

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

**REPLY COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) hereby submits its Reply Comments with respect to the Wireline Competition Bureau’s *Public Notice* (Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform), DA 17-631, released June 29, 2017.

WTA’s rural local exchange carrier (“RLEC”) members have long originated the toll-free calls of 8YY services. Whereas such calls have different and distinct purposes and costs vis-à-vis other originating traffic, the underlying common cost recovery and universal service issues are so closely intertwined that any and all substantial reform of 8YY and other originating switched access charges should be undertaken and implemented simultaneously in a single comprehensive proceeding. WTA agrees with Windstream Services LLC (“Windstream”), Frontier Communications Corporation (“Frontier”) and NTCA – The Rural Broadband Association (“NTCA”) that any such proceeding requires the collection of extensive usage, revenue and pricing data; the consideration of the impacts upon broadband deployment and Internet Protocol (“IP”) migration; the crafting of effective and efficient cost recovery

mechanisms; and the modeling of potential impacts upon infrastructure investment and universal service support mechanisms (Windstream-Frontier-NTCA Comments, pp. 8-10).

In the meantime, there is no need for the Commission to jump precipitously into 8YY access reform due to largely vague and unsupported claims that “arbitrage and access stimulation schemes are increasingly shifting to 8YY service” [See, *e.g.*, Ad Hoc Telecommunications Users Committee (“Ad Hoc”), Ex Parte Notice, May 19, 2017, p. 2]. The only specific example of which WTA is aware – the alleged use of autodialers by unscrupulous competitive local exchange carriers (“CLECs”) or their accomplices to generate artificial originating access revenues by making large numbers of robocalls to 8YY numbers (Comments of Verizon, pp. 3-4) – can be investigated, addressed, punished and stopped by the Commission at this time under a variety of existing statutory provisions and rules, including the prohibition of unjust and unreasonable practices in Section 201 of the Act and the prohibition of autodialer calls to parties charged for received calls in Section 227(b) of the Act.

I. WTA – Advocates for Rural Broadband

WTA is a national trade association representing more than 325 rural telecommunications providers that offer voice, broadband and video-related services in Rural America. WTA members are generally small RLECs that serve some of the most rugged, remote and/or sparsely populated areas of the United States. They are providers of last resort to many areas and communities that are both very difficult and very expensive to serve.

II. The Nature of 8YY Calls and Cost Recovery

8YY calls were developed as a valuable and highly desired service for businesses and other large entities that want to encourage potential users of their goods and services to place

long distance calls to them, and that agree to pay the originating switched access costs of such non-local inbound calls in order to make them toll-free for the originating callers.

Contrary to Ad Hoc's claims (Ad Hoc May 19, 2017 Ex Parte Notice, p. 2 of Attachment), originating 8YY calls are not equivalent to "sent paid" terminating calls on the "ground" that the paying 8YY customer on the terminating end is "powerless" to pick the originating switched access service provider. In reality, 8YY service customers are not passive "victims," but rather are the prime movers that actively solicit and encourage calls from a large and broad variety of potential callers situated throughout the national or regional areas for which they purchase their 8YY services. Virtually all 8YY customers advertise their toll-free numbers generally, and invite calls without regard to the identities of the carriers providing originating switched access services to the potential callers. Stated another way, 8YY service customers do not have any interest or reason to investigate, much less to "pick" among, the hundreds or thousands of incumbent local exchange carriers ("ILECs") and CLECs providing originating switched access services to the locations from which they can be called on a toll-free 8YY basis. Instead, 8YY service customers pay rates that compensate the interexchange carriers providing their 8YY service for the estimated originating access charges of the variety of ILECs and CLECs from which their toll-free callers initiate calls.

WTA agrees with CenturyLink that "the fundamental purpose of 8YY service is to *relieve* calling parties of the cost of the call" (CenturyLink comments, pp. 4-5). Ad Hoc's proposal to apply the per minute charges for terminating traffic (currently, bill-and-keep for price cap carriers and less than \$0.005 per minute for other carriers) to the originating end of 8YY calls (Ad Hoc May 19, 2017 Ex Parte Notice, p. 1) would wholly nullify this pro-consumer purpose. It would largely eliminate (and fully do so when the remaining non-price cap carriers

complete the transition of their terminating end office switched access charges to bill-and-keep) the arrangements entered into by businesses and other 8YY service customers to encourage toll calls from prospective users of their goods and services by bearing the costs of such calls. Instead, the costs of originating 8YY calls would be imposed upon the ILECs and CLECs serving the phone numbers originating such calls, and passed through to their customers (both those who call 8YY numbers and those who do not) in the form of higher local exchange service rates unless and until an alternative cost recovery mechanism may be adopted and implemented.

