

**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 Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	

REPLY COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

In response to the public notice seeking comment on 8YY access charge reform,¹ NCTA – The Internet & Television Association (NCTA) urges the Commission to eliminate incentives for arbitrage by completing the intercarrier compensation reforms started in 2011.

In the *Public Notice*, the Wireline Competition Bureau asks interested parties to refresh the record regarding one aspect of intercarrier compensation reform left open in the 2011 further notice of proposed rulemaking – the treatment of originating access charges for toll free (8YY) calls.² In its 2011 order, the Commission made great strides in reforming the intercarrier compensation regime by adopting a bill-and-keep pricing methodology as the eventual default for all intercarrier compensation traffic.³ To reach this default, the Commission adopted a

¹ *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, WC Docket No. 10-90, *et al.*, Public Notice, DA 17-631 (Wireline Comp. Bur., June 29, 2017) (*Public Notice*).

² *Id.* at 1-2; *see also Connect America Fund, et al.*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*2011 ICC Order and FNPRM*), *aff'd sub nom.*, *In re: FCC*, Nos. 11-9900, *et al.*, 753 F.3d 1015 (10th Cir. 2014).

³ *2011 ICC Order and FNPRM*, 26 FCC Rcd at 17904, ¶736. Under bill-and-keep, entities recover their costs from fees imposed on their own end users, rather than through charges assessed on other providers. *Id.* ¶737.

transition schedule for bringing terminating access rates to bill-and-keep.⁴ The transition will be complete for all price cap carrier terminating access rates next July, and for all rate-of-return carrier terminating access rates by July 2020.⁵ The Commission did not adopt a transition schedule for other rate elements, such as originating switched access (including originating 8YY access charges), dedicated transport, tandem switching and some tandem transport, and other signaling charges, but instead sought comment on implementing a transition for these elements.⁶ The Commission has yet to set a transition schedule for these remaining rate elements.

Since the 2011 further notice, various parties have sought Commission action on certain of the remaining elements, including, most recently, the Ad Hoc Telecommunications Users Committee's (Ad Hoc's) request that gave rise to the instant *Public Notice*.⁷ These parties raise issues which the Commission itself acknowledged in the 2011 further notice could arise:

“[F]ailure to take action promptly on these elements could perpetuate inefficiencies, delay the deployment of IP networks and IP-to-IP interconnection, and maintain opportunities for arbitrage.”⁸ NCTA certainly does not support Commission inaction in the face of arbitrage

⁴ *Id.* at 17934-36, ¶801.

⁵ *Id.*.

⁶ *Id.* at 18109, ¶1297.

⁷ See Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363 (Sept. 30, 2016) (seeking forbearance from switched access services rules related to tandem and transport service provided on calls to carriers engaged in access stimulation, and database query charges to long distance carriers for toll-free services); CenturyLink Petition for Limited Stay of Transformation Order Years 6 and 7 ICC Transition – As It Impacts a Subset of Tandem Switching and Transport Charges, WC Docket No. 10-90 *et al.* (Apr. 11, 2017); Letter from Colleen Boothby, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (May 19, 2017) (asking the Commission to require carriers to apply terminating per minute access charges to originating 8YY calls).

⁸ 2011 ICC Order and FNPRM, 26 FCC Rcd at 18109, ¶1297.

schemes such as those described in the record.⁹ The answer, however, is not to take piecemeal action based on discrete claims brought by individual petitioners, but instead for the Commission to finish its intercarrier compensation reform efforts in an expeditious and holistic manner.¹⁰

In the context of such a proceeding, the Commission can fully consider the implications of any rule changes that would apply to 8YY traffic. As suggested by a number of parties, 8YY traffic presents unique issues because there is a tension between the marketing of such calls as “toll free” and the principle underlying bill-and-keep that a LEC can recover costs from its customers.¹¹ Consequently, while addressing originating access charges on 8YY traffic should be a part of the Commission’s reform efforts, the Commission should consider whether subjecting such traffic to bill-and-keep is an appropriate solution.

NCTA raised similar concerns in response to AT&T’s forbearance request that the Commission preclude incumbent and competitive local exchange carriers (LECs) from imposing 8YY database dip charges.¹² The 8YY database queries that LECs are required to make solely benefit interexchange carriers that are paid to deliver these calls, and LECs cannot recover these costs from their end users because another entity (the called party) has elected to make these calls “toll free.” Under these circumstances, precluding LECs from recovering their database query costs may not be an appropriate solution.

⁹ See, e.g., Verizon Comments at 3-5. As it did in 2011, the Commission can and should adopt rules targeted to those perpetrating sham traffic pumping schemes. *2011 ICC Order and FNPRM*, 26 FCC Rcd at 17874-75, ¶¶656-660.

¹⁰ Comcast Comments at 1-3.

¹¹ See, e.g., Windstream et al. Comments at 11 (“LECs originating calls should not be forced to provide these services to the 8YY provider without compensation, nor should the end-user customer be told he or she is making a toll-free call but then get stuck with the bill.”); ITTA Comments at 3 (“[W]hen a consumer places an 8YY call, she expects that call indeed to be toll-free. Embedding charges attributable to ‘toll-free’ calling within the rates consumers pay LECs for telephone service would fundamentally contravene that expectation.”).

¹² Comments of NCTA – The Internet & Television Association, WC Docket No. 16-363, 4-5 (Dec. 2, 2016). AT&T renews that request in its comments responding to the Notice. AT&T Comments at 8-13.

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As explained above, the Commission should continue its intercarrier compensation reform efforts on a holistic basis, rather than granting piecemeal relief as requested by Ad Hoc and other petitioners.

Respectfully submitted,

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