Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter 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
	)	

REPLY COMMENTS OF WINDSTREAM SERVICES, LLC, FRONTIER COMMUNICATIONS CORPORATION AND NTCA – THE RURAL BROADBAND ASSOCIATION

Windstream Services, LLC, Frontier Communications Corporation, and NTCA – The Rural Broadband Association (collectively, the "rural LECs") submit these reply comments in response to the Wireline Competition Bureau's ("Bureau") June 29, 2017 Public Notice ("Notice") requesting that parties "refresh the record" from the 2011 Further Notice of Proposed Rulemaking "regarding 8YY access charge reform."[1]

As stated in our comments, we agree that, to the extent 8YY access stimulation schemes exist, such activities can distort the market and cause 8YY providers to incur unreasonable costs. However, as compared to the substantial record evidence with respect to terminating access stimulation in 2011—which included estimates of the cost of terminating access stimulation to interexchange carriers ("IXCs") and numerous traffic pumping disputes—remarkably little evidence of 8YY access stimulation has been placed in the record beyond the bald assertions of a select few IXCs and 8YY service providers—*e.g.*, AT&T, Verizon, and Sprint (collectively, the

[1] *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, Public Notice, WC Docket No. 10-90, 32 FCC Rcd 5117 (WCB 2017) ("Notice").

"IXC Parties")—who most stand to benefit from the elimination of such charges. Furthermore, what limited evidence has been presented suggests such access stimulation is confined to a small handful of competitive local exchange carriers ("CLECs") and does not infect the LEC industry as a whole. Thus, before taking any action to reform the originating access regime writ large, the Commission should further investigate more specifically the scope of 8YY access stimulation. If after an appropriate investigation the Commission concludes such stimulation exists and is material, then it should consider making targeted efforts to address such unreasonable behavior. Most commenters agree with the rural LECs that it is premature for the FCC to proceed with either 8YY reform or broader originating access reform at this time—that is, before it has had an opportunity to fully develop a thorough record and adequately evaluate the consequences of any proposed reforms on consumers.[2]

Moreover, contrary to the Ad Hoc Telecommunications Users Committee's ("Ad Hoc") and the IXC Parties' misleading suggestions, the Commission's historical treatment of toll free originating access traffic does not support transitioning 8YY originating access charges to a bill-and-keep framework that would unfairly and paradoxically place the burden of paying to originate toll free calls on toll free callers. Indeed, if anything, such precedent supports the Commission continuing to allow LECs to recover the cost of originating 8YY calls from 8YY service providers.

The rural LECs are committed to working with the Commission and other stakeholders to

[2] *See, e.g.*, Comments of USTelecom Association, WC Docket No. 10-90 et al., at 2 (July 31, 2017) ("With regard to broader 8YY reforms or reforms of originating access generally, the Commission lacks sufficient data to achieve its goal of executing 'well-informed, economically sound policy.'" (citation omitted)); Comments of ITTA – The Voice of America's Broadband Providers, WC Docket No. 10-90 et al., at 6-7 (July 31, 2017) ("The Commission should maintain the status quo with respect to 8YY access charges."); Comments of CenturyLink, WC Docket No. 10-90 et al., at 8 (July 31, 2017) ("The Commission should also proceed with caution when it comes to addressing the broader ICC reform issues that remain pending in the Commission's ICC FNPRM docket.").

develop a comprehensive record that would inform possible changes to the originating access regime and to consider the approach that best serves consumers of local voice services in urban and rural areas alike.

I. The Evidence in the Record Does Not Support an Industry-Wide Overhaul of Originating Access Charges.

When the Commission previously adopted targeted rules to address terminating access stimulation schemes, it did so based on actual evidence in the record of widespread and material practices and related costs. For instance, Verizon estimated that overall costs to IXCs were between $330 and $440 million per year, and indicated that it expected to be billed between $66 and $88 million by access stimulators for approximately two billion wireline and wireless long-distance minutes in 2010.[3] Furthermore, payment of access charges to access stimulating LECs had been the subject of large numbers of disputes in a variety of forums.[4]

Here, by contrast, there is comparatively little evidence beyond the self-serving assertions of the IXCs themselves regarding the scope or scale of 8YY access stimulation, and what limited evidence there is suggests that the problem (to the extent there is one) is confined to a few bad actors.[5] AT&T, for example, points primarily to the overall increase in 8YY originating access

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[3] *See* Letter from Donna Epps, Vice President-Federal Regulatory, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-135, at 1 (filed Oct. 12, 2010); *see, also,* TEOCO, ACCESS STIMULATION BLEEDS CSPS OF BILLIONS, at 5, *attached to* Letter from Glenn Reynolds, Vice President – Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 07-135 (filed Oct. 18, 2010) (study estimated that access stimulation had cost IXCs more than $2.3 billion in the preceding five years).

