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

In the Matter of	)	
	)	
8YY Access Charge Reform	)	WC Docket No. 18-156
	)	

REPORT AND ORDER

Adopted: October 7, 2020 **Released: October 9, 2020**

By the Commission: Commissioner Rosenworcel concurring.

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I. INTRODUCTION

1. Toll free or 8YY telephone numbers have played and continue to play a unique and enduring role in the telecommunications landscape. Ever since they were first introduced over a half a century ago, toll free numbers have provided benefits to consumers and businesses alike. Toll free calling

is a convenient method for reaching a business or other organization with the called entity responsible for paying the toll (or long-distance) charges associated with such calls. Demand for toll free numbers has continued to grow over time, necessitating the authorization of additional 8YY codes. As one commenter puts it, "8YY is America's Area Code. It gives businesses a regional or national presence and makes it easier for customers to make contact without the need to find and remember local telephone numbers."[1]

2. Arbitrage and fraud, however, increasingly affect and undermine the system of intercarrier compensation that currently underpins toll free calling. Such schemes takes various forms, including "traffic pumping" by robocallers who are paid to make massive numbers of illegitimate calls to toll free numbers; "benchmarking" and "mileage pumping" by competitive local exchange carriers that aggregate other carriers' 8YY traffic to hand it off to 8YY providers in areas where they can charge higher rates after transporting it an inflated distance; and "double dipping" schemes to assess multiple toll free database queries when only one such query is needed.

3. In recent years, these schemes have raised costs for 8YY providers and 8YY customers alike, ultimately burdening consumers. 8YY arbitrage can also disrupt vital services. For example, in 2019, the National Suicide Prevention Lifeline toll free telephone number was hit by a fraudulent calling scheme, which intermittently prevented legitimate calls to that number.[2] Together, these fraudulent and abusive practices undermine the broad array of useful toll free services on which consumers, businesses, and other organizations commonly rely.

4. Today, we take definitive steps to address these problems by reducing the intercarrier compensation 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, an arrangement under which carriers look to their subscribers rather than other carriers to cover the costs of their networks, we move 8YY originating end office access charges to bill-and-keep over approximately three years, and, as a transitional step toward bill-and-keep, combine 8YY originating transport and originating tandem switching into a single nationwide tandem switched transport access service rate capped at $0.001 per minute.[3] We also transition charges for the 8YY database queries needed to route all 8YY calls to $0.0002 over approximately three years and prohibit carriers from charging for more than one such query per call. Carriers may look to existing mechanisms, such as universal service support (known as Connect America Fund Intercarrier Compensation), to recover lost revenue. As we continue our progress toward bill-and-keep for all intercarrier compensation, curtailing carriers' incentives to engage in toll free arbitrage, we 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. In so doing, we preserve and enhance the value of toll free services for consumers and businesses alike.

II. BACKGROUND

5. 8YY services have long been a prominent fixture of the telecommunications landscape. Calls to 8YY numbers differ from other calls carried over the public switched telephone network in that

[1] Teliax Reply, WC Docket No. 10-90 et al., at 6 (rec. Aug. 15, 2017).

[2] Letter from Matt Nodine, Assistant Vice President Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Jan. 13, 2020) (AT&T Jan. 13, 2020 *Ex Parte*). As part of the *8YY Further Notice*, the Commission incorporated filings from WC Docket Nos. 10-90 and 07-135, and CC Docket No. 01-92 into the record of this proceeding. *8YY Access Charge Reform*, WC Docket No. 18-156, Further Notice of Proposed Rulemaking, 33 FCC Rcd 5723, 5724 n.2 (2018) (*8YY Further Notice*).

[3] "Under bill-and-keep arrangements, a carrier generally looks to its end-users—which are the entities and individuals making the choice to subscribe to that network—rather than looking to other carriers and their customers to pay for the costs of its network." *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17904, para. 737 (2011) (*USF/ICC Transformation Order* or *USF/ICC Transformation Further Notice*), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*In re FCC 11-161*).

the party receiving the call—not the party placing the call—pays the toll charges. When long-distance calls were expensive, allowing consumers to call businesses and other institutions without worrying about the cost of toll service was a benefit to consumers and to the companies receiving their calls. Reductions in toll rates and the rise of unlimited, all-distance calling plans have largely eliminated separate toll charges for consumers, yet 8YY services continue to have significant value, as evidenced by the persistently high demand for toll free numbers. Businesses and other institutions increasingly use 8YY numbers to support branding efforts, and to facilitate and evaluate marketing efforts—by, for example, assigning specific numbers to individual advertising campaigns to track the effectiveness of those campaigns.[4]

6. The record indicates that the percentage of originating traffic attributable to 8YY has grown significantly over the years and currently accounts for the vast majority of originating access traffic.[5] According to AT&T, for example, in 2008, 8YY originating minutes accounted for 64% of all AT&T originating access minutes (including minutes from AT&T affiliates) and by 2019, they accounted for 83% of all originating access minutes.[6] Increased demand for toll free numbers has led the Commission to authorize a half a dozen additional toll free codes beyond the original 800 code, including the 888, 877, 866, 855, 844, and 833 codes.[7]

A. 8YY Routing and Intercarrier Compensation

7. To understand intercarrier compensation for 8YY calls, it is first necessary to understand how toll free calls are routed and how that differs from the routing of non-toll free calls. When a caller dials an 8YY number, the originating carrier does not simply pass the call to the customer's pre-subscribed interexchange carrier, as it would for a non-toll free call. Instead, to determine how to route a toll free call, the originating carrier typically queries an industrywide database operated by the Toll Free Number Administrator (the 8YY Database) to determine the 8YY provider for the dialed number.[8] Typically, for calls routed over time-division multiplexing (TDM) based networks, to query the 8YY Database a carrier must route the 8YY call through a switch, equipped with a "service switching point."[9] The service switching point "suspends" routing of the call and, during this suspension, sends a query over the signaling system 7 (SS7) channel to a service control point.[10] Service control points are "regional

[4] *See, e.g.*, Somos, Inc., Insights, *Q&A with 800Response* (Aug. 11, 2016), https://www.somos.com/insights/qa-800response; Grasshopper, *E-Commerce Companies: Toll Free Numbers for Your Online Business*, https://grasshopper.com/numbers/toll-free-numbers/; *see also 8YY Further Notice*, 33 FCC Rcd at 5725, para. 6.

[5] AT&T Comments at 4 (measuring traffic AT&T received as an interexchange carrier and providing percentages based on minutes of use data). Some rural local exchange carriers indicate that the ratio of toll free calls to all originating calls remained relatively stable for their member companies. *See* Nebraska Rural Independent Companies Comments at 4-5 (NRIC Comments).

[6] *See* Letter from Matthew Nodine, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed June 5, 2020) (AT&T June 5, 2020 *Ex Parte*).

[7] *See Toll Free Service Access Codes et al*., CC Docket No. 95-155 et al., Order, 32 FCC Rcd 3153, 3153-54, paras. 1-3 (WCB 2017).

[8] Letter from Matthew Nodine, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al., Attach. Traditional Originating 8YY Call Flow (filed Nov. 9, 2017) (AT&T Nov. 9, 2017 *Ex Parte*) (depicting a typical originating 8YY call flow, including the database query). As the current Toll Free Numbering Administrator, Somos manages the SMS/800 Toll Free Number Registry which provides the routing data necessary to route all 8YY traffic. Somos was established in 1993 as a result of Commission action to create an independent 8YY numbering database to enable competition in the 8YY market. *See generally Provision of Access for 800 Service*, CC Docket No. 86-10, Order, 8 FCC Rcd 1423 (1993).

[9] *See 800 Data Base Access Tariffs and the 800 Service Management System Tariff and Provision of 800 Services*, CC Docket Nos. 93-129 and 86-10, Report and Order, 11 FCC Rcd 15227, 15232, para. 7 (1996) (*1996 Database Access Tariffs Order*); *see also 8YY Further Notice*, 33 FCC Rcd at 5727, para. 11.

[10] *See 1996 Database Access Tariffs Order*, 11 FCC Rcd at 15232, para. 7; *see also* Somos Comments at 3.

databases that contain routing instructions for the toll free numbers located in . . . particular geographic regions."[11] 8YY calls from customers served by local exchange carrier end offices that are not connected to a service control point can be routed to one of the local exchange carrier's tandem switches that is equipped with a service control point, and the call is processed from there.[12] Local exchange carriers that do not own a service control point can purchase database query services from carriers that do.[13]

8. A database query produces a carrier identification code, which tells the local exchange carrier to route the call to the 8YY provider, typically an interexchange carrier, associated with that carrier identification code.[14] The originating carrier then uses its own or an intermediate carrier's transport and switching facilities to route the call to the designated 8YY provider.[15]

9. Carriers assess intercarrier compensation somewhat differently for 8YY calls than for other calls. When a caller places a regular long-distance call from a landline telephone, the caller's local exchange carrier routes that call to the long-distance carrier (interexchange carrier) used by the caller through pre-arranged direct connections with the interexchange carrier or through a nearby tandem switch and the interexchange carrier pays the local exchange carrier for originating the call. The interexchange carrier is then responsible for routing the call to its final destination and for paying any charges associated with its decisions about how to route the call. For its part, the interexchange carrier is paid by the customer that placed the call.

10. By contrast, when a caller makes a toll free call from a landline telephone, the 8YY provider pays the caller's local exchange carrier for originating the call and for performing the 8YY Database query.[16] The 8YY provider also pays tandem switching and transport charges to intermediate carriers in the call path between the local exchange carrier and the 8YY provider.[17] The 8YY customer compensates the 8YY provider for completing the call. The rates paid by 8YY providers for various access charges typically are tariffed rates which vary widely depending on where an 8YY call originates and how it is routed.[18]

11. The situation is slightly different for 8YY calls placed using a wireless carrier. The Commission's rules prohibit wireless carriers from tariffing terminating or originating access charges.[19]

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[11] *Toll Free Service Access Codes et al*., CC Docket No. 95-155 et al., NSD File Nos. L-99-87 and L-99-88, Fifth Report and Order in CC Docket No. 95-155, Order in NSD File No. L-99-87, Order in NSD File No. L-99-88, 15 FCC Rcd 11939, 11941, para. 2 (2000); *see also* Somos Comments at 3; Alliance for Telecommunications Industry Solutions Reply, WC Docket No. 10-90 et al., at 3 (filed Aug. 19, 2013).

[12] *1996 Database Access Tariffs Order*, 11 FCC Rcd at 15232-33, para. 9.

[13] *Id*.; *see also* Teliax and Peerless Network Reply at 15 (Teliax/Peerless Reply).

[14] AT&T Nov. 9, 2017 *Ex Parte* Attach. Traditional Originating 8YY Call Flow.

[15] *Id.*

[16] *See, e.g., id*. (providing a diagram illustrating the routing and intercarrier compensation flows for 8YY traffic); Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary FCC, WC Docket No. 10-90, CC Docket No. 01-92, Attach. 8YY Switched Access Charges by Call Flow at 3 (filed Nov. 6, 2017) (Verizon Nov. 6, 2017 *Ex Parte*) (listing the types of charges billed to 8YY providers by incumbent local exchange carriers); *see also* Windstream Services, LLC, Frontier Communications Corporation, and NTCA–The Rural Broadband Association Comments at 2 (Sept. 4, 2018) (Windstream et al. Comments).

[17] *See* AT&T Nov. 9, 2017 *Ex Parte* Attach. Traditional Originating 8YY Call Flow.

[18] Verizon Nov. 6, 2017 *Ex Parte* Attach. 8YY Switched Access Charges by Call Flow at 4 (providing tariff rates for 8YY traffic); AT&T Comments at 1; *8YY Further Notice*, 33 FCC Rcd at 5729-30, paras. 16-17.

[19] *See* 47 CFR § 20.15(c) ("Commercial mobile radio service providers shall not file tariffs for . . . interstate access service . . . ."); *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, WT Docket No. 01-316, Declaratory Ruling, 17 FCC Rcd 13192, 13198, para. 12 (2002), *pets. for review dismissed*, (continued….)

As a result, a wireless carrier cannot assess 8YY providers for originating end office charges, database query charges, or tandem switching or transport charges.

B. Impact of the 2011 *USF/ICC Transformation Order*

12. In the 2011 *USF/ICC Transformation Order*, finding that the intercarrier compensation system had become "riddled with inefficiencies and opportunities for wasteful arbitrage,"[20] the Commission undertook comprehensive reform of the intercarrier compensation system by adopting bill-and-keep "as the default methodology for all intercarrier compensation traffic."[21] As a first step in moving intercarrier compensation toward bill-and-keep, the Commission established a plan to transition all terminating end office rates and some terminating tandem switching rates to bill-and-keep over six years for price cap carriers and competitive local exchange carriers that benchmark to price cap carriers and nine years for rate-of-return carriers and the competitive local exchange carriers that benchmark to them.[22]

13. As part of the intercarrier compensation reforms adopted in the *USF/ICC Transformation Order*, the Commission created a transitional Eligible Recovery mechanism to mitigate revenue reductions wrought by the transition of terminating end office charges to bill-and-keep.[23] The Commission defined as "Eligible Recovery" the amount of intercarrier compensation revenue reductions

AT&T Corp. v. FCC, 349 F.3d 692 (D.C. Cir. 2003) (concluding that CMRS providers may collect access charges for calls that originate or terminate on their networks only pursuant to contract).

[20] *USF/ICC Transformation Order*, 26 FCC Rcd at 17669, para. 9.

[21] *Id.* at 17904, para. 736 (explaining that "[w]e believe setting an end state [of bill-and-keep] for all traffic will promote the transition to IP networks, provide a more predictable path for the industry and investors, and anchor the reform process that will ultimately free consumers from shouldering the hidden multi-billion dollar subsidies embedded in the current system").

[22] *Id.* at 17905, para. 739.

[23] *See id.* at 17956-87, paras. 847-904. The Commission premised the Eligible Recovery mechanism, in part, on mechanisms it had previously adopted, such as the Subscriber Line Charge, which allows carriers to recover certain costs through end-user charges. The Commission retained the Subscriber Line Charge—which is "the mechanism through which local exchange carriers recover a portion of the costs of their local loops through a flat per-line fee assessed on end users"—as well as the caps it had previously adopted limiting how much carriers could assess as the Subscriber Line Charge. *See Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges*, WC Docket No. 20-71, Notice of Proposed Rulemaking, 35 FCC Rcd 3165, 3166-67, para. 6 (2020) (*Telephone Access Charges Notice*). The Subscriber Line Charge is also referred to in the Commission's rules as the End User Common Line charge. 47 CFR §§ 69.104, 69.152; *Telephone Access Charges Notice*, 35 FCC Rcd at 3177, para. 36 n.102. For convenience, we use the term "Subscriber Line Charge" throughout this *Order*. For price cap carriers, there are three categories of caps on the Subscriber Line Charge: a primary residential or single-line business cap of $6.50 per line per month, a non-primary residential cap of $7.00 per line per month, and a multi-line business cap of $9.20 per line per month. *See* 47 CFR §§ 69.152(d)(ii)(D), (e)(1)(i), (k)(1)(i). These are hard caps. Under our rules, the price cap carrier Subscriber Line Charge must be the lesser of the hard cap or the Average Price Cap CMT Revenue per Line month as defined in section 61.3(d) of the Commission's rules for the primary residential or single-line business Subscriber Line Charge. *Id.* §§ 61.3(d), 69.152(d)(1)(i). For the non-primary residential and multi-line business Subscriber Line Charges, the charge must be the lesser of the hard cap or the greater of the rate charged as of June 30, 2000, less reductions needed to ensure that the price cap carrier does not over-recover CMT revenues or the Average Price Cap CMT Revenue per Line month, as defined in section 61.3(d). *Id.* §§ 69.152(e)(1)(ii), (k)(1)(ii). Average Price Cap CMT Revenue per Line month is the maximum total revenue a carrier would be permitted to receive from common line, marketing, and certain residual interconnection charge interstate access elements. *Id.* § 61.3(d). For rate-of-return carriers, there are two categories of caps on their counterpart of the Subscriber Line Charge: a residential or single-line business cap of $6.50 per line per month and a multi-line business cap of $9.20 per line per month. *See id.* §§ 69.104(n)(1)(ii), (o)(1)(i). These are also hard caps. Under our rules, the rate-of-return Subscriber Line Charge must be the lesser of the hard cap or one twelfth of the projected annual revenue requirement from the Subscriber Line Charge divided by the projected average number of subscriber lines in use during such an annual period. *Id.* §§ 69.104(n)(1)(i), (o)(1)(ii).

that price cap and rate-of-return incumbent local exchange carriers would be eligible to recover.[24] An incumbent local exchange carrier's Eligible Recovery is based on a percentage of the reduction in intercarrier compensation revenues resulting from the reforms adopted in the *USF/ICC Transformation Order*.[25] After calculating Eligible Recovery, incumbent local exchange carriers may recover that amount through Access Recovery Charges, subject to caps[26] and, where eligible, Connect America Fund Intercarrier Compensation support.[27] The Commission adopted a rebuttable presumption that these revenue recovery mechanisms would allow carriers to earn a reasonable return on their investment, and also adopted a Total Cost and Earnings Review to allow individual carriers to demonstrate that the rebuttable presumption is incorrect and that additional recovery is needed to prevent a taking.[28]

14. In the *USF/ICC Transformation Order*, the Commission found that "originating charges for all telecommunications traffic subject to [its] comprehensive intercarrier compensation framework should ultimately move to bill-and-keep."[29] It declined, however, to move originating access to bill-and-keep immediately.[30] Instead, it capped most originating access charges as "a first step" in a "measured

[24] *USF/ICC Transformation Order*, 26 FCC Rcd at 17957-58, paras. 850-51. Price cap carriers' Eligible Recovery includes the specific inter- and intrastate access elements reformed in the *USF/ICC Transformation Order* and therefore does not include 8YY originating access rate elements. *Id*. at 17957, para. 851; 47 CFR § 51.915(d). Rate-of-return carriers' Eligible Recovery includes all interstate switched access revenues but does not include originating intrastate End Office Access Service or originating intrastate Tandem-Switched Transport Access Service. 47 CFR §§ 51.903(j), 51.917(d). Therefore, interstate originating 8YY end office and tandem switching rates are included in the rate-of-return carrier Eligible Recovery calculation but intrastate originating 8YY rates are not.

[25] *USF/ICC Transformation Order*, 25 FCC Rcd at 17957-58, paras. 850-51. Rate-of-return carriers and price cap carriers calculate their Eligible Recovery differently. 47 CFR §§ 51.915(d) (price cap carriers), 51.917(d) (rate-of-return carriers). After initial one-time reductions, the baseline revenue figure from which carriers calculate their Eligible Recovery is reduced by 10% each year for price cap carriers through the Price Cap Carrier Traffic Demand Factor and 5% each year for rate-of-return carriers through the Rate-of-Return Carrier Baseline Adjustment Factor. *Id.* §§ 51.915(a)(10), 51.917(b)(3).

[26] *See* 47 CFR §§ 51.915(e), 51.917(e); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17958, para. 852 (discussing the Access Recovery Charge). For rate-of-return incumbent local exchange carriers, the residential Access Recovery Charge may not exceed $3.00 per month per line and may not be assessed if it causes a carrier's rate to exceed the Residential Rate Ceiling, which the Commission established to prohibit incumbent local exchange carriers from charging an Access Recovery Charge "on any consumer paying an inclusive local monthly phone rate of $30 or more." *See USF/ICC Transformation Order*, 26 FCC Rcd at 17958-61, para. 852; *see also* 47 CFR §§ 51.917(e)(6)(i)(F), (iii). The rate-of-return multi-line business Access Recovery Charge may not exceed $6.00 per month per line and any multi-line business customer's total Subscriber Line Charge plus Access Recovery Charge may not exceed $12.20 per line. *See* 47 CFR §§ 51.917(e)(6)(ii)(F), (iv); *USF/ICC Transformation Order*, 26 FCC Rcd at 17958-61, para. 852. For price cap incumbent local exchange carriers, the residential or single-line business Access Recovery Charge may not exceed $2.50 per month per line and may not be assessed to the extent it causes a carrier's rate to exceed the $30 per month Residential Rate Ceiling. *See* 47 CFR §§ 51.915(e)(5)(i)(E), (iii); *USF/ICC Transformation Order*, 26 FCC Rcd at 17958-61, para. 852. The price cap multi-line business Access Recovery Charge may not exceed $5.00 per month per line and any multi-line business customer's total Subscriber Line Charge plus Access Recovery Charge may not exceed $12.20 per month per line. *See* 47 CFR §§ 51.915(e)(5)(ii)(E), (iv); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17958-61, para. 852.

[27] Rate-of-return carriers may recover any Eligible Recovery that they cannot recover through permitted Access Recovery Charges from Connect America Fund Intercarrier Compensation. *See* 47 CFR § 51.917(f). As of July 1, 2019, price cap incumbent local exchange carriers no longer receive Connect America Fund Intercarrier Compensation support. *Id.* § 51.915(f)(5).

[28] *USF/ICC Transformation Order*, 26 FCC Rcd at 17996-97, para. 924.

[29] *Id*. at 17942, para. 817.

[30] *Id*. at 17942, para. 818.

transition toward comprehensive reform."[31] The Commission capped all interstate originating access charges and intrastate originating access charges for price cap carriers at their then current rates.[32] The Commission also capped interstate originating access charges for rate-of-return carriers.[33] But, it declined to cap intrastate originating rates for rate-of-return carriers to "control the size" of the Connect America Fund and to "minimize burdens on consumers."[34] The Commission further specified that the access charge reforms undertaken in the *USF/ICC Transformation Order* would "generally apply to competitive [local exchange carriers (LECs)] via the [competitive local exchange carrier (CLEC)] benchmarking rule," which allows competitive local exchange carriers to tariff interstate access charges "at a level no higher than the tariffed rate for such services offered by the incumbent LEC serving the same geographic area."[35]

15. In the *USF/ICC Transformation Further Notice*, the Commission committed to transition originating access charges to bill-and-keep[36] and sought further comment on how to make that transition.[37] It also specifically sought comment on the appropriate treatment of 8YY originating access, including the "need for a distinct 8YY resolution."[38] There was wide variation in 8YY originating access charges when the Commission capped most 8YY originating access charges at their 2011 rates in the *USF/ICC Transformation Order*. As a result, such rates continue to vary widely among carriers. Database query charge rates, for example, range from $0.0015 to $0.015 per query.[39]

C. 8YY Arbitrage and Abuse

16. The unique routing of, and compensation for, 8YY calls have created opportunities for arbitrage and other abuse of the intercarrier compensation system. As AT&T describes it, "originating access charges for 8YY calls inherently invite fraud and abuse, because they create a mismatch in pricing signals"[40] and carriers "are increasingly exploiting this arbitrage opportunity, and . . . increasingly focusing their efforts on 8YY calling now that most terminating access charges have gone to bill-and-

[31] *Id.*

[32] *Id.*

[33] *Id.* at 17936, para. 805.

[34] *Id.*

[35] *Id.* at 17937, para. 807; *see also* 47 CFR § 51.911(c). In 2001, the Commission adopted rules requiring competitive local exchange carriers to benchmark their access charge rates to the rates charged by the incumbent local exchange carriers that serve the same areas as a means of ensuring that competitive local exchange carriers' rates are just and reasonable. *See generally Access Charge Reform et al.*, CC Docket No. 96-262 et al., Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9925, para. 3 (2001) (*Competitive LEC Access Charge Order*); 47 CFR § 61.26. The Commission, however, did not require competitive local exchange carriers to benchmark their 8YY Database query rates to incumbent carriers' rates. *See Competitive LEC Access Charge Order*, 16 FCC Rcd at 9948, para. 56 n.128.

[36] *USF/ICC Transformation Further Notice*, 26 FCC Rcd at 18109-10, para. 1298 (determining that "such charges should be eliminated at the conclusion of the ultimate transition to the new intercarrier compensation regime").

[37] *Id.* at 18109-11, paras. 1298-1302.

[38] *Id.* at 18111, para. 1304; *see also id.* at 18111-12, paras. 1303-05.

[39] Letter from Matt Nodine, Assistant Vice President Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92, Attach. AT&T *Ex Parte* at 8 (filed Feb. 12, 2018) (AT&T Feb. 12, 2018 *Ex Parte*) (chart showing various 8YY Database query rates); *see also* AT&T Jan. 13, 2020 *Ex Parte* Attach. AT&T 8YY Originating Access at 9.

[40] AT&T Comments at 1; *see also* Ad Hoc Telecommunications Users Committee Comments at 4 (Ad Hoc Comments); CenturyLink Comments at 4; Somos Reply, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92, at 1, 3 (rec. Aug. 15, 2017) (Somos 2017 Reply); Verizon Comments at 1; CenturyLink Reply at 3. *But see* NRIC Comments at 5-9 (arguing that the record is insufficient to support the existence of industry-wide arbitrage).

keep."[41] Moreover, as the Commission observed in the *USF/ICC Transformation Further Notice*, "because the calling party chooses the access provider but does not pay for the toll call, it has no incentive to select a provider with lower originating access rates."[42] Because 8YY originating access charges have not yet transitioned to bill-and-keep, neither the originating carrier nor any intermediate provider that performs tandem switching and transport has an incentive to use the lowest cost means of routing the call since both may collect access charges.[43] Incentives for 8YY abuse are further enhanced by the fact that 8YY access and 8YY Database query rates vary significantly, creating incentives for some providers to use carriers with higher rates to increase their revenues.[44] Commenters identify four types of abuse associated with 8YY calls: traffic pumping, benchmarking abuse, mileage pumping, and database query abuse.[45]

17. 8YY traffic pumping, or "robocalling," occurs when an access-stimulating entity enters into a revenue sharing agreement with a local exchange carrier and then uses auto-dialing equipment to generate significant amounts of 8YY traffic that the carrier passes on to the interexchange carrier for

[41] AT&T Comments at 2.

[42] *USF/ICC Transformation Further Notice*, 26 FCC Rcd at 18111, para. 1303.

[43] *8YY Further Notice*, 33 FCC Rcd at 5731-33, paras. 24-29; *see also* Ad Hoc Comments at 4 (emphasis in original) ("[T]he party who *chooses* the product does not *pay* for it and thus creates no competitive market pressure on the provider."); GCI Communication Corp. Comments at 7 (GCI Comments) ("Like the terminating end of a toll call, the IXC is unable . . . to encourage the 8YY caller to select a LEC that charges lower access rates. The caller (for an 8YY call) . . . is insensitive to the level of access charges that the LEC charges the IXC and which become part of the cost of the IXC's service."); GCI Reply at 5 (footnotes omitted) ("IXCs that carry an 8YY call have no control over the caller's choice of originating carrier. IXCs have no choice but to deliver the traffic for their 8YY customers. As a result, originating carriers have no incentive to keep costs low."); AT&T Comments at 4 (reasoning that the "calling party in an 8YY call chooses the originating LEC but does not pay or contract with the IXC for the long-distance call" and therefore "the IXC has no choice but to use the originating LEC chosen by the calling party"); AT&T Jan. 13, 2020 *Ex Parte* at 1.

[44] *See, e.g.*, Letter from Mike Saperstein, Vice President, Strategic Initiatives & Partnerships, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 3, 5 (filed Feb. 25, 2020) (USTelecom Feb. 25, 2020 *Ex Parte*); Letter from Matt Nodine, Assistant Vice President Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92, Attach. AT&T *Ex Parte* at 4 (filed Dec. 4, 2017) (diagram illustrating 8YY aggregation occurring in a state with typically higher access rates); *id*. at 9 (chart illustrating the variability of 8YY Database query charges).

