

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)	WC Docket No. 01-92
Compensation Regime)	

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

The Nebraska Rural Independent Companies (“NRIC”),¹ hereby provide these reply comments to the parties’ July 31, 2017 comments² filed in response to the *July 2017 8YY Public Notice*.³ The filed comments and refreshed record requested in the *July 2017 8YY Public Notice*

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 In addition to the comments filed by NRIC, comments were also filed by the following entities representing various industry providers including Local Exchange Carriers (“LECs”) and Interexchange Carriers (“IXCs”): AT&T, Inc. (“AT&T”); CenturyLink, Inc. (“CTL”); Comcast Corporation (“Comcast”); Consolidated Communications Companies (“Consolidated”), Peerless Network, Inc. and West Telecom Services, LCC (“Consolidated Companies, *et al.*”); General Communication, Inc. (“GCI”); ITTA – The Voice of American’s Broadband Providers (“ITTA”); Inteliquent, Inc. (“Inteliquent”); Sprint Corporation (“Sprint”); Teliix, Inc. (“Teliix”); US Telecom Association (“USTA”); the regulated, wholly owned subsidiaries of Verizon Communications, Inc. (“Verizon”); and Windstream Services, LLC, Frontier Communications Corporation, and NTCA – The Rural Broadband Association (“Windstream Services, LLC, *et al.*”). Parties’ comments are referenced by their respective name followed by “Comments.” To the extent commenting parties provide similar positions to those specifically addressed herein, NRIC’s response would be the same.

³ See *Public Notice*, WC Docket Nos. 10-90 *et.al.*, DA 17-631, released June 29 2017 (the “*June 2017 8YY Public Notice*”). Apparently, the *July 2017 8YY Public Notice* was issued in response to

demonstrate that a data-driven, specific resolution of the intercarrier compensation (“ICC”) treatment of originating *interstate* 8YY traffic as compared to other originating exchange access services is appropriate based on the significance of such 8YY traffic and the distinct differences associated with the provisioning of 8YY services as compared to other long distance traffic types. As the record also demonstrates, and assuming the Federal Communications Commission (“FCC” or the “Commission”) elects to move forward with addressing originating *interstate* 8YY traffic, the opportunity for proper 8YY carrier cost recovery must be assured, including by way of example, adoption of at least a similar glide path as that established for terminating exchange access in the *ICC/USF Transformation Order*⁴ in order to avoid flash-cuts. Put plainly, no carrier should be provided a regulatory ticket for a “free ride” on another carrier’s network.

To be sure, NRIC opposes instances in which legitimate exchange access services are undermined based on proven arbitrage. Commenters that have raised the arbitrage issue seem to be doing so to invoke the negative emotional appeal that claims of arbitrage present. These commenters provide no specific facts to demonstrate why a small number of carriers potentially involved in 8YY arbitrage should drive the establishment of an industry-wide framework for

two ex partes filed by the Ad Hoc Telecommunications Users (“Ad Hoc”). *See id.* at 1.

⁴ *See 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 Order”) at 18111 (¶¶ 1303-1304). For purposes of these reply comments, the outstanding issues raised in FCC’s decisions reached in the second portion of the *2011 ICC/USF Transformation Order* will be referenced as the “*ICC/USF Transformation FNPRM*.” As noted by NRIC, it filed both comments and reply comments in response to the 8YY issues raised in the *ICC/USF Transformation FNPRM*. *See* NRIC Comments at 2, n.4 *citing* 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.

8YY.⁵ In addition, these commenting parties once again fail to demonstrate why other FCC-sanctioned procedural mechanisms do not fully address any such proven arbitrage situations or to explain why the FCC's prior actions to address arbitrage are insufficient to mitigate any future arbitrage issues.

With these general points in mind, NRIC respectfully submits that the record amply supports the following five points that demonstrate the need for specific, tailored efforts by the FCC to address any issues relating to interstate 8YY originating exchange access rates and framework, if the FCC decides to take action on these issues at this time.

