

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

8YY Access Charge Reform

WC Docket No. 18-156

COMMENTS OF VERIZON¹

The Commission should promptly adopt a plan to complete the transition to bill-and-keep for all telecommunications traffic, including originating switched access charges. Virtually all originating access charges today are associated with calls to toll-free, or “8YY” numbers. And because originating access charges have not transitioned to bill-and-keep—even though Section 251(b) does not support originating charges—arbitrageurs and fraudsters have moved their consumer-harming schemes to 8YY calls. These schemes and the disputes they engender are growing. Quickly moving originating access charges to bill-and-keep and reducing per-call 8YY database query charges would eliminate financial incentives fueling the schemes.

I. The Commission Should Quickly Move 8YY Originating Access Charges to Bill-And-Keep.

The Commission has identified two primary remaining areas of intercarrier compensation arbitrage. In the Access Arbitrage proceeding, the Commission proposed narrow measures intended to eliminate arbitrage associated with terminating traffic, including terminating transport. And while we supported the Commission’s goals and efforts there, we explained that reducing all terminating tandem switching, common transport, and tandem-switched transport rate elements for access stimulators to bill-and-keep ultimately would be more effective than the rules the

¹ The Verizon companies participating in this filing (“Verizon”) are the regulated, wholly-owned subsidiaries of Verizon Communications Inc.

Commission proposed. Setting rates at bill-and-keep eliminates the financial arbitrage incentives better than targeted measures.

Here, the Commission proposes to begin to transition originating access charges associated with 8YY calls to bill-and-keep over three years.² While the proposal reaches the right end state—bill-and-keep—the Commission should consider moving there more quickly. Since 2011, the Commission has permitted originating access charges only as part of its anticipated transition to bill-and-keep. But for the first seven years of that transition, the Commission did no more than cap all originating access rates for price-cap LECs and interstate originating access rates for rate-of-return LECs. Even if the Commission were to move quickly and adopt next year its proposed three-year transition, 8YY originating access rates would not be at bill-and-keep until 2022. That would be eleven years after the Commission concluded that the legal framework for the current intercarrier compensation regime does not support permanently retaining originating access charges³ and that originating switched access rates “should be eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime.”⁴

The disparity between terminating access (which has transitioned to bill-and-keep) and originating access has fueled uneconomic arbitrage schemes, leading to harassing calls to 8YY customers, devaluation of 8YY services, and many intercarrier compensation disputes. The schemes typically involve LECs that purchase, transmit, and bill long-distance carriers for robocalls and other fraudulent 8YY traffic. Those LECs also typically assert—incorrectly—that

² *8YY Access Charge Reform*, Further Notice of Proposed Rulemaking, WC Docket No. 18-156, FCC 18-76 (June 8, 2016).

³ See *Connect America Fund; et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 817 (2011) (“*2011 ICC Transformation Order*”).

⁴ *Id.* ¶ 1298.

they can assess tariffed end office switching charges on over-the-top VoIP traffic, which the Commission is addressing in Docket Nos. 10-90 and 01-92 in response to a CenturyLink Petition for Declaratory Ruling.⁵ In the typical scenario, these LECs acquire 8YY calls from their ostensible wholesale customers to exploit arbitrage opportunities. For example, Teliix's "wholesale customer[s do not] make any payment to Teliix . . . for 8YY originating" traffic; instead, "[t]hey get paid by Teliix to send us their traffic."⁶ Core Communications, which the Commission long ago identified as the "the poster boy of [intercarrier] compensation gamesmanship,"⁷ also is pursuing this arbitrage opportunity. Indeed, Core recently asserted that "a purchase of X number of [originating switched access] minutes for \$100,000 . . . generates multiples of the \$100,000 in [originating switched access charge] revenues."⁸ The Commission has previously acted to stop similar arbitrage opportunities that "made it possible for LECs . . . to afford to pay their own customers to use their services," which "provide[s] an inducement to fraudulent schemes to generate . . . minutes."⁹

The Commission can and should act quickly. The transition to bill-and-keep for 8YY originating access is possible and should be required in one year (or less) after the effective date of a Commission order beginning the transition. 8YY calls today comprise most originating access

⁵ See CenturyLink Petition for Declaratory Ruling, *Connect America Fund*, WC Docket No. 10-90, *et al.* (May 5, 2011).

