



November 1, 2017

Via EFCS
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: WC Docket Nos. 10-90 and 07-135; CC Docket No. 01-92

Dear Ms. Dortch:

This is to provide additional carrier input to the Comments and Reply Comments filed in the above named dockets in response to the Federal Communications Commission's ("FCC" or "Commission") June 29, 2017 Public Notice requesting parties to refresh the record regarding 8YY access charge reform.

I. O1 Communications, Inc. ("O1")

O1 is a California-based competitive local exchange ("CLEC") and interexchange carrier ("IXC") that provides a variety of services including wholesale and retail interconnected and non-interconnected Voice over Internet Protocol ("VoIP") services. As part of its offering, O1 enables its customers to call 8YY "toll free" businesses, such as insurance and credit card companies and large retail chains. The individual toll free calls are paid for by the businesses that receive the calls – they purchase the services from IXCs to solicit customers and potential customers to use toll free telephone numbers to conveniently reach them.

While a variety of service providers, including O1, sell toll free 8YY services to businesses, the market leaders in toll free services are the large, traditional IXCs, AT&T and Verizon.¹

Consistent with current rules and its tariffs, O1 charges the IXCs originating switched access charges on a minute of use ("MOU") basis to deliver the toll free calls from the calling parties to the IXCs' toll free business customers. O1 also provides 8YY data base query

¹ Reply Comments of Teliix, Inc., WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (Aug. 15, 2017) (Teliix Reply Comments) at 10.

services, which direct the call to the correct IXC's network, and charges the receiving IXC a per call query rate. The IXCs recover these costs directly from their toll free business customers.

II. Modifying 8YY originating switched access usage charges is unnecessary at this time.

In response to the Public Notice, parties have expressed several perspectives on existing 8YY originating switched access usage charges with varied suggestions on how to approach concerns about the current system. Generally, the proposals include: (1) doing nothing at this time, (2) reducing the charges to bill and keep and (3) changing the assessment of access charges from the terminating (toll free business/called party's) end of the call to the originating (consumer/calling party's) end of the call.

A. The record does not support a drastic change.

O1 agrees with the commenters that recommend that the Commission do nothing to modify 8YY access usage charges at this time.² The current regime was properly designed and remains appropriate because it allows carriers to charge for switched access services provided when handling and routing 8YY traffic and ensures that carriers performing originating switched access services, including switching and transport services, can recover their costs for handling and processing 8YY traffic. The current system also complies with the principle that the cost causer pay for the service. The toll free business customer is the beneficiary of the incoming business-generating calls incited by the calling consumer's ability to call the business for free.³

The parties seeking to change the current system have not provided sufficient reasons to support imposing the drastic changes that have been suggested. They fail to describe or quantify any supposed benefit of a flash-cut regime change that would somehow outweigh its harmful consequences. The complaints concern the activity of a few carriers and not the entire industry.⁴

² See e.g., Comments of Teliix, Inc. WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (July 31, 2017) (Teliix Comments); Comments of Consolidated Communications Companies, Peerless Network, Inc., and West Telecom Services, LLC in Opposition to Ad Hoc's Request Concerning the Treatment of 8YY Traffic for Access Charge Purposes, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (July 31, 2017) (Consolidated Comments); U.S. Telepacific Corp. Reply Comments, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (Aug. 15, 2017) (Telepacific Reply Comments)

³ Telepacific Reply Comments at 5-6; Teliix Comments at 8-10; Consolidated Comments at 10; Comments of CenturyLink, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (July 31, 2017) (CenturyLink Comments) at 4-5.

⁴ Comments of Verizon, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (July 31, 2017) (Verizon Comments) at 4-6; Comments of AT&T, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (July 31, 2017) (AT&T Comments) at 4-7, 13-14.

Under these circumstances, the issues should be dealt with on a case by case basis through the FCC's or state commission complaint processes or, to the extent alleged fraud is involved, through FBI investigations or enforcement proceedings held at the FCC. The alleged unlawful robocalling concerns expressed by some carriers are currently being addressed in a comprehensive and focused way in an FCC rulemaking proceeding.⁵ They need not be addressed separately here. In fact, addressing them separately here may result in confusion and/or inconsistent solutions.

B. The Commission should not reduce originating access charges to bill and keep.

O1 also agrees with comments explaining that reducing 8YY originating access charges to bill and keep would be bad for consumers and bad public policy.⁶ Consumer prices will likely rise as current providers of 8YY origination services will exit the market. O1 incurs costs to provide 8YY originating access services. O1 cannot afford to provide free services to IXC's and their toll free business customers, particularly when it would continue to incur costs necessary to provide the service, despite the loss of revenue.

