

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

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

COMMENTS OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. (“Charter”) hereby submits these comments in response to the Further Notice of Proposed Rulemaking (“*FNPRM*”) issued by the Federal Communications Commission (“Commission”) in the above-captioned proceeding.¹

INTRODUCTION

Charter supports the Commission’s objective of eliminating and addressing any abuse of the ICC system. Nevertheless, the Commission’s proposal to transition all 8YY to a bill-and-keep regime is unnecessary and unfair to end users and originating carriers. 8YY numbers provide primarily a business service to 8YY subscribers, and consumers justifiably view those toll-free numbers as entirely free to them. 8YY traffic is also one-way: 8YY subscribers do not call end users. Transitioning 8YY access charges to bill-and-keep would therefore be inconsistent with the basic purpose of 8YY numbers and with the concept of bill-and-keep. The consumer harm from this change would be immediate and direct, by forcing providers to charge higher rates without providing any additional benefit for consumers. The Commission should instead consider 8YY access charges in context as part of a holistic reform of the remaining

¹ *In re 8YY Access Charge Reform*, Further Notice of Proposed Rulemaking, FCC 18-76, WC Docket No. 18-76 (rel. June 8, 2018) (“*FNPRM*”).

intercarrier compensation issues to ensure that the consumer and carrier impact of such reforms are considered together.

If the Commission nonetheless decides to transition 8YY access charges to bill-and-keep at this time, it should set a longer transition period that mirrors the transition period in the *USF/ICC Transformation Order*. It should also adopt its alternative proposal to move 8YY tandem switching and transport to bill-and-keep only where the originating provider also owns the tandem.

Finally, the Commission should act now to place appropriate limits on database dip charges, including potentially a cap on the charges that can be assessed. In order to ensure fair competition, however, that cap should be set at the average rate rather than the lowest rate as the *FNPRM* proposes.

I. TRANSITIONING 8YY ACCESS CHARGES TO BILL-AND-KEEP WOULD HARM CONSUMERS AND IMPOSE AN UNFAIR BURDEN ON ORIGINATING CARRIERS.

Charter opposes the transition of 8YY access charges to a bill-and-keep regime because it would harm consumers and upset consumers' settled expectations regarding toll free calling. While providing a direct benefit to interexchange carriers ("IXCs") by transferring to originating carriers a portion of the cost of an 8YY call, it would also place originating carriers in the untenable position of either absorbing or passing through those costs to their end users. These costs should be borne by the subscribers to 8YY service—not end users. These 8YY subscribers are businesses that use 8YY numbers to enable consumers to reach them without paying a toll charge. It therefore is appropriate to impose the costs of 8YY services on those subscribers, rather than on the calling party.

The entire premise of 8YY calling is that the 8YY subscriber will bear the costs of routing such calls. As the Commission rightly recognizes, 8YY numbers are assets to these

businesses. The numbers allow consumers to more easily reach businesses, create a better relationship with consumers, and can also provide visibility and “act as a powerful branding tool, particularly if the subscriber can obtain a vanity number.”² 8YY numbers can also facilitate businesses’ data-driven analytics, tracking “the effectiveness of [businesses’] advertising and marketing strategy” by “assign[ing] unique numbers to each advertising campaign or even to different segments of the same advertising campaign.”³ The continued growth in 8YY numbers’ use only confirms the business value of these assets.⁴

A critical element of 8YY calls is that they are “toll-free” to the calling party, enabling consumers to place calls for often critical services—for example to banking, credit card, wireless telephone, cable, and Internet providers—without also footing the bill for the call itself. Transitioning 8YY to bill-and-keep would invert this basic concept. The average customer considers 8YY calls to be “free,” generally, other than the cost of local service. Adopting bill-and-keep and shifting the intercarrier compensation charges to end users is inconsistent with the free nature of the call and would upset settled consumer expectations.⁵

For similar reasons, transitioning 8YY access charges would also be inconsistent with the concept of bill-and-keep. The Commission has explained that bill-and-keep is sensible in the typical intercarrier context because both the originating carrier and the terminating carrier collect

² *FNPRM* ¶ 6.

³ *Id.*

⁴ *Id.* ¶¶ 6-7 (noting that demand for 8YY numbers continues to grow and that the record suggests that 8YY minutes of use are increasing).

⁵ Such a result would also be misleading. It is highly unlikely that the average consumer would distinguish between the long distance and access elements of an 8YY call; a charge for either would be inconsistent with the generally understood (and advertised) nature of the call as “free.” *Cf. id.* ¶ 92 (“Under our proposal, 8YY calls will remain ‘toll free’ because originating callers will not be charged for the long-distance portion of the call.”).

charges from their respective end users, who each “generally benefit from participating in a call” and both “mak[e] the choice to subscribe to the network.”⁶ This model is inapplicable in the 8YY situation. Because Charter has no relationship with the 8YY subscriber, it cannot “bill” the subscriber for the call; instead it must bill its own end users. The statutory basis for bill-and-keep also assumes reciprocal or mutual compensation and cost recovery.⁷ In the 8YY context, by contrast, there is neither a mutual recovery to waive nor a mutual benefit to be allocated. Instead, bill-and-keep would shift the costs of such calls from businesses (and IXC) to the very consumers whose calls they seek to stimulate, forcing end users to subsidize a premium business service and rendering the calls no longer “toll-free” to the consumer.⁸ This would result in a windfall to IXC and 8YY providers who would collect 100 percent of the charge and bear zero percent of the originating cost. Meanwhile, costs that are shifted to consumers and originating carriers are both substantial and continuing—because the transition to bill-and-keep is not a one-time adjustment but a permanent change in who is charged for the originating cost.