⁶ Excerpt of Deposition of Teliix President David Aldworth at 61:18-62:5, *Teliix, Inc. v. AT&T Corp.*, No. 1:15-cv-01472-RBJ, Dkt. No. 68-1 (D. Colo. filed Oct. 21, 2016), <https://bit.ly/2sOWzAx>.

⁷ Resp. of FCC to Emergency Mot. for Stay at 14, *WorldCom, Inc. v. FCC*, Nos. 01-1218 *et al.* (D.C. Cir. filed June 12, 2001).

⁸ Debtor's Post-Hearing Mem. at 9, *In re CoreTel Virginia, LLC*, No. 15-16717-RAG, Dkt. No. 238 (Bankr. D. Md. June 6, 2018) (emphasis added), <https://bit.ly/2xRaFam>.

⁹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Remand and Report and Order, 16 FCC Rcd 9151, ¶¶ 21, 70 (2001).

traffic, and they account for all or nearly all originating access abuse. A one-year (or shorter) transition would more quickly curtail the 8YY arbitrage schemes, fueled by robocalls, proliferating since terminating access rates have transitioned to bill-and-keep. The Commission acknowledged in the *NPRM* the many factors fueling originating access arbitrage, and we described our experience with these problems in the record-refresh comments we submitted last year, which we attach here as Exhibit 1. The Commission should wait no longer to address these issues.

II. The Commission Should Reduce 8YY Database Query Charges As It Proposes, To The Level of the Lowest Price-Cap ILEC Nationwide.

In addition to high per-minute charges for originating switched access, the per-call charges for querying the 8YY database on a toll-free call are fueling arbitrage. When a caller places a toll-free call, the originating LEC or an upstream tandem provider has to query an 8YY database to identify the IXC that provides the toll-free service on that call and route the call properly. The originating LEC or upstream tandem provider tariffs a per-query charge for that database dip, and the IXC offering the toll-free service has no choice but to accept that charge at the LEC's tariffed rate.

There are few, if any, limits on these 8YY query charges. Unlike CLEC switched access charges, CLEC 8YY query charges are not benchmarked to the rate of the competing ILEC. As a result, tariffed 8YY query charges—and particularly CLEC 8YY query charges—often times are very high, sometimes \$0.015 or more per query. And toll-free service providers have no choice but to accept those charges, because as the Commission has observed, “the IXC carrying the 8YY traffic must use the access service of the LEC subscribed to by the calling party.”¹⁰

¹⁰ 2011 ICC Transformation Order ¶ 1303.

In addition, we often are assessed more than one 8YY database query charge on the same call. For example, as an 8YY call moves down its call path, it may go from one LEC to another before it reaches the IXC that serves the 8YY customer. And in that scenario, the first LEC in the path and other LECs in the path may both assess the charge.

Although the Commission could address 8YY query charges in other ways, its proposal to reduce them to the level of the lowest price-cap LEC nationwide—and limit them to one per call—would reduce if not eliminate the arbitrage opportunities these charges generate. The Commission should adopt its proposal.

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EXHIBIT 1

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

COMMENTS OF VERIZON¹

8YY originating access arbitrage has become an industry-wide problem. The arbitrage opportunity exists because although the Commission made clear its intent to phase out originating-access rates, the Commission has not transitioned originating rates below their 2011 levels. And as Ad Hoc noted, arbitrage schemes have shifted to 8YY traffic.² The time has come for the Commission to transition all originating switched-access rates to bill-and-keep. But as a first step, as it suggested in the Public Notice,³ the Commission should act immediately to reduce originating access charges on 8YY-dialed traffic, one of the last havens for intercarrier-compensation schemes.

