

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: June 23, 2020

Released: June 23, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In recent weeks, communities across the United States have been loosening their shelter-in-place requirements, but the dramatic upheaval caused by the COVID-19 pandemic continues to affect everyday life. Of particular relevance to this proceeding, office workers, students, teachers, doctors, entertainers, families and friends continue to use conference calling services at unprecedented volumes.

2. Onvoy d/b/a Inteliquent, Inc. (Inteliquent) is a competitive local exchange carrier (LEC) that has long served enterprise customers including two of the premier conference calling service providers in the United States—Zoom Video Communications, Inc. (Zoom) and Cisco Webex. These preexisting Inteliquent customers have been helping to facilitate the massive shift to telework and distance learning caused by the COVID-19 pandemic. This shift has materially increased Inteliquent’s ratio of terminating-to-originating traffic such that Inteliquent’s traffic to an end office in a calendar month now exceeds the 6:1 terminating-to-originating traffic ratio which would make Inteliquent an “access stimulating” competitive LEC under the rules adopted by the Commission in the Access Arbitrage Order last year.1 Absent a waiver of that portion of the Access Stimulation Rules, Inteliquent would be required to accept the financial responsibilities that apply to access-stimulating LECs.2 To avoid this outcome, Inteliquent sought and received a temporary waiver of part of the Access Stimulation definition—section 61.3(bbb)(1)(ii) of the of the Commission’s rules—through June 1, 2020.3

3. Inteliquent now requests a limited renewal of the temporary waiver until September 1, 2020 with respect to traffic it terminates in six urban areas to preexisting customers on the basis that its terminating-to-originating traffic ratios in those areas continue to be particularly unbalanced as a result of

1 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); see also 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).

2 See Updating the Intercarrier 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 Commc’ns Corp. et al. v. FCC, No. 19-1233 (D.C. Cir. filed Oct. 29, 2019) (consolidated with No. 19-1244).

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, Order, DA 20-349 (WCB Mar. 27, 2020) (Inteliquent Waiver Order).

the “unprecedented amounts of conference platform traffic that Inteliquent is terminating for pre-existing customers Zoom and Cisco Webex to facilitate remote work and other forms of social distancing.”⁴ We find good cause to grant Inteliquent’s request for renewal of its temporary waiver until September 1, 2020 based on the information and representations in its Renewal Request and the extraordinary circumstances that it continues to face.

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.⁵ Among other things, in the *Access Arbitrage Order*, the Commission modified the definition of access stimulation to find a competitive LEC 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.”⁶ Under these rules, a LEC “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.”⁷

5. On March 17, 2020, Inteliquent filed a request for a temporary waiver, until June 1, 2020, of section 61.3(bbb)(1)(ii) Commission’s rules.⁸ As a competitive LEC that provides access to Zoom and Cisco Webex, “[i]n the wake of the COVID-19 pandemic Inteliquent [found] itself handling vastly greater volumes of terminating traffic than normal” as Americans began to stay at home to reduce the spread of COVID-19.⁹ When Inteliquent filed its waiver request in March 2020, it expected that the traffic terminating to these conference calling service providers would double in the subsequent months and as a result, its interstate terminating-to-originating traffic ratio would exceed the 6:1 trigger in section 61.3(bbb)(1)(ii) of the Commission’s rules, resulting in Inteliquent being deemed an access stimulator.¹⁰ Inteliquent explained that it would face significant financial harm in the form of “huge cost increases and revenue decreases” if it were “deemed to be engaged in ‘access stimulation’” because of the dramatic increase in traffic it would be carrying to its conference calling service provider customers in the wake of the COVID-19 pandemic.¹¹

6. In granting Inteliquent’s initial waiver request, we found that, before March 2020, Inteliquent did not meet the definition of an access-stimulating LEC.¹² We limited the waiver to traffic originated and terminated by Inteliquent’s preexisting customers, thereby ensuring that the waiver was tied to the unexpected market conditions and did not “provide an opportunity for Inteliquent to avoid the financial consequences of adding any access-stimulating customers.”¹³ Recognizing the benefits to the public of access to conference calling services during the pandemic, we granted the requested temporary

⁴ Renewal Request at 2.

⁵ *Access Arbitrage Order*, 34 FCC Rcd at 9035-36, para. 1.

⁶ 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).

⁷ 47 CFR §§ 51.914(a), (a)(2).

⁸ Petition at 1; 47 CFR § 61.3(bbb)(1)(ii).

⁹ *Inteliquent Waiver Order* at 2, para. 6 (citing Petition at 4). Zoom and Cisco Webex are conference calling service providers which serve universities, healthcare institutions, corporations, governments and other enterprise customers. *Id.*

¹⁰ Petition at 3.

