6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 51 and 61

[WC Docket No. 18-156; FCC 18-76]

8YY Access Charge Reform

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission proposes to migrate interstate and intrastate originating end office and tandem switching and transport charges for toll free (8YY) calls to bill-and-keep, continuing the reform efforts that began with the 2011 USF/ICC Transformation Order. The Commission also proposes to cap 8YY database query rates at the lowest rate charged by any price cap local exchange carrier, and to limit charges to one database query charge per call, regardless of the number of carriers are in the call path or the number of database queries conducted. These proposals should limit unreasonably inflated charges and reduce or eliminate incentives for parties to engage in the types of abuse described in the record.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply comments must be submitted on or before [**INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: You may submit comments, identified by WC Docket No. 18-156, by any of the following methods:

- Federal Communications Commission's Web Site: http://apps.fcc.gov/ecfs//. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 888-835-5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Irina Asoskov, Wireline Competition Bureau, Pricing Policy Division at 202-418-2196 or at Irina.Asoskov@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM or Notice), FCC 18-76, released on June 8, 2018. A full-text version of the Further Notice of Proposed Rulemaking may be obtained at the following internet address: https://docs.fcc.gov/public/attachments/fcc-18-76a1.pdf

I. BACKGROUND

1. AT&T first introduced interstate toll free service, using 800 numbers, in 1967. The defining characteristic of that service, then known as Inward Wide Area Telecommunications Service (WATS), was that such calls were paid for by the company that received the calls and had subscribed to the toll free service. At the time, and for many years after, interstate calling rates were substantial, so the calling party received significant financial benefit from making a toll free call rather than a direct-dialed long distance (or toll) call. Today, by contrast, the prevalence of unlimited minutes plans for both wireless and wireline service and the advent of the Internet and other advances in communications have reduced the financial benefit to the calling party of being able to make a telephone call and not pay for the toll portion of the call.

2. Nonetheless, many businesses and consumers continue to find 8YY numbers useful. Demand for 8YY numbers continues to grow. In fact, the Commission recently

authorized a new 833 code to supplement the 800, 888, 877, 866, 855, and 844 codes already in use for 8YY calling. The record offers several explanations for the continued demand for 8YY numbers. A toll free number can give a business a national presence and "project a professional image." Toll free numbers can also act as a powerful branding tool, particularly if the subscriber can obtain a vanity number, such as 1-800-FLOWERS, that promotes its business. Many businesses also use toll free numbers to track the effectiveness of their advertising and marketing strategy. These marketing efforts increase the demand for toll free numbers, as businesses need to assign unique numbers to each advertising campaign or even to different segments of the same advertising campaign.

3. The record indicates that 8YY minutes of use appear to be increasing, at least relative to other originating access minutes. As a result, according to some commenters, 8YY calls account for a substantial majority of originating access minutes. We seek comment on parties' experiences regarding demand for 8YY numbers and legitimate minutes of use. We also invite parties to provide additional information regarding the usefulness of 8YY numbers and demand for 8YY services.

A. History of Intercarrier Compensation for 8YY Calls

4. Following the breakup of AT&T, the Commission analyzed the treatment of toll free originating and terminating switched access charges for purposes of carrier revenue recovery. In addition to end office rate elements, the Commission allowed LECs to recover a portion of fixed local loop costs through the carrier common line (CCL) charge that LECs were allowed to recover from IXCs. In devising the CCL rate element for toll free calls, the Commission recognized that toll free calls generally "originated over regular local loops and terminated over a dedicated access line to the 8YY subscriber's premises." The Commission referred to the originating end of such calls as the "open end" and the terminating end as the

"closed end." In the 1986 WATS Order, the Commission placed the bulk of CCL charges on terminating access minutes, allowing carriers to recover the rest of their loop costs through traffic-sensitive charges. The Commission also exempted the "closed end" of the call from the CCL charges, based on a finding that the costs of the closed end of a toll free call were covered by special access charges. Exempting the "closed end" of 8YY calls from CCL charges, however, meant that "800 traffic would be exempt from carrier common line charges altogether, despite the fact that it makes use of the public switched network." In other words, because LECs recovered the bulk of their loop costs from terminating access charges, and the terminating end of toll free calls was exempt from the CCL charge, LECs were not able to recover from IXCs the loop costs associated with originating 8YY calls. The Commission allowed LECs to recover their loop costs by treating the originating (open) end of interstate 8YY calls as terminating for purposes of assessing the CCL charge.

5. In 1997, the Commission reaffirmed its prior decision that the "open end" of an 8YY call should be treated as the terminating end for access charge purposes. The Commission noted that "an IXC is unable to influence the end user's choice of access provider for originating access services because the end user on the terminating end is paying for the [8YY] call." In the early 2000s, the Commission eliminated the CCL charge, but did not specifically address 8YY services. At present, originating carriers receive payments from 8YY providers for originating interstate toll free calls through originating end office, tandem switching and transport, and database query charges.

6. Database query charges. From 1967, when AT&T first introduced toll free service, until late 1986, "LECs were unable to provide access for 800 service to any IXC other than AT&T." In 1986, the Bell Operating Companies (BOCs) and other LECs began offering other IXCs 8YY access through an NXX-based methodology, whereby the first three digits

following the 800 prefix of the dialed number were associated with a specific IXC. Toll free subscribers seeking a particular 800 number had to obtain it from the IXC to which the NXX in that number had been assigned and could not change carriers without changing their 800 number. For example, if MCI had been assigned all numbers beginning with 800-468, then someone who wanted to subscribe to 800-468-3927 (800-GO-TEXAS) would have to do business with MCI. In 1989, the BOCs and some other carriers began developing "common channel signaling networks based on the CCS7 protocol," in which their CCS7 networks would be linked with databases containing the 800 service information. The Commission established a separate access element for the database cost recovery. The Commission required LECs to "develop rates for 800 data base access based only on their data-base-specific costs" and expressed an expectation that the costs associated with the 800 number database would be "relatively modest."

7. In 1993, the Commission determined that the newly-created 800 database was "absolutely necessary to the provision of 800 service using the data base access system" and concluded that access to the database must be provided pursuant to tariff. In contrast to NXX-based routing, which relied on LECs using their central office switches to process 800 calls, the new routing technology required originating LECs to route 8YY calls through a switch equipped with a "service switching point" (SSP). The SSP would then "suspend" routing of the call until it determined where to send it by transmitting a query over the signaling system 7 (SS7) to a regional service control point (SCP). The SCP would regularly obtain routing information from the central (SMS/800) database. Not all end offices of the LECs that owned an SCP were connected to the SCP. 8YY calls from consumers served by end offices that were not connected to an SCP were routed to one of the LEC's tandem switches equipped with an SCP and the call would be processed from there. Those LECs that did not own an SCP could purchase query services from a LEC that did.

8. In a series of orders, the Commission determined that certain costs associated with the provision of 8YY database query services were reasonable and allowed price cap and rate-of-return carriers to include them in their rate calculations.

B. Access Charge Reforms Adopted in the USF/ICC Transformation Order

9. In the USF/ICC Transformation Order, the Commission found that, over time, the intercarrier compensation system had become "riddled with inefficiencies and opportunities for wasteful arbitrage." To rid the system of arbitrage schemes that impose "undue costs on consumers, inefficiently diverting capital away from more productive uses such as broadband deployment" and to provide incentives to transition telecommunications networks to IP technology, the Commission adopted a national, default bill-and-keep framework as the ultimate end state of all telecommunications traffic exchanged with a LEC. As the first step in implementing that framework, the Commission adopted a multi-year transition to bill-and-keep for many terminating access charges, determined that "the originating access regime should be reformed," and capped most originating access charges, with the exception of intrastate originating access charges of rate-of-return carriers. The cap applied to a wide range of originating access charges, including, but not limited to, database query charges. The Commission also adopted bill-and-keep as the default compensation regime for non-access traffic between LECs and commercial mobile radio service (CMRS) providers, thus bringing that traffic into parity with CMRS-related access traffic, which had long been subject to bill-and-keep.

10. Based on a determination that concerns regarding network inefficiencies, arbitrage, and costly litigation were "less pressing with respect to originating access" than with respect to terminating access, the Commission did not adopt any further reforms to originating access charges. In a Further Notice of Proposed Rulemaking that accompanied the USF/ICC

Transformation Order, the Commission sought comment on the steps it should take to transition originating access and transport to bill-and-keep, as well as issues related to 8YY traffic. The Commission sought comment on the timing, transition, and possible need for a recovery mechanism for the remaining rate elements. The Commission explained that access charges for originating 8YY traffic have been treated similarly to terminating access charges for non-8YY calls. It sought comment on "the appropriate treatment of 8YY originated minutes" and on whether 8YY access reform should be treated differently from originating access reform more generally. Comments regarding these issues were mixed.

C. 8YY Routing and Related Access Elements

11. To understand how the current 8YY system allows for arbitrage and fraud, it is necessary to understand the typical wireline call path for, and intercarrier charges associated with, 8YY calls. As described by various commenters, when a wireline customer places a call to an 8YY number, the call is initially carried by the caller's LEC to that carrier's end office switch. At that point, the LEC may conduct the database query from the end office switch to the SCP, where it obtains the routing information. Then the LEC may route the call to a tandem switch which may or may not be owned by the same LEC. If the LEC did not conduct the database query at its end office, then it may conduct the query from a tandem office, or it may rely on a third-party tandem provider to perform the database query. Once the routing information has been obtained, the call is then routed to the IXC—either directly, or through an intermediate provider—and, ultimately, the 8YY customer.