First, any action by the Commission in response to the 8YY issues raised in the *July 2017 8YY Public Notice* and *ICC/USF Transformation FNPRM*,⁶ must be tailored to reflect the fact that the level of 8YY traffic remains significant. Commenting parties' data are generally consistent with NRIC's demonstration that for its reporting members: (1) 2016 total originating 8YY traffic was thirty-five percent (35%); and (2) originating *interstate* 8YY traffic was fifty-seven percent (57%) of total *interstate* originating switched access traffic for 2016 as was also the case for the first six (6) months of 2017.⁷ Sprint's originating 8YY "usage accounts for the

⁵ For example, USTA's contentions regarding arbitrage appear to be based on a presumption that the "current regulatory framework *apparently* presents opportunities" for forms of arbitrage. USTA Comments at 1 (emphasis added). The negative emotional appeal associated with arbitrage should not, in NRIC's view, be used as a basis to support industry-wide solutions. Allegations of arbitrage (*see* Comcast Comments at 3; Verizon Comments at 1 ("8YY originating access arbitrage has become an industry-wide problem")) must be supported by facts if the apparent claim that 8YY arbitrage is a pandemic requiring an industry-wide solution is to be accepted. Likewise, any party claiming the existence of arbitrage must reconcile those claims with the FCC's statements 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; *see also* NRIC Comments at 2, n.5.

⁶ *See July 2017 8YY Public Notice* at 1-2; *see also ICC/USF Transformation FNPRM* at ¶¶ 1303-1304.

⁷ NRIC Comments at 4-5; *see also ITTA Comments* at 4, 5.

vast majority of the originating minutes for Sprint wireless and IXC entities are billed – over 74% for May and June 2017.”⁸ Likewise, GCI states that its “8YY traffic is a substantial amount” accounting for “29 percent of the interexchange calls that GCI carries” and “53 percent of the access charges that GCI pays to LECs.”⁹ Verizon, for its part, indicates that “8YY traffic today makes up the bulk of originating access minutes,”¹⁰ and Consolidated states that for its incumbent LEC operations, and “prior to merging with Fairpoint,” “44% of the traffic originating from its end users is 8YY traffic.”¹¹

These facts cannot be ignored. Commenting parties have amply demonstrated that their levels of 8YY originating access are similar and are significant. Thus, NRIC respectfully submits that in the event the FCC elects to address any interstate 8YY traffic issues, great care should be exercised because significant cost recovery is associated with such traffic.

Second, NRIC respectfully submits that, should the Commission move forward to consider alterations to the current *interstate* 8YY exchange access framework, parties’ efforts to apply the current bill and keep framework for terminating interstate exchange access are inappropriate. The assertions by some commenters that interstate originating 8YY exchange access can and should be treated in the same manner as other interstate terminating exchange access services should be rejected. While such assertions may advance the parties’ own pecuniary business objectives,¹² these parties fail to address the factual differences and end user

⁸ Sprint Comments at 2 (footnote omitted).

⁹ GCI Comments at 2 and 2-3.

¹⁰ Verizon Comments at 3.

¹¹ Consolidated Companies *et al.* Comments at 9. In light of these assertions, USTA’s assertion that “8YY minutes and revenues supporting these networks appear to be continually falling. . .” (USTA Comments at 1) is suspect.

¹² See NRIC Comments at 5 (the IXC that orders the 8YY service and the 8YY customer that uses that 8YY service are the ‘cost causers’ of such service and should not obtain a free ride on the

impacts arising from such assertions as demonstrated by the record.¹³ By way of example, these parties fail to address the fact that 8YY traffic is provisioned differently from other telephone toll products and that consumers' expectations as to the "free" nature of 8YY calling demand different treatment of this traffic.¹⁴

The fact that 8YY is different from other toll services and thus requires a distinct resolution is amply supported in the record. As summarized by Inteliquent:

[In an 8YY call, the fact that the] "calling party rides for free" is the feature that toll-free customers purchase from their IXC. Consequently, 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.¹⁵

Other commenting parties note the foregoing as well as other distinctions.¹⁶

LEC's originating network); *see also* CenturyLink Comments at 4-5 (Unlike traditional toll, in 8YY services, the called party is the "cost causer" and Ad Hoc's proposal does just the opposite by placing the cost on the originating caller.)

¹³ *Accord*, Windstream Services, LLC *et al.* Comments at 10, 10-11 ("[F]ar from being captive victims of originating access rates, as Ad Hoc suggests, 8YY providers are active drivers of 8YY calls and are compensated by the 8YY customer in order to provide a service to their customers" and the "originating LEC has no relationship" with the 8YY customer.) NRIC respectfully submits that these differences in service arrangements counsel against any credence being given to Comcast's concerns that treating 8YY in a distinct manner may result in a situation where "identical functions are subject to very different ICC regimes." Comcast Comments at 2.

