

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

In the Matter of
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

Adopted: December 16, 2020

Released: December 16, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order we grant Onvoy, LLC d/b/a Inteliquent's (Inteliquent) third request to renew, in part, the temporary waiver of part of the Commission's Access Stimulation definition that we first granted to the company in March. Inteliquent's request is based on changes the pandemic has caused to its business with respect to the company's preexisting customers that provide conference calling services.

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. As a result, 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 the Commission adopted in the Access Arbitrage Order. 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. To avoid this outcome, Inteliquent petitioned for, and received, a temporary waiver of part of the Access Stimulation definition through June 2020. Inteliquent requested and received renewal of the temporary waiver with respect to traffic terminating in six Local Access Transport Areas (LATAs)

1 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 Nov. 19, 2020) (Third 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 20-349 (WCB Mar. 27, 2020) (Inteliquent Waiver Order).

2 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); 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 (filed Aug. 18, 2020) (Second Renewal Request).

3 47 CFR § 61.3(bbb)(1)(ii); 47 CFR § 51.914. See generally Access Arbitrage Order.

4 Inteliquent Waiver Order.

through September 2020.<sup>5</sup> Inteliquent subsequently requested and received renewal of the waiver with respect to traffic terminating in four of those six urban LATAs through December 1, 2020.<sup>6</sup>

3. On November 19, 2020 Inteliquent requested a third renewal of the temporary waiver, until March 1, 2021, for traffic terminating at two of the four urban LATAs covered by the September waiver renewal (Chicago, IL and Houston, TX).<sup>7</sup> Inteliquent bases its request on the continued high level of terminating conference platform traffic to its preexisting customers Zoom and Cisco Webex.<sup>8</sup> We agree that Inteliquent has shown 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>9</sup> Therefore, as described herein, we find good cause to grant, Inteliquent’s Third Renewal Request, until March 1, 2021, based on the information the company has submitted detailing the effect the pandemic has had on Inteliquent and its customers.

## II. BACKGROUND

4. In September 2019, the Commission unanimously adopted the *Access Arbitrage Order* to reduce the use of the intercarrier compensation system to implicitly subsidize services offered through wasteful access stimulation.<sup>10</sup> Among other things, in the *Access Arbitrage Order* the Commission modified the definition of access stimulation.<sup>11</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>12</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>13</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>14</sup> We reasoned that by limiting the temporary waiver to Inteliquent’s preexisting customers—i.e., those that

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<sup>5</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 20-655 (WCB June 23, 2020) (*Inteliquent Waiver Renewal Order*).

<sup>6</sup> *Petition of Onvoy d/b/a Inteliquent, Inc. for Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission’s Rules*, Order, WC Docket No. 18-155, DA 20-1100, at 1 (WCB Sept. 17, 2020) (*Inteliquent Second Waiver Renewal Order*). Under the Commission’s rules, a LEC meets the definition of access-stimulating LEC if it has an “interstate terminating-to-originating traffic ratio of at least 6:1 in a calendar month.” 47 CFR 61.3(bbb)(1)(ii). In keeping with the other waivers granted to Inteliquent, in the *Inteliquent Second Waiver Renewal* the Bureau waived the application of rule 61.3(bbb)(1)(ii) to Inteliquent through December 1, 2020 meaning Inteliquent received a waiver of the access stimulation definition through December 2020.

<sup>7</sup> Third Renewal Request at 5.

<sup>8</sup> *Id.* at 2 (“The ongoing COVID-19 pandemic has continued to result in substantial conference platform traffic that Inteliquent is terminating for pre-existing customers Zoom and Cisco Webex to facilitate remote work, distance learning, and socializing with friends and family.”).

<sup>9</sup> *Id.*

<sup>10</sup> *Access Arbitrage Order*, 34 FCC Rcd at 9035-36, para 1.

<sup>11</sup> *Id.* at 9053, para. 43.

<sup>12</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>13</sup> 47 CFR § 51.914(a)(2).

<sup>14</sup> *Inteliquent Waiver Order* at 5-6, para. 15.

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>15</sup> We found credible Inteliquent’s explanation that the shift in its traffic ratios was the result of serving its preexisting customers’ increased traffic 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>16</sup>

6. Inteliquent sought a renewal of its temporary waiver, asking us to extend it until September 1, 2020, but narrowed the request to cover traffic terminating at only six urban LATAs.<sup>17</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>18</sup> We found that granting the renewal was in the public interest, as the COVID-19 pandemic increased the use of conference calling services by teleworkers and health professionals.<sup>19</sup> To protect against abuse, the waiver renewal was limited, as was the original waiver, to traffic terminated by Inteliquent to its “preexisting customers”—those entities that were Inteliquent customers when Inteliquent filed its Petition on March 17, 2020.<sup>20</sup> We again 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>21</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 preexisting customers in four urban LATAs—Chicago, IL; Houston, TX; Philadelphia, PA; and Jacksonville, FL.<sup>22</sup> The Second Renewal Request included a certification that there had been no material change to the facts that led us to grant the Petition or Renewal Request.<sup>23</sup> Consistent with the Petition and the Renewal Request, we found that the dramatically increased demand created by the current pandemic for the services of Inteliquent’s preexisting conference calling service provider customers constituted a special circumstance justifying a renewal of the temporary waiver and that the public interest supported renewal of the temporary waiver.<sup>24</sup> Although Inteliquent requested a six-month waiver, we granted a three-month waiver after finding that the three month increment was a workable and effective timeframe for closely monitoring the effects of the pandemic on Inteliquent’s terminating-to-

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<sup>15</sup> *Id.* at 5, para. 14.

