



March 8, 2019

Ex Parte

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

Re: USTelecom Ex Parte Notice, Rural Call Completion, WC Docket No. 13-39

Dear Ms. Dortch:

On Thursday, March 7, 2019, the undersigned had a phone conversation with Randy Clarke, Acting Legal Advisor to Commissioner Geoffrey Starks. We reviewed issues related to the draft order in the above referenced proceeding (Draft Order),¹ and the recent ex parte filing submitted by NTCA – the Rural Broadband Association (NTCA) in this proceeding.²

I emphasized that the Commission appropriately should sunset the recording and retention rules given their many shortfalls that have been extensively addressed in the record in this proceeding. Contrary to the unfounded and speculative assertions by NTCA, the Commission's well-reasoned conclusion to sunset the recording and retention obligations was based on extensive record evidence demonstrating that they do not provide the Commission any meaningful utility and are a needless regulatory burden for Covered Providers.³

While NTCA speculatively argues that the mandate for retaining the data required under the current rules somehow leads to improved call completion,⁴ it provides no evidence of a correlation between the two. Nor could it. There is no evidence in the record demonstrating a correlation between simply recording and retaining certain data and improved call completion

¹ Rural Call Completion, Fourth Report and Order, Draft, FCC-CIRC1903-07 (*Draft Order*).

² Letter from Jill Canfield (NTCA) to Marlene Dortch (FCC), filed March 4, 2019 (*NTCA Ex Parte*). NTCA filed a similar ex parte letter on March 7.

³ See, *Draft Order*, ¶ 43. See also, Comments of Verizon, WC Docket No. 13 – 39, p. 1 (submitted June 4, 2018); Comments of ITTA, WC Docket No. 13 – 39, p. 8 (submitted June 4, 2018); Comments of CTIA, WC Docket No. 13 – 39, p. 6 (submitted June 4, 2018).

⁴ See e.g., *NTCA Ex Parte*, p. 3 (stating that “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.”).

to rural areas. Rather, the record amply demonstrates that in addition being a needless regulatory burden, the collected data lacked any utility and was therefore never used by the Commission for its intended purposes.⁵ Indeed, the Commission, on its own motion, waived the reporting requirement nearly a year ago because it has no use for this particular data.⁶

Because the Commission cannot draw reliable conclusions from the data, it properly proposes to eliminate these rules and replaced them with new rules for both Covered Providers and Intermediate Providers. NTCA ignores that compliance with the new rules appropriately and necessarily includes an obligation to retain more targeted data in order to monitor rural call completion performance, investigate complaints, and respond to Commission enforcement inquiries. The recording and retention rules that the Commission chose to sunset “placed covered providers in the position of maintaining one pre-packaged set of data for rural call completion rule compliance only and possibly retaining another data set actually used by covered providers in operating their networks and remedying call completion issues via the covered provider monitoring rule.”⁷ The balanced approach taken in the draft order allows reasonable flexibility to ensure more useful and accurate call completion data is maintained, appropriate to the individual carrier

I also encouraged the Commission to reject NTCA’s proposal to require Intermediate Providers to maintain records of how they are complying with the service quality standards and monitoring rules.⁸ Instead, if the Commission believes there is a need for Intermediate Providers to document their processes, this requirement should mirror the