

Before the
FEDERAL COMMUNICATIONS COMMISSION

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| In the Matter of |) | |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Developing a Unified Intercarrier |) | |
| Compensation Regime |) | CC Docket No. 01-92 |
| |) | |

REPLY COMMENTS OF TELIAx, INC.

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TABLE OF CONTENTS

| | |
|---|----|
| I. Introduction and Summary | 3 |
| II. Much of the So-Called "8YY Aggregation" Occurs Because of IXC Conduct..... | 4 |
| A. What Is 8YY Aggregation?..... | 4 |
| B. LECs Providing 8YY Origination Services Incur Substantial Costs | 4 |
| C. LECs Providing 8YY Origination Service Also Incur Major Legal and Regulatory Costs Because Large IXCs Often Attempt to Obtain Free Service | 6 |
| D. Many LECs Partner with Teliax for Sound Business Reasons..... | 7 |
| III. After Prospering from Access Charges for Decades, AT&T and Verizon Want to Abolish Them .. | 9 |
| IV. What AT&T Wants Now, No Access Charges, It Earlier Considered to Be Confiscation..... | 11 |
| V. Conclusion | 12 |

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I. Introduction and Summary

Teliax, Inc., d/b/a Teliax Colorado ("Teliax"), through counsel, respectfully files its reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") public notice requesting interested parties refresh the record regarding Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit.¹

AT&T and Verizon's initial comments are heavily focused on 8YY originating traffic.² They seek rules that would require other carriers to deliver this traffic for free, as they continue to bill their subscribers for these calls. They complain about "8YY aggregation," but fail to acknowledge that their refusal to pay tariff or contracts for this traffic and to use their massive resources to beat down smaller carriers until they give up billing tariff rates for their services causes many Interconnected VoIP ("I-VoIP") providers and competitive local exchange carriers to make a "buy decision" and partner with carriers like Teliax that have elected to spend considerable sums to fight the Industry Behemoths.

¹ Public Notice, "Wireline Competition Bureau Announces the Comment Cycle for Refreshing the Record On Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit," DA 17-933 (rel. September 26, 2017).

² See Comments of AT&T Services, Inc., Connect America Fund, Developing a Unified Intercarrier Compensation Regime, WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) ("Comments of AT&T"); Comments of Verizon, Connect America Fund, Developing a Unified Intercarrier Compensation Regime, WC Docket No. 10-90, CC Docket No. 01-92 (Oct. 26, 2017) ("Comments of Verizon").

Many of these I-VoIP providers and CLECs also chose carriers such as Teliix to avoid the high costs of providing their own 8YY origination capabilities.

Having prospered and made acquisitions and network improvements funded, in part, through access charges, AT&T and Verizon now seek to freeze smaller companies from the same business strategy. And, AT&T, which now advocates no access charges whatsoever, formerly called that policy unconstitutional confiscation.

II. Much of the So-Called “8YY Aggregation” Occurs Because of IXC Conduct

Both AT&T and Verizon complain vigorously about so-called 8YY aggregation,³ often muddling the term with “arbitrage” and “access stimulation.” But neither take the time to explain the facts about the market nor their roles in causing the aggregation of 8YY traffic with only a few CLECs.

A. What Is 8YY Aggregation?

Teliix provides wholesale 8YY origination service to other LECs and I-VoIP providers under contract. In exchange for its 8YY outbound traffic, delivered to Teliix’s network in Denver (hardly a rural market – nearly 2.9 million people reside in Metro Denver) free of charge and without any billing to the interexchange carrier (“IXC”), Teliix shares a portion of access charges billed and collected by Teliix on such traffic. There is no double billing of IXCs.⁴

B. LECs Providing 8YY Origination Services Incur Substantial Costs

8YY service continues to grow rapidly despite the fact that most consumers have access to bundles of long distance minutes or have “all distance calling” packages. 8YY service provides subscribers, e.g., hotel and airline reservation centers, the IRS, and computer support operations, with more information about the caller (and, thus, how to serve the customer) than with ordinary long distance calling. Even more important, a toll free subscriber can immediately reroute its calls to other

³ See Comments of AT&T, *supra* note 2, at 12-14, 27-29; Comments of Verizon, *supra* note 2, at 10-11.

