

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

In the Matter of	)	
	)	
Petition of Onvoy d/b/a Inteliquent, Inc.	)	WC Docket No. 18-155
for Temporary Waiver of Section 61.3(bbb)(1)(ii)	)	
of the Commission's Rules	)	
	)	

**ORDER**

**Adopted: September 17, 2020**

**Released: September 17, 2020**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this *Order* we grant, in part, Onvoy d/b/a Inteliquent, Inc.'s (Inteliquent) second request to renew the temporary waiver of part of the Commission's Access Stimulation definition that we granted to the company in June.<sup>1</sup> Inteliquent's request is based on the changes the pandemic has wrought on Inteliquent's business with respect to its preexisting conference calling service provider customers.

2. Inteliquent is a competitive local exchange carrier (LEC) that provides service to large, enterprise customers. Among Inteliquent's preexisting customers are Zoom Video Communications, Inc. (Zoom) and Cisco Webex, two of the premier conference calling service providers in the United States. The increased volume of calls placed by Zoom and Cisco Webex customers during the COVID-19 pandemic has materially increased Inteliquent's ratio of terminating-to-originating traffic, such that Inteliquent's traffic to affected end offices in a calendar month now exceeds the 6:1 ratio that would make Inteliquent an "access stimulating" competitive LEC under the rules adopted by the Commission in the *Access Arbitrage Order*.<sup>2</sup> Under the Commission's Access Stimulation Rules, absent a waiver, Inteliquent would be required to accept the financial responsibilities that apply to access-stimulating LECs.<sup>3</sup> To avoid this outcome, Inteliquent petitioned for, and received, a temporary waiver of part of the Access Stimulation definition through June 1, 2020.<sup>4</sup> Inteliquent subsequently requested and received

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<sup>1</sup> See Request of Onvoy, LLC d/b/a Inteliquent for Renewal of Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission's Rules, WC Docket No. 18-155, at 1-2 (filed Aug. 18, 2020) (Second Renewal Request); *Petition of Onvoy d/b/a Inteliquent, Inc. for Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission's Rules*, WC Docket No. 18-155, Order, DA 20-655 (WCB June 23, 2020) (*Inteliquent Waiver Renewal Order*).

<sup>2</sup> See Request of Onvoy, LLC d/b/a Inteliquent for Renewal of Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission's Rules, WC Docket No. 18-155, at 2 (filed May 13, 2020) (Renewal Request); *Petition of Onvoy d/b/a Inteliquent, Inc. for Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission's Rules*, WC Docket No. 18-155, at 4 (filed Mar. 17, 2020) (Petition).

<sup>3</sup> See *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, 34 FCC Rcd 9035 (2019) (*Access Arbitrage Order*), *pets. for review pending sub nom, Great Lakes Comm'n Corp., et al. v. FCC*, No. 19-1233 (D.C. Cir. filed Oct. 29, 2019) (consolidated with No. 19-1244); 47 CFR § 61.3(bbb)(1)(ii); 47 CFR § 51.914.

<sup>4</sup> *Petition of Onvoy d/b/a Inteliquent, Inc. for Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission's Rules*, WC Docket No. 18-155, Order, DA 20-349 (WCB Mar. 27, 2020) (*Inteliquent Waiver Order*).

renewal of the waiver with respect to traffic terminating in six urban Local Access Transport Areas (LATAs) through September 1, 2020.<sup>5</sup>

3. Inteliquent now requests a second renewal of the temporary waiver until March 1, 2021, for traffic terminating at four of the six urban LATAs covered by the previously granted waiver renewal.<sup>6</sup> Inteliquent bases its request on the continued high level of terminating conference platform traffic to its preexisting customers Zoom and Cisco Webex, stating that “but for the pandemic and Inteliquent’s service to these well-established conference calling platforms, Inteliquent would not require an extension of the limited temporary waiver.”<sup>7</sup> We find good cause to grant, in part, Inteliquent’s Second Renewal Request, based on the information and representations the company has submitted detailing the effect the pandemic has had on Inteliquent and its customers. We renew the waiver only through December 1, 2020, however, given the ongoing uncertainty about how long the pandemic will continue to impact Inteliquent and its customers.

