

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) appreciates the Commission’s efforts to further reform the intercarrier compensation system.¹ Through the reforms adopted in 2011, the Commission reduced arbitrage and increased competition in the marketplace for voice services.² As the Commission recognized at the time, additional reforms are necessary, and we support the Commission’s recent rulemaking seeking to curb ongoing terminating access charge arbitrage.³ Rather than addressing remaining intercarrier compensation issues through multiple individual proceedings, we have urged the Commission to conduct further reforms holistically.⁴

Even if the Commission does not address all of the remaining intercarrier compensation transition issues from the 2011 *CAF Order* at this time, at the very least it should address all originating access charges together, rather than adopting a disparate regime for only the toll-free (8YY) subset of originating access charges. Similar to the reforms of terminating access charges adopted in 2011, any changes to originating access charges should occur subject to a reasonable transition period. Finally, the Commission should recognize that competitive providers incur

¹ *8YY Access Charge Reform*, WC Docket No. 18-156, Further Notice of Proposed Rulemaking, FCC 18-76 (June 8, 2018) (*8YY Further Notice*).

² *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*CAF Order*).

³ *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC 18-68 (June 5, 2018).

⁴ Reply Comments of NCTA – The Internet & Television Association, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92, at 3 (Aug. 15, 2017).

costs when performing database queries and should ensure that they are able to recover those costs.

I. THE COMMISSION SHOULD ADDRESS REMAINING INTERCARRIER COMPENSATION REFORMS HOLISTICALLY

In its 2011 order, the Commission made great strides in reforming the intercarrier compensation regime by adopting a bill-and-keep pricing methodology as the eventual default for all intercarrier compensation traffic.⁵ To reach this default, the Commission adopted a schedule to transition terminating access rates to bill-and-keep.⁶ The transition was complete for all price cap carrier terminating access rates in July, and will be complete for all rate-of-return carrier terminating access rates by July 2020.⁷ The Commission did not adopt a transition schedule for other rate elements, such as originating switched access (including originating 8YY access charges), dedicated transport, tandem switching and some tandem transport, and other signaling charges, but instead sought comment on implementing a transition for these elements.⁸ The Commission has not yet set a transition schedule for these remaining rate elements.

In the current *8YY Further Notice*, the Commission seeks comment on one aspect of intercarrier compensation reform that was not definitively addressed in the 2011 proceeding – the treatment of originating access charges for 8YY calls.⁹ Rather than taking piecemeal action to address only one of the pending issues in this proceeding, NCTA encourages the Commission to take action promptly to address all of the remaining rate elements in a comprehensive manner.

⁵ *CAF Order*, 26 FCC Rcd at 17904, ¶736. Under bill-and-keep, entities recover their costs from fees imposed on their own end users, rather than through charges assessed on other providers. *Id.* ¶737.

⁶ *Id.* at 17934-36, ¶801.

⁷ *Id.*

⁸ *Id.* at 18109, ¶1297.

⁹ *8YY Further Notice*, FCC 18-76 at ¶¶ 13-14, 22.

As the Commission recognized in 2011, “[F]ailure to take action promptly on these elements could perpetuate inefficiencies, delay the deployment of IP networks and IP-to-IP interconnection, and maintain opportunities for arbitrage.”¹⁰

II. THE COMMISSION SHOULD NOT ADDRESS ONLY A SUBSET OF ORIGINATING ACCESS CHARGES

In the 2011 reform order, the Commission found that all rate elements should eventually transition to bill-and-keep.¹¹ However, the Commission did not at that time establish a transition to bill-and-keep for originating access charges, noting that “[t]he concerns we have with respect to network inefficiencies, arbitrage, and costly litigation are less pressing with respect to originating access, primarily because many carriers now have wholesale partners or have integrated local and long distance operations.”¹² As a result, originating access charges have remained unreformed and in many cases more expensive than terminating access charges, leaving open the opportunity for arbitrage.

In the *8YY Further Notice* the Commission cites examples of alleged abuses of the current 8YY intercarrier compensation regime.¹³ The Commission also notes that 8YY minutes of use appear to represent a large portion of total originating access minutes,¹⁴ but this is the case because many providers now offer customers unlimited calling plans, eliminating traditional toll calls and the originating access fees that accompany them. Where such plans are not available or purchased, non-8YY traffic remains subject to originating access charges. There is no reason for

¹⁰ *CAF Order*, 26 FCC Rcd at 18109, ¶1297.

¹¹ *Id.* at 17905, ¶741.

¹² *Id.* at 17923, ¶777.

¹³ *8YY Further Notice*, FCC 18-76 at ¶¶25-27.

