

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

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

REPLY COMMENTS OF AT&T

AT&T Inc. (“AT&T”), on behalf of itself and its affiliates, respectfully submits these reply comments in response to the Public Notice released by the Federal Communications Commission (“Commission”) on June 29, 2017 seeking to refresh the record regarding 8YY access charge reform.¹

Many commenters acknowledge the reality that originating 8YY access charges are analytically indistinguishable from ordinary terminating access for intercarrier compensation purposes. Even many of those that do not support bill-and-keep acknowledge that the inefficiencies inherent in originating 8YY access charges billed to IXC’s are inducing certain carriers to expand efforts to exploit arbitrage opportunities. Given that the economic case for bill-and-keep is unassailable and originating 8YY arbitrage is increasing rapidly as opportunities on

¹ Public Notice, *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92, DA 17-631 (rel. June 29, 2017) (“Public Notice”).

the terminating end become more limited, the comments support (1) adopting rules subjecting originating 8YY access to the same intercarrier compensation arrangements as terminating access without delay, and (2) eliminating comparable arbitrage opportunities for 8YY database dip charges either by granting AT&T's pending forbearance petition or adopting rules mandating bill-and-keep for such charges. In addition, many of the comments echo AT&T's position that the Commission should press forward promptly to resolve *all* of the outstanding issues in the intercarrier compensation transition.²

Originating 8YY Access. Many commenters accept the long-established view that, for purposes of the intercarrier compensation regime, originating 8YY access is analytically identical to terminating access for ordinary calls and should be treated the same.³ As the Commission has recognized for decades, the originating carrier in an 8YY call plays the role “more akin to the

² See, e.g., Comments of Comcast Corporation, *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 1 (filed Jul. 31, 2017) (“Comcast Comments”) (“the Commission should consider and resolve *all* of the intercarrier compensation (“ICC”) issues that have remained unresolved since the 2011 *Transformation Order*”) (emphasis in original); Comments of CenturyLink, *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 3 (filed Jul. 31, 2017) (“CenturyLink Comments”) (“CenturyLink reiterates . . . that there are a number of important issues associated with ICC that are still-open as a result of the still-pending ICC aspects of the *Transformation Order FNPRM*.”); Comments of Verizon, *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 5 (filed Jul. 31, 2017) (“Verizon Comments”).

³ See, e.g., Verizon Comments at 6 (“So 8YY traffic is more similar to terminating access than originating access charges on 1+ dialed traffic.”); Comments of Sprint Corporation, *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 2 (filed Jul. 31, 2017) (“Sprint Comments”) (“To promote the economic benefits of bill-and-keep, and to stem access stimulation schemes involving toll-free service, the Commission should re-instate its prior policy of treating the open end of 8YY calls as terminating usage for access charge purposes. . . .”); Comments of General Communication, Inc., *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 4 (filed Jul. 31, 2017) (“Nothing relevant about 8YY calling has changed since 1986. The end user placing the call still has no incentive to seek lower originating access charges because the end user does not pay for the call.”).

traditional role of the terminating LEC,”⁴ and thus the Commission has historically treated originating 8YY traffic the same as terminating for access charge purposes.⁵ Access charges billed to IXC’s leads to inefficient outcomes because the “calling party [in an 8YY call] . . . has no incentive to select a provider with lower originating access rates” because he “does not pay for the toll call.”⁶ Indeed, even the parties that do not support bill-and-keep grant the Commission’s point that the existing system creates a fundamental misalignment of pricing signals that invites arbitrage.⁷

The comments also confirm that carriers, particularly CLECs, are shifting their efforts to exploit those arbitrage opportunities. As Verizon succinctly notes, “8YY originating access arbitrage has become an industry-wide problem.”⁸ Now that the first stage of the intercarrier

⁴ Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund, et al.*, 26 FCC Rcd. 17663 (2011) (“*USF/ICC Transformation Order*” and/or “*FNPRM*”).

