

**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	)	WC Docket No. 07-135
Local Exchange Carriers	)	
	)	
Developing an Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	

**U.S. TelePacific Corp. Reply Comments**

U.S. TelePacific Corp. d/b/a TPx Communications (“TPx”) submits these reply comments regarding 8YY access charge reform in response to the Public Notice released by the Federal Communications Commission (“Commission”) on June 29, 2017.<sup>1</sup>

**I. Introduction and TPx Interest in this Proceeding**

Founded in 1998 and headquartered in California, TPx is a provider of comprehensive managed services and business solutions to a multitude of customers from small businesses to multi-location enterprises. TPx is one of the largest competitive local exchange carriers in California and its affiliates also provide facilities-based communications and managed services across the United States.

As a provider of voice and data communications solutions, TPx originates and terminates long distance telephone calls. Because TPx serves end users and has implemented the required

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<sup>1</sup> 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”).

step down in terminating intercarrier compensation charges, it derives little revenue from charges for terminating access. The vast majority of its customers choose TPx as their long distance carrier, and TPx contracts with wholesale providers of long distance services to deliver those calls to the Public Switched Telephone Network (“PSTN”). This means that today TPx derives intercarrier compensation revenue primarily from originating charges for 8YY calls placed by its end users. But TPx’s 8YY access revenue is not a result of arbitrage, it is a function of the costs TPx incurs to provide the communications services that its broad customer base demands. Although the Commission’s 2011 Notice on originating access reform has been pending for some time, it has to date given no indication it intends to adopt a specific reform schedule. Therefore, TPx includes originating access revenue in its business plans and revenue forecasts.

TPx supports the many parties that argued (1) local exchange carriers should recover the costs they incur to provide originating access and 8YY dip charges, (2) TPx’s end users do not expect to be charged for placing toll free calls to 8YY numbers, and (3) the Commission should not require precipitous changes to originating intercarrier charges. Although TPx agrees that individual carriers engaging in arbitrage should be stopped through enforcement, complaint, or tailored caps, TPx does not agree that the Commission should flash cut originating access for any category of traffic to bill-and-keep or commercial negotiations. As a first step, TPx agrees with CenturyLink’s suggestion that the Commission should “eliminate any question [about whether database query charges are subject to the CLEC benchmark rule] by issuing a clarification to this effect.”<sup>2</sup> The Commission should cap the 8YY dip charge at the corresponding ILEC rates (like

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<sup>2</sup> See Comments of CenturyLink, WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92, at 5 (filed July 31, 2016) (“CenturyLink Comments”) ; *see also*, Comments of Inteliquent, Inc., WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92, at 1 (filed July 31, 2016) (“Inteliquent Comments”) (“[i]t is important for the Commission to review this area in light of the record compiled in response to AT&T’s 2016 forbearance petition, since the record there demonstrates that the most straightforward way to address 8YY-related abuses is to subject

other competitive local exchange carrier (“CLEC”) access rate elements) and permit CLECs to continue tariffing such charges. CLECs wishing to charge a higher rate can do so, if appropriate, by negotiating contracts.

## **II. LECs Incur Costs to Provide Originating 8YY Access and Database Dip Services and Should Be Permitted to Recover Those Costs Through Tariffed Charges**

TPx agrees with the many parties that argued originating access and database dip services are real costs that LECs should be permitted to recover.<sup>3</sup> As Windstream noted, even AT&T admits that toll-free database queries are legitimate charges for “an actual expense incurred by LECs.”<sup>4</sup> LECs should be permitted to recover these costs through tariffed charges that are imposed on the 8YY customer, not the end user placing a toll *free* 8YY call.

The *2001 CLEC Benchmark Order* recognized that ILEC price cap rates are presumptively just and reasonable.<sup>5</sup> When AT&T is the beneficiary of this presumption, it agrees, arguing in the business data services docket that “current price caps are presumed to be just and reasonable under Section 201 of the Act pursuant to the Commission’s existing incentive regulation scheme...”<sup>6</sup> When AT&T wants to avoid paying a price cap rate, however, it asks the Commission to flash cut 8YY dip charges to zero based on AT&T’s assertion that the “prices for

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8YY database query charges (or dip charges) to the competitive local exchange carrier (“CLEC”) benchmark rule at 47 C.F.R. § 61.26.”).