As CenturyLink indicates, “originating access services entail real costs and LECs providing those services must be assured of the ability to recover those costs” (CenturyLink comments, p. 5). In addition to the last mile (for RLECs, often the last 20-to-50 miles), switching and other transport and transmission costs that are incurred to set up all originating long distance calls, 8YY calls entail additional costs for the 8YY database queries needed to route such calls to the appropriate interexchange carrier (“IXC”) serving the 8YY customer. WTA members and other RLECs lack the size and resources to compile, maintain and operate their own 8YY database query services, and must obtain these services from the larger entities that offer them. In most cases, RLECs have very few options from which to obtain 8YY database query service – often the successor to the Regional Bell Operating Company (“RBOC”) in whose region they are located, plus possibly one or (in rare instances) two alternatives. And, in all cases, RLECs are price takers that have no choice but to accept and pay the 8YY query charges imposed by the 8YY database operators from which they obtain service.

WTA is aware that CenturyLink has indicated that “the fact that database query charges vary considerably within the industry is a problem” (CenturyLink comments, p. 5). However, CenturyLink also asserts that “database query services entail real costs” and that “any reform

must still assure that LECs providing those services must be assured of the ability to recover those costs” (*Id.*). Given that they do not operate their own 8YY query databases, WTA members are not in a position to comment upon the reasonableness of 8YY database costs and query pricing. However, WTA notes that where its members have a choice among multiple 8YY database inquiry services, speed and ease of access and reliability are important factors as well as query pricing.

III. There Is No Need or Basis for Immediate and Precipitous 8YY Originating Access Reform

Ad Hoc and AT&T have asserted that “arbitrage and access stimulation schemes are increasingly shifting to 8YY service in the wake of the Commission’s delayed reformation of originating access charges” (Ad Hoc, May 19, 2017 Ex Parte Notice, p. 2). However, there is a dearth of specific evidence in the record of this proceeding to support this oft-repeated but rarely substantiated claim.

Verizon is the only entity of which WTA is aware that has attempted to describe the existence of 8YY access stimulation schemes. Without presenting specific evidence of actual instances, Verizon has claimed the presence of traffic pumping involving sham 8YY calls initiated by autodialers from certain CLECs (Verizon comments, pp. 3-4). Verizon has alleged that unscrupulous CLECs and their accomplices have used autodialers to make robocalls to 8YY numbers, often using tactics or devices to prolong calls to maximize originating access charges.

WTA notes that any and all such autodialer/robocall schemes constitute clearly unlawful behavior that can and should be addressed immediately. The Commission does not need a lengthy and complex originating access charge reform rulemaking to put a stop to these unlawful practices. Rather, it already has substantial and effective statutory authority -- under the Section 201 prohibitions against unjust and unreasonable practices and under the Section 227(b)

prohibition against the use of autodialers to place calls to parties (like 8YY customers) charged for the call -- to investigate specific claims that certain carriers and their collaborators are engaged in these and similar schemes, and to punish and put an end to proven violations.

IV. Prerequisites for Originating Access Charge Reform

Given that 8YY originating access charges entail basically the same cost recovery and universal service issues as non-8YY originating switched access charges, originating access charge reform can and should be undertaken and accomplished in a single comprehensive rulemaking at the appropriate time.

WTA agrees with Windstream, Frontier and NTCA that the Commission must first collect and analyze relevant data before proposing or adopting originating switch access rate reforms (Windstream-Frontier-NTCA comments, pp. 5-10). Similar to what it did to prepare for its 2011 terminating switched access charge reforms, the Commission should collect and analyze recent data from potentially affected ILECs and CLECs with respect to originating 8YY and non-8YY switched access minutes and originating 8YY and non-8YY switched access revenues, as well as retail local exchange service rates, before devising an originating access charge reform plan and putting it out for public comment.

Originating access reform may or may not result in a transition to bill-and-keep similar to that implemented for terminating switched access charges. Whatever approach is ultimately selected, an extensive collection of data will be needed to model the length and timing of potential transition mechanisms and paths, the originating access rate reductions and projected revenues during each year of the transition, and the size of the universal service support mechanism(s) necessary to permit cost recovery and avoid unaffordable local service rate increases and/or local service losses and degradations. Such data might support differing

transition periods and rate reduction schedules for price cap carriers versus RLECs and other smaller entities. The data may also shed light upon questions whether the originating access rate transition for RLECs and CLECs should be postponed until the transition of their terminating end office switched access rates to bill-and-keep is completed. Recent originating access data, plus the Commission's experience with terminating access charge reform, should help to develop an appropriate and efficient originating access transition. However, an originating access transition may be much more complicated and volatile due to the prior revenue reductions from terminating access charge reform and the subsequent establishment of high-cost support budgets.