⁴ In the event Teliix is presented with competent evidence of double billing, Teliix will work with all parties to ensure a refund is made and to fix the billing arrangements such that future double billing does not reoccur.

business locations (say, a different call center) or to another carrier in the case of a network outage—things that cannot occur with ordinary long distance calling—simply by contacting its RespOrg, which can make immediate changes in the SOMOS toll free database.

Yet, at the same time, toll free service is archaic. It is almost exclusively a TDM-based (Time Division Multiplexing) network,⁵ which requires any IP-based traffic to be converted to TDM traffic. Thus, for IP-originated calls to be completed successfully, some carrier in the call stream must have TDM capacity. To self-provision 8YY originating traffic, a LEC must have TDM capacity, as well as IP capacity, which is used to provide better call quality and more features, as well as to enable operating efficiencies. This is expensive.

Teliax, which has both TDM and IP network capacity, performs an 8YY database query using its own Service Control Point ("SCP");⁶ determines which Carrier Identification Code ("CIC") serves the dialed 8YY number; and routes the call either through a tandem switch or a direct connection (depending on how the IXC has ordered service). Since Teliax's partners do not charge access themselves, they function similar to a PBX that delivers calls to a LEC. This is not unlike the situation in the *Atlantic Richfield* case.⁷ There Atlantic Richfield, dissatisfied with GTE's service quality at Atlantic Richfield's Plano, TX plant, elected to transmit all interstate toll calls made or received in Plano to an Atlantic Richfield office in Dallas, which was served by Southwestern Bell Telephone Company ("SWB"). In this instance, SWB received all access charges on this traffic. Over the objections of both GTE and the Texas Public Utility Commission, the FCC upheld Atlantic Richfield's right to choose its point of interconnection and SWB's right to collect access charges.

⁵ The overwhelming majority of toll free calls are handled by AT&T and Verizon, both of which use their TDM networks for such traffic.

⁶ Teliax is the smallest owner-operator of the SOMOS toll free 8YY database, which costs the company tens of thousands of dollars each month in license payments, amortization of multi-million dollar proprietary software investments and the provision and maintenance of sufficient network capacity to convert IP traffic to TDM for delivery to the remaining four IXCs that provide toll free services – AT&T, Verizon, Sprint (which is exiting the wireline interexchange market) and CenturyLink/Level 3.

⁷ *Atlantic Richfield Co.*, Memorandum Opinion & Order, 3 FCC Rcd 3089 (1988).

Teliax performs the first incidence of network switching, using both IP and TDM network capacity based on the nature and routing of each call. Teliax then bills the terminating IXC originating end office switching, switch port, and DBQ query charges. The first two rates are benchmarked to CenturyLink's price cap rates for Denver, as required by FCC rules. The DBQ rate was set based on factors including Teliax's costs and investments, demand, and rates charged by similar CLECs. Of the three largest IXCs for toll free service (AT&T, Verizon and CenturyLink/Level 3), only AT&T has not entered into an interconnection agreement with Teliax.

C. LECs Providing 8YY Origination Service Also Incur Major Legal and Regulatory Costs Because Large IXCs Often Attempt to Obtain Free Service

As well as incurring substantial network and operating costs to provide 8YY originating service, Teliax (and other LECs providing 8YY originating service) incurs substantial legal and regulatory costs. Those costs include attorney fees, regulatory consultant fees, additional travel costs for company employees, and executive time diverted from management of their business.

It is no secret in the Industry that AT&T and Verizon have a concerted business strategy to obtain toll free traffic from I-VoIP providers and CLECs, either free or at a unilaterally imposed rate. Initially AT&T and Verizon often pay the tariff access rate for this traffic, but only for a time. Then the companies contest the traffic, sometimes alleging that as much as 100% of the calls are fraudulent or originated outside the United States. AT&T labels much of this traffic as non-compensable, for which it pays nothing, or reclassifies traffic as tandem 8YY traffic for which it pays "national average rates." AT&T then refuses to negotiate an interconnection agreement for this traffic, but, instead, simply pays the rate it wants to pay.⁸ At the very same time, mid-to-high level AT&T employees have testified in depositions, under oath, that AT&T "expect[s] Teliax to deliver all calls intended to reach AT&T's network," except for fraud (calls "artificially-generated" and that AT&T helps Teliax to identify).

