC now updates these figures and notes that based on interstate and intrastate data provided by a number of NRIC companies:

- (1) Although State Commissions have authority over intrastate 8YY traffic, based on calendar year 2016 data, *total* interstate and intrastate originating 8YY traffic was thirty-five percent (35%) of total originating switch access traffic for the period;

⁹ *June 2017 8YY Public Notice* at 1 *quoting May 2017 Ad Hoc Ex Parte*.

¹⁰ *Id. citing May 2017 Ad Hoc Ex Parte* at 2.

¹¹ *Id.*

¹² *June 2017 8YY Public Notice* at 1-2.

¹³ *NRIC FNPRM 8YY Comments* at 9.

- (2) Based on calendar year 2016 data, originating *interstate* 8YY traffic was fifty-seven percent (57%) of total *interstate* originating switch access traffic; and
- (3) For the first six (6) months of 2017, originating *interstate* 8YY traffic was also fifty-seven percent (57%) of total *interstate* originating switch access traffic.

As was true in 2012, NRIC again respectfully submits that this actual calling data demonstrates that the amount of originating *interstate* 8YY traffic continues to be as significant as it was in 2011. Moreover, in response to the Commission-requested “solution” for the intercarrier compensation regime associated with such *interstate* 8YY traffic,¹⁴ NRIC once again confirms that “such traffic must have a ‘distinct’ resolution provided for it.”¹⁵ NRIC respectfully submits that no carrier should be able to use another carrier’s originating network free of charge. Providing a carrier or a class of service with a “free ride” on an originating RLECs’ network 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 call related to that service could be made). Should the Ad Hoc’s position be adopted, these types of unjustified “free rides” would be the result.¹⁶

To be sure, Ad Hoc fails to justify why bill and keep applied in an 8YY environment is justified when the IXC serving the 8YY user (or possibly, in the case of the Ad Hoc, one of its members) is the only entity with a “retail” relationship with the customer ordering the 8YY

¹⁴ *June 2017 8YY Public Notice* at 1.

¹⁵ *NRIC FNPRM 8YY Comments* at 9 quoting *2011 ICC Transformation FNPRM* at ¶ 1304.

¹⁶ The *May 2017 Ad Hoc Ex Parte*, for example, makes clear that it sought to treat originating 8YY minutes as “terminating” traffic. *See, e.g., May 2017 Ad Hoc Ex Parte* at 1, 2. If the Ad Hoc contentions are adopted, one would logically conclude that Ad Hoc’s ultimate relief would be akin to some form of the “bill and keep” end office switched access regime adopted for other terminating traffic. *See, e.g., ICC/USF Transformation Order* at ¶ 777; 47 C.F.R. § 51.909. Yet, Ad Hoc provides no details, for example, regarding any transition or recovery mechanism for the loss of originating *interstate* 8YY switched access intercarrier compensation. *See generally May 2017 Ad Hoc Ex Parte* and its attachment.

service based on how 8YY service is provisioned. The carrier providing access to the 8YY service provider does not have any “end user” relationship with the entity receiving the call and thus no opportunity to recover the cost of originating the 8YY call from that 8YY customer. Therefore, absent a specific resolution of the cost recovery issues arising from the method of provisioning 8YY service, the interexchange carrier (“IXC”) offering the facilities-based 8YY service (and thus the customer of that service) would receive a “free ride” over the switched access network of the originating RLEC.

Even if these issues were properly addressed and some form of external recovery mechanism was established in lieu of continuing the originating *interstate* switched access framework for originating *interstate* 8YY traffic, it would still be necessary to explain how the establishment of such a cost recovery framework is consistent with the Act’s Congressionally-mandated Section 254 directives.¹⁷ The dilemma facing the Commission is readily apparent. If the Commission seeks, as a policy matter, to lower originating *interstate* 8YY access charges to accommodate a specific segment of the consuming retail market – 8YY end user customers and facilities-based IXC providing such services – the Commission *must*, as a rational public policy matter, provide an opportunity for the LEC to recover its costs. As noted above, in the *ICC/USF Transformation Order*, the FCC has accomplished this result to an extent for terminating switched access provided by rate of return (“ROR”) RLECs such as the NRIC member companies through the CAF-ICC mechanism. However, the availability of a CAF-ICC-like mechanism to accommodate originating *interstate* 8YY access charge reductions results in additional strain on the federal “USF budget” available to smaller ROR RLECs.¹⁸ Of course,

¹⁷ NRIC demonstrated why continued use of the switched access charge framework is the preferred method to address universal service. See *NRIC FNPRM 8YY Reply Comments* at 2-5.