Given that originating access revenues have long provided implicit support for ILECs that has allowed them to make the infrastructure investments necessary to provide reasonably comparable voice and broadband services to their rural customers at affordable rates, originating access rates and revenues cannot simply be reduced to or toward bill-and-keep (*i.e.*, zero) without substantial adverse consequences upon rural investment, service and rates. There will be an obvious need for one or more universal service cost recovery mechanisms – perhaps similar to the Connect America Fund – Intercarrier Compensation (“CAF-ICC”) support mechanisms implemented in connection with terminating access charge reform. Major issues to be modeled by the Commission include whether there will need to be separate mechanisms for price cap carriers and rate-of-return carriers, how large each such a mechanism will need to be, how long each mechanism will operate and whether and how they will transition toward their final state, and how each mechanism will be funded.

Given that the entire High-Cost Universal Service Fund program has an annual \$4.5 billion budget and the Rate-of-Return portion thereof has an annual \$2.0 billion budget [plus the additional CAF Reserve provided to Alternative Connect America Cost Model (“ACAM”)]

participants], the size and funding of the universal service cost recovery mechanism(s) for originating access charge reform pose a critical and difficult problem having no easy resolution. For RLECs, with the ACAM Path already funded below the optimal \$200 per location benchmark and with Rate-of-Return (“RoR”) Path carriers already suffering projected 12.3505 percent “haircuts” from the Section 54.901(f) and 54.1310(d) budget control mechanisms for the July 2017 to June 2018 period, there is simply no place to fit a sufficient originating access reform support mechanism (whether or not similar to the CAF-ICC mechanism) within the existing \$2.0 billion annual Rate-of-Return budget. This is particularly true while the CAF-ICC mechanism for terminating access charge reform continues to make substantial distributions. And if the Commission establishes separate mechanisms outside the existing High-Cost program budgets, or increases those budgets to accommodate them, what will be the necessary increase in Universal Service Fund contributions and assessment rates?

WTA notes that the Commission should also consider the impacts of the Internet Protocol (“IP”) transition and originating access reform upon each other. Will originating access reform have any impact -- favorable or unfavorable -- upon the ability of ILECs and CLECs to upgrade their networks to deploy faster broadband speeds and accommodate more advanced IP services? Does the ongoing transition to IP services increase or reduce the need for or urgency of originating access reform?

WTA agrees with Windstream, Frontier and NTCA that the Commission should analyze the degree to which terminating access reform has fulfilled its promises of lower consumer toll rates, increased service levels and more innovative services before undertaking comprehensive originating access reform (Windstream-Frontier-NTCA comments, pp. 6-7). The extent to which the promised pass-throughs of access cost savings by interexchange carriers to their toll

customers were made is not clear, nor is the extent to which reduced termination charges have led to promised new calling features and services.

Finally, WTA notes that there may be questions regarding the Commission's authority to reform intrastate originating access charges. Whereas the Commission's jurisdiction over interstate originating access charges is clear, the Section 251(b)(5) language that was found to support the Commission's jurisdiction to reform intrastate terminating access charges is not so clearly applicable to intrastate originating access charges.

V. Conclusion

WTA finds no need for the Commission to jump precipitously into 8YY access reform. Ad Hoc's proposal to apply largely bill-and-keep terminating access charges to originating 8YY calls must be rejected because it ignores the fact that 8YY customers are the driving force encouraging and generating 8YY calls rather than powerless victims, and would destroy the fundamental purpose of 8YY calls to relieve calling parties of the cost of 8YY toll calls. Likewise, there is no clear evidence that arbitrage and access stimulation schemes are shifting to 8YY service. Rather, the CLEC autodialer/robocall schemes alleged by Verizon can readily be addressed by enforcing existing prohibitions in Sections 201 and 227 of the Act. Finally, WTA does not know whether or how the Commission can address alleged excessive charges for queries to the 8YY databases operated by the RBOCs and other large entities. WTA members have access to few alternative 8YY query databases, and have virtually no options but to pay and recover the query prices charged by 8YY database owners.

Any substantial reform of 8YY originating access should be undertaken and implemented simultaneously in a single comprehensive originating access charge reform proceeding because the underlying common cost recovery and universal service issues are closely intertwined. WTA

agrees with Windstream, Frontier and NTCA that any such proceeding requires the collection of extensive usage, revenue and pricing data; the consideration of the impacts upon broadband deployment and IP migration; the crafting of effective and efficient cost recovery mechanisms; and the modeling of potential impacts upon infrastructure investment and universal service support mechanisms. In particular, during the present period of pressing broadband upgrade demands, insufficient universal service support dollars, and tight high-cost support budgets, it is difficult to see how an appropriate universal service mechanism to support an originating access charge transition could be funded without substantial changes to existing budgets and/or contribution mechanisms.

Respectfully submitted,
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