12. Under our current rules, the LEC that originates an 8YY call is entitled to charge the IXC that terminates the 8YY call originating access charges for the specific services provided, which would typically include originating end office switching, database queries, interoffice transport and, often, tandem switching and transport. The amount of access charges

an originating LEC receives for such calls is dependent on the applicable switching and transport rates, including the number of miles that are subject to the transport charge, which is billed on a per-minute, per-mile basis. In some cases, the originating LEC and a third-party tandem provider bill the IXC separately, but some intermediate carriers submit one bill for originating and tandem and transport charges to the IXC and subsequently reimburse the originating carrier pursuant to an agreement between the originating LEC and the tandem carrier. Because database queries can originate from either an end office or a tandem office, tandem providers can also charge the IXC for database queries. According to AT&T, it is not unusual for an IXC to be assessed a database dip charge by both the LEC that originates an 8YY call, and by the tandem provider that picks up that call. AT&T claims that database queries account for a significant share—approximately 19 percent—of the originating access charges it is billed for 8YY calls.

13. Thus, in the case of 8YY traffic, originating carriers involved in the call have incentives to route calls in ways that maximize the compensation they receive—regardless of whether they receive those access revenues directly or indirectly, via shared revenue arrangements. Moreover, the current system encourages bad actors to place fraudulent, or otherwise illegitimate, robocalls with the sole purpose of generating originating access revenues. These inflated charges raise costs for both IXCs and 8YY subscribers, which have no control over the choice of originating and intermediate providers.

14. While we have described the typical call paths for 8YY calls as laid out by commenters in the current record, to further our understanding of the issues, we invite commenters to provide additional information about their experiences with various call paths associated with 8YY calls.

D. More Recent Procedural History

15. On September 30, 2016, AT&T filed a petition seeking forbearance from, among other things, rules related to the tariffing of 8YY database query charges. AT&T alleged that "some LECs are engaged in schemes to overcharge" for certain originating 8YY traffic and claimed that "arbitrage schemes are increasingly shifting to 8YY." AT&T pointed to a "wide variation in the tariffed charges" for 8YY database queries and asserted that the rates it had negotiated in contracts with some providers were generally lower—and more uniform—than the tariffed rates for those services.

16. Other IXCs echoed many of AT&T's concerns. Verizon argued that "[t]raffic pumping involving sham 8YY calls already is a serious arbitrage problem" and Sprint agreed that the charges for 8YY database queries are "unjustifiably high." Even parties that opposed the forbearance petition acknowledged that the variances in 8YY database query charges may create arbitrage opportunities. AT&T withdrew its petition before the Commission reached a decision.

17. Subsequently, on May 19, 2017, the Ad Hoc Telecommunications Users Committee (Ad Hoc) filed an ex parte letter, urging the Commission to require carriers to "apply the per minute charges for terminating traffic to the originating or 'open' end of 8YY calls." Ad Hoc asserts that the Commission could reduce or eliminate incentives to use 8YY for arbitrage and access stimulation schemes if it were to treat originating 8YY calls the same as terminating access calls for purposes of intercarrier compensation.

18. In a public notice dated June 29, 2017, the Wireline Competition Bureau invited interested parties to update the record on issues raised by the Commission in the USF/ICC Transformation Order with respect to access charges for 8YY. We incorporate the comments from the June 29, 2017 Public Notice and the FNPRM portion of the USF/ICC Transformation

Order into this record and seek further comment on issues related to 8YY access charge reform, as discussed in greater detail below.

II. ALLEGED ABUSES OF THE 8YY INTERCARRIER COMPENSATION REGIME

19. Parties raise concerns about abuses of the 8YY intercarrier compensation regime. Based on the current record in this proceeding, we propose to revise our rules to change the incentives that are leading to these reported abuses.

20. In the USF/ICC Transformation Order, the Commission acted to "reduce arbitrage and competitive distortions" which had occurred over time. However, commenters allege that because the Commission left originating access charges "largely unreformed and expensive," abuses of the intercarrier compensation system with respect to 8YY service have flourished. The record currently includes descriptions of at least four different categories of schemes by which carriers are reported to be exploiting the current regime governing intercarrier compensation for originating 8YY traffic. In the interest of having a robust record, we seek additional comment on the existence, prevalence, and impact of each of these reported schemes and on any other 8YY-related schemes that commenters propose we address.

21. Benchmarking abuse. Currently, pursuant to the competitive LEC benchmarking rule, competitive LECs are permitted 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. Commenters complain that some competitive LECs aggregate 8YY traffic from originating LECs and instead of "benchmark[ing] its originating tandem switched transport rates to the rates tariffed by the incumbent LEC in the area where the call originated, the CLEC bills the higher rates tariffed by the incumbent LEC in the area where the call is handed off to the IXC." We seek comment on this practice and on whether it is a legitimate practice or an improper attempt

to exploit a loophole in the Commission's rules. Are there examples of other forms of potential benchmarking abuse in addition to the one we describe here? How prevalent is benchmarking abuse? How much does it cost individual IXCs or 8YY subscribers in additional access charges? Are there legitimate reasons a LEC would choose to hand off 8YY traffic in an area other than where the call originated?

22. Mileage pumping. Because originating carriers charge IXCs for transport on a per-minute, per-mile basis, the farther they transport the originating traffic, the greater the compensation they receive from the IXC serving the 8YY subscriber. As a result, originating carriers have an incentive to artificially inflate their mileage in order to maximize the transport rates they charge to the IXC, particularly if transport rates are materially higher than transport costs, as some commenters' filings suggest. In fact, AT&T alleges that carriers engage in "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." We seek comment on this practice. Are there other examples of mileage pumping schemes that differ from the ones described by AT&T? If so, please describe them. How prevalent are mileage pumping schemes? How much do they cost 8YY providers or subscribers in inflated charges? Are there legitimate reasons a carrier would haul traffic 100 miles or more before handing it off to an IXC?

23. Traffic pumping. There is also evidence in the record that companies are using traffic pumping schemes to exploit inflated access rates. As described by commenters, in these schemes, a traffic pumper enters into a revenue sharing agreement with a LEC and subsequently uses automated software to place illegitimate calls to 8YY numbers. These calls often use auto dialers or "robocallers" to target Interactive Voice Response (IVR) systems and use varying

means to keep the IVR engaged, preventing the call from ending. The LEC then bills the IXC for the calls—including the artificially inflated minutes of use—and shares the proceeds with the traffic pumper. These "[a]nnoying and disruptive 8YY calls" waste the targeted businesses' resources and "devalue [providers'] 8YY products." We seek comment on this practice. How prevalent are traffic pumping schemes involving toll free calls? Are there examples of 8YY traffic pumping schemes that differ materially from those already described in the record? We encourage parties to quantify the costs these schemes impose on 8YY providers and subscribers.

24. Database queries. As the least regulated rate element of the 8YY traffic flow, database queries also appear to have been the subject of abuse. Commenters point out substantial variance in database charges and contend that query charges are excessive and unrelated to actual costs. For example, AT&T provides numerous examples of database query charges, ranging from as low as $0.0015 to as high as $0.015. IXCs also claim that there are times when they are billed for multiple queries on a single call. We invite commenters to provide information about the actual cost of a database query to a LEC compared to the amount IXCs are being assessed for the database dips. We also seek comment on the impact on IXCs and their customers of paying these database charges. Are there ways for IXCs to determine whether a call has been "dipped" more than once? Is there any legitimate reason for a call to be subjected to multiple dips?

25. Other abuses. We also seek comment on whether there are any other abuses related to 8YY access charges that are not described above. If so, what are they? What impact do any other 8YY-related abuses have on carriers and on 8YY subscribers? To the extent that commenters identify other abuses of the 8YY system, we seek comment on whether our proposed reforms would sufficiently address those abuses. If not, what additional measures would we need to take to eliminate those abuses?

III. ADDRESSING ALLEGED ABUSES OF THE 8YY INTERCARRIER COMPENSATION REGIME

26. To address abuses of the current 8YY intercarrier compensation system, we propose to move, over time, all originating interstate and intrastate end office and tandem switching and transport charges related to 8YY calls to bill-and-keep. To avoid a flash cut to bill-and-keep for originating 8YY access charges, we propose a three-year transition period. We propose to allow originating carriers to recover their costs primarily through end-user charges, though we invite comment on allowing some recovery through Connect America Fund (CAF) support. We also propose to cap 8YY database query rates nationwide and to prohibit carriers from assessing more than one database query charge per call, even if more than one carrier handles the call before it is handed off to an IXC. Additionally, we seek comment on other issues related to 8YY traffic, including alternative approaches to address abuses related to 8YY calls.

A. Moving 8YY Originating End Office and Tandem Switching and Transport Charges to Bill-and-Keep

27. Consistent with the bill-and-keep framework the Commission adopted as "a default framework and end state for all intercarrier compensation traffic," we propose moving all interstate and intrastate originating access charges related to 8YY calls to bill-and-keep, except for database query charges. We seek comment on this proposal. We also seek comment on an alternative approach that would transition all originating interstate and intrastate end office 8YY access charges to bill-and-keep but move 8YY tandem switching and transport to bill-and-keep only where the originating carrier also owns the tandem.

