§ 502.410 Representation of parties.

(a) The provisions of § 502.21 apply to representation of parties in dispute resolution proceedings, as do the provisions of § 502.27 regarding representation of parties by nonattorneys.

(b) A neutral in a dispute resolution proceeding may require participants to demonstrate authority to enter into a binding agreement reached by means of a dispute resolution proceeding.

§ 502.411 Mediation and other alternative means of dispute resolution.

(a) Parties are encouraged to utilize mediation or other forms of alternative dispute resolution in all formal proceedings. The Commission also encourages those with disputes to pursue mediation in lieu of, or prior to, the initiation of a Commission proceeding.

(b) Any party may request, at any time, that a mediator or other neutral be appointed to assist the parties in reaching a settlement. If such a request is made in a proceeding assigned to an Administrative Law Judge, the provisions of § 502.91 apply. For all other matters, alternative dispute resolution services may be requested directly from the Commission's Alternative Dispute Resolution Specialist, who may serve as the neutral if the parties agree or who will arrange for the appointment of a neutral acceptable to all parties.

(c) The neutral shall convene and conduct mediation or other appropriate dispute resolution proceedings with the parties.

(d) Ex-parte Communications. Except with respect to arbitration, the provisions of 502.11 do not apply to dispute resolution proceedings, and mediators are expressly authorized to conduct private sessions with parties.

By the Commission.

Bryant L. VanBrakle,

Secretary.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 96–262; FCC 01–146]

Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether tariffed competitive LEC-provided access service for toll free, or ''8YY,'' numbers should be benchmarked to a different figure than the Commission has adopted for CLEC tariffed switched access traffic generally.

DATES: Comments are due by June 20, 2001. Reply comments are due by July 20, 2001. Written comments by the public on the proposed and/or modified information collections discussed in this Further Notice of Proposed Rulemaking are due by June 20, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections by July 20, 2001.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to vhuth@omb.eop.gov. Parties should also send one paper copy of their filings to Jane Jackson, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–A225, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Jeffrey H. Dygert, Common Carrier Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 96–262 released on April 27, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

This FNPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The FNPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection(s) contained in this FNPRM, as required by the PRA, Public Law 104–13. Public and agency comments on the proposed and/or modified information collections discussed in this Notice of Proposed Rulemaking are due by June 20, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections by July 20, 2001.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Synopsis of FNPRM

I. Further Notice of Proposed Rulemaking

1. Shortly before we issued the final rule that is published elsewhere in this issue, AT&T asserted, for the first time in this proceeding, that CLEC originating 8YY, toll-free traffic should be subject to a different benchmark scheme than other categories of switched access traffic. AT&T argues that the benchmark for CLEC 8YY traffic should immediately move to the access rate of the competing ILEC and that CLECs should be mandatorily detariffed above that point. In support of this position, AT&T asserts that certain CLECs with higher access charges attempt to obtain as customers end users that typically generate high volumes of 8YY traffic, such as hotels and universities. AT&T further asserts that some CLECs then ''install limited, high-capacity facilities designed only to handle 8YY traffic'' and ''share their access revenues with the customers generating the [8YY] traffic'' through agreements that provide for payments to the end user based on the level of 8YY

traffic it generates. AT&T contends that such arrangements do not promote the development of local exchange competition. Rather, it argues that these arrangements merely create the incentive for end users artificially to generate heavy 8YY traffic loads, which, in turn generate revenues for CLECs and their end-user customers.

2. Given the paucity of record evidence on this issue, we seek comment generally on AT&T's proposal immediately to benchmark CLEC 8YY access services to the ILEC rate. Is the generation of 8YY traffic in order to collect greater access charges, as AT&T complains, something that the Commission should attempt to address through a rulemaking, or should the IXCs be left to address specific instances of abuse directly with the relevant CLEC, with the aid of the Commission's complaint process where appropriate? In this regard, we note AT&T's assertion that one recent case of apparent abuse, confirmed by WorldCom, arose from the sequential dialing of over 800,000 8YY calls by a single end user. It appears that, even without the rule it now requests, AT&T may, through discussions with the relevant CLEC, have been able to act to prevent payment for improperly generated 8YY access minutes.

3. We seek comment on the magnitude of the potential problem with 8YY traffic that AT&T identifies. AT&T estimates that approximately 30% of its CLEC access traffic is generated by 8YY aggregators that, it speculates, have revenue-sharing agreements with their end-user subscribers. Is this an accurate figure across the industry? How many minutes and what premium over the competing ILEC rate does this represent? More generally, what proportion of CLEC access traffic is composed of originating 8YY service? What proportion of CLEC end users have 8YY revenue-sharing agreements with their carrier?

