

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

In the Matter of)
)
8YY Access Charge Reform) WC Docket No. 18-156

TO: The Commission

**COMMENTS
OF
WTA – ADVOCATES FOR RURAL BROADBAND**

WTA – Advocates for Rural Broadband (“WTA”) hereby submits its comments in response to the Commission’s *Further Notice of Proposed Rulemaking*, FCC 18-76, released June 8, 2018, in the captioned proceeding (“*FNPRM*”).

WTA believes that the Commission can readily eliminate arbitrage and fraud in the current 8YY system without penalizing innocent rural local exchange carriers (“RLECs”) by eliminating critical originating access charges and revenues for 8YY calls. Fraudulent and otherwise illegitimate robocalls made for the sole or primary purpose of generating originating 8YY access revenues can be: (1) prohibited; (2) traced and identified; (3) precluded from collecting unlawful charges; and (4) subjected to maximum allowable forfeitures. Database queries regarding 8YY calls can be limited to one query per carrier and its affiliates, and database query charges can be limited to a uniform nationwide cap. Originating 8YY access charges can be prohibited from being assessed by or paid to any local exchange carrier (“LEC”) for any location other than that from which a *bona fide* customer actually dialed the 8YY call involved. Routing of 8YY calls in an indirect manner likely to be intended to maximize transport compensation can be challenged as unjust and unreasonable, with longer routes, revenue sharing arrangements and affiliated facilities all raising presumptions of unlawfulness.

In stark contrast, the 1,000 or so wholly innocent RLECs should not be punished by having at least \$40-to-\$45 million of their originating 8YY access charge revenue streams reduced precipitously to zero, with a potential of no replacement revenue or cost recovery. As WTA understands the *FNPRM's* proposal, RLECs not only would get no originating access compensation for the use of their networks by the interexchange carriers (“IXCs”) selling 8YY service, but also would have to pay database dip charges in many instances for 8YY calls for which they would receive no compensation. Meanwhile, the IXCs selling 8YY services get windfall profits as their former 8YY originating access costs drop to zero. Finally, even if their state commissions allow them to increase monthly local exchange service rates to recover some or all of their lost 8YY originating access revenues, RLECs would be placed in the perilous and untenable public relations position of charging their customers indirectly for 8YY service that has long been advertised and provided as a free service to those customers. Without trying to untangle the sophistry as to whether monthly service rate increases contradict long advertised claims that 8YY calls are “toll-free,” WTA notes that some customers are very likely to object to the change, and to file deceptive practices complaints with the Federal Trade Commission (“FTC”) or truth-in-billing complaints with this Commission.

I. WTA-Advocates for Rural Broadband

WTA is a national trade association representing more than 340 rural telecommunications providers that offer voice, broadband and video-related services in rural America. WTA members are predominately RLECs that serve some of the most rugged, remote and/or sparsely populated areas of the United States. The typical WTA member has 10-to-20 full-time employees and serves fewer than 3,500 access lines in the aggregate and fewer than 500 access lines per exchange. The primary service areas of WTA members are comprised of farming and ranching regions, isolated

mountain and desert communities, and Native American reservations. They must construct, operate and maintain their “last mile” (often, last 20-to-50 mile) networks under highly varied conditions of climate and terrain ranging from the deserts of Arizona to the lakes of Minnesota to the wilderness and villages of Alaska, and from the valleys of Oregon to the plains of Indiana to the hills of Tennessee and to the mountains of Wyoming. The major common features of these diverse rural areas are the much longer than average distances that must be traversed and the much higher per-customer costs of constructing, upgrading, operating and maintaining “last mile” networks than in urban and suburban America. WTA members are providers of last resort to many remote areas and communities that are both very difficult and very expensive to serve.

WTA members are all Rate-of-Return (“RoR”) carriers. Approximately forty-five percent (45%) of WTA’s members are included among the 207 RoR companies that elected Alternative Connect America Cost Model (“ACAM”) support for the 2017-2026 period.¹ Eleven (11) WTA members have opted into the Alaska Plan, while the remaining WTA members have remained on cost-based RoR regulation for a variety of circumstances and reasons.

