Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
8YY Access Charge Reform	)	WC Docket No. 18-156
	)	

COMMENTS OF AT&T

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AT&T Inc. ("AT&T"), on behalf of itself and its affiliates, respectfully submits these comments in response to the Further Notice of Proposed Rulemaking released by the Federal Communications Commission ("Commission") on June 8, 2018, regarding 8YY access charge reform.[1]

INTRODUCTION AND SUMMARY

The *Notice*'s proposals to reform originating access charges for 8YY calls are vitally necessary and long overdue. As the *Notice* recognizes, originating access charges for 8YY calls inherently invite fraud and abuse, because they create a mismatch in pricing signals. The calling party in an 8YY call chooses the originating LEC but does not pay or contract with the IXC for the long-distance call. The IXC therefore has no choice but to use the originating LEC chosen by the calling party, but the "calling party . . . has no incentive to select a provider with lower originating access rates" because he "does not pay for the toll call."[2]

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[1] Further Notice of Proposed Rulemaking, *8YY Access Charge Reform*, WC Docket Nos. 18-156, FCC 18-76 (released June 8, 2018) ("*Notice*").

[2] Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund, et al.*, 26 FCC Rcd 17663, ¶ 1303 (2011) ("*Transformation Order*").

Local exchange carriers—especially CLECs—are increasingly exploiting this arbitrage opportunity, and indeed, they are increasingly focusing their efforts on 8YY calling now that most terminating access charges have gone to bill-and-keep. The problem is growing, as 8YY calls increase as a percentage of all originating access and CLEC arbitrage practices have begun to dominate 8YY calling. The only way to truly eliminate any ability to exploit these arbitrage opportunities is to adopt a system of bill-and-keep. As the *Notice* correctly recognizes, bill-and-keep will make all of the CLECs' current arbitrage schemes impossible to execute, while providing substantial public interest benefits relating to competition, the transition to IP, and a reduction in needless litigation and associated monitoring efforts.

Notably, however, CLECs that are acting as third-party tandem providers (and thus have no end-user customer) are the source of some of today's 8YY originating access charge abuses. As explained below, the Commission should address these abuses by adopting the direct interconnection proposal that AT&T recently put forward for both terminating and originating access in the companion *Access Arbitrage* proceeding. Under that proposal, when an IXC is financially responsible for traffic originated by a LEC or a CMRS carrier, that IXC would be permitted either (1) to choose to establish a direct connection to the originating carrier's end office (or its equivalent), or (2) if the IXC chooses not to establish a direct connection to the originating carrier's end office (or its equivalent), the IXC could use the available third party arrangements and pay the intermediate carrier for its services. If the IXC requests a direct connection and is denied, however, then (3) the end office owner would be required to arrange and pay for the tandem and transport necessary to deliver the call from its end office to the IXC. In this third scenario, in which the end office owner is required to contract for tandem and transport, the Commission should apply "bill-and-keep" to such third-party tandem services for such calls (as well as to the

originating carrier's end office services), thereby relieving the IXC from the requirement to compensate another carrier for these services.

The Commission should also adopt its proposal to cap the rates for 8YY database dip charges. Database dip charges present the same arbitrage concern as per-minute rates, because the calling party's originating carrier provides the database dip service but the calling party does not pay the IXC for the call. Under the current regime, captive IXCs are not in a position to bring competitive pressure on the originating LECs that offer these services via access tariffs. CLECs in particular are rushing to exploit this arbitrage opportunity as well, and many have relatively high rates given that they have never been subject to the Commission's CLEC access charge rules requiring them to benchmark their rates to the ILEC rate. AT&T supports the Commission's proposal to cap such rates at $0.0015 per database dip or "query" as an interim measure pending the further transition to bill-and-keep.

Finally, the Commission should take this opportunity to complete the full transition of all originating access charges to a bill-and-keep system. 8YY calling today represents a large percentage of all originating access, and therefore reforming only 8YY-related charges would leave only a relatively small amount of traffic under the legacy access charge regime. Maintaining the access charge regime for such a small amount of traffic would serve little purpose (and, indeed, requires LECs to incur new costs simply to create billing and accounting systems that can split the originating traffic between the two regulatory regimes). Rather than delaying the inevitable, the Commission should apply its transition to all originating traffic, rather than just 8YY traffic.

