

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: March 27, 2020

Released: March 27, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The coronavirus COVID-19 pandemic is an unprecedented outbreak of a respiratory illness that continues to spread throughout the United States and the rest of the world. On March 16, 2020, the White House issued The President's Coronavirus Guidelines for America, providing guidance on slowing the spread of this pandemic, including encouraging the public to "[w]ork or engage in schooling from home whenever possible." The ensuing massive increase in the number of people teleworking and attending online classes has in turn exponentially increased the use of conference calling services while dramatically decreasing the number of telephone calls originating from the premises of business customers. As a result, telecommunications carriers providing service to commercially available conference calling platforms for large, enterprise customers have had to quickly increase capacity to their conference calling customers to accommodate this spike in conference calling and keep the nation connected.

2. Onvoy d/b/a Inteliquent, Inc. (Inteliquent) is a competitive local exchange carrier that originates interstate traffic for large, enterprise customers and terminates traffic for other clients, including two of the best known conference calling providers in the United States—Zoom Video Communications (Zoom) and Cisco WebEx. During these extraordinary times, Inteliquent's preexisting customers are helping to facilitate the massive shift to telework and distance learning. This shift has materially altered Inteliquent's normal mix of originating and terminating traffic such that Inteliquent will likely fall under the "Access Stimulation" definition adopted by the Commission in the Access Arbitrage Order which will trigger the financial responsibilities that apply to access-stimulating local exchange carriers. Inteliquent therefore seeks a temporary waiver of the Access Stimulation definition until June 1, 2020, to avoid this outcome.

1 See Centers for Disease Control and Prevention, Coronavirus (COVID-19), https://www.cdc.gov/coronavirus/2019-ncov/index.html.

2 See White House, Healthcare, Coronavirus Guidelines for America (March 16, 2020), https://www.whitehouse.gov/briefings-statements/coronavirus-guidelines-america/ (emphasis not included).

3 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) (Inteliquent Petition or Petition).

4 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

3. The Wireline Competition Bureau (Bureau) finds good cause to grant Inteliquent's Petition for a temporary waiver due to the information it provides and commitments it makes in its Petition and the extraordinary circumstances facing the country at this time.

II. BACKGROUND

4. In September 2019, the Commission adopted the *Access Arbitrage Order* to reduce the use of the intercarrier compensation system to subsidize services offered through access stimulation schemes.⁶ The Commission found that access-stimulating local exchange carriers and their high-volume calling service provider partners generate extraordinarily high volumes of calls, tend to inefficiently route those calls, and terminate them in costly rural end offices.⁷ This results in long distance carriers, and ultimately, their customers paying artificially inflated tandem transport and switching charges to the tandem providers chosen by access-stimulating local exchange carriers to terminate these calls.⁸ In the *Access Arbitrage Order*, the Commission targeted these practices that resulted in “billions of minutes of long distance traffic [being] routed through a handful of rural areas, not for any legitimate engineering or business reasons, but solely to allow the collection and dispersal of inflated intercarrier compensation revenues to access-stimulating LECs and their partners, as well as intermediate providers.”⁹

5. Among other things, in the *Access Arbitrage Order*, the Commission modified the definition of access stimulation to find a competitive local exchange carrier 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.”¹⁰ Under these rules, a local exchange carrier “engaged in Access Stimulation, as defined in § 61.3(bbb) . . . 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.”¹¹

6. On March 17, 2020, Inteliquent filed a request for a temporary waiver, until June 1, 2020, of the Commission's rule providing that a competitive local exchange carrier is engaged in access stimulation if it has an interstate terminating-to-originating traffic ratio of at least 6:1.¹² As the competitive local exchange carrier responsible for providing access to Zoom and Cisco WebEx, “[i]n the wake of the COVID-19 pandemic Inteliquent finds itself handling vastly greater volumes of terminating traffic than normal.”¹³ Zoom is a video conference provider that serves a myriad of entities, including

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Order), pets. for review pending, *Great Lakes Commc'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.

⁵ Petition at 4.

⁶ *Access Arbitrage Order*, 34 FCC Rcd at 9035-36, para. 1.