1. Moving Most Elements of Originating 8YY Access Charges to Bill-and-Keep Should Curtail Abuses of 8YY Calls

28. The current record shows that toll free subscribers are burdened by unpredictable and uncontrollable call volumes and associated charges for calls to their 8YY numbers. With the proliferation of unlawful robocalls, the volume of traffic routed to 8YY numbers no longer depends on the "promotional efforts" of the 8YY subscriber. Indeed, just the opposite is true—fraudulent calls are only "controllable from the originating point." And there is significant evidence that some carriers are exploiting loopholes in the current intercarrier compensation system to inflate their bills to IXCs that serve 8YY customers. The intercarrier compensation system needs to adapt to this new reality.

29. Accordingly, in an effort to combat the abuses that appear to plague the existing 8YY regime, we propose to move interstate and intrastate originating 8YY end office, tandem switching and transport access charges to bill-and-keep. Consistent with the USF/ICC Transformation Order, we propose to allow carriers to negotiate private agreements that depart from bill-and-keep, but not permit carriers to tariff any originating end office or tandem switching and transport charges related to 8YY traffic. We seek comment on this approach. Are there any obstacles that would prevent carriers from moving to bill-and-keep for these charges? Would our proposal adequately address the problems currently plaguing the 8YY industry? As explained below, we expect our proposed changes to have numerous benefits, including: removing incentives for abuse, reducing costs for consumers, potentially lowering rates or improving service for 8YY subscribers, encouraging the transition to IP services, and reducing the number of disputes over intercarrier compensation.

30. The basic logic underpinning our proposal is that each carrier should be responsible for the costs of the parts of the call path which it has discretion to choose. Should we

adopt any exceptions to the proposal? For example, are there instances where an IXC, or some other party, may require the originating LEC to route traffic through a specific tandem? If so, should the originating LEC be allowed to charge the IXC for the costs it incurs in using that tandem? If the originating LEC routes 8YY traffic over a tandem that it does not own, how should the originating LEC and the tandem owner recover their respective costs? Should the originating LEC be required to pay the tandem owner for the use of the tandem and recover those costs from its own end users? Are there situations where such an arrangement would not be just and reasonable?

31. Curtailing abuses. We seek comment on the extent to which our proposals will curtail 8YY abuses. In the USF/ICC Transformation Order, the Commission found that, over time, bill-and-keep will "eliminate wasteful arbitrage schemes and other behaviors designed to take advantage of or avoid above-cost interconnection rates." The Commission's prediction has proven accurate, as filings submitted in this proceeding indicate that the transition to bill-and-keep has reduced fraud and abuse related to terminating traffic. However, the reforms adopted in the USF/ICC Transformation Order did not address 8YY traffic, and the record in this proceeding shows an increase in certain types of abuses "designed to take advantage" of the intercarrier compensation system, such as the inefficient routing of 8YY calls.

32. In light of the positive outcome of bill-and-keep for terminating traffic, we expect that our proposed reforms to 8YY originating access charges will eliminate abuses—including benchmarking, mileage pumping, and traffic pumping schemes—related to 8YY calls. All of these schemes arise from carriers' ability to bill IXCs inflated access charges relating to 8YY traffic. Moving the access elements associated with these abuses to bill-and-keep should eliminate any ability to profit from these activities. We expect the proposed reforms will provide originating carriers with the incentive to be as efficient and cost-effective as possible in routing

8YY traffic. We seek comment on this expectation.

33. Based on the current record in this proceeding, we propose to revise our rules to change the incentives that are leading to abuses of the intercarrier compensation system for 8YY. We seek comment on each of these alleged abuses, including mileage pumping, traffic pumping, benchmarking abuse, and excessive and unnecessary database dips. How should our rules be modified to curb such abuses? Will moving originating end office and tandem switching and transport rates for 8YY calls to bill-and-keep discourage carriers from engaging in traffic or mileage pumping? We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of those costs or burdens.

34. At least one competitive LEC that offers toll free services to businesses and also provides originating 8YY services opposes proposals to move originating access charges to bill-and-keep. This carrier asserts that fraudulent toll free calls should be addressed on a case-by-case basis through inter-carrier cooperation and by the Commission's Enforcement Bureau and the Federal Bureau of Investigation. This carrier's contracts require its customers to adopt anti-fraud measures and provide remedies against customers that are suspected of engaging in unlawful activity. Do other carriers use similar contract provisions? How effective are they? What efforts do carriers or their customers make to identify illegitimate 8YY calls? How effective are those efforts? What security mechanisms do wholesalers or traffic aggregators employ to screen incoming calls? What obstacles do carriers or 8YY subscribers face in distinguishing illegitimate traffic from legitimate traffic? We seek comment on these and other issues related to the alternative approach of addressing unlawful toll free calls on a case-by-case basis.

a. Benefits to Consumers

35. We seek comment on the extent to which our proposals will benefit consumers. In the USF/ICC Transformation Order, the Commission concluded that the intercarrier compensation regime distorted competition because carriers shifted their network costs onto other carriers and, as a result, consumers could not identify and switch to more efficient providers. At the same time, the Commission observed that "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." In the 8YY industry, consumers who call 8YY telephone numbers are not charged directly for the calls, do not know what their originating carrier is charging for routing their 8YY call and, therefore, cannot exercise effective consumer choice. Yet, inefficiencies and abuses of the intercarrier compensation system result in higher prices to 8YY subscribers, who must recover their costs from their customers—a group that likely includes originating 8YY callers. Thus, in the end, consumers indirectly subsidize inefficiencies and abuses of the 8YY intercarrier compensation system.

36. In the USF/ICC Transformation Order, the Commission reviewed economic evidence and concluded that, upon transitioning to bill-and-keep, "carriers will reduce consumers' effective price of calling, through reduced charges and/or improved service quality." The Commission further predicted that these "reduced quality-adjusted prices will lead to substantial savings on calls made, and to increased calling." This prediction appears to have proven true. For example, while there are several factors that may explain increased calling, significant growth has occurred in wireless subscribership since the Commission moved all CMRS traffic to bill-and-keep.

37. We recognize that consumers appear to find toll free calling an attractive way to reach certain businesses and do not expect that to change if we move originating access charges

for 8YY calls to bill-and-keep. Given that the Commission has already moved wireless calls—including 8YY calls from wireless numbers—to bill-and-keep, consumers' use of wireless services may be instructive in helping predict the effects our proposed changes will have on consumers' use of toll free services. Are there any lessons we can learn from the effect bill-and-keep has had on wireless 8YY calls? We seek data on whether wireless 8YY originating calls have increased or decreased over the past five years. Do consumers make fewer toll free calls from wireless phones than they do from wireline phones? Has the number of 8YY calls decreased as more people have switched to wireless phones as their primary method of telecommunications?

38. We expect that transitioning 8YY calls to bill-and-keep will ultimately benefit consumers. We invite comment on this view and welcome commenters to provide economic analysis and data in support of their views.

b. Benefits to 8YY Subscribers

39. We seek comment on the extent to which our proposals will benefit 8YY subscribers. Because incentives in the 8YY industry are misaligned (8YY subscribers are paying originating carriers that they did not select), 8YY subscribers are likely paying higher rates than they otherwise would, even for legitimate 8YY traffic. We anticipate that, by correctly aligning carriers' incentives and pricing signals, bill-and-keep will lead to increased competition and "reduced quality-adjusted prices" for 8YY subscribers. In addition, we predict that moving to bill-and-keep will prompt "carriers [to] engage in substantial innovation to attract and retain" customers.

40. We seek comment on these expectations and predictions. Are our proposed changes to the 8YY access charge regime likely to result in lower rates for 8YY subscribers?

Will our proposed changes lead to more competition and innovation? In the USF/ICC Transformation Order, the Commission estimated that "incumbent LECs will, on average, pass through at least 50 percent of ICC savings to end users, while CMRS providers and competitive LECs will pass through at least 75 percent of these savings." Should we expect similar passthrough levels by 8YY providers? Are there effects that resulted from the Commission's actions in the USF/ICC Transformation Order that might be instructive here?

c. Encouraging the Transition to All-IP Services

41. We seek comment on the extent to which our proposals will encourage the transition to all-IP services. We are concerned that the current compensation regime creates disincentives for carriers to transition to IP. For example, AT&T claims that "CLECs engaged in arbitrage are resisting agreements to exchange traffic in IP format because they are reluctant to relinquish high access revenues from originating 8YY traffic that would go to bill-and-keep under an IP arrangement." Are other parties having similar experiences? Do other parties share AT&T's concerns that the current intercarrier compensation system is impeding the transition to all-IP services?

42. There is no obvious justification for using tandem switches in an IP environment. As a result, carriers might be reluctant to transition to IP-based services because of concerns about lost intercarrier compensation revenues. We seek comment on this issue. Are there carriers that are reluctant to move to IP-based interconnection due to concerns about losing intercarrier compensation revenues? Will moving originating 8YY access charges—particularly tandem switching and transport charges—to bill-and-keep expedite the transition to IP services? Will it discipline prices? Will it improve network efficiency?

d. Reducing Intercarrier Compensation Disputes

43. We seek comment on the extent to which our proposals will reduce intercarrier compensation disputes. The Commission found in the USF/ICC Transformation Order that "bill-and-keep will . . . reduce ongoing call monitoring, intercarrier billing disputes, and contract enforcement efforts." Similarly, we expect that by eliminating the incentives to abuse the intercarrier compensation system for 8YY traffic, our proposed reforms will allow carriers to reduce the resources they currently dedicate to monitoring their 8YY call traffic and disputing 8YY invoices.