## II. BACKGROUND

4. In September 2019, the Commission adopted the *Access Arbitrage Order* to reduce the use of the intercarrier compensation system to implicitly subsidize services offered through wasteful access stimulation schemes.<sup>8</sup> Among other things, in the *Access Arbitrage Order* the Commission modified the definition of access stimulation.<sup>9</sup> Under the modified definition in section 61.3(bbb) of the Commission’s rules, a competitive LEC is deemed to be engaged in access stimulation if it “has an interstate terminating-to-originating traffic ratio of at least 6:1 in an end office in a calendar month.”<sup>10</sup> The Commission’s rules also require that a LEC “engaged in Access Stimulation . . . shall assume financial responsibility for any applicable Intermediate Access Provider’s charges for such services for any traffic between such local exchange carrier’s terminating end office or equivalent and the associated access tandem switch.”<sup>11</sup>

5. In granting Inteliquent’s initial petition for temporary waiver of section 61.3(bbb)(1)(ii), we found that prior to March 2020, Inteliquent did not meet the definition of an access-stimulating LEC.<sup>12</sup> We reasoned that by limiting the temporary waiver to Inteliquent’s preexisting customers—i.e., those that the company served before the advent of the pandemic—the waiver would be tied to unexpected market conditions, and would not allow Inteliquent to avoid the legal consequences of adding access-stimulating customers.<sup>13</sup> We found credible Inteliquent’s explanation that the shift in its traffic ratios was the result of serving its preexisting customers’ increased volume in response to the public health crisis, and acknowledged the important function of providing terminating access for two of the nation’s leading conference calling platforms.<sup>14</sup>

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<sup>5</sup> See generally *Inteliquent Waiver Renewal Order*

<sup>6</sup> Second Renewal Request at 1-2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Access Arbitrage Order*, 34 FCC Rcd at 9035-36, para. 1.

<sup>9</sup> *Id.* at 9053, para. 43.

<sup>10</sup> 47 CFR § 61.3(bbb)(1)(ii). The Commission also revised the access stimulation definition to include a higher ratio for rate-of-return LECs that are not parties to revenue sharing agreements. 47 CFR § 61.33(bbb)(1)(iii).

<sup>11</sup> 47 CFR § 51.914(a)(2).

<sup>12</sup> *Inteliquent Waiver Order* at 5-6, para. 15.

<sup>13</sup> *Id.* at 5, para. 14.

<sup>14</sup> *Id.*

6. Subsequently, Inteliquent sought a renewal of its temporary waiver, asking us to extend it until September 1, 2020, but narrowing the request to cover traffic terminating at only six urban LATAs.<sup>15</sup> We granted that request, relying on Inteliquent’s actual and projected traffic volumes and terminating-to-originating traffic ratios for the six LATAs for February through August 2020.<sup>16</sup> We found that granting the renewal was in the public interest, as the COVID-19 pandemic increased the usage of conference calling services by teleworkers and health professionals.<sup>17</sup> To protect against abuse, the waiver renewal was limited, as was the original waiver, to traffic originated and terminated by Inteliquent to its “preexisting customers”—those entities that were Inteliquent customers when Inteliquent filed its Petition on March 17, 2020.<sup>18</sup> We required that any further waiver renewal request contain a certification that there has been no material change in the facts that led to the grant of the original waiver or the initial renewal and that Inteliquent include traffic volume information for the two months preceding the certification, and projected traffic volumes for the succeeding two months.<sup>19</sup>

7. On August 18, 2020, Inteliquent filed the Second Renewal Request seeking to renew the waiver through March 1, 2021 while further narrowing the scope of the temporary waiver to traffic terminated to four urban LATAs—Chicago, IL; Houston, TX; Philadelphia, PA; and Jacksonville, FL.<sup>20</sup> The Second Renewal Request includes a certification that there has been no material change to the facts that led us to grant the Petition or Renewal Request.<sup>21</sup> Inteliquent also provides historical and projected origination and termination traffic volumes for those four LATAs for its preexisting customers.<sup>22</sup> Inteliquent confirms that the COVID-19 pandemic continues to drive the unprecedented amount of conference platform traffic that it terminates for Zoom and Cisco Webex to facilitate remote work, distance learning, and socializing with friends and family.<sup>23</sup> Inteliquent also explains that many primary and secondary schools, and universities, plan to begin the fall semester with either full-time online learning or hybrid in-person/online programs.<sup>24</sup> It also provides evidence that many employers plan to allow employees to work remotely well into 2021, and that ongoing social distancing and travel restrictions indicate that significant use of conferencing platforms will continue to be pervasive.<sup>25</sup> Finally, Inteliquent avers that its conference traffic volumes “show no signs . . . of decreasing further given the expected continuation of the pandemic and measures to reduce its spread.”<sup>26</sup>