Moreover as set forth above, those dialing toll free calls are not the beneficiaries of the service; toll free business customers that purchase the service to make it easier and convenient for their customers and potential customers to reach them are the ones that benefit. The IXC's serving the toll free business customers charge them for this service. Requiring small carriers to provide access service for free to large IXC's that receive revenue for this service is bad public policy.⁷

C. Toll charges should not be assessed on the calling party's side of call.

Applying toll charges to the originating side of the call is also not recommended since it would create pressure for LEC's and VOIP providers to discontinue providing interstate toll free calls or informing their end users that they must pay higher local rates to continue to make toll free calls. As pointed out by several commenters, it would also upset expectations of consumers and require re-education of the nation, which over twenty years has grown accustomed to

⁵ *In the Matter Of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Notice of Proposed Rulemaking and Notice of Inquiry, CG Docket No. 17-59 (rel. March 23, 2017).

⁶ Consolidated Comments at 8-11; Teliix Comments at 7-9; Telepacific Reply Comments at 3-5.

⁷ Teliix Comments at 5-6; Teliix Reply Comments at 11-14.

making toll free calls with the understanding that the cost of the call would be borne by the business called instead of the calling consumer.⁸

III. Modifying toll free query charges on an industry wide basis is unnecessary.

The record also does not support subjecting 8YY database query charges to the competing incumbent LEC benchmark rate. The Commission has justifiably rejected this recommendation in the past.⁹ The parties recommending this change do not provide evidence that high database charges are an industry wide issue and that the Commission needs to change its mind about reducing these charges. They seem simply to recommend this change as a compromise, middle ground solution to complaints of a few (long distance providers, who are the only carriers that benefit from the reduction) concerning a distinct list of carriers imposing alleged unreasonable database query charges.¹⁰ Again, since the concerns relate to a limited number of carriers, the issues are more appropriately addressed in complaint proceedings and do not require an industry wide solution.

The record certainly does not support a bill and keep approach to query charges. Carriers have demonstrated that they incur actual costs to provide the service which, if not covered by the carrier's provision of the service, would only benefit the IXC's and their toll free business customers, which would receive a free ride.¹¹ O1, too, incurs a cost each time it "dips" the database that allows it to correctly direct the call to the called party's toll free network provider.

Alternatively, the affected carriers would be required to assess these costs on their calling party consumer customers, who, as discussed above, have become accustomed over many years to be able to call the toll free businesses at the business' cost. As discussed above with regard to originating usage charges, the toll free business is the cost causer and entity benefitting from the calls since they purchase the service from long distance providers to solicit customers and

⁸ Reply Comments of the Nebraska Rural Independent Companies, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (Aug. 15, 2017)(NRIC Reply Comments) at 4-6; Telepacific Reply Comments at 5-6; Consolidated Comments at 8-11.

⁹ *Access Charge Reform Order*, 19 FCC Rcd 9108 (rel. May 18, 2004) at para. 69, note 251 ("Because we find that IXC allegations of wide-spread fraud or abuse may indeed be overstated, we also reject AT&T's request that the (sic) limit 8YY database query charges based on the incumbent LEC charges.")

¹⁰ See, e.g., October 12, 2017 Letter from G. Waldron, Covington & Burlington, Counsel for Inteliquent and attached PowerPoint presentation; Telepacific Reply Comments at 2-4; Consolidated Reply Comments at 14-16.

¹¹ Consolidated Reply Comments at 14-16; Teliix Comments at 4-6, 9-10; Telepacific Reply Comments at 3.

potential customers to purchase their service and make it easy and convenient for consumers to reach them.¹²

IV. If the Commission decides to make a change, it should implement a multiple year transition and not impose a "flash cut."

Several commenters provided examples of carriers that would be severely handicapped by a significant loss of revenue if the Commission were to change the current 8YY access charge system.¹³ O1 would likewise be handicapped by the sudden loss of originating access charge revenue associated with its interconnected and non interconnected VoIP services. It is unlikely that O1 and other carriers serving the callers of 8YY numbers would be able to recoup the associated revenue reductions from increased customer charges given the significant amount of traffic at issue. If the Commission finds that a change is required (which it is not), a carefully designed transition would provide the industry with certainty and sufficient time to adapt business models to a changed regulatory landscape.¹⁴

O1 also agrees with the comments urging that, at a minimum, before changing the current system, the Commission should collect and analyze relevant data, including (1) the degree to which consumers have benefitted from prior access reductions and (2) to what extent intercarrier compensation reductions have actually been passed through from long distance providers to consumers.¹⁵

V. Toll free fraud should be addressed on a case by case basis.

Like other industry members, O1 fights toll free fraud. O1 actively participates in industry efforts to identify and block fraudulent toll free calls from being delivered to the downstream carriers. Company executives regularly join industry calls to identify and stop fraud. O1 also works on a real-time, case by case basis with law enforcement agencies, the FCC and other network providers to eliminate fraud and other unlawful conduct that plagues all communications networks.