[45] *See, e.g.*, CenturyLink Comments at 4 ("CenturyLink generally concurs in the fundamental conclusion of the *NPRM* that a variety of different forms of arbitrage and fraud have become prevalent in the ICC regime currently applicable to 8YY traffic" and discussing benchmarking and mileage pumping in particular); AT&T Comments at 8-9 (moving to bill-and-keep for 8YY access charges would "eliminate any possibility that LECs could pursue" benchmarking or mileage and traffic pumping); *id*. at 14 ("[E]xcessive database charges represent a large and growing portion of the overall problems related to 8YY calling."); AT&T Jan. 13, 2020 *Ex Parte* at 2-5 (explaining benchmarking and traffic pumping abuses); Somos Comments at 1 (explaining that "Somos is concerned about the negative effect traffic pumping has on Toll Free end-users and the harm it can bring to the entire industry"); Ad Hoc Comments at 5 ("With some charges for 8YY originating access set as much as half a million times in excess of the incremental cost of providing services . . . it is small wonder that traffic pumping schemes exist."); Letter from Sara Crifasi, Counsel to Ad Hoc Telecom Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156 et al., at 2 (filed Apr. 2, 2020) (Ad Hoc Apr. 2, 2020 *Ex Parte*) (discussing the effects of traffic pumping observed by Ad Hoc's members); Verizon Comments at 4 (arguing that "the per-call charges for querying the 8YY database on a toll free call are fueling arbitrage" and that "[t]here are few, if any, limits on these 8YY query charges"); Comcast Comments at 5 ("The record contains substantial evidence of significant, inexplicable variations among the rates that service providers assess for 8YY database query dips."); ITTA Comments at 3 (voicing support for "the Commission's efforts to eradicate pestilent robocalls and to eliminate abuses of the intercarrier compensation regime"); Verizon Nov. 6, 2017 *Ex Parte* Attach. 8YY Switched Access Charges by Call Flow at 5 (providing a diagram illustrating benchmarking abuse).

payment.[46] This kind of abuse involves the generation of 8YY traffic that has no legitimate purpose and exists solely for the purpose of obtaining intercarrier compensation. As AT&T explains, "these fraudulent calling schemes cause a wide variety of harms" including inundating "8YY customers with unwanted calls that increase the 8YY customer's expense," and affect "the ability of legitimate calls to be completed or cause other systems to be disrupted."[47] As a result, 8YY customers "must pay for the traffic pumpers' calls to their numbers, for the time wasted by congested incoming lines and lost employee productivity, and for the procurement of remedial services."[48] 8YY robocallers have become very sophisticated and are able to display a different spoofed telephone number for each call they place to elude easy detection of their illegitimate calls.[49]

18. A second type of benchmarking abuse occurs when an originating carrier in one part of the country sends its toll free calls to a competitive local exchange carrier located in a different part of the country where the incumbent local exchange carrier serving that geographic area has relatively high access charges.[50] As AT&T explains, some competitive local exchange carriers "have set themselves up as 8YY 'aggregators,' agreeing to handle 8YY calls from many originating providers."[51] The aggregating competitive local exchange carrier hands off its aggregated 8YY traffic to interexchange carriers in these more remote areas, thereby allowing the competitive local exchange carrier to charge higher access charges "relative to what the provider would have been able to charge in the incumbent LEC area where the call was actually placed."[52]

19. As Bandwidth further explains, toll free aggregators "that are inserted into the call path by the originators of Toll Free traffic routinely ignore the routing instructions in the SMS 800 database."[53] These toll free aggregators chosen by the originating carriers route 8YY calls to "whichever IXC or tandem is willing to pay the highest rate."[54] This kind of arbitrage "increases the amount of revenue to be shared, often adds additional hops, and can result in failed calls . . . driving up costs and disrupting

[46] AT&T Jan. 13, 2020 *Ex Parte* at 2-3 (describing traffic pumping in detail); Ad Hoc Comments at 4 ("[F]raud and traffic pumping schemes . . . are rampant in this segment of the market today."); Somos 2017 Reply at 1 (Toll Free Responsible Organizations "cited traffic pumping as the number one barrier to promoting Toll Free to services customers. Clearly, Toll Free traffic pumping harms the overall Toll Free industry."); Verizon Comments, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92, at 4 (rec. July 31, 2017) (detailing a traffic pumping scheme observed by Verizon involving the use of an autodialer and explaining that the local exchange carriers "involved in this arbitrage scheme often send Verizon no other traffic, indicating that their sole business plan is to exploit the originating access regime").

[47] AT&T Jan. 13, 2020 *Ex Parte* at 3; *see also* Ad Hoc Apr. 2, 2020 *Ex Parte* at 2-3.

[48] Ad Hoc Apr. 2, 2020 *Ex Parte* at 2; *see also id*. Attach. A, Excerpts from SecureLogix Website (illustrating web content from a sample network security service).

[49] AT&T Jan. 13, 2020 *Ex Parte* at 2-3. Spoofing is the manipulation of caller identification information and is often used to facilitate fraudulent and other harmful activities. *See, e.g., Implementing Section 503 of RAY BAUM'S Act et al.*, WC Docket Nos. 18-335, 11-39 et al., Notice of Proposed Rulemaking, 34 FCC Rcd 738, 738, para. 1 (2019). The Commission's rules prohibit spoofing done with the intent to defraud, cause harm, or wrongfully obtain anything of value. 47 CFR § 64.1604(a).

[50] *See 8YY Further Notice*, 33 FCC Rcd at 5732, para. 25; AT&T Nov. 9, 2017 *Ex Parte* Attach. Aggregated Originating 8YY Traffic Call Flow (diagram illustrating an example of benchmarking abuse).

[51] AT&T Comments at 8-9.

[52] *Id.* at 8; *see also* Verizon Nov. 6, 2017 *Ex Parte* at 1.

[53] Letter from Tamar E. Finn, Counsel to Bandwidth, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 2 (filed May 1, 2020) (Bandwidth May 1, 2020 *Ex Parte*).

[54] *Id.*

[carriers'] ability to properly manage their networks."[55] These practices can also affect network management, causing unnecessary network congestion and ultimately distorting network investment.[56]

20. A third type of 8YY arbitrage is mileage pumping, which occurs when a carrier artificially inflates the distance it routes an 8YY call to increase the transport revenues it receives when it hands off an 8YY call to the interexchange carrier that serves as the 8YY provider.[57] Mileage pumping occurs when "a CLEC tariffs a per-mile charge for transport and then either (i) bills the IXC for transport it does not actually provide (because it is provided by a different provider) or (ii) inefficiently routes traffic long distances—sometimes more than a hundred miles—to inflate the number of miles applied to the per-mile transport charge."[58]

21. Finally, there is 8YY Database query abuse, which results from relatively high and varied database query charges[59] and the fact that often more than one carrier assesses a database query charge in the course of routing an 8YY call (i.e., double dipping).[60] A significant portion of 8YY origination revenues are derived from assessing database query charges.[61] The ability to assess high database query charges provides an additional incentive and revenue source for carriers engaged in other forms of 8YY arbitrage.

D. Recent Procedural History

22. In 2016, the Commission sought comment on a petition filed by AT&T which, in relevant part, sought forbearance from rules related to pricing regulation and tariffing of 8YY Database query

[55] *Id*. As Bandwidth further explains, "[a]s tandem revenues are increased by routing . . . Toll Free calls through multiple tandems, the opportunity to share additional revenue is increased." *Id*.

[56] *Id*. (asserting that "connections between tandems can become overloaded because fraudulent calls are routed over trunks that are not designed to carry the misrouted Toll Free calls"); AT&T Jan. 13, 2020 *Ex Parte* at 3 ("[T]he sheer inundation of the 8YY customer's systems can affect the ability of legitimate calls to be completed or cause other systems to be disrupted.").

[57] *See* AT&T Comments, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92, at 14 (rec. July 31, 2017) (AT&T 2017 Comments) (explaining mileage pumping schemes); *see also* CenturyLink Comments at 4 ("[T]hese practices are inherently unlawful and potentially fraudulent . . . ."). For a broader discussion of mileage pumping, 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, 9066, para. 70 (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).

[58] AT&T 2017 Comments at 14 n.32 (citing an example of a carrier that "has billed AT&T 192 miles of distance-sensitive transport charges on virtually every minute of traffic, resulting in charges that are inflated by hundreds of percent").

[59] AT&T Feb. 12, 2018 *Ex Parte* Attach. AT&T *Ex Parte* at 7 ("[T]here is a wide variability in the query rates assessed by carriers of 8YY traffic."); *id*. at 8 (chart showing 8YY Database query rates as high as $0.015).

[60] *Id*. at 7 ("AT&T data indicates [sic] that multiple carriers are assessing 8YY query charges for the same call.").

[61] AT&T indicates that "database query charges for 8YY calls now represent an astounding 20 percent of AT&T's total originating access expense." AT&T Jan. 13, 2020 *Ex Parte* at 5.

charges.[62] AT&T subsequently moved to withdraw its petition[63] and the Commission granted its motion.[64]

23. In 2017, the Wireline Competition Bureau (Bureau) issued a Public Notice[65] seeking to update the record in the *USF/ICC Transformation Order* dockets on 8YY access charges, in part in response to an *ex parte* letter filed by Ad Hoc Telecommunications Users Committee (Ad Hoc).[66] In its letter, Ad Hoc alleges that there has been an increase in 8YY-related arbitrage and asks the Commission to reduce or eliminate incentives for that arbitrage.[67]

24. In 2018, the Commission adopted a Further Notice of Proposed Rulemaking (*8YY Further Notice*) seeking comment on a proposal to move all 8YY originating access charges to bill-and-keep, impose a nationwide cap on 8YY Database query charges, and impose a limit of one query charge per 8YY call.[68] The *8YY Further Notice* also invited commenters to "propose additional, or alternative, methods for reforming originating 8YY access charges" in ways that "would reduce abusive practices related to 8YY calls."[69] It also sought comment on potential sources of revenue recovery.[70]

III. DISCUSSION

25. Today, we take the next steps toward transitioning intercarrier compensation to bill-and-keep by adopting rules aimed at curtailing abuse of the 8YY intercarrier compensation regime and preserving the value of toll free services. As an initial step, and to avoid further opportunities for arbitrage or rate increases during the transitions, we cap all originating 8YY end office, tandem switching and transport, and database query charges at their current rates as of the effective date of this *Order*.[71] We then transition each of these rate elements. We reduce originating 8YY end office charges to bill-and-keep over three further steps beginning July 1, 2021 and ending July 1, 2023. We also adopt a single uniform nationwide rate cap of $0.001 per minute for originating 8YY tandem switching and transport access charges as of July 1, 2021.[72] We reduce database query charges to a cap of $0.0002 per query in three steps ending July 1, 2023, and as of the effective date of this *Order*, we end double dipping by

[62] *Pleading Cycle Established for Comments on AT&T's Petition for Forbearance from Certain Tariffing Rules*, Public Notice, 31 FCC Rcd 11935 (WCB 2016); AT&T Jan. 13, 2020 *Ex Parte* Attach. Petition of AT&T for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363 (filed Sept. 30, 2016).

[63] Motion of AT&T Services, Inc., to Withdraw Petition for Forbearance, WC Docket No. 16-363 (filed Nov. 16, 2017).

[64] Petition of AT&T Services, Inc., for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges, WC Docket No. 16-363, Order, 32 FCC Rcd 10222 (WCB 2017).

[65] *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, WC Docket No. 10-90 et al., Public Notice, 32 FCC Rcd 5117 (WCB 2017).

[66] *See generally* Letter from Colleen Boothby, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 19, 2017).

[67] *Id*. at 2.

[68] *See generally 8YY Further Notice*, 33 FCC Rcd 5723.

[69] *Id.* at 5750-51, para. 99.

[70] *Id*. at 5741, para. 61.

[71] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17932-33, para. 798 (explaining that a cap "ensures no rate increase during reform, and that carriers do not shift costs between or among other rate elements").

[72] The actions we take today impose various rate caps. For example, after July 1, 2021, carriers may not tariff rates for database query charges that are higher than the specified rate cap of $0.001. As the Commission has previously explained, however, the tariffing rules we adopt are default rules and carriers remain free to negotiate other mutually acceptable rates. *E.g.*, *id.* at 17677, para. 35.

prohibiting carriers from charging for more than one query per call. These changes, which are consistent with recommendations in the USTelecom industry consensus proposal,[73] will lower 8YY calling costs by removing inefficiencies, reducing incentives for carriers to use TDM networks and thereby encouraging the adoption of IP-based networks, and diminishing 8YY intercarrier compensation disputes. In making these changes to intercarrier compensation for 8YY traffic we continue our progress toward moving our intercarrier compensation system toward a bill-and-keep end state and drastically reduce the incentives that have led to the proliferation of 8YY arbitrage schemes.

A. Transitioning Originating 8YY End Office Charges

26. As proposed in the *8YY Further Notice* we transition originating 8YY end office charges to bill-and-keep.[74] We agree with those commenters that argue that moving 8YY originating end office charges to bill-and-keep is the best way to remove the underlying incentives to route calls inefficiently and generally inflate the charges imposed on 8YY providers created by the existence of originating access charges for 8YY traffic.[75] We also agree with those commenters that propose a three-year transition period as one that will give carriers sufficient time to adjust to this new regime.[76]

27. As the initial step, we cap all intrastate originating 8YY end office rates not previously capped at their current levels as of the effective date of this *Order*.[77] As the Commission explained when it capped most originating access rates, capping rates "ensures that no rates increase during reform" and also "minimize disruption to consumers and service providers by giving parties time, certainty, and stability" as they adjust to the changes we make today.[78]

28. Then, effective July 1, 2021, we require all local exchange carriers to bring any intrastate originating 8YY end office access rates that exceed the comparable interstate rates into parity with the

[73] *See generally* USTelecom Feb. 25, 2020 *Ex Parte. But see* Letter from John Barnicle, President & CEO, Peerless Network, Inc., and David Aldworth, President, Teliax, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 2 (filed Apr. 27, 2020) (Teliax/Peerless Apr. 27, 2020 *Ex Parte*) (arguing that the USTelecom proposal is only a consensus of USTelecom's members); Letter from Carolyn A. Mahoney, Counsel to Intrado Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156 et al., Attach. at 3 (filed May 4, 2020) (Intrado May 4, 2020 *Ex Parte*) (asserting that USTelecom's proposal excludes the interests of independent tandem providers). We recognize that not all carriers have endorsed the USTelecom proposal but find significant the fact that it has the support of many of the carriers charging originating 8YY access charges, including carriers whose size and business models vary significantly.

[74] *See 8YY Further Notice*, 33 FCC Rcd at 5734, para. 31. Originating 8YY end office charges include all usage-based rate elements related to the end office origination of 8YY calls, as "End Office Access Service rate elements" are defined at section 51.903(d)(3) of our rules. *See, e.g.*, Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, CC Docket No. 01-92, Attach. 8YY Switched Access Charges by Call Flow at 3 (filed Dec. 12, 2017) (Verizon Dec. 12, 2017 *Ex Parte*). Non-usage-based rates, such as flat rates for dedicated port charges do not transition. *See* Letter from Mike Saperstein, Vice President, Strategic Initiatives and Partnerships, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 2 n.8 (filed May 11, 2020) (USTelecom May 11, 2020 *Ex Parte*).

[75] *See, e.g.*, CenturyLink Comments at 8; AT&T Comments at 2-3; Verizon Comments at 1; *see also* GCI Comments at 7; Ad Hoc Comments at 3-5; Comcast Comments at 2.

[76] *See, e.g.*, USTelecom Feb. 25, 2020 *Ex Parte* at 3; CenturyLink Comments at 14-15; GCI Comments at 8.

[77] Most originating end office charges are already capped. In the *USF/ICC Transformation Order*, the Commission capped all interstate originating access charges and intrastate originating access charges for price cap carriers. *USF/ICC Transformation Order*, 26 FCC Rcd at 17942, para. 818. The Commission, however, did not cap rate-of-return carriers' intrastate originating access rates. *See id*. at 17934, para. 801 & fig. 9. Competitive local exchange carriers' rates are subject to the Commission's benchmark rule, which caps the tariffed rates for their services at the level of the competing incumbent local exchange carrier for similar service. *See id*. at 17937, para. 807; 47 CFR§§ 51.911(c), 61.26.

[78] *USF/ICC Transformation Order*, 26 FCC Rcd at 17932-33, para. 798.

comparable interstate rates. As the Commission has recognized, intrastate rates that vary from interstate rates create "incentives for arbitrage and pervasive competitive distortions within the industry."[79] By bringing intrastate rates into parity with comparable interstate rates, this initial step will "minimize opportunities for arbitrage that could be presented by disparate intrastate rates."[80]

29. In the *USF/ICC Transformation Order*, the Commission declined to cap intrastate originating rates for rate-of-return carriers because it wanted to "minimize[] the burden intercarrier compensation reform [would] place on consumers and . . . help manage the size of the access replacement mechanism."[81] The Commission sought comment on whether to "initially defer the transition to bill-and-keep for originating access to the states to implement."[82] Some state commissions have urged the Commission to proceed cautiously, if at all,[83] and to allow an additional time period to transition originating access to bill-and-keep.[84] In the nine years since the Commission adopted the *USF/ICC Transformation Order*, the industry has transitioned the majority of interstate and intrastate terminating charges to bill-and-keep without disrupting carriers' ability to operate and update their networks. Thus, the Pennsylvania Public Utilities Commission's argument that it would be premature for the Commission to proceed with any further intercarrier compensation reform because "the Commission has not yet fully implemented the initial rate transition for terminating access charges that it adopted in 2011"[85] is now moot. Likewise, the Pennsylvania Public Utilities Commission's concern that a "notice to refresh the record is not the proper vehicle to consider and adopt any comprehensive proposals" to reform intercarrier compensation is no longer relevant.[86] We only revise originating access for 8YY services, not other aspects of intercarrier compensation, and we do so after the Commission released a Further Notice of Proposed Rulemaking and a rigorous examination of the record we have received in response to that Further Notice. We find no reason to further delay the transition of intrastate originating 8YY access charges for rate-of-return carriers. To the contrary, we find that bringing some rate-of-return carriers' intrastate originating 8YY end office access rates to parity and capping them all will reduce arbitrage with minimal disruption, and will provide an appropriate starting point for the multiyear transition of these rates to bill-and-keep that we adopt herein.[87]

30. Although the Commission capped price cap carriers' interstate and intrastate originating rates in the *USF/ICC Transformation Order*, the Commission did not require those carriers to bring

[79] *Id*. at 17929-30, para. 791.

[80] *See id.* at 17930, para. 792; *see also* USTelecom Feb. 25, 2020 *Ex Parte* at 3 (reasoning that "bringing rates to parity reduces incentives for arbitrage"); Letter from Matthew S. DelNero, Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 4-5 (filed Mar. 31, 2020) (Inteliquent Mar. 31, 2020 *Ex Parte*) (arguing that "[e]liminating geographic disparities in rates at step one, rather than later in time, will promptly eliminate opportunities for jurisdictional arbitrage"). However, capped intrastate originating 8YY end office access service rates that are lower than the comparable interstate rates shall remain capped at that lower rate.

[81] *USF/ICC Transformation Order*, 26 FCC Rcd at 17905, para. 739. The Commission capped intrastate originating switched access rates for price cap carriers. *See id*. at 17933-34, para. 800 n.1494 ("We do, however, cap price cap interstate and intrastate originating access rates to combat potential arbitrage and other efforts designed to increase or otherwise maximize sources of intercarrier revenues during the transition.").

[82] *Id*. at 18111, para. 1302.

[83] *See* Pennsylvania Public Utility Commission Reply, WC Docket No. 10-90 et al., at 4 (rec. Nov. 13, 2017) (PA PUC 2017 Reply).

[84] *See id.*; *see also* Indiana Utility Regulatory Commission Comments, WC Docket No. 10-90 et al., at 7 (rec. Feb. 24, 2012).

[85] PA PUC 2017 Reply at 3.

[86] *Id*. at 4.

[87] *See* USTelecom Feb. 25, 2020 *Ex Parte* at 2 (proposing caps on intrastate end office rates); Ad Hoc Apr. 2, 2020 *Ex Parte* at 1 (supporting the USTelecom proposal).

originating intrastate rates to parity with the comparable originating interstate rates.[88] If a price cap carrier's capped originating intrastate end office rates are above the comparable interstate rates, that carrier is required to reduce its intrastate rates to interstate levels on July 1, 2021.

31. After reducing or capping intrastate 8YY end office rates, we next transition all intrastate and interstate originating 8YY end office charges from their capped amounts to bill-and-keep in two equal reductions. Effective July 1, 2022, we reduce all originating 8YY end office rates to half of their capped levels. Then, effective July 1, 2023, we reduce all originating 8YY end office rates to bill-and-keep.

32. Moving originating 8YY end office charges to bill-and-keep is consistent with the Commission's long-held determination that bill-and-keep will be the end state for all access charges, including originating access.[89] It therefore aligns with the Commission's adoption of bill-and-keep for local exchange carriers' terminating end office access charges in the 2011 *USF/ICC Transformation Order* as well as the Commission's decision that wireless providers cannot impose access charges. Indeed, as Ad Hoc observes, "[t]he legitimacy of the use of bill-and-keep as a mechanism for access traffic has not been the subject of serious debate for some time."[90]

33. We also agree with those commenters that argue that moving to bill-and-keep is the best approach to reducing (or eliminating) incentives for 8YY arbitrage and other abuse.[91] Under our existing rules, the interexchange carrier is unable to choose the originating call path and must pay the local exchange carrier's charges to originate the call, and there is evidence that carriers routinely ignore the routing direction provided by the 8YY provider in the 8YY Database.[92] This mismatch in incentives is "what *inherently* creates the opportunity for arbitrage and fraud,"[93] as originating local exchange carriers not only lack incentives to minimize intercarrier compensation charges but actually have an incentive to inflate those charges. As Ad Hoc explains, "[b]ecause the choosing party has no incentive to select the provider with the lowest access charges, there is no competitive pressure on those charges. But there are powerful incentives for unscrupulous actors to take advantage of this broken market by generating traffic to 8YY numbers for no purpose other than to inflate the access charge revenues that are ultimately paid by toll free service customers."[94] Bill-and-keep, by contrast, "will incentivize efficient call routing and will benefit the public interest,"[95] as the originating "LEC would recover its costs from its end user"—or

[88] *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, para. 805 & fig. 9.

[89] *See id*. at 17942, para. 817 ("We find that originating charges also should ultimately be subject to the bill-and-keep framework" because "[t]he legal framework underpinning our decision today is inconsistent with the permanent retention of originating access charges.").

[90] Ad Hoc Comments at 5.

[91] AT&T Reply at 3-4; *see also* Ad Hoc Comments at 5; Verizon Comments at 1-2; Comcast Comments at 4-5. *But see* Charter Comments at 2-5 (arguing that moving to bill-and-keep would provide a benefit to interexchange carriers while requiring originating carriers to absorb or pass through the costs of 8YY calls). As discussed below, we do not expect that moving 8YY originating access to bill-and-keep will lead to appreciable increases in rates for local service.

[92] *See* Bandwidth May 1, 2020 *Ex Parte* at 2 (explaining that "[i]nstead of routing the Toll Free call to the designated IXC chosen for the originating area, the companies route the call to whichever IXC or tandem is willing to pay the highest rate").

[93] AT&T Reply at 7.

[94] Ad Hoc Comments at 4; *see also, e.g.*, AT&T Comments at 10 ("The current system creates arbitrage opportunities . . . both to artificially inflate the amount of 8YY calling and to artificially increase the costs of 8YY calls to IXCs and their customers.").

[95] *See* GCI Reply at 3-4.

from existing recovery mechanisms—and will face competitive pressure to make cost-efficient routing decisions.[96]

34. The Commission previously adopted bill-and-keep as the default methodology for all intercarrier compensation traffic[97] and recognized that adopting bill-and-keep "imposes fewer regulatory burdens and reduces arbitrage and competitive distortions inherent in the current [intercarrier compensation] system, eliminating carriers' ability to shift network costs to competitors and their customers."[98] We find no merit to arguments that 8YY traffic should be excluded from our actions to move intercarrier compensation to bill-and-keep.[99] Contrary to some commenters' claims, apart from the obligation of 8YY providers to pay the long-distance costs, there is nothing unique about 8YY traffic that militates in favor of exempting such traffic from a bill-and-keep regime.[100] Bill-and-keep itself remains "competitively neutral, treating all carriers equally."[101] And, moving end office charges to bill-and-keep will significantly reduce 8YY arbitrage, given that end office charges represent a majority of all originating access charges.[102] In sum, we agree that adopting bill-and-keep for 8YY end office charges "fosters competition, is simple to establish and administer, and addresses arbitrage," and "the 'competitive distortions' 8YY access charges create."[103]

35. Some commenters argue against moving to bill-and-keep and instead urge us to adopt narrower, more targeted rules to prohibit specific 8YY arbitrage or abusive practices[104] or simply pursue enforcement through the Commission's Enforcement Bureau or the courts.[105] Targeted enforcement actions are important, but insufficient because enforcement under our current rules for the provision of

[96] AT&T Reply at 7; *see also* GCI Comments at 7; CenturyLink Comments at 8; Verizon Comments at 1; GCI Reply at 1.

[97] *USF/ICC Transformation Order*, 26 FCC Rcd at 17904, para. 736.

[98] *Id*. at 17904, para. 738.

[99] *See, e.g.*, West Telecom Services, LLC, Comments at iii (West Comments). West Telecom Services subsequently changed its name to Intrado Communications, LLC.

[100] West Comments at iii, 22; West Telecom Services, LLC, Reply at 9 (West Reply); ITTA Comments at 7.

[101] CenturyLink Comments at 8.

[102] AT&T Jan. 13, 2020 *Ex Parte* Attach. AT&T 8YY Originating Access at 6 (chart showing originating end office access charges represent 53% of all originating (end office plus local transport) access charges).

[103] GCI Reply at 3-4. *But see* Letter from Carolyn A. Mahoney, Counsel to Intrado, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156 et al., at 6 (filed May 13, 2020) (Intrado May 13, 2020 *Ex Parte*) (arguing that bill-and-keep "provides little deterrence to fraudulent 8YY calling").

[104] *See, e.g.*, O1 Communications Reply at 6 (requesting the Commission "address bad actors on a case by case basis [or] in other proceedings targeted to address the specific problems raised"); West Comments at 9 ("The Commission instead should limit its near-term rule changes to targeted approaches that can expeditiously and effectively eliminate 8YY access arbitrage situations. These approaches include declaring certain practices of 'bad actors' to be unjust and unreasonable under the Communications Act, enlisting industry cooperative efforts to identify and shut down those activities, and promoting establishment of efficient direct connections between providers when warranted by the amount of traffic exchanged between them."); Letter from Matthew S. DelNero and Thomas G. Parisi, Counsel to Inteliquent, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Dec. 20, 2019) ("Inteliquent agrees that there are occasional abuses in the system and supports targeted efforts to address those abuses."); WTA – Advocates for Rural Broadband Comments at 1 (WTA Comments) (suggesting that robocalls "made for the sole or primary purpose of generating originating 8YY access revenues" can be prohibited, traced and identified, precluded from collecting unlawful charges, and subjected to forfeitures); NRIC Comments at iii, 11.

[105] West Comments at 2-4 (advocating limited action against "a few 'bad actors'" and "case-by-case enforcement"); NRIC Comments at 7 (arguing IXCs may proceed by "complaint or court action"); WTA Comments at 5 (seeking targeted, active enforcement against bad actors); Bandwidth May 1, 2020 *Ex Parte* at 2 (proposing that "the FCC take stronger enforcement actions against bad actors and those who carry their traffic").

8YY services would not be able to address the underlying incentives that drive 8YY arbitrage and abuse. While adopting rules narrowly targeting specific practices would likely result in parties revising their arbitrage schemes to circumvent the specific prohibitions,[106] adopting narrower solutions would also be "impractical and unworkable as a matter of day-to-day implementation,"[107] and would continue to place the burden of detection and enforcement on 8YY providers, rather than on the carriers that are abusing the current access charge regime. We also agree with AT&T that there is a risk that "*ex ante* prohibitions will not deter bad actors from pursuing traffic-pumping or other arbitrage schemes, and the result of any such system will inevitably be extensive *ex post* litigation and billing disputes."[108] And despite requests for targeted enforcement against, for example, "robocalling-enabled arbitrage or other bad practices,"[109] commenters do not provide specifics that would allow us to identify these "bad practices," or what specific measures we should take to curtail them.[110] Without eliminating the financial incentives to engage in arbitrage, the Commission would continually find itself reacting to new arbitrage schemes designed to exploit our rules, given the creativity and adaptability of entities engaging in arbitrage. We conclude that focusing on the next steps in transitioning 8YY access rates to "bill-and-keep eliminates the financial incentives"[111] for 8YY arbitrage and is more likely to eliminate these practices than targeted measures.

36. For similar reasons, we also decline to adopt Aureon's proposal that instead of modifying our intercarrier compensation rules we adopt a blanket prohibition against "8YY abuse as an unjust and unreasonable practice."[112] Aureon offers no details about the types of conduct it would have us prohibit, let alone how we could effectively enforce such a prohibition. Further, nothing in Aureon's submission or in the record supports its assertion that merely adopting an amorphous prohibition against 8YY abuse would lead industry to "work cooperatively and take the legal and technical actions necessary to prevent unlawful 8YY calls."[113] Aureon's contention that the Commission's "indirect approaches, which have so far focused upon financial incentives and modifications to intercarrier compensation, have not stopped access arbitrage" is not supported by the facts.[114] In 2011, before the *USF/ICC Transformation Order* took effect, terminating access arbitrage was estimated to cost carriers and their customers as much as $330 million to $440 million annually.[115] By 2019, that estimate declined to $60 million to $80 million, a dramatic reduction that we believe was largely the result of the Commission's reform efforts.[116] The rules we adopted last year in the access arbitrage proceeding appear to be further reducing the costs of

[106] *Access Arbitrage Order*, 34 FCC Rcd at 9036, para. 3 (describing how access stimulation schemes "adapted" to the measures the Commission adopted in the *USF/ICC Transformation Order*).

[107] AT&T Reply at 6.

[108] *Id*. (citing Verizon Comments at 2).

[109] *See* West Reply at 10-11.

[110] *See id*. (arguing that the Commission should enlist industry cooperation to identify and eliminate arbitrage but providing no explanation of how we would do so or why we should expect such efforts to be successful given that industry has been unable to address 8YY arbitrage effectively so far).