¹ The Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² Letter from Colleen Boothby, Counsel to Ad Hoc Telecommunications Users Committee (“Ad Hoc”), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90; *et al.*, at 1 (filed May 19, 2017).

³ *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, Public Notice, 32 FCC Rcd 5117 (2017).

As the Commission has found, the legal framework it relied upon in the *2011 ICC Transformation Order* does not support permanently retaining originating access charges.⁴ In that order, the Commission brought “all traffic within the section 251(b)(5) regime.”⁵ And since 1996, the Commission has held section 251(b)(5) “does not address charges payable to a carrier that originates traffic.”⁶

The Commission therefore since 2011 has permitted originating access charges only as part of a transition, “subject to the phase-down and elimination of those charges pursuant to a transition to be specified in response to the FNPRM.”⁷ Originating switched-access rates, it said, “should be eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime.”⁸ But while the Commission began that transition by capping all originating access rates for price-cap LECs and interstate originating access rates for rate-of-return LECs, it deferred for another day how it should eventually reduce originating rates to bill-and-keep.⁹ And we are now in the seventh year of that transitional state, with no further progress towards phasing down originating rates.

Terminating access rates, meanwhile, have been transitioning to bill-and-keep, and the transition for end-office rates is almost complete. This year, price-cap carriers’ terminating

⁴ See *Connect America Fund; et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, ¶ 817 (2011) (“*2011 ICC Transformation Order*”).

⁵ *2011 ICC Transformation Order*, ¶ 764.

⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15,499, ¶ 1042 (1996).

⁷ *2011 ICC Transformation Order* ¶ 961, n.1976. See also *id.* ¶¶ 817-818.

⁸ *Id.* ¶ 1298.

⁹ See, e.g., *id.* ¶ 818. The Commission capped all interstate originating access rates and capped price-cap carriers’ intrastate originating access rates, but it did not cap rate-of-return carriers’ intrastate originating access rates.

switched end-office rates were set at bill-and-keep. Rate-of-return carriers have three years left in that transition.¹⁰

This has created a disparity between originating and terminating rates, presenting an opportunity for traffic pumpers and other arbitrageurs for whom terminating end-office rates no longer provide any benefit. Because originating access rates are still above bill-and-keep—for example, the Band 8 NECA interstate per-minute rate is \$0.04882, or almost five cents per minute—arbitrage schemes are, as Verizon and others have noted, shifting to originating access, and in particular 8YY originating access. The “inefficiencies and opportunities for wasteful arbitrage” that riddled the intercarrier-compensation regime in 2011 have shifted to originating access.¹¹ And as 8YY arbitrage traffic has increased, 8YY traffic today makes up the bulk of originating access minutes.

Recent sworn testimony from the CEO of Core Communications confirms that arbitrageurs are shifting their operations to originating access. Core’s CEO testified that while it is exiting “backwards-looking lines of business” and the drop in terminating access rates has affected its revenues, Core projects to grow its originating-access revenue: “[o]ne thing that is not dropping ... is originating access, and a big portion of projection growth is the growth of the originating access business.”¹²

Traffic pumping involving sham 8YY calls already has become a real arbitrage problem. These schemes—which began to proliferate shortly after the Commission’s decision to transition *terminating* access to bill-and-keep—often include an autodialed call originating from a CLEC

¹⁰ *Id.* ¶ 801.

¹¹ *Id.* ¶ 9.

¹² *In re Core Communications*, Transcript, 341 Meeting of Creditors, Case No. 17-258 at 58 (D.C. Bankr. Ct. June 7, 2017) (quoting Bret Mingo, Debtor Representative, President of Core Communications, Inc.).