The *FNPRM* suggests that consumers would benefit from moving to bill-and-keep because the costs resulting from inefficiencies and abuses in the ICC system are indirectly passed

⁶ *In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,904-97 ¶¶ 737, 744 (2011) (*USF/ICC Transformation Order*).

⁷ See 47 U.S.C. § 252(d)(2)(B)(i) (permitting “arrangements that afford the *mutual recovery of costs* through the *offsetting* of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)” (emphasis added)).

⁸ The *FNPRM* argues that the rationale for bill-and-keep applies to 8YY calls because both parties benefit from such calls, as evidenced by growing demand for 8YY numbers and increased minutes of use. *FNPRM* ¶ 86. But this is a non-sequitur. First, although the demand for 8YY numbers may be growing, the majority of 8YY subscribers are provisioned by only three IXC carriers (in Charter’s territory), and so the flow of 8YY calls is unequal among all parties. Second, even if providers had the same number of 8YY customers, the volume of 8YY calls is irrelevant to whether it is appropriate or consistent with the statute to impose originating access costs associated with such calls on non-subscribers where the 8YY subscriber never originates a call and therefore never bears such charges itself.

on by 8YY subscribers to their customers,⁹ but the Commission cites no evidence to support its conclusion.¹⁰ In any event, any such benefits would be far more diluted than the impact of a new access charge on each 8YY call that a consumer makes. For instance, it is not at all clear that many of the callers to an 8YY service—for example, prospective new customers in response to an advertising campaign¹¹—are existing customers of an 8YY subscriber’s business who would reap the benefit of the reduced costs that 8YY subscribers might realize from a transition to bill-and-keep if the 8YY subscriber even passes on those savings to its customers.

At bottom, transitioning 8YY to bill-and-keep would be inconsistent with both the purpose of 8YY numbers and the way consumers have come to understand them. The Commission should reject its proposal on that ground alone. As discussed below, 8YY charges are most appropriately considered as part of a holistic reform of the remaining intercarrier compensation issues. Charter would also support targeted measures to combat the isolated 8YY access arbitrage that some have identified to date, but such measures need not include a transition to bill-and-keep.

II. THE COMMISSION SHOULD TAKE A HOLISTIC APPROACH TO INTERCARRIER COMPENSATION REFORMS.

Charter shares the Commission’s goal of preventing abuse of the ICC system. Any incentives for arbitrage that exist in the ICC regime should be eliminated. Access stimulation, traffic pumping, and other arbitrage schemes remain problems that impose unnecessary costs on

⁹ *Id.* ¶ 39.

¹⁰ Likewise, while the *FNPRM* points to the increase in wireless subscribership since the advent of bill-and-keep, it acknowledges that access reform is one of only “several factors” that explain this phenomenon. *Id.* ¶ 40.

¹¹ *Id.* ¶ 6 (explaining that many businesses use toll-free numbers to track marketing and advertising).

consumers and harm competition. Charter therefore supports the Commission's *overall* framework of moving most originating and terminating charges to bill-and-keep.

In the *USF/ICC Transformation Order*, the Commission deferred consideration of reforms relating to originating access,¹² and the transition of certain aspects of terminating access to bill-and-keep remains incomplete. Rather than addressing 8YY in a vacuum, the Commission should consider originating access, including 8YY, and the remaining terminating access matters in a holistic manner. Indeed, this would allow the Commission to consider whether, in adopting rules to address access arbitrage generally, bringing 8YY to bill-and-keep may be unnecessary. If the Commission sets rules at this time only for 8YY, it risks unfairly disadvantaging originating providers, like Charter, whose customer base includes a larger number of customers placing calls to 8YY numbers than 8YY subscribers.

III. IF THE COMMISSION NEVERTHELESS DECIDES TO TRANSITION 8YY TO BILL-AND-KEEP, ITS PROPOSAL SHOULD BE MODIFIED TO ENSURE FAIRNESS.

If the Commission nevertheless decides to transition 8YY traffic to bill-and-keep in this proceeding, certain modifications are necessary to ensure that the regime is as fair as possible.

First, the Commission should provide a longer transition period than the three-year, three-step transition proposed in the *FNPRM*.¹³ In the *USF/ICC Transformation Order* the Commission established a much longer, and more gradual, transition period to implement bill-and-keep for terminating access. The Commission set a six-year transition for price cap carriers

¹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17,942 ¶ 818.