II. There Are Straightforward Ways to Stop 8YY Fraud and Arbitrage

The *FNPRM* notes that many businesses and consumers continue to find 8YY numbers and services useful, and indicates that both demand for 8YY numbers and usage of 8YY minutes continue to grow. *FNPRM* at ¶¶6-7. Hence, 8YY service appears to be a substantial and healthy business that LECs, IXC, business customers, regulators and the general public should all want to continue to grow and prosper.

¹ See Public Notice (*Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More Than \$51 Million Annually in Alternative Connect America Cost Model Support And Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*), WC Docket No. 10-90, DA 16-1422, released December 20, 2016; and Public Notice (*Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*), WC Docket No. 10-90, DA 17-99, released January 24, 2017.

WTA has seen and heard the allegations that there is some amount of unfortunate fraud and arbitrage that is adversely affecting the 8YY business. WTA has no reason to challenge the accuracy of such allegations, but is aware of no specific instances of 8YY fraud and arbitrage and has seen little evidence detailing the prevalence of such behavior. During recent months, WTA has met and worked with other industry representatives to try to develop targeted approaches and rules to put an end to specific existing access stimulation tactics and arrangements. The thrust of the discussion at such meetings was that the 8YY problems that needed to be addressed were the work of competitive local exchange carriers (“CLECs”) and not RLECs. WTA knows of none of its RLEC members that has engaged in actual or alleged abuses of the intercarrier compensation system with respect to 8YY service. For that matter, WTA has not yet seen any evidence that significant numbers of rural CLECs are engaged in 8YY abuses.

Assuming, *arguendo*, that substantial 8YY abuses exist, it appears that they can be targeted directly and counteracted without inflicting collateral damage upon innocent entities. For example, the most egregious and expensive alleged abuse appears to be the use of auto dialers or “robocallers” to place illegitimate calls to 8YY numbers and to use varying means to keep Interactive Voice Response (“IVR”) systems engaged to prevent the calls from ending while more and more originating access charges are run up. The vulnerable link in this scam is that the traffic pumping “robocaller” and its associated LEC have to bill and collect substantial access minutes and charges from the IXC providing the 8YY service that they are trying to bilk. The Commission can and should put a halt to this tactic by issuing a clear statement: (a) that the placing of robocalls to 8YY numbers is an unlawful practice under Section 201(b) and other sections of the Act; (b) that IXCs and their 8YY customers do not have to pay 8YY originating access or other charges for such unlawful calls; and (c) that entities involved in the origination of unlawful robocalls to

8YY numbers will be identified, prosecuted and fined to the maximum extent permitted by law. Action of this nature will provide notice and incentive for 8YY customers and their IXC service providers to look for, monitor and investigate potential robocall schemes and billing. The Commission's Enforcement Bureau and the industry's Robocall Strike Force have substantial experience in identifying, tracing, investigating and prosecuting 8YY robocalling activities. With active enforcement, removal of profit, and looming large forfeitures, robocall 8YY traffic pumping practices can be halted by direct actions that penalize the actual offenders.

Alleged 8YY database query abuses can and should be ended by two relatively simple steps. First, 8YY database query charges can be capped, as proposed by the *FNPRM*, at the lowest rate currently charged by a price cap LEC (\$0.0015 per query). *FNPRM* at ¶69. Second, a carrier and its affiliates (defined broadly as any entity with which the carrier has a common owner or a revenue sharing agreement) can and should be limited to the billing of one 8YY database query charge per 8YY call. This proposal differs somewhat from that in the *FNPRM* in that wholly separate, non-affiliated carriers along the route of an 8YY call should continue to be able to make and recover the costs of 8YY database queries that are necessary to complete an 8YY call.

Alleged 8YY benchmarking abuses can and should be stopped by prohibiting the assessment of 8YY originating access charges by any carrier other than the LEC whose customer originates the call and for any location other than the one from which the call was actually originated. Carriers can and should be strictly prohibited from aggregating 8YY calls, and from charging rates other than the originating access and originating tandem switching transport rates applicable to the location from which the 8YY call was actually originated.