that inflates costs to carriers and their customers. They result in harassing hang-up calls at all hours to the carriers' 8YY customers, despite section 227(b)'s prohibition on using autodialers to place calls to a service for which the called party is charged for the call. In one scheme Verizon has observed, a caller using an autodialer will make robocalls to 8YY numbers. Sometimes there will be no answer, and the calls will time out. Other times, the calls will be answered, typically by a business's automated, interactive voice response (IVR) system. After the call is answered, the arbitrageur's autodialer or computerized systems will hit the "#" key every 20 seconds. Sometimes, that will have no effect, and the call will soon time out. Sometimes, it may prolong the call for another 30 or 60 seconds. But sometimes, periodically hitting the "#" key will send an 8YY call into an endless loop, generating minute after minute of originating access charges for the originating local exchange carrier, which has partnered with the caller to share the revenue. Verizon has found that the local exchange carriers involved in this arbitrage scheme often send Verizon no other traffic, indicating that their sole business plan is to exploit the originating access regime.

The Commission has found that traffic pumping "imposes undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment."¹³ And it found that traffic pumping "harms competition by giving companies that offer a 'free' calling service a competitive advantage" when they "leverage arbitrage opportunities."¹⁴

Here, 8YY arbitrage harms several victims. First, the schemes harm the businesses that receive these autodialed 8YY calls. At best, these calls are an annoyance. Worse, they can cause business customers to waste resources answering these calls. And they can disrupt a customer's IVR system. Second, the schemes harm the interexchange carriers involved, in at least two ways.

¹³ *2011 ICC Transformation Order* ¶ 663.

¹⁴ *Id.* ¶ 665.

These carriers sell 8YY service to business customers. Annoying and disruptive 8YY calls devalue their 8YY products. And the interexchange carriers receive the artificially inflated originating access bills from the local exchange carriers involved in the scheme. Those bills are for calls that serve no purpose except to drive up those access bills. And ultimately, as the Commission has recognized, all long-distance customers bear the costs of arbitrage-related access stimulation.¹⁵ This is as true with today's originating-access schemes as it was with the terminating-access schemes the Commission addressed in the *2011 ICC Transformation Order*, when it found access stimulation increases the average cost of long-distance calling for all customers of the long-distance providers involved, whether or not they use the access stimulator's services.¹⁶

So while the Commission should begin to transition all originating switched-access rates to bill-and-keep, a good first step would be to take immediate action to phase down or eliminate tariffed charges associated with 8YY traffic. This would include the per-minute access charges and the database query charges, which have few if any limits and which can be excessive.¹⁷

AdHoc would have the Commission "restore the historic treatment of 8YY traffic for access charge purposes"¹⁸ by setting originating access rates at terminating levels for 8YY calls. 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

¹⁵ *Id.* ¶ 663.

¹⁶ *Id.*

¹⁷ See Comments of Verizon, *Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket No. 16-363 (filed Dec. 2, 2016).

¹⁸ Letter from Colleen Boothby, Counsel to Ad Hoc, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90; *et al.*, at 1 (filed March 31, 2015); see also Ad Hoc Comments, WC Docket No. 10-90; *et al.*, at 12 (filed Feb. 24, 2012).

“because the calling party chooses the access provider but does not pay for the toll call, it has no incentive to select a provider with lower originating access rates,”¹⁹ and neither the 8YY provider nor its customer (the called party) have an opportunity to discipline those rates. So 8YY traffic is more similar to terminating access than originating access charges on 1+ dialed traffic.

Because terminating end-office rates for price-cap carriers are already at bill-and-keep, and rate-of-return carriers’ rates will be there in three years, Ad Hoc effectively proposes to take originating access rates to bill-and-keep almost immediately. If the Commission determines a longer transition is needed, it still could address 8YY originating access arbitrage quickly by beginning a multi-year transition of all originating access charges to bill-and-keep but with an accelerated transition for 8YY originating access.

But 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. Since shortly after the Commission adopted the *2011 ICC Transformation Order*, Verizon and others have urged the Commission to reform originating access and to focus on 8YY traffic, to prevent the arbitrage schemes that now pervade the industry. The time is overdue for the Commission to address the problem.

We look forward to working with the Commission to complete the intercarrier-compensation reform efforts the Commission began in 2011.

¹⁹ *2011 ICC Transformation Order* ¶ 1303.

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