



March 7, 2019

Ex Parte Notice

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Rural Call Completion, WC Docket No. 13-39

Dear Ms. Dortch:

On Wednesday, March 6, 2019, the undersigned from NTCA – the Rural Broadband Association met separately with Arielle Roth from Commissioner O’Rielly office and Randy Clarke from Commissioner Stark’s office and on March 7, 2019 with Evan Swarztrauber from Commissioner Carr’s office to discuss the above-referenced matter.

NTCA appreciates the Commission’s professed interest in addressing rural call failures and the work of its enforcement staff in pursuing such concerns when they are detected. With respect to the Draft Order now circulating,¹ however, NTCA is concerned that it lacks the specificity necessary to ensure that all providers in a call path understand and comply with their obligations. Even more so, NTCA is concerned that the Draft Order would relieve providers of their obligation to retain the records necessary to ensure that they comply with their general obligations to complete calls under the law before it is confirmed that alternative “flexible” measures will not lead to backsliding in call completion performance. During the meeting, NTCA therefore advocated for several specific changes that would at once enable a movement toward more flexible methods for providers to manage call routing while helping still to ensure that calls will complete to rural consumers

The Draft Order is in response to the Commission’s obligation to implement the Improving Rural Call Quality and Reliability Act of 2017 (the “RCC Act”).² In part, the RCC Act directs the Commission to establish service quality standards for the transmission of covered voice communications by intermediate providers and requires intermediate providers to comply with such standards. The Commission’s Draft Order adopts a flexible regulatory approach that would require intermediate providers to take steps reasonably calculated to ensure that all covered voice communications traversing their networks are delivered to their destinations, monitor the performance of any directly contracted intermediate provider and ensure that the intermediate providers they hand calls to are themselves registered.

¹ *In the Matter of Rural Call Completion*, Fourth Report and Order, WC Docket No. 13-39 (released ---), circulated for tentative consideration by the Commission at its March open meeting (“Draft Order”).

² Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129, 132 Stat 329 (2018).

During the meetings, NTCA urged the Commission to expect at least some conformance with industry “best practices” as part of any service quality standards for intermediate providers if it will not prescribe specific performance standards in the interest of providing “regulatory flexibility.” NTCA believes that the evidence throughout the history of this proceeding indicates that the best practices have proven most effective in improving call completion performance has improved, whereas a monitoring requirement alone on covered providers and now on intermediate providers would do little more than restore the *status quo ex ante* of a 2012 Declaratory Ruling that did little to improve call completion performance.

Indeed, it was not until the Commission adopted reporting and record-keeping requirements that call completion performance improved³ – and NTCA believes again that the evidence indicates the greatest improvement in call completion performance among those that opted for (or were required to accept) a “safe harbor” from these requirements that contemplated compliance with industry “best practices” that limited the number of intermediate providers in a call path. Now, however, the combined actions of the Second Report and Order and the Draft Order would gut the “safe harbor” as to covered providers while also extending a weakened “safe harbor” to covered intermediate providers. More specifically, in its Second Report and Order, the Commission determined that call completion reporting would no longer be required to be filed with the Commission.⁴ Building upon this, the Draft Order indicates that, after one year, covered providers would no longer be required to keep any records at all related to call completion performance. In this regard, then, it is not clear what the “safe harbor” would actually offer “safety” from – with no more reporting or record-keeping requirements for covered providers, and with no affirmative call quality standards imposed on intermediate providers, the “safe harbor” would appear to provide nothing more than “safety” from basic monitoring requirements.

It is therefore difficult to imagine that any provider (covered or intermediate) would abide by the safe harbor and its methods proven to complete calls by (1) restricting the number of intermediate providers in the call path, (2) limiting non-disclosure agreements with intermediate providers so that it may reveal the identity upon request, and (3) having a process in place to monitor its intermediate providers. Put another way, even as the “safe harbor” is almost certainly more effective in ensuring rural call completion, it would be more onerous than the more “flexible” basic monitoring requirements left in place if the Draft Order were adopted – making it more attractive for providers to “stay out to sea” and just monitor performance than to avail themselves of the “safe harbor.” Thus, if the Draft Order is adopted in current form, the “safe harbor” – the best mechanism to date in ensuring call completion performance – is likely to become meaningless as covered and intermediate providers opt instead merely to “monitor” the performance of downstream operators.

On a more practical level, it is NTCA’s understanding that rural call failure continued unabated for a significant period of time, despite awareness of the issue, in part because few originating providers kept any call completion records and the Enforcement Bureau had difficulty determining how widespread the problem was or who was at fault. The record keeping and reporting requirements, while imperfect, did provide information that enabled the Commission to track the issue and address individual call failures and problematic originating providers.

³ *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154

⁴ *Rural Call Completion*, Second Report and Order and Third Further Notice of Proposed Rulemaking 33 FCC Rcd 4199, 4204 (2018).

Finally, if the Commission will provide for “flexible” standards in managing downstream intermediate providers, NTCA urged the Commission to make clear that each and every instance of a failure to complete calls may qualify as a separate violation of the Communications Act. If covered and intermediate providers are all given significant flexibility to manage call completion performance in lieu of conformance with specific standards, and if they will also have no requirements to retain records in connection with such performance, proper incentives for monitoring and ongoing performance are best provided through clear consequences for failure to perform.

With this as backdrop, NTCA therefore urged the Commission to make several targeted changes to its Draft Order to ensure continued incentives for invocation of the “safe harbor” by covered and intermediate providers alike:

- 1) To ensure that the “safe harbor” retains meaning as offering “safety” from *something*, and in light of the positive effects record-keeping have had in promoting improved call completion performance, the Commission should require intermediate providers to maintain records of how they are complying with the Draft Order’s requirements;
- 2) To ensure that the “safe harbor” retains meaning as offering “safety” from *something*, and in light of the positive effects record-keeping have had in promoting improved call completion performance, the Commission should retain the record keeping requirement for covered providers until such time as there is an affirmative determination that the rules are effective and records are no longer necessary; and
- 3) Make clear that the Commission will impose penalties for both single infractions and patterns of non-compliance or misconduct in connection with call completion failures.⁵

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter is being filed via ECFS.

Sincerely,

/s/ Jill Canfield

Jill Canfield

Vice President of Legal

cc: Arielle Roth
Randy Clarke
Evan Swarztrauber

⁵ See, Draft Order ¶ 37.