⁸ Moreover, AT&T consistently refuses to provide information on the calculation of its "nationwide average rates," including in response to discovery request in federal district court. *Teliax, Inc. v. AT&T Corp.*, Civil Action No. 1:15-cv-01472-RBJ (D.Colo.). On September 1, 2017, the Court stayed the case and made a primary jurisdiction referral to the FCC. Doc 82.

As one would expect, a LEC providing 8YY calls to AT&T or Verizon must either be willing to ignore its tariff rates and accept whatever AT&T or Verizon is willing to pay or spend substantial resources, including on legal fees, to fight AT&T and Verizon. A small LEC must also understand that will devote a significant amount of executive time to working with attorneys and consultants on collections and regulatory efforts.

Teliax has signed interconnection agreements for 8YY originating traffic with Verizon, CenturyLink and Level 3. They provide for compensation at negotiated rates that are lower than Teliax's "rack rates," i.e., its tariff rates. However, recently Verizon has cancelled its agreement with Teliax and ceased paying for 8YY calls without explanation. Verizon has not indicated that it no longer wishes to receive this traffic. Hence, Verizon is apparently engaged in a scheme to obtain free services. Teliax, once again, must decide whether to spend additional resources to collect from Verizon; effectively agree to provide free service; surcharge end users' bills to pay a fee (say \$0.25) to make a toll free call;⁹ or file a Section 214 application to discontinue providing access traffic to Verizon's CICs.¹⁰

D. Many LECs Partner with Teliax for Sound Business Reasons

Every CLEC with or without I-VoIP partners must decide how to handle 8YY calls dialed by their customers. Some decide to provision the service themselves (the "make decision"); some decide to deliver the traffic to another LEC (the "buy decision"); and some simply deliver the call to a tandem switch operator (forgoing any compensation).

⁹ Imposing a surcharge on end users who make toll free calls to Verizon's 8YY subscribers (or to all 8YY numbers) is consistent with T-Mobile's practice of surcharging its end users \$.01 per minute for "[c]alls to chat lines, radio broadcast lines, and similar services." <https://support.t-mobile.com/docs/DOC-33322>

¹⁰ When Verizon does not pay for the costs of getting 8YY traffic from an end user to Verizon's network for completion to its toll free subscribers (from which it receives money for each toll free call completed), Teliax's partners are not compensated. They too must decide whether to "work for free," surcharge their end user customers who make toll free calls or file Section 214 applications to discontinue providing toll free calls to Verizon.

But for the IXC schemes to obtain free service, the “make or buy” decision for I-VoIP providers and CLECs would be based solely on an analysis of revenues, expenses and investments needed to provide quality 8YY origination to both end user and IXC customers. But as the Commission and many courts are well aware and as described above, I-VoIP providers and CLECs must also decide whether they have the resources and the will to battle AT&T and Verizon, CABS bill-by-CABS bill and month-after-month-after-month. It has been Teliax’s experience that many I-VoIP providers and CLECs, including companies that are much larger than Teliax, simply choose not to take on the role of David against the two Goliaths. Fighting AT&T and Verizon and their massive resources simply is too overwhelming for many companies. That, of course, must be part of their strategy.

Instead, many of these companies have elected to partner with Teliax (and a few other CLECs) to originate 8YY calls from their end user customers that are desired by AT&T and Verizon and their many 8YY subscribers. While AT&T and Verizon¹¹ claim 8YY aggregation is some type of fraud or access stimulation, the facts show that traffic is aggregated as the result of a normal make-buy decision that is now highly skewed to “buy” because of AT&T’s and now Verizon’s heavy-handed efforts to get free or low-rate services. Yet despite their behavior-motivating conduct as market bullies, AT&T and Verizon are now claiming it is wrong and, indeed, illegal for the bullied to join together in partnership with Teliax or other similarly situated CLECs providing 8YY origination service.