<sup>16</sup> *Id.*

<sup>17</sup> Inteliquent requested waiver for the following LATAs: Chicago, IL; Houston, TX; Philadelphia, PA; Jacksonville, FL; New York, NY; and Denver, CO. Request of Onvoy, LLC d/b/a Inteliquent for Renewal of Temporary Waiver of Section 61.3(bbb)(1)(ii) of the Commission Rules, WC Docket No. 18-155 (filed May 13, 2020) (Renewal Request).

<sup>18</sup> *Inteliquent Waiver Renewal Order* at 4-5, para. 11.

<sup>19</sup> *Id.* at 5, para 12.

<sup>20</sup> *Id.* at 5, para 13.

<sup>21</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>22</sup> Second Renewal Request.

<sup>23</sup> Second Renewal Request at Cert. of Brett Scorza.

<sup>24</sup> *Inteliquent Second Waiver Renewal Order.*

originating traffic ratios.<sup>25</sup> Accordingly, we granted Inteliquent's request for a renewal of its temporary waiver, but only through December 1, 2020.<sup>26</sup>

8. On November 19, 2020, Inteliquent filed a Third Waiver Renewal Request limited to the Chicago, IL and Houston, TX LATAs.<sup>27</sup> In this request, Inteliquent explains that the ongoing pandemic has continued to result in "substantial conference platform traffic that Inteliquent is terminating for pre-existing customers Zoom and Cisco Webex to facilitate remote work, distance learning, and socializing with friends and family."<sup>28</sup> Prior to the pandemic, Inteliquent's terminating-to-originating traffic ratios were 2.4:1 in the Chicago, IL LATA, and 1.5:1 in the Houston, TX LATA.<sup>29</sup> Since Inteliquent received its first waiver in March the terminating-to-originating traffic ratios for its preexisting customers in the Chicago, IL LATA have been as high as 32.8:1 and as low as 15.5:1.<sup>30</sup> Similarly, Inteliquent's terminating-to-originating traffic ratios in the Houston, TX, LATA have been as high as 29.7:1 and as low as 12.2 since March 2020.<sup>31</sup> Inteliquent now projects that in the months included in its requested waiver its terminating-to-originating traffic ratios will continue to exceed the 6:1 threshold with estimated terminating-to-originating traffic ratios of 17.4:1 in the Chicago, IL LATA and 13.7:1 in the Houston, TX LATA.<sup>32</sup> Inteliquent, therefore, requests a continuation of this waiver to ensure that it can keep Americans connected, without "undermining the Commission's important efforts to curb access arbitrage."<sup>33</sup> With social distancing measures, the upcoming holiday season, and continued restrictions on interstate travel, Inteliquent anticipates continued and substantial use of these conferencing platforms.<sup>34</sup> Inteliquent again certifies that there has been no material change to the facts that led the Wireline Competition Bureau (Bureau) to grant the initial waiver or waiver renewal requests, including the fact that it is the increase in conferencing traffic as a result of COVID-19 that has caused Inteliquent's terminating-to-originating ratios to exceed 6:1 in the two LATAs.<sup>35</sup>

### III. DISCUSSION

<sup>25</sup> *Id.* at 5, para. 12. 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 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>26</sup> *Inteliquent Second Waiver Renewal Order* at 2, para. 3.

<sup>27</sup> Third Renewal Request.

<sup>28</sup> *Id.* at 2.

<sup>29</sup> *Id.* at Exh. A.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* Inteliquent's projected traffic ratios are "based on current traffic volumes observed in October/November, and then adjusted for the number of business days and weekend days in those months. This methodology is used because traffic volumes tend to correlate with whether a given day is a business day or a weekend day." *Id.* at n.11.

<sup>33</sup> Third Renewal Request at 2.

<sup>34</sup> *Id.* at 2-3.

<sup>35</sup> *Id.* at Cert. of Brett Scorza.

9. Generally, the Commission's rules may be waived for good cause shown.<sup>36</sup> The Commission may exercise its discretion to waive a rule where the particular facts render strict compliance inconsistent with the public interest.<sup>37</sup> The Commission may also take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.<sup>38</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>39</sup> In the *Access Arbitrage Order*, the Commission contemplated the possible need for waivers where "a LEC, not engaged in arbitrage, finds that its traffic will exceed a prescribed terminating-to-originating traffic ratio."<sup>40</sup>

10. In the *Inteliquent Waiver Order*, the *Inteliquent Waiver Renewal Order*, and the *Inteliquent Second 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 Stimulation rules.<sup>41</sup> We agree that virtual school, work and socialization will be ongoing for the foreseeable future.<sup>42</sup> We find that the significantly increased conference calling traffic volumes to Inteliquent's preexisting customers Zoom and Cisco Webex due to COVID-19 pandemic-related restrictions constitute special circumstances justifying a renewal of the temporary waiver and the public interest supports renewal of the temporary waiver. The data provided by Inteliquent in its Third Renewal Request also support a grant.