Finally, alleged mileage pumping with respect to 8YY and other services can and should be curtailed by requiring transport service providers to bill for the shortest practicable direct route.² Routing of 8YY calls via routes that are indirect and likely to be intended to maximize transport compensation can be challenged as unjust and unreasonable, with longer routes, revenue sharing arrangements and affiliated facilities all raising presumptions of unlawfulness. In many instances, mileage pumping disputes arise when carriers change their points of interconnection (“POIs”) in a manner that is designed or allegedly designed to artificially “stimulate” transport mileage. As proposed by WTA in WC Docket No. 18-155,³ the Commission can deal with this situation by freezing and grandfathering existing POIs as of a reasonable recent date – say December 31, 2017. No LEC would thereafter be permitted to change or re-arrange one or more of its POIs if such change would result in an increase of its transport mileage and transport charges to any IXC unless and until the LEC is able to provide clear and convincing evidence to that IXC that the POI change is necessary for technical or economic reasons unrelated to increasing its transport charges to the IXC. If the LEC and IXC cannot agree upon the treatment of a POI change or upon a mutually acceptable alternative transport mileage factor, the POI change can be brought to the Commission for resolution in, for example, a Section 208 complaint proceeding.

III. Innocent RLECs Should Not Be Penalized For the 8YY Fraud and Arbitrage of Others

Given that existing 8YY fraud or arbitrage issues can be directly targeted and resolved, it is unfortunate that the *FNPRM*'s primary proposed solution appears to be to move all originating interstate and intrastate end office and tandem switching and transport charges related to 8YY calls

² The “shortest practicable direct route” should not be defined solely in terms of air miles, but rather should take account of the need to adjust routes for natural and man-made obstacles such as mountains, forests, rivers, lakes, swamps, highways, railroad crossings, and historic or sacred places.

³ “Reply Comments of WTA – Advocates for Rural Broadband,” WC Docket No. 18-155, August 3, 2018, at p. 5.

to bill-and-keep over a three-year transition period. *FNPRM* at ¶30. In other words, rather than initiating enforcement and forfeiture actions against the relatively limited number of CLECs that may be engaging in readily identifiable 8YY fraud and arbitrage, the *FNPRM* proposes instead to punish over a thousand wholly innocent RLECs and rural CLECs by depriving them of significant amounts of their remaining access revenues that they cannot afford to lose.

WTA estimates that RLECs currently receive at least \$40 million to \$45 million per year in originating interstate and intrastate end office and tandem switching and transport revenues related to 8YY calls. That is approximately 20 percent of total remaining RLEC switched access revenues. One small WTA member reports that its 8YY originating access revenue is \$40,000 per year, and another neighboring WTA member indicates that its 8YY originating revenue is \$43,000 per year. If their state commission would approve local service rate increases and customers would accept them without cancelling some or all of their voice service, each of the two WTA members would have to raise its monthly local exchange voice service rates by \$1.50 to \$1.60 per customer in order to replace the lost 8YY access charge revenues. Another somewhat larger WTA member has approximately \$45,000 per year in 8YY originating access revenue. Whereas the latter member would need to increase its monthly service rates only about \$0.25 per customer in order to replace the lost revenues, past experience indicates that its state commission would be extremely unlikely to approve even this relatively small increase in the absence of a specific Commission prescription.

The proposed 8YY originating access revenue reductions could not come at a worse time. The ongoing transition from a predominately copper-based voice network to a more and more fiber-based broadband network has been neither easy nor inexpensive. RLECs continue to be caught in the crippling vise between the increasing broadband capacity needs of their rural

customers on the one hand and their limited financial resources and available federal high-cost support on the other. Whether RLECs are dealing with ACAM support and build-out obligations, or cost-based Rate-of-Return support and budget control mechanisms, their high-cost support and other revenue streams have not been sufficient to keep up with the growing investment needs and increased operating costs necessary to meet the growing broadband needs of their rural customers. These broadband demands have already surpassed the 10/1 service level that is the predominant focus of the current high-cost support mechanisms, and are rapidly passing beyond the next 25/3 intermediate milestone on their way to higher and higher speeds.