⁷ See generally *Access Arbitrage Order*.

⁸ *Access Arbitrage Order*, 34 FCC Rcd at 9036, para. 2.

⁹ *Id.* at 9041, para. 14 (emphasis in original) (citation omitted).

¹⁰ 47 CFR § 61.3(bbb)(1)(ii). The Commission also adopted rules providing a higher ratio for rate-of-return local exchange carriers. 47 CFR § 61.3(bbb)(1)(iii).

¹¹ 47 CFR §§ 51.914(a), (a)(2).

¹² Petition at 1.

¹³ *Id.* at 4. See also Taylor Lorenz, NEW YORK TIMES, ‘Zoombombing’: When Video Conferences Go Wrong; As its user base rapidly expands, the video conference app Zoom is seeing a rise in trolling and graphic content, (March 20, 2020, updated March 22, 2020) (“Zoom has seen a sharp rise in use over the past few weeks. On Sunday[, March 22, 2020,] nearly 600,000 people downloaded the app, its biggest day ever.”) <https://www.nytimes.com/2020/03/20/style/zoombombing-zoom-trolling.html>.

some of our nation's largest universities, healthcare institutions, and non-profit organizations.¹⁴ Cisco WebEx facilitates online collaboration by video conference and other means and serves enterprise customers including healthcare institutions and universities.¹⁵ As a result of increased remote work and schooling, Zoom and Cisco WebEx are seeing surges in the number of people using their platforms and in minutes of use.¹⁶

7. Based on the increases in traffic to its conference calling platform customers that Inteliquent has already seen and the requests it has received to augment capacity to those customers, Inteliquent expects traffic to its conference calling provider customers to double in some markets over the next few weeks.¹⁷ At the same time, although it normally carries significant volumes of originating traffic from enterprise customers, due to the shift to increased telework, Inteliquent “expects these volumes of originating traffic to decrease materially as originating traffic migrates to wireless providers and other providers that serve the residential market [which] will reduce the outbound traffic Inteliquent [carries].”¹⁸ Inteliquent also expects that its unusually high terminating-to-originating ratios will last “as long as COVID-19-related telework persists on a wide scale.”¹⁹

8. In its waiver request, Inteliquent explains that it will face significant financial harm in the form of “huge cost increases and revenue decreases” if it is “deemed to be engaged in ‘access stimulation’” because of the dramatic increase in traffic it is carrying to its conference calling platform customers in the wake of the COVID-19 pandemic.²⁰ The result, according to Inteliquent, could be to “limit the company’s ability to meet [the demand of those customers] in the weeks and potentially months ahead during which remote telework is expected to continue across the country.”²¹

9. To date, two parties have filed responses to the Inteliquent Petition. Free Conferencing filed a Limited Opposition to the Petition in which it recommended that the Commission grant a waiver for “all conferencing traffic transmitted by all carriers.”²² Free Conferencing also argues that not all traffic that terminates to Inteliquent and other carriers should be exempt from calculating the trigger in the

¹⁴ See Zoom Customer Case Studies, <https://zoom.us/customer/all>.

¹⁵ Cisco Collaboration Customer Showcase, https://www.cisco.com/c/en/us/solutions/collaboration/case-studies.html?ft2_general-table0=Webex#~featured-stories.

¹⁶ For example, Cisco’s CEO recently announced that the company’s video conferencing platform, WebEx, saw a surge in user activity since the beginning of March due to the coronavirus pandemic. *Cisco CEO: Customers spent 5.5 billion minutes in virtual meetings this month due to coronavirus*, CNBC, Tech, March 17, 2020, <https://www.cnbc.com/2020/03/17/cisco-ceo-says-5point5-billion-minutes-of-webex-meetings-due-to-coronavirus.html> (“In the first 11 business days of March, we’ve had 5.5 billion meeting minutes.”). Similarly, Forbes reports an increase in traffic to Zoom, “[a]s the Covid-19 virus sweeps across the planet, leading to quarantined cities and shut-down schools, Zoom has emerged as one of the leading tools to keep businesses up and running and students learning. On Wednesday, the most recent day for which data is available, 343,000 people globally downloaded the Zoom app, 60,000 in the U.S. alone, according to mobile intelligence firm Apptopia — compared to 90,000 people worldwide and 27,000 in the U.S. just two months ago.” Alex Konrad, *Exclusive: Zoom CEO Gives K-12 Schools His Videoconferencing Services for Free*, FORBES (Mar. 13, 2020) <https://www.forbes.com/sites/alexkonrad/2020/03/13/zoom-video-coronavirus-eric-yuan-schools/#7485ff7d4e71>.