⁵ CenturyLink argues that what Ad Hoc claims is the Commission’s “historic” treatment of originating 8YY access was actually a much narrower concern: namely, that the terminating Carrier Common Line charge was higher than the originating charge, and that the Commission believed that “allowing [the] lower [originating] access charges for toll traffic would not be fair.” See CenturyLink Comments at 7 (citing *WATS-Related and Other Amendments of Part 69 of the Commission’s Rules*, CC Docket No. 86-1, Report and Order, 1986 FCC Lexis 3812, at ¶¶ 47, 53 (rel. Mar. 21, 1986) (“*1986 Access Reform Order*”). The very paragraph CenturyLink cites, however, makes clear that the Commission’s actual concern was that “these open end minutes are, like terminating MTS and MTS-like minutes, less subject to bypass than originating MTS and MTS-like minutes and should be treated like terminating MTS and MTS-like minutes.” *1986 Access Reform Order* ¶ 53. That is the same concern the Commission cites in the *FNPRM*, and it applies equally to all terminating and all originating 8YY access charges.

⁶ *FNPRM* ¶ 1303; see Verizon Comments at 5-6 (“While consumers are able to choose all-distance services from the same provider for most originating calls, the same is not true of toll-free traffic, where the carrier that serves the toll-free customer pays originating access charges to the carrier that delivers the traffic to it” and thus “neither the 8YY provider nor its customer (the called party) have an opportunity to discipline those rates.”); Sprint Comments at 2 (“If LECs were required to collect call originating charges directly from the end users that originate those calls, they would have some incentive to minimize those charges.”).

⁷ See, e.g., CenturyLink Comments at 5.

⁸ Verizon Comments at 1.

compensation transition, which focused on terminating rates, is nearing completion, the resulting “disparity between originating and terminating rates” has created “an opportunity for traffic pumpers and other arbitrageurs for whom terminating end-office rates no longer provide any benefit.”⁹ Accordingly, commenters recognize that while 8YY may “make[] up the bulk of originating access minutes” today, that is in no small part because “8YY arbitrage traffic has increased.”¹⁰ Here again, even commenters that do not fully embrace bill-and-keep recognize that such arbitrage schemes “threaten the current access system.”¹¹

A few commenters argue that bill-and-keep is not economically or theoretically appropriate for originating 8YY access charges, but those arguments do not withstand scrutiny. For example, some commenters maintain that the Commission should continue to view the IXC as the entity “using” the originating LEC’s service,¹² and that the originating LEC must therefore be permitted to charge the IXC since it cannot bill the IXC’s 8YY customer directly.¹³ That position is an

⁹ *Id.* at 3.

¹⁰ *Id.* at 3-5 (explaining arbitrage incentives and various specific schemes to exploit originating 8YY access charges).

¹¹ Comments of USTelecom Association, *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 2 (filed Jul. 31, 2017) (“USTelecom Comments”) (“Regulatory arbitrage schemes to artificially inflate revenues from originating calls to 8YY toll free numbers threaten the current access system” and should be “hobbled as quickly as possible”; “[a]rbitrage schemes include rerouting traffic so that it appears to ‘originate’ with high fee charging providers or that include above market charges for database dips.”).

¹² *See, e.g.*, Comments of the Nebraska Rural Independent Companies, *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 5, 7 n.19 (filed Jul. 31, 2017) (“Nebraska Comments”) (“NRIC respectfully submits that no carrier should be able to use another carrier’s originating network free of charge.”); Comments of ITTA, *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 2 (filed Jul. 31, 2017) (“ITTA Comments”).

¹³ *See* Nebraska Comments at 6 (“[t]he 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”); *see also* Comments of Windstream Services, LLC, Frontier Communications Corporation and NTCA – The Rural Broadband Association, *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 10-11

argument against the entire concept of bill-and-keep (as well as an implicit concession that the originating LEC plays the same role in an 8YY call that a terminating LEC does in an ordinary call).¹⁴ That horse left the barn long ago: the Commission has unequivocally committed to transition the historic regime to a bill-and-keep system, and has made clear that originating switched-access rates “should be eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime.”¹⁵