I. THE COMMISSION SHOULD ADOPT BILL-AND-KEEP ON THE ORIGINATING END OF 8YY CALLS, SUBJECT TO AT&T'S DIRECT INTERCONNECTION PROPOSAL.

The Commission should immediately adopt its proposal to transition originating access charges for 8YY calls to bill-and-keep. Abuse of the originating access charge regime is

substantial and growing, and bill-and-keep will make the system more rational and efficient while closing down opportunities for regulatory arbitrage. Notably, some CLECs acting as third-party tandem providers account for many of today's abuses, and the Commission should deal with those situations by combining a bill-and-keep approach with the direct interconnection proposal that AT&T recently put forward in the companion *Access Arbitrage* proceeding. And, as explained below, the Commission should adopt appropriate transitional rules, including reducing the transition to a two-step process that reaches bill-and-keep more quickly.

A. The Commission Should Adopt Bill-And-Keep, And It Should Apply Bill-And-Keep To Third-Party Tandem Providers In Conjunction With AT&T's Interconnection Proposal.

Originating access charges involve a mismatch in pricing signals that inherently invites fraud and abuse. The calling party in an 8YY call chooses the originating LEC but does not pay or contract with the IXC for the long-distance call. This creates a fundamental misalignment of pricing signals: the IXC has no choice but to use the originating LEC chosen by the calling party, but the "calling party . . . has no incentive to select a provider with lower originating access rates" because he "does not pay for the toll call."[3]

Now that most terminating access charges have transitioned to bill-and-keep, LECs—especially CLECs—have shifted their efforts to recoup lost revenues by taking advantage of 8YY-related opportunities for arbitrage and abuse on the originating side. 8YY originating access minutes have been growing as a share of total originating access minutes (from 65% in January 2007 to 89% in January 2018, according to AT&T's billing data). CLEC 8YY originating access minutes have exploded even as the number of ILEC 8YY originating minutes has declined. As AT&T previously showed, as of January 2017, AT&T data show that CLEC 8YY originating

[3] *Transformation Order* ¶ 1303.

minutes accounted for more than 53 percent of all interstate originating 8YY minutes and continues to grow rapidly. According to AT&T's most recent billing data (from February 2018), CLECs account for more than 70 percent of all originating access revenues—the vast majority of which is 8YY calling—dwarfing the declining originating access revenues of all the ILECs put together.

Thus, as the *Notice* properly recognizes, a transition to some type of bill-and-keep regime is an urgent priority. The Commission seeks comment, however, on whether it should adopt an across-the-board version of bill-and-keep, or whether it should adopt an alternative version in which bill-and-keep would apply to tandem switching and transport charges only where the originating carrier also owns the tandem.[4] This alternative proposal would have the effect of exempting third-party tandem services from bill-and-keep, and the Commission proposes certain rules that might cap the rates of such intercarrier charges.[5] The Commission asks whether such a proposal "would adequately address abuses in the 8YY marketplace, including benchmarking abuse and mileage pumping."[6]

In fact, neither of the Commission's principal proposals would adequately deal with the issues posed by third-party tandem charges. The alternative proposal, by exempting third-party tandem charges from bill-and-keep, would exempt a substantial portion of the CLEC abuses from bill-and-keep. Much of the abuse today stems from CLECs that do not own the end office or act as the end user's carrier; this is especially true of those that have set themselves up as 8YY

[4] *See Notice* ¶¶ 49-50.

[5] *Id*. ¶ 49.

[6] *Id*. ¶ 50.

"aggregators."[7] Permitting those CLECs to continue billing IXCs for such calls, even if the rates are capped, will only perpetuate the abuses and the resulting inefficiencies.

At the same time, the Commission's principal proposal—"bill-and-keep as the default methodology for all 8YY originating access charges, without regard to who owns the tandem" (*Notice* ¶ 50)—would also be untenable standing alone. Imposing "bill-and-keep" on third-party tandem providers that do not serve the end-user would strand those providers in the middle of the call flow with no customer. That could have major implications for the viability of third-party tandem providers in general, with possible unintended consequences for the overall efficiency of the system.