4. Are CLECs continuing to offer 8YY revenue-sharing agreements to their new end users, or are they currently available only to end users that negotiated them at some point in the past? Do CLECs notice a difference in the 8YY traffic patterns generated by end users with revenue-sharing agreements, compared to those end users without such agreements? What are the typical terms of a revenue-sharing agreement? Do they provide for payment of a per-minute fee for 8YY traffic, a per-call fee or some other arrangement? What is the magnitude of the fee paid? How, if at all, will the Commission's imposition of the switched-access benchmark affect CLECs' existing revenue-sharing agreements?

5. We are concerned that AT&T's proposed solution to the problem it identifies may paint with too broad of a brush. Does the existence of some CLECs' revenue-sharing agreements justify immediately limiting CLEC tariffed access rates for all 8YY traffic to the rate of the competing ILEC? Should the Commission instead impose such a limitation only on those CLECs that actually offer revenue-sharing agreements to their end users?

6. Additionally, we seek comment on AT&T's assertion that it promotes neither appropriate policy goals nor the development of local exchange competition when a CLEC carries an end user's 8YY traffic without also providing that end user with local exchange service or other types of access service. Would we be justified in immediately tying 8YY access tariffs to the ILEC rate for all CLECs, regardless of the services that they provide to their end users? Or would such a rule be appropriate, if at all, only for those CLECs that carry exclusively their end users' 8YY traffic? How does the presence or absence of revenue-sharing agreements, discussed, fit into the analysis of whether a CLEC's service offerings support restricting their tariffed 8YY access rates to the competing ILEC's rate?

7. We question whether, at bottom, CLEC 8YY traffic is inherently worthy of lower access charges than are other types of access traffic. A CLEC provides a closely similar service and uses similar or identical facilities, regardless of whether it provides originating 8YY access service, or terminating or originating access service for conventional 1+ calls. Accordingly, we seek comment on whether the presence of certain incentives to generate artificially high levels of 8YY traffic necessarily justifies reducing the tariffed rate for all such traffic immediately to the ILEC rate. Should we instead presume that there exists some ''legitimate'' level of CLEC 8YY traffic that should be treated as other categories of access traffic and subject to a lower benchmark only the traffic that exceeds this ''legitimate'' level? If this is an appropriate alternative, how should we define the level at or below which 8YY access traffic may be subject to the higher tariff benchmark that we permit for other categories of CLEC access service? Additionally, we seek comment on any other reasons that CLEC 8YY traffic should be subjected to a different tariff benchmark than are other categories of CLEC access traffic. We also seek comment on whether, if we adopt a different benchmark for 8YY access services, there are any different tariff filing requirements or timetables that we might adopt to account for the resources available to small entities. Commenters should indicate whether and how such provisions would be consistent with our goals in this proceeding, including our obligation to ensure just and reasonable rates for interstate access services.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice. 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 this Notice, which are set out. The Commission will send a copy of this Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, this Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Action

9. In this Further Notice, the Commission sets a benchmark for CLEC interstate switched access services that declines over time to the competing ILEC rate. In the Further Notice, the Commission seeks comment on a proposal offered by AT&T to move immediately the benchmark for CLEC 8YY access services to the competing ILEC rate and to mandatorily detariff CLEC interstate access rates for such 8YY traffic above that point. The Commission seeks comment on the nature and extent of the problem alleged by AT&T and on various means of addressing CLEC 8YY access service rates. Through the Further Notice, the Commission seeks to ensure that CLEC rates for 8YY access services are just and reasonable.

2. Legal Basis

10. The legal basis for the action as proposed for this rulemaking is contained in sections 1–5, 201–205, 208, 251–271, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 201–205, 208, 251–271, 403, 502, and 503.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Action May Apply

11. 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 rules, if adopted. To estimate the number of small entities that may be affected by the proposed rules, we first consider the statutory definition of ''small entity'' under the RFA. The RFA generally defines ''small entity'' as having the same meaning as the term ''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, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a ''small business concern'' is one that is independently owned and operated; is not dominant in its field of operation; and meets any additional criteria established by the SBA. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees.

12. The rules adopted in this order apply to CLECs and IXCs. Neither the Commission nor the SBA has developed a definition of small CLECs or small IXCs. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that telecommunications carriers file annually in connection with the Commission's universal services requirements. According to our most recent data, 349 companies reported that they were engaged in the provision of either competitive access services or competitive local exchange services (referred to collectively as CLECs) and 204 companies reported that they were engaged in the provision of interexchange services. Among these companies, we estimate that approximately 297 of the CLECs have 1500 or fewer employees and that approximately 163 of the IXCs have 1500 or fewer employees. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are 297 or fewer small CLECs, and 163 or fewer small IXCs that may be affected by the decisions and rules adopted in this order.

