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Small Entity Compliance Guide

Amendment of the Commission's Rules Regarding 8YY Access Charge Reform

**FCC 20-143
WC Docket No. 18-156
Released: October 9, 2020**

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In the Report and Order in WC Docket No. 18-156 (*8YY Reform Order* or *Order*), the Federal Communications Commission (Commission) adopted rules to address arbitrage and fraud that undermine the intercarrier compensation system for toll free or 8YY calls. The new regulatory requirements reduce or eliminate, over time, most 8YY originating access charges that provide the underlying incentive for 8YY arbitrage schemes, consistent with the Commission's commitment to move all intercarrier compensation to bill-and-keep.

Arbitrage and fraud are increasingly undermining the intercarrier compensation system for 8YY calls. This arbitrage takes a variety of forms, including traffic pumping schemes generating large numbers of illegitimate calls to toll-free numbers, so-called benchmarking abuses where competitive local exchange carriers aggregate other carriers' 8YY traffic to hand it off to 8YY providers in areas where they can charge higher rates, and routing schemes where multiple toll free database query charges are assessed by different carriers when only one is needed. This results in higher costs for 8YY providers and customers alike, ultimately burdening consumers.

The *8YY Reform Order* will reduce or eliminate carriers' incentives to engage in arbitrage for 8YY calls. The Commission's actions will reduce the cost of 8YY calling overall, decrease inefficiencies in 8YY call routing and compensation, encourage the transition to IP-based networks, and diminish the frequency and costs of 8YY intercarrier compensation disputes. Further, the policies adopted in the *8YY Reform Order* will preserve the value of toll free services for both consumers and businesses.

II. COMPLIANCE REQUIREMENTS

The *8YY Reform Order* will reduce or eliminate carriers' incentives to engage in 8YY arbitrage by (a) moving 8YY originating end office access charges to bill-and-keep over approximately three years; (b) capping 8YY originating transport and tandem switching charges at a combined rate of \$0.001 per minute; (c) capping 8YY database query charges nationwide and transitioning these query charges to no more than \$0.0002 over approximately three years; and (d) requiring the originating carrier to assess the toll free query charge, if it is able to transmit the results, and prohibiting more than one query charge to be assessed per 8YY call. Local exchange carriers are allowed to recover lost revenues from these 8YY calls to the extent permitted by existing mechanisms such as Access Recovery Charges and the Connect America Fund Intercarrier Compensation.

Definitions (47 CFR § 51.903)

- The *8YY Reform Order* adopts several new definitions related to intercarrier compensation for 8YY calling, including:
 - **Toll Free Database Query Charge** which is defined as a per-query charge to access the Toll Free Service Management System Database;
 - **Toll Free Call** which is defined as a call to a Toll Free Number, as defined in § 52.101(f) of the Commission's rules; and
 - **Joint Tandem Switched Transport Access Service** which is defined as the rate element assessible for the transmission of toll free originating access service. The rate element includes both the transport between the end office and the tandem switch and the tandem switching. It does not include transport of traffic over dedicated transport facilities between the serving wire center and the tandem switching office.

Implementation Requirements (47 CFR § 51.905)

- Local exchange carriers must follow state law procedures when filing tariffs for intrastate originating access charges for Toll Free Calls and Toll Free Database Query Charges.
- Beginning July 1, 2021, only originating carriers are permitted to assess database queries for 8YY calls and may only charge a single database query per 8YY call. If the originating carrier is unable to transmit the results of the 8YY query, the next carrier in the call path is permitted to do so and may instead assess the charge.

Transition of price cap carrier access charges (47 CFR § 51.907(i) through (k))