[111] Verizon Comments at 2.

[112] Iowa Network Services, Inc. d/b/a Aureon Network Services Reply at 3-5 (Aureon Reply).

[113] *Id*. at 4.

[114] *Id*. at 4-5.

[115] *USF/ICC Transformation Order*, 26 FCC Rcd at 17876, para. 664 ("Verizon estimates the overall costs to IXCs to be between $330 and $440 million per year . . . .").

[116] *See Access Arbitrage Order*, 34 FCC Rcd at 9039, para. 9 (citing estimates by interexchange carriers).

terminating access arbitrage.[117] The rules we adopt today are another step in the Commission's "comprehensive intercarrier compensation reform," and continue our effort to address, over time, carriers' incentives and ability to abuse our intercarrier compensation rules.[118]

37. We find unnecessary suggestions that we adopt rules requiring local exchange carriers to offer direct connections to interexchange carriers.[119] AT&T, for example, proposes that we adopt a rule requiring that local exchange carriers either offer direct connections to interexchange carriers for originating 8YY access or, if the originating carrier refuses to do so, require the local exchange carrier to assume financial responsibility for delivering the call to the interexchange carrier.[120] AT&T argues that its proposal would alleviate concerns that tandem providers would be unable to charge for their services if the Commission moved tandem switching and transport to bill-and-keep because tandem providers have no end users.[121] But the non-zero rate cap we adopt for tandem switching and transport as we continue our transition ultimately to bill-and-keep will allow intermediate tandem providers to charge for their services, obviating any need to adopt AT&T's proposal. Moreover, we agree with Aureon that AT&T's proposal would not accomplish the goals of this proceeding.[122]

38. Other, more detailed direct connection proposals are both unnecessary to achieve the objectives of this proceeding and create additional challenges. For example, West's proposal that we require all carriers to negotiate bilateral direct connections in good faith would require us to determine whether such negotiations were undertaken in good faith, a factual question which would be difficult to resolve.[123] O1's proposal that we mandate that carriers offer direct connections "to requesting carriers that send or receive at least four T-1s of originating/terminating traffic per month"[124] extends to issues beyond the scope of this proceeding and the current record does not provide a sufficient basis for us to evaluate the impact these proposals would have on the industry.

39. We likewise decline requests that we undertake other broad changes to our intercarrier compensation system in this proceeding, such as transitioning all originating access charges to bill-and-keep or addressing "all of the remaining intercarrier compensation transition issues" stemming from the *USF/ICC Transformation Order* holistically rather than in a piecemeal fashion.[125] Such broad changes would be inconsistent with the incremental approach the Commission has taken to intercarrier compensation reform and the transition to bill-and-keep, which is designed to provide carriers the necessary time and flexibility to adapt their businesses to the changes we adopt without undue disruption. Those proposals would also "fail[] to account in *any* way for the differences between 8YY originating

[117] *See Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Order on Reconsideration, FCC 20-79, at 13-14, para. 32 & n.109 (WCB June 10, 2020) (identifying entities that have notified the Commission that they are exiting the access stimulation business).

[118] *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17879, para. 672.

[119] *See* AT&T Comments at 6; West Comments at ii-iii; GCI Comments at 10-11; O1 Communications Reply at 10-11.

[120] AT&T Comments at 6.

[121] AT&T Reply at 11-12.

[122] *See* Aureon Reply at 7; *see also Access Arbitrage Order*, 34 FCC Rcd at 9043, para. 18.

[123] *See* West Comments at ii.

[124] O1 Communications Reply at 10.

[125] *See* NCTA – The Internet & Television Association Comments at 1 (NCTA Comments); *see also* Comcast Comments at 1-4; Charter Comments at 5-6; AT&T Reply at 15-16.

access functionality and terminating access functionality," most notably network functions, such as database queries, that are particular to 8YY traffic.[126]

40. We also decline suggestions to issue a second further notice of proposed rulemaking to seek comment on "more refined proposals" for combating 8YY abuses.[127] Issuing another further notice would only create uncertainty and unnecessarily delay our ability to address 8YY arbitrage schemes and eliminate the harms such schemes continue to inflict on both consumers and on 8YY subscribers.

41. We also disagree with parties that suggest the record contains insufficient data to justify adopting new rules to combat 8YY arbitrage.[128] According to AT&T, for example, "arbitrage and fraud in connection with 8YY calling have become widespread and are growing."[129] In quantifying that growth, AT&T specifies that in 2008, 8YY traffic was 64% of all originating traffic and by 2019, it had grown to 83% of all originating traffic.[130] Verizon echoes AT&T's claims, alleging that 8YY abuse is "proliferating since terminating access rates have transitioned to bill-and-keep."[131] Given AT&T and Verizon's role as 8YY providers and the relatively comprehensive market data they have access to, we find their characterizations of the 8YY market to be an acceptable basis for the actions we take.[132] Furthermore, 8YY subscribers concur in this assessment. The record also makes clear that 8YY subscribers "have seen an increase in the number of fraudulent calls terminating to their toll free numbers"[133] and that "fraudulent access stimulation in the 8YY market is not an isolated problem."[134] 8YY customers have had to "pay for the traffic pumpers' calls to their numbers, for the time wasted by congested incoming lines and lost employee productivity, and for the procurement of remedial services from companies that provide voice network security services . . . ."[135] And in a 2016 survey conducted by the Toll Free Number Administrator, 35% of all Toll Free Responsible Organizations reported that traffic

[126] CenturyLink Reply at 6-7. For these same reasons, we also decline to adopt Ad Hoc's suggestion that we apply "the same access charge regime to the originating end of toll free calls and the terminating end of sent paid calls." Letter from Sara Crifasi, Counsel to Ad Hoc Telecom Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1-2 (filed Dec. 18, 2019) (Ad Hoc Dec. 18, 2019 *Ex Parte*).

[127] *See, e.g.*, ITTA Comments at 3-5; Windstream et al. Comments at 10.

[128] *See* NRIC Comments at 8-9; Teliax/Peerless Comments at 10-11; Windstream et al. Comments at 3.

[129] AT&T Reply at 4.

[130] AT&T June 5, 2020 *Ex Parte* at 1; *see also* AT&T Comments at 4. Many originating local exchange carriers not engaged in 8YY arbitrage report lower percentages of 8YY traffic. *See, e.g.*, ITTA Comments at 8 ("Three ITTA members report that, based on their most recent annualized data, one-half to approximately 60 percent of their originating interstate access minutes are attributable to 8YY calls . . . ."); GCI Comments at 6 ("Although toll free traffic accounts for 25 percent of the interexchange minutes that GCI carries, it accounts for 56 percent of the access charges that GCI pays to LECs."). The fact that toll free traffic accounts for a disproportionately high percentage of originating access charges provides further evidence of the need for reform of 8YY access charges.

[131] Verizon Comments at 4.

[132] Windstream et al. assert that only a relatively small number of carriers may be responsible for 8YY abuse. *See* Windstream et al. Comments at 9 (observing that "these increases are being driven by a small handful of competitive LECs"). But neither Windstream nor any other party is able to state precisely how many carriers are engaged in 8YY arbitrage. Regardless of the number, the problem they create is systemic, justifying the steps we take in this *Order*.

[133] Letter from Sara Crifasi, Counsel to Ad Hoc Telecom Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Apr. 10, 2020).

[134] Ad Hoc Dec. 18, 2019 *Ex Parte* at 3 ("A traffic analysis by one member's independent security consultant revealed that as much as 40% of the member's 8YY calls were fraudulent.").

[135] Ad Hoc Apr. 2, 2020 *Ex Parte* at 2; *see also* Bandwidth May 1, 2020 *Ex Parte* at 2 ("Customers of Toll Free service are charged for calls that would not have been made but for the intent to make financial gain.").

pumping was a "key obstacle facing the industry."[136] The Toll Free Number Administrator estimates that up to 20% of toll free minutes for some carriers could be the result of traffic pumping.[137] This and other evidence convince us of the pressing need to reform the 8YY access charge regime. Reducing the costs of 8YY arbitrage is more than sufficient justification for the rules we adopt in this *Order*, and the record regarding the burdens 8YY arbitrage imposes on carriers, toll free subscribers, and consumers is extensive. Various carriers describe a "wide variety of harms" that 8YY schemes cause ranging from unwanted calls and increased expenses to call completion issues.[138] While Ad Hoc explains that its members have seen an increase in the number of fraudulent calls terminating to their toll free numbers, resulting in tied up lines, lost productivity, and the need for unnecessary remedial expenses such as voice network security services.[139] Critics of the record in this proceeding set too high an evidentiary threshold for Commission action; have not submitted data in the record to support their position; and fail to acknowledge the prevalence of 8YY arbitrage or the harms caused by such arbitrage.

42. We are also unpersuaded by commenters arguing that moving originating end office charges to bill-and-keep would enable IXCs to reap windfall profits.[140] Instead, we agree with GCI that "[e]liminating the implicit subsidies in the current system cannot fairly be described as a 'windfall'; rather, it will incentivize efficient call routing and will benefit the public interest."[141] In fact, the Commission rejected similar arguments when it moved terminating end office charges to bill-and-keep, finding that a significant proportion of interexchange carriers' reduced access expenses were likely to be passed through to benefit consumers.[142] We expect that the cost savings resulting from our new rules will flow through to interexchange carriers' customers, in the form of lower prices or better service or both,[143]

[136] *See* Somos 2017 Reply at 1.

[137] *Id*. at 3 (explaining that this figure is based on anecdotal evidence from Toll Free Responsible Organizations, honey pots, and carriers).

[138] *See, e.g.*, AT&T Jan. 13, 2020 *Ex Parte* at 3; Bandwidth May 1, 2020 *Ex Parte* at 2; GCI Comments at 6; Verizon Comments at 2-3.

[139] Letter from Sara Crifasi, Counsel to Ad Hoc Telecom Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Mar. 9, 2020).

[140] *See, e.g.*, West Comments at 3-4; NRIC Comments at 13; Teliax/Peerless Apr. 27, 2020 *Ex Parte* at 3.

[141] GCI Reply at 3-4. We also reject Aureon's claim that the rate caps we adopt here, "without adequate recovery mechanisms would violate section 254's requirement that all subsidies be explicit and predictable." Letter from James U. Troup, Counsel for Iowa Network Services d/b/a Aureon Network Services, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156 et al., at 7 (filed Sept. 3, 2020) (Aureon Sept. 3, 2020 *Ex Parte*) at 7. The "explicit and predictable" subsidies required by section 254(b)(5) and 254(e) of the Act pertain to universal service support, which is not an issue in this proceeding. Nor do we require carriers to choose any particular means to recover their costs, so Aureon and other carriers need not "increase the price of unregulated service to subsidize their regulated operations" as it claims. *Id*. If Aureon can demonstrate that it requires additional recovery, it may seek a waiver of our rules.

[142] *USF/ICC Transformation Order*, 26 FCC Rcd at 18295-301, Appx. I (quantifying the amount of reductions in intercarrier compensation that will be passed through to consumers and therefore not retained by interexchange carriers); *see generally* Jean Tirole, The Theory of Industrial Organization 66-67 (1988) (discussing passthrough of reductions in marginal cost).

[143] As the Commission explained in the *USF/ICC Transformation Order*, upon transitioning to bill-and-keep, "carriers will reduce consumers' effective price of calling, through reduced charges and/or improved service quality." *USF/ICC Transformation Order*, 26 FCC Rcd at 17909, para. 748; *see also id.* at 18298, Appx. I, para. 9 (explaining that pass through rates for competitive local exchange carriers were conservatively estimated to be greater than 50% in 2010). Thus, we find misplaced the Safe Spaces Coalition's allegation that this Order will drive up costs for toll free customers, including those operating in the public interest such as the Veteran Crisis Hotline, National Domestic Violence Hotline, National Suicide Hotline. *See* Letter from Academy on Violence and Abuse et al., to Chairman Ajit Pai, FCC, WC Docket No. 18-156 at 1 (filed Oct. 6, 2020) (Safe Spaces Coalition Oct. 6, 2020 *Ex Parte*); *see* E-mail from individual members of the Action Network, to Allison Baker, FCC, WC Docket No. 18- (continued….)

and we therefore decline to require interexchange carriers to pass through the benefits they receive as some commenters have suggested.[144]

43. We disagree with Public Knowledge that the approach we take today "will allow IXCs to 'double dip' by charging 8YY subscribers fees to own an 8YY number as well as charging LECs that route the 8YY calls" resulting in a "windfall" for interexchange carriers.[145] The rules we adopt today do not allow an interexchange carrier to charge a local exchange carrier for originating a call. To the contrary, moving originating 8YY end office charges to bill-and-keep will foreclose *any* carrier's ability to assess those intercarrier charges. Indeed, the premise of bill-and-keep is that carriers rely on their own end users, rather than other carriers, to recover their costs.[146] At the same time, 8YY providers will continue to be responsible for the long-distance charges for calls placed to their 8YY numbers.

44. There is also no reason to believe that moving 8YY end office access charges to bill-and-keep will lead to an appreciable increase in rates for local service.[147] As Ad Hoc points out, "in wireless markets, the bill-and-keep framework has been in place for years and no separate, toll free specific charges have been imposed on callers."[148] In fact, charges for wireless calling plans declined even as access charges for wireless calls moved to bill-and-keep.[149] There is no reason to expect a different outcome here.

45. Relatedly, we are unpersuaded by commenters' unsupported assertions that moving to bill-and-keep will somehow hamper rural local exchange carriers' ability to meet the broadband needs of their customers.[150] Our rules provide a revenue recovery system for lost interstate 8YY revenue for the rate-of-return local exchange carriers and we leave it to the states to handle the substantially smaller impact on intrastate 8YY revenue. Furthermore, as important as we find broadband deployment, we continue to reject the suggestion that we should preserve inefficiencies in our intercarrier compensation regime to implicitly subsidize carriers' efforts to deploy broadband.[151]

46. Contrary to the views expressed by some commenters that appear to profit as middlemen in the existing intercarrier compensation regime,[152] we find that interexchange carriers' customers, and

156 (filed Oct. 5-6, 2020) (the Action Network Oct. 5-6, 2020 *Ex Parte*). Rather, the steps we take today should drive down the costs for those essential services.

[144] *See* Teliax/Peerless Apr. 27, 2020 *Ex Parte* at 6. Because we decline to implement these preconditions, we also decline to adopt the remaining parts of the proposal by Peerless and Teliax. *See id.* at 8-10; *see also* Intrado May 13, 2020 *Ex Parte* at 2.

[145] Public Knowledge Reply at 5.

[146] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17904, para. 737.

[147] Windstream et al. Comments at 4-6; ITTA Comments at 8-11; Safe Spaces Coalition Oct. 6, 2020 *Ex Parte* at 1; the Action Network Oct. 5-6, 2020 *Ex Parte* at 1. Contrary to the claims made by the Safe Spaces Coalition, nothing we do today will inhibit a caller from placing a toll free call. *See* Safe Spaces Coalition Oct. 6, 2020 *Ex Parte* at 2; the Action Network Oct. 5-6, 2020 *Ex Parte* at 1.

[148] Ad Hoc Comments at 6.

[149] *Cf. id*. at 6; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17671, para. 14 (reasoning that prior intercarrier compensation reforms "helped usher in . . . the proliferation of innovative new offerings, such as . . . flat-priced wireless calling plans, with substantial consumer benefits").

[150] WTA Comments at 8; Public Knowledge Reply at 7; Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Apr. 15, 2020) (ACAM Apr. 15, 2020 *Ex Parte*).

[151] *Access Arbitrage Order*, 34 FCC Rcd at 9046, para. 26.; *USF/ICC Transformation Order*, 26 FCC Rcd at 17876, para. 666.

[152] *See, e.g.*, Intrado May 4, 2020 *Ex Parte* Attach. at 2; Intrado May 13, 2020 *Ex Parte* at 4.

consumers in general, will benefit from our efforts to address 8YY abuses. By reducing the incentives for local exchange carriers to engage in 8YY arbitrage, we expect to see a reduction in, or elimination of, such arbitrage. As AT&T points out, bill-and-keep "shifts originating costs to end user charges, where they can be disciplined by competition."[153] This will result in inflated costs being "competed away, which will make the overall system more efficient and permit 8YY calling to occur at efficient (and still robust) levels."[154]

47. The reforms we adopt here do not alter the fact that the toll portion of an 8YY call will still be paid by the called party, not the calling party, thereby preserving the *toll free* nature of 8YY calls.[155] Thus, arguments by some parties that 8YY calls would no longer be "free" with the imposition of bill-and-keep are misplaced.[156] For the same reason, we find that concerns that Teliax and others have raised about potential false advertising claims related to 8YY calling are groundless; the calls will remain toll free to consumers even after this *Order* takes effect.[157] It is also worth noting that consumers have always paid for service from their local provider as a component of any toll free call.[158]

48. With respect to issues of self-help that some commenters have raised,[159] we reiterate our previous statements cautioning parties to be mindful of "their payment obligations under the tariffs and contracts to which they are a party."[160] We continue to discourage providers from engaging in self-help except to the extent that such self-help is consistent with the Communications Act of 1934, as amended (the Act), our regulations, and applicable tariffs.[161] Disallowing self-help, whether in the access stimulation context or not, would be inconsistent with existing tariffs, some of which permit customers to withhold payment under certain circumstances.[162]

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[153] AT&T Comments at 10.

[154] *Id*. at 10-11. The Commission estimated that the steps it took to move intercarrier compensation to bill-and-keep in the *USF/ICC Transformation Order* would result in a more than $1.5 billion annual consumer benefit. *USF/ICC Transformation Order*, 26 FCC Rcd at 18295, Appx. I, paras. 1, 3. Although the originating 8YY access revenues at issue here are not of the same magnitude as the access revenues implicated by the *USF/ICC Transformation Order*, our expectation of significant passthrough of 8YY access revenue reductions are based on the same evidence and reasoning used in that *Order*.

[155] *See* Ad Hoc Comments at 6; AT&T Reply at 7-8; *8YY Further Notice*, 33 FCC Rcd at 5749, para. 92,

[156] *See, e.g.*, ITTA Comments at 7, 9-10 ("[P]assing the costs of originating 8YY traffic on to consumers fundamentally undermines the notion of 'toll free' calling."); *see also* Teliax/Peerless Comments at 30-31; West Comments at 23; NRIC Comments at 15; Charter Comments at 2-5 (arguing bill-and-keep would shift costs to consumers); Frontier Communications Corporation Reply at 4-6 (Frontier Reply); Windstream et al. Comments at 2-3; Teliax/Peerless Apr. 27, 2020 *Ex Parte* at 5; ACAM Apr. 15, 2020 *Ex Parte* at 1.

[157] *See* Teliax/Peerless Comments at 30-31; Windstream et al. Comments at 6; WTA Comments at 2.

[158] *See* Charter Comments at 3 (conceding that calling parties currently pay "the cost of local service" for 8YY calls).

[159] Teliax/Peerless Comments at 7-10; *id*. at 10 ("The FCC should investigate the use of self-help, and how profits from non-payment of tariffed rates are used by IXCs."); O1 Communications Reply at 3 (arguing that self-help by interexchange carriers is "systematic fraud" and that the Commission should "reign [sic] in" the practice).

[160] *USF/ICC Transformation Order*, 26 FCC Rcd at 17890, para. 700.

[161] We do not depart from a prior finding that the Commission "has never held that a failure to pay tariffed charges violates the Act itself." *All American Telephone Co. v. AT&T Corp*., File No. EB-10-MD-003, Memorandum Opinion and Order, 26 FCC Rcd 723, 728, para. 13 (2011). We also do not depart here from a prior Commission finding that it is unlawful for a tariff to require payment of disputed amounts while those amounts are in dispute. *Sprint Communications Co. L.P. v. Northern Valley Comm., LLC*, File No. EB-11-MD-003, Memorandum Opinion and Order, 26 FCC Rcd 10780, 10786-87, para. 14 (2011).

[162] *See, e.g.*, AT&T Reply at 10 & n.31.

49. *Transition.* We find that the multiyear transition period that we adopt for moving originating 8YY end office access charges to bill-and-keep "affords a reasonable period [for carriers to] make adjustments" to reduce these rates to bill-and-keep.[163] We amend sections 51.907 and 51.909 of our rules to effectuate this transition for price cap and rate-of-return carriers and rely on the application of the existing benchmark requirements in sections 51.911(c) and 61.26 of our rules to apply this same transition to tariffed rates charged by competitive local exchange carriers.[164] We begin by capping all intrastate and interstate originating 8YY end office rates that are not already capped as of the effective date of this *Order*. Next, we require carriers to bring their intrastate originating 8YY end office rates that exceed their interstate originating 8YY end office rates into parity with their interstate rates as of July 1, 2021. In doing so, we "balance the importance of starting the first step of reform as quickly as possible with the practical realities that billing system implementation and tariff revisions" will take some time.[165] This step of our transition provides a "gradual rate reduction of intrastate to interstate charges," followed by a 12-month period before the next rate reduction to enable carriers to "appropriately adjust and phase in revenue changes."[166] Additionally, these rate reductions and those scheduled for July 1, 2022 and July 1, 2023 are timed to coincide with annual access tariff filing dates, minimizing administrative burdens on filing entities and on the Commission.[167] The transition period exceeds the two-year transition for originating 8YY access rates on which the Commission sought comment in the *USF/ICC Transformation Further Notice*.[168] It also closely parallels the transition proposed in the *8YY Further Notice* by reducing rates in three steps over a three-year transition.[169] Several commenters support transitions of similar duration,[170] and we find that a three-year transition with rate changes tied to the annual access tariff filings benefits both carriers and consumers.

50. Some commenters advocate for a shorter transition period, or even for no transition at all.[171] They suggest that the costs of 8YY arbitrage are significant enough to justify a more rapid transition.[172] However, we find that allowing no transition or only a single year would not give providers

[163] GCI Comments at 8; *see also* Comcast Comments at 2-3 (recommending that we reduce all charges to zero over a reasonable and uniform period).

[164] *See* Appx. A, 47 CFR §§ 51.907, 51.909; *see also* 47 CFR §§ 51.911(c), 61.26.

[165] USTelecom Feb. 25, 2020 *Ex Parte* at 2. USTelecom proposed initiating the transition on January 1, 2021 but qualified its proposal by "assuming the Commission adopts these reforms in the first half of 2020." Letter from Mike Saperstein, Vice President, Strategic Initiatives & Partnerships, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 18-156 and 20-71, at 2 (filed Mar. 13, 2020) (USTelecom Mar. 13, 2020 *Ex Parte*).

[166] USTelecom Feb. 25, 2020 *Ex Parte* at 3.

[167] *Id*. at 2-3; *see also* USTelecom Mar. 13, 2020 *Ex Parte* at 2 (observing that a July 1 date is "the most logical and efficient date for access charge reforms" and "would minimize the burdens on filing entities as well as Commission staff").

[168] *See USF/ICC Transformation Further Notice*, 26 FCC Rcd at 18110, para. 1299 (seeking comment on a separate two-year transition period for originating access that reduces rates in equal increments over the period); *see also 8YY Further Notice*, 33 FCC Rcd at 5738-39, paras. 51-53.

[169] *8YY Further Notice*, 33 FCC Rcd at 5738-39, paras. 51-53 (proposing a reduction of equal increments over a three-year period).

[170] *See* CenturyLink Comments at 3 (proposing "three proportional rate reductions"); GCI Comments at 8 (supporting a three-year transition for all originating access charges); Comcast Comments at 2 (supporting a reasonable period).

[171] Verizon Comments at 2-3; Ad Hoc Comments at 8. *But see* Ad Hoc Apr. 2, 2020 *Ex Parte* at 1 (withdrawing Ad Hoc's opposition to the use of a transition period).

[172] Verizon Comments at 2-3; Ad Hoc Comments at 8.

adequate time to adapt their business plans to accommodate the move to bill-and-keep.[173] Other commenters argue for a longer transition, some as long as the transition provided to move terminating end office charges to bill-and-keep.[174] We agree, however, with those commenters that argue that a six- or nine-year transition, like the one the Commission adopted for terminating end office access charges, would inappropriately "perpetuate incentives for the originating . . . carriers involved to engage in traffic pumping and other arbitrage schemes,"[175] and "allow perpetrators of fraud and traffic pumping to eke out [additional] years of access revenues."[176] In 2011, transitioning to bill-and-keep was a relatively untested concept. By now, carriers have had over eight years to adapt to bill-and-keep and have successfully accomplished that transition for terminating end office rates. Carriers have also been on notice since at least 2011 that the Commission plans to move all intercarrier compensation to bill-and-keep. The multiyear transition we adopt today for originating access charges means that carriers will have had eleven years to prepare for the elimination of 8YY originating end office rates.[177] We find that the transition period we adopt strikes the appropriate balance between providing carriers adequate lead time to adjust to the new rules, "while still moving quickly to the desired end state of bill-and-keep."[178]

51. Our decision is also influenced by the fact that the revenues affected by this *Order* are likely to be smaller than those affected as a result of the *USF/ICC Transformation Order*. In the *USF/ICC Transformation Order*, the Commission reduced most terminating intrastate rates to interstate rates, capped most originating intrastate and interstate charges for price cap carriers and originating interstate charges for rate-of-return carriers at 2011 levels, and reduced carriers' Eligible Recovery by 10% annually for price cap carriers and 5% annually for rate-of-return carriers. By contrast, according to NTCA estimates, rural local exchange carriers' (RLECs) total originating 8YY access revenues for the 12 months from July 2019 through June 2020 were approximately $30.3 million.[179] In addition, the record shows that while 8YY arbitrage has increased in recent years as a percentage of originating traffic, overall originating traffic and therefore originating access revenues have declined.[180] Thus, we find that moving originating end office access charges for 8YY calls to bill-and-keep will have a smaller relative impact on carriers than did the rules the Commission adopted in the *USF/ICC Transformation Order*. Accordingly,

[173] *See* USTelecom Feb. 25, 2020 *Ex Parte* at 2, 6; Frontier Reply at 15 ("Including database query charges in any phasedown period is essential . . . to avoid flash cuts and ensure a smooth transition for both carriers and customers."); *see also* CenturyLink Comments at 13-14.

[174] *See, e.g.*, Charter Comments at 6-7; ITTA Comments at 16.

[175] Comcast Comments at 3.

[176] Ad Hoc Comments at 7-8; *see* AT&T Reply at 10.

[177] *See, e.g.*, Verizon Comments at 2 (acknowledging an eleven-year notice of the elimination of 8YY originating end office rates); AT&T Reply at 9-10.

[178] USTelecom Feb. 25, 2020 *Ex Parte* at 3. Inteliquent proposes that we set uniform rates for toll free end office and database query rates during the multiyear transition for those rates. Letter from Matthew S. DelNero and Thomas G. Parisi, Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156 at 2 (filed Aug. 26, 2020) (Inteliquent Aug. 26, 2020 *Ex Parte*). We agree that rate disparities provide opportunities for arbitrage and that is why we have set a transition to uniform 8YY end office charges and 8YY Database query charges. We find that the approximately three-year duration of our rate transitions strikes the right balance between the need for rate uniformity and the need to minimize disruptions for carriers during the transition.

[179] Letter from Michael R. Romano, Senior Vice President, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Feb. 24, 2020) (NTCA Feb. 24, 2020 *Ex Parte*).

[180] *See, e.g.*, AT&T Comments at 2 (observing that "CLEC arbitrage practices have begun to dominate 8YY calling"); CenturyLink Comments at 4 ("CenturyLink generally concurs in the fundamental conclusion of the NPRM that a variety of different forms of arbitrage have become prevalent in the ICC regime currently applicable to 8YY traffic."); Verizon Comments at 1 (asserting that arbitrage schemes are growing); *see also* ITTA Comments at 8 (explaining that three of its member companies' originating access minutes had decreased by 20-50% between 2011 and 2016). Given trends in the industry, those declines have likely continued since 2016.

we find that a multiyear transition ending July 1, 2023 is reasonable for moving originating 8YY end office charges to bill-and-keep.

B. Adopting a Joint Tandem Switched Transport Access Service Rate Cap for Originating 8YY Traffic

52. Next, to reduce incentives for arbitrage with respect to 8YY originating tandem switching and transport rates while preserving the role of independent tandem providers, we move rates for these services toward bill-and-keep by adopting the proposal made by USTelecom that we impose a single nationwide tariffed joint tandem switched transport access service rate cap of $0.001 per minute for originating 8YY traffic.[181] We amend sections 51.907 and 51.909 of our rules to effectuate this transition for price cap and rate-of-return carriers and rely on the application of the existing benchmark requirements in sections 51.911(c) and 61.26 of our rules to apply this same transition to tariffed rates charged by competitive local exchange carriers.[182] In the interest of reducing administrative burdens, we allow carriers to implement any necessary changes as part of their next set of annual tariff revisions, and make the cap effective July 1, 2021.[183] To prevent gamesmanship in the interim, we cap all intrastate and interstate originating toll free tandem switching and transport rates at their current levels as of the effective date of this *Order*.[184]

53. Although the Commission proposed moving these rates to bill-and-keep in the *8YY Further Notic*e,[185] we agree with commenters that doing so at this stage would leave uncompensated those intermediate providers that do not serve end customers.[186] We remain committed to moving all intercarrier compensation to bill-and-keep and by taking this interim step toward that goal, we leave for further consideration questions of the network edge and how intermediate providers will be compensated when we reach a full bill-and-keep-regime. Allowing carriers to charge for tandem switching and transport service under a uniform nationwide rate cap will preserve independent tandem service providers' role in routing originating 8YY traffic until we complete the transition of these rates to bill-and-keep.