The solution that would address both issues would be to adopt bill-and-keep *in conjunction with* the interconnection proposal that AT&T recently put forward in the companion *Access Arbitrage* proceeding.[8] There, AT&T proposed that, in situations in which the IXC is financially responsible for delivering calls from a LEC or CMRS carrier, the IXC should have the right to choose to connect directly to the LEC's or CMRS carrier's end office (or the equivalent) or to pay to use an intermediate carrier. Equally important, if the IXC requests a direct connection with the LEC or CMRS carrier and that request is denied, the financial responsibility for delivering the traffic should shift to the originating LEC or CMRS carrier. AT&T specifically argued that this proposal should be adopted at both the originating and terminating ends of a call.[9]

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[7] *See, e.g.*, Letter from Matthew Nodine, AT&T, to Marlene H. Dortch, FCC, *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Att. at 5 (filed Dec. 4, 2017) ("AT&T 12/4/17 *Ex Parte*") (diagram of call flow for originating aggregator).

[8] *See* Comments of AT&T, *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, at 21-24 (filed July 20, 2018) ("*AT&T Access Arbitrage Comments*").

[9] *Id*. at 23-24 (there is "no reason . . . why [the proposal] should be limited to just terminating switched access traffic," and arguing that it should be applied to originating traffic as well).

AT&T's interconnection proposal would facilitate a workable bill-and-keep rule for third party tandem charges. The IXC could establish a direct connection to the end office, or if it did not want to do so, it could choose to use an intermediate carrier and pay that intermediate carrier tandem switching and transport.[10] Where the originating carrier has refused a direct connection, however, it would become the end office owner's responsibility to establish and pay for the appropriate tandem switching and transport to deliver the call to the IXC—thus facilitating a workable bill-and-keep rule for such calls that would apply to both the end office owner and the third-party tandem provider.[11]

As AT&T argued in the *Access Arbitrage* proceeding, such a rule would create the appropriate incentives to establish efficient arrangements and it would also prevent third-party carriers from foisting excessive or inefficient costs on IXCs (as they frequently do today).[12] Indeed, the *Notice* itself articulates a principle that, in actuality, should inform every aspect of the Commission's intercarrier compensation regime: "each carrier should be responsible for the costs of the call path which it has discretion to choose." *Notice* ¶ 34. Originating access charges for 8YY calls, including third-party tandem charges, violate this principle, but AT&T's proposal—which would create a set of rules in which all carriers would pay only for the third-party connections and arrangements that they have the "discretion to choose"—would put this principle into effect and eliminate all of the existing arbitrage opportunities.

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[10] In either of these two scenarios, AT&T proposes that the originating (end office) carrier would still be permitted to assess the database dip charge where appropriate (albeit consistent with the new rules governing such charges, including the cap of $0.0015 per query, as discussed in the next section).

[11] Some of today's 8YY abuses involve CLECs that have partnered with a over-the-top VoIP provider, rather than a LEC or a wireless carrier. The Commission should also consider how and under what circumstances to apply a bill-and-keep regime to such calls to curb such abuses.

[12] *Id*. at 21-23.

B. Bill-And-Keep Would Eliminate Any Ability To Execute Abusive Schemes.

The Commission identifies three specific ways in which carriers are abusing 8YY originating charges: benchmarking abuses, mileage pumping, and traffic pumping. *Notice* ¶¶ 32-38. Bill and keep, by eliminating intercarrier charges, would eliminate any possibility that LECs could pursue any of these abusive 8YY-related schemes.

Benchmarking. Originating access charges for 8YY calls facilitate abuse of the CLEC benchmarking rule.[13] In recent years, CLECs have set themselves up as 8YY "aggregators," agreeing to handle 8YY calls from many originating providers. The current rules give CLECs an incentive to set up shop in areas where they can benchmark their originating access charges to high incumbent LEC rates, thereby artificially inflating their charges relative to what the provider would have been able to charge in the incumbent LEC area where the call was actually placed. In many of these schemes, the CLEC aggregator agrees to pay a portion of its access revenues to the originating provider.

Bill-and-keep (along with AT&T's interconnection proposal) would eliminate any abuses related to these practices. Originating providers may still wish to use the services of aggregators, but under AT&T's interconnection proposal, if the originating carrier has refused a direct connection, such provider/aggregator partnerships would have to recover the costs of their services from the originating provider's end-user customers. Retail competition would discipline the rates they could charge. Such a bill-and-keep regime would prevent such partnerships from working together to foist inflated access costs on IXCs.[14]

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[13] *See Notice* ¶ 25.