WTA appreciates the efforts currently under way by the Commission to review the Rate-of-Return high cost support budget, and hopefully to increase it to levels that will relieve current and future sufficiency problems. However, WTA notes that regulatory cost increases and access revenue stream decreases can both significantly offset high cost support increases and reduce the net RLEC financial resources available for broadband deployment. WTA is very concerned that the Order⁴ recently adopted in WC Docket No. 10-90 will impose very substantial and very expensive performance testing obligations and compliance penalties upon many RLEC high-cost support recipients. And now the *FNPRM* is considering the potential elimination of the 8YY originating access revenue stream that provides RLECs with about \$40-to-\$45 million per year that they cannot afford to lose. At some point, if one keeps on increasing the costs and reducing the revenues of already struggling small RLECs, they will no longer be able to meet the broadband needs of their rural customers.

The *FNPRM* not only proposes to require RLECs to take their 8YY originating access charges and revenues to zero during a brief three-year “transition” period, but also raises questions

⁴ *Connect America Fund*, Order, WC Docket No. 10-90, DA 18-710, released July 6, 2018.

whether a revenue recovery mechanism like Connect America Fund – Intercarrier Compensation (“CAF-ICC”) support will be provided (*FNPRM* at ¶¶ 61-64, 66) while still requiring RLECs and others to pay 8YY database dip charges (*FNPRM* at ¶ 70). If there is no revenue recovery mechanism like CAF-ICC, adoption of the *FNPRM* proposals would put RLECs in a position where they would receive no compensation from the IXC providers of 8YY service for the use of RLEC “last mile” networks to originate 8YY calls but would be required to pay 8YY database dip charges to the same IXCs and other database operators for the dubious “privilege” of originating the uncompensated 8YY calls. Meanwhile, the IXCs providing 8YY service profit from cost savings as 8YY originating access charges go to zero, while at least some 8YY database dip revenues remain.

If there is no revenue recovery mechanism, the *FNPRM* suggests that RLECs and other carriers should be able to recover their lost 8YY originating access revenues from their end users (*FNPRM* at ¶ 64). As a threshold matter, WTA is not clear whether or how such lost revenues would be recovered from end user customers, for some states may not approve local service rate increases whereas existing Commission rules and limitations regarding Access Recovery Charges (“ARCs”) and/or Subscriber Line Charges (“SLCs”) may first need to be revised.

Even if carriers can get past these hurdles, WTA believes that the end user recovery approach is unfair to consumers for at least two reasons. First, it imposes monthly local exchange service rate increases upon all of an RLEC’s (or CLEC’s) customers – both customers that make 8YY calls and customers who do not. Perhaps more important, it imposes additional charges upon customers with respect to 8YY calls that have long been advertised and completed without any charge to the customer. RLECs and CLECs should not be placed in untenable positions where they must “educate” their customers and state commissions that 8YY calls remain “toll-free” even

though local service rates have been increased by one or more dollars to pay indirectly for them. Such casuistry will severely impact customer trust and relations, and is likely to lead to the filing of deceptive practices complaints with the Federal Trade Commission (“FTC”) and/or truth-in-billing complaints with this Commission.

IV. Conclusion

WTA supports targeted Commission action to punish and deter fraud and arbitrage abuses against 8YY services and service providers, including direct efforts to stop robocall scams, excessive 8YY database query charges, benchmarking tactics and mileage pumping. However, WTA vigorously objects to the proposed punishment of more than a thousand innocent RLECs and rural CLECs by precipitously eliminating their 8YY originating access revenues by imposing a 3-year transition to bill-and-keep, particularly when there may be no revenue recovery mechanism like CAF-ICC and 8YY database query charges may still be assessed for uncompensated 8YY calls. Not only does this revenue disruption come at a critical time when RLECs are caught in squeeze between broadband deployment demands and insufficient investment resources, but it also creates significant potential customer relations problems with subscribers who have long been used to making free 8YY calls.

Respectfully submitted,
WTA – Advocates for Rural Broadband

By: /s/ Derrick B. Owens
 Derrick B. Owens
 Senior Vice President of Government
 & Industry Affairs
 400 7th Street NW, Ste. 406
 Washington, DC 20004
 (202) 548-0202

By: /s/ Gerard J. Duffy
 Gerard J. Duffy, Regulatory Counsel
 Blooston, Mordkofsky, Dickens, Duffy &
 Prendergast, LLP
 2120 L Street NW, Suite 300
 Washington, DC 20037
 (202) 659-0830

Dated: September 4, 2018