¹¹ *Id.* at 6.

¹² *Inteliquent Waiver Order* at 5-6, para. 15.

¹³ *Inteliquent Waiver Order* at 5, para. 14.

waiver until June 1, 2020, and specified that the temporary waiver could be renewed.¹⁴ We asked that as part of any request for renewal of its initial waiver, Inteliquent include traffic volume information and certify that there has been no material change to the facts that led the Commission to grant the initial waiver.¹⁵

7. On May 13, 2020, Inteliquent filed a request for a narrow renewal of its temporary waiver of section 61.3(bbb)(1)(ii) of the Commission's rules until September 1, 2020.¹⁶ Inteliquent now limits its waiver request to traffic terminating to Inteliquent end offices in only six urban Local Access and Transport Areas (LATAs)—Chicago, IL; Houston, TX; Philadelphia, PA; Jacksonville, FL; New York Metro, NY; and Denver, CO—all of which have experienced in recent months a dramatic increase in the number of terminating minutes and a commensurate change in Inteliquent's ratios of terminating-to-originating traffic due to the COVID-19 pandemic.¹⁷ The Renewal Request includes a table containing actual and projected terminating-to-originating traffic ratios for Inteliquent's preexisting customers for these six LATAs for February through August 2020.¹⁸ The data show that Inteliquent's terminating-to-originating traffic for preexisting customers in those six LATAs was well below the 6:1 ratio in February and had risen above the 6:1 ratio in all six LATAs by April.¹⁹ The projections show that the company expects those ratios to remain high, but relatively stable, through August 2020.²⁰ Inteliquent's Renewal Request includes a Certification by the company's Chief Information Officer confirming that "there has been no material change to the facts that led the Commission to grant the initial waiver."²¹

8. Wide Voice, LLC (Wide Voice) filed a response to the Renewal Request.²² Wide Voice supports Inteliquent's Renewal Request, acknowledging the financial "penalties" that would apply to Inteliquent if the renewal were not granted.²³ Wide Voice also asks that we "extend this waiver to **all conferencing traffic** exempting it from the CLEC traffic measurement ratios" in the definition of Access

¹⁴ *Id.* at 5-7, paras. 13-17 & n.44.

¹⁵ *Id.* at 6-7, para. 17.

¹⁶ Renewal Request at 1-2, Exh. A.

¹⁷ Renewal Request at 1-2, 9. A LATA "is a contiguous geographic area—(1) Established before February 8, 1996 by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (2) Established or modified by a Bell operating company after February 8, 1996 and approved by the Commission." 47 CFR § 51.5. The boundaries of LATAs are described in databases that are maintained by commercial organizations.

¹⁸ Renewal Request at 7, Exh. A ("The attached Exhibit provides additional detail regarding each of the LATAs in which a waiver is necessary."). Inteliquent also filed the actual and projected originating and terminating traffic volumes pursuant to a Protective Order. *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Protective Order, DA 20-596 (WCB June 5, 2020); Letter from Matthew S. DelNero and Thomas G. Parisi, Counsel for Onvoy, LLC d/b/a Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, Exh. (filed June 9, 2020) (Inteliquent *Ex Parte*). Pursuant to the Protective Order, interested parties had the opportunity to file Acknowledgments with the Commission and review the confidential material. Commission staff have reviewed the confidential data and confirm that it supports Inteliquent's request for waiver.

¹⁹ Renewal Request at 7. The actual ratio of terminating-to-originating traffic varies by LATA. The ratio in Chicago, for example, went from 2.4:1 in February to 33.2:1 in April, while in Denver, the ratio went from 2.8:1 to 6.1:1 in the same time period. *See* Renewal Request, Exh. A.

²⁰ Renewal Request Exh. A.

²¹ Renewal Request Cert. of Brett Scorza.

²² Letter from Andrew Nickerson, CEO Wide Voice, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-155, at 1 (filed May 20, 2020) (Wide Voice *Ex Parte*).

²³ *Id.* at 1.