44. We invite comment on these expectations. What would be the monetary impact of such savings? Is there any reason that our proposed reforms would not reduce intercarrier disputes related to 8YY calls? Are there any other benefits that are likely to arise from moving most 8YY intercarrier compensation charges to bill-and-keep, in addition to the ones already discussed in this Notice?

2. Alternative Proposal

45. We recognize that our proposal to move all tandem switching and transport to bill-and-keep is a departure from the approach the Commission took in reforming terminating access charges. In the USF/ICC Transformation Order, the Commission adopted bill-and-keep for terminating tandem switching and transport only where the terminating price cap carrier owns the tandem. Accordingly, we invite comment on an alternative proposal to transition all originating interstate and intrastate end office 8YY access charges to bill-and-keep, but to move 8YY tandem switching and transport to bill-and-keep only where the originating carrier also owns the tandem. Under this approach, we propose to cap the mileage that carriers can charge for tandem switching and transport based on the number of miles between the originating end

office and the nearest tandem in the same local access and transport area (LATA). As part of this alternative approach, we also propose to cap tandem switching and transport rates based on the rates charged by the incumbent LEC serving the LATA in which the call originates, without regard to the rates charged by the incumbent LEC serving the area where the tandem is located.

46. We seek comment on whether this alternative proposal would adequately address abuses in the 8YY marketplace, including benchmarking abuse and mileage pumping. If we adopt this approach, what are the relative benefits compared to our proposed framework for transitioning all tandem switching and transport elements of originating toll free traffic to bill-and-keep? For example, under this alternative approach, would there be less need for revenue recovery? How would common ownership of the end office and tandem be determined? Should we determine ownership at the holding company level? Is there any reason that an originating LEC should not be deemed to "own" a tandem that is owned or operated by an affiliate of the originating LEC? Finally, we seek comment on the drawbacks of this alternative proposal, particularly relative to our proposal to adopt bill-and-keep as the default methodology for all 8YY originating access charges, without regard to who owns the tandem.

B. Providing a Transition Period

47. We propose to provide a three-year transition period for moving originating end office and tandem switching and transport access charges for 8YY calls to bill-and-keep. In proposing this transition, we acknowledge concerns that a "flash cut" to bill-and-keep might be "hugely disruptive for originating access providers and . . . could prompt 'financial distress.'" Adopting a glide path will allow providers to evaluate their cost recovery options and make any appropriate changes to their end-user rates to offset the loss of 8YY access payments.

48. A three-year transition period would be consistent with the Commission's

decision, in the USF/ICC Transformation Order, to adopt a glide path to a bill-and-keep methodology for many terminating access charges. That decision was prompted by a desire to "provide industry with certainty and sufficient time to adapt to a changed regulatory landscape." As the Commission explained, "adopting a gradual glide path to a bill-and-keep methodology for intercarrier compensation generally . . . will help avoid market disruption to service providers and consumers" and "moderate potential adverse effects on consumers and carriers of moving too quickly."

49. We propose a three-step transition process that corresponds with the process for filing annual access tariffs, to become effective on July 1 of every year. Each step will last one year and apply to all LECs that tariff rates related to originating 8YY calls. The rules will apply directly to incumbent LECs, including both rate-of-return carriers and price cap LECs, and will apply to competitive LECs through the continuing application of the existing benchmarking rule. At the first step, to become effective on July 1 of the base year, we propose to require carriers to reduce all interstate and intrastate originating end office and tandem switching and transport tariffed rates for 8YY calls by one-third. At the second step, one year later, we propose to require carriers to further reduce their originating end office and tandem switching and transport rates for 8YY calls by an additional one-third. At the third and final step, two years after the base year filing, we propose to require carriers to move their tariffed rates for originating 8YY end office and tandem switching and transport to bill-and-keep. We seek comment on this proposal.

50. Do commenters have concerns about the adoption of a transition period? Should we adopt different transition periods for originating end office access charges and for tandem switching and transport charges? If so, why and what should they be? Will our proposed transition adequately address concerns about problems associated with a flash cut? Conversely,

would a shorter transition of 8YY traffic to bill-and-keep help speed the transition to IP services? Would the proposed transition impact some carriers differently than others? Are there any other aspects of 8YY traffic flow that we should address when we consider a transition period? We also seek comment on our proposed rules for effectuating this proposal. Do the proposed rules provide sufficient guidance for implementing our proposed transition period? Are there additional issues that we should address in the proposed rules to avoid confusion during implementation?

51. Consistent with the rules the Commission adopted to implement the transition to bill-and-keep for terminating end office access services in the USF/ICC Transformation Order, we propose to require carriers to first convert their originating 8YY access charges to single composite per-minute rates for each of the four categories of services being transitioned (interstate originating end office access, intrastate originating end office access, interstate originating tandem switched transport access, and intrastate originating tandem switched transport access). Our proposed rules require LECs to calculate their baseline rates—which will be the starting point for the rate reductions described above—by dividing their baseline revenues from a particular category of access charges (e.g., interstate originating end office access charges for toll free calls) by the corresponding minutes of use for that category. We seek comment on this proposed approach. What lessons can be learned from implementation of the transition to bill-and-keep for terminating end office access services that we should apply here? Would this approach be reasonably straightforward to implement? Are there potential gaming or other implementation concerns about which we should be concerned?

52. In the alternative, should we require LECs to reduce all rate elements for originating end office and tandem switching and transport for toll free calls by one-third the first year, by an additional one-third the second year, and to bill-and-keep the third year? Would such

an approach be simpler for carriers to implement from a tariffing and billing perspective? Does it make any difference to the carriers paying these access charges whether the transition involves composite rates? What are the advantages and disadvantages to one approach as compared to the other? Are there potential gaming or other implementation concerns about which we should be concerned if we adopt this three-year transition approach?

53. Unlike the rules the Commission adopted in the Transformation Order, our proposed rules do not specifically address the treatment of fixed charges (e.g., non-recurring charges and some monthly recurring charges, such as those billed on a per-DS1 or per-DS3 basis). We seek comment on whether we should address such charges in connection with toll free calls by, for example, requiring LECs to allocate their fixed charges between 8YY and non-8YY calls. Or, should we bring per-minute charges related to originating toll free calls to bill-and-keep but defer action on fixed charges until we address originating access charges more broadly outside of the toll free context? Does the answer to this question depend on whether we require LECs to adopt composite rates as part of the transition of 8YY originating access charges to bill-and-keep?

54. If we decide to include fixed charges as part of our reforms of originating access charges for 8YY calls, should we dictate a specific methodology for allocating such charges between toll free and other originating traffic? If so, how should the rules allocate fixed charges between 8YY and non-8YY calls? In the USF/ICC Transformation Order, the Commission directed carriers to allocate fifty percent of their fixed charges to terminating access and fifty percent to originating access. Should we take a similar approach here and direct LECs to allocate half of their fixed charges for originating access to toll free traffic? Or should a greater percentage of fixed charges be allocated to toll free originating traffic, particularly given that filings in the record suggest that toll free calls account for significantly more than half of all

originating access minutes billed to IXCs? In the alternative, should we allow LECs to allocate based on their particular traffic data, but establish a default allocation for carriers that lack sufficient information regarding their traffic data? If we establish a default allocation, should the percentage be fifty percent allocated to 8YY calls? Or should the percentage be different?

55. In the USF/ICC Transformation Order, the Commission modified the CLEC benchmarking rule and adopted "a limited allowance of additional time to make tariff filings during the transition period" in order "to ensure smooth operation of our transition" to bill-and-keep. We seek comment on whether a similar allowance is warranted here. For example, should we allow competitive LECs that benchmark their originating 8YY access charges to a competing incumbent LEC an additional 15 days from the effective date of the tariff to which a competitive LEC is benchmarking to make its modified tariff filing? Would such an allowance be necessary if we adopted our alternative proposal and required LECs to reduce their individual rate elements for toll free calls rather than converting their existing charges to composite per-minute rates? If all LECs were required to reduce their originating access rates for 8YY calls by the same proportions, would it be necessary to give competitive LECs additional time after incumbent LECs file their tariffs to come into compliance with the proposed reductions? We invite comments on these issues, as well as any other suggested modifications to the application of the CLEC benchmarking rule during the transition period, based on lessons learned during the transition to bill-and-keep for terminating access charges.

56. We seek comment on any costs and burdens on small entities associated with the proposed rule, including data quantifying the extent of those costs or burdens. We also invite suggested modifications to the proposed transition. Are there other issues we should consider? Are there lessons learned during the transition to bill-and-keep for terminating access charges that should inform our approach here? Any alternative approaches should also be supported by

data and other evidence showing their relative advantages and disadvantages. We welcome specific comments on the language and the potential impact of the proposed rules accompanying this item.

C. Revenue Recovery

57. Some commenters express concerns about the financial impact of moving 8YY calls to bill-and-keep and argue that some carriers may need a source of revenue recovery to mitigate the impact of lost access revenues. Other commenters express concern that moving originating access for 8YY calls to bill-and-keep might deter consumers from making toll free calls. The latter concerns appear to be based on an assumption that carriers will directly bill consumers for originating 8YY access on a per-call or per-minute basis. We do not propose that carriers should recover any lost revenue through 8YY-specific charges, whether billed per-call, per-minute, or on a flat-rated monthly basis. Such an approach would be inconsistent with the way most customers are billed for voice services today (e.g., flat-rated, unlimited calling plans). We seek comment on whether there are additional steps we should take to address concerns that our proposed reforms might discourage legitimate 8YY calls.