<sup>3</sup> CenturyLink Comments at 5 (“originating access services entail real costs and LECs providing those services must be assured of the ability to recover those costs”); Comments of US Telecom, WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92, at 3 (filed July 31, 2016) (“US Telecom Comments”) (“Local exchange carriers must continue to have the opportunity to recover costs associated with operating their networks and providing voice services, including the originating 8YY and other calls.”).

<sup>4</sup> Comments of Windstream Services, LLC, WC Docket No. 16-363, at 1 (filed Dec. 2, 2016) (“Windstream Comments”).

<sup>5</sup> *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd. 9923, ¶ 41 (2001) (*2001 CLEC Benchmark Order*).

<sup>6</sup> AT&T Notice of Ex Parte Presentation, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25; RM-10593, at 2 (filed Mar. 21, 2016).

[toll-free database query services] in [] wholesale market are generally both more uniform and lower than the tariffs rates billed by many LECs.”<sup>7</sup> Although AT&T claims its “data show that the Commission’s rules are not adequately constraining the price of toll free database queries,”<sup>8</sup> it does not present sufficient data to determine a reasonable rate level<sup>9</sup> or explain how the Commission could carve out 8YY dip charges from price caps. In a similar context, when a party asked to change treatment of one service included within a price cap basket, the Commission refused to do so because “carving out [a specific] service[] from price caps generally... would impose significant regulatory burdens, including restructuring price cap buckets for all price cap carriers.”<sup>10</sup> Concerns with respect to ILEC 8YY dip charges are better addressed by the Commission’s tariff investigation process.<sup>11</sup> Capping 8YY dip charges would be consistent with the presumption that price caps ensure just and reasonable rates.

Adopting mandatory detariffing only for access rates in excess of the safe harbor limit “will subject to negotiation between two willing parties any access services offered at a rate above the benchmark.”<sup>12</sup> This negotiation-driven approach would “provide a better mechanism for IXC’s to control costs,” but also provide “greater certainty for CLECs that they will receive

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<sup>7</sup> Comments of AT&T, WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92, at 10-11 (filed July 31, 2016) (“AT&T Comments”).

<sup>8</sup> AT&T Comments at 11.

<sup>9</sup> *Business Data Services in an Internet Protocol Environment; Technology Transitions; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, WC Docket No. 16-143, GN Docket No. 13-5, WC Docket No. 05-25, RM-10593, Report and Order, 32 FCC Rcd 3459, ¶ 256 (2017) (“BDS Order”) (“Even if we were to accept Inteliquent’s premise that multiplexing rates are unreasonably high, the record in this proceeding would not enable us to determine a reasonable level.”).

<sup>10</sup> BDS Order, at fn. 291 (rejecting Inteliquent request to carve out multiplexing).

<sup>11</sup> Windstream Comments, at 1-4.

<sup>12</sup> *Id.*

full compensation for the access services that they provide.”<sup>13</sup> Capping the 8YY dip charge at the corresponding ILEC rate like other CLEC access rate elements would benefit CLECs, IXCs, and their respective customers because it would provide a tariff mechanism to compensate CLECs for costs incurred at the presumptively reasonable price cap rate.

Consolidated argued that “[t]o the extent the rates or practices of any individual carriers that originate 8YY traffic may be unreasonable, the Commission has authority to take action within the existing statutory framework, such as via Section 208 complaint proceedings.”<sup>14</sup> TPx agrees. TPx also notes that a particular carrier’s mix of originating, 8YY, and terminating access may vary based on factors unrelated to arbitrage. For example, although nearly all of TPx’s originating access is 8YY, that is because all its customers pick TPx as their long distance carrier and TPx uses wholesale long distance service to deliver such traffic. The Commission should not define “arbitrage” based on ratios of 8YY to originating or terminating access, and it should not change its 8YY access regime for the entire industry in an attempt to stop a few carriers from engaging in 8YY arbitrage. Instead, it should “encourage and facilitate the reporting of prominent and repeat offenders for enforcement action, and then take appropriate action.”<sup>15</sup>

### **III. End Users Placing Toll Free Calls Do Not Expect, and Should Not Be, Charged for Placing Such Calls**

TPx agrees with Consolidated that “[b]usinesses continue to advertise calls to 8YY numbers as toll-free, and thus end-users often expect that such calls are free-of-charge.”<sup>16</sup> And as

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<sup>13</sup> *Id.*

<sup>14</sup> Comments of Consolidated Communications Companies, Peerless Network, Inc., West Telecom Services, LLC, WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92, at fn. 31 (filed July 31, 2016) (“Consolidated Comments”)

<sup>15</sup> US Telecom Comments at 3.