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[181] *See* USTelecom Feb. 25, 2020 *Ex Parte* at 3-5.

[182] *See* Appx. A, 47 CFR §§ 51.907, 51.909; *see also* 47 CFR §§ 51.911(c), 61.26.

[183] Originating 8YY tandem switched transport access services include all rate elements as defined under "Tandem-Switched Transport Access Service" in 47 CFR § 51.903(j), including transport mileage charges, multiplexing charges, and transport termination charges for originating traffic, and all services related to the transport function, as well as all access charges related to the tandem switching function, regardless of the varying terminology used in tariffs. *See, e.g.*, Verizon Dec. 12, 2017 *Ex Parte* Attach. 8YY Switched Access Charges by Call Flow at 3. This rate is exclusive of any dedicated port charge at the tandem. *See* USTelecom Feb. 25, 2020 *Ex Parte* at 4 n.14; *see also* 47 CFR § 69.111 (excluding dedicated port charges). The $0.001 per minute tariffed rate, like tariffed rates generally, acts as a default rate with carriers being free to mutually agree to different rates.

[184] Most such rates were previously capped by the Commission. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17942, para. 818; 47 CFR § 61.26.

[185] *8YY Further Notice*, 33 FCC Rcd at 5734, para. 33.

[186] AT&T Comments at 6 ("Imposing 'bill-and-keep' on third-party tandem providers that do not serve the end-user would strand those providers in the middle of the call flow with no customer."); USTelecom Feb. 25, 2020 *Ex Parte* at 4 (explaining that "it would be unnecessarily disruptive to determine that tandem providers cannot charge IXCs at all for the service they provide"); West Comments at 23 (adopting bill-and-keep "would leave [intermediate providers] with no cost recovery mechanism"); Intrado May 13, 2020 *Ex Parte* at 4-5 ("A bill-and-keep compensation system leaves [intermediate] providers without compensation . . . ."); O1 Communications Reply at 9 ("The FCC should avoid putting competitive tandem/transport access providers in an intermediary position in the call path out of business by mistakenly subjecting them to a bill and keep regime intended for carriers who are serving their own end user customers."); Aureon Reply at 10 ("Zero compensation under bill-and-keep is not just, reasonable, or reciprocal compensation.").

54. In the meantime, we find that instituting a single uniform tandem switching and transport rate cap "will immediately remove the largest incentive to create [8YY] arbitrage schemes."[187] Because originating carriers and intermediate providers currently charge interexchange carriers for transport on a distance-sensitive, per-minute, per-mile basis, they have an incentive to engage in "mileage pumping, inefficient routing and aggregation of 8YY traffic to high rate areas."[188] AT&T, for example, describes mileage pumping schemes in which "a CLEC tariffs a per-mile charge for transport and then either (i) bills the IXC for transport it does not actually provide . . . or (ii) inefficiently routes traffic long distances––sometimes more than a hundred miles—to inflate the number of miles applied to the per-mile transport charge."[189] As Verizon explains, "as long as 8YY tandem-switched transport rates remain high, and continue to vary from LEC to LEC, there will be strong incentives for carriers to engage in such arbitrage schemes."[190] We agree with USTelecom that, because "the lack of uniformity in current rate structures tend[s] to distort the market by incenting 8YY call origination and aggregation in remote areas," setting a nationwide cap on originating 8YY tandem switching and transport rates will reduce 8YY arbitrage, particularly abuses related to 8YY benchmarking.[191] Although they do not necessarily agree with the level of the rate cap, several intermediate providers agree that we should cap the rate for tandem switching and transport.[192] Inteliquent, for example, "emphasized its agreement with USTelecom that the Commission should adopt a nationwide tandem rate to address any abuses in tandem charges assessed for 8YY-related costs."[193]

55. In addition to eliminating incentives for 8YY benchmarking and mileage pumping, a single nationwide tandem switching and transport rate cap for 8YY traffic constitutes another transitional step in the process of achieving the Commission's longer term goal of moving all intercarrier compensation to bill-and-keep.[194] Furthermore, if we transition 8YY originating end office charges to bill-and-keep without also taking action to begin the transition of originating 8YY tandem switching and transport charges toward bill-and-keep by reducing those rates, we could create incentives for carriers to shift the focus of their 8YY arbitrage schemes to tandem switching and transport charges. Such a shift would not be unlike the shift in arbitrage practices that occurred when the Commission moved terminating end office rates to bill-and-keep but left certain terminating tandem switching and transport rates in place.[195]

56. We agree with commenters that it is premature to move originating toll free tandem switching and transport charges to full bill-and-keep, as proposed in the *8YY Further Notice*.[196] As commenters including AT&T, CenturyLink, and independent tandem providers argue, because intermediate tandem providers generally do not serve end-user customers, moving tandem switching rates

[187] USTelecom Feb. 25, 2020 *Ex Parte* at 5 (adding that "[u]se of a single composite rate will also simplify billing, thereby reducing disputes and administrative cost").

[188] *Id*.; *see also 8YY Further Notice*, 33 FCC Rcd at 5732, para. 26.

[189] AT&T 2017 Comments at 14.

[190] Verizon Nov. 6, 2017 *Ex Parte* at 1; *accord* AT&T Feb.13, 2020 *Ex Parte* at 2.

[191] *See* USTelecom Feb. 25, 2020 *Ex Parte* at 4.

[192] Letter from Matthew S. DelNero and Thomas G. Parisi, Counsel to Inteliquent, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 2 (filed June 1, 2020) (Inteliquent June 1, 2020 *Ex Parte*); Bandwidth May 1, 2020 *Ex Parte* at 1.

[193] Inteliquent June 1, 2020 *Ex Parte* at 2.

[194] *USF/ICC Transformation Order*, 26 FCC Rcd at 17905, para. 741.

[195] *See generally Access Arbitrage Order*, 34 FCC Rcd at 9036, para. 3 (observing that "access stimulation schemes have adapted to shrinking end office termination charges and now seek to take advantage of access charges that have not yet transitioned or are not transitioning to bill-and-keep").

[196] *See* USTelecom Feb. 25, 2020 *Ex Parte* at 3-4; CenturyLink Comments at 8.

to bill-and-keep—which is premised on carriers obtaining compensation from their end users—could strand them without a clear source of revenue.[197] Commenters observe that the result could be to "disincentivize investment in tandem facilities,"[198] and "limit[] the benefits tandem services provide to the entire public switched network."[199] We agree that independent tandem services add important "network redundancy and alternative routing options," and "are a fundamental component of today's telecommunications network."[200] Mindful of the importance of these attributes, our institution of an interim national rate cap retains "an IXC payment obligation for tandem functionality utilized for originating 8YY traffic," and preserves independent tandem providers' ability to receive compensation for the services they provide.[201]

57. Some parties claim that today's reforms will shift financial incentives to engage in 8YY traffic stimulation to interexchange carriers,[202] or allege that interexchange carriers are responsible for the increase in access charges they must pay because IXCs have encouraged their 8YY customers to increase their use of toll free services.[203] These assertions are unsupported by the record. Commenters provide no explanation as to how interexchange carriers either drive or would engage in such arbitrage, nor do they offer any evidence that such schemes exist. These commenters also fail to acknowledge that by moving 8YY end office charges to bill-and-keep and moving to a uniform nationwide tandem switched transport access service rate cap, we reduce incentives for *all* carriers to engage in 8YY arbitrage.

58. FailSafe Communications, Inc., (FailSafe) requests that we provide an indefinite exemption from bill-and-keep for 8YY access traffic associated with small and medium-sized business end users with less than 24 phone lines, arguing that the "loss of the [carrier access billing] contribution" would upset its current business model targeted at small and medium-sized businesses.[204] We do not find that such an exemption is justified. FailSafe fails to recognize that to the extent that its clients are the recipients of 8YY calls, they will benefit from lower access prices paid by their 8YY provider.[205] To the extent FailSafe's business model relies on intermediate carriers being paid for tandem switching and transport, we provide a uniform tariffed rate for those services. Furthermore, FailSafe does not offer a justification for the broad waiver it requests for access traffic associated with small and medium-sized business end users, nor does it explain how such a waiver could be operationalized.[206]

59. We also decline to adopt the alternative proposal the Commission sought comment on in the *8YY Further Notice* that would have imposed mileage limitations on 8YY transport charges and would have transitioned originating 8YY tandem switching and transport rates to bill-and-keep, but only where

[197] *See, e.g.*, CenturyLink Comments at 2-3; West Comments at 8; Teliax/Peerless Comments at 25; *see also* AT&T Reply at 11; Inteliquent Reply at 1; Aureon Reply at 9-12; AT&T Comments at 6.

[198] CenturyLink Reply at 7.

[199] Inteliquent Reply at 3.

[200] West Comments at 3 n.10; O1 Communications Reply at 7.

[201] CenturyLink Reply at 2.

[202] *See* Aureon Comments at 6-7; Aureon Reply at 5-7; West Comments at 22.

[203] *See* West Comments at 3-6, 14 & n.31.

[204] Letter from Leo A. Wrobel, CEO, FailSafe Communications, Inc., to Marlene H. Dortch, Secretary, FCC, and Major L. Clark III, Acting Director, and Jamie Saloom, Office of Chief Counsel for Office of Advocacy, U.S. Small Business Administration, WC Docket No. 18-156, at 1-2 (filed Oct. 17, 2019).

[205] According to FailSafe, its clients include 911 centers, which do not use 8YY phone numbers. At the same time FailSafe claims that its web controller product is "virtually 100% based on 8YY Traffic." *Id.*

[206] FailSafe also requests that we provide a three-year transition to bill-and-keep for "other services related to emergency communications." *Id.* We provide a three-year transition to bill-and-keep for all 8YY originating end office charges.

the "originating carrier also owns the tandem."[207] There is no basis in the record for treating some tandem and transport providers owned by originating providers differently than independent tandem providers. Further, this proposal would allow abuse by independent tandem providers to continue unchecked.

60. Upon review of the record, we now reject proposals to impose specific distance-based mileage caps such as a ten-mile flat distance cap,[208] mileage limits that "vary by the type of market,"[209] or a cap based on the "shortest practicable direct route."[210] We find these and other suggestions in the record concerning tandem switching and transport overly narrow and therefore unlikely to be as successful in curtailing abuse as adopting a single, uniform rate cap. Any attempt to cap just 8YY transport mileage would only create incentives to abuse other aspects of the rate. In addition, commenters that recommend a mileage cap have provided insufficient data to allow us to determine the appropriate distance for a mileage cap, if we were to adopt one.[211] Alternatively, ITTA recommends that we require competitive local exchange carriers to benchmark tandem and transport rates to the "charges of the ILEC in the market where 8YY traffic originates."[212] We find this approach would be administratively burdensome and potentially unworkable given the difficulties inherent in determining "where [an 8YY] call originates," difficulties that will only increase with the evolution of new technologies.[213]

61. Instead, we find that the most workable interim solution to addressing arbitrage of toll free tandem switching and transport rates in connection with intercarrier compensation for 8YY traffic is to set a single nationwide joint tandem switched transport access service rate cap of $0.001 per minute as an interim step toward moving these services toward bill-and-keep. USTelecom proposes this rate as part of its consensus proposal and states that this rate "would address negative incentives that currently exist in the market while allowing legitimate cost recovery and providing a level competitive playing field for all market participants."[214] USTelecom explains that "$0.001 remains an 'above cost' rate'"[215] and that "rates at and below $0.001 exist today and CLECs currently provide service in those areas at those rates

[207] *8YY Further Notice*, 33 FCC Rcd at 5738, para. 49 (proposing a cap on mileage that carriers could charge for tandem switching and transport in conjunction with a proposal to move 8YY tandem switching and transport to bill-and-keep only where the originating carrier also owns the tandem). This alternative proposal would have had the same effect of preserving the role of independent tandem providers, not unlike the interim $0.001 per minute rate we adopt here.

[208] CenturyLink Comments at 11.

[209] Teliax/Peerless Comments at 15.

[210] WTA Comments at 6.

[211] Teliax/Peerless assert that "the record does not justify the imposition of transport mileage limits as there are no statistically valid traffic studies, adjusted for seasonality, that show excessive mileage is charged on the bulk of calls, rather than anecdotal evidence that some LECs may route calls inefficiently in some circumstances." Teliax/Peerless Comments at 15. Although the interim rate cap we impose does not technically establish a mileage limit, we disagree with the suggestion that we allow unlimited transport miles and reject this attempt at setting an evidentiary bar unreasonably high so as to preclude our taking action against mileage pumping practices. There is sufficient evidence in the record to justify our taking action to curtail this form of arbitrage. *See* CenturyLink Comments at 4 (arguing that 8YY abuses, including mileage pumping, "have become prevalent," are unlawful, and "potentially fraudulent"); AT&T 2017 Comments at 14.

[212] *See* ITTA Comments at 4; *see also* Letter from Gerard J. Waldron, Counsel to Inteliquent, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 and 07-135, CC Docket No. 01-92, at 1 (filed Dec. 21, 2017) (Inteliquent Dec. 21, 2017 *Ex Parte*).

[213] *See* Teliax/Peerless Comments at 12; AT&T Reply at 6.

[214] USTelecom May 11, 2020 *Ex Parte* at 1. USTelecom explains that "[t]o eliminate incentives for regulatory arbitrage, this rate would apply to all traffic . . . regardless of the number of miles of transport provided." USTelecom Feb. 25, 2020 *Ex Parte* at 4 n.15.

[215] Letter from Michael Saperstein, Vice President, Strategic Initiatives & Partnerships, USTelecom, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed June 5, 2020) (USTelecom June 5, 2020 *Ex Parte*).

due to the ILEC benchmarking rule."[216] According to USTelecom, a rate of $0.001 per minute is approximately at the midpoint of rates currently assessed by its larger members.[217] In addition, USTelecom members that own tandem switches "agree to provide service at this rate" and find no reason to charge higher existing rates given their agreement.[218]

62. Bandwidth, a facilities-based competitive local exchange carrier that operates an interexchange network to provide 8YY service, agrees with the USTelecom proposal, explaining that, in Bandwidth's experience "without revenue sharing, a tandem charge of $0.001 should be sufficient to recover an IP tandem provider's costs of delivering the traffic to the [Responsible Organization]."[219] According to Bandwidth the $0.001 per minute rate "is likely high enough to enable a revenue share of $0.0005-7," suggesting that costs to provide tandem switching may in fact be lower than $0.001 per minute.[220] As Bandwidth also explains, adopting a higher rate could retard the transition to IP networks by perpetuating a high rate for TDM switching.[221] Indeed, although independent tandem providers may be more reliant than other carriers on revenues from these services, their filings in the record of this proceeding also make clear that they rely principally on lower-cost IP-based switching and transport to provide service and are therefore likely to have lower costs than carriers that operate legacy TDM-based networks.[222] Given this record evidence, we find that a cap of $0.001 per minute will allow carriers, including intermediate tandem providers, a reasonable level of compensation for providing 8YY tandem switching and transport services as we transition all 8YY access rates ultimately to bill-and-keep. Allowing carriers to charge as much as $0.001 per minute for tandem switching and transport also addresses concerns that intermediate providers would not receive compensation for 8YY traffic routed over their networks. Given the support for a uniform nationwide rate cap in general, particularly from

[216] USTelecom May 11, 2020 *Ex Parte* at 1; USTelecom June 5, 2020 *Ex Parte* at 1 n.3 (citing existing rates lower than the $0.001 rate, including "CenturyLink Operating Cos., FCC Tariff No. 9, § 6.8.2, page 6-229 (multiple tandem switched per minute rates under $0.001, as low as $0.000124); Consolidated Communications Companies, FCC Tariff No. 1, § 17.2.2, page 17-3 ($0.000680); Frontier Communications, FCC Tariff No. 11, § 6.3.1, page 6-92 ($0.000634); Southwestern Bell Telephone Co., FCC Tariff No. 73, § 6.9.2, page 6-179.11 ($0.000288); Windstream Telephone System, FCC Tariff No. 6, § 17.2.2, page 17-32 (multiple rates under $0.001, as low as $0.0001)"); USTelecom May 11, 2020 *Ex Parte* at 1 (further maintaining that "if the rate was untenable CLECs would not already be providing the service at this rate in those areas").

[217] USTelecom Feb. 25, 2020 *Ex Parte* at 5 (A rate of "$0.001/minute strikes the right balance as a reasonable midpoint between other existing RBOC rates, the highest of which is $0.002828, and the lowest of which is $0.000418." (citation omitted)).

[218] *Id.*; USTelecom May 11, 2020 *Ex Parte* at 1; *see also* Bandwidth May 1, 2020 *Ex Parte* at 1 ("Bandwidth generally supports USTelecom's Originating Access Reform Proposal."). Inteliquent claims that Bandwidth is a "non-representative provider that fails to perform . . . common tandem functions" and is "a provider of all-IP services." Letter from Matthew S. DelNero and Thomas G. Parisi, Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 2 (filed July 10, 2020) (Inteliquent July 10, 2020 *Ex Parte*). Bandwidth, however, states it operates "a facilities-based CLEC . . . that charges originating access" that by definition provides the kind of TDM-based services that Inteliquent presumes it does not provide. Bandwidth May 1, 2020 *Ex Parte* at 1.

[219] Bandwidth May 1, 2020 *Ex Parte* at 1.

[220] *Id*. at 1-2.

[221] *Id*. at 1 n.1.

[222] *See, e.g.*, Teliax Comments, WC Docket No. 10-90 et al. at 11-13 (rec. July 31, 2017) (providing illustrations contrasting "the existing PSTN method of handling 8YY calls and the streamlined, less expensive IP-based method of handling those calls" and explaining that the "elimination of mid-call transport and other PSTN relics can lower the cost for providing 8YY service and the price to subscribers"). Indeed, given that IP services are generally less expensive to provide than TDM services and that the record demonstrates that there are carriers providing tandem switching services at rates below the benchmark that we adopt today, we find no merit to the Safe Spaces Coalition's apparent concern that today's Order will imperil the use of IP connections for tandem switching of 8YY calls. *See* Safe Spaces Coalition Oct. 6, 2020 *Ex Parte* at 2.

intermediate providers such as Inteliquent and Bandwidth, we concur that a uniform cap is suitable, notwithstanding the potentially variable nature of transport service.

63. Unsurprisingly, even among carriers that support a uniform rate cap, not all carriers support the $0.001 per minute rate for joint tandem switched transport access services.[223] In particular, Inteliquent proposes a nationwide uniform rate cap of $0.0017 per minute, which it describes as a national average tandem usage rate it calculated using its own internal traffic data.[224] Inteliquent claims its proposed rate is "based on those charged by the largest ILECs, which in turn were based originally on cost studies."[225] Yet, Inteliquent fails to acknowledge that those cost studies are almost three decades old and, given the generally declining costs of providing telecommunications service, those dated cost-based rates almost certainly overstate carriers' current costs.[226] Moreover, the fact that a broad consensus of USTelecom member companies is willing to accept a lower rate would appear to confirm that Inteliquent's average rate is unlikely to reflect the USTelecom member companies' current costs. Inteliquent also argues that "picking an arbitrary, unweighted number that might be sufficiently compensatory to *some* carriers in *some* circumstances is not a form of 'averaging'" accepted by courts.[227] But, of course, there is nothing arbitrary about the rate cap of $0.001 that we adopt.

64. Inteliquent's preferred approach, however, would be the adoption of a higher rate cap of $0.002814/minute that would include tandem switching, transport, and what it refers to as "dedicated tandem charges" as the "best method" to avoid harming competitive tandem providers like Inteliquent.[228] Our rules governing tandem-switched transport access services currently exclude flat rated charges for transport of traffic over dedicated transport facilities.[229] We similarly exclude such dedicated charges

[223] *See, e.g.*, Inteliquent July 10, 2020 *Ex Parte* at 2; Letter from Brita Strandberg, Counsel to Ooma, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 2 (filed July 7, 2020) (Ooma July 7, 2020 *Ex Parte*).

[224] Inteliquent Mar. 31, 2020 *Ex Parte* at 2-3; *see also* Inteliquent Dec. 21, 2017 *Ex Parte* at 3-4; Ooma July 7, 2020 *Ex Parte* at 2.

[225] Inteliquent June 1, 2020 *Ex Parte* at 2.

[226] For example, the inclusion of a productivity offset in the Commission's price cap regulation of local exchange carriers since its inception in 1990 is premised on increasing productivity gains and therefore declining costs in the telecommunications industry. *See Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6795-801, paras. 74-119 (1990).

[227] Inteliquent June 1, 2020 *Ex Parte* at 3. While Inteliquent cites a court case endorsing the Commission's use of nationwide averaged costs, other cases make clear the Commission's flexibility to balance a wider range of policy considerations, as we do here in picking a rate that begins the necessary transition to bill-and-keep. *See, e.g.*, *Competitive Telecomms. Ass'n v. FCC*, 87 F.3d 522, 529 (D.C. Cir. 1996). Although *Competitive Telecomms. Ass'n* dealt with just and reasonable rates under sections 201 and 202 of the Act, we find such principles equally relevant under section 251. *See* 47 U.S.C. § 251(g) (broadly describing the Commission's authority to "explicitly supersede[]" grandfathered access charges); *cf. id*. § 252(d)(2)(A) (where a state commission reviews "the terms and conditions for reciprocal compensation" in an interconnection agreement it must ensure they are "just and reasonable"). Our choice of a rate cap to begin the shift to bill-and-keep for originating toll free tandem switching and transport charges is further supported by precedent making clear the Commission's authority and flexibility when adopting a measured industry transition. *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17938, para. 809 & nn.1518-20.

[228] *See, e.g.*, Inteliquent Aug. 26, 2020 *Ex Parte* at 2. Inteliquent uses various terms when referring to the third category of charges including "dedicated tandem connection charges" and "dedicated tandem charges." *Compare* Inteliquent Mar. 31, 2020 *Ex Parte* at 4 *with* Inteliquent Aug. 26, 2020 *Ex Parte* at 2. It defines a dedicated tandem connection charge as including "dedicated tandem trunk port, dedicated multiplexing (muxing), dedicated tandem transport, and entrance facilities." Inteliquent Mar. 31, 2020 *Ex Parte* at 4. For simplicity, in referencing their advocacy on these charges, we use the term "dedicated tandem charges."

[229] *See* 47 CFR §§ 51.903(i), 69.111.

from the rules we adopt here for joint tandem switched transport access services.[230] The Commission sought comment on the possible inclusion of "fixed charges" in the *8YY Further Notice* but, apart from Inteliquent's suggestion, the record is devoid of any discussion of the potential implications of including dedicated transport services in our rate cap.[231] Inteliquent's claim that if we do not incorporate dedicated tandem charges into the uniform tandem switching and transport rate, incumbent LECs will simply increase the rates for those charges is misplaced.[232] Those charges were capped by the *USF/ICC Transformation Order* at their 2011 levels, with the exception of rate-of-return carriers' intrastate traffic, which represents a small minority of all 8YY traffic.[233] We also have some concern that setting a toll free tandem switching and transport rate cap inclusive of dedicated transport charges could overcompensate at least some competitive tandem providers. If, as Inteliquent explains, dedicated tandem charges are "disproportionally levied by incumbent LECs," then adopting a higher unified rate for tandem switching, transport and dedicated transport would offer a windfall to the competitive carriers that do not typically charge for those services and increase, rather than decrease, the cost of 8YY services.[234] As we continue to proceed incrementally in the implementation of bill-and-keep for 8YY traffic, we will monitor the impact of this *Order* on toll free dedicated transport charges and will revisit the issue if our actions in this *Order* adversely impact competition for these services.

65. After careful review of the record, we find that a rate cap of $0.001 will reasonably compensate providers for tandem switching and transport access services while we consider how best to move all intercarrier compensation to a bill-and-keep regime. As we make that transition, there is no legal requirement that we establish purely cost-based rates.[235] The rate cap we adopt here is not intended primarily to reflect carriers' costs but is instead intended to ensure a reasonable transitional rate as part of our transition of originating toll free tandem switching and transport rates to bill-and-keep. The Commission has previously delineated the merits of bill-and-keep as a rate methodology and affirms those benefits here.[236] Carriers that believe this cap provides insufficient revenue recovery may seek a Total Cost and Earnings Review provided for in this *Order*.

66. *Implementation*. To achieve this nationwide uniform cap, effective July 1, 2021, we require that tandem providers eliminate existing tandem switching charges and transport charges for originating 8YY traffic, and instead subsume charges for both tandem switching and transport into a single joint tandem switched transport access service rate element not to exceed $0.001 per minute.[237] The new rate structure we adopt will compensate the tandem provider for the use of its facilities whenever

[230] *See* Appx. A, 47 CFR § 51.903(p).

[231] *8YY Further Notice*, 33 FCC Rcd at 5740, para. 57.

[232] Inteliquent June 1, 2020 *Ex Parte* at 3.

[233] *USF/ICC Transformation Order*, 26 FCC Rcd at 17934, para. 801 & Fig.9.

[234] Inteliquent Aug. 26, 2020 *Ex Parte* at 2.

[235] *See Nat'l Ass'n of Reg. Util. Comm'rs v. FCC*, 737 F.2d 1095, 1137 (D.C. Cir. 1984); *see also Nat'l Rural Telecom Ass'n v. FCC*, 988 F.2d 174, 182-83 (D.C. Cir. 1993) (affirming price cap regulation although not tied directly to cost). We therefore disagree with Aureon that the Commission is required to "permit Aureon to continue to bill IXCs a cost-based tariff rate for tandem-switching and transport of 8YY calls." Aureon Reply at 11.

[236] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17905-14, paras. 740-59. For the same reason, we find no merit to arguments by the ACAM Broadband Coalition that this rate would prevent rural rate-of-return carriers from recovering their costs because the rate does "not reflect actual transport distances in the networks of many [rate-of-return] carriers serving very rural areas." Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 2 (filed May 13, 2020) (ACAM May 13, 2020 *Ex Parte*). Moreover, the ACAM Coalition provides no data to support its argument and does not reconcile its assertion with the fact that this rate is acceptable to the USTelecom stakeholders, some of which are rural rate-of-return carriers. Additionally, as we transition these rates toward bill-and-keep, rural carriers will progressively recover more of their revenues through a mixture of Access Recovery Charges and Connect America Fund intercarrier compensation.

[237] *See* USTelecom Feb. 25, 2020 *Ex Parte* at 4 (proposing a single unified rate).

it provides either or both elements of a joint tandem switched transport access service.[238] We find that requiring carriers to combine their tandem switching and transport rates into a single per minute rate element is "simpler to implement" than an approach that keeps the two separate, reducing the burden on carriers that must implement the new rules.[239]

67. To give tandem providers adequate time to implement our rate cap, we require carriers to file tariffs that comply with the interim rate cap for originating 8YY tandem switching and transport rates effective July 1, 2021. We find that this period of time provides carriers with a reasonable timeframe in which to transition their rates to the $0.001 per minute cap, and allows for implementation of necessary changes to billing systems and the filing of required tariff changes as part of carriers' annual tariff revisions.[240] At the same time, to avoid gamesmanship before July 1, 2021, we cap all existing toll free tandem switching and transport rates as of the effective date of this *Order*.

68. A longer transition, such as the one we adopt for moving originating 8YY end office charges to bill-and-keep, is unnecessary in this instance because tandem switching accounts for a smaller proportion of total originating access charges, and carriers will still be able to charge intercarrier compensation for toll free tandem switching and transport and will not need to find alternative sources of revenue for their tandem switching and transport costs during this transition. Adopting a longer transition, on the other hand, would unnecessarily prolong carriers' incentives to engage in 8YY arbitrage and could delay carriers' transition to IP-enabled services.

69. *Network edge*. In response to a request in the *8YY Further Notice* for comment on whether a distinct approach to determining the network edge is necessary in the 8YY context, T-Mobile proposes that we require carriers to interconnect at "no more than a few dozen POIs for the entire country" instead of at "hundreds, or even thousands of POIs across the country."[241] It describes existing interconnection arrangements as an inefficient system that is "slowing the transition from legacy transmission platforms and services to those based fully on Internet Protocol."[242] NTCA opposes the T-Mobile proposal, claiming that "the shift of all financial responsibility to RLECs serving relatively small customer bases in remote rural areas for transport to reach distant points would undermine universal service and the ability to maintain reasonably comparable rates."[243] NTCA also argues that "moving from existing network edges would introduce a much greater degree of uncertainty and exacerbate the potential for confusion or disruption as underlying network technologies change."[244] We decline to implement T-Mobile's proposal in this proceeding. Mandating such fundamental changes to carriers' interconnection obligations would have unpredictable consequences for a wide range of interconnection arrangements and

[238] *See id*. In instances of jointly provided common transport, it is only the carrier providing the tandem switching service that may assess the joint charge. *See id*. at 4 n.15.