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<sup>15</sup> Inteliquent requested waiver for the following LATAs: Chicago, IL; Houston, TX; Philadelphia, PA; Jacksonville, FL; New York, NY; and Denver, CO. *See generally* Renewal Request.

<sup>16</sup> *Inteliquent Waiver Renewal Order* at 4-5, para. 11.

<sup>17</sup> *Id.* at 5, para 12.

<sup>18</sup> *Id.* at 5, para 13.

<sup>19</sup> *Id.* at 6, para. 15. We also provided that if Inteliquent could not “certify that there have been no material changes to the facts supporting its original Petition and this Renewal Request” it could instead “describe the material changes that have occurred since the filing of its Petition and the Renewal Request, and explain why a waiver renewal is nonetheless justified.” *Id.*

<sup>20</sup> Second Renewal Request at 2; Letter from Matthew S. DelNero and Thomas G. Parisi, Counsel to Onvoy, LLC d/b/a Inteliquent to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155 (filed Aug. 19, 2020).

<sup>21</sup> Second Renewal Request Cert. of Brett Scorza.

<sup>22</sup> Second Renewal Request at Exhs. A and B.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* at 2-3.

<sup>25</sup> *Id.* at 3.

<sup>26</sup> *Id.* at 6.

### III. DISCUSSION

8. Generally, the Commission's rules may be waived for good cause shown.<sup>27</sup> The Commission may exercise its discretion to waive a rule where the particular facts render strict compliance inconsistent with the public interest.<sup>28</sup> The Commission may also take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.<sup>29</sup> Waiver of the Commission's rules is appropriate if both: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation will serve the public interest.<sup>30</sup> In the *Access Arbitrage Order*, the Commission contemplated the possible need for waivers for non-access-stimulating LECs where "a LEC, not engaged in arbitrage, finds that its traffic will exceed a prescribed terminating-to-originating traffic ratio."<sup>31</sup> In the *Inteliquent Waiver Order* and in the *Inteliquent Waiver Renewal Order*, the Bureau recognized that the continuing impact of the COVID-19 pandemic on Inteliquent's existing conference calling service customers could justify further renewals of its temporary and limited waiver of a portion of the Access Arbitrage rules.<sup>32</sup>

9. As required by our previous orders, Inteliquent certifies that as to the four LATAs for which it requests the waiver renewal, there has been no material change in the facts that led to the grant of the Petition or the Renewal Request, and that all information in the Second Renewal Request is true.<sup>33</sup> Inteliquent provides the traffic ratios and actual traffic volumes for February through July 2020, and projected numbers for August 2020 through February 2021, for the four LATAs for which it requests the waiver renewal.<sup>34</sup> Traffic ratios in each of the four LATAs have exceeded the 6:1 ratio since March 2020, and the ratios are projected to continue to exceed 6:1 throughout the period covered by this temporary waiver.<sup>35</sup>

10. Consistent with our previous orders in this proceeding, we find that the dramatically increased demand created by the current pandemic for the services of Inteliquent's preexisting conference calling service provider customers constitutes special circumstances justifying a renewal of the temporary waiver and the public interest supports renewal of the temporary waiver. As part of our nation's ongoing efforts to combat the spread of COVID-19, many of the country's primary and secondary schools, colleges, and universities have begun the Fall 2020 semester in a hybrid in-person/virtual, or 100% virtual setting. Indeed, public school districts in the four LATAs—Chicago, IL;<sup>36</sup> Houston, TX;<sup>37</sup> Philadelphia,

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<sup>27</sup> 47 CFR § 1.3.