[14] *Cf. Transformation Order* ¶ 738.

Mileage pumping. The current system, in which IXCs have no choice but to deal with the originating LEC, also gives LECs an incentive "to artificially inflate their mileage in order to maximize the transport rates they charge IXCs."[15] Bill-and-keep (again, in conjunction with AT&T's interconnection proposal) would eliminate carriers' ability to force inflated per-minute mileage charges on IXCs, and thereby eliminate any ability to execute such schemes.

Traffic pumping. The current regime also gives unscrupulous operators the incentive to enter into fraudulent schemes to inflate traffic volumes delivered to 8YY numbers. The record shows that a traffic-pumper can enter into a revenue sharing arrangement with a LEC and then use automated software both to "robocall" 8YY numbers and to prolong the duration of such calls by using various means to engage with the Interactive Voice Response systems many 8YY customers use. *See Notice* ¶ 27. As the *Notice* indicates, these are essentially fraudulent calls whose sole purpose is to generate access charges for "artificially inflated minutes of use." *Id*.

Bill-and-keep is the only way to reliably eliminate such abuses. Contrary to one commenter's suggestion,[16] addressing fraudulent 8YY calls "on a case-by-case basis" through after-the-fact enforcement would not be nearly as effective. The industry's long history with traffic pumpers shows that the prospect of enforcement will not deter the most unscrupulous operators; IXCs even today are continually forced into disputes and litigation to stop abusive schemes and to win remedies and damages. Bill-and-keep will completely eliminate any ability to execute such schemes, and with it the need for *ex post* litigation and enforcement—all while establishing an intercarrier compensation rule that is more economically efficient than the current rule in the first place.

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[15] *Notice* ¶ 26 (citing AT&T Comments at 14).

[16] *See Notice* ¶ 38 (citing O1 Communications Nov. 1, 2017 *Ex Parte* at 6).

C. Bill-And-Keep Would Also Provide Broad Public Interest Benefits.

Bill-and-keep will also provide broad public interest benefits. As the Notice indicates, bill-and-keep will provide benefits for (1) consumers, (2) the transition to IP, and (3) reduction of intercarrier disputes and the associated litigation. *See Notice* ¶¶ 39-48.

Consumers. Bill-and-keep will benefit end-user and 8YY customers by making the system more efficient. *Notice* ¶¶ 39-44. As the Commission has previously explained, bill-and-keep has significant policy advantages in general because it "ensure[s] that consumers pay only for services that they choose and receive, eliminating the existing opaque implicit subsidy system under which consumers pay to support other carriers' network costs." *Transformation Order* ¶ 738. A bill-and-keep system "also imposes fewer regulatory burdens and reduces arbitrage and competitive distortions inherent in the current system, eliminating carriers' ability to shift network costs to competitors and their customers." *Id*.

These advantages would apply fully to 8YY originating access. Bill-and-keep would align pricing signals more appropriately, which would give end users on the originating end the ability to apply competitive discipline to originating LECs' prices and end the "opaque implicit subsidy" inherent in today's access charge arrangement. *Transformation Order* ¶ 738; *see also Notice* ¶¶ 39-40.

Contrary to some parties' suggestions, bill-and-keep reforms should have no negative impact on *legitimate* 8YY calling. *See Notice* ¶ 41. The current system creates arbitrage opportunities that give CLECs incentives both to artificially inflate the amount of 8YY calling and to artificially increase the costs of 8YY calls to IXCs and their customers. Bill-and-keep merely shifts originating costs to end user charges, where they can be disciplined by competition. The

result will be that artificially inflated costs are competed away, which will make the overall system more efficient and permit 8YY calling to occur at efficient (and still robust) levels.[17]

Transition to All-IP Services. Bill-and-keep should also accelerate the transition to an all-IP network. *Notice* ¶¶ 45-46. As discussed above, the current rules encourage carriers to maintain (or even establish) TDM access arrangements to handle 8YY calls, in order to take advantage of the tariffing regime to impose inflated access charges on captive IXCs. As a result, as AT&T has previously shown, the current rules create a disincentive for such carriers to upgrade to IP facilities or to negotiate agreements to exchange traffic in IP format, because they do not want to give up the high access revenues that would go to bill-and-keep under an IP arrangement.[18]