¹³ *FNPRM* ¶ 53.

and a nine-year transition for rate-of-return carriers, reflecting its “commitment to avoid flash cuts.”¹⁴

A similar gradual transition period is warranted for 8YY access charges. A gradual transition would allow providers time to better analyze potential reforms and changes to access policies, and assess how to accommodate bill-and-keep in their charges to consumers and the changes that must be made to carriers’ investment and expenditures. Charter proposes a transition that would largely mirror the step-down in the *USF/ICC Transformation Order*.

Second, the Commission should only transition originating local switching and the shared trunk port element associated with 8YY to bill-and-keep. As the *FNPRM* recognizes, its proposal “to move all tandem switching and transport to bill-and-keep is a departure from the approach the Commission took in reforming terminating access charges,” where the Commission “adopted bill-and-keep for terminating tandem switching and transport only where the terminating price cap carrier owns the tandem.”¹⁵ Charter supports the Commission’s alternative proposal to move 8YY tandem switching and transport to bill-and-keep only where the originating provider also owns the tandem.¹⁶ When Charter transports the call and hands it off to the IXC who serves the 8YY number, the IXC receives the total revenue for the call from its subscriber—but Charter is not able to recover any of its costs to transport the call to the IXC. Charter should therefore still be able to bill the IXC for tandem switching and transport of these 8YY calls.

¹⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17,934-35 ¶¶ 801-802 & Figure 9. The Commission has more recently characterized the price cap transition as a seven-year period, which reflects the transition’s 2011-2018 duration. See *Level 3 Commc’ns, LLC v. AT&T Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 2388, 2388 ¶ 1 (2018).

¹⁵ *FNPRM* ¶ 49.

¹⁶ *Id.*

IV. ANY CAP ON DATABASE DIP CHARGES SHOULD BE AT THE NATIONAL AVERAGE RATE.

The Commission also seeks comment on its proposal to cap database query charges nationwide at the lowest rate currently charged by any price cap LEC.¹⁷ While Charter supports placing appropriate limits on database dip charges, the Commission should set that cap at the average rate in order to ensure fair competition.

As the Commission explains, some IXC's have indicated that database dip charges vary widely, suggesting that those charges may not in all cases reflect the costs providers incur to query the database.¹⁸ Irrespective of the Commission's resolution of the larger bill-and-keep proposals set forth in the *FNPRM*, Charter agrees that the Commission should act now to limit dip charges for 8YY. Charter supports the Commission's proposal to limit database dip charges to a single query dip per 8YY call.¹⁹ Because the originator of the call must perform or contract for the database dip in order to route the call, the originating provider should be the only entity that bills for the database query. The Commission would not need to take any additional steps to address double billing; if an IXC is billed a second query for a call, the IXC can handle the issue through bill audit procedures and issue a dispute to the second biller.²⁰

¹⁷ *Id.* ¶ 68.

¹⁸ *Id.* ¶ 69.

¹⁹ *Id.* (proposing to "allow only one database query charge per 8YY call").

²⁰ The Commission has taken action to avoid double billing in the past; specifying that only the originating provider be able to charge for the database query would similarly avoid double billing. See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 18,026 ¶ 970; *In re Connect America Fund*, Order, 27 FCC Rcd 2142, 2144 ¶¶ 4-5 (WCB 2012). To avoid necessitating a second query, the originating carrier should be expected to forward the routing information received from that query to other providers in the call path.

Charter has previously expressed support for exploring potential options for addressing high database query charges, including possibly adopting a national cap or unified rate.²¹ If the Commission determines that a cap on query charges is warranted, however, selecting the lowest rate would be inappropriate. Charter lacks transparency into providers' database charges, and therefore is unable to determine whether some providers' charges might be artificially deflated for any number of reasons.²² To best approximate the actual cost providers incur in querying the database, the Commission should select the average rate.²³ Capping the charges at the nationwide average would help ensure fair competition among providers.

If the Commission instead mandates that database query charges be cut to the lowest rate, it should provide for a reasonable period to transition to those rates so that providers can better determine how to accommodate those changes, particularly if the lowest rate does not reflect actual costs.

CONCLUSION

Charter shares the Commission's commitment to eliminating abuse of the ICC system and incentives for arbitrage, but Charter respectfully submits that transitioning 8YY to bill-and-keep would harm consumers through higher rates, outweighing any benefits to the ICC system.

²¹ Letter from Christianna Barnhart, Vice President, Regulatory Affairs, Charter Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 *et al.* (filed Dec. 14, 2017).

²² For example, because Charter benchmarks its 8YY query charges to the LEC's rate, Charter's interstate rates currently range from a high of \$0.01047977 to a low of \$0.00100000, while its intrastate rates range from \$0.01623000 to \$0.00100000.

²³ Where the Commission has set cost-based rates in other areas, it has often used the average compensation rate, believing that the rate will encourage providers "to find efficient ways of providing high quality service." *See, e.g., In re Telecommunications Services for Individuals with Hearing and Speech Disabilities*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 22,948, 22,952 ¶ 6 (2001).

The Commission should instead consider 8YY in the larger context of the other outstanding ICC issues. To the extent the Commission does move forward with 8YY bill-and-keep at this time, Charter urges the Commission to implement the proposals set forth herein.

Respectfully submitted,

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