<sup>28</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>29</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>30</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>31</sup> *Access Arbitrage Order*, 34 FCC Rcd at 9058-59, para. 53.

<sup>32</sup> *Inteliquent Waiver Order* at 6-7, para. 17; *Inteliquent Waiver Renewal Order* at 6, para. 15.

<sup>33</sup> Second Renewal Request Cert. of Brett Scorza.

<sup>34</sup> Second Renewal Request at Exhs. A and B.

<sup>35</sup> *Id.* at Exh. A.

<sup>36</sup> Lee Hawkins and Joe Barrett, *Chicago Schools Reopening Online Only as Coronavirus Cases Rise* (Aug. 5, 2020), <https://www.wsj.com/articles/new-york-schools-among-few-top-10-districts-reopening-schools-for-in-person-learning-11596635317>.

<sup>37</sup> Shelby Webb, *With schools starting online only, Houston districts work to convince skeptical families to log on* (Aug. 3, 2020), <https://www.houstonchronicle.com/news/education/article/houston-schools-parents-online-only-hisd-covid-15454585.php>.

PA;<sup>38</sup> and Jacksonville, FL<sup>39</sup>—for which Inteliquent requests the waiver, have elected to conduct remote learning. Many companies and government entities are also continuing to encourage or require remote telework during the pandemic.<sup>40</sup> These extraordinary circumstances have driven unprecedented conference service volume for Inteliquent’s preexisting customers, causing terminating-to-originating traffic volumes to exceed the 6:1 ratio. But for these ongoing special circumstances, the temporary waiver would be unnecessary. Given the expanded use of conferencing services by schools, businesses, government entities, medical professionals, and private citizens, we find that renewing the temporary waiver will serve the public interest by preserving Inteliquent’s longstanding role in providing terminating access for two of the leading conferencing platforms in the country.

11. As we explained in our prior waiver orders, Inteliquent did not meet the Access Stimulation definition prior to its petition for waiver of section 61.3(bbb)(1)(ii) and is not currently engaged in access stimulation. In its Second Renewal Request, Inteliquent further narrows the scope of the requested waiver to four specific urban LATAs, and continues to limit the waiver to preexisting customers as of the date it filed the Petition. We find that geographically limiting the waiver to four urban LATAs will serve to safeguard against opportunities for Inteliquent to engage in access arbitrage while allowing the company to support unprecedented demand in keeping America connected.<sup>41</sup> Continuing to limit the waiver to preexisting Inteliquent customers ensures that the traffic driving the increase in terminating-to-originating ratios is a result of COVID-19, and not the result of Inteliquent adding new customers engaged in access stimulation schemes.<sup>42</sup> Inteliquent’s certification that there has been no material change in the facts leading to the grant of the Petition and Renewal Request, as well as the traffic data it provides, support a grant of its Second Renewal Request.

12. We therefore find that good cause exists to grant, in part, Inteliquent’s Second Renewal Request for a temporary waiver of the Access Stimulation definition in section 61.3(bbb)(1)(ii) of the Commission’s rules as to traffic terminating to Inteliquent’s preexisting customers in four urban LATAs (Chicago, IL; Houston, TX; Philadelphia, PA; and Jacksonville, FL) until December 1, 2020. Although the longer waiver period that Inteliquent requests might reduce the administrative burden of more frequent waiver reviews, given the uncertainty caused by the COVID-19 pandemic, we find it prudent to grant a renewal for a shorter period than requested. Granting Inteliquent’s waiver in increments of three months has proven to be a workable and effective timeframe by which to closely monitor the effects of the pandemic on Inteliquent’s terminating-to-originating traffic ratios.<sup>43</sup> If Inteliquent submits further renewal requests, we can evaluate the traffic ratio projections underlying those requests closer to the dates of the requested renewal, thus allowing us to more accurately assess if the public interest would be served by granting the request. Accordingly, we grant Inteliquent’s request for a renewal of its temporary waiver, but only through December 1, 2020.<sup>44</sup>

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<sup>38</sup> Kristen A. Graham, *It’s Official, Philly’s school year to begin fully remotely* (July 30, 2020), <https://www.inquirer.com/news/back-to-school-plan-philadelphia-school-district-board-20200730.html>.