As the Commission observes, "there is no obvious justification for using tandem switches in an IP environment." *Notice* ¶ 46. The availability of TDM-based regulatory arbitrage schemes, therefore, like those related to 8YY services, will inevitably induce carriers to retain their legacy TDM networks and resist transitioning to IP. Bill-and-keep will eliminate those regulatory arbitrage opportunities—and with them, lingering resistance to IP-based services and agreements.

Reducing Intercarrier Disputes. Bill-and-keep should also reduce intercarrier disputes.[19] As noted above, given that most terminating access charges have now gone to bill-and-keep, LECs have shifted their focus to executing traffic-pumping and other abusive schemes for originating

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[17] As the Commission notes in the *Notice*, very few consumers actually pay toll charges for any long-distance calls today. Consumers continue to make millions of 8YY calls, however, even though in almost all cases they do not actually save a toll charge. The fact that 8YY calling remains robust shows that consumers value these numbers as a convenient way to communicate with the businesses that make the numbers available; their use of these numbers is no longer driven by rate considerations. To the extent that bill-and-keep shifts some originating access costs to general end-user rates, the effect is likely to be modest in most cases and is highly unlikely to negatively impact the level of 8YY calling in any significant way.

[18] *See Notice* ¶ 45 (citing AT&T Comments at 8).

[19] *See id.* ¶¶ 47-48.

access, especially for 8YY calls. As a result, many intercarrier disputes today center on originating access charges, which are mostly 8YY calls (and in some disputes, *e.g.*, against 8YY aggregators, are all 8YY). Bill-and-keep, by eliminating carrier charges altogether, should "reduce ongoing call monitoring, intercarrier billing disputes, and contract enforcement efforts."[20]

D. The Transition Should Occur In Two Steps and It Should Provide An Alternative Recovery Mechanism.

The *Notice* seeks comment on several issues related to how bill-and-keep should be implemented for originating 8YY traffic. In implementing bill-and-keep, the Commission should (1) adopt a two-step transition to bill-and-keep, rather than the three-step transition proposed in the *Notice*, and (2) it should adopt an alternative recovery mechanism as appropriate.

Transition Period. The Commission proposes a three-step transition that would take two years to complete: carriers would take a one-third reduction in their 8YY originating charges in Year 1, another one-third reduction in Year 2, and a final reduction to zero (bill-and-keep) in Year 3.[21] Although the Commission's proposed transition would give carriers a long lead-time to prepare for bill-and-keep, it would also allow CLECs to continue their abusive tactics for two full years after the transition begins, and as proposed the transition cannot begin until July 2019 at the earliest. The public interest would be better served by a two-step transition, in which carriers reduced their rates by one-half in Year 1 and to zero in Year 2.

The Commission proposes that each carrier will convert its originating 8YY access charges into a single composite per-minute rate for each of four categories (interstate and intrastate end office, interstate and intrastate tandem switched transport access), and the one-third reductions will be applied to this composite rate (which is how the Commission handled the transition under the

[20] *Id.* ¶ 47 (quoting *Transformation Order* ¶ 749).

[21] *Id.* ¶ 53.

Transformation Order).[22] The Commission also seeks comment, however, on an alternative proposal in which existing rate elements would be reduced by one-third each year (rather than calculating a composite rate).[23] Experience with the *Transformation Order* confirms that the need to create and tariff a composite rate imposes unnecessary costs and complications on the transition. The Commission should adopt the alternative proposal, in which carriers will simply reduce their existing rate elements.

The Commission also seeks comment on whether to include fixed charges in the transition to bill-and-keep, and if so how. Under the *Transformation Order,* fixed charges were divided 50/50 between originating and terminating, and the Commission seeks comment on what percentage breakdown might be appropriate in separating toll and toll-free originating traffic.[24] As shown above, the overwhelming majority of originating access traffic today is 8YY traffic. The need to divide fixed costs between originating and terminating traffic was one of the costliest and most administratively burdensome aspects of implementing the *Transformation Order* transition. It would be especially burdensome and pointless to adopt an accurate breakdown of 8YY/non-8YY originating traffic, which would likely attribute only a very small percentage of originating fixed costs to non-8YY traffic. Because 8YY traffic represents such a large percentage of originating traffic, the Commission should adopt a rule attributing 100 percent of the appropriate originating fixed costs to 8YY traffic (*i.e.*, the originating end office port charge and any other fixed charges associated with the end office should transition entirely to bill-and-keep).[25]

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[22] *See id.* ¶ 55.