Stimulation.²⁴

III. DISCUSSION

9. Generally, the Commission's rules may be waived for good cause shown.²⁵ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁶ The Commission also may take into account considerations of hardship, equity, or more effective implementation of policy on an overall basis.²⁷ 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."²⁸ In the *Inteliquent Waiver Order*, the Bureau acknowledged that Inteliquent might need to renew its temporary waiver, depending on the COVID-19 pandemic's continuing impact on telecommunications traffic.²⁹

10. Based on the record, we find that good cause exists to grant Inteliquent's 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 Inteliquent's preexisting customers' traffic originating or terminating to six urban LATAs (Chicago, IL; Houston, TX; Philadelphia, PA; Jacksonville, FL; New York Metro, NY; and Denver, CO) until September 1, 2020. Doing so will ensure that Inteliquent is not classified as an access-stimulating LEC and will not have to assume financial responsibility for any charges imposed by an Intermediate Access Provider related to traffic terminating in those LATAs during the period covered by this waiver.³⁰ To protect against abuse, this waiver renewal is 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, 2020.³¹ This renewal does not cover traffic volumes generated by any entity that became an Inteliquent customer after March 17, 2020.³²

11. Inteliquent's Renewal Request includes information requested in the *Inteliquent Waiver Order*.³³ Inteliquent certifies that there is no material change to the facts that led to the grant of the initial waiver and that all of the information in the Renewal Request is true.³⁴ Inteliquent also provides actual and projected terminating-to-originating traffic ratios and volume data for seven months, February through August 2020, for its preexisting customers in the six LATAs for which it requests a renewal.³⁵ The data show that the traffic ratios in the six LATAs covered by this *Order* were below the 6:1 trigger in February 2020, but exceeded that ratio by April and are expected to exceed that ratio through at least August 2020.³⁶ Terminating traffic volumes in all six LATAs grew from February through April 2020,

²⁴ *Id.* at 1, 3-4 (emphasis in original).

²⁵ 47 CFR § 1.3.

²⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁸ *Access Arbitrage Order*, 34 FCC Rcd at 9058-59, para. 53.

²⁹ *Inteliquent Waiver Order* at 6-7, para. 17.

³⁰ 47 CFR § 61.3(bbb)(1)(ii).

³¹ *Inteliquent Waiver Order* at 4, para. 11.

³² See Renewal Request at 4 (fully supporting this limitation).

³³ *Inteliquent Waiver Order* at 6-7, para. 17.

³⁴ Renewal Request Cert. of Brett Scorza.

³⁵ Renewal Request Exh. A; Inteliquent *Ex Parte* Exh.

³⁶ Renewal Request at 3, 6, Exh. A; see 47 CFR § 61.3(bbb) (definition of access stimulation).

but have remained—and are expected to remain—relatively stable thereafter.³⁷ For example, in the Chicago, IL LATA, the traffic ratio was 2.4:1 in February 2020, 15.5:1 in March 2020 and is roughly 33:1 since April 2020.³⁸ Inteliquent explains that “Cisco Webex and Zoom alone account for a nearly 850% increase in traffic volumes when comparing traffic volumes from April and February.”³⁹

12. The public interest also supports renewal of this waiver. For example, conference calling service use by teleworkers increased since the beginning of the pandemic and is expected to remain high for the foreseeable future.⁴⁰ Telehealth, which saw a surge due to the need for social distancing as the pandemic worsened, will remain important as the country moves beyond the pandemic.⁴¹ The Zoom and Cisco Webex services that Inteliquent serves help facilitate these increases in conference calling usage.

13. We find that Inteliquent did not meet the Access Stimulation definition prior to its initial request for a waiver and is not currently engaged in access stimulation. Inteliquent has narrowed the scope of the requested waiver to six specific LATAs and continues to limit its waiver request to customers it had before the original waiver request. We agree with Inteliquent that limiting its “waiver to traffic generated by existing customers is an important safeguard to ensure that the public health crisis, and not the addition of any new customer participating in an access stimulation scheme, is the cause of the increase in terminating traffic.”⁴² We also agree that “[r]enewal of Inteliquent’s temporary waiver request on this geographically limited basis will allow Inteliquent to continue to meet . . . increased demand and keep America connected, without undermining the Commission’s important [policy] efforts to curb access arbitrage.”⁴³ And, as with its original waiver, Inteliquent confirms that its “terminating conference call traffic continues to be routed efficiently to largely urban destinations based on legitimate network considerations, with rates benchmarked to the applicable RBOC serving the area where the calls terminate, all while imposing no mileage charges on [interexchange carriers] for terminating this traffic (whether at the tandem or end office).”⁴⁴

14. We decline to adopt Wide Voice’s suggestion that we extend the waiver to all conferencing traffic, or in the alternative, extend the waiver to “all LECs who charge price cap LEC benchmarked rates, without mileage, in urban LATAs, like the ones for which Inteliquent seeks waiver in

³⁷ Inteliquent *Ex Parte* Exh. (showing a large increase in traffic volumes); Renewal Request Exh. A.

³⁸ Renewal Request Exh. A.