O1's retail and wholesale contracts also require customers to adopt anti-fraud measures and provide remedies, including the blocking of calls and service and contract termination,

¹² See notes 3 and 7.

¹³ NRIC Reply Comments at 3-4; Consolidated Comments at 9-11; Consolidated Reply Comments at 5-7.

¹⁴ Telepacific Reply Comments at 6-8; Consolidated Comments at 4-5.

¹⁵ NRIC Reply Comments at 6; Consolidated Reply Comments at 9-10; Comments of Windstream Services, LLC, Frontier Communications Corporation and NTCA – The Rural Broadband Association, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92 (July 31, 2017) (Rural LEC Comments) at 5-10.

against customers that are suspected of, or are engaged in, unlawful activity in connection with the use of O1's network. O1 has terminated customer contracts as a result of the customers' failure or unwillingness to address such complaints.

O1 agrees that efforts should be made to eliminate unlawful calls placed to toll free business customers.¹⁶ Like numerous other carriers, O1 recommends that those complaints be handled on a case by case basis, through inter-carrier cooperation and by the FCC's Enforcement Bureau and the FBI, not through a system wide change in the rules for the recovery of switched access charges.¹⁷ Specific problems may also be addressed in rulemaking proceedings where sufficient information can be gathered to focus the solutions on the particular problems raised and not implement an overbroad change that risks harming the industry and consumers in unintended ways. The fraudulent activity of a few does not warrant the drastic step of eliminating originating access charges for all toll free calls.

VI. IXC self-help tactics continue.

In the *Transformation Order*,¹⁸ the FCC reiterated its long-standing condemnation of "self-help" tactics engaged in by IXCs that unilaterally withhold payment of access charges and "caution[ed] parties of their payment obligations under tariffs and contracts to which they are a party." Despite this caution, IXCs, particularly AT&T and Verizon, have continued to engage in unilateral withholding of access charge payments, including 8YY originating access usage and database query charges, based solely on their own desires of what the law should be, without Commission sanction or approval. They also improperly withhold payment based on unsupported suspicions rather than facts.

In its Comments, Teliix described conduct by AT&T that forced Teliix to file a complaint against AT&T to recover payment of access charges and AT&T's attempt to recover previously paid amounts. Teliix cites to *CenturyTel of Chatham, LLC v. Sprint Communications Co.*, 861 F. 3d 566 (5th Cir. 2017) where the 5th Circuit affirmed the district court's holding that an IXC's "clawing back" of previously made payments is unreasonable, in violation of Section 201 of the Act.¹⁹ The Court cited the FCC's policy against the self-help non-payment tactics of IXCs in support of its ruling. *Id.* at 576-577.

¹⁶ Verizon Comments at 2-6; AT&T Comments at 4-8.

¹⁷ Teliix Comments at 7; Telepacific Reply Comments at 5; NRIC Reply Comments at 7-8; Rural LEC Comments at 3-5.

¹⁸ In the Matter of Developing an Unified Intercarrier Compensation System, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) at para. 700.

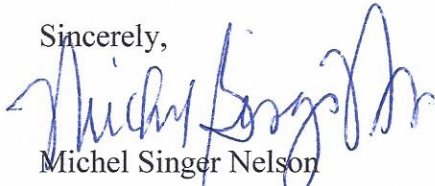
¹⁹ Teliix Comments at 5-6.

O1 has also been forced to file a lawsuit against AT&T to recover unpaid access charges and is aware of additional CLECs that continue to be subject to AT&T and Verizon's self-help withholding. The Commission's admonition against such self-help is being ignored by the large IXC's. O1 asks the Commission to (1) once again remind the IXC's of the Commission's prohibition against unilateral withholding of access charge payments and (2) impose sufficient penalties for an IXC's failure to comply with the directives such that the IXC's are incented to stop blatantly ignoring them.

VII. Conclusion

To summarize, in response to the Commission's request for updated comments on the status of 8YY originating switched access and database query charges, O1 concurs in the recommendations that the Commission: (1) do nothing at this time to change the current system; (2) address alleged abuses, including fraud relating to 8YY charges on a case by case basis or through ongoing rulemakings; (3) alternatively, if the Commission is compelled to act, avoid a "flash cut" and adopt a transitional change over sufficient time for the industry and consumers to adjust. In addition, because the IXC's continue to ignore the Commission's repeated admonitions against self-help withholding of access payments, O1 asks the Commission to impose harsh enough consequences on IXC's that violate this policy to incent the IXC's to change their harmful and unlawful business practices.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michel Singer Nelson", is written over the typed name.

Michel Singer Nelson

Counsel and Vice President of Regulatory and Public Policy