[23] *Id.* ¶ 56.

[24] *See id.* ¶ 58.

[25] Other "fixed" elements, such as direct-trunked transport, entrance facilities, dedicated tandem trunk port, and dedicated multiplexing, should not go to bill-and-keep; those elements would be

Revenue Recovery. As the Commission notes, in most instances LECs should be able to recover their costs for carrying legitimate 8YY calls from their end users, where such rates will be disciplined by competition.[26] Nonetheless, AT&T does not oppose a recovery mechanism to the extent supported by the record.[27]

II. THE COMMISSION SHOULD ADOPT RULES LIMITING DATABASE QUERY CHARGES FOR 8YY CALLS.

As the *Notice* recognizes, eliminating 8YY-related abuses also requires the Commission to reform 8YY database dip charges. Indeed, excessive database charges represent a large and growing portion of the overall problems related to 8YY calling. AT&T strongly supports an aggressive cap on database charges as an interim measure toward an eventual bill-and-keep rule.

8YY database dip charges present the same arbitrage issue as originating 8YY per-minute rates discussed above. The originating carrier establishes the database dip arrangements, but its customer, the calling party, does not pay for the call. Accordingly, as with originating access charges more generally, the originating carrier has no incentive to establish economically efficient arrangements or charges, because all such costs are shifted to the IXC, which has no choice but to pay the charges.

CLECs in particular have rushed to take advantage of this low-hanging arbitrage opportunity. As AT&T previously explained, CLEC database charges have never been subject to the Commission's CLEC access charge benchmark rules.[28] CLECs' tariffed database charges vary

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encompassed within AT&T's interconnection proposal and recovered either from the IXC or from the originating carrier as appropriate.

[26] *See id.* ¶¶ 63-64.

[27] *See id.* ¶ 64.

[28] *See* AT&T Comments at 9-10; *Notice* ¶¶ 10-12.

greatly: many are quite high, and significantly higher than incumbent LEC charges or what carriers would be able to negotiate with third-party database providers in the marketplace.[29]

CLEC abuse of database charges is a rapidly growing share of the problem. As AT&T has previously shown, CLECs accounted for 62 percent of all database query charges billed to AT&T in September 2016, which increased to 68 percent in September 2017.[30] AT&T's most recent billing data (from February 2018) show that CLECs accounted for more than 71 percent of all database query charges. Only a small number of carriers—23 out of 1084, or two percent—bill the vast majority (90 percent) of database query charges billed to AT&T.[31] AT&T data also indicate that, in many cases, multiple carriers assess 8YY database query charges for the same call.[32] And database query abuses account for a substantial portion of the *overall* 8YY problem: AT&T's data show that query charges now represent 19 percent of all originating access.[33]

To limit these abuses, the Commission should reform 8YY database query charges expeditiously. The best and most effective way to address these issues, of course, would be a prompt transition of such charges to full bill-and-keep, and AT&T has long advocated that solution. As an interim measure, however, AT&T would support imposing an aggressive interim cap on database charges pending a final transition to bill-and-keep.[34]

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[29] *See* Letter from Matthew Nodine, AT&T, to Marlene H Dortch, FCC, *Connect America Find, et al.*, WC Docket No. 10-90, *et al.*, Att. at 5 & 8 (filed Feb. 12, 2018) ("AT&T 2/12/18 *Ex Parte*").

[30] *See id.*, Att. at 4.

[31] *See id.*, Att. at 3.

[32] *See id.*, Att. at 7.

[33] *See id.*, Att. at 3.

[34] *See, e.g., id.*, Att. at 9 ("as an interim step to long term reform: establish a nationwide database query rate cap").