4. Description of Proposed Reporting, Recordkeeping, and Other Compliance Requirements

13. In the *CLEC Access Order*, the Commission sets a benchmark for CLEC interstate switched access services that declines over time to the competing ILEC rate. Through the Further Notice, the Commission seeks comment on whether it should move immediately the benchmark for CLEC 8YY access services to the competing ILEC rate and mandatorily detariff CLEC interstate access rates for such 8YY access services above that point. Adopting this proposal may require CLECs to refile tariffs with the Commission or to negotiate contracts with IXCs, rather than filing tariffs.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; the use of performance, rather than design, standards; and an exemption from coverage of the rule, or any part thereof, for small entities.

15. As mentioned, through the Further Notice, the Commission seeks to ensure that CLEC rates for 8YY access services are just and reasonable. Our proposals may affect CLECs, by altering the rates that they may tariff for 8YY access services. At the same time, our proposals might affect indirectly IXCs that must pay access charges for 8YY traffic. Because there are both small entity IXCs and small entity CLECs—with conflicting interests in this proceeding—we expect that small entities may be affected by any approach that we adopt. We seek an approach that both reduces opportunities for regulatory arbitrage and minimizes the burdens placed on carriers.

16. Among the alternatives proposed, the Commission seeks comment whether it should move immediately the benchmark for CLEC 8YY access services to the competing ILEC rate and mandatorily detariff CLEC interstate access rates for such 8YY access services above that point. The Commission seeks comment, to the extent that it finds that a separate benchmark is appropriate for 8YY access rates, on whether it should instead impose such a limitation only on those CLECs that offer revenue-sharing agreements to their end users or only on those CLECs that do not offer local exchange services in addition to their 8YY access services. Alternatively, the Commission seeks comment on whether the Commission should take no additional action and whether IXCs should be left to address specific instances of abuse directly with the relevant CLEC, with the aid of the Commission's complaint process where appropriate.

17. We also seek comment on whether, if we adopt a different benchmark for 8YY access services, there are any different tariff filing requirements or timetables that we might adopt to account for the resources available to small entities. We ask commenters to indicate whether and how such provisions would be consistent with our goals in this proceeding, including our obligation to ensure just and reasonable rates for interstate access services.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

18. None.

B. Comment Filing Procedures

19. Pursuant to §§ 1.415, 1.419, and 1.430 of the Commission's rules, interested parties may file comments by June 20, 2001, and reply comments by July 20, 2001. All filings should refer to CC Docket No. 96–262. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number, CC Docket No. 96–262. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to

<ecfs@fcc.gov>, and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

20. Parties that choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, Room TW–B204, 445 12th Street, SW., Washington, DC 20554. Regardless of whether parties choose to file electronically or by paper, parties should also serve: (1) Jane Jackson, Common Carrier Bureau, 445 12th Street, SW., Room 5–A225, Washington, DC 20554; and (2) the Commission's copy contractor, International Transcription Service, Inc. (ITS), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 857–3800, with copies of any documents filed in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

21. Parties that choose to file by paper should also submit their comments on diskette to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036. These submissions should be on a 3.5-inch diskette formatted in a Windows-compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, CC Docket No. 96–262), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file.

22. Comments and reply comments must comply with § 1.49 and all other applicable sections of the Commission's rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments.

23. That this proceeding will continue to be governed by ''permit-but-disclose'' *ex parte* procedures that are applicable to non-restricted proceedings under 47 CFR 1.1206. This will provide an opportunity for all interested parties to receive notice of the various issues raised in *ex parte* presentations made to the Commission in this proceeding; it will also allow interested parties to file responses or rebuttals to proposals made on the record in this proceeding. We find that it is in the public interest to continue this proceeding's designation as ''permit-but-disclose.''

24. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or <bmillin@fcc.gov>. This further notice of proposed rulemaking can also be downloaded in Microsoft Word and ASCII formats at <http://www.fcc.gov/ccb/cpd>.

III. Ordering Clauses

25. Pursuant to sections 1–5, 201–205, 303(r), 403, 502, and 503 of the Communications Act of 1934, as amended, this Further Notice of Proposed Rulemaking is hereby adopted.

26. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 01–12756 Filed 5–18–01; 8:45 am]

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