



July 25, 2006

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554

Notice of Written *Ex Parte* Presentation

Re: 8x8, Inc. Request for Expedited Approval of Traffic Study WC Docket No. 06-122.

Dear Ms. Dortch:

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> submits this written *ex parte* presentation to alert the Commission of the dangers in rushing to approve the July 18, 2006 traffic study request of 8x8, Inc. (8x8), a VoIP provider. The Commission should not grant 8x8's emergency request because no true emergency exists, 8x8 has not justified its request for confidential treatment, and 8x8 has not satisfied the Commission's standards for traffic studies. The Commission should deny 8x8's request, incorporate the 8x8 traffic study into the Universal Service Fund (USF) contribution methodology record, and require 8x8 to file a public, unredacted version of its Exhibit 1 and Attachment A to Exhibit 1 so that NTCA and others can offer the Commission their views on the validity of the traffic study and its overall accuracy.

#### **A. Background**

On June 27, 2006, the Commission released its Report and Order and Further Notice of Proposed Rulemaking which, among other matters, established an interim safe

<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents over 570 rural rate-of-return regulated incumbent local exchange carriers (ILECs). All of its members are full service local exchange carriers, and many members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

harbor of 64.9% for interconnected VoIP providers.<sup>2</sup> The Commission sought comment on this safe harbor amount, as well as on the propriety of the use of traffic studies given its concerns with the use of wireless traffic studies.<sup>3</sup>

8x8, a VoIP provider, filed a request on July 18, 2006 for “emergency approval” of its proposed traffic study seeking approval before August 1, a mere eight business days later.<sup>4</sup> 8x8 claimed that its request deserves emergency review because 8x8 will be prejudiced if it cannot use its own traffic study to report its USF information in time for the August 1 FCC Form 499Q.<sup>5</sup> 8x8 asserts that its traffic study and the end result of that study (i.e., the overall interstate traffic flow as it differs from the 64.9% safe harbor) should be treated as confidential. Finally, 8x8 asserts that its traffic study meets the Commission’s criteria set forth in the NPRM because the study employs sampling techniques that result in a 1% margin of error, has a confidence level of 95%, captures all traffic, does not overstate or emphasize one type traffic over another, uses random sampling rather than stratified sampling, contains no bias, and produces representative, reliable results.<sup>6</sup>

## **B. Argument**

The Commission should reject 8x8’s request for emergency approval because no true emergency exists, 8x8 has not satisfied the Commission’s confidentiality standards for its traffic study, and 8x8’s request is vague and does not demonstrate that it has met the Commission’s traffic study approval criteria.

Expeditious approval is not appropriate since 8x8 will not be harmed by a careful review. 8x8 contends that it will be prejudiced by being “forced to utilize a factor which overstates 8x8’s overall interstate traffic.”<sup>7</sup> This assertion lacks merit. Blindly approving 8x8’s traffic study without adequate review will cause more harm than good to the USF. 8x8’s traffic study may be replete with inaccuracies and fallacious assumptions that permit it to understate its true USF contribution obligations. The Commission needs time to review the traffic studies to ensure that their data collection methods, assumptions, and analyses will lead to reliable, representative results. 8x8 has not demonstrated that it will suffer irreparable harm or prejudice by using the 64.9% safe harbor; to the contrary, the USF program may suffer irreparable harm through underfunding if the Commission hastily approves traffic studies without giving those studies diligent review. Furthermore, the Commission retains the authority to permit 8x8 to reconcile its 499Q reports if the Commission later sets a different safe harbor amount or approves its traffic study. There is no emergency that cannot be redressed, so the Commission should deny 8x8’s request for emergency review.

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<sup>2</sup> *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Further Notice of Proposed Rulemaking (rel. June 27, 2006) (NPRM).

<sup>3</sup> NPRM, ¶ 29; ¶ 32, n. 115; ¶ 57, n. 192.

<sup>4</sup> *8x8 Request for Expedited Approval of Traffic Study*, WC Docket No. 06-122 (filed July 18, 2006) (8x8 Study).

<sup>5</sup> 8x8 Study, p. 3.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.* at 3.

8x8 has not complied with the Commission's rules for confidential treatment, so the Commission should deny 8x8's casual request for confidentiality. 47 CFR § 0.459(c). 8x8 claims its traffic studies, contained in Exhibit 1 and Attachment A to Exhibit 1, should be treated as confidential because the study contains "commercially sensitive and non-public nature of the data."<sup>8</sup> 8x8 goes no further to substantiate its claim and its public filing is so vague that viewers have no reasonable opportunity to discern whether the hidden data truly is commercially sensitive. 8x8 did not state in its request the reasons for withholding the materials from inspection and the facts upon which those records are based. 47 CFR §0.459(b). 8x8 did not explain the degree to which the information is commercial or financial, or contains a trade secret or is privileged. 47 CFR §0.459(b)(3). 8x8 did not explain how disclosure of the information could result in substantial competitive harm. 47 CFR §0.459(b)(5). 8x8 did not specify or justify the period for which its material should not be viewed by the public. 47 CFR §0.459(b)(8). 8x8 did not demonstrate that its data is the type the Commission's rules typically exclude from public view. 47 CFR §0.457. Accordingly, the Commission should deny 8x8's request for confidentiality of its traffic study.

8x8 failed to demonstrate that its traffic study produces accurate information. Traffic studies, to obtain Commission approval, "may rely on statistical sampling to estimate the proportion of minutes that are interstate and international ... designed to produce a margin of error of no more than one percent with a confidence level of 95%."<sup>9</sup> 8x8 claims its traffic study meets this requirement, but has not given the Commission or the public adequate time or information to review the study's assumptions and data collection techniques. 8x8, therefore, has not sufficiently explained its sampling and estimation methods, or whether the study results in a biased estimate of 8x8's traffic.<sup>10</sup> The Commission should reject 8x8's request for lack of verification that its traffic study produces reliable results.

The Commission should resist 8x8's temptation for a quick approval and, instead, should incorporate 8x8's traffic study into the NPRM record and enlist public comment on an unredacted version of this traffic study. This will allow the Commission and others ample time to review the validity of 8x8's traffic study assumptions, data collection methods, sampling techniques, calculations, traffic type stratification and biases. This type of in-depth analysis is necessary to ensure reliable, justifiable results.

### **C. Conclusion**

The Commission should not grant 8x8's emergency request because no emergency exists, 8x8 has not justified its request for confidential treatment, and 8x8 has not satisfied the Commission's standards for traffic studies. Rushing to judgment on 8x8's traffic study will create poor precedent, both in terms of the traffic study assumptions and in terms of the review process, and may greatly understate 8x8's USF

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> NPRM, ¶ 32, n. 115.

<sup>10</sup> *Ibid.*

obligations. The Commission should, instead, incorporate 8x8's traffic study into the NPRM record and enlist public comment on an unredacted version of this traffic study.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. If you have any questions, please do not hesitate to contact me at (703) 351-2016.

Sincerely,

/s/ Daniel Mitchell

Daniel Mitchell

Karlen J. Reed

Its Attorneys

cc: Kevin Martin, FCC Chairman  
Jonathan Adelstein, FCC Commissioner  
Michael Copps, FCC Commissioner  
Deborah Taylor Tate, FCC Commissioner  
Robert McDowell, FCC Commissioner  
Daniel Gonzalez  
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