[4] *See, e.g.*, Bluegrass Telephone Co., WC Docket 10-90 et al., at 28-29 (April 1, 2011).

[5] In addition, the Commission has not evaluated whether the Commission's access stimulation rules resulted in consumer benefits in the form of lower rates. As noted in our comments, the Commission should analyze whether consumers actually realized benefits from prior intercarrier compensation reductions before initiating further reform. Comments of Windstream Services, LLC, Frontier Communications Corporation and NTCA – The Rural Broadband Association, WC Docket No. 10-90 et al., at 6-7 (July 31, 2017) ("Windstream et al. Comments").

minutes as a proportion of total originating access minutes as support for its claim that arbitrage activities have increasingly shifted to 8YY.[6] But, an increase in 8YY minutes alone does not necessarily suggest that arbitrage is occurring. Indeed, a migration to 8YY conference calls and away from "free" conference calls as a result of the Commission's targeted terminating access stimulation rules may be one reason for the increased minutes. Furthermore, as the market for standalone long distance service dwindles and bundled local and long distance expand, it is logical that 8YY would increase as a percentage of the total originating access minute share.

Even if some of the increased 8YY minutes are due to arbitrage, AT&T's filing in support of its Forbearance Petition indicates that these increases are being driven by a small handful of CLECs, and that the overwhelming majority of LECs do not engage in such unreasonable behavior.[7] Verizon similarly provides virtually no support for its claims of widespread 8YY access stimulation, save for a single statement from the CEO of Core Communications indicating that Core projects its originating access revenue to grow.[8] Finally, nowhere in the record is there any evidence of the cost of 8YY access stimulation to IXCs, what benefits would accrue to their

[6] Comments of AT&T, WC Docket No. 10-90 et al., at 7 (July 31, 2017) (citing Letter from Matthew Nodine (AT&T) to Marlene H. Dortch (FCC), *AT&T Petition for Forbearance from Certain Rules for Switched Access Services and Toll Free Database Dip Charges; Petition for Declaratory Ruling Regarding Applicability of the IntraMTA Rules to LEC-IXC Traffic,* WC Docket Nos. 16-363 & 14-228, Attachment at 9 (May 11, 2017) ("AT&T Forbearance Petition *Ex Parte*")); Comments of Sprint Corporation, WC Docket No. 10-90 et al., at 2 (July 31, 2017) (stating that originating 8YY traffic accounts for a significant percentage of the originating minutes for which Sprint and other IXCs are billed).

[7] AT&T Forbearance Petition *Ex Parte* at 10 (estimating that 20% of AT&T's originating access spend in September 2016 was attributable to 17 carriers engaged in traffic pumping or support of traffic pumping and 80% of spend was attributable to 1,300 other carriers).

[8] Comments of Verizon, WC Docket No. 10-90 et al., at 3 (July 31, 2017).

customers if such costs were mitigated or avoided, or that the payment of 8YY access charges to access stimulating LECs has led to significant disputes and litigation.[9]

Given the lack of concrete record evidence regarding 8YY access stimulation, the Commission should refrain from implementing an industry-wide overhaul of 8YY originating access charges at this time, especially considering that such charges compensate LECs for routing traffic to 8YY providers, including conducting 8YY database dips, and maintaining the local networks that 8YY providers use to serve their customers. Instead, at most, the FCC should conduct further investigation and require the presentation of data to determine the scope of the access stimulation concerns raised by the IXC Parties. If, after an appropriate investigation, the Commission concludes such stimulation exists and is material, then it should consider targeted efforts—along the lines of the terminating access stimulation rules the Commission adopted in 2011—to address such unreasonable behavior before engaging in any process to reform all originating traffic-related charges. Doing so will enable the Commission to appropriately analyze the impact of the terminating access reforms and predictions about consumer benefits, and to collect data before initiating additional reforms that could have far-reaching and unintended consequences for consumers.

In the spirit of good-faith compromise, we are meeting with other providers to evaluate the extent of 8YY arbitrage and identify targeted solutions.[10] As noted in our comments, we hope to submit a proposal in the near future.

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[9] *Cf.* Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. §160(c) from Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges, WC Docket No. 16-363, at 10-11 (filed Sept. 30, 2016) (citing a single case of alleged 8YY access stimulation).

