Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of	)	
	)	
Connect America Fund	)	**WC Docket No. 10-90**
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	**WC Docket No. 07-135**
	)	
Developing a Unified Intercarrier Compensation Regime	)	**CC Docket No. 01-92**
	)	

COMMENTS OF
ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits its comments in response to the Public Notice seeking to refresh the record regarding access charges for 8YY calls.[1] ITTA urges the Commission to maintain the status quo with respect to 8YY access charges. The Commission should not punish incumbent local exchange carriers (LECs) who, in good faith, enable their subscribers to access 8YY service. If the Commission nevertheless adopts reforms diminishing or eliminating such access charges, it should implement an access replacement recovery mechanism.

I. THE COMMISSION SHOULD MAINTAIN THE STATUS QUO WITH RESPECT TO 8YY ACCESS CHARGES

In the *USF/ICC Transformation FNPRM*, the Commission sought comment on whether it should distinguish between originating access reform for 8YY traffic and originating access

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[1] *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, Public Notice, DA 17-631 (WCB June 29, 2017) (*Public Notice*).

reform more generally.[2] The Commission heretofore has not addressed 8YY access charges further in the rulemaking context. The *Public Notice* now asks parties to refresh the record on issues raised in the *USF/ICC Transformation FNPRM* with respect to access charges for 8YY calls in light of developments that have occurred in the relevant markets since adoption of the *USF/ICC Transformation FNPRM*, including the transition of certain terminating switched access rates to bill and keep, and any changes in 8YY traffic volumes.[3] In a May 19, 2017 *ex parte* letter, the Ad Hoc Telecommunications Users Committee (Ad Hoc), whose members consist of large business customers that are heavy users of telecommunications services,[4] requested the Commission to re-impose the "historic treatment" of 8YY traffic for access charge purposes, pursuant to which carriers were required to apply the per-minute charges for terminating traffic to the originating end of 8YY calls.[5]

An interexchange carrier (IXC) should pay to both originate and terminate calls since the IXC does not own the local network itself and thus must purchase local network functionality from the LEC. As the retail service provider, the IXC bills the customer that purchases the 8YY number. Callers to an 8YY number use the LEC's network to place their calls; thus, the IXC

[2] *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18111, para. 1303 (2011) (*USF/ICC Transformation Order and/or FNPRM*).

[3] *See Public Notice* at 1 (citing *USF/ICC Transformation Order FNPRM*, 26 FCC Rcd at 18111, paras. 1303-04).

[4] The Ad Hoc Telecommunications Users Committee, Statement (July 2015), http://trycompetify.com/wp-content/uploads/2015/07/Adhoc.pdf. Ad Hoc members include 9 of the Fortune 100 and 19 of the Fortune 500, and come from a broad range of industry sectors, such as financial services, automotive, insurance, aerospace, accounting, and package delivery. *See id.*

[5] *See Public Notice* at 1 (citing Letter from Colleen Boothby, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 19, 2017) (Ad Hoc *Ex Parte*)).

should pay originating access to the LEC for the use of its network. The *USF/ICC Transformation FNPRM* recounted the contention by the Nebraska Rural Independent Companies that a reciprocal compensation system, "'in which originating compensation does not exist, is unworkable in an environment of originating 8YY traffic . . . .'"[6] This remains true. 8YY traffic is not reciprocal. One carrier's originating traffic does not terminate on another carrier's network. The originating 8YY traffic belongs to the carrier that sold the 8YY number to the customer, but the carrier that sold the 8YY number does not own the network used to originate the 8YY calls.

To the extent that terminating rates already have been reduced to bill and keep or will be within less than three years,[7] Ad Hoc's request is a request to also apply bill and keep to originating 8YY traffic. As a result, LECs handling originating 8YY traffic would either have to pass the costs of such traffic on to their subscribers or absorb the loss of originating access revenue from 8YY calls. Neither outcome is in the public interest.

As for passing on the costs to subscribers, when a consumer places an 8YY call, she expects that call indeed to be toll-free. Embedding charges attributable to "toll-free" calling within the rates consumers pay LECs for telephone service would fundamentally contravene that expectation.[8] Ad Hoc's Fortune 500 and other members purchase 8YY services in order to

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[6] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18111-12, para. 1304 (citing Comments of the Nebraska Rural Independent Companies in Response to August 3, 2011 Further Inquiry, WC Docket No. 10-90 et al., at 71 (Aug. 24, 2011)).

[7] *See id.* at 17935, para. 801, Fig. 9 (intercarrier compensation reform timeline).

[8] FCC, Consumer and Governmental Affairs Bureau, What is a Toll-Free Number and How Does it Work? (July 13, 2017), https://www.fcc.gov/consumers/guides/what-toll-free-number-and-how-does-it-work ("Toll-free numbers . . . can be dialed from landlines with no charge to the person placing the call. . . . Toll-free service has traditionally provided potential customers and others with a free and convenient way to contact businesses."); FCC, Toll Free, https://www.fcc.gov/general/toll-free (last visited July 24, 2017) ("Toll-free numbers allow

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entice customers to call them,[9] and, as such, their costs for 8YY services are a cost of attracting and conducting business.