Other commenters argue that 8YY is uniquely exempt from the logic of bill-and-keep because calling parties expect their 8YY calls to be “free-of-charge,” and thus a bill-and-keep approach would inappropriately shift “the entire tab” for the call to the originating end user.¹⁶ This argument misconceives the nature of 8YY calls. It has always been the case that the end user must subscribe to – and pay for – a local exchange service in order to have the ability to make 8YY calls. An 8YY customer is offering the calling party a “toll”-free call – *i.e.*, the 8YY customer relieves the calling party of the need to pay the incremental per-minute toll charges of a long-distance carrier. As AT&T has explained elsewhere, the 8YY customer will continue to bear most of the costs of its calls even after originating charges are converted to bill-and-keep.¹⁷ The critical

(filed Jul. 31, 2017) (“Windstream/Frontier/NTCA Comments”) (“unlike the 8YY provider, which is compensated by the customer subscribing to the 8YY service, the originating LEC has no relationship with that bank or retail store and therefore has no way to be compensated by that customer for the use of the LEC’s network and the costs it incurs to set up the call.”).

¹⁴ Indeed, ITTA (at 2) makes its opposition to bill-and-keep explicit: “An interexchange carrier (IXC) should pay to both originate and terminate calls since the IXC does not own the local network itself and thus must purchase local network functionality from the LEC.”

¹⁵ *USF/ICC Transformation Order* ¶ 1298; *see also* Verizon Comments at 2 (elimination of originating access charges inevitable and action on originating 8YY access overdue).

¹⁶ *See, e.g.*, ITTA Comments at 3-4.

¹⁷ *See* Reply Comments in Support of Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(C), *Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C § 160(c) From*

point, however, is that the originating 8YY LEC's costs should be shifted to its end-users to eliminate the misaligned pricing signals that invite arbitrage and are increasingly causing system-wide damage.

Other commenters claim 8YY calls are unique because, unlike the end-user on the terminating end of an ordinary call, the calling party in an 8YY call is not a cost causer.¹⁸ It is not credible to argue that the calling party, who picks up the phone and makes the 8YY call at issue, is not a “cost causer” of that 8YY call. Rather, like an ordinary call, both parties to the call have engaged local services and share in the causation of the 8YY call's cost, and each should bear the costs of the networks they have engaged. As the Commission explained in the *USF/ICC Transformation Order*, bill-and-keep has significant policy advantages over the current system because it “ensure[s] that consumers pay only for services that they choose and receive, eliminating the existing opaque implicit subsidy system under which consumers pay to support other carriers' network costs.”¹⁹ That analysis applies to 8YY calls just as much as it does to ordinary terminating access.

In short, the case for bill-and-keep is clear, and the Commission should reject any calls for delay in proceeding with these changes. Commenters have documented increasing arbitrage activities, and even those who oppose full bill-and-keep acknowledge the increasing harms from

Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges, WC Docket No. 16-363, at 25 (filed Dec. 19, 2016) (“AT&T Forbearance Reply”).

¹⁸ See CenturyLink Comments at 4-5 (arguing that bill-and-keep for terminating access depends on assumption that “the calling and called parties are equal cost causers for the traffic,” which is allegedly a “characteristic that is not present with 8YY originating traffic. . . .”); see also Nebraska Comments at 5 (bill-and-keep would not follow “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).”); Windstream/Frontier/NTCA Comments at 10 (8YY customers are the “active drivers” of an 8YY call).

¹⁹ *USF/ICC Transformation Order* ¶ 738.

arbitrage.²⁰ Those arbitrage activities will continue to increase if the Commission does not act. Given the evidence of rapidly increasing arbitrage from 8YY calls, there is no need to wait for exhaustive studies of the effects of the transitions that have already occurred before taking the actions that are clearly necessary here.²¹

Some commenters argue that the Commission should replace originating access charges with a competitively neutral alternative recovery mechanism.²² Bill-and-keep, of course, merely shifts the source of cost recovery from IXC's to end users, and commenters have not shown that these originating 8YY access charges could not be absorbed into end-user rates. Nonetheless, AT&T is not opposed to use of a recovery mechanism if the Commission determines that one is

²⁰ See, e.g., CenturyLink Comments at 4 (“CenturyLink agrees that this is a concern.”); USTelecom Comments at 2 (“Regulatory arbitrage schemes to artificially inflate revenues from originating calls to 8YY toll free numbers threaten the current access system.”).