[239] CenturyLink Reply at 2; *see also id*. at 9.

[240] USTelecom Mar. 13, 2020 *Ex Parte* at 1-2 (commenting that "USTelecom members require at least six months to make the necessary changes to their budgets and billing systems" and that a January 1, 2021 start date was "the first feasible implementation date" for such changes to 8YY tandem and transport rates).

[241] Letter from Indra Sehdev Chalk, Director, Federal Regulatory Affairs, T-Mobile USA, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 2 (filed Apr. 27, 2020) (T-Mobile Apr. 27, 2020 *Ex Parte*) (T-Mobile's "Safe Harbor POI Proposal"); *see also* T-Mobile USA Comments, WC Docket No. 10-90, CC Docket No. 01-92, at ii (filed Oct. 26, 2017) (outlining its Safe Harbor POI proposal).

[242] T-Mobile Apr. 27, 2020 *Ex Parte* at 2; *see also id*. at 3.

[243] Letter from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, and 18-156, CC Docket No. 01-92, at 2 (filed Feb. 13, 2020) (NTCA Feb. 13, 2020 *Ex Parte*).

[244] Letter from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156 et al., at 3 (filed May 18, 2020) (NTCA May 18, 2020 *Ex Parte*).

are best dealt with in a comprehensive fashion in the separate proceedings where the Commission previously sought comment on issues relating to intercarrier compensation and the network edge.[245]

70. GCI proposes a four-part plan for determining the default network edge for 8YY traffic in Alaska.[246] But the record does not provide any information on the financial implications of its proposal for other Alaska carriers or the impact of its proposal on carriers' network build-out and rates, let alone provide other parties sufficient opportunity to comment on its financial or operational implications. All of which underscores the need to address GCI's proposal in the broader context of our network edge proceeding. We therefore decline to adopt GCI's proposed approach to the network edge for 8YY traffic in Alaska here.[247]

71. Finally, NTCA raises concerns that if larger providers are no longer responsible for 8YY transport costs, they may attempt to "leverage such changes to demand rearrangement of existing interconnection arrangements and to move the network edges . . . from existing locations in rural areas to points that may be [great distances] from the rural areas where those calls originate or terminate."[248] Contrary to NTCA's concerns, although our rules transition 8YY transport and tandem switching access charges incrementally toward bill-and-keep, they do not alter the fact that interexchange carriers and wireless carriers continue to be responsible for those charges. Furthermore, we affirm that nothing we do in this *Order* is intended to affect or alter existing network edge arrangements. To address NTCA's concerns, it requests that we adopt a default rule specifying that: "(1) the RLECs will be able to choose the point of interconnection in its service area; and (2) in no event will an RLEC be financially responsible for transport of calls beyond its service area."[249] We decline to adopt NTCA's proposal as unnecessary, but at NTCA's request, we take this opportunity to remind all stakeholders that a carrier has no legal obligation to agree to unilateral attempts to change network interconnection points.[250] And, on several occasions the Commission has found that unilateral attempts by a carrier to change its interconnection point with another carrier that results in increased costs or inefficient routing of traffic is unjust and unreasonable under section 201(b) of the Act.[251]

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[245] *See Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, 32 FCC Rcd 6856 (WCB 2017).

[246] GCI Comments at 9-13.

[247] *See* NTCA May 18, 2020 *Ex Parte* at 1 (urging the Commission to "be mindful as well of the potential interconnection cost implications of any access charge reforms [it] may choose to implement" and asserting that any potential effort to "remake existing interconnection arrangement is of significant concern"); GCI Comments at 10-11 (requesting that we define the network edge); O1 Communications Reply at 10-11; T-Mobile Apr. 27, 2020 *Ex Parte* at 2 (arguing that "the USTelecom Proposal would establish the ILEC tandem as the network edge, thereby perpetuating antiquated voice technology and associated access charge regimes").

[248] NTCA Feb. 13, 2020 *Ex Parte* at 2.

[249] Letter from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, and 18-156, CC Docket No. 01-92, at 2 (filed Mar. 9, 2020) (NTCA Mar. 9, 2020 *Ex Parte*).

[250] *Northern Valley Communications, LLC*, Memorandum Opinion and Order, 35 FCC Rcd 6198, 6212, para. 30 (2020) (*Northern Valley*) (citing *Access Arbitrage Order*, 34 FCC Rcd at 9049, para. 34). Letter from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Aug. 25, 2020) (NTCA Aug. 25, 2020 *Ex Parte*).

[251] *See Northern Valley*, 35 FCC Rcd at 6208-09, para. 24 ("For example, in *Indiana Switch*, the Commission held that if a LEC's proposed unilateral shift in a point of interconnection 'significantly increases IXCs' operating costs without significant increases in service choices or benefits to subscribers, or unreasonably designates . . . points of interconnection with IXCs,' the Commission could find that unjust and unreasonable under section 201(b). Applying that precedent in the *Alpine Order*, the Commission found LECs' unilateral decisions to move their

(continued….)

C. 8YY Database Query Charges

72. To continue our transition of all intercarrier compensation to bill-and-keep, to remove the incentive for arbitrage created by the existing wide disparity in rates charged for 8YY Database queries, and to put an end to abuse of the intercarrier compensation system created by multiple carriers charging for 8YY Database queries for a single call, we adopt an interim nationwide cap of $0.0002 per 8YY Database query and limit 8YY Database query charges to a single charge per call to be assessed by the carrier that originates the call (i.e., no double dipping). Finally, we adopt a multistep transition to the rate cap of $0.0002 per query for intrastate and interstate 8YY Database queries to ensure carriers have sufficient time to adapt their businesses to the new rate.

1. Preventing Arbitrage by Capping 8YY Database Query Rates Nationwide

73. In response to the negative incentives created by the wide variety of 8YY Database query charges, and general agreement that there should be a nationwide database query rate,[252] we transition 8YY Database query charges to a single, nationwide rate cap of $0.0002. Current database query rates are widely disparate, ranging from $0.0015 to $0.015 per query,[253] because of the disparities that existed when the Commission capped most 8YY Database query charges as part of the intercarrier compensation reforms it adopted in the *USF/ICC Transformation Order*.[254] Although some commenters suggest that the different query rates may be based in carriers' differing rate structures, none provide examples of those different structures. This high degree of variability in rates strongly suggests that some, possibly many, of these rates do not reflect the costs carriers incur in providing these services, creating opportunities for 8YY arbitrage. Generating 8YY Database query charges has become one of the principal reasons driving the increase in 8YY arbitrage.[255] Additionally, there is nothing currently stopping more than one carrier in a call path from querying the 8YY Database and charging the interexchange carrier for the query. As a result, database query charges make up a disproportionately high proportion of intercarrier compensation paid by IXCs. AT&T, for example, reports that 8YY Database query charges represent 20% of all of its originating access expenses.[256] As AT&T emphasizes "[t]he cost to perform an 8YY database dip is very low, and therefore one would not expect database query charges to represent such a high percentage of AT&T's overall originating access expense."[257]

74. We are persuaded that a cap of $0.0002 per database query, as proposed by USTelecom, is a reasonable nationwide rate cap and will further our goals of ultimately transitioning all access charges to bill-and-keep, minimizing access costs, and routing 8YY traffic as efficiently as possible.[258]

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interconnection points unjust and unreasonable." (citing *Application of Indiana Switch Access Div*., File No. W–P–C–5671, Memorandum Opinion and Order, 1 FCC Rcd 634, 635, para. 5 (1986) (*Indiana Switch*); *AT&T Corp. v. Alpine Communications et al*., File No.: EB-12-MD-003, Memorandum Opinion and Order, 27 FCC Rcd 11511, at 11526, 11528-30, paras. 39, 44-48; *id*. at 11528-29, para. 44 (2012) (*Alpine Order*))).

[252] *See, e.g.*, Inteliquent Reply at 5; Inteliquent Mar. 31, 2020 *Ex Parte* at 5; AT&T Comments at 15-16; *see also* CenturyLink Comments at 12; WTA Comments at 5; Charter Comments at 8-9; Comcast Comments at 5-6.

[253] AT&T Feb. 12, 2018 *Ex Parte* Attach. AT&T *Ex Parte* at 8 (showing a sample of the variability of 8YY Database query rates).

[254] *USF/ICC Transformation Order*, 26 FCC Rcd at 17934, para. 801 & fig. 9; 47 CFR §§ 51.907(a), 51.909(a).

[255] AT&T Jan. 13, 2020 *Ex Parte* at 2 (asserting that "a significant portion of these arbitrage efforts involve abusive schemes to generate fraudulent 8YY calls solely for the purpose of charging captive long-distance carriers usage-sensitive originating access charges and 8YY database query fees"); Comcast Comments at 5 (explaining that "the record contains substantial evidence of significant, inexplicable variations among the rates that service providers assess for 8YY database query dips"); ITTA Comments at 5 n.13.

[256] AT&T Jan. 13, 2020 *Ex Parte* at 5; *see also id*. Attach. AT&T 8YY Originating Access at 4.

[257] *Id*. at 5.

[258] USTelecom Feb. 25, 2020 *Ex Parte* at 6.

USTelecom describes this rate as "the estimated cost of performing a database dip."[259] Additionally, the fact that this cap represents the "agreed upon amount" by USTelecom's members, which include companies that range from the largest to some of the smallest incumbent local exchange carriers, competitive local exchange carriers, and interexchange carriers, all with widely varying business models and cost characteristics makes it likely that it will be sufficient for carriers to recover their costs.

75. We considered suggestions that we adopt a higher rate cap, including the proposal that we cap database queries at different rates, for example, the "national average" rate of $0.004248 per query.[260] We agree that "the Commission should not adopt a higher cap, such as the national average, because such a cap would simply lock in the excessive, unregulated rates that many carriers charge today," perpetuating opportunities for continued arbitrage.[261]

76. We also considered suggestions that we move 8YY Database query charges to bill-and-keep.[262] As the Commission recognized in the *8YY Further Notice*, "the database query is a cost a LEC must incur in order to route an 8YY call to the proper IXC, either by maintaining its own SCP database or by paying a third-party SCP for the database query."[263] USTelecom agrees that "providers incur costs associated with the [database query] function" and therefore "does not propose to reduce the rate to zero."[264] The payment of a query charge ultimately supports the existence of the 8YY Database, which is essential to competition in the provision of toll free services. That said, such charges nonetheless remain a component part of access charges generally, to which the Commission's commitment to bring all such charges to a bill-and-keep methodology applies. In the interim, as USTelecom explains, by setting the transitional query rate cap at a low, "near-zero rate" we will remove most incentives to engage in 8YY Database query charge abuse while still allowing carriers to recover their costs.[265] Setting the cap at this level will also ensure that 8YY customers and, ultimately consumers, will not bear the burden of unreasonable query charges.[266] As proposed in the *8YY Further Notice* and consistent with our goal of addressing fraud and arbitrage that affects all 8YY charges, this transition applies to both interstate and intrastate 8YY Database query charges.[267] Carriers that can demonstrate higher costs may seek a waiver of the cap pursuant to the Commission's waiver processes.[268]

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[259] *Id*.; *see also* USTelecom June 5, 2020 *Ex Parte* at 2.

[260] *See, e.g.,* Inteliquent Dec. 21, 2017 *Ex Parte* at 2; Charter Comments at 9 n.23; ITTA Comments at 6; *see also* Comcast Comments at 5-6 (rejecting the nationwide average as the end state for query rates but supporting a cap at "the nationwide average of the charges imposed by the largest incumbent LEC in each state and then reduced to a reasonable level over three years").

[261] AT&T Reply at 2; *see also* AT&T Comments at 16 ("CLEC database charges have never been subject to direct rate regulation or to the CLEC benchmark rules, and many such charges are excessive. Setting the nationwide cap at the average marketplace rate would therefore establish a rate derived from today's set of artificially high CLEC rates."); Teliax/Peerless Comments at 5.

[262] AT&T Comments at 15; AT&T Reply at 14.

[263] *8YY Further Notice*, 33 FCC Rcd at 5743, para. 68.

[264] USTelecom Feb. 25, 2020 *Ex Parte* at 6.

[265] *Id.*

[266] This level of rate cap should also greatly reduce carriers' incentives to use database query charges to offset access charge revenues—a cross-subsidization the Commission has expressly forbidden. *See Competitive LEC Access Charge Reform Order*, 16 FCC Rcd at 9946, para. 56 n.128 (competitive local exchange carriers should "not look to this category of tariffed [database query] charges to make up for access revenues").

[267] *See 8YY Further Notice*, 33 FCC Rcd at 5733-34, para. 30. As discussed above, by bringing intrastate rates into parity with comparable interstate rates, we will "minimize opportunities for arbitrage that could be presented by disparate intrastate rates." *USF/ICC Transformation Order*, 26 FCC Rcd at 17929-30, paras. 791-92.

[268] 47 CFR § 1.3.

2. Adopting a Multistep Transition to the Nationwide Rate Cap

77. To avoid a flash cut in revenue received by carriers for database queries, as proposed by USTelecom, we implement the nationwide rate cap for 8YY Database query charges over a multistep transition period. First, we cap all 8YY Database query charges not previously capped at their current levels as of the effective date of the *Order*.[269] Capping all 8YY Database query rates will serve as an important step in curbing the arbitrage that currently exists for database query charges. It will also prevent carriers from gaming our reform efforts by changing or modifying existing rates in anticipation of the adoption of the first interim query rate for 8YY Database queries.

78. Second, effective July 1, 2021, we cap 8YY Database query rates for each carrier at the national average query rate of $0.004248. (Capped 8YY Database query rates from step one of the transition that are lower than $0.004248 must remain at those lower capped rates.) Several commenters supported setting the initial cap at this level.[270] But, consistent with the USTelecom proposal we make this the second step of the transition.[271] Setting July 1, 2021 as the effective date for this step will allow carriers ample time to prepare to transition higher rates to the cap. We find that adopting an implementation date of July 1, 2021 for this transitional step will ensure that carriers have ample time to reduce the "excessive, unregulated rates that many carriers charge today" and therefore "mitigate this form of arbitrage."[272] Third, effective July 1, 2022, all database query rates will be transitioned half of the way to the final target rate of $0.0002. So, if a carrier's database query rate is capped at $0.004248 in the second step, its cap would be $0.002224 on July 1, 2022. If a carrier's rate cap is below $0.004248, then it will use its capped rate to arrive at its rate effective July 1, 2022. Finally, effective July 1, 2023, carriers may not charge more than $0.0002 for an 8YY Database query.

79. Adopting a multistep, multiyear transition period to implement the 8YY Database query rate cap is consistent with the prior Commission's actions and will "provide [the] industry with certainty and sufficient time to adapt to a changed regulatory landscape"[273] and help minimize disruption to consumers and service providers.[274] Accordingly, we agree with parties that favor a reasonable transition period to avoid the negative effects that might have resulted from imposing a "flash cut" to the new nationwide cap.[275]

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[269] *See* Appx. A, 47 CFR §§ 51.909(m), 51.911(d). The only database query rates not currently capped are those of competitive local exchange carriers and rate-of-return incumbent local exchange carriers' intrastate database query rates.

[270] *See* USTelecom Feb. 25, 2020 *Ex Parte* at 6 (proposing that all database query rates be capped at the national weighted average rate of $0.004248 effective January 1, 2021); *see also* Comcast Comments at 5-6 (suggesting that database query rates should be capped "at the nationwide average of the charges imposed by the largest incumbent LEC in each state and then reduced to a reasonable level over three years").

[271] USTelecom Feb. 25, 2020 *Ex Parte* at 6.

[272] *8YY Further Notice*, 33 FCC Rcd at 5739, para. 53; AT&T Reply at 2; CenturyLink Comments at 12.

[273] *USF/ICC Transformation Order*, 26 FCC Rcd at 17667, para. 1. The Commission adopted a much shorter transition period of 45 days for certain changes in the *Access Arbitrage Order*, determining that "there is no reason to allow access-stimulating LECs and the intermediate access providers that they choose to use to continue to benefit from access arbitrage schemes." *Access Arbitrage Order*, 34 FCC Rcd at 9068, paras. 74-76.

[274] *USF/ICC Transformation Order*, 26 FCC Rcd at 17932-33, para. 798; *see also* CenturyLink Comments at 13 ("[C]arriers should have time to adjust their pricing, etc. to the new regime."); Charter Comments at 9.

[275] *See, e.g.*, NCTA Comments at 4 (asserting that to "avoid adopting a flash cut," the Commission "instead should adopt a reasonable transition to bill-and-keep, similar to the transition adopted for terminating access charges in the 2011 reforms"); Frontier Reply at 17-18 ("Frontier appreciates the Commission's commitment to avoiding flash cuts . . . ."); Charter Comments at 9 (arguing that the Commission "should provide for a reasonable period to transition to those rates so that providers can better determine how to accommodate those changes"); Comcast Comments at 5-6 (asserting that adopting a graduated transition "will reduce potential rate shock"); CenturyLink Comments at 13 (A (continued….)

80. Implementation of the database query rate cap and transition will occur through application of amendments to section 51.907 of our rules for price cap carriers, section 51.909 of our rules for rate-of-return carriers, and 51.911 of our rules for competitive local exchange carriers.[276]

81. Nearly two decades ago, the Commission declined to subject competitive local exchange carrier database query charges to the benchmarking rules because of the dearth of information about such carriers' query charges in the proceeding before it.[277] This proceeding by contrast includes robust discussion of competitive providers' database query charges[278] and we find that given our adoption of a nationwide rate cap for all database query charges, the simplest and most administrable manner to implement that change for competitive local exchange carriers is by applying our benchmark rules to competitive local exchange carrier database query charges. The competitive local exchange carrier benchmark rule in section 61.26 of our rules and the benchmarking requirements for access reciprocal compensation rates in section 51.911(c) of our rules already applies to competitive local exchange carrier interstate charges, except database query charges. We now amend section 51.911 of our rules to make clear that beginning July 1, 2021, a competitive local exchange carrier providing interstate or intrastate switched exchange access services for use in the delivery of a Toll Free Call shall not have a tariffed interstate or intrastate Toll Free Database Query Charge rate that exceeds the rate charged by the competing ILEC.[279]

3. Limiting 8YY Database Query Charges to One Per 8YY Call, to Be Assessed by the Originating Carrier

82. To further reduce the abuse of the 8YY Database query, as of the effective date of this *Order*, we will eliminate double dipping and allow only one carrier in a call path to charge a single database query for each 8YY call. If the originating carrier is unable to conduct the 8YY query or transmit the results of the query, the next carrier in the call path that is able to do so may conduct the single query and assess the charge. We agree with the Toll Free Number Administrator that "multiple dip charges are unnecessary and increase the cost of a call to a[n 8YY number]."[280] There is broad support in the record for this action,[281] with many commenters agreeing that "there is no legitimate reason why an IXC should be expected to pay for multiple database queries."[282] We agree that "a single dip could allow

new nationwide database query cap "will have an impact on a large number of parties across the industry and carriers should have time to adjust their pricing.").

[276] *See* Appx. A, 47 CFR §§ 51.907, 51.909, 51.911(d), (e).

[277] *Competitive LEC Access Charge Reform Order*, 16 FCC Rcd at 9946, para. 56 n.128 ("Late in this proceeding, Sprint argued that CLEC toll-free database query charges should also be subject to a tariff benchmark or should be detariffed above the rate of the competing ILEC. . . . Sprint also mentioned this issue, but only in passing, in its comments to our *Safe Harbor Public Notice*. . . . Given the dearth of record evidence on this issue, we decline at this time to impose by rule the limit on database query charges that Sprint proposes. We expect, however, that CLECs will not look to this category of tariffed charges to make up for access revenues that the benchmark system denies them." (citations omitted)).

[278] *See, e.g.*, Inteliquent Comments, WC Docket No. 10-90 et al. at 5 (rec. July 31, 2017) (Inteliquent 2017 Comments); AT&T Comments at 14-15 ("CLECs in particular have rushed to take advantage of this low-hanging arbitrage opportunity. . . . CLECs' tariffed database charges vary greatly: many are quite high, and significantly higher than incumbent LEC charges . . . .").

[279] Appx. A, 47 CFR § 51.911(e).

[280] Somos Reply at 3.

[281] *Id.*; *see also* AT&T Comments at 14; CenturyLink Comments at 13; Charter Comments at 8; Comcast Comments at 5-6; West Comments at 18-19; WTA Comments at 5.

[282] *See* CenturyLink Comments at 13; Comcast Comments at 6; ITTA Comments at 6; West Comments at 18 n.34; *but see* Teliax/Peerless Reply at 21-22 (contending "there are valid reasons why more than one query is necessary"); Teliax/Peerless Apr. 27, 2020 *Ex Parte* at 10.

[a] call to be correctly routed" and that "routing information should be carried with that call until it is terminated."[283] Allowing only one query per call will eliminate an obvious source of 8YY arbitrage and encourage efficient routing.

83. In the typical 8YY call path, it is the originating carrier that conducts the query because the query is a necessary prerequisite to routing the call to the proper 8YY provider.[284] Some commenters support allowing the originating carrier to assess the database query charge,[285] while others support allowing the carrier that hands the call off to the 8YY provider to assess the charge.[286] We find that allowing the originating carrier to assess the 8YY Database query charge or, if that carrier is unable to conduct the query or transmit the results of the 8YY query, allowing the next carrier in the call path to assess the charge, is consistent with long-standing industry practice and fosters efficient routing of 8YY calls from their inception. Conducting the database query at the point of initiation of the call, allows the originating carrier and all subsequent carriers in the call path to use the correct call routing information to transmit the call.[287] In contrast, allowing the last carrier that hands the call off to the 8YY provider to assess the query charge would necessarily entail inefficient routing up to the point where the final carrier conducts the query.

84. Commenters suggest that some originating carriers' networks may lack the requisite signaling functionality to pass the results of an 8YY Database query, necessitating an additional query by the next carrier in the call path.[288] In the very limited instances where an originating carrier cannot pass the results of an 8YY Database query, that carrier is not required to perform a query, and may not charge for an 8YY Database query. In this circumstance, we allow the next carrier in the call path to conduct the query and assess the single charge. Carriers other than the next carrier in the call path after the originating carrier remain free to perform their own database queries but may not assess a charge for them. Not allowing intermediate carriers to assess a second 8YY Database query charge per call should have a *de minimis* impact on those carriers' bottom lines generally.[289] Although the record does not allow us to quantify the number of carriers that lack these basic signaling capabilities, this likely involves a subset of rural carriers which are likely to serve a relatively small fraction of customers and a similarly

[283] Somos Reply at 3.

[284] *See* Charter Comments at 8 (reasoning that "the originating provider should be the only entity that bills for the database query"); *see also* NCTA Comments at 5 ("To properly route 8YY calls to the associated interexchange carrier (IXC), originating providers must obtain information from a central 8YY database.").

[285] Charter Comments at 8 (arguing that only the originating provider should bill for the database query); NCTA Comments as 5-6 (urging the Commission to "make clear that the originating provider should conduct and bill for the database query").

[286] AT&T Comments at 17 (proposing that "the carrier that hands the call to the IXC is the only carrier that may bill the IXC a database query charge"); CenturyLink Comments at 13.

[287] Charter Comments at 8 n.20 ("[T]he originating carrier should be expected to forward the routing information received from that query to other providers in the call path."); NCTA Comments at 5-6 ("[T]he originating provider should . . . be required to pass the information on to subsequent entities in the call path.").

[288] GCI Comments at 14 (asserting that "if any of the carriers handling the call has not implemented SS7, the information about which IXC serves the 8YY customer will not be embedded into the signaling information for the call even after the carrier queries the 800 database"); Teliax/Peerless Reply at 21 ("When a carrier does not use SS7 technology and, as a result, there is no information identifying the serving IXC, an additional [database query] would be necessary.").

[289] Interexchange carriers that are charged multiple 8YY Database query charges for a single call may reasonably decline to pay for more than one query, citing the Commission's policy against double billing for a single service. *See generally USF/ICC Transformation Order*, 26 FCC Rcd at 18026-27, para. 970.

small fraction of 8YY calls overall.[290] Intermediate providers that are affected by this restriction transport such traffic pursuant to voluntary agreements and can decide whether to renegotiate their contractual arrangements.[291] In fact, the record shows that competitive local exchange carriers and interconnected Voice over Internet Protocol providers partner with other providers, including intermediate tandem providers, to perform the database queries needed "to determine the IXC serving the dialed toll free number . . . and then route[] the call to the IXC through an unaffiliated carrier's tandem switch that is interconnected with the serving IXC."[292]

D. Relying on Existing Mechanisms for Revenue Recovery

85. We find that our existing revenue recovery mechanisms are sufficient to facilitate incumbent local exchange carriers' reasonable recovery needs as we move originating 8YY end office charges to bill-and-keep and move to national rate caps for 8YY joint tandem switched transport service and 8YY Database query charges. Consistent with the principles of bill-and-keep, competitive local exchange carriers, which are not subject to prescriptive rate regulation, can decide whether to recover from their end users any revenues they "lose" as a result of this *Order*. Accordingly, we decline requests to adopt new recovery mechanisms specifically tailored to 8YY.[293]

86. The Commission adopted the current rules for Eligible Recovery as part of the intercarrier compensation reforms it undertook in the *USF/ICC Transformation Order*.[294] The Commission designed those rules to enable price cap and rate-of-return carriers to recover a portion of the revenues they lost as terminating end office access rates transitioned to bill-and-keep.[295] Our existing recovery mechanisms reflect "the differences faced by price cap and rate-of-return carriers."[296] Rate-of-return carriers, "which are generally smaller and less able to respond to changes in market conditions than

[290] AT&T Comments at 17 ("[R]ural incumbent LECs . . . account for a very small percentage of database query charges by revenue."). AT&T indicates that from January to October, 2019, rural carriers (identified as both National Exchange Carrier Association and Non-National Exchange Carrier Association carriers) accounted for 3% of all of its 8YY Database query expenses. AT&T Jan. 13, 2020 *Ex Parte* Attach. AT&T 8YY Originating Access at 8.

[291] *See* West Telecom Comments at 19 n.36 ("West has internal policies and procedures, however, that minimize the possibility that an IXC would be charged multiple query charges for a single call. For example, when West receives a call from another provider that normally handles query charges, even if the call is missing call information necessary for onward routing of the call, and even when West therefore has to make a query of its own, West does not bill the IXC for the West database 'dip.'").

[292] Teliax/Peerless Reply at 11-12.

[293] *See* CenturyLink Comments at 19 (requesting that the Commission adopt rules defining additional Eligible Recovery that incumbent local exchange carriers "are permitted to recover as a result of this 8YY reform"); ITTA Comments at 17 (arguing that if the Commission eliminates 8YY access charges, it must provide revenue recovery for price cap carriers and rate-of-return carriers); NTCA Feb. 13, 2020 *Ex Parte* at 1 (urging the Commission to provide recovery for "any additional rate elements not currently included within existing explicit alternative cost recovery mechanisms"); NTCA Feb. 24, 2020 *Ex Parte* at 2 (reiterating NTCA's request for "explicit alternative cost recovery mechanisms"); USTelecom Feb. 25, 2020 *Ex Parte* at 2, 7-9 (proposing separate revenue recovery proposals for price cap carriers and rate-of-return carriers for revenue lost due to the Commission's 8YY reforms); ACAM Apr. 15, 2020 *Ex Parte* at 1 (arguing that transition of rate-of-return carriers' originating 8YY access revenues to bill-and-keep must be accompanied by a recovery mechanism to provide recovery for all lost revenues); ACAM May 13, 2020 *Ex Parte* at 1-2 (advocating for a specific recovery mechanism to accommodate lost intrastate 8YY revenues for rate-of-return carriers).

[294] *See* 47 CFR §§ 51.915 (price cap carriers), 51.917 (rate-of-return carriers); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17956-18002, paras. 847-932.

[295] *USF/ICC Transformation Order*, 26 FCC Rcd at 17678, para. 38 (discussing "how much of their lost revenues carriers will have the opportunity to recover" as a result of intercarrier compensation reform).