11. Notably, Inteliquent has further limited the scope of its waiver request, determining that waiver is only necessary in the Chicago, IL and Houston, TX LATAs.<sup>43</sup> To support its latest request, Inteliquent provides terminating-to-originating traffic ratios and actual traffic volumes for February through October 2020 and projected ratios for November 2020 to March 2021.<sup>44</sup> These data show that ratios for traffic terminating to preexisting customers in each of the two LATAs have exceeded the 6:1 ratio since March 2020 and are expected to continue to exceed the 6:1 ratio throughout the time period

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<sup>36</sup> 47 CFR § 1.3.

<sup>37</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>38</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>39</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>40</sup> *Access Arbitrage Order*, 34 FCC Rcd at 9058-59, para. 53.

<sup>41</sup> *Inteliquent Waiver Order* at 6-7, para. 17; *Inteliquent Waiver Renewal Order* at 6, para. 15; *Inteliquent Second Waiver Renewal Order* at 6, para. 13.

<sup>42</sup> Third Renewal Request at 2-3 & nn.3-4 (citing Nader Issa and Lauren FitzPatrick, *Most CPS Students Won't Return to Classrooms for Start of 2nd Quarter, Sources Say*, Chicago Sun Times (updated Oct. 15, 2020), <https://chicago.suntimes.com/education/2020/10/15/21518280/cps-public-schools-remote-learning-second-quarter-in-person-covid-coronavirus> (Explaining that in Chicago, "most of CPS' 300,000 students at the 500-plus district-run, non-charter schools will continue learning from home as the quarter gets underway in early November, sources said. The quarter ends in early February."); *Thinking of Traveling in the U.S.? These States Have Travel Restrictions*, New York Times (updated Dec. 11, 2020), <https://www.nytimes.com/2020/07/10/travel/state-travel-restrictions.html> (In Washington, DC "[a]nyone visiting for more than 24 hours from a high-risk area must get a negative coronavirus test no more than 72 hours before their arrival. If they are staying in Washington for more than three days, they must have another test done three to five days after arriving. The order excludes travelers from Maryland and Virginia because of their relationship with the district, but it applies to any jurisdiction with more than 10 positive cases per 100,000 people per day" and in Maine, "[o]nly residents of Massachusetts, New Hampshire and Vermont can enter the state without restriction. Everyone else must either self-quarantine for 14 days, or sign a document stating that they had a negative result to a PCR or antigen coronavirus test within the previous 72 hours.")).

<sup>43</sup> Third Renewal Request at 1-2.

<sup>44</sup> *Id.* at Exhs. A & B.

covered by this temporary waiver.<sup>45</sup> Inteliquent indicates that its terminating and originating ratios have, as projected, stayed fairly constant throughout the fall, suggesting that it should not experience a substantial increase or decrease in traffic in those two LATAs during the temporary waiver period.<sup>46</sup> We continue to find that geographically limiting these waivers 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>47</sup>

12. As required in our previous waiver orders, Inteliquent also certifies that as to the two 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, the Renewal Request, or the Second Renewal Request and that all information in the Third Renewal Request is true.<sup>48</sup> In the Third Renewal Request Inteliquent again confirms that it is not engaged in access arbitrage.<sup>49</sup> 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 we find that it is not currently engaged in efforts to stimulate traffic terminating on its network.<sup>50</sup> Inteliquent again limits its waiver request to traffic terminating to its preexisting customers.<sup>51</sup> We find that limiting 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.

13. For these reasons we find good cause exists to grant Inteliquent's Third 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 the Chicago, IL and Houston, TX LATAs until March 1, 2021. 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 calling service provider customers may continue to exceed 6:1 and a further temporary renewal may be justified.<sup>52</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, Second Renewal Request or this renewal request.<sup>53</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

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<sup>45</sup> *Id.* at Exh. A.

<sup>46</sup> *Id.* at 6.

<sup>47</sup> *Inteliquent Waiver Renewal Order* at 5, para. 13; *Inteliquent Second Waiver Renewal Order* at 5, para. 11.

<sup>48</sup> Third Renewal Request at Cert. of Brett Scorza.

<sup>49</sup> *Id.* at 4.

<sup>50</sup> *Inteliquent Waiver Order* at 5, para. 14; *Inteliquent Waiver Renewal Order* at 5, para. 13; *Inteliquent Second Waiver Renewal Order* at 5, para. 11.

<sup>51</sup> Third Renewal Request at 1-2.

<sup>52</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, Second Renewal Request, and Third 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 request 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 March 1, 2021, to enable its consideration in connection with any renewal request.

<sup>53</sup> *Inteliquent Waiver Order* at 6-7, para. 17; *Inteliquent Waiver Renewal Order* at 6, para. 15; *Inteliquent Second Waiver Renewal Order* at 6, para. 13.

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 March 1, 2021 and the Third 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