¹⁴ In this regard, Comcast's efforts to suggest that all originating traffic, including 8YY traffic, be addressed at once (*see* Comcast Comments at 2) appear to be based on the false premise that 8YY is like other services using exchange access because 8YY traffic "uses the same transport and switching facilities and processes as other originating calls." *Id.* However, this contention cannot be reconciled with the fact that 8YY traffic is different from an end user and ordering perspective as noted by NRIC (*see* NRIC Comments at 5-6) and the record developed herein.

¹⁵ Inteliquent Comments at 4.

¹⁶ As noted by Teliix, the customer of the 8YY service is the "beneficiary" of the call "as they pay extra to let consumers reach them without paying toll charges even in today's market of "flat-rate toll calling." Teliix Comment at 9. So too, ITTA properly notes that "[e]mbedding charges attributable to 'toll-free' calling within the rates consumers pay LECs for telephone service would fundamentally contravene that expectation." ITTA Comments at 3 (footnote omitted). The Consolidated Companies *et al.* also demonstrate that an originating end user

Accordingly, a distinct resolution for the issues raised by the provision of *interstate* 8YY traffic is necessary. 8YY service is a different toll offering from traditional 1+ service not only from a billing but also from an end user perspective. In the event the FCC elects to move forward to address originating *interstate* 8YY traffic, these factual differences between 8YY traffic and other long distance toll services require that a distinct framework be developed in order to advance the public interest.

Third, no question should exist that an originating *interstate* 8YY traffic framework must be based on “well informed, economically sound policy” that is “[g]uided by economists and data experts, using data collected by the FCC and from other sources” – quotes taken from the Remarks of FCC Chairman Ajit Pai at the Hudson Institute, *The Importance of Economic Analysis at the FCC* at 4 (April 5, 2017).¹⁷ NRIC endorses the application of this data-driven analytical framework.

Fourth, the record reflects the absolute requirement that any framework not only provides carriers with the opportunity to recover their costs, but also any such framework should avoid disruptive results.¹⁸ Whether the need for recovery is expressed in terms of avoiding

paying for the call “would upset the common understanding that (1) 8YY calls are free-of-charge to the calling party and (2) the companies that subscribe to 8YY service pay for the cost of the 8YY calls.” Consolidated Companies *et al.* Comments at 10-11.

¹⁷ USTA Comments at 2; *see also* Windstream Services, LLC *et al.* Comments at 5, and 5-10 (The FCC’s assumptions used to establish the terminating access reforms should be tested before any originating access reform is undertaken and any result cannot be done in a vacuum but must evaluate network investment impacts.)

¹⁸ USTA Comments at 1-2, and 3 (“Any changes to the underlying originating access system must include equivalent alternative sources of revenue of incumbent local exchange carriers.”); *see also* Consolidated Companies *et al.* Comments, at 4 (“[M]ajor intercarrier compensation reforms should be made in ways that “avoid market disruption to service providers and consumers”” *quoting* ICC/USF Transformation Order at ¶ 996) at 5 (Reforms should reject any “flashcut” and not be “unduly disruptive” *quoting* ICC/USF Transformation Order at ¶ 964. Further, concerns are expressed that the availability of 8YY services may be called into question if the originating end user pays for the cost of an 8YY call. Absent such recovery, other actions

results that are not “just and reasonable”¹⁹ or avoiding shifting costs to end users,²⁰ the opportunity for cost recovery is required.²¹ Bill and keep in the context of 8YY²² does not provide for that recovery.²³

Finally, NRIC respectfully submits that the record confirms that there is no rational basis to support a conclusion that any existing arbitrage of 8YY services should drive an industry-wide decision.²⁴ Advocates for an 8YY windfall through implementation of bill-and-keep continue to

– like the need to request the discontinuance of carrying 8YY traffic or the elimination of competitive 8YY wholesale query services – may result. *See* Teliix Comments at 2, 3 and 9.

¹⁹ Inteliquent Comments at 2.