²¹ See Windstream/Frontier/NTCA Comments at 6-10.

²² See, e.g., CenturyLink Comments at 6 & n.11 (“if . . . the Commission does decide to reduce or eliminate 8YY originating access charges, it must, at the very least, create a recovery mechanism to permit LECs to recover the costs of related services from end users.”); USTelecom Comments at 3 (“Any changes to the underlying originating access system must include equivalent alternative sources of revenue for incumbent local exchange carriers.”); Nebraska Comments at 6 (“the Commission *must*, as a rational public policy matter, provide an opportunity for the LEC to recover its costs.”); ITTA Comments at 6 (“solution . . . would be for the Commission to implement an access replacement recovery mechanism akin to the one adopted in the *USF/ICC Transformation Order*.”); see also Comcast Comments at 3 (any transition to bill-and-keep should be gradual). See also Comments of Consolidated Communications Companies, Peerless Network, Inc., and West Telecom Services, LLC in Opposition to Ad Hoc’s Request Concerning the Treatment of 8YY Traffic for Access Charge Purposes, *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 4-6, 8 & n.26 (filed Jul. 31, 2017) (“Consolidated Comments”) (Ad Hoc proposal would result in rate reductions “without any corresponding revenue offset or transition mechanism,” and noting that Commission permitted ILECs to assess an Access Recovery Charge in the initial transition).

needed. This issue, however, should not delay Commission action on immediately adopting bill and keep for 8YY calls.²³

Database Dip Charges. The record also confirms that the Commission should promptly address arbitrage related to database dip charges. As AT&T discussed in its Comments, LECs bill a wide variation of tariffed charges for toll-free database queries (generally higher than the rates LECs are able negotiate with competitive wholesale service providers pursuant to negotiated contracts) and CLEC 8YY query charges are oftentimes well in excess of the rates imposed by other LECs.²⁴ These data show that certain unscrupulous CLECs are abusing the Commission's rules and assessing unreasonably excessive rates for their services. A number of commenters acknowledge these concerns. As CenturyLink explains (at 5), "given 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."²⁵ As AT&T previously explained, the Commission should promptly address this issue as well, either by

²³ See Verizon Comments at 6 ("whether the Commission chooses to adopt Ad Hoc's proposal or to reform 8YY originating access through a different vehicle, it should do so without delay").

²⁴ AT&T at 10-12. See also *id* at n.28 comparing CLEC 8YY dip query rates.

²⁵ See also, e.g., Comments of Inteliquent, Inc., *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 3 (filed Jul. 31, 2017) ("Inteliquent Comments") ("This 8YY database query arbitrage concern is real. . . ."); CenturyLink Comments at 5 ("CenturyLink acknowledges that there are concerns when it comes to 8YY originating traffic," including "the fact that database query charges vary considerably within the industry is a problem."). There is no merit to Teliax's assertion that there are only three providers of 8YY query services. See Comments of Teliax, Inc., *Connect America Fund, et al.*, WC Docket No. 10-90, et al., at 2 (filed Jul. 31, 2017) ("Teliax Comments"). As AT&T has previously demonstrated, 8YY query services are offered by a number of providers, and are tariffed by most incumbent LECs. *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 Docket No. 16-363, at 19-20 (filed Sept. 30, 2016) ("AT&T Forbearance Petition").

granting AT&T's pending forbearance petition,²⁶ or by using this rulemaking to adopt rules mandating bill-and-keep for such charges.²⁷

CONCLUSION

For the foregoing reasons, 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,

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²⁶ See *AT&T Forbearance Petition* (seeking forbearance from the rules permitting ILECs to assess such charges and mandatory detariffing of such charges for all LECs, including CLECs). Even some purported opponents of bill-and-keep for originating access for 8YY concede that detariffing 8YY services is “a better way” to regulate such services. See Teliax Comments at 13-14 (describing “a better way” to regulate 8YY and advocating an approach where “[t]ariffs disappear”).

²⁷ See *FNPRM* ¶ 1305 (seeking comment on other approaches or issues relating to originating access reform, including implementation issues).