[296] *See, e.g., id.* at 17965, para. 863.

are price cap carriers" require a "greater degree of certainty" in connection with intercarrier compensation reforms.[297] We therefore conclude that it is reasonable and appropriate to rely on these mechanisms here, especially insofar as commenters have not demonstrated that they are unable to recover all or part of their lost revenues through existing federal and state recovery mechanisms and insofar that these mechanisms permit rate-of-return carriers to obtain some recovery from explicit universal service support through Connect America Fund Intercarrier Compensation.[298] As the Commission provided for in the *USF/ICC Transformation Order*, we continue here to provide an opportunity for carriers to request additional support if needed through a petition for a Total Cost and Earnings Review.[299] In addition, carriers retain the option of seeking a waiver of any provision of the Commission's rules.[300]

1. Rate-of-return carriers

87. Rate-of-return carriers will continue to calculate their Eligible Recovery using the methodology adopted in the *USF/ICC Transformation Order* and pursuant to section 51.917(d) of our rules.[301] The Eligible Recovery calculation will allow rate-of-return carriers to account for most of their total lost 8YY revenues. Because the Eligible Recovery calculation requires rate-of-return carriers to subtract expected interstate switched access revenues from Base Period Revenue, adjusted downward 5% annually, a decline in originating 8YY interstate switched access revenues resulting from the reforms we make today means that less revenue will be subtracted from the adjusted Base Period Revenue. This will increase rate-of-return carriers' Eligible Recovery.[302] Thus, the Eligible Recovery calculation will reflect rate-of-return carriers' lost interstate end office and tandem switching and transport access revenues and allow recovery of those revenues.[303]

88. Consistent with the Commission's rules,[304] and the recommendation of ITTA, WTA, and USTelecom,[305] rate-of-return carriers will continue to recover Eligible Recovery through the same two-step process set forth in the *USF/ICC Transformation Order*: first through the Access Recovery Charge, subject to the current caps, and then through Connect America Fund Intercarrier Compensation, as permitted by the Commission's rules.[306] In the *USF/ICC Transformation Order*, the Commission explained that carriers—especially rate-of-return carriers—likely would not be able to recover all of their lost revenues through Access Recovery Charges alone, given the constraints imposed by our caps on permissible Access Recovery Charges and by the Residential Rate Ceiling.[307] Accordingly, the Commission allowed incumbent local exchange carriers to rely on Connect America Fund Intercarrier

[297] *See, e.g., id.* at 17977, para. 891.

[298] *See* ITTA Comments at 19-20.

[299] *USF/ICC Transformation Order*, 26 FCC Rcd at 17996-18002, paras. 924-32. The existing revenue recovery mechanisms for intercarrier compensation reform, including the Total Cost and Earnings review, were affirmed by the 10th Circuit. *See In re FCC 11-161*, 753 F.3d at 1131-32.

[300] 47 CFR § 1.3.

[301] *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17957-58, para. 851; *see also* 47 CFR § 51.917(d).

[302] *See* 47 CFR § 51.917(d).

[303] Further, rate-of-return carriers will be able to recover the costs of their interstate 8YY Database query charges under the existing Eligible Recovery calculation. *See id.* § 51.917.

[304] *Id.* § 51.917(e)-(f).

[305] ITTA Comments at 20; WTA Comments at 9; USTelecom Feb. 25, 2020 *Ex Parte* at 9.

[306] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17987-18002, paras. 905-32 (explaining the "two-step mechanism by which carriers will be allowed to recover their Eligible Recovery"); *see also* 47 CFR § 51.917(e) (explaining the Access Recovery Charge that rate-of-return carriers may assess), (f) (discussing rate-of-return carrier eligibility for Connect America Fund Intercarrier Compensation recovery).

[307] *USF/ICC Transformation Order*, 26 FCC Rcd at 17994, para. 917.

Compensation to recover Eligible Recovery that they could not recover through permitted Access Recovery Charges.[308]

89. Consistent with the concept of moving to bill-and-keep, rate-of-return carriers will continue to look first to their end users for recovery through the Access Recovery Charge.[309] Some commenters suggest that we modify the Access Recovery Charge caps for rate-of-return carriers, but do not offer any specifics on how those caps should be modified.[310] Rate-of-return carriers can rely on Connect America Fund Intercarrier Compensation support to recover at least some of the revenues that they cannot recover through their Access Recovery Charges.[311]

90. Rate-of-return carriers will recover any Eligible Recovery permitted by section 51.917(f) of our rules through Connect America Fund Intercarrier Compensation pursuant to section 54.304 of our rules.[312] We agree with ITTA that using Connect America Fund Intercarrier Compensation support in this manner is consistent with the Commission's mandate under section 254 of the Act to advance universal service through "specific, predictable and sufficient" mechanisms and the Commission's use of universal service funding as a component of prior intercarrier compensation reforms.[313]

91. We conclude that concerns that allowing rate-of-return carriers to continue receiving support from Connect America Fund Intercarrier Compensation will limit the funds available under the Alaska Plan are unfounded.[314] As GCI concedes, the Alaska Plan provides "fixed amounts of support to participating ILECs and CMRS providers in exchange for specific, tailored obligations to deploy broadband over a ten-year period."[315] Nothing we do in this *Order* alters Alaska Plan support. Accordingly, the rules that we adopt today will not "upend the carefully calibrated commitments" made as part of that Plan.[316]

92. Our rules for calculating rate-of-return Eligible Recovery will consider reductions in originating interstate revenue but not any reductions in originating intrastate revenue. Although the recovery mechanism established in the *USF/ICC Transformation Order* adopted a formal mechanism for terminating intrastate revenue recovery for rate-of-return carriers, we adopt a different approach here for several reasons.[317] The hundreds of millions of dollars in rate-of-return carriers' annual intrastate revenues potentially affected by the *USF/ICC Transformation Order*'s reforms[318] dwarf the intrastate

[308] *Id.* at 17994-95, para. 918.

[309] *See* 47 CFR § 51.917(e).

[310] *See* WTA Comments at 9; Frontier Reply at 13. In a separate proceeding, we are currently seeking comment on detariffing Access Recovery Charges as well as Subscriber Line Charges. *See generally Telephone Access Charges Notice*.

[311] The *Telephone Access Charges Notice* proposes to detariff Access Recovery Charges, as well as other retail end user access charges, in most, if not all parts of the country. If that proposal were adopted, carriers would be able to recover any lost revenues directly from their end users, subject only to the constraints of the competitive marketplace. *See generally Telephone Access Charges Notice*.

[312] 47 CFR §§ 51.917(f), 54.304.

[313] *See* ITTA Comments at 21; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17995, para. 919.

[314] *See* GCI Comments at 8-9.

[315] *Id*.

[316] *Id*. at 9.

[317] *USF/ICC Transformation Order*, 27 FCC Rcd at 17932, para. 795.

[318] *See, e.g., id.* at 17980, Fig. 11.

revenues at issue here, which NTCA estimates will be approximately $6.5 million per year.[319] Further, even the recovery mechanism in the *USF/ICC Transformation Order* declined to ensure revenue-neutrality, and we are not persuaded to go further here, particularly given the comparatively limited revenues at stake.[320] In addition, in contrast to interstate rate regulation, intrastate revenue recovery largely is a matter of state control, presenting a real risk of over-recovery if we were to establish a formal recovery mechanism for intrastate 8YY origination charges here. For one, many states have granted local exchange carriers a significant amount of flexibility regarding intrastate rates.[321] In addition, in contrast to our regulation of price cap carriers, we have left rate-of-return carriers' intrastate originating access rates uncapped—and continue to do so, except with specific respect to 8YY originating charges as reformed in this *Order*.[322] Furthermore, we anticipate that our reform of 8YY originating charges will reduce billing disputes, leading to some cost savings for local exchange carriers. The record thus does not demonstrate that a formal recovery mechanism genuinely is needed here for intrastate 8YY origination charges above and beyond the recovery possible under state law.

93. We find it unnecessary to adopt ITTA's proposal to "restart the timeline" of the 5% annual reductions in rate-of-return carriers' Baseline Adjustment Factor[323] or to otherwise adjust the Eligible Recovery calculation for rate-of-return carriers to accommodate our changes to the 8YY access charge regime. ITTA fails to provide a basis for changing the 5% annual reductions which were instituted to approximate the rate of line losses rate-of-return carriers were experiencing at the time of the adoption of the *USF/ICC Transformation Order*. We therefore decline to modify the 5% annual reduction.

2. Price cap carriers

94. Like rate-of-return carriers, we find that price cap carriers should look to the existing rules to determine how to adjust to the changes we make today to our intercarrier compensation system. We decline to adopt the suggestion of some commenters that we revise our Eligible Recovery rules to allow price cap carriers to include 8YY originating access revenues in their Eligible Recovery calculations.[324] Instead, consistent with our move to bill-and-keep, price cap carriers may increase their Subscriber Line Charges or their Access Recovery Charges, to the extent they are otherwise able to do so.[325] There is no compelling evidence in the record that further change to our recovery mechanisms is warranted. In fact, parties have not provided any meaningful data regarding the amount of revenue price cap carriers as a whole derive from 8YY originating access charges, or how such revenues should be considered as part of the Eligible Recovery calculations.[326] Without actionable data regarding the

[319] NTCA Feb. 24, 2020 *Ex Parte* at 1. The ACAM Broadband Coalition acknowledges that the "bulk" of rural rate-of-return carriers' originating access traffic "will be interstate," suggesting that intrastate revenue losses will be less than interstate revenue losses. *See* ACAM Apr. 15, 2020 *Ex Parte* at 3. We are also unpersuaded by the ACAM Broadband Coalition's unsupported assertion that having to "absorb the loss of originating access revenue from 8YY calls" would mean that rural broadband deployment would need to be "diverted." *Id.* at 1. Rate-of-return carriers are not required to absorb all revenue losses as we permit recovery of interstate revenues, which ACAM acknowledges represents a larger share of originating access traffic.

[320] *USF/ICC Transformation Order*, 26 FCC Rcd at 17996-97, para. 924.

[321] *See Telephone Access Charges Notice*, 35 FCC Rcd at 3181, paras. 46-47.

[322] 47 CFR § 51.909(a)(2); *USF/ICC Transformation Order*, 26 FCC Rcd at 17936-37, para. 805.

[323] *See* Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 2 n.10 (filed Dec. 10, 2019).

[324] *See, e.g.*, CenturyLink Comments at 16; Frontier Reply at 13.

[325] 47 CFR § 69.152. As explained above, the Subscriber Line Charge is referred to in our rules as the End User Common Line Charge.

[326] *See, e.g.*, CenturyLink Comments at 19 (requesting that the Commission define an additional Eligible Recovery amount that incumbent local exchange carriers "are permitted to recover as a result of this 8YY reform" but providing no indication of what that additional amount should be). USTelecom estimates that for its mid-size price (continued….)

revenues price cap carriers might lose as a result of our reform, and their ability to recover that revenue from their end users absent rule changes, we are unable to justify amending the Eligible Recovery calculation. The Commission has concluded that "[p]rice cap carriers generally are less dependent than rate-of-return carriers on interstate access charge revenues and universal service support, and better able to use various economies of scale to generate cost-saving efficiencies, thereby reducing the relative impact of any revenue reductions."[327] These same considerations lead us to conclude that price cap carriers will be able to accommodate changes in 8YY originating access revenues without the need for new universal service support. We also find that the transitions we adopt for today's reforms will give price cap carriers adequate time to adapt to these changes.

95. We also decline to implement proposals to freeze the annual 10% reduction in the Price Cap Carrier Traffic Demand Factor or to offset that annual 10% reduction by the amount of revenues lost as a result of our reform of 8YY access charges.[328] Although we sought "quantifiable data or evidence" to help us determine what proportion of originating access revenues are attributable to 8YY calls and, more broadly, the need for originating local exchange carriers to replace the revenues they currently obtain from 8YY-related access charges,[329] parties failed to submit the data we would need to quantify the revenues that price cap carriers might lose as a result of our reforms.[330] Without that data, we are unable to justify amending the Eligible Recovery calculation. Commenters also do not attempt to explain how our reforms to 8YY originating access charges are related to the Commission's mechanism designed to

cap members, "8YY originating access represents at least a quantity similar or greater than that cited by NTCA" in the record. Letter from Mike Saperstein, Vice President, Strategic Initiatives & Partnerships, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156 at 1 (filed Aug. 6, 2020) (USTelecom Aug. 6, 2020 *Ex Parte*) (citing NTCA Feb. 24, 2020 *Ex Parte* at 1 ("RLECs' total originating 8YY access revenues will be approximately $30.3 million.")). Given USTelecom's lack of specificity about how much 8YY originating access revenue some undefined subset of its members receive and its failure to specify whether any of the carriers in that subset will benefit from 8YY expense reductions that will offset losses in 8YY access revenue, we are unable to find that USTelecom's 8YY access revenue estimate justifies an alternative approach to recovery. As part of a recent filing, Frontier provides confidential estimates of its current revenue from originating 8YY access and of its estimated lost revenue should we adopt the approach USTelecom has proposed for reducing 8YY access charges. Letter from Russell Hanser, Counsel to Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No 18-156, Attach. (filed Sept. 4, 2020) (Frontier Sept. 4, 2020 *Ex Parte*). As Ad Hoc notes, Frontier's estimates are unverified. Letter from Sarah Crifasi and Susan Gately, to Marlene H. Dortch, Secretary, FCC, WC Docket No 18-156 (filed Sept. 2, 2020) (Ad Hoc Sept. 2, 2020 *Ex Parte*). At the very least, it appears that Frontier's estimates fail to account for opportunities it currently has to offset 8YY revenue reductions such as any remaining room under existing Access Recovery Charge or Subscriber Line Charge caps and intrastate pricing flexibility in the states it serves.

[327] *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*, CC Docket No. 00-256 et al., Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19671, para. 134 (2001).

[328] *See* Frontier Reply at 13; ITTA Comments at 19; *see also* 47 CFR § 51.915(b)(10).

[329] *8YY Further Notice*, 33 FCC Rcd at 5743, para. 66.

[330] ITTA provided certain data showing that, for three of its members, "one-half to approximately 60[%] of their originating interstate access minutes are attributable to 8YY calls, and a move of 8YY originating traffic to bill-and-keep would deplete them of revenues ranging from over $900,000 to approximately $1.6 million annually." ITTA Comments at 8. These numbers are for three unspecified ITTA members, however, making it impossible for us to determine whether they are representative of price cap carriers generally or to assess how significant these amounts are relative to carriers' total revenues and whether these amounts may be material in relation to the individual carriers' total revenues.

estimate line loss for price cap carriers, which is reflected in the 10% annual reduction.[331] Nor do they claim that the 10% annual reduction has somehow ceased to reasonably predict line loss trends. Furthermore, the 10% reduction is applied only to the revenue reductions included in the Eligible Recovery calculation—required reductions to a price cap carrier's terminating access revenues.

96. We also decline to adopt suggestions by CenturyLink and ITTA that we amend our existing revenue recovery rules to allow price cap carriers to receive Connect America Fund Intercarrier Compensation support to recover revenues lost as the result of today's reform.[332] In the *USF/ICC Transformation Order*, the Commission allowed price cap carriers to seek recovery from Connect America Fund Intercarrier Compensation on a transitional basis and phased out such support over time.[333] The Commission chose to phase out this support for price cap carriers in part because it adopted measures allowing price cap carriers the opportunity to receive additional universal service support through other mechanisms.[334] The same logic applies today. With the new support mechanisms now phased in, there is no basis to revisit the phase-out of Connect America Fund Intercarrier Compensation support "designed to reflect the efficient costs of providing service over a voice and broadband network."[335] Since the adoption of the *USF/ICC Transformation Order*, price cap carriers that have chosen to receive high-cost universal service support have been able to maintain and improve their networks using universal service support they receive through the phased-in Connect America Fund mechanisms apart from the phased-out Connect America Fund Intercarrier Compensation.[336] Therefore, we decline to extend Connect America Fund Intercarrier Compensation support to price cap carriers to recover lost 8YY access revenues at this time.

97. Although we do not adopt a specific revenue recovery mechanism for price cap carriers, we also do not foreclose those carriers from recovering reduced revenues through lawful end-user charges such as the Subscriber Line Charge. Indeed, such end-user recovery is one of the central tenets of bill-and-keep.[337] Some price cap carriers claim they are unable to bill their end users to offset reduced 8YY access charge revenues given the Commission's limits on end user charges.[338] We note, however, that

[331] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17957, para. 851 (explaining that estimated minutes of use for price cap carriers will be calculated using fiscal year 2011 minutes and will be reduced 10% each year to reflect downward trends in minutes of use).

[332] CenturyLink Comments at 20; ITTA Comments at 19.

[333] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17994-95, para. 918; *see also* 47 CFR § 51.915(f)(5) (barring price cap carriers from recovering Eligible Recovery from Connect America Fund Intercarrier Compensation beginning July 1, 2019).

[334] *USF/ICC Transformation Order*, 26 FCC Rcd at 17961, para. 853.

[335] *Id*.

[336] *See, e.g.*, *id.* at 17725, para. 156. To the extent that some carriers elected not to avail themselves of the phased-in alternative support mechanisms, we are not persuaded to create support mechanisms to insulate them from the consequences of their choices, particularly insofar as it would mean treating them more favorably than potentially similarly-situated carriers that took on the obligations that came along with the receipt of universal service support under the phased-in mechanisms.

[337] *See, e.g.*, *id*. at 17904, para. 737 (explaining that under bill-and-keep, a carrier looks to its end users rather than to other carriers to pay for the costs of its network).

[338] *See, e.g.*, Letter from Russell P. Hanser, Counsel to Frontier, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Aug. 5, 2020) (Frontier/Windstream Aug. 5, 2020 *Ex Parte*); USTelecom May 11, 2020 *Ex Parte* at 2.

certain price cap carriers' tariffs contain end user charges that are below the Commission's caps on these charges, which would enable a measure of recovery of reduced 8YY revenues.[339]

98. At the same time, we decline proposals to allow price cap carriers to pursue recovery through increases in the caps on Subscriber Line Charges and Access Recovery Charges, or through an increase in the Residential Rate Ceiling.[340] In regulating end-user charges, the Commission has always had to account for important consumer interests, including "ensuring that all consumers have affordable access to telecommunications services."[341] To ensure that increases in end-user charges do "not impact the affordability of rates" the Commission has routinely capped such increases.[342] USTelecom does not provide any justification for its proposed increases of as much as $12 per line per year to the Subscriber Line Charge after two years.[343] Frontier and Windstream fail to justify their proposal for two annual increases of $0.15 per line per month in Subscriber Line Charges for price cap carriers.[344] Windstream offers no data in support of that proposal. Frontier justifies the proposal based loosely on the amount of interstate and intrastate revenue it estimates it would lose should we adopt the USTelecom proposal without any new revenue recovery mechanism for price cap carriers.[345] Frontier's estimates, however, appear not to take into account the extent it can offset 8YY revenue reductions through remaining room under the existing Access Recovery Charge or Subscriber Line Charge caps. Moreover, Frontier's proposal would be applicable to all price cap carriers, and no other price cap carriers have offered data estimating their anticipated revenue losses. The very fact that different parties representing price cap carriers make two such widely varying proposals for Subscriber Line Charge increases in this proceeding underscores the arbitrary and unsupported nature of both proposals. Proposals to increase the caps on Access Recovery Charges are cursory, lack supporting evidence or analysis, and fail to address the impact of such increases on affordability.[346] Because we are concerned about affordability, we reject those proposals and the USTelecom proposal to increase the Residential Rate Ceiling by $1.00 a month to

[339] *See, e.g.*, Frontier Telephone Companies, Tariff F.C.C. No. 13, §§ 4.7.4. (single line business rate/month of $2.14 as compared to the $2.50/month cap), 4.7.6. (multiline business rate/month of $4.28 as compared to the $5.00/month cap); Consolidated Communications Companies, Tariff F.C.C. No. 1, § 17.1.2 (residential subscriber line charge rate of $0.00/month as compared to the $6.50/month cap).

[340] *See* USTelecom Feb. 25, 2020 *Ex Parte* at 7-8 (proposing to freeze the Subscriber Line Charge caps as of January 1, 2021 and allow price cap carriers to increase their Subscriber Line Charges by up to $0.50 per line per month as of that date and up to a total of $1.00 per line per month as of July 1, 2022); WTA Comments at 9; Frontier Reply at 13.

[341] *See, e.g., Access Charge Reform et al.*, CC Docket No. 96-262 et al., First Report and Order, 12 FCC Rcd 15982, 16010, para. 73 (1997) (*Access Charge Reform Order*); *see also Access Charge Reform et al.*, CC Docket No. 96-262 et al., Sixth Report and Order in CC Docket Nos. 96-262 and 94-1; Report and Order in CC Docket No. 99-249; Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12990, para. 75 (2000) (subsequent history omitted) (justifying reforming certain end user charges due in part to the "immediate significant consumer benefits through reduced consumer rates").

[342] *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17958, para. 852 (explaining the Commission's rationale for capping increases to the Access Recovery Charge); *see also Access Charge Reform Order*, 12 FCC Rcd at 16004, para. 55 (declining to raise the Subscriber Line Charge ceiling for primary residential and single-line business lines "because a higher SLC could make telecommunications service unaffordable for some consumers").

[343] USTelecom Feb. 25, 2020 *Ex Parte* at 7-9.

[344] Letter from Russell P. Hanser, Counsel to Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No 18-156 at 3 (filed Aug. 24, 2020) (Frontier/Windstream Aug. 24, 2020 *Ex Parte*).

[345] *Id.*

[346] *See, e.g.*, CenturyLink Comments at 20; Frontier Reply at 13. *See also* Letter from Matthew S. DelNero and Thomas G. Parisi, Counsel to Inteliquent, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Oct. 2, 2020) (arguing that raising end user rates would be "a bad outcome for consumers").

$31.00 per month.[347] USTelecom offers no information to demonstrate that there is a meaningful relationship between the revenue reductions carriers will face as a result of this Order and the ability of some carriers to recover more revenue through Access Recovery Charges should we raise the residential rate ceiling by $1 per month.[348] We also agree with NTCA that USTelecom's proposal to raise the residential rate ceiling makes no sense with respect to rate-of-return carriers which have a different revenue recovery mechanism than price cap carriers.[349] None of these proposals provide an adequate basis for us to adopt industry-wide pricing rules. Absent adequate justification, we are also unable to analyze the potential effects on end users of increases in the Subscriber Line Charge, Access Recovery Charges or the Residential Rate Ceiling and whether the increases and timing are reasonable.[350]

3. Case-by-Case Requests for Additional Revenue Recovery

99. We provide an opportunity for revenue recovery through existing mechanisms to promote an orderly transition in the reform of 8YY originating access charges. As explained in the *USF/ICC Transformation Order*, we do not have a legal obligation to ensure that carriers recover access revenues lost as a result of reform, absent a showing of a taking.[351] In that Order, the Commission established a rebuttable presumption that the revenue recovery mechanisms it adopted would allow incumbent local exchange carriers to earn a reasonable return on their investment and established a "Total Cost and Earnings Review," through which a carrier may petition the Commission to rebut that presumption and request additional support.[352] The Commission identified factors that it could consider in analyzing requests for additional support and predicted that the limited recovery permitted would be more than sufficient to provide carriers reasonable recovery for regulated services, both as a matter of the constitutional obligations underlying rate regulation and as a policy matter of providing a measured transition away from incumbent local exchange carriers' historical reliance on intercarrier compensation

[347] *See* Letter from Mike Saperstein, Vice President, Strategic Initiatives and Partnerships, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156 (filed Sept. 15, 2020) (USTelecom Sept. 15, 2020 *Ex Parte*); *see also* ITTA Comments at 18; CenturyLink Comments at 20; Frontier Reply at 13.

[348] USTelecom's arguments that the average voice urban monthly rate is higher than $31 month and inflation has occurred since the rate ceiling was set are unrelated to the outcome of this proceeding and do not alleviate our concerns about protecting consumers from unnecessary rate hikes. USTelecom Sept. 15, 2020 *Ex Parte* at 1-2.

[349] Letter from Michael R. Romano, Senior Vice President, Industry Affairs and Business Development, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Sept. 23, 2020) (NTCA Sept. 23, 2020 *Ex Parte*).

[350] The Ad Hoc Telecom Users Committee disputes the reasonableness of the Subscriber Line Charge increase proposed by Frontier and Windstream, in part, on the basis that the carriers' costs to originate 8YY calls is far lower than their current 8YY originating revenue. Ad Hoc Sept. 2, 2020 *Ex Parte* at 2. Although we decline to adopt proposals to increase Subscriber Line Charge caps or to modify the Access Recovery Charge calculations as part of this proceeding, we are considering reforming our rules governing Subscriber Line Charges and Access Recovery Charges. *See generally Telephone Access Charges Notice.* Frontier and Windstream recommend we take action in the Telephone Access Charge proceeding in addition to the actions we take here. Frontier/Windstream Aug. 24, 2020 *Ex Parte* at 4. We also do not foreclose the possibility that an individual company may be able to show good cause to waive a particular rate cap. 47 CFR § 1.3. We also recognize that states have increasingly provided local exchange carriers intrastate pricing flexibility, which gives price cap carriers flexibility to recover reductions in intrastate 8YY access revenues. Frontier and Windstream complain that some states "lack[] substantial pricing flexibility" but they do not specify what the limits on pricing flexibility are or quantify the extent to which they will be able to adjust intrastate rates to cover intrastate costs. Frontier/Windstream Aug. 24, 2020 *Ex Parte* at 3. Frontier claims that it lacks substantial pricing flexibility in nine of the states where it provides service but is silent as to the extent of pricing flexibility it has in those states or in the remaining sixteen states it serves. *Id.*

[351] *USF/ICC Transformation Order*, 26 FCC Rcd at 17996-97, para. 924.

[352] *Id*.

revenues to recovery that better reflects competitive markets.[353] Nonetheless, the Commission adopted a Total Cost and Earnings Review to allow individual carriers to demonstrate that this rebuttable presumption is incorrect and that additional recovery is needed to prevent a taking.[354] We take the same approach here and adopt a rebuttable presumption that the existing revenue recovery mechanisms will allow incumbent local exchange carriers to earn a reasonable return on investment. We also continue to make the Total Cost and Earnings Review available to carriers affected by the 8YY originating access reforms we adopt today.[355]

100. To show that the existing recovery mechanisms are legally insufficient, a carrier faces a "heavy burden,"[356] and must demonstrate that the regime "threatens the financial integrity of [the carrier] or otherwise impedes [its] ability to attract capital."[357] As the Supreme Court has long recognized, when a regulated entity's rates "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed," the company has no valid claim to compensation under the Takings Clause, even if the current scheme of regulated rates yields "only a meager return" compared to alternative rate-setting approaches.[358] We believe that our existing recovery

[353] *Id*. at 17998-18001, paras. 928-30 (citing *Time Warner Ent. Co. v. FCC*, 240 F.3d 1126, 1133 (D.C. Cir. 2001) ("Substantial evidence does not require a complete factual record—we must give appropriate deference to predictive judgments that necessarily involve the expertise and experience of the agency.")).

[354] *USF/ICC Transformation Order*, 26 FCC Rcd at 17996-97, para. 924.

[355] Frontier and Windstream's arguments that the Total Cost and Earnings Review process is inadequate to provide sufficient cost recovery and insufficient to cure the unlawfulness of a system that provides no recovery are misplaced. Frontier/Windstream Aug. 5, 2020 *Ex Parte* at 2; *see also* Aureon Sept. 3, 2020 *Ex Parte* at 4. Based on the record here we find our approach to recovery reasonable and otherwise lawful, rather than something that must be "cured" by the Total Cost and Earnings Review. Frontier and Windstream are incorrect when they argue that the Total Cost and Earnings Review process is unlawful "because Section 252(d)(2)(B) expressly precludes the Commission and the states from 'engag[ing] in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or . . . requir[ing] carriers to maintain records with respect to the additional costs of such calls.'" Frontier/Windstream Aug. 5, 2020 *Ex Parte* at 2 (citing 47 U.S.C. § 252(d)(2)(B)). As the Commission has previously explained, the pricing standard in section 252(d) does not apply to traffic exchanged between local exchange carriers and interexchange carriers. *USF/ICC Transformation Order*, 26 FCC Rcd at 17921, para. 774. Moreover, if the Commission receives petitions for Total Cost and Earnings Reviews, in reviewing such petitions, the Commission will not be engaging "in any rate regulation proceeding" that would be precluded by the statute. No rates will be analyzed, only the sufficiency of a carrier's recovery. In addition, the Total Cost and Earnings Review considers recovery for all relevant costs and does not attempt to "establish with particularity the additional costs of transporting or terminating calls." 47 U.S.C. § 252(d)(2)(B). Further, although the Commission has been mindful of cost recovery in prior intercarrier compensation reforms, it has rejected the need for complete revenue neutrality. *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17956-57, 17996-97, paras. 848, 924. When considering this issue in the context of the *USF/ICC Transformation Order*, the 10th Circuit rejected claims that the specific revenue recovery opportunities we continue to provide carriers here were inadequate, statutorily or otherwise. *In re FCC 11-161*, 753 F.3d at 1135-36. Although the *USF/ICC Transformation Order* established new recovery mechanisms in conjunction with the reforms there, we rely on the continued operation of existing recovery mechanisms here. This reliance is justified by the radically differing magnitude of revenues at stake in the different reform contexts. On the record here we thus disagree with Frontier and Windstream that an additional revenue recovery mechanism has been shown to be "necessary" in the same ways it was in prior contexts as with the *USF/ICC Transformation Order*. Frontier/Windstream Aug. 5, 2020 *Ex Parte* Attach. at 1. We likewise reject Frontier and Windstream's argument that our actions undercut rationales previously identified in support of bill-and-keep because those arguments are premised on assumptions that there will be a lack of adequate recovery and an inability to seek recovery from end users that are not supported by the record here and that rely on a narrow view of 8YY intercarrier compensation reforms divorced from the broader regulatory context.