[10] Windstream et al. Comments at 5.

II. The FCC's Historical Treatment of Toll Free Originating Access Traffic Does Not Support Transitioning 8YY Originating Access Charges to Bill-and-Keep.

As support for their proposal that the Commission immediately transition all 8YY originating access charges, including 8YY database dipping charges, to a bill-and-keep framework, Ad Hoc and the IXC Parties rely on decades-old Commission precedent in which the Commission determined that toll free originating traffic should be treated the same as terminating access traffic for the purpose of assessing since-eliminated per minute access charges.[11] Ad Hoc's and the IXC Parties' reliance on such precedent is misleading and misplaced. If anything, such precedent *supports* the Commission continuing to permit LECs to recover the costs of originating toll free traffic from toll free service providers.

A closer examination of the cited precedent illustrates why this is so. In 1986, concerned that IXCs were increasingly bypassing originating LECs in order to avoid tariffed per-minute common carrier line ("CCL") charges—the purpose of which was to permit LECs recovery for the costs of maintaining their local networks—the Commission determined to create a bifurcated CCL charge regime, whereby the CCL charge was set at a higher rate at the terminating end than at the originating end of long distance calls.[12] The Commission surmised that this bifurcated regime would help address the bypass issue, because it was more difficult for IXCs to avoid using the

[11] Letter from Colleen Boothby, Counsel, Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attachment at 4-5 (filed May 19, 2017) (citing *In re WATS-Related and Other Amendments of Part 69 of the Commission's Rules*, CC Docket No. 86-1, Report and Order, 59 Rad. Reg. 2d (P&F) 1418 (1986); *In re Access Charge Reform*, CC Docket No. 96-262 et al., First Report and Order, 12 FCC Rcd 15,982 (1997)); *see also* AT&T Comments at 5-6; Sprint Comments at 1-2; Verizon Comments at 5.

[12] *In re WATS-Related and Other Amendments of Part 69 of the Commission's Rules*, CC Docket No. 86-1, Report and Order, 9 Rad. Reg. 2d (P&F) 1418 paras. 47, 53 (1986).

public switched telephone network ("PSTN") at the terminating end of calls than at the originating end.[13]

The Commission recognized, however, that this change in the CCL rate structure would have the adverse effect of preventing LECs from obtaining a full recovery for the use of their local networks to originate 8YY calls, because at that time most 8YY services terminated on special access lines and therefore could not be assessed a CCL charge at the terminating end of the call.[14] To address this adverse effect, the Commission decided to treat toll free originating service traffic the same as terminating access traffic for purposes of assessing CCL charges, to ensure that LECs could assess IXCs the higher terminating rate for originating 8YY calls.[15]

The Commission reaffirmed this treatment of toll free originating minutes in its *1997 Access Reform Order*, although it began taking measures to phase out the per-minute CCL charge in favor of flat, non-traffic-sensitive fees.[16] Three years later, in the *2000 CALLS Order*, the Commission all but eliminated the per-minute CCL charge and, with it, the bifurcated rate structure that had led the Commission to treat originating toll free traffic the same as terminating long distance traffic in the first instance.[17] Critically, at no point in this multi-decade history of access charge reform did the Commission question the underlying logic of allowing LECs to recover the costs of originating toll free calls from 8YY service providers, as opposed to toll free callers.

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[13] *Id.*

[14] *Id.* at para. 39.

[15] *Id.* at para. 53.

[16] *In re Access Charge Reform*, CC Docket No. 96-262 et al., First Report and Order, 12 FCC Rcd 15,982, 16,142 at para. 366 (1997).

[17] *In re Access Charge Reform, et al.*, CC Docket Nos. 96-262, 94-1, 99-249, 96-45, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12,962, 12987 para. 68 (2000).

Thus, when put in this proper historical context, the Commission's decision to treat originating toll free traffic the same as terminating access traffic for access charge purposes clearly was designed to ensure that LECs were able to recover from IXCs the costs of maintaining their local networks, and not, as Ad Hoc and the IXC Parties suggest, to shift such costs onto toll free callers. Because Ad Hoc's and the IXC Parties' proposals that the Commission treat toll free originating minutes the same as terminating minutes and immediately transition them to bill-and-keep would have exactly the opposite effect—*i.e.*, it would prevent LECs from recovering their 8YY origination costs from 8YY service providers and would instead transfer such costs to toll free callers—the FCC should decline to adopt it here.

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