58. In the USF/ICC Transformation Order, the Commission adopted a transitional recovery mechanism to partially mitigate revenue reductions incumbent LECs would experience because of these intercarrier compensation reform measures. The recovery mechanism had two basic components. First, the Commission defined the revenue incumbent LECs were eligible to recover—referred to as "Eligible Recovery." The Eligible Recovery calculation was different for price cap carriers and rate-of-return carriers, with the rate-of-return calculation based on a more complex formula, which included such carriers' 2011 interstate switched access revenue requirement. Second, the Commission specified that incumbent LECs may recover Eligible Recovery through limited end-user charges, and, where eligible, and a carrier elects to receive it,

support from the CAF. The recovery mechanism differed between price cap carriers and rate-of-return carriers, with CAF ICC support for price cap carriers eventually phasing out, but no similar sunset for rate-of return carriers. The Commission declined to permit competitive LECs to participate in the recovery mechanism, explaining that, because competitive LECs lack market power for the provision of these services, they were free to recover reduced access revenue through regular end-user charges.

59. More recently, in the Technology Transitions Order, the Commission concluded that incumbent LECs, like competitive LECs, are "non-dominant in their provision of interstate switched access services." Accordingly, incumbent LECs, like competitive LECs, should be able to recover revenues they may lose as a result of our proposals directly from their end users, subject only to the discipline of the market. This is similar to the approach the Commission took with competitive LECs in the USF/ICC Transformation Order, and to the approach the Commission adopted with CMRS providers. When those providers were transitioned to bill-and-keep, the Commission did not provide any revenue recovery mechanisms. Instead, the Commission relied on the competitive market to determine whether, and how much, those providers could increase their rates to recover any revenues lost due to the transition to bill-and-keep.

60. We seek comment on whether incumbent LECs, like competitive LECs, should be able to recover their lost access charge revenues from their end users. Should the market determine whether any rate increases are reasonable? Is there any reason consumers would not be able to switch providers—for example, moving from a wireline LEC to a wireless provider—if their existing carrier charges too much for its services? Is there any reason LECs cannot adjust their end-user rates to recover revenues they may lose due to our proposed changes to the intercarrier compensation regime for originating 8YY calls? Should we provide any additional

revenue recovery? For example, should we allow incumbent LECs to recover lost revenue through mechanisms, such as the Access Recovery Charge (ARC)? Why would carriers need to rely on ARCs if they are nondominant in the provision of the originating switched access services at issue here? If we allow carriers to recover lost revenues through ARCs, would we need to raise the Residential Rate Ceiling, which currently prohibits providers from imposing an ARC on any consumer paying an inclusive local monthly phone rate of $30 or more, in order to allow sufficient revenue recovery? Would we need to increase the existing cap on ARCs? Are there other issues to consider if we allow price cap carriers and competitive LECs to rely on increased ARCs? Are there any regulatory barriers that might impede incumbent LECs' ability to recover a reasonable amount of lost revenue from their end users? Are there any state or local regulations that would prevent LECs from raising their end-user rates to recover reasonable lost revenues related to intrastate 8YY calls?

61. We also propose to exclude from any recovery mechanism revenues generated by illegitimate or unlawful 8YY calls, such as those involving autodialed calls to toll free numbers, because it would be unreasonable for a LEC to rely on access revenues generated by such calls. We seek comment on this issue. We also seek comment on how we should determine which portion of originating carriers' 8YY revenues are legitimate for purposes of establishing the need for revenue recovery. Do we need to make any determinations regarding what revenues LECs should reasonably be allowed to recover from their end users, or can we rely on the competitive market to discipline carriers' switched access rates?

62. Rate-of-return carriers. While we propose to allow rate-of-return carriers to recover their legitimate 8YY costs through reasonable increases in end-user rates—though not through new line items—we recognize that many rate-of-return carriers, particularly those serving rural areas, already require CAF ICC support to keep end-user rates at acceptable levels.

We seek detailed comment on the effect transitioning originating 8YY charges to bill-and-keep will have on rural and high-cost areas. Would rate-of-return carriers be disproportionately affected compared to price cap and competitive LECs? For example, for rate-of-return carriers, what proportion of originating access revenues are attributable to 8YY calls? Does this proportion differ significantly from that of price cap carriers? What effect would our existing rate-averaging and rate-integration rules have on our proposed reforms? We seek comment on the need for originating LECs to replace the revenues they currently obtain from 8YY calls. We urge commenters, whenever possible, to provide quantifiable data or evidence supporting their views.

63. We also seek comment on whether we should provide rate-of-return carriers additional CAF ICC support to help cover the costs of originating 8YY access or to replace some or all of the revenue such carriers currently earn from originating access on legitimate 8YY calls. Would using CAF ICC support in this manner comport with the Commission's mandate under section 254 to advance universal service through "specific, predictable and sufficient" mechanisms?

D. Limiting Database Query Charges

1. Adopting a Uniform Cap

64. According to at least one commenter, database query charges comprise a significant proportion of the charges IXCs currently pay to originating LECs for 8YY calls. From the originating carrier's perspective, 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.

65. Nonetheless, we recognize the need to rein in any unreasonable charges for database queries. IXCs point out that 8YY database query rates vary widely among carriers and are typically untethered from the costs incurred in querying a database. We propose to address concerns about excessive and irrationally priced rates for database query charges by capping those charges nationwide at the lowest rate currently charged by any price cap LEC. We also propose to allow only one database query charge per 8YY call.

66. We invite comment on these proposals. In this item, we do not propose to move database query charges to bill-and-keep. Are there reasons that we should consider doing so immediately? Should we revisit that question after a set period of time? Are there harms that might arise if we moved other elements of originating access for 8YY to bill-and-keep, before we moved database query charges to bill-and-keep? We also seek comment on alternative methods of ensuring that database dip charges are just and reasonable.

67. Is the proposed cap on database query charges reasonable? Should we adopt a transition period for carriers to lower their rates to the proposed cap? If so, how should we structure such a transition period? Should we adopt a firm cap, as we propose, or should we establish a rebuttable presumption that rates above a certain threshold are presumptively unjust and unreasonable? Should we provide a specific waiver process for carriers that can demonstrate that their costs for database queries exceed the national cap? Should we build in automatic reductions to the permissible data base query charge to account for improvements in technology? If so, what amounts and over what timeframe? Conversely, should we allow adjustments to any rate caps to account for inflation? Does this proposal create the proper incentives for carriers to minimize access costs and route 8YY traffic as efficiently as possible? We also seek comment on any costs and burdens on small entities associated with this proposal, including data quantifying the extent of those costs or burdens.

2. Determining the Appropriate Cap

68. AT&T alleges that query rates currently range from $0.0015 to $0.015 per query, and that rates can vary widely even among corporate affiliates. We seek comment and additional data on the variability of 8YY database query rates. Do the rate examples provided by AT&T accurately reflect carriers' rates for database queries? We recognize that the rates were capped at their then-current levels by the adoption of the USF/ICC Transformation Order, but we seek comment on the underlying reason for the extreme variability in rates for database queries. Are these rates reflective of the costs carriers incur in providing database dip services? Do querying costs vary by geographic region? Do query rates (or costs) vary by the type of customer? How do incumbent LECs set their database query rates? What impact have high database query rates had on IXCs and 8YY subscribers?

69. Evidence provided by AT&T indicates that the lowest rate currently charged by a price cap LEC is $0.0015 per query, charged by CenturyTel. Is this correct? If so, is there any reason this rate should not serve as a nationwide cap for all 8YY database query charges? Are rates above $0.0015 per query unjust and unreasonable? Is there any reason to believe this rate is below the cost of querying the database? Inteliquent observes that,

> [r]ate structures between incumbent local exchange carriers trade off non-recurring setup charges, monthly recurring interconnect charges, 8YY query charge, per minute of use switching charges, and per minute per mile transport charges. For example, although some carriers charge a materially higher non-recurring set up charge or monthly recurring interconnect charge, those higher rates typically are offset by a lower per minute of use switching charge.

Similarly, the 8YY DIP query charge may be high because the switched per minute of use charge is low, and vice versa.

70. Is this a correct representation of how LECs allocate their charges? Is there any reason to believe that CenturyTel's rate of $0.0015 is artificially low because CenturyTel allocates some database dip costs to other originating charges? Should we consider a cap based on the average or median rates currently charged by LECs?

71. What infrastructure is necessary to conduct a database query? How expensive is it to become an SCP owner/operator? How many SCP owner/operators are there? Is the market for database queries competitive? We encourage commenters to provide detailed information about the rates SCP's charge for database dips, the costs LECs incur in connecting to SCPs, and any other costs associated with database queries. Are there economies of scale associated with database dips?

72. We understand that Somos is offering a new product—RouteLink, which "provides direct access to authoritative Toll-Free data," thus eliminating any need for an SCP intermediary. How many carriers, Responsible Organizations ("RespOrgs"), or other entities use Somos's RouteLink? What advantages does RouteLink provide compared to other ways to connect to Somos's database? What effect, if any, does the introduction of RouteLink have on what constitutes a reasonable rate for database queries?

3. One Dip per Call

73. Regarding our proposal to limit carriers to one database query charge per call, we recognize that the Commission has previously declined to impose such a requirement on LECs. Instead, the Commission deferred the matter to an industry association, the Ordering and Billing Forum of the Exchange Carrier Standards Association. Did this Association take any action on

database query charges? Should the Commission act now, given the current concerns about carriers billing IXCs for more than one query per call? Specifically, we seek comment on whether billing for more than one query charge per 8YY call is an unjust and unreasonable practice, even if the duplicative queries are performed by different carriers in the call chain. Is there any legitimate reason that an IXC should reasonably be expected to pay for multiple database queries in connection with a single 8YY call?