AT&T supports the Commission's proposal to use CenturyTel's rate of $0.0015 as a new nationwide cap. The Commission has ample authority to adopt that rate as the interim rate cap. Indeed, the Commission's proposal is an *interim* rule pending the final transition to bill-and-keep, and as noted above, the Commission would be fully justified in moving directly to bill-and-keep—*i.e.*, an intercarrier charge of zero. Setting the interim rate is therefore a question principally of balancing marketplace participants' need to prepare for bill-and-keep with the potential for abuse of these charges while the interim rates remain in effect.

AT&T agrees with the *Notice* that the nationwide cap should be set as low as feasible, to deter continuing and more extensive abuse during the transition to bill-and-keep. If the Commission sets a cap with no firm end-date for the final transition to bill-and-keep—as the *Notice* proposes to do—some CLECs will likely continue their 8YY aggregation schemes indefinitely and may try to make up for the decreased rates with an increase in the volume of calls. If the Commission leaves in place an ability to force IXCs to pay database charges (as the interim cap would), it becomes all the more important to keep the nationwide cap as low as possible, to minimize the potential rewards (and thus incentive) for abuse.

Contrary to some commenters' suggestions, the Commission should not set the cap at the national average. As the *Notice* recognizes, CLEC database charges have never been subject to direct rate regulation or to the CLEC benchmark rules, and many such charges are excessive.[35] Setting the nationwide cap at the average marketplace rate would therefore establish a rate derived from today's set of artificially high CLEC rates.

A nationwide cap would not prevent a carrier from recovering their database query costs. Carriers can recover some or all of their costs from end-user rates, just as they will under the

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[35] *See Notice* ¶ 74 & n.157.

eventual bill-and-keep regime. The transition to bill-and-keep is merely a question of *how* to recover those costs, not *whether* the LEC can recover them.[36] In addition, as AT&T has shown, limiting database query charges should have no harmful impact on rural incumbent LECs, because they account for a very small percentage of database query charges by revenue.[37] The impact would be limited even further to the extent the Commission permits increased end user rates or other alternative recovery mechanisms for such carriers. *See Notice* ¶¶ 66-67.

Finally, the Commission should also adopt its proposal to permit only one database query charge per call.[38] The Commission should adopt a rule providing that the carrier that hands the call to the IXC is the only carrier that may bill the IXC the database dip charge.[39]

III. THE COMMISSION SHOULD COMPLETE THE FULL TRANSITION TO BILL-AND-KEEP FOR ALL ORIGINATING CHARGES.

More generally, the Commission should promptly complete the full transition to bill-and-keep for *all* originating access charges. As shown above, 8YY calls represent a large and growing share of all originating access today. Accordingly, transitioning 8YY originating access to bill-and-keep will leave a relatively small amount of traffic remaining subject to traditional access charges. Maintaining the legacy access charge regime for such a small amount of traffic has costs of its own—for example, carving out only 8YY traffic for bill-and-keep may necessitate significant

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[36] For this reason, the question is not whether an intercarrier rate above any given nationwide interim cap, standing alone, is "unjust and unreasonable." *Cf. Notice* ¶ 73. The Commission has already concluded that bill-and-keep, in which the intercarrier rate would be zero, would be just and reasonable, and the Commission has broad leeway to fashion interim measures intended to transition to such a result.

[37] *See* AT&T 2/12/18 *Ex Parte*.

[38] *Notice* ¶ 77.

[39] *See* AT&T 12/4/17 *Ex Parte*, Att. at 12.

new accounting and billing costs, in addition maintaining two systems for recovering originating access costs.

In short, unscrupulous carriers have proven that they will scour the existing intercarrier compensation regime for any arbitrage opportunity they can find and vigorously take advantage of those opportunities to impose enormous costs on IXCs and their customers until the Commission can shut it down through bill-and-keep reforms. Given that 8YY calls represent such a large share of originating access overall, the better approach would be simply to complete the full reform of all originating access services to bill-and-keep (in conjunction with AT&T's direct interconnection proposal), rather than attempt to maintain two parallel systems into the indefinite future and invite further arbitrage.

CONCLUSION

For the foregoing reasons, the Commission should immediately update the intercarrier compensation rules for 8YY traffic in the manner described herein, and the Commission should promptly complete the comprehensive update of all intercarrier compensation rules.

Respectfully Submitted,

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