¹⁸ The FCC must recognize that some parties question whether the current federal “USF budget”

should the Commission determine to provide an originating *interstate* 8YY access reduction windfall to the IXCs providing such facilities-based services, the ROR “USF budget” would need to be increased in order to meet the “sufficient” level required by Congress under Section 254 of the Act. The tension is clear.

To meet the directives of sufficiency and predictability within Section 254 of the Act, the Commission must address the dilemma of continuing to suggest that the current ROR “USF budget” is proper. The existence of that tension can be demonstrated in a number of ways, but regardless it would need to be *directly addressed* by the Commission if it sought to establish a CAF-like mechanism for originating *interstate* 8YY traffic based on the *June 2017 8YY Public Notice*. There is no rational basis to reduce the access charges paid (and thus the retail service charges to 8YY users) without first affording the RLEC providing access an opportunity to recover its costs. Should the FCC consider some form of “bill and keep” for originating *interstate* 8YY switched access traffic as effectively being proposed by Ad Hoc, the following statement made by NRIC in 2012 is today equally true:

For 8YY traffic, . . . the originating local service provider would not receive compensation for the origination and transport of 8YY calls under a “bill-and-keep” compensation regime. Only the 8YY provider, which is the IXC that provides the long distance calling associated with the 8YY number, receives compensation from the customer that purchases the service from the IXC that terminates to the 8YY number. As a result, the LEC whose network is used to originate the call must assess access charges to that 8YY provider, unless and until the Commission establishes some alternative mechanism such as the RM or some mixture of both access charges and RM. Without this compensation, an 8YY provider would be receiving a “free ride” on the network of the ROR ETC, a result that defies common sense and, for example, contradicts the requirement that, under ROR regulation, a carrier is provided the opportunity to recover its cost and earn a reasonable return.¹⁹

for ROR RLECs is sufficient to meet the ongoing defined federal USF disbursement needs of ROR RLECs.

¹⁹ *NRIC FNPRM 8YY Comments* at 11-12 (footnote omitted). In the Attachment at 3 to the *May 2017 Ad Hoc Ex Parte*, Ad Hoc also quotes certain passages from ¶ 1303 of the FCC’s *ICC*

Finally, NRIC seeks to ensure that the record is clear with respect to the AT&T claims referenced in the *June 2017 8YY Public Notice* and, for example, the *May 2017 Ad Hoc Ex Parte* statement that “arbitrage and access stimulation schemes are increasingly shifting to 8YY service.”²⁰ The references to arbitrage and the apparent inference that 8YY arbitrage is rampant already has been debunked by NRIC. For example, in NRIC’s comments filed in WC Docket No. 16-335, NRIC rebutted AT&T’s contentions aimed at securing a free ride on the RLECs’ originating networks and claiming access stimulation within the NRIC WC Docket No. 16-335 comments.²¹ NRIC properly concluded that “AT&T has failed to demonstrate that it is unable to utilize other available procedural vehicles to address what it perceives to be improper conduct.”²²

III. CONCLUSION

Accordingly, NRIC respectfully submits that the Commission should comprehensively address the issue of 8YY originating interstate access. Should the FCC be inclined to move

Transformation FNPRM -- “the calling party chooses the access provider but does not pay for the long-distance call, it has no incentive to select a provider with lower originating access rates” and that the role of the originating ILEC “is more akin to the traditional role of the terminating LEC in that the IXC carrying the 8YY traffic must use the access service of the LEC subscribed to by the calling party.” NRIC has already demonstrated that the Commission statements (and thus Ad Hoc’s reliance on them) miss the mark.

... Regardless of whether the traffic is originating 8YY traffic or whether the traffic is originating or terminating long-distance traffic subject to presubscription, the real issue is whether the originating ROR ETC’s network is being used and whether compensation for such use is properly due and owing from the IXC. In both the case of 8YY traffic and originating access delivered to the end user’s presubscribed IXC, the answer to this question is undeniably “yes.” Where the ROR ETC’s originating access network is being used by the IXC, either intercarrier compensation (“ICC”), RM or a combination of both is required to be paid to the ROR ETC.

NRIC FNPRM 8YY Comments at 11.

²⁰ *May 2017 Ad Hoc Ex Parte* at 2; see also *June 2017 8YY Public Notice* at 1.

²¹ See *NRIC AT&T Forbearance Comments* at 1-9.

²² *Id.* at 8.

forward, it should do so through the continuation of originating switched access framework or alternatively through the establishment of a specific alternative cost recovery mechanism that meets the Section 254 directives, thus affording RLECs such as the NRIC member companies the opportunity to recover their costs of providing originating *interstate* 8YY access service.

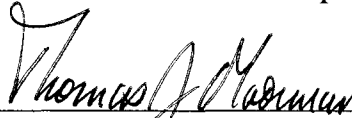
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Respectfully submitted,

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