E. Legal Authority

74. In the USF/ICC Transformation Order, the Commission determined that it had the authority to comprehensively reform intercarrier compensation and move all interstate and intrastate access charges to bill-and-keep, explaining that "the legal authority to adopt the bill-and-keep methodology described herein applies to all intercarrier compensation traffic." Pursuant to this authority, the Commission adopted bill-and-keep as the end state for all traffic exchanged between carriers and adopted a glide path toward that methodology for all terminating access charges.

75. The Commission's actions in the USF/ICC Transformation Order were upheld on appeal, including the Commission's decision to prescribe bill-and-keep as the default methodology for intercarrier compensation for various categories of traffic. The Court specifically rejected challenges to Commission's regulation of originating charges, noting that the FCC's inclusion of originating access charges in its reform effort was "reasonable" and entitled to deference.

76. Our statutory authority to implement changes to pricing methodology governing the exchange of traffic with LECs flows directly from sections 251(b)(5) and 201(b) of the Act. Section 251(b)(5) states that LECs have a "duty to establish reciprocal compensation

arrangements for the transport and termination of telecommunications." In addition to providing the substantive authority for various rules and requirements, the Supreme Court in AT&T Corp. v. Iowa Utilities Board, held that "the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the 'provisions of this Act,' which include §§ 251 and 252."

77. In addition to our authority to reform originating 8YY access charges, we also have authority to establish a transition plan for moving toward that ultimate objective in a manner that will minimize market disruptions. Indeed, the Commission's pre-existing regimes for establishing reciprocal compensation rates for section 251(b)(5) traffic have been upheld as lawful, and can be applied to originating 8YY traffic, as provided by our transitional intercarrier compensation rules related to "ultimately phasing down" originating access charges. As the U.S. Court of Appeals for the D.C. Circuit has recognized, "[w]hen necessary to avoid excessively burdening carriers, the gradual implementation of new rates and policies is a standard tool of the Commission," and the transition "may certainly be accomplished gradually to permit the affected carriers, subscribers and state regulators to adjust to the new pricing system, thus preserving the efficient operation of the interstate telephone network during the interim."

78. We invite comment on our legal authority to adopt the changes to the 8YY intercarrier compensation system that we are proposing in this Notice. Is there any reason that the precedents cited above would not apply to our current proposals? Does the Commission have the authority to create a revenue recovery mechanism and to cap database query charges as part of its reform of 8YY originating access? Does the Commission have the authority to make these changes pursuant to one or more different statutory provisions, other than sections 201(b) and 251(b)(5)?

F. Related Issues

1. Role of Intermediate Providers

79. To better inform our reform efforts, we seek comment on the role intermediate providers, such as third-party tandem providers, or other providers that are interposed in the call path between an originating carrier and 8YY providers, play in the 8YY market. We also seek comment on how wireless 8YY calls have been affected by the fact that CMRS providers cannot charge originating access charges.

80. Several parties express frustration with certain practices employed by intermediate providers in the 8YY call flow. In particular, some carriers complain about the role intermediate providers play in facilitating abuses of the 8YY intercarrier compensation system. We seek comment on whether intermediate providers perform a legitimate function that should be preserved. Once originating 8YY traffic moves to bill-and-keep, we expect the market will determine how much, if anything, aggregators or other "middlemen" should be paid for their services (including database queries). Should the Commission provide any regulations or guidance regarding the offering of these services or compensation for these services? Or can we rely on the marketplace?

2. Network Edge

81. Although we have issued a separate Public Notice to refresh the record on other intercarrier compensation issues, including the network edge, we seek comment on whether the network edge requires a distinct approach in the 8YY context, particularly in a scenario where an IXC seeks a direct connection for 8YY originating traffic. Parties argue that some carriers take advantage of the Commission's current rules by specifying inefficient transport routes for 8YY traffic. Should originating carriers be allowed to specify a certain transport route, particularly if

they are financially responsible for the transport? Should we develop separate rules for certain locations (e.g., Alaska) with respect to 8YY traffic? What role, if any, should states continue to play in determining the network edge for 8YY traffic?

3. Traffic Imbalances

82. Some parties argue that bill-and-keep is inappropriate for toll free calls because the traffic flow is unbalanced, i.e., 8YY subscribers are unlikely to call consumers and, therefore, the traffic always flows from the consumer to the 8YY subscriber. These arguments do not strike us as persuasive. As the Commission explained in the USF/ICC Transformation Order, "both parties generally benefit from participating in a call, and therefore . . . both parties should split the cost of the call." This reasoning applies to 8YY calls. If callers did not benefit from placing an 8YY call, then we would expect to see a decline in demand for 8YY numbers as well as in volume of 8YY calls, especially as more and more consumers have moved to wireless-only methods of telecommunications. This is not the case, however, as demand for 8YY numbers appears to be growing, as do minutes of use. Thus, it is clear that 8YY calls confer some benefit not only to the 8YY subscriber, but also to the calling party.

83. Indeed, the Commission has previously "reject[ed] claims that, as a policy matter, bill-and-keep is only appropriate in the case of roughly balanced traffic." We continue to reject such claims and reiterate that "bill-and-keep is most consistent with the models used for wireless and IP networks, models that have flourished and promoted innovation and investment without any symmetry or balanced traffic requirement." Nonetheless, we seek comment on whether there is a legitimate reason to find that traffic imbalances make 8YY calls ill-suited for bill-and-keep.

4. CMRS Providers

84. We do not include CMRS providers in our proposals because wireless carriers are already subject to bill-and-keep for 8YY calls and their end-user rates remain largely unregulated. We seek comment on whether there are any CMRS-related issues we need to address in this proceeding. Have CMRS providers been able to meet their revenue needs for originating 8YY calls through pre-existing end-user charges? If not, what other mechanisms have CMRS providers used to meet their revenue needs related to originating 8YY calls?

85. Some commenters assert that CMRS providers collect revenue for originating 8YY calls pursuant to revenue sharing arrangements with intermediate providers. We seek comment on this allegation. Are there wireless carriers that refuse to connect directly with other providers in order to facilitate revenue sharing arrangements? If so, how prevalent is this practice? What rationale do wireless providers use for refusing direct connection? How are 8YY access charges and database dips affected by a refusal of direct connection?

86. We also seek comment on what lessons we can learn from the wireless experience with bill-and-keep as we reform originating access for wireline 8YY calls. What is the typical call path for wireless 8YY calls? Does it differ materially from the call path for wireline 8YY calls? Have wireless rates increased to account for access costs for which CMRS providers cannot charge other carriers? If so, how large have these rate increases been? Has competition effectively disciplined CMRS providers' ability to increase their rates to account for "lost" access charge revenues?

5. Unintended Consequences

87. Although we expect our proposals to bring numerous benefits to both carriers and end users, we do not want to overlook any potentially negative unintended consequences that

could result from our proposed reforms. We therefore seek comment on the potential risks related to our proposals.

a. Potential Effects on Consumers

88. Some commenters object that moving 8YY calls to bill-and-keep would undermine consumer expectations that 8YY calls are "free" to the calling party. Other parties counter that, "from the beginning," the term "toll-free" has meant that "the caller doesn't pay toll—i.e., long distance—charges, not that the caller's monthly charge on his or her local bill will never change." Under our proposal, 8YY calls will remain "toll free" because originating callers will not be charged for the long-distance portion of the call. Nonetheless, we seek comment on whether 8YY calls will continue to meet consumers' expectations of "toll free." Would it still be accurate to label these calls "toll free" since the long distance, or "toll" portion of the call would be free to the caller and paid by the 8YY subscriber?

89. Some carriers claim they will need to educate their customers if toll free calls are no longer "free." Would any consumer education be necessary or appropriate if we were to adopt our proposals? Do consumers need to be informed of the change in our originating access charge regime for 8YY calls? If so, what would it cost to disseminate such information? Who should bear the costs of educating consumers about these changes? Is there any merit to claims that transitioning 8YY to bill-and-keep would leave providers open to "false advertising" claims because "toll free" calls will not be completely free? Are there any other possible negative consequences for consumers resulting from transitioning 8YY traffic to bill-and-keep?

b. Potential Effects on 8YY Subscribers

90. Some commenters argue that moving originating 8YY access charges to bill-and-keep would harm 8YY subscribers, because consumers will be reluctant to place 8YY calls.

Despite these concerns, the largest toll free subscribers appear to favor transitioning 8YY traffic to bill-and-keep. Would our proposed reforms disproportionately affect some 8YY subscribers more than others? From the 8YY subscriber perspective, do the benefits of transitioning to bill-and-keep outweigh the adverse consequences from it?

91. What is the proportion of the originating 8YY access charges (including end office, tandem switching and transport) to the remaining 8YY charges that 8YY subscribers pay, on average? Will 8YY subscribers continue to pay a larger proportion of the total costs of an 8YY call, or will the callers be responsible for the larger share? Will this calculus vary by geography?

92. We also note that, despite evidence of abuse, 8YY numbers continue to be in high demand. What factors explain this dynamic? It is our understanding that this growth in demand is at least partially due to businesses using 8YY numbers in new ways, such as call tracking to determine which advertisements generate the most responses. Will the transition to bill-and-keep reduce the benefits of 8YY calls?

c. Other Consequences

93. In this Notice, we propose to move 8YY originating end office and tandem switching and transport charges to bill-and-keep before reforming the remaining rate elements not yet affected by changes in the USF/ICC Transformation Order, including non-8YY originating traffic. Would doing so create new opportunities for abuses of the intercarrier compensation system, or shift abuses to other forms of originating access? If so, how? How would our proposed changes affect network efficiency?