With this factual background, there is no evidence that retaining originating end office, originating tandem switching and transport, as well as DBQ charges is causing problems in the market. Adopting rules that eliminate these fees for services provided by I-VoIP providers and LECs would result in end users paying surcharges or per-call fees to make toll free calls or a significant number of providers electing to file Section 214 applications to discontinue retail and wholesale 8YY services.

¹¹ See Comments of AT&T, *supra* note 2, at 27-29; Comments of Verizon, *supra* note 2, at 10-11.

Either result would be detrimental to consumers, businesses, economic growth and the public interest.¹²

III. After Prospering from Access Charges for Decades, AT&T and Verizon Want to Abolish Them

Both AT&T and Verizon complain vociferously about access charges throughout their comments. In sum, every local exchange carrier ("LEC") and I-VoIP provider is scheming and over-billing unjust and excessive rates. This includes originating 8YY traffic.¹³ Their bottom line: LECs and I-VoIP providers must be made to originate, transport, switch, perform database queries ("DBQ") and terminate interstate calls for free or, at most, for whatever price the interexchange carrier ("IXC") wants to pay. This is the worldview AT&T and Verizon want the FCC to impose on American telecommunications.

Of course, that was not always their position. Both AT&T and Verizon heavily relied on access charge revenue to fund their network operations and profits that both rewarded investors and enabled the companies to expand their networks and acquire new businesses. For example, SBC Communications, which is now AT&T, acquired Pacific Telesis, Ameritech, BellSouth, SNET and the old AT&T. It's now trying to gobble up Time Warner. Over time, SBC Communications was able to form Cingular Wireless in partnership with BellSouth, which ended when SBC Communications acquired BellSouth. The Company also bought the former AT&T Wireless, which then became a functional part of Cingular. After, SBC became AT&T, and Cingular became AT&T Wireless. The now bad access charge regime was very good to AT&T.

Bell Atlantic, now Verizon, acquired NYNEX, GTE, MCI, AOL and Yahoo. It also formed what is now Verizon Wireless (Cellco Partners) and bought out its former partner Vodafone. Verizon Wireless also acquired a number of other wireless carriers, including West Virginia Wireless, Ramcell,

¹² Indeed, Teliix would not be surprised if an economic analysis would show retaining toll free calling as is, where the called party pays for 100% of the costs for the call, even at concurrent result of causing major contractions in both AT&T's and Verizon's business.

¹³ See Comments of AT&T, *supra* note 2, at 27-29; Comments of Verizon, *supra* note 2, at 10-11.

Rural Cellular Corporation, SureWest Communications and Alltel. Likewise, Verizon prospered when it collected access charges.

Most certainly, SBC/AT&T and Bell Atlantic/Verizon used profits from access charges to make these investments and acquisitions. As such, neither AT&T nor Verizon were always so anti-access charges. For example, in SBC Communications' last annual report (SEC Form 10-K) before it became AT&T, the Company described "access charges" as follows: "Access charges are designed to compensate our wireline subsidiaries for the use of their networks by other carriers."¹⁴ The disclosure was similar to what was made in 1994: "Access charges are designed to compensate the Telephone Company for the use of its facilities for the origination or termination of long-distance and other communications by non-Telephone Company carriers."¹⁵ In 1991 through 1993, the Company obtained 20% of its total revenues from Charges to interexchange carriers for network access.¹⁶

Also in 1994, Verizon, then Bell Atlantic, described access charges as:

The FCC has prescribed structures for exchange access tariffs to specify the charges ("Access Charges") for use and availability of the Network Services Companies' facilities for the origination and termination of interstate interLATA service. Access Charges are intended to recover the related costs of the Network Services Companies which have been allocated to the interstate jurisdiction ("Interstate Costs") under the FCC's separations procedures.¹⁷

Now the Companies seem to believe that only end users should pay for these interstate costs. This also means newer market entrants will never have the same revenue source—profits from access charges—that AT&T and Verizon used to expand and update their networks and make acquisitions. By cutting off a revenue source that AT&T and Verizon used to become market behemoths, the Commission is ensuring no future carrier will ever be able to grow big enough to challenge AT&T and

¹⁴ <https://www.sec.gov/Archives/edgar/data/732717/000073271705000176/form10k.htm>