[356] *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944) (*Hope Nat. Gas Co.*).

[357] *Illinois Bell Tel. Co. v. FCC*, 988 F.2d 1254, 1263 (D.C. Cir. 1993).

[358] *Hope Nat. Gas Co.*, 320 U.S. at 605.

mechanisms provide recovery well beyond any constitutionally required minimum, and we find no convincing evidence in the record that those mechanisms will yield confiscatory results.

101. As we seek to protect consumers from undue rate increases or increases in contributions to universal service funding, we will conduct the most comprehensive review of any requests for additional support allowed by law. Our existing recovery mechanisms go beyond what might strictly be required by the constitutional takings principles underlying historical Commission regulations. Therefore, although our recovery mechanisms do not seek to precisely quantify and address all considerations relevant to resolution of a takings claim, carriers will need to address these considerations to the extent that they seek to avail themselves of the Total Cost and Earnings Review procedure based on a claim that recovery is legally insufficient.[359]

E. The Benefits of Our Actions Far Outweigh the Costs

102. The record is clear that the benefits of the actions we take today to move 8YY access charges toward bill-and-keep far outweigh the costs. By eliminating 8YY arbitrage opportunities based on high and varying originating end office access rates, tandem switching and transport rates, and database query rates, we reduce the incidence of 8YY robocalls, incent more efficient (and therefore lower cost) routing of 8YY calls, and encourage greater competition among 8YY providers on the basis of quality and price.

1. The Benefits of Our Actions

103. Carriers, 8YY customers, and consumers will all benefit from better quality, lower-priced 8YY services as a result of the actions we take to move 8YY charges to or toward bill-and-keep. We conclude that there are at least four ways in which our actions benefit consumers and firms and enhance the public interest. *First*, by transitioning interstate and intrastate end office originating access rates for 8YY calls to bill-and-keep, moving 8YY tandem switching and transport services and database query charges to nationally capped low rates, and limiting database queries to one charge per call, we discourage inefficient routing designed to maximize 8YY access revenues. Consistent with the Commission's findings in the *USF/ICC Transformation Order*, moving originating 8YY end office access rates to bill-and-keep will move prices closer to being cost reflective[360] and, as a consequence, "carrier decisions to invest in, develop, and market communications services will increasingly be based on efficient price signals."[361] Taken together, these actions will reduce the access charge and network operation costs carriers incur, and will provide better investment incentives. Additionally, reducing 8YY robocalls will mitigate network congestion, lower the costs of access for 8YY providers and help ensure that legitimate callers can reach their intended destinations. We expect some of the carriers' cost savings that will arise from more efficient network use to be passed on to their 8YY customers in the form of better service and/or lower prices.[362] Ultimately, this will lead businesses using 8YY services to provide better service and/or lower prices to their own customers.

104. *Second*, our actions will reduce the 8YY originating access rates paid by interexchange carriers for legitimate 8YY calls. We estimate that originating end office charges for 8YY services

[359] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17996-18002, paras. 924-32.

[360] *Id.* at 17907-08, paras. 744-45.

[361] *Id*. at 17910, para. 749. The Commission identified a wide range of benefits resulting from the adoption of a bill-and-keep methodology in the *USF/ICC Transformation Order*. *See id.* at 17905-14, paras. 741-59.

[362] This is true in competitive and less than competitive environments. Even a monopolist passes on reductions in marginal costs, that is, costs that vary with the additional unit of output sold. Jean Tirole, The Theory of Industrial Organization 66-67 (1989). Reducing congestion, which harms call quality or blocks calls, and reducing artificially inflated 8YY originating access charges will lower the cost of carrying additional 8YY minutes.

exceed $56 million annually,[363] and are possibly many times this. Because of our actions, these end office access expenses will fall to zero over the next three years. Establishing nationally uniform rate caps for 8YY tandem switching and transport charges and 8YY Database queries and reducing the number of queries per call to one will further reduce interexchange carriers' costs of providing 8YY services. These declines in access charges will further lower 8YY prices and/or increase innovation.

105. *Third*, our actions will encourage carriers to efficiently transition to IP services. Under the current system of intercarrier compensation, access revenues can be inflated by inefficiently exchanging traffic over TDM facilities.[364] Reducing those revenues will reduce incentives to route traffic inefficiently and to use TDM facilities which will further encourage the transition to IP services. As the Commission previously found, taking steps to foster the transition to IP-based and other advanced communications technologies "can dramatically reduce network costs and lead to the development of new and innovative services, devices, and applications, and can also result in improvements to existing product offerings and lower prices."[365]

106. *Finally*, our reforms will reduce intercarrier compensation disputes. Carriers will no longer need to devote as many resources to monitor their 8YY call traffic and dispute 8YY invoices. For end office switching, billing will not be necessary. Although some of these benefits are difficult to quantify, together they will be substantial.

2. The Costs of Our Actions

107. The impact of our rule changes on the intercarrier compensation revenue and expenses of carriers will vary by carrier. To the extent one carrier's losses are gains to another, for example, because the amount of access revenue losses on call origination services for one carrier constitute reduced access expenses for another carrier, these changes are transfers, and therefore do not of themselves impact economic efficiency.[366] As such, transfers are not directly relevant to a cost-benefit analysis. In any case, except to the extent that there may be some carriers for which 8YY arbitrage is the core of a narrow business plan, relative to the scale of most carriers' operations, the impact of our action on any carrier's revenues will be small, and we expect carriers may make ameliorating adjustments to their business plans. Despite the fact that some commenters have sought approval to raise their end user charges in

[363] According to NTCA, rural incumbent local exchange carriers currently receive annual revenues from originating 8YY access of about $30.3 million. NTCA Feb. 24, 2020 *Ex Parte* at 1. USTelecom estimates similar or greater 8YY originating access revenues for mid-size price cap carriers. USTelecom Aug. 6, 2020 *Ex Parte* at 1. According to NCTA, the largest cable providers receive annual revenues from originating 8YY access and database query charges of almost $70 million. Letter from Steve Morris, Vice President & Associate General Counsel, NCTA–The Internet & Television Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-363 and 10-90, at 2 (filed Nov. 16, 2017) (NCTA Nov. 16, 2017 *Ex Parte*). We understand that these revenues are from all 8YY-related access charges, including end office, transport, tandem switching, and Database queries. We focus on end office switching, because 8YY end office rates will be lowered to zero under bill-and-keep. As a result, those reductions can be more easily estimated than the reductions that will result from the changes we make to tandem switching and transport and 8YY Database query charges. Using AT&T's reported end office share of all of its originating usage-based access expenses (8YY and non-8YY end office and local transport and 8YY Database queries), which equals 43%, the reductions for these two groups alone for end office switching would amount to $56 million [= ($30.3 million + $30.3 million + $70 million) x 43%]. *See* NTCA Feb. 24, 2020 *Ex Parte* at 1; USTelecom Aug. 6, 2020 *Ex Parte* at 1; NCTA Nov. 16, 2017 *Ex Parte* at 2; *see also* AT&T Jan. 13, 2020 *Ex Parte* Attach. AT&T 8YY Originating Access at 4.

[364] AT&T Comments at 11.

[365] *Ensuring Customer Premises Equipment Backup Power for Continuity of Communications, et al.*, PS Docket No. 14-174 et al., Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968, 14973-74, para. 7 (2014).

[366] Consumption and production levels are economically efficient if resources cannot be reallocated to make one or more persons better off, without making others worse off. *See* James M. Henderson & Richard E. Quandt, Microeconomic Theory: A Mathematical Approach 285-87 (3d ed. 1980).

conjunction with this rulemaking, we expect that robust competitive pressure for voice services nationwide will limit the extent to which carriers of all types respond to our rule changes by raising their end user charges.[367] In any case, the rule changes will provide more efficient incentives for carriers' pricing decisions, product offerings, and investments.[368]

108. It is possible that small price increases could occur due to our actions. Rate-of-return incumbent local exchange carriers may recover a portion of their lost revenue through a combination of Access Recovery Charges and Connect America Fund Intercarrier Compensation. We estimate that the total Universal Service Fund program collection will increase at most by approximately 0.3% due to our actions.[369] Increases in Access Recovery Charges will be paid by rate-of-return carriers' end user customers and increased Connect America Fund Intercarrier Compensation support will require increases in Universal Service Fund contributions, partially offsetting the benefits of the price declines generated by our actions. The costs of higher contributions arise because they raise prices for end users and hence distort efficient consumption of interstate services. However, we expect this loss of efficiency will be small relative to the benefits our actions will bring, primarily because the inefficiency brought about by higher contribution rates is small relative to the substantial inefficiency created by current 8YY arbitrage, and because the revenue impacts of lower 8YY access charges will only be partially offset by contribution increases. Moreover, meeting universal service obligations from contributions is simpler and more transparent than the existing opaque implicit subsidy system under which carriers pay to support other carriers' network costs through origination charges.

109. We estimate the costs necessary to update the relevant carrier's billing systems to be approximately $6 million. We estimate billing costs as follows. We use a labor cost per hour to implement billing system changes of $70. We estimate the hourly wage for this work to be $47, equivalent to the hourly pay for a General Schedule 12, step 5 employee of the federal government.[370] This rate does not include non-wage compensation. To capture this, we markup wage compensation by 46%.[371] The result is an hourly rate of $68.62 [= $47 x 1.46], which we round up to $70. As many as 859 carrier holding companies may be impacted by our actions. In 2018 on Form 499 filings, 859 holding companies reported non-zero revenue from per-minute charges for originating or terminating calls provided under state or federal access tariff (based on aggregated data from Form 499, line 304.1). These holding companies vary significantly in size and therefore likely face varying costs to implement billing system changes. We assume that at most 100 hours of work is required to adjust billing systems for the largest holding companies and the most complicated systems, and conservatively use that figure as the

[367] We recognize that there are also regulatory barriers to price cap and rate-of-return local exchange carriers increasing their end user charges. Windstream et al. Comments at 12-13; USTelecom Feb. 25, 2020 *Ex Parte* at 7-8; USTelecom June 5, 2020 *Ex Parte* at 3. *See generally Telephone Access Charges Notice*, 35 FCC Rcd 3165.

[368] *USF/ICC Transformation Order*, 26 FCC Rcd at 17905-14, paras. 741-59.

[369] Rate-of-return carriers' total interstate originating 8YY access revenues are approximately $24 million per year. The total projected Universal Service Fund program collection (schools and libraries, rural health care, high cost, and lifeline) for the third quarter of 2020 is approximately $2.118 billion, which translates to $8.472 billion per year. Assuming at most that Connect America Fund Intercarrier Compensation will increase by $24 million per year as a result of our 8YY actions, this implies an increase in the total annual Universal Service Fund program collection of at most approximately 0.3% [= ($24 million/$8.472 billion) = 0.003 or 0.3%]. *See* NTCA Feb. 24, 2020 *Ex Parte* at 1; *Proposed Third Quarter 2020 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 20-617 (WCB June 12, 2020).

[370] U.S. Office of Personnel Management, Salary Tbl. 2020-GS Incorporating the 2.6% General Schedule Increase, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/GS_h.pdf (last visited June 26, 2020).

[371] In March 2020, hourly wages for the civilian workforce averaged $25.91, and hourly benefits averaged $11.82 or a 46% markup on wages. *See* Bureau of Labor Statistics, National Compensation Survey, https://www.bls.gov/ncs/ (last visited Aug. 27, 2020).

estimate for every holding company.[372] Thus, our estimate of the costs for billing adjustment is approximately $6 million [= 859 x $70 x 100]. We acknowledge the limits of our attempt to estimate these costs but believe this approach yields a reasonable estimate for the purposes of this cost-benefit analysis.

3. On Balance, Benefits Exceed Costs

110. On balance, the benefits of our actions outweigh their costs. Consumers, 8YY customers, and carriers will benefit as we transition 8YY access charges toward bill-and-keep, reducing the inefficiencies inherent in 8YY arbitrage, lowering 8YY access charges, causing prices of 8YY services to fall and innovation to increase, reducing 8YY congestion, encouraging network modernization, and reducing intercarrier compensation disputes. Our actions will also reduce "competitive distortions inherent in the current system, eliminating carriers' ability to shift network costs to competitors and their customers."[373] There will be some costs imposed, largely due to the need to collect additional Universal Service Fund contributions to fund rate-of-return carriers who face losses in 8YY originating access charges. Nonetheless, the costs of higher retail rates due to any increase in Access Recovery Charges are likely to be *de minimis*, and compliance costs are a small transitional expense. The significant benefits of our actions more than compensate for the necessary, yet small costs they impose.

F. Legal Authority

111. In this *Order* we correct the perverse incentives the current rules create for local exchange carriers to choose expensive and inefficient call paths for 8YY traffic. We also continue to advance the goals and objectives the Commission articulated in the *USF/ICC Transformation Order* and take further steps toward the Commission's goal of adopting a bill-and-keep regime for all intercarrier compensation.[374]

112. As in the *USF/ICC Transformation Order*, our statutory authority to implement changes to the pricing methodology governing the exchange of traffic with local exchange carriers flows directly from sections 201(b), 251(b)(5), and 251(g) of the Act. Section 201(b) permits us to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter," including the provision requiring the "charges, practices, classifications, and regulations" for interstate communications to be just and reasonable.[375] The new rules we adopt in this *Order* will help ensure

[372] For example, TDS, a company for which switched access rates are regulated under the rules for rate-of-return carriers, has more than 90 study areas distributed among seven different switched access rate groups. Our estimate of 100 hours to adjust billing systems implies approximately one hour of work per study area (100/90) or 14 hours per rate group (100/7) for a company like TDS.

[373] *USF/ICC Transformation Order*, 26 FCC Rcd at 17904, para. 738.

[374] *Id*. at 17916, para. 764 (describing the Commission's goals of "eliminating arbitrage and competitive distortions; and eliminating the thicket of disparate intercarrier compensation rates"); *see also* AT&T Comments at 16.

[375] 47 U.S.C. § 201(b). Aureon argues that a full move to bill-and-keep would fail to satisfy section 201(b) by removing any source of revenue for intermediate access providers, but our adoption of a universal nationwide rate cap for tandem switching obviates this concern. *See* Aureon Reply at 10-12; Aureon Sept. 3, 2020 *Ex Parte* at 4-5. Aureon also claims that "The rate cap of $0.001 proposed by USTelecom is not just and reasonable because it is far below the $0.00411 effective tariff rate that Aureon's cost study demonstrates is required to recover Aureon's legitimate regulated costs" and Aureon includes a copy of the cost study it filed to justify its tariffed rate following the Commission's section 205 investigation of Aureon's tariff. Aureon Sept. 3, 2020 *Ex Parte* at 6-7, Exh. A.; *see also* Letter from Robert H. Jackson, Counsel to Intrado Communications, LLC, Peerless Network, LLC, and Teliax, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-156, at 4-5 (filed Sept. 25, 2020) (also arguing that a rate cap of $0.001 will not allow them to recover costs, but providing no data in support of their claim). When establishing an industry-wide rate cap, the test for whether that cap is just and reasonable is not whether it would be justified by any one particular carrier's costs. Indeed, Aureon cites no authority for such a proposition. The Tenth Circuit has already confirmed that taking all intercarrier compensation to bill-and-keep is just and reasonable in the context of the recovery mechanisms the Commission established. *In re FCC 11-161*, 753 F.3d at 1128-30. If

(continued….)

originating 8YY rates are just and reasonable as required by section 201(b) and should end the abuse of these charges, including the artificial inflation of originating access charges.

113. Section 251(b)(5) specifies that local exchange carriers have a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[376] In the *USF/ICC Transformation Order* the Commission "br[ought] all traffic within the section 251(b)(5) regime."[377] In finding that it had the authority to comprehensively reform intercarrier compensation and move all interstate and intrastate access charges to bill-and-keep, the Commission explained that its authority to implement bill-and-keep as the default framework for the exchange of traffic with local exchange carriers flows directly from sections 251(b)(5) and 201(b) of the Act.[378] This comprehensive reform approach necessarily includes originating access charges. Indeed, the Commission has long held that the absence of any reference to originating traffic in section 251(b)(5) means that—apart from access charge rules temporarily preserved by section 251(g)—the originating carrier is barred from charging another carrier for delivery of traffic that falls within the scope of section 251(b)(5).[379] Section 251(g) of the Act—which preserves existing "originating access until the Commission adopts rules to transition away from that system"[380]—provides additional legal authority for our regulation of origination charges and our continuation of the measured transition away from historical access charge regimes that the Commission began in the *USF/ICC Transformation Order*.[381] Relying on those sections of the Act, the Commission confirmed that originating charges for all telecommunications traffic should ultimately move to bill-and-keep, but capped interstate and certain intrastate originating access charges in the *USF/ICC Transformation Order* pending more comprehensive reform.[382]

114. In considering challenges to the *USF/ICC Transformation Order*, the Tenth Circuit held that the Commission's inclusion of originating access charges in its reform effort was "reasonable" and entitled to deference.[383] The Court also expressly affirmed the Commission's authority over intrastate originating access charges.[384] The Commission's authority to take such action for interstate and intrastate

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Aureon can demonstrate that the recovery it has available is insufficient to recover costs as the result of our actions today, it may seek a waiver of our rules.

[376] 47 U.S.C. § 251(b)(5);

[377] *USF/ICC Transformation Order*, 26 FCC Rcd at 17916, para. 764.

[378] *Id*. at 17914-17, paras. 760-65; *see also id*. at 17905, 17914-23, paras. 740, 760-76.

[379] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, 16016, para. 1042 (1996).

[380] 47 U.S.C. § 251(g); *USF/ICC Transformation Order*, 26 FCC Rcd at 17923, para. 778 (explicitly concluding that our authority in section 251(g) over "exchange access" includes authority to regulate originating access rates).

[381] We have additional statutory authority under section 332 of the Act to regulate interconnection arrangements involving CMRS providers. 47 U.S.C. § 332.

[382] *USF/ICC Transformation Order*, 26 FCC Rcd at 17923, 17942, paras. 778, 817-18.

[383] *In re FCC 11-161*, 753 F.3d at 1123. To the extent that the Commission could be seen as reserving judgment regarding aspects of the regulation of origination charges in the *USF/ICC Transformation Order* and the accompanying *USF/ICC Transformation Further Notice*, we see no basis to hesitate in our use of section 251(b)(5) authority here. *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17923, 18109-10, paras. 777-78, 1298 (discussing certain issues related to origination charges that were not resolved there). In particular, our action is supported by the Commission's historical interpretation of the significance of section 251(b)(5) for origination charges, the Tenth Circuit's affirmance of the Commission's application of that interpretation in the context of originating access, and the Commission's continued reaffirmations of the wisdom of shifting to a bill-and-keep framework.

[384] *In re FCC 11-161*, 753 F.3d at 1119-23.

originating charges is thus well settled.[385] Arguments that we lack authority over such charges or the methodology that should apply to those charges are entirely without merit.[386]

115. This statutory authority also allows us to establish a transition plan to reform 8YY originating access charges. We agree with CenturyLink that "the Commission can rely on (*inter alia*) sections 4(i) and 201 through 205 of the Act, which together afford the Commission broad discretion in establishing carrier rates."[387] As the Commission concluded in the *USF/ICC Transformation Order*, "although the [Act] provides that each carrier will have the opportunity to recover its costs, it does not entitle each carrier to recover those costs from another carrier, so long as it can recover those costs from its own end users and through explicit universal service support where necessary.[388] We continue this framework today by allowing end user recovery and, where permitted, explicit universal service support.

IV. PROCEDURAL MATTERS

116. *Paperwork Reduction Act Analysis*. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198; *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.[389]

117. In this *Report and Order*, we have assessed the effects of transitioning inter- and intrastate originating 8YY end office and transport rates to bill-and-keep, and of adopting a single national rate for originating 8YY tandem switching and transport charges and database query charges and find that the tariff modifications required by our rules are both necessary and not overly burdensome. We believe that many carriers affected by this *Report and Order* will be small businesses and may employ less than 25 people.[390] However, we find the benefits that will be realized by a decrease in the problematic consequences associated with 8YY abuse outweigh any burden associated with the changes (such as making tariff or billing revisions) required by this *Report and Order*.

118. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a

[385] *USF/ICC Transformation Order*, 26 FCC Rcd at 17920, para. 772 ("[W]e conclude that we have authority, independent of our traditional interstate rate-setting authority in section 201, to establish bill-and-keep as the default compensation arrangement for all traffic subject to section 251(b)(5), including intrastate traffic."); *see also In re FCC 11-161*, 753 F.3d at 1119-23. Only by ignoring this authority can Aureon incorrectly assert that the Commission does not have jurisdiction over intrastate access charges. Aureon Sept. 3, 2020 *Ex Parte* at 2-3. Aureon's reference to the D.C. Circuit's decision in *Global Tel*Link* to support its jurisdictional argument is inapt. *See Global Tel*Link v. FCC*, 866 F.3d 397, 409, 412 (D.C. Cir. 2017). In that case, the D.C. Circuit was considering the Commission's jurisdiction over intrastate payphone service rates under section 276 of the Act, which is not applicable here.

[386] *Cf.* CenturyLink Comments at 20 (conceding that "the Commission clearly possesses ample legal authority" to apply bill-and-keep in some respects but contesting authority over tandem switching and transport); NRIC Comments at 10-12 (arguing against Commission authority to apply bill-and-keep to originating access).

[387] *See* CenturyLink Comments at 23; *see also* 47 U.S.C. §§ 154(i), 201-205.

[388] *USF/ICC Transformation Order*, 26 FCC Rcd at 17914, para. 757.

[389] *8YY Further Notice*, 33 FCC Rcd at 5752, para. 104.

[390] In the *8YY Further Notice*, the Commission specifically sought comment on how it might further reduce the information collection burden for businesses with fewer than 25 employees that may be affected by the proposed rules but received none. *See id.* at 5752, para. 104.

copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

119. *Final Regulatory Flexibility Analysis*. The Regulatory Flexibility Act as amended (RFA)[391] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[392] Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities.[393] The FRFA is set forth in Appendix B.

V. ORDERING CLAUSES

120. Accordingly, IT IS ORDERED that, pursuant to sections 1, 2, 4(i), 201-206, 251, 252, 254, 256, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 251, 252, 254, 256, 303(r), 403, and section 1.1 of the Commission's rules, 47 CFR § 1.1, this *Report and Order* IS ADOPTED.

121. IT IS FURTHER ORDERED that Part 51 of the Commission's rules, 47 CFR Part 51, IS AMENDED as set forth in Appendix A, and that such rule amendments SHALL BE EFFECTIVE thirty (30) days after publication of this *Report and Order* in the Federal Register, except for sections 51.907(i)-(k), 51.909(m)-(p), and 51.911(e), which contain information collections that require approval by the Office of Management and Budget under the Paperwork Reduction Act. The Commission directs the Wireline Competition Bureau to announce the effective date for those information collections in a document published in the Federal Register after OMB approval, and directs the Wireline Competition Bureau to cause sections 51.907, 51.909, and 51.911 of the Commission's rules to be revised accordingly.

122. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

123. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[391] *See* 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

[392] 5 U.S.C. § 605(b).

[393] The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

APPENDIX A

Final Rules

For the reasons set forth above, the Federal Communications Commission amends Part 51 of Title 47 of the Code of Federal Regulations as follows:

PART 51—INTERCONNECTION

1. The authority citation for Part 51 continues to read as follows:

AUTHORITY: 47 U.S.C. 151-55, 201-05, 207-09, 218, 225-27, 251-52, 271, 332, unless otherwise noted.

2. Amend § 51.903 by adding paragraphs (n) through (p) to read as follows:

§ 51.903 Definitions.

* * * * *

(n) *Toll Free Database Query Charge* is a per query charge that is expressed in dollars and cents to access the Toll Free Service Management System Database, as defined in § 52.101(d) of this subchapter.

(o) *Toll Free Call* means a call to a Toll Free Number, as defined in § 52.101(f) of this subchapter.

(p) *Joint Tandem Switched Transport Access Service* is 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.

3. Amend § 51.905 by revising paragraph (b)(2) and adding paragraph (d) to read as follows:

§ 51.905 Implementation.

* * * * *

(b) * * *

(2) With respect to Transitional Intrastate Access Services, originating access charges for Toll Free Calls, and Toll Free Database Query Charges governed by this subpart, LECs shall follow the procedures specified by relevant state law when filing intrastate tariffs, price lists or other instruments (referred to collectively as "tariffs").

* * * * *

(d) Beginning July 1, 2021, and notwithstanding any other provision of the Commission's rules, only the originating carrier in the path of the Toll Free Call may assess a Toll Free Database Query Charge for a Toll Free Call. When the originating carrier is unable to transmit the results of the Toll Free Database Query to the next carrier or provider in the call path, that next carrier or provider may instead assess a Toll Free Database Query Charge.

4. Amend § 51.907 by adding paragraphs (i) through (k) to read as follows:

§ 51.907 Transition of price cap carrier access charges.

* * * * *

(i) Beginning July 1, 2021 and notwithstanding any other provision of the Commission's rules, each Price Cap Carrier shall:

(1) Establish separate rate elements for interstate and intrastate toll free originating end office access service and non-toll free originating end office access service. Rate elements reflecting fixed charges associated with originating End Office Access Service shall be treated as non-toll free charges.

(2) Reduce its intrastate toll free originating end office access service rates to its interstate toll free originating end office access service rates as follows:

(i) Calculate total revenue from End Office Access Service, excluding non-usage-based rate elements, at the carrier's interstate access rates in effect on June 30, 2020, using intrastate switched access demand for each rate element for the 12 months ending June 30, 2020.

(ii) Calculate total revenue from End Office Access Service, excluding non-usage based rate elements, at the carrier's intrastate access rates in effect on June 30, 2020, using intrastate switched access demand for each rate element for the 12 months ending June 30, 2020.

(iii) If the paragraph (2)(ii) value is less than or equal to the paragraph (2)(i) value, the Price Cap Carrier's intrastate End Office Access Service rates shall remain unchanged.

(iv) If the paragraph (2)(ii) value is greater than the paragraph (2)(i) value, the Price Cap Carrier shall reduce intrastate rates for End Office Access Service so that they are equal to the Price Cap Carrier's functionally equivalent interstate rates for End Office Access Rates and shall be subject to the interstate rate structure and all subsequent rate and rate structure modifications.

(v) Except as provided in this paragraph, nothing in this section allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates. If a Price Cap Carrier has an intrastate rate for an End Office Access Service rate element that is below the comparable interstate rate for that element, the Price Cap Carrier may, if necessary as part of a restructuring to reduce its intrastate rates for End Office Access Service down to parity with functionally equivalent interstate rates, increase the rate for an intrastate rate element that is below the comparable interstate rate for that element to the interstate rate in effect on July 1, 2021.

(3) 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 rate for intrastate and interstate originating toll free transport services consistent with a bill-and-keep methodology;

(4) Establish separate rate elements respectively for interstate and intrastate non-toll free originating tandem switching services.

(5) Establish transitional interstate and intrastate Joint Tandem Switched Transport Access

Service rate elements for Toll Free Calls that are respectively no more than $0.001 per minute.

(6) Reduce its interstate and intrastate rates for Toll Free Database Query Charges to no more than $0.004248 per query. Nothing in this section obligates or allows a Price Cap Carrier that has Toll Free Database Query Charges lower than this rate to make any intrastate or interstate tariff filing revision to increase such rates.

(j) Beginning July 1, 2022 and notwithstanding any other provision of the Commission's rules, each Price Cap Carrier shall:

(1) 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 paragraph (a); and

(2) Reduce its rates for intrastate and interstate Toll Free Database Query Charges by one-half of the difference between the rate permitted by paragraph (i)(6) and the transitional rate of $0.0002 per query set forth in paragraph (k)(2).

(k) Beginning July 1, 2023, and notwithstanding any other provision of the Commission's rules, each Price Cap Carrier shall:

(1) In accordance with a bill-and-keep methodology, refile its interstate switched access tariff and any state tariff to remove any intercarrier charges for intrastate and interstate originating End Office Access Service for Toll Free Calls; and

(2) Reduce its rates for all intrastate and interstate Toll Free Database Query Charges to a transitional rate of no more than $0.0002 per query.

5. Amend § 51.909 by adding paragraphs (m) through (p) to read as follows:

§ 51.909 Transition of rate-of-return carrier access charges.

* * * * *

(m) As of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], each rate-of-return carrier shall cap the rate for all intrastate originating access charge rate elements for Toll Free Calls, including for Toll Free Database Query Charges.

(n) Beginning July 1, 2021 and notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall:

(1) Establish separate rate elements for interstate and intrastate toll free originating end office access service and non-toll free originating end office access service. Rate elements reflecting fixed charges associated with originating End Office Access Service shall be treated as non-toll free charges;

(2) Reduce its intrastate toll free originating end office access service rates to its interstate toll free originating end office access service rates as follows;

(i) Calculate total revenue from End Office Access Service, excluding non-usage-based rate elements, at the carrier's interstate access rates in effect on June 30, 2020, using intrastate switched access demand for each rate element for the 12 months ending June 30, 2020.