The prospect of LECs absorbing the loss of originating access revenue from 8YY calls is also not good policy. For years, LECs' originating access revenues have been waning as customers migrate to other ways to originate toll calls, mostly by use of wireless networks. To illustrate, as compared to 2011, the non-8YY (traditional) originating access minutes of three ITTA members declined in 2016 by amounts ranging from one-third to over 45 percent. LECs are ill-equipped to absorb the significant loss of revenue should originating access charges for 8YY traffic be eliminated. Losing the originating access revenue from 8YY calls would particularly compound the financial woes of rural LECs that have less means than their larger, more urban counterparts to absorb the revenue loss or to make it up elsewhere.

II. PURPORTED ACCESS STIMULATION INVOLVING 8YY SERVICE BY SOME ENTITIES IS NOT GROUNDS FOR ABANDONING ALL ACCESS CHARGES FOR 8YY CALLS

In the *USF/ICC Transformation FNPRM*, the Commission recounted how it had previously sought data and comment on the relative proportion of 8YY originated minutes to traditional originated minutes, and how one commenter had estimated that approximately 20-30 percent of originating traffic was to an 8YY number, while another commenter suggested that

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callers to reach businesses and/or individuals without being charged for the call. The charge for using a toll-free number is paid by the called party (the toll-free subscriber) instead of the calling party.").

[9] Newton's Telecom Dictionary 65 (22nd ed. 2006) (defining 800 and other 8YY service as a "toll free call paid for by the called party, rather than the calling party. . . . Such 8[YY] service is typically used by merchants offering to sell something . . . . The idea of the free service is to entice customers to call the number, with the theory being that if the call . . . cost the customer something, he or she might be less inclined to call."). In addition, if charges for ostensibly toll-free calls are embedded in LECs' rates, consumers who do not place 8YY calls will end up subsidizing them nevertheless, rather than the businesses that benefit from the 8YY calls.

figure could be as much as 50 percent. The Commission again invited carriers to provide such data.[10] The *Public Notice* encourages commenters to submit updated data on the relative proportion of 8YY originated minutes to traditional originated minutes.[11] It also observes that Ad Hoc noted AT&T's recent allegation that arbitrage and access stimulation schemes are increasingly shifting to 8YY service.[12]

Three ITTA members have indicated that for 2016, the amounts of their total originating traffic attributable to an 8YY number ranged from slightly over 30 percent to slightly over 60 percent. Notably, as compared to 2011, these members' originating 8YY access minutes decreased in 2016 by amounts ranging from slightly over 20 percent to slightly over half. In light of this, Ad Hoc's argument that significant 8YY arbitrage and access stimulation opportunities exist that the Commission can reduce, if not eliminate, by effectively transitioning originating 8YY traffic to bill and keep[13] misses the mark. ITTA certainly encourages the Commission to take action to address artificially inflated 8YY traffic. But ITTA's members, who, in good faith, enable their subscribers to access 8YY service as part of the overall access service they provide as LECs, should not be made to suffer the loss of originating access revenue. As such, Ad Hoc's proposed solution of 8YY access charge reform to eliminate access charges on 8YY traffic should be rejected.

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[10] *See USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18111, para. 1304.

[11] *See Public Notice* at 1.

[12] *See id.* (citing Ad Hoc *Ex Parte* at 2); *see also* Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363, at 11 (filed Sept. 30, 2016).

[13] *See* Ad Hoc *Ex Parte* at 2.

III. IF THE COMMISSION DIMINISHES OR ELIMINATES 8YY ACCESS CHARGES, IT SHOULD ADOPT AN ACCESS REPLACEMENT RECOVERY MECHANISM

As discussed above, if the Commission grants Ad Hoc's request and applies bill and keep to originating 8YY traffic, or if the Commission diminishes 8YY access charges in any other manner, ITTA's LEC members will face a Hobson's choice of either recouping the foregone access revenues from consumers, or absorbing the losses themselves. Both choices are untenable. Without replacement of this significant revenue stream, the financial distress especially of rural LECs will increase, thus making them less capable of servicing existing debt and further hindering their ability to make the investments required to deploy broadband.

The solution to this conundrum would be for the Commission to implement an access replacement recovery mechanism akin to the one adopted in the *USF/ICC Transformation Order*. In the *USF/ICC Transformation Order*, the Commission implemented the CAF ICC recovery mechanism as a replacement for intercarrier compensation revenue that would be foregone from reform of certain terminating access charges.[14]

IV. CONCLUSION

For the foregoing reasons, while the Commission may need to address purported illegitimate access stimulation schemes involving 8YY service, transitioning 8YY access charges to bill and keep is not the solution. The Commission should maintain the status quo with respect

[14] *See, e.g.*, *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17971, 17990, paras. 880 n.1699, 910.

to 8YY access charges. In the unfortunate event the Commission decides to diminish or eliminate such access charges, it should implement an access replacement recovery mechanism.

Respectfully submitted,

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