³⁹ Renewal Request at 7; *see also* Inteliquent *Ex Parte* Exh. (showing an increase in traffic volumes of that magnitude).

⁴⁰ Renewal Request at 3 n.2, 6 & n.10; Zacks Equity Research, *Cisco (CSCO) Q3 Earnings and Revenues Surpass Estimates* (May 14, 2020), <https://www.yahoo.com/news/cisco-csco-q3-earnings-revenues-105710629.html> (reporting a “[s]olid uptake of Webex video conferencing . . . offerings amid the COVID-19 induced work-from-home demand environment”); Mansoor Iqbal, *Zoom Revenue and Usage Statistics (2020)*, Business of Apps (May 13, 2020), <https://www.businessofapps.com/data/zoom-statistics/> (reporting that from 100 million daily meeting participants in December 2019, Zoom’s usage shot up to 200 million daily meeting participants in March 2020 and 300 million in April 2020 (data includes international users)). Phases One and Two of the President’s Guidelines for Opening Up America Again include the recommendation for employers to “continue to encourage telework, whenever possible and feasible with business operations.” White House and CDC, *Guidelines for Opening Up America Again*, <https://www.whitehouse.gov/openingamerica/> (last visited June 19, 2020).

⁴¹ *E.g.*, David Flessner, *BlueCross BlueShield of Tennessee to Make Telehealth Coverage Permanent After Expansion amid COVID-19 Crisis* (May 14, 2020), <https://www.timesfreepress.com/news/business/aroundregion/story/2020/may/14/bluecross-makes-permanent-telehealth-coverage/523060/> (reporting that BlueCross was the first major insurer in Tennessee to “embrace telehealth for the long-term”).

⁴² Renewal Request at 4 (citation omitted).

⁴³ *Id.* at 2.

⁴⁴ Renewal Request at 5.

its Renewal . . . Request.”⁴⁵ In the *Inteliquent Waiver Order*, we granted a temporary waiver based on Inteliquent’s specific circumstances.⁴⁶ In this *Order*, we find that granting Inteliquent’s narrow Renewal Request with safeguards to protect against abuse is in the public interest based on the traffic data Inteliquent submitted in support of its Renewal Request.⁴⁷ By comparison, Wide Voice fails to offer evidence demonstrating that Wide Voice and other LECs that would benefit from a broader waiver are similarly situated to Inteliquent or that granting a broader waiver is otherwise in the public interest.⁴⁸ In the *Inteliquent Waiver Order*, we explained that “[t]here is no reason to believe that all local exchange carriers that provide service to conference calling platforms are similarly situated to Inteliquent.”⁴⁹ Again we find that a blanket waiver applicable to all LECs with conference calling service provider customers would be overbroad and would provide an opportunity for existing access-stimulating LECs to continue the schemes the Commission “sought to disrupt” in the *Access Arbitrage Order*.⁵⁰

15. We grant Inteliquent’s Renewal Request until September 1, 2020.⁵¹ Should Inteliquent’s terminating-to-originating traffic ratios continue to exceed 6:1 due to the COVID-19 pandemic, Inteliquent may request another temporary renewal.⁵² As part of any renewal request, Inteliquent should certify that there has been no material change to the facts that led to the grant of the original waiver or this renewal.⁵³ If, at the time it requests a future waiver renewal, Inteliquent cannot certify that there have been no material changes to the facts supporting its original Petition and this Renewal Request, Inteliquent’s certification must 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. 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

16. 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

⁴⁵ Wide Voice *Ex Parte* at 1; see *Inteliquent Waiver Order* at 6, para. 16 (declining to adopt a similar suggestion that we extend any waiver to all conferencing traffic).

⁴⁶ *Inteliquent Waiver Order* at 6, para. 16.

⁴⁷ Inteliquent *Ex Parte* Exh. (providing actual and projected traffic data); see also Renewal Request Exh. A.

⁴⁸ *Inteliquent Waiver Order* at 6, para. 16; see e.g., Wide Voice *Ex Parte* at 3-4.

⁴⁹ *Inteliquent Waiver Order* at 6, para. 16.

⁵⁰ See *id.*

⁵¹ *Inteliquent Waiver Order* at 6 n.44. 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.*, CG 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).

⁵² For purposes of this temporary waiver request we rely on the un rebutted accuracy—and facial plausibility—of the representations made in the Petition and the Renewal Request and on the supporting data submitted by Inteliquent pursuant to the Protective Order. 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. 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 September 1, 2020, to enable its consideration in connection with any renewal request.

⁵³ *Inteliquent Waiver Order* at 6-7, para. 17.

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 September 1, 2020 and the Renewal Request IS GRANTED.

17. 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