(ii) Calculate total revenue from End Office Access Service, excluding non-usage based rate elements, at the carrier's intrastate access rates in effect on June 30, 2020, using intrastate switched access demand for each rate element for the 12 months ending June 30, 2020.

(iii) If the paragraph (2)(ii) value is less than or equal to the paragraph (2)(i) value, the Rate-of-Return Carrier's intrastate End Office Access Service rates shall remain unchanged.

(iv) If the paragraph (2)(ii) value is greater than the paragraph (2)(i) value, the Rate-of-Return Carrier shall reduce intrastate rates for End Office Access Service so that they are equal to the Rate-of-Return Carrier's functionally equivalent interstate rates for End Office Access Rates and shall be subject to the interstate rate structure and all subsequent rate and rate structure modifications.

(v) Except as provided in this paragraph, nothing in this section allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates. If a Rate-of-Return Carrier has an intrastate rate for an End Office Access Service rate element that less than the comparable interstate rate for that element, the Rate-of-Return Carrier may, if necessary as part of a restructuring to reduce its intrastate rates for End Office Access Service down to parity with functionally equivalent interstate rates, increase the rate for an intrastate rate element that is below the comparable interstate rate for that element to the interstate rate on July 1, 2021.

(3) 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 rate for intrastate and interstate originating toll free transport services consistent with a bill-and-keep methodology.

(4) Establish separate rate elements respectively for interstate and intrastate non-toll free originating tandem switching services.

(5) 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.

(6) Reduce its interstate and intrastate rates for Toll Free Database Query Charges to no more than $0.004248 per query. Nothing in this section obligates or allows a Rate-of-Return carrier that has Toll Free Database Query Charges lower than this rate to make any intrastate or interstate tariff filing revision to increase such rates.

(o) Beginning July 1, 2022 and notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall:

(1) 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 paragraph (a); and

(2) Reduce its rates for intrastate and interstate Toll Free Database Query Charges by one-half of the difference between the rate permitted by paragraph (n)(6) and the transitional rate of $0.0002 per query set forth in paragraph (p)(2).

(p) Beginning on July 1, 2023, and notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall:

(1) In accordance with a bill-and-keep methodology, refile its interstate switched access tariff and any state tariff to remove any intercarrier charges for all intrastate and interstate originating End Office Access Service for Toll Free Calls; and

(2) Reduce its rates for all intrastate and interstate Toll Free Database Query Charges to a transitional rate of no more than $0.0002 per query.

6. Amend § 51.911 by adding paragraphs (d) and (e) to read as follows:

§ 51.911 Access reciprocal compensation rates for competitive LECs.

(a) * * *

(d) A Competitive Local Exchange Carrier assessing a tariffed intrastate or interstate Toll Free Database Query Charge shall cap such charge at the rate in effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

(e) Beginning July 1, 2021, notwithstanding any other provision of the Commission's rules, a Competitive Local Exchange Carrier assessing a tariffed intrastate or interstate Toll Free Database Query Charge shall 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 local exchange carrier, as defined in § 61.26(a)(2) of this chapter.

* * * * *

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* in this proceeding released in June 2018.[2] The Commission sought written public comments on the proposals in the *8YY Further Notice*, including comment on the IRFA. The Commission did not receive comments specifically directed as a response to the IRFA. However, the Commission did receive comments from NTCA–The Rural Broadband Association (NTCA), Iowa Network Services, Inc. d/b/a Aureon Network Services (Aureon), Public Knowledge, and FailSafe Communications, Inc., (FailSafe) relating to small entities.[3] This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[4]

A. Need for, and Objectives of, the *Report and Order* (*Order*)

2. Arbitrage and fraud have a significant and increasing effect that undermines the intercarrier compensation system for 8YY calls. This arbitrage takes on 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 "double dipping" schemes where multiple Toll Free Database query charges are assessed when only one is needed. This 8YY arbitrage results in higher costs for 8YY providers and customers alike, and ultimately burdens consumers. Left unchecked, 8YY arbitrage threatens to undermine the broad array of useful toll free services on which consumers, businesses and other organizations commonly rely.

3. In the *Order*, the Commission takes steps to address these problems by, in some cases, reducing and, in others, eliminating, over time, most of the 8YY originating access charges that provide the underlying incentive for 8YY arbitrage schemes, consistent with the Commission's previous commitment to move all intercarrier compensation to bill-and-keep. The Commission moves 8YY originating end office access charges to bill-and-keep over three years, caps 8YY originating transport and tandem switching charges at a combined rate of $0.001 per minute, caps 8YY Database query charges needed to route 8YY calls and transitions these query charges to $0.0002 over three years, and prohibits carriers from assessing more than one query charge per 8YY call. We allow carriers to recover lost revenues from these 8YY access charge reductions to the extent existing mechanisms such as Access

[1] *See* 5 U.S.C. § 603. The RFA, *see id.* §§ 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *8YY Access Charge Reform*, WC Docket No. 18-156, Further Notice of Proposed Rulemaking, 33 FCC Rcd 5723, 5760, Appx. B (2018) (*8YY Further Notice*).

[3] Letter from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, and 18-156, CC Docket No. 01-92, at 2 (filed Feb. 13, 2020) (NTCA Feb. 13, 2020 *Ex Parte*), Letter from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, and 18-156, CC Docket No. 01-92, at 1-2 (filed Mar. 9, 2020) (NTCA Mar. 9, 2020 *Ex Parte*); Letter from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156 et al., at 1-2 (filed May 18, 2020); Windstream Services, LLC, and NTCA–The Rural Broadband Association Reply at 7 (Windstream and NTCA Reply); Iowa Network Services, Inc. d/b/a Aureon Network Services Reply at 10-12 (Aureon Reply); Public Knowledge Reply at 7; Letter from Leo A. Wrobel, CEO, FailSafe Communications, Inc., and Major L. Clark III, Acting Director, and Jamie Saloom, Office of Chief Counsel for Office of Advocacy, U.S. Small Business Administration, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Oct. 17, 2019) (FailSafe Oct. 17, 2019 *Ex Parte*).

[4] *See* 5 U.S.C. § 604.

Recovery Charges and Connect America Fund Intercarrier Compensation allow. By striking at the root of these practices, we eliminate carriers' incentives to engage in arbitrage for 8YY calls. Our actions 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. Additionally, the policies adopted in the *Order* will preserve the value of toll free services for both consumers and businesses.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. No comments were filed in response to the IRFA. However, parties did file comments addressing the impact of proposals in the *8YY Further Notice* on small entities. NTCA, for example, expresses concern that the approach proposed by the Commission in the *8YY Further Notice* would shift financial responsibility to rural local exchange carriers (LECs) serving relatively small customer bases in remote rural areas for transport to reach distant points undermining universal service and maintaining reasonably comparable rates.[5] NTCA urges the Commission to ensure that "any such reforms in the future will not have a negative precedential impact on reasonable cost recovery otherwise and critical universal service objectives."[6] NTCA also raises interconnection and "network edge" issues arising out of a transition to bill-and-keep. In addition, NTCA expresses concern that a move to bill-and-keep without default interconnection rules could create new opportunities for arbitrage and allow providers to dictate unilateral shifts in "edges" aimed at reducing their relative financial responsibilities for transport and thereby shift such costs instead on interconnecting carriers–and that rural local exchange carriers, serving small rural customer bases, were at particular risk of suffering serious harm from such arbitrage.[7] As set forth in the *Order*, though our rules transition 8YY transport and tandem switching access charges incrementally toward bill-and-keep, interexchange carriers continue to be responsible for the payment of access charges during the transition. In addition, our rules provide a recovery mechanism for rate-of-return local exchange carriers' interstate revenue reduction. Further, we affirm that nothing we do in the *Order* is intended to affect or alter existing network edge arrangements, and as suggested by NTCA, we clarify that unilateral attempts by carriers to change network interconnection points may be unjust and unreasonable in violation of the Act, and carriers have no obligation to agree to such unilateral attempts to change interconnection points.[8]

5. Aureon, a provider of centralized equal access (CEA) service in Iowa, argues that moving tandem switching and transport to bill-and-keep, as proposed in the *8YY Further Notice*, would not be "just and reasonable" under section 201(b) of the Communications Act of 1934, as amended (the Act) because bill-and-keep would amount to "zero compensation" for intermediate access providers that do not serve end users.[9] Our adoption of a universal nationwide rate cap for originating 8YY tandem switching and transport obviates this concern by providing intermediate carriers with a regulated intercarrier compensation rate for 8YY calls, rather than moving to full bill-and-keep at this time. Public Knowledge argues that the increased cost and reduced revenues will make it harder for small rural local exchange carriers to meet the needs of rural customers, and would have a detrimental impact on the digital divide.[10]

6. As explained in the *Order*, however, our rules provide a revenue recovery system for lost interstate 8YY revenue for the rate-of-return local exchange carriers about which Public Knowledge expresses concern and we leave it to the states to handle the substantially smaller impact on intrastate

[5] NTCA Feb. 13, 2020 *Ex Parte* at 2.

[6] NTCA Mar. 9, 2020 *Ex Parte* at 1.

[7] *Id.* at 2

[8] Letter from Michael R. Romano, Senior Vice President – Industry Affairs & Business Development, NTCA–The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-156, at 1 (filed Aug. 25, 2020).

[9] Aureon Reply at 10-12.

[10] Public Knowledge Reply at 7; *see also* Windstream and NTCA Reply at 7.

8YY revenue. In addition, by tying 8YY-related rate changes to annual access tariff filings we minimize the cost of implementing 8YY-related tariff revisions.

7. FailSafe, a provider of disaster recovery telecommunications solutions, for emergency response providers and a wide variety of enterprise customers, argues that "[a]n overly-broad Order would destroy the only Disaster Recovery option available to millions of [small and medium-sized businesses]. At a minimum, it would price [small and medium-sized businesses] out of a Disaster Recovery/call overflow solution due to loss of the [carrier access billing] contribution" and requests (1) an indefinite exemption from bill-and-keep for access traffic associated with small and medium-sized business end users with less than 24 phone lines and (2) a three-year transition to bill-and-keep for "other services related to emergency communications."[11] As the *Order* explains, to the extent that FailSafe's clients are the recipients of 8YY calls, they will benefit from lower access prices paid by their 8YY provider.[12] To the extent FailSafe's business model relies on intermediate carriers being paid for tandem switching and transport, the *Order* provides a uniform tariffed rate for those services. Furthermore, FailSafe does not offer a justification for the broad waiver it requests for access traffic associated with small and medium-sized business end users, nor does it explain how such a waiver could be operationalized. As to FailSafe's request for a three-year transition to bill-and-keep for some services related to emergency communications, the *Order* provides for a three-year transition to bill-and-keep for all originating 8YY end office access charges.

C. Response to Comments by Chief Counsel for Advocacy of the Small Business Administration

8. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments.[13]

9. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[14] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[15] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[16] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[17]

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[11] FailSafe Oct. 17, 2019 *Ex Parte* at 1-2.

[12] According to FailSafe, its clients include 911 centers, which do not use 8YY phone numbers. At the same time FailSafe claims that its web controller product is "virtually 100% based on 8YY Traffic." *Id*. at 2.

[13] 5 U.S.C. § 604(a)(3).

[14] *See id.* § 604(a)(4).

[15] *See id.* § 601(6).

[16] *See id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[17] *See* 15 U.S.C. § 632.

11. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[18] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[19] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.[20]

12. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[21] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[22] Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[23]

13. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[24] U.S. Census Bureau data from the 2017 Census of Governments[25] indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[26] Of this number there were

[18] *See* 5 U.S.C. § 601(3)-(6).

[19] *See* SBA, Office of Advocacy, "What's New With Small Business?", https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf (Sept. 2019).

[20] *Id*.

[21] 5 U.S.C. § 601(4).

[22] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[23] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[24] 5 U.S.C. § 601(5).

[25] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7"; *see also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[26] *See* U.S. Census Bureau, 2017 Census of Governments – Organization, Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts); *see also* Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

36,931 general purpose governments (county,[27] municipal and town or township[28]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[29] with enrollment populations of less than 50,000.[30] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[31]

14. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[32] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[33] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[34] Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.[35]

15. *Local Exchange Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable

[27] *See id. at* Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[28] *See id. at* Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[29] *See id. at* Tbl. 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000; *see also* Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State Census Years 1942 to 2017.

[30] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[31] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

[32] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[33] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[34] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[35] *Id.* The largest category provided by the U.S. Census Bureau data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

NAICS Code category is Wired Telecommunications Carriers.[36] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[37] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year.[38] Of that total, 3,083 operated with fewer than 1,000 employees.[39] Thus, under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

16. *Incumbent Local Exchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[40] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[41] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.[42] Of this total, 3,083 operated with fewer than 1,000 employees.[43] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) incumbent local exchange carriers reported that they were incumbent local exchange service providers.[44] Of this total, an estimated 1,006 have 1,500 or fewer employees.[45] Thus, using the SBA's size standard the majority of incumbent local exchange carriers can be considered small entities.

17. *Competitive Local Exchange Carriers, Competitive Access Providers, Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers,[46] and under that size standard, such a business is small if it has 1,500 or fewer employees.[47] U.S. Census Bureau data for 2012 indicate that 3,117 firms

[36] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[37] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[38] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[39] *Id.* The largest category provided by the U.S. Census Bureau data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

[40] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[41] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[42] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[43] *Id.* The largest category provided by the U.S. Census Bureau data is "1,000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

[44] *See Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf (*Trends in Telephone Service*).

[45] *Id.*

[46] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[47] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

operated during that year.[48] Of that number, 3,083 operated with fewer than 1,000 employees.[49] Based on this data, the Commission concludes that the majority of Competitive Local Exchange Carriers, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[50] Of these, an estimated 1,256 have 1,500 or fewer employees.[51] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers.[52] Of this total, 70 have 1,500 or fewer employees.[53] Consequently, based on internally researched FCC data, the Commission estimates that most competitive local exchange carriers, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

18. We have included small incumbent local exchange carriers in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[54] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[55] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

19. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for interexchange carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

20. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except

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[48] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[49] *Id.* The largest category provided by U.S. Census Bureau data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

[50] *See Trends in Telephone Service* at tbl. 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] 5 U.S.C. § 601(3).

[55] Letter from Jere W. Glover, Counsel to SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[56] Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.[57] U.S. Census data for 2012 show that 1,341 firms provided resale services during that year.[58] Of that number, all of which operated with fewer than 1,000 employees.[59] Thus, under this category and the associated small business size standard, all of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[60] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[61] Consequently, the Commission estimates that the majority of local resellers are small entities.

21. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[62] The SBA has developed a small business size standard for the category of Telecommunications Resellers.[63] Under that size standard, such a business is small if it has 1,500 or fewer employees.[64] 2012 U.S. Census Bureau data show that 1,341 firms provided resale services during that year.[65] Of that number, 1,341 operated with fewer than 1,000 employees.[66] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[67] Of this total, an estimated 857

[56] *See* U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search.

[57] *See* 13 CFR § 121.201, NAICS Code 517911.

[58] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[59] *Id.* Available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[60] *See Trends in Telephone Service* at tbl. 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[61] *See id.*

[62] *See* U.S. Census Bureau, *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search.

[63] 13 CFR § 121.201, NAICS Code 517911.

[64] *Id.*

[65] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[66] *Id.* Available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[67] *See Trends in Telephone Service* at tbl. 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

have 1,500 or fewer employees.[68] Consequently, the Commission estimates that the majority of toll resellers are small entities.

22. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined above. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers.[69] The applicable SBA size standard consists of all such companies having 1,500 or fewer employees.[70] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year.[71] Of that number, 3,083 operated with fewer than 1,000 employees.[72] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[73] Of these, an estimated 279 have 1,500 or fewer employees.[74] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules proposed in the Notice.

23. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business definition specifically for prepaid calling card providers. The most appropriate NAICS code-based category for defining prepaid calling card providers is Telecommunications Resellers.[75] This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual networks operators (MVNOs) are included in this industry.[76] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[77] U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services during that year.[78] Of that number, 1,341 operated with fewer than

[68] *See id.*

[69] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers"*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017.

[70] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[71] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table. ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[72] *Id.* The largest category provided by the U.S. Census Bureau data is "1000 employees or more" and a more precise estimate for firms with fewer than 1,500 employees is not provided.

[73] *See Trends in Telephone Service* at tbl. 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[74] *Id.*

[75] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517911&search=2017%20NAICS%20Search.

[76] *Id.*

[77] *See* 13 CFR § 121.201, NAICS Code 517911.

[78] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517911, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517911&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

1,000 employees.[79] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to the Commission's Form 499 Filer Database, 86 active companies reported that they were engaged in the provision of prepaid calling cards.[80] The Commission does not have data regarding how many of these companies have 1,500 or fewer employees, however, the Commission estimates that the majority of the 86 active prepaid calling card providers that may be affected by these rules are likely small entities.

24. *Wireless Telecommunications Carriers (except Satellite)*. This industry is comprised of establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[81] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[82] For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[83] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more.[84] Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

25. The Commission's own data—available in its Universal Licensing System—indicate that, as of August 31, 2018, there are 265 Cellular licensees that may be affected by our actions.[85] The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.[86] Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

26. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross

[79] *Id*. Available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[80] *See* Federal Communications Commission, *FCC Form 499 Filer Database*, http://apps.fcc.gov/cgb/form499/499a.cfm (last visited July 10, 2020).

[81] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[82] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

[83] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012. EC1251SSSZ5&hidePreview=false&vintage=2012.

[84] *Id*. The available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that meet the SBA size standard of employment of 1,500 or fewer employees.

[85] *See* Federal Communications Commission, *Universal Licensing System*, http://wireless.fcc.gov/uls (last visited June 20, 2017). For the purposes of this FRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

[86] *See Trends in Telephone Service* at tbl. 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

revenues of $15 million for each of the three preceding years.[87] The SBA has approved these small business size standards.[88] In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as "very small business" entities, and one winning bidder that qualified as a "small business" entity.[89]

27. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite).[90] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[91] According to Commission data, 413 carriers reported that they were engaged in wireless telephony.[92] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.[93] Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1,000 employees or more.[94] Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.[95] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

28. *All Other Telecommunications*. The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[96] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[97] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry[98]. The SBA has developed a small business size standard for All Other

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[87] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[88] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998).

[89] *WCS Auction Closes; Winning Bidders in the Auction of 128 Wireless Communications Licenses; FCC Form 600s Due May 12, 1997*, 12 FCC Rcd 21653, DA-97-886, Report No. AUC-997-14-E (Auction No.14) (Apr. 28, 1997).

[90] *See* U.S. Census Bureau, *2017 NAICS Definition, "517210 Wireless Telecommunications Carriers (except Satellite)*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517312&search=2017%20NAICS%20Search.

[91] *See* 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

[92] *Trends in Telephone Service* at tbl. 5.3.

[93] *See U.S. Census Bureau, 2012 Economic Census of the United States*, Table *ID: EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012, NAICS Code 517210*, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012.

[94] *Id.* Available U.S. Census Bureau data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees. The largest category provided is for firms with "1000 employees or more."

[95] *See Trends in Telephone Service* at tbl. 5.3, https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[96] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications*", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017.

[97] *Id.*

[98] *Id.*

Telecommunications, which consists of all such firms with annual receipts of $35 million or less.[99] For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.[100] Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999.[101] Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

29. *Recordkeeping and Reporting.* We take definitive steps to address the problems that plague 8YY intercarrier compensation by reducing or eliminating, over time, the intercarrier compensation charges that provide the underlying incentive for 8YY arbitrage schemes. We expect the requirements we adopt in the *Order* will impose some additional compliance obligations on small entities. In the *Order*, the Commission adopts new rules for originating toll free access charges that will involve reduced 8YY originating access charges, the adoption of bill-and-keep, and the adoption of nationwide rate caps associated with 8YY traffic. Some of the changes involve a transitional period to complete implementation and will require modification of existing tariffs and filing of these tariff revisions. For small entities that may be affected, their compliance obligations may also include certain reporting and recordkeeping requirements to determine and establish their eligibility to receive revenue recovery from other sources as 8YY originating access revenue is reduced. The Commission believes the impacts of reporting, recordkeeping, and/or other compliance obligations on small entities will be mitigated by the greater certainty and reduced litigation that should occur as a result of the reforms adopted.

30. In the *Order*, the Commission moves 8YY originating end office access charges to bill-and-keep over approximately three years, caps 8YY originating transport and tandem switching charges at a combined rate of $0.001 per minute, caps 8YY Database query charges nationwide and transitions these query charges to $0.0002 over approximately three years, and prohibits carriers from assessing more than one query charge per 8YY call. Carriers are allowed to recover lost revenues from these 8YY calls to the extent existing mechanisms such as Access Recovery Charges and the Connect America Fund Intercarrier Compensation allow. By adopting policies that strike at the root of these practices, we eliminate carriers' incentives to engage in arbitrage for 8YY calls, thereby preserving the value of toll free services for both consumers and businesses.

31. The rule changes adopted in today's *Order* will require affected carriers to revise their existing tariffs and internal billing systems. More specifically, carriers involved in originating toll free calls will be required to file tariff revisions to remove or revise their existing tariffs. Affected carriers will also need to file tariff revisions to modify toll free originating transport charges as these charges move to bill-and-keep. Tariff revisions will likewise be needed for the three-year transition period to bill-and-keep for toll free end office access charges. Similarly, carriers will need to file tariff revisions to implement the nationwide cap on 8YY Database queries and the three-year transition of these query charges to $0.0002 per query, as well as the rule change that allows only one carrier to assess the toll free database query charge per call. Carriers will also need to make tariff revisions to recover lost revenues from toll free calls to the extent existing mechanisms such as Access Recovery Charges and the Connect America Fund Intercarrier Compensation allow. Nevertheless, the Commission believes that with the changes to originating 8YY access charges and 8YY Database query charges, carriers' recordkeeping burdens may be reduced given the simplification of tariffing and billing that the *Order* entails. In particular, the three-year transition adopted by the Commission is timed to coincide with the annual

[99] *See* 13 CFR § 121.201, NAICS Code 517919.

[100] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false.

[101] *Id.*

access tariff filing dates to minimize the administrative burdens on small entities as well as other entities that are required to make such filings. These changes will require carriers to employ the same types of professional skills they typically employ whenever they file tariffs or make billing changes, including legal, accounting, and/or tariffing expertise.

32. With regard to the internal billing system changes that will be necessary for compliance with our *Order*, the cost of compliance will vary by carrier. Overall, the Commission estimates the costs necessary to update the affected carriers' billing systems will be approximately $6 million.[102] This estimate is conservative since it is based on costs incurred by the largest carrier holding companies and the costs of modification of the most complicated systems. The $6 million industry-wide estimate results in approximately $7,000 of expense per carrier holding company.[103] Since the Commission is not in a position to determine the actual costs for small entities, or for any specific entity for that matter, we have applied our conservative estimate to every holding company that may be impacted by decision. As we mention above, our estimate is based on requirements for the largest carrier holding companies, and thus the actual expense will likely be lower for small entities.

33. Notwithstanding the compliance costs that small entities will incur, on balance the Commission believes the benefits of its actions outweigh their costs. Consumers, 8YY customers, and carriers will benefit as we transition 8YY access charges toward bill-and-keep, thereby reducing the inefficiencies inherent in 8YY arbitrage, lowering 8YY access charges, causing prices of 8YY services to fall and innovation to increase, reducing 8YY congestion, encouraging network modernization, and reducing intercarrier compensation disputes. The "competitive distortions inherent in the current system, eliminating carriers' ability to shift network costs to competitors and their customers," will also be reduced.[104] Thus, the significant benefits of our actions more than compensate for the necessary costs imposed on small entities and other carriers.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its approach, which may include the following four alternatives may include (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.[105]

35. As a general matter, actions taken as a result of our actions should benefit small entities as well as other service providers by reducing the inefficiencies inherent in 8YY arbitrage, providing greater regulatory certainty, and moving toward the Commission's goal of bill-and-keep for all access charges. Our tailored approach to allowing carriers different transition timeframes to implement our different rate changes is designed to balance the circumstances facing different carrier types and provide

[102] In 2018 on Form 499 filings, 859 holding companies reported non-zero revenue from per-minute charges for originating or terminating calls provided under state or federal access tariff (aggregated data from Form 499, line 304.1). Thus, there are potentially 859 impacted entities.

[103] The $6 million estimate is derived as follows, [859 potentially impacted entities x $70 per hour labor costs x 100 hours of labor required]. The $7,000 estimate is derived as follows, [$70 per hour labor costs x 100 hours of labor required per impacted entity].

[104] *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17904, para. 738 (2011), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[105] 5 U.S.C. § 604(a)(6).

all carriers with the necessary predictability, certainty, and stability to transition from the current intercarrier compensation system.

36. *Transition Periods*. To minimize the impact of the changes to 8YY intercarrier compensation adopted in the *Order* on affected small entities, as well as other affected service providers we adopt multistep transition periods for transitioning originating 8YY end office access rates to bill-and-keep and 8YY Database query charges to no more than $0.0002 for an 8YY Database query. For end office access charges, we initially cap all intrastate originating 8YY end office rates not previously capped at their current levels as of the effective date of the *Order*. This first step will ensure against any rate increases during the transition and will benefit small entities and other service providers by giving parties time, certainty, and stability as they adjust to the changes. Then, effective July 1, 2021, we require all local exchange carriers to bring any intrastate originating 8YY end office access rates that exceed the comparable interstate rates into parity with the comparable interstate rates. After reducing or capping intrastate 8YY end office rates, we will transition all intrastate and interstate originating 8YY end office charges from their capped amounts to bill-and-keep in two equal annual reductions. Effective July 1, 2022, we reduce all originating 8YY end office rates to half of their capped levels. Then, effective July 1, 2023, we reduce all originating 8YY end office rates to bill-and-keep.

37. In a similar fashion, small entities will benefit from the multistep, multiyear transition period to implement the 8YY Database query rate cap. Specifically, small entities will avoid the negative economic effects that might have resulted from imposing a "flash cut" to the new nationwide cap. Our actions which are consistent with prior Commission actions, will provide small entities with certainty and sufficient time to adapt to a changed regulatory landscape and will help minimize service disruptions. First, we cap all 8YY Database query charges not previously capped at their current levels as of the effective date of the *Order*. Second, we cap 8YY Database query rates for each carrier at the national average query rate of $0.004248 for those carriers whose capped database query rates are not already at or below $0.004248 or the rate capped in step one of the transition, if lower than $0.004248, effective July 1, 2021. This step will allow small entities and other carriers ample time to prepare to transition higher rates to the cap. Third, all 8YY Database query rates will be transitioned halfway to the final target rate of $0.0002. If a carrier's cap rate is below $0.004248, then it will use its capped rate to arrive at its rate effective July 1, 2022. Finally, effective July 1, 2023, carriers will not be allowed to charge more than $0.0002 for an 8YY Database query.

38. While the Commission proposed moving 8YY originating tandem switching and transport rates to bill-and-keep in the *8YY Further Notice*, we instead move rates for these services toward bill-and-keep by adopting a nationwide tariffed tandem switched transport access service rate cap of $0.001 per minute for originating 8YY traffic effective July 1, 2021. This approach avoids the economic hardship for small and other intermediate providers that do not serve end customers, and who would be uncompensated under bill-and-keep. Making the cap effective July 1, 2021 will reduce the administrative burdens for small entities and other carriers by allowing carriers to implement any necessary changes as part of their next set of annual tariff revisions. Further, the Commissions finds the adopted effective date will provide carriers with a reasonable timeframe in which to transition their rates to the $0.001 per minute cap and will allow for implementation of necessary changes to their billing systems. To avoid gamesmanship before July 1, 2021, however, we cap all existing toll free tandem switching and transport rates as of the effective date of the *Order*.

39. The multistep transition periods will allow carriers sufficient time to adapt to our new rules for 8YY calling and to spread the financial impact of these changes over three years. By gradually implementing these changes, we will avoid burdening small entities, and provide small carriers, as well as other carriers, with adequate time to adjust to the new rates, while at the same time minimizing existing arbitrage. We considered adopting shorter transitions or even no transitions as proposed in the record and rejected them because these proposed options would not allow carriers sufficient time to implement the changes we adopt to our system of 8YY intercarrier compensation rules. We also considered proposals in the record to allow longer transitions but rejected them since they would unnecessarily perpetuate the problem of 8YY arbitrage and the burdens it imposes on all carriers involved in 8YY calling.

40. Finally, as discussed in Section E, we recognize that carriers involved in providing toll free service may need to revise their internal billing systems to reflect the rate changes related to the actions in this *Order* and to file tariff revisions as necessary. Although we believe that internal billing system changes will be not be overly burdensome to make, we reiterate that the transitions we adopt today will ensure that small entities as well as other carriers have sufficient time, predictability, and certainty to transition their tariffs and billing systems to reflect the rates required by our new rules.

Report to Congress

41. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[106]

[106] *See id.* § 604(b).