²⁰ ITTA Comments at 3 (“Ad Hoc’s request is a request to also apply bill and keep to originating 8YY traffic”, thus “LECs handling originating 8YY traffic would either have to pass the costs of such traffic on to their subscribers or absorb the loss of originating access revenue from 8YY calls. Neither outcome is in the public interest.”); *Id.* at 6 (The FCC should implement a “CAF ICC recovery mechanism” for 8YY access if access charges are diminished.)

²¹ *See* CenturyLink Comments at 6 and n.11 (The FCC has a legal obligation to provide a basis for the recovery by the LEC of its costs); *accord* NRIC Comments at 5-8 (Among other reasons for the treatment of 8YY traffic as distinct, no carrier should be allowed to use another carrier’s network free of charge).

²² For example, Sprint’s comments on its “bill and keep” proposal effectively provide no such recovery (Sprint Comments at 2) nor does Verizon’s apparent request for a flash cut to bill and keep, although recognizing that some longer transition may be required for non-8YY traffic. *See* Verizon Comments at 6. While Comcast argues for a transition and principles of gradualism (Comcast Comments at 4), the ultimate suggestion it reaches of increasing end user charges ignores the fact that the service which is “toll free” is no longer “free.” *See* Inteliquent Comments at 4.

²³ *See* Consolidated Companies *et al.* Comments at 10 (8YY traffic is “not reciprocal”) and n.30 (In light of the “unique characteristic of 8YY traffic, the premise of a bill-and-keep regime, that there is a balanced exchange of traffic between the originating and terminating carrier, does not exist”, thus requiring the FCC to provide “special consideration to 8YY traffic if and when the Commission reforms the existing regime for originating access.”).

²⁴ AT&T’s claimed facts reference a May 2017 ex parte that discloses seventeen (17) CLECs allegedly engaged in what A&T contends to be arbitrage. *See* AT&T Comments at 7 *citing* AT&T May 11, 2017 Ex Parte, WC Docket Nos. 16-363 and 14-228, Attachment at 9. On page 10 of the Attachment to that ex parte, AT&T notes data from “17 Carriers” that AT&T contends are “engaged in traffic pumping or support traffic pumping” as well as “1300 other carriers” that are not so engaged. *See id.*, Attachment at 10.

avoid any reconciliation of their positions *vis-a-vis* the Commission's recognition that arbitrage actions will continue to be monitored by the FCC²⁵ and that, if *interstate* 8YY arbitrage occurs, alternative Commission procedures – such as complaints or rulemakings – can be used to address the specifics of any such situation.²⁶ To be sure, if exchange access rates are alleged to be too high, tariff challenges may be made, complaints may be filed or, ultimately, the complaining carrier may attempt to serve the end user placing the toll free call at a lower cost.

Accordingly, for the reasons stated in submissions made by NRIC regarding the intercarrier compensation treatment of originating *interstate* 8YY exchange access traffic, NRIC respectfully submits that the Commission should comprehensively address the issue of 8YY originating *interstate* access in the manner that NRIC has suggested.

²⁵ See NRIC Comments at 2, n.5 *citing to ICC/USF Transformation Order* at ¶ 672. Like Ad Hoc in its ex partes, commenters also attempt to bolster contentions on the appropriateness of an interstate 8YY bill and keep access regime based on FCC statements in *ICC/USF Transformation FNPRM* that 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” (Sprint Comments at 2 *quoting ICC/USF Transformation Order* at ¶1303) as well as the companion point made by GCI 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.” GCI Comments at 3 *quoting ICC/USF Transformation FNPRM* at ¶1303; *see also* AT&T Comments at 4; Verizon Comments at 5-6. NRIC has already demonstrated that such reliance is misplaced. *See* NRIC Comments at 7-8, n.19.

²⁶ *See id.* at 8; *see also* USTA Comments at 2 (Action on arbitrage schemes should be “targeted.”) As also stated by Windstream Services, LLC *et al.*:

If after an appropriate investigation the Commission concludes such stimulation exists and is material, then it should consider such targeted efforts before engaging in a process to reform all originating traffic-related charges. Doing so will enable the Commission to appropriately analyze the impact of the terminating access reforms and predictions about consumer benefits and to collect data before initiating additional reforms that could have far-reaching and unintended consequences for consumers.


Windstream Services, LLC *et al.* Comments at 4; *see also id.* at 3.

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Respectfully submitted,

Arlington Telephone Company, The 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 Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company and Three River Telco

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