94. Are there any other possible unintended negative consequences of our proposals? Would our proposed reforms result in call completion issues, as predicted by some commenters?

Would they "lead smaller competitors to exit all or part of the market?"

6. Additional Proposals for Reform

95. We invite parties to propose additional, or alternative, methods for reforming originating 8YY access charges. We also seek comment on proposals already in the record. We encourage commenters to consider how any proposal would reduce abusive practices related to 8YY calls. We particularly invite comparison of the relative benefits and drawbacks of these proposals compared to the proposals we have set forth in the Notice.

IV. RULE REVISIONS

96. We seek comment on the rule changes proposed in Appendix A. Among other changes, we propose to add new definitions for the following terms: Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls, Baseline Composite Interstate Tandem-Switched Transport Access Service Rate for Toll Free Calls, Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls, Baseline Composite Intrastate Tandem-Switched Transport Access Service Rate for Toll Free Calls, Database Query Charge, and Toll Free Call. The proposed rules also discuss the proposed transition of originating access charges for toll free calls to bill-and-keep, proposed new limitations on database query charges for toll free calls, and proposed modifications to the CLEC benchmarking rules. What, if any, other rule additions or modifications would need to be made to codify these proposals? Are there any conforming rule changes that commenters consider necessary? Are there any conflicts or inconsistencies between existing rules and those proposed herein? We ask commenters to provide any other proposed actions and rule additions or modifications we should consider to address the issues regarding 8YY calls described in this Notice including updates to any relevant comments or proposals made in response to the USF/ICC Transformation FNPRM, and the June 29, 2017 Public Notice.

V. PROCEDURAL MATTERS

97. Filing Instructions. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
    - Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD

20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

98. People with Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

99. Ex Parte Requirements. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with Rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments

thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

100. Paperwork Reduction Act Analysis. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

101. Initial Regulatory Flexibility Act Analysis. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this Notice. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

102. Contact Person. For further information about this proceeding, please contact Irina Asoskov, FCC, Wireline Competition Bureau, Pricing Policy Division, Room 5-A235, 445 12th Street, S.W., Washington, D.C. 20554, (202) 418-2196, irina.asoskov@fcc.gov.

VI. INITIAL REGULATORY FLEXIBILITY ANALYSIS

103. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this FNPRM. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the FNPRM. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

104. In the USF/ICC Transformation Order, the Commission adopted a bill-and-keep framework—under which a carrier generally looks to its end users to pay for its network costs—"as the default methodology for all intercarrier compensation traffic." In the FNPRM portion of that item, the Commission also sought comment on additional steps to implement a bill-and-keep cost recovery mechanism for certain access charges and sought comment on outstanding issues subject to reform in the future, including originating access charges and cost recovery for toll free (8YY) calls. In this FNPRM, we propose transitioning interstate and intrastate originating end office and tandem switching and transport charges for 8YY traffic to bill-and-keep, consistent with the Commission's reforms and policy directives in the USF/ICC Transformation Order. In the FNPRM we also propose capping database query charges associated with 8YY calls. We also propose amending our rules to limit charges to one database query per 8YY call. The FNPRM also asks for comment on various issues related to the 8YY network generally and 8YY cost recovery specifically.

B. Legal Basis

105. The legal basis for any action that may be taken pursuant to this Notice is contained in 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), and 403.

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

106. 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 proposed rule revisions, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. 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.

107. 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. 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. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 28.8 million businesses. 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." Nationwide, as of August 2016, there were approximately 356,494 small organizations, based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS). 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." U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 37,132 General Purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special Purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data, we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

108. 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." 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. Census data for 2012 show that there were 3,117 firms that operated that year. 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.

109. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the proposed rules.

110. Incumbent LECs. 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 as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

111. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access

Providers (CAPs), 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, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, 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. Of these, an estimated 1,256 have 1,500 or fewer employees. 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. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

112. We have included small incumbent LECs 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." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

113. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers, as defined above. 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 data for 2012 indicate that 3,117 firms operated during that 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 IXCs are small entities.

114. Local Resellers. The SBA has developed a small business size standard for the category of 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. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year, all of which operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, all of these resellers can be considered small entities.

115. 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. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. 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. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

116. 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 IXCs, 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. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. 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. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules proposed in the

Notice.

117. Prepaid Calling Card Providers. The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules proposed in the Notice.

118. 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. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

119. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that may be affected by our proposed rules. 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. 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.

120. 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 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 revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

121. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than two thirds of these entities can be considered small.

122. All Other Telecommunications. The "All Other Telecommunications" industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. 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. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Thus a majority of "All Other Telecommunications" firms potentially affected by our action can be considered small.

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

123. In this FNPRM, the Commission seeks public comment on additional steps to complete its intercarrier compensation reform regarding toll free or 8YY calls. The transition to complete the reform of new intercarrier compensation rules could affect all carriers, including small entities, and may include new administrative processes. In proposing these reforms, we seek comment on various reporting, recordkeeping, and other compliance requirements that may apply to all carriers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rules, including data quantifying the extent of those costs or burdens. These issues include the appropriate path or transition to move 8YY originating access charges to bill-and-keep and on the appropriate recovery of 8YY database costs. We also seek data to analyze the effects of proposed reforms and need for revenue recovery.

124. Compliance with a transition to a new system for 8YY originating access may impact some small entities and may include new or reduced administrative processes. For

carriers that may be affected, obligations may include certain reporting and recordkeeping requirements to determine and establish their eligibility to receive recovery from other sources as 8YY originating access revenue is reduced. Modifications to the rules to address potential arbitrage opportunities will affect certain carriers, potentially including small entities. However, these impacts are mitigated by the certainty and reduced litigation that should occur as a result of the reforms adopted. The FNPRM seeks comment on several issues relating to bill-and-keep implementation for 8YY originating access as well as cost recovery for 8YY database dips. The FNPRM also seeks comment on how reduced intercarrier compensation revenues in the future would impact carriers, and how recovery, if any, for those reduced revenues should be addressed. The Commission asks if the recovery approach adopted should be different depending on the type of carrier or regulation.

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

125. The RFA requires an agency to describe any significant alternatives it has considered to the proposed rule which minimize any significant impact on small entities. These 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.

126. This FNPRM invites comment on a number of proposals and alternatives to modify or adopt 8YY originating access and database dip rules. As a general matter, actions taken as a result of our actions should benefit all service providers, including small entities, by

providing greater regulatory certainty and by moving toward the Commission's goal of bill-and-keep for all access charges. In the FNPRM, we encourage small entities to bring to the Commission's attention any specific concerns that they have, including on any issues or measures that may apply to small entities in a unique fashion. We especially encourage commenters to discuss the proposed transitional recovery mechanism to help transition LECs away from existing revenues. Our proposed tailored approach to transitional recovery is designed to balance the different circumstances facing the different carrier types and provide all carriers with necessary predictability, certainty, and stability to transition from the current intercarrier compensation system. The FNPRM also seeks comment on other actions the Commission could take to further discourage or eliminate abuse of the intercarrier compensation regime that governs 8YY calls. Finally, we seek comment on alternatives to our proposals that we should consider to achieve our objectives with less impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

127. None.

I. ORDERING CLAUSES

128. 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 § 1.1 of the Commission's rules, 47 CFR 1.1, this Further Notice of Proposed Rulemaking IS ADOPTED.

129. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on this Further Notice of Proposed Rulemaking on or before **[INSERT DATE 60**

DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and reply comments on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

130. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of the Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 51 and 61

Telephone.

FEDERAL COMMUNICATIONS COMMISSION

Katura Jackson,
Federal Register Liaison Officer,
Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 51 and 61 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, 220, 225-27, 251-54, 256, 271, 303(r), 332, 1302.

2. Revise § 51.903 to read as follows:

§ 51.903 Definitions.

(a) Access Reciprocal Compensation means telecommunications traffic exchanged between telecommunications service providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

(b) Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls means originating End Office Access Service billed revenue from interstate Toll Free Calls for [Base Year -1] divided by end office switching interstate Toll Free calling minutes for [Base Year-1].

(c) Baseline Composite Interstate Tandem-Switched Transport Access Service Rate for Toll Free Calls means originating Tandem-Switched Transport Access Service billed revenue from interstate Toll Free Calls for [Base Year -1] divided by tandem-switched interstate Toll Free calling minutes for [Base Year -1].

(d) Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls means originating End Office Access Service billed revenue from intrastate Toll Free Calls for [Base Year-1] divided by end office switching intrastate Toll Free calling minutes for [Base Year-1].

(e) Baseline Composite Intrastate Tandem-Switched Transport Access Service Rate for Toll Free Calls means originating Tandem-Switched Transport Access Service billed revenue from intrastate Toll Free Calls for [Base Year -1] divided by tandem-switched intrastate Toll Free calling minutes for [Base Year -1].

(f) Competitive Local Exchange Carrier. A Competitive Local Exchange Carrier is any local exchange carrier, as defined in § 51.5, that is not an incumbent local exchange carrier.

(g) Composite Terminating End Office Access Rate means terminating End Office Access Service revenue, calculated using demand for a given time period, divided by end office switching minutes for the same time period.

(h) Database Query Charge means a charge that is expressed in dollars and cents that an originating carrier or tandem switch provider assesses upon an interexchange carrier for obtaining routing information for a Toll Free Call and includes any charges for signaling or transport services used to obtain such routing information.