<sup>16</sup> Consolidated Comments at 3.

Inteliquent argued, “it would be illogical (and commercially impracticable) to direct the originating calling party’s LEC to look to the calling party for compensation of the costs of originating a supposedly ‘toll-free’ call. Recovering the cost from the originating party would take the ‘free’ out of ‘toll-free calling.’”<sup>17</sup> TPx end user customers dial 8YY numbers for many reasons, including but not limited to reaching technical support lines and contacting suppliers and call centers. End user customers will object to any effort by its carrier to recover originating access charges for 8YY calls from its end users. The Commission would need to engage in a “massive reeducation of consumers placing 8YY calls... so that they know such calls are no longer truly free before such charges could be assessed to them.”<sup>18</sup>

TPx is a provider of 8YY services to businesses that want to offer their customers a means to place a toll free call to reach them. But TPx relies on large 8YY providers such as AT&T to offer this service, and the Commission has not suggested that wholesale 8YY providers would be required to pass through originating access charge reductions in wholesale rates. Thus TPx does not expect to achieve cost savings from any 8YY originating access reform.

#### **IV. Any Originating Access Charge Reform Should Provide a Sufficient Glide Path to Permit Carriers to Adjust Business Plans**

Because carriers incur costs to provide originating access services and include that cost recovery in their financial planning, the Commission should not require precipitous changes to originating intercarrier charges. In 2011, the FCC recognized that it needed “a sensible transition path that ensures that the industry has sufficient time to adapt to changed circumstances”, and

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<sup>17</sup> Inteliquent Comments at 4.

<sup>18</sup> Consolidated Comments at fn.32.

sought comment on how to transition to bill-and-keep for originating access charges.<sup>19</sup> TPx shares the Commission’s view that “it is important for any transition to be gradual enough to enable the private sector to react and plan appropriately”<sup>20</sup> and applauds the Commission’s intention “to avoid sudden changes or ‘flash cuts in [Commission] policies, acknowledging the benefits of measured transitions that enable stakeholders to adapt to changing circumstances and minimize disruption.”<sup>21</sup>

Midsized and small carriers, including CLECs, need a measured transition plan that reduces rates on a predictable glide path and avoids a flash cut. Changing the treatment of 8YY access to be consistent with terminating access would be a flash cut wholly inconsistent with the Commission’s practice of affording carriers time to adjust to new pricing regimes. Consolidated argued that it “would experience a 44% decrease of its originating switched access revenues associated with originating 8YY traffic.”<sup>22</sup> A flash cut to bill-and-keep for 8YY access charges is of particular concern for CLECs that would not be permitted to recoup any costs from the universal service system, offer services only in competitive markets that may not allow costs to be recouped or offset in the form of higher charges to end users, and face other uncertainties (such as special access price increases, uncertainty regarding retirement of copper loops needed to provide Ethernet over copper, etc.) that may negatively impact their ability to raise needed capital.

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<sup>19</sup> *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform -Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, ¶ 1297-1313 (2011) (“2011 Order & NPRM”).

<sup>20</sup> 2011 Order & NPRM, at ¶ 533.

<sup>21</sup> 2011 Order & NPRM, at ¶ 12.

<sup>22</sup> Consolidated Comments at 3.

A measured transition plan would be consistent with the six-year step down in terminating access rates to bill-and-keep and the Commission's more recent 36 month transition period for detariffing in the Business Data Services Order that was adopted "in light of the need for an adequate transition to ensure that small businesses will have time to adjust to the new regulatory conditions."<sup>23</sup>

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<sup>23</sup> BDS Order at ¶ 167.



## V. Conclusion

TPx encourages the Commission to acknowledge that (1) local exchange carriers should recover the costs they incur to provide originating access and 8YY dip charges, (2) end users do not expect to be charged for placing toll free calls to 8YY numbers, and (3) the Commission should not require precipitous changes to the recovery of costs associated with originating toll-free calls. While individual carriers engaging in arbitrage should be stopped, the Commission should not flash cut originating access for any category of traffic to bill-and-keep or commercial negotiations. The Commission should clarify that database query charges are subject to the CLEC benchmark rule, cap the 8YY dip charge at the current corresponding ILEC rates (like other CLEC access rate elements), and permit CLECs to continue tariffing 8YY access charges up to the cap.

Respectfully submitted,

*/s/ Tamar E. Finn*

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