- Amendments to section 51.907 of the Commission's rules implement the new rules for price cap carriers' Toll Free and non-toll free originating access charges. New sections 51.907(i), (j), and (k) implement a three-step transition plan for price cap carriers to transition their 8YY access rates to bill-and-keep or to new rate caps, as appropriate.
- Step One: Beginning July 1, 2021, each price cap carrier must:
 - Create separate rate elements for interstate and intrastate toll free originating end office access service and non-toll free originating end office access service. **[47 CFR § 51.907(i)(1)]**
 - Reduce intrastate toll free originating end office access service rates to match interstate toll free originating end office access service rates. **[47 CFR § 51.907(i)(2)]**
 - (1) Price cap carriers with intrastate rates lower than their interstate rates may not increase such rates. **[47 CFR § 51.907(i)(2)(v)]**
 - (2) If, however, a price cap carrier has an intrastate rate for an End Office Access Service rate element that is below the interstate rate for that element, the Price Cap Carrier may increase the rate for an intrastate rate element that is below the interstate rate for that element to the interstate rate in effect on July 1, 2021. **[47 CFR § 51.907(i)(2)(v)]**
 - Create separate rate elements for interstate and intrastate non-toll free originating transport services for service between an end office switch and the tandem switch. Intrastate and interstate originating toll free transport service rates must be reduced to zero. **[47 CFR § 51.907(i)(3)]**
 - Create separate rate elements for interstate and intrastate non-toll free originating tandem switching services. **[47 CFR § 51.907(i)(4)]**
 - Create transitional interstate and intrastate Joint Tandem Switched Transport Access Service rate elements for Toll Free Calls that are no more than \$0.001 per minute. **[47 CFR § 51.907(i)(5)]**
 - Reduce Toll Free Database Query Charges (both intrastate and interstate) to no more than \$0.004248 per query. If a price cap carrier has Toll Free Database Query Charges lower than this rate, such rates may not be increased. **[47 CFR § 51.907(i)(6)]**
- Step Two: Beginning July 1, 2022, each price cap carrier must:

- Reduce all intercarrier charges for intrastate and interstate originating End Office Access Service rate elements for Toll Free Calls by one-half of the maximum rate allowed by section 51.907(a). [47 CFR § 51.907(j)(1)]
- Reduce all Toll Free Database Query Charges (both intrastate and interstate) by one-half of the difference between the rate permitted in step one for interstate and intrastate Toll Free Database Query Charges (no more than \$0.004248 per query) and the transitional rate cap of \$0.0002 per query. [47 CFR § 51.907(j)(2)]
- Step Three: Beginning July 1, 2023, each price cap carrier must:
 - Reduce all intercarrier charges for intrastate and interstate originating End Office Access Service rates for Toll Free Calls to zero and remove them from their interstate switched access tariffs and any state tariff; all revised switched access tariffs must be refiled. [47 CFR § 51.907(k)(1)]
 - Reduce all Toll Free Database Query Charges (both intrastate and interstate) to no more than \$0.0002 per query. [47 CFR § 51.907(k)(2)]

Transition of rate-of-return carrier access charge (47 CFR § 51.909(l) through (o))

- Amendments to section 51.909 of the Commission’s rules implement the new rules for rate-of-return carriers’ Toll Free and non-toll free originating access charges. New sections 51.909(l) through (o) implement a three-step transition plan for rate-of-return carriers to transition their 8YY access rates to bill-and-keep or to new rate caps, as appropriate.
- As of the effective date of the *Order*, each rate-of-return carrier must cap the rate for all intrastate originating access charge rate elements for Toll Free Calls, including for Toll Free Database Query Charges. [47 CFR § 51.909(l)]
- Step One: Beginning July 1, 2021, each rate-of-return carrier must:
 - Create separate rate elements for interstate and intrastate toll free originating end office access service and non-toll free originating end office access service. [47 CFR § 51.909(m)(1)]
 - Reduce intrastate toll free originating end office access service rates to match interstate toll free originating end office access service rates. [47 CFR § 51.909(m)(2)]
 - (1) Rate-of-return carriers that have intrastate rates lower than their interstate rates may not increase such rates. [47 CFR § 51.909(m)(2)(v)]
 - (2) If, however, a rate-of-return carrier has an intrastate rate for an End Office Access Service rate element that is below the interstate rate for that element, the rate-of-return carrier may increase the rate for an intrastate rate element that is below the interstate rate for that element to the interstate rate in effect on July 1, 2021. [47 CFR § 51.909(m)(2)(v)]
 - Establish separate rate elements for interstate and intrastate non-toll free originating transport services for service between an end office switch and the tandem switch and remove its rates for intrastate and interstate originating toll free transport services consistent with a bill-and-keep methodology. [47 CFR § 51.909(m)(3)]
 - Establish separate rate elements respectively for interstate and intrastate non-toll free originating tandem switching services. [47 CFR § 51.909(m)(4)]