(i) Dedicated Transport Access Service means originating and terminating transport on circuits dedicated to the use of a single carrier or other customer provided by an incumbent local exchange carrier or any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. Dedicated Transport Access Service rate elements for an incumbent local exchange carrier include the entrance facility rate elements specified in § 69.110 of this chapter, the dedicated transport rate elements specified in § 69.111 of this chapter, the direct-trunked transport rate elements specified in § 69.112 of this chapter, and the intrastate rate elements for functionally equivalent access services. Dedicated Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access services.

(j) End Office Access Service means:

(1) The switching of access traffic at the carrier's end office switch and the delivery to or from of such traffic to the called party's premises;

(2) The routing of interexchange telecommunications traffic to or from the called party's premises, either directly or via contractual or other arrangements with an affiliated or unaffiliated entity, regardless of the specific functions provided or facilities used; or

(3) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. End Office Access Service rate elements for an incumbent local exchange carrier include the local switching rate elements specified in § 69.106 of this chapter, the carrier common line rate elements specified in § 69.154 of this chapter, and the intrastate rate elements for functionally equivalent access services. End Office Access Service rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the information surcharge and residual rate elements. End office Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

Note to paragraph (j): For incumbent local exchange carriers, residual rate elements may include, for example, state Transport Interconnection Charges, Residual Interconnection Charges, and PICCs. For non-incumbent local exchange carriers, residual rate elements may include any functionally equivalent access service.

(k) Fiscal Year 2011 means October 1, 2010 through September 30, 2011.

(l) Incumbent Local Exchange Carrier means a Price Cap Carrier or Rate-of-Return Carrier.

(m) Price Cap Carrier has the same meaning as that term is defined in § 61.3(aa) of this chapter.

(n) Rate-of-Return Carrier is any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(aa) of this chapter, but only with respect to the territory in which it operates as an incumbent local exchange carrier.

(o) Tandem-Switched Transport Access Service means:

(1) Tandem switching and common transport between the tandem switch and end office; or

(2) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier via other facilities. Tandem-Switched Transport rate elements for an incumbent local exchange carrier include the rate elements specified in § 69.111 of this chapter, except for the dedicated transport rate elements specified in that section, and intrastate rate elements for functionally equivalent service. Tandem Switched Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

(p) Toll Free Call means a call to a toll free number, as defined in § 52.101(f) of this subchapter.

(q) Transitional Intrastate Access Service means terminating End Office Access Service that was subject to intrastate access rates as of December 31, 2011; terminating Tandem-Switched Transport Access Service that was subject to intrastate access rates as of December 31, 2011; and originating and terminating Dedicated Transport Access Service that was subject to intrastate access rates as of December 31, 2011.

3. Add § 51.921 to Subpart J to read as follows:

§ 51.921 Transition of Originating Access Charges for Toll Free Calls.

(a) Effective [July 1, base year], notwithstanding any other provision of the Commission's rules, each Incumbent LEC shall calculate:

(1) A single per-minute Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls for each state in which it provides such service;

(2) A single per-minute Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls;

(3) A single per-minute Baseline Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls for each state in which it provides such service; and

(4) A single per-minute Baseline Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(b) **Step 1.** Beginning July 1, [base year], notwithstanding any other provision of the Commission's rules:

(1) Each Incumbent LEC shall establish rates for intrastate originating End Office Access Service for Toll Free Calls in each state in which it provides such service using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls. The [base year] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls means two-thirds of the Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls.

(ii) Beginning [July 1, base year], a LEC is prohibited from filing an intrastate access tariff that includes an Originating End Office Rate for intrastate Toll Free Calls that exceeds its [base year] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls for that particular state.

(2) Each Incumbent LEC shall establish rates for interstate originating End Office Access Service for Toll Free Calls using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls. The [base year] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls means two-thirds of the Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls.

(ii) Beginning [July 1, base year], a LEC is prohibited from filing an interstate access tariff that includes an Originating End Office Rate for interstate Toll Free Calls that exceeds its [base year] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls.

(3) Each Incumbent LEC shall establish rates for intrastate originating Tandem-Switched Transport Access Service for Toll Free Calls in each state in which it provides such service using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year] Target Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls. The [base year] Target Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls means two-thirds of the Baseline Composite Intrastate Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(ii) Beginning [July 1, base year], a LEC is prohibited from filing an intrastate access tariff that includes an originating Tandem-Switched Transport Access Service Rate for intrastate Toll Free Calls that exceeds its [base year] Target Composite Intrastate

Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls for that particular state.

(4) Each Incumbent LEC shall establish rates for interstate originating Tandem-Switched Transport Access Service for Toll Free Calls using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls. The [base year] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls means two-thirds of the Baseline Composite Interstate Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(ii) Beginning [July 1, base year], a LEC is prohibited from filing an interstate access tariff that includes an originating Tandem-Switched Transport Access Service Rate for interstate Toll Free Calls that exceeds its [base year] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(c) **Step 2**. Beginning July 1, [base year + 1], notwithstanding any other provision of the Commission's rules:

(1) Each Incumbent LEC shall establish intrastate rates for originating End Office Access Service for Toll Free Calls in each state in which it provides such service using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year + 1] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls. The [base year + 1] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls means one-third of the Baseline Composite Intrastate Originating End Office Access Rate for Toll Free Calls.

(ii) Beginning July 1, [base year + 1], a LEC is prohibited from filing an intrastate access tariff that includes an Originating End Office Access Rate for intrastate Toll Free Calls that exceeds its [base year + 1] Target Composite Intrastate Originating End Office Access Rate for Toll Free Calls for that particular state.

(2) Each Incumbent LEC shall establish interstate rates for originating End Office Access Service for Toll Free Calls using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year + 1] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls. The [base year + 1] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls means one-third of the Baseline Composite Interstate Originating End Office Access Rate for Toll Free Calls.

(ii) Beginning July 1, [base year + 1], a LEC is prohibited from filing an interstate access tariff that includes an Originating End Office Access Rate for interstate Toll Free Calls that exceeds its [base year + 1] Target Composite Interstate Originating End Office Access Rate for Toll Free Calls.

(3) Each Incumbent LEC shall establish rates for originating Tandem-Switched Transport Access Service for intrastate Toll Free Calls in each state in which it provides such service using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year + 2] Target Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls. The [base year + 2] Target Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for intrastate Toll Free Calls means one-third of the [base year]

Baseline Composite Intrastate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(ii) Beginning July 1, [base year + 2], a LEC is prohibited from filing an intrastate access tariff that includes an Originating Tandem-Switched Transport Access Service Rate for intrastate Toll Free Calls that exceeds its [base year + 2] Target Composite Originating Tandem-Switched Transport Access Service Rate for intrastate Toll Free Calls for that particular state.

(4) Each Incumbent LEC shall establish rates for interstate originating Tandem-Switched Transport Access Service for Toll Free Calls using the following methodology:

(i) Each Incumbent LEC shall calculate its [base year + 2] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls. The [base year + 2] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls means one-third of the [base year] Baseline Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(ii) Beginning July 1, [base year + 2], a LEC is prohibited from filing an interstate access tariff that includes an Originating Tandem-Switched Transport Access Service Rate for interstate Toll Free Calls that exceeds its [base year + 2] Target Composite Interstate Originating Tandem-Switched Transport Access Service Rate for Toll Free Calls.

(d) **Step 3**. Beginning July 1, [base year + 2], notwithstanding any other provision of the Commission's rules, all LECs shall, in accordance with bill-and-keep, revise and refile their interstate and intrastate switched access reciprocal compensation tariffs and any state tariffs to remove any intercarrier charges applicable to interstate and intrastate originating End Office

Access Service and Tandem-Switched Transport Access Service for all interstate and intrastate rate elements for Toll Free Calls.

(e) Nothing in this section shall prevent a LEC from negotiating a rate for Originating End Office Access Service for Toll Free Calls or for Originating Tandem-Switched Transport Access Service for Toll Free Calls that is different from its tariffed rates, or that is different from bill-and-keep if there is no tariffed rate for such services.

4. Add § 51.923 to Subpart J to read as follows:

§ 51.923 Limitation on Database Query Charges for Toll Free Calls.

(a) Notwithstanding any other provision of the Commission's rules, on [the first July 1/annual tariff filing after rule adoption], every Incumbent LEC shall cap the rates for database query charges in its interstate or intrastate tariffs at $.0015 per Toll Free Call.

(b) Notwithstanding any other provision of the Commission's rules, on [the first July 1/annual tariff filing after rule adoption], LECs involved in the routing of a Toll Free Call to a provider of Toll Free calling services may not, collectively, charge the provider of Toll Free calling services more than one database query charge per Toll Free Call.

PART 61—TARIFFS

5. The authority citation for part 61 continues to read as follows:

AUTHORITY: Secs 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

6. Amend § 61.26 by revising paragraphs (a)(3)(i) and (e) to read as follows:

§ 61.26 Tariffing of Competitive Interstate Switched Exchange Access Services.

(a) * * *

(3) * * *

(i) The functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching; and Database Query Charge, as that term is defined in section [51.903(m)] of this chapter;

* * * * *

(e) Rural exemption. Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) through (d) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge. Beginning July 1, 2013, all CLEC reciprocal compensation rates for intrastate switched exchange access services subject to this subpart also shall be no higher than that NECA rate. The rural exemption in this section does not apply to Toll Free Calls.

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