¹⁴ *Id.* at ¶7.

the Commission to reform 8YY originating access charges while leaving in place expensive, unreformed originating access charges. Such an outcome would only ensure that arbitrage schemes shift from 8YY to non-8YY originated toll calls.

Instead, the Commission should address all originating access charges simultaneously. In doing so, the Commission should avoid adopting a flash cut and instead should adopt a reasonable transition to bill-and-keep, similar to the transition adopted for terminating access charges in the 2011 reforms. Under that regime, access charges were reduced to bill-and-keep gradually over a six-year period, which the Commission found “strikes an appropriate balance that will moderate potential adverse effects on consumers and carriers of moving too quickly from the existing intercarrier compensation regimes.”¹⁵

The Commission also seeks comment on an alternative proposal to move originating tandem switching and transport to bill-and-keep only in cases where the originating carrier owns the tandem.¹⁶ We believe the better course would be for the rates to move to bill-and-keep in all cases. Where the originating access provider has control of the choice of call path and chooses to route traffic through a tandem, that provider should be responsible for the costs of that choice.¹⁷ As the Commission correctly notes, this approach will encourage the transition to IP services.¹⁸

If, however, the Commission takes the narrower approach of applying bill-and-keep to tandem switching and transport rates only when the originating provider owns the tandem, it should make clear that, for both terminating and originating tandem switching and transport, bill-

¹⁵ *CAF Order*, 26 FCC Rcd at 17934, ¶801.

¹⁶ *8YY Further Notice*, FCC 18-76 at ¶49.

¹⁷ *Id.* at ¶34.

¹⁸ *Id.* at ¶33.

and-keep also applies to transit services and service arrangements between affiliated carriers and tandem owners. As NCTA explained previously, this requirement should not be limited to situations where the carrier is itself a price cap local exchange carrier (LEC), but includes competitive LECs, CMRS providers, and VoIP providers affiliated with the price cap LEC that owns and operates the relevant tandem.¹⁹ Moreover, such “affiliated” relationships should include not only arrangements between entities that are corporate affiliates, but also any arrangement under which a service provider receives compensation from the tandem operator for routing traffic between the two. Such arrangements today create incentives to engage in traffic stimulation schemes and other forms of arbitrage and therefore regulation is warranted.

III. PROVIDERS SHOULD BE ABLE TO RECOVER THE COSTS OF CONDUCTING DATABASE QUERIES

To properly route 8YY calls to the associated interexchange carrier (IXC), originating providers must obtain information from a central 8YY database. As the Commission correctly recognizes, “the database query is a cost a LEC must incur in order to route an 8YY call to the proper IXC, either by maintaining its own [service control point] SCP database or by paying a third-party SCP for the database query.”²⁰ Originating providers have to incur these costs for the benefit of the IXC that has been chosen to carry the 8YY call, and therefore it is appropriate for originating providers to be able to recover these costs from that IXC, rather than from their end users through bill-and-keep. However, IXCs should not have to pay for more than one database query per call. The Commission should make clear that the originating provider should conduct

¹⁹ Comments of NCTA – The Internet & Television Association, WC Docket No. 10-90, at 4-5 (filed Oct. 26, 2017)

²⁰ *8YY Further Notice*, FCC 18-76 at ¶68.

and bill for the database query and should then be required to pass the information on to subsequent entities in the call path.

To avoid unreasonably priced database queries, the Commission proposes to adopt a nationwide cap set at the lowest rate charged by a price cap LEC.²¹ The Commission also notes that providers may have different allocations of costs between their various recurring and non-recurring charges, so that the lowest rate charged by any price cap LEC may not reflect actual database query costs incurred.²² In addition, originating providers that do not own their own SCPs must retain a third party to perform this function on their behalf. Thus, their costs differ significantly from those incumbent LECs that own SCPs and have amortized the costs of such facilities over time. It is reasonable, therefore, that the charges for database queries for both types of entities differ. Given this, the Commission should instead set any cap at a rate based on the average of all carriers' current database query charges.

CONCLUSION

The best approach to avoid regulatory arbitrage and competitive inequities is for the Commission to address all of the outstanding intercarrier compensation issues left unresolved in the 2011 *CAF Order*. If the Commission does move forward in the piecemeal fashion set out in the *8YY Further Notice*, it should not limit reforms to only the subset of 8YY originating access charges but should apply them to all originating access charges.

²¹ *Id.* at ¶69.

²² *Id.* at ¶¶73-74.

The Commission also should ensure that originating providers are able to recover the costs of performing 8YY database queries through reasonable charges.

Respectfully submitted,

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