¹⁷ Petition at 4-5.

¹⁸ *Id.* at n.10.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6.

²¹ *Id.*

²² See CarrierX, LLC’s Limited Opposition to Inteliquent’s Petition for Waiver of Section 61.3(bbb)(1)(ii) of the Commission’s Rules, WC Docket No. 18-155, at 1 (filed Mar. 20, 2020) (Free Conferencing Limited Opposition).

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access stimulation definition.²³ AT&T filed a response to the Inteliquent Petition taking no position on the merits of the Petition, but instead asking that “the Commission make clear that all traffic measurements that were calculated before the onset of the crisis – *e.g.*, the month of February 2020 – are valid and if carriers’ traffic previously exceeded the 6:1 ratio set out in the Commission’s rules, they are indeed an access stimulator under the rules.”²⁴ AT&T suggests that “any waiver should only be available to protect *non-access-stimulating LECs* from false identification as being engaged in access stimulation.”²⁵

III. DISCUSSION

10. Generally, the Commission’s rules may be waived for good cause shown.²⁶ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.²⁸ In the *Access Arbitrage Order* the Commission contemplated the possible need for waivers, such as the one sought by Inteliquent, where “a LEC, not engaged in arbitrage, finds that its traffic will exceed a prescribed terminating-to-originating traffic ratio.”²⁹

11. Based on the record before us, we find that good cause exists to temporarily waive the access-stimulating competitive local exchange carrier definition in section 61.3(bbb)(1)(ii) of the Commission’s rules as to Inteliquent until June 1, 2020, so that Inteliquent will not be defined as an access-stimulating local exchange carrier and have to bear the accompanying financial responsibility on the basis of that definition during this time. To protect against abuse, we limit this waiver to traffic originated and terminated by Inteliquent for its “preexisting customers”—those entities that were Inteliquent customers when Inteliquent filed its Petition on March 17, 2020. This waiver will not cover traffic volumes generated by any entity that became an Inteliquent customer after March 17, 2020.

12. When it adopted the *Access Arbitrage Order*, the Commission recognized that a non-access-stimulating local exchange carrier could unexpectedly find itself with a mix of traffic that exceeds the new traffic ratio triggers.³⁰ The Commission found that, “should a non-access-stimulating LEC experience a change in its traffic mix such that it exceeds one of the ratios we use to define access-stimulating LECs, that LEC will have an opportunity to show that they are in compliance with the Commission’s rules.”³¹ The Commission further specified that when a local exchange carrier not engaged

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(As CarrierX makes clear in its filing, CarrierX does business in part as FreeConferenceCall.com and abbreviates that to “Free Conferencing.”)

²³ *Id.* at 3.

²⁴ Letter from Keith Krom, Senior Legal Counsel, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155 (filed Mar. 20, 2020) (AT&T Letter).

²⁵ AT&T Letter (emphasis in original).

²⁶ 47 CFR § 1.3.

²⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁹ *Access Arbitrage Order*, 34 FCC Rcd at 9058-59, para. 53; *see also* Petition at 3-4 (“By granting the requested temporary waiver, the Commission would ensure that Inteliquent is not erroneously labeled an ‘access stimulator’ at a time when it needs to devote substantial resources to increasing network capacity to handle large volumes of terminating traffic to its conference calling provider customers.”).

³⁰ *Access Arbitrage Order*, FCC Rcd at 9058-59, para. 53.