- Establish transitional interstate and intrastate Joint Tandem Switched Transport Access rate elements for Toll Free Calls that are respectively no more than \$0.001 per minute. **[47 CFR § 51.909(m)(5)]**
- Reduce its interstate and intrastate rates for Toll Free Database Query Charges to no more than \$0.004248 per query. A rate-of-return carrier that has Toll Free Database Query Charges lower than this rate may not increase such rates. **[47 CFR § 51.909(m)(6)]**
- Step Two: Beginning July 1, 2022, each rate-of-return carrier must:
 - Reduce its interstate and intrastate rates for all originating End Office Access Service rate elements for Toll Free Calls in each state in which it provides such service by one-half of the maximum rate allowed by section 51.907(a). **[47 CFR § 51.909(n)(1)]**
 - Reduce its rates for intrastate and interstate Toll Free Database Query Charges by one-half of the difference between the rate permitted by paragraph (m)(6) and the transitional rate of \$0.0002 per query set forth in paragraph (o)(2). **[47 CFR § 51.909(n)(2)]**
- Step Three: Beginning on July 1, 2023, each rate-of-return carrier must:
 - Reduce all intercarrier charges for intrastate and interstate originating End Office Access Service rates for Toll Free Calls to zero and remove them from their interstate switched access tariffs and any state tariff; all revised tariffs must be refiled. **[47 CFR § 51.909(o)(1)]**
 - Reduce all Toll Free Database Query Charges (both intrastate and interstate) to no more than \$0.0002 per query. **[47 CFR § 51.909(o)(2)]**

Access reciprocal compensation rates for competitive LECs (47 CFR § 51.911)

- A Competitive Local Exchange Carrier (CLEC) must cap its tariffed intrastate Toll Free Database Query Charge at the rate in effect on the effective date of the *Order*. **[47 CFR § 51.911(d)]**
- Beginning July 1, 2021, a CLEC assessing a tariffed intrastate or interstate Toll Free Database Query Charge must revise its tariffs, as necessary, to ensure that its intrastate and interstate Toll Free Database Query Charges do not exceed the rates charged by the competing incumbent LEC. **[47 CFR § 51.911(e)]**

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The *8YY Reform Order* contains the following new or modified information collection and reporting requirements.

- ***Implementation Requirements (47 CFR § 51.905(b)(2), (d))***
 - Local exchange carriers must follow state law procedures when filing intrastate tariffs for originating access charges for Toll Free Calls, and Toll Free Database Query Charges.
 - Beginning July 1, 2021, carriers are required to modify their tariffs so that they may assess database queries for 8YY calls only when they are the originating carrier and may only charge a single database query per 8YY call. Their tariffs must also reflect the fact that if the originating carrier is unable to transmit the results of the 8YY query, the next carrier in the call path is permitted to do so and may instead assess the charge.

- ***Transition of price cap carrier access charges (47 CFR § 51.907(i), (j), (k)) and Transition of rate-of-return carrier access charge (47 CFR § 51.909(l) through (o))***
 - Carriers are required to revise their existing interstate and intrastate tariffs and internal billing systems to implement the rule changes in the *8YY Reform Order*. Carriers are required to:
 - Transition their 8YY originating end office charges to bill-and-keep over a three-step process;
 - Replace existing tandem switching and transport charges for 8YY calling with a joint tandem switched transport access service rate cap of \$0.001 per minute for originating 8YY traffic by July 1, 2021;
 - Implement a three-step transition of toll-free database query charges to \$0.0002 per query, as well as a requirement that only the originating carrier may assess the toll-free database query charge and only one such charge may be assessed per call; and
 - Carriers may also choose to revise their tariffs to recover lost revenues from toll-free calls by using existing mechanisms such as Access Recovery Charges and the Connect America Fund Intercarrier Compensation.
- ***Access reciprocal compensation rates for competitive LECs (47 CFR § 51.911)***
 - Competitive LECs are required to revise their existing tariffs and internal billing systems to ensure that their intrastate and interstate Toll Free Database Query Charges do not exceed the rates charged by the competing incumbent LEC.

IV. IMPLEMENTATION DATE

The rules in the *8YY Reform Order* shall become effective 30 days after publication in the Federal Register, except for rules that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, including 47 CFR §§ 51.907(i)-(k), 51.909(l)-(o), and 51.911(e). The Commission will publish a document in the Federal Register announcing OMB approval and the relevant effective date.

V. INTERNET LINKS

A copy of the *8YY Reform Order*, is available at: <https://docs.fcc.gov/public/attachments/FCC-20-143A1.pdf>.

A copy of the Federal Register Summary of the *8YY Reform Order* is available at: <https://www.govinfo.gov/content/pkg/FR-2020-11-27/pdf/2020-24624.pdf>.