<sup>39</sup> Joe McLean and Steve Patrick, *State OKs Duval County’s ‘hybrid’ school reopening plan* (Aug. 4, 2020), <https://www.news4jax.com/news/local/2020/08/03/state-oks-duval-countys-hybrid-school-reopening-plan/>.

<sup>40</sup> See e.g., Hannah Denham, *Google employees will work from home until at least summer 2021* (July 27, 2020), <https://www.washingtonpost.com/business/2020/07/27/google-remote-workers-july-2021/>; Jon Reid, *FCC Allows Staff to Telework Through June 2021, Citing Pandemic* (July 24, 2020), <https://news.bloomberglaw.com/tech-and-telecom-law/fcc-allows-staff-to-telework-through-june-2021-citing-pandemic>.

<sup>41</sup> See Second Renewal Request at 5; *Inteliquent Waiver Renewal Order* at 5, para. 13.

<sup>42</sup> See *id.*

<sup>43</sup> See *Inteliquent Waiver Order* at 5, para. 14; *Inteliquent Waiver Renewal Order* at 4, para. 11.

<sup>44</sup> *Inteliquent Waiver Order* at 6 n.44; *Inteliquent Waiver Renewal Order* at 6 n.51. The Commission has granted other COVID-19 pandemic-related waivers for time periods that range from, for example, just over one month to 18 months. See, e.g., *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing*

13. If the COVID-19 pandemic continues to drive unprecedented levels of conference platform traffic, the terminating-to-originating traffic ratios of Inteliquent's preexisting conference call service provider customers may continue to exceed 6:1 and a further temporary renewal may be justified.<sup>45</sup> As part of any further renewal request, Inteliquent should certify that there has been no material change to the facts that led to the grant of the Petition, Renewal Request, or Second Renewal Request.<sup>46</sup> If, at the time it requests a future waiver, Inteliquent cannot certify that there have been no material changes to the facts supporting its previous requests, Inteliquent's certification must describe the material changes that have occurred, and explain why a further renewal is nonetheless justified. The certification must also include information about the terminating and originating traffic volumes for Inteliquent's preexisting customers for two months preceding the certification date and estimated terminating and originating traffic volumes of those preexisting customers for two months succeeding the certification date.

#### IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4, 201, 202, and 205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 202, and 205, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that section 61.3(bbb)(1)(ii) of the Commission's rules is temporarily waived as to Onvoy, LLC d/b/a Inteliquent, Inc., to the extent described herein, until December 1, 2020 and the Second Renewal Request IS GRANTED.

15. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this *Order* SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

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*and Speech Disabilities et al.*, CGG Docket No. 03-123 et al., Order, DA 20-378, at 1, para. 1 (CGB Apr. 3, 2020) (granting waiver of rules concerning video interpretation services from April 3, 2020 to May 15, 2020); *GE Healthcare Petition for Waiver of the Commission's Part 2 Rules for Certain Part 15, 18 and 95 Medical Devices*, Order, DA 20-489, at 1, 7, paras. 1, 17 (OET WTB May 11, 2020) (granting an 18-month waiver so that GE can market, operate, and import medical devices without the usual equipment authorizations due to the surge in demand caused by the COVID-19 pandemic). Here, given the uncertainty about how the COVID-19 pandemic will continue to affect terminating-to-originating traffic ratios, we find that a waiver period of three months appropriately balances public interest concerns and administrative efficiency.

<sup>45</sup> For purposes of this temporary waiver request we rely on the un rebutted accuracy—and facial plausibility—of the representations made in the Petition, Renewal Request, and Second Renewal Request, and on the supporting data submitted. To the extent that interested parties dispute the facts provided or the policy reasoning in granting the requests for renewal, they are free to seek reconsideration or full Commission review as appropriate, *see* 47 CFR §§ 1.106, 1.115. In addition, we suggest that any parties objecting to a possible further renewal of the waiver make a filing in the docket sufficiently in advance of December 1, 2020, to enable its consideration in connection with any renewal request.

<sup>46</sup> *Inteliquent Waiver Order* at 6-7, para. 17; *Inteliquent Waiver Renewal Order* at 6, para. 15.