³¹ *Id.* (citation omitted).

in access arbitrage finds itself in that position, it may request a waiver.³²

13. The health crisis currently facing our nation is precisely the type of unexpected situation that the Commission recognized could justify a waiver of the access stimulation rules. This nationwide emergency has fundamentally changed the way we work by forcing Americans from their offices and students from their schools and to quickly and simultaneously move to telework and home schooling. Inteliquent's customers, Cisco WebEx and Zoom's conferencing platforms, are a crucial part of helping our nation make this shift to working and learning from home. As a result, Zoom and Cisco WebEx are seeing surges in the number of individuals using their platforms and in minutes of use. This temporary waiver will allow Inteliquent to continue increasing capacity to its preexisting conference calling customers so they, in turn, can continue providing much-needed, large-scale, conference calling services to consumers working and attending classes from home as part of an unprecedented nationwide effort to slow the spread of the pandemic.

14. In finding that granting this temporary waiver to Inteliquent is in the public interest, we do not rely solely on the benefits to the public of access to conference calling services during the pandemic. We also focus on whether Inteliquent is stimulating traffic or is otherwise engaged in access arbitrage.³³ With respect to the first question, based on the record before us we find that Inteliquent is not stimulating traffic. Inteliquent credibly explains that because it was already providing terminating access to two of the nation's leading conference calling platforms, the change in its traffic ratios is a function of the public health directive to the people of this country to work from home and to move their classes online and the important role of two of its largest preexisting customers in allowing Americans to follow that directive.³⁴ Moreover, before this month, Inteliquent's traffic ratios were sufficiently balanced so that it did not meet the definition of an access-stimulating local exchange carrier.³⁵ Also, importantly, Inteliquent represents that it seeks only a temporary waiver, assuring the Commission that "[o]nce the crisis ends, Inteliquent will not require the waiver and it expects traffic volumes to return to normal levels below the 6:1 ratio."³⁶ And by limiting this waiver to Inteliquent's preexisting customers we ensure that the waiver is tied to the unexpected market conditions and does not provide an opportunity for Inteliquent to avoid the financial consequences of adding any access-stimulating customers. As such, we consider this waiver to be consistent with AT&T's caution that "any waiver should only be available to protect *non-access-stimulating LECs* from false identification as being engaged in access stimulation."³⁷

15. In its Petition, Inteliquent also convinces us that it is not engaged in access arbitrage (attempts to take advantage of rate differentials in our existing intercarrier compensation system). It has not previously been identified as an access-stimulating local exchange carrier. What is more, according to Inteliquent, it routes its terminating conference call traffic to largely urban destinations rather than rural areas as access-stimulating local exchange carriers typically do.³⁸ Moreover, Inteliquent's termination rates are benchmarked to those of the applicable regional Bell operating company, which results in low, if any, access charges to interexchange carriers.³⁹ And, according to Inteliquent, it charges "virtually no

³² *Id.*

³³ *Access Arbitrage Order*, FCC Rcd at 9058-59, para. 53. This consideration flows from the public interest rationale for the rules themselves, and does not involve some broader normative evaluation of which providers are "good" or "worthy," contrary to Free Conferencing's suggestion. Free Conferencing Limited Opposition at 5.

³⁴ Petition at 4-5.

³⁵ *Id.* at 3.

³⁶ *Id.* at 7.

³⁷ AT&T Letter (emphasis in original).

³⁸ Petition at 2.

³⁹ *Id.*

mileage/transport” to IXCs for terminating the traffic at issue.⁴⁰

16. Because our decision to grant this temporary waiver is based on Inteliquent’s specific circumstances, we decline to adopt Free Conferencing’s suggestion that we extend the waiver to all conferencing traffic.⁴¹ There is no reason to believe that all local exchange carriers that provide service to conference calling platforms are similarly situated to Inteliquent. Moreover, Free Conferencing offers no comfort that such a waiver would be anything but an opportunity for existing access-stimulating local exchange carriers to continue the schemes the Commission sought to disrupt by adopting the *Access Arbitrage Order*.⁴² We agree with AT&T that accurate calculations of traffic before the onset of the crisis are likely to correctly capture a carrier’s practices, and if, in February 2020, a carrier’s traffic exceeded the 6:1 ratio set out in the Commission’s rules it is an access stimulator under the rules.⁴³ Indeed, in considering future waiver requests we will remain vigilant to ensure that unscrupulous providers do not attempt to take advantage of this national emergency to avoid obligations the Commission’s rules place on their business practices.