¹⁵ <https://www.sec.gov/Archives/edgar/data/732717/0000732717-94-000005.txt>

¹⁶ *Id.*

¹⁷ <https://www.sec.gov/Archives/edgar/data/732712/0000950109-94-000587.txt>

Verizon in the future. The FCC, beginning with the 2011 release of the Transformation Order,¹⁸ has effectively taken major steps to return the industry from a competitive market to a duopoly not drastically different from the Pre-Divestiture Bell System. The work of previous Commissions, both under Democratic and Republican leadership, is being undone. Essentially, we have a situation where AT&T and Verizon prospered from access charges for decades, but now want to change the rules so that no other company can grow to become effective competitors to AT&T or Verizon.

IV. What AT&T Wants Now, No Access Charges, It Earlier Considered to Be Confiscation

The rank hypocrisy of AT&T's arguments against access charges extends to the Constitution. It previously claimed a failure of a state commission to set cost-recovering access charges constituted confiscation. In the case of *Southwestern Bell Telephone Co. v. State*, 825 P.2d 262 (Okla. 1992), the Oklahoma Corporation Commission ("OCC") set a rate of \$0.192 "per minute of originating access to be charged by SWB and other local exchange companies to MCI and the other interexchange carriers to provide intraLATA non-joint 800 service to the customers of the interexchange carriers." Earlier SWB filed a state tariff for originating toll free calls. The rate was disputed by a number of carriers, including AT&T. The parties, except for AT&T, agreed to an interim rate of \$0.276 per minute. Then the OCC prescribed \$0.192 as the final rate, which was quickly challenged in court by SWB on grounds that "the rate set results in the confiscation of property of SWB without due process of law."¹⁹ SWB argued that: "[T]he Commission's method of calculating the \$.192 rate is flawed in that it could lead to a rate of zero and result in confiscation of property without due process of law."²⁰ The court rejected the argument because the OCC did not set the rate at zero. But what if the OCC

¹⁸ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Inter-carrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; and Universal Service Reform - Mobility Fund*, Report & Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) ("Transformation Order").

¹⁹ *Southwestern Bell Telephone Co.*, 825 P.2d at 264.

²⁰ *Id.* at 265.

had set a zero rate, something that the FCC is being urged to do? Or what would SWB have argued had the OCC ordered the Company to recover its 800 origination service from end user customers?

Even the old AT&T argued a failure of the FCC to permit a Bell System LEC to impose a "surcharge on access charges applicable to interstate users in States in which State commissions had 'allocated' costs to interstate operations" by failing to follow the FCC's Separations Rules would "would be an unconstitutional confiscation of carrier property."²¹

Yet today AT&T takes the position other carriers have no rights to, and should not receive, any compensation from other carriers. Regulatory bodies are urged to set zero rates for the use of LEC networks. Yet The Constitution has not changed. The Fifth Amendment has not changed. What has changed is AT&T (and Verizon) have most certainly calculated that they make more money by not paying access charges to other carriers than they would make by collecting access charges by LEC operations.

Hopefully, the Industry and the Commission realize that, in this instance, granting AT&T's and Verizon's request to zero-out originating end office, originating tandem switching and transport, and DBQ would likely wreak havoc with the 8YY market, possibly by charging end user customers to make toll free calls or by I-VoIP providers and CLECs exiting the 8YY market all together.

V. Conclusion

For the reasons set forth herein, the Commission should not take any action to eliminate originating end office and tandem switching/transport. Such action is too drastic to occur based solely on comments filed in response to the Commission's request to refresh the record. Just as with 8YY access reform, before taking any action on originating access reform, the Commission should first do

²¹ *Establishment of Interstate Toll Settlements and Jurisdictional Separations Requiring the Use of Seven Calendar Day Studies by the Florida Public Service Commission*, Memorandum Opinion & Order, 93 FCC 2d 1287, at Summary of Comments ¶ 5 (1983), *recon. den.*, 98 FCC 2d 777 (1984), *aff'd sub nom. State Corp. Comm'n of Kansas v. FCC*, 787 F.2d 1421 (10th Cir. 1986).

so only as a part of a larger proceeding that examines "Post Transformation Order" access issues, including the effects of the earlier changes on competition and consumers.

Respectfully submitted,
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