17. Having found that it is in the public interest to allow Inteliquent the ability to temporarily exceed the terminating-to-originating traffic ratio in the Commission’s access-stimulating competitive local exchange carrier definition with its preexisting customers, and thus not trigger the accompanying financial obligations on that basis, we grant the requested temporary waiver until June 1, 2020.⁴⁴ The waiver may be renewed for additional, temporary intervals if Inteliquent’s terminating-to-originating traffic ratio continues to exceed 6:1 due to the public health crisis. As part of any renewal request, Inteliquent should certify “that there has been no material change to the facts that led the Commission to grant the initial waiver.”⁴⁵ If, at the time it requests a waiver renewal, Inteliquent cannot certify that there

⁴⁰ *Id.*

⁴¹ Free Conferencing Limited Opposition at 1.

⁴² We also reject as unnecessary and unsupported in the record, Free Conferencing’s apparent suggestion that Inteliquent’s non-conference calling high-volume terminating traffic be subject to the access stimulation triggers. Free Conferencing Limited Opposition at 3. Free Conferencing does not offer any basis for finding that Inteliquent serves access-stimulating customers. Indeed, even with two large conference calling provider customers, Inteliquent’s traffic before the onset of the pandemic did not meet the access stimulation triggers. What is more, because this waiver is temporary, we anticipate little risk that Inteliquent will take the opportunity of being exempt from one trigger in the definition of access stimulation to carry high volumes of stimulated traffic and engage in the type of access arbitrage addressed in the *Access Arbitrage Order* given the Commission’s ability to evaluate evidence regarding Inteliquent’s conduct under this waiver prior to granting any extension. Nor does Free Conferencing demonstrate that the trigger sensibly could be applied only to particular categories of traffic given the Commission’s recognition that it was designed to apply to a calculation based on the aggregation of traffic from all sources. *Access Arbitrage Order*, 34 FCC Rcd at 9058, para. 52.

⁴³ AT&T Letter.

⁴⁴ This duration for the initial temporary waiver falls within the range of recent waivers of some other Commission rules granted in connection with responses to COVID-19. *See, e.g., Lifeline and Link Up Reform and Modernization*, Order, DA 20-285 (WCB Mar. 17, 2020) (waiver granted for 60 days); *Telecommunications Relay Services and Speech-To-Speech Services For Individuals With Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Order, DA 20-281 (CGB Mar. 16, 2020) (waiver granted for 60 days). In particular, we find June 1, 2020, a reasonable duration for the initial waiver under the specific context and circumstances relevant here. The duration enables us to guard against potential misuse of the waiver to begin engaging in access stimulation, and we find that a longer initial waiver is unnecessary given that Inteliquent itself sought a temporary waiver—subject to potential extension—only until June 1, 2020. Petition at 1.

⁴⁵ Petition at 7. For purposes of this temporary waiver request we rely on the un rebutted accuracy—and facial plausibility—of the representations made in the Petition. To the extent interested parties dispute the facts provided or the policy reasoning, they are free to seek reconsideration or full Commission review as appropriate, *see* 47 CFR §§ 1.106, 1.115. At a minimum we suggest that any parties objecting to a possible extension of the waiver make a

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have been no material changes to the facts supporting its Petition, Inteliquent's certification must describe and explain the material changes that have occurred since the filing of its Petition and explain why a waiver renewal is nonetheless justified. Inteliquent's certification must also include information about the terminating and originating traffic volumes of its preexisting customers for the two months preceding the certification date and estimated terminating and originating traffic volumes of the preexisting customers for the succeeding two months.

IV. ORDERING CLAUSES

18. 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 June 1, 2020 and the Petition IS GRANTED.

19. 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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filing in the docket sufficiently in advance of June 1, 2020, to enable its consideration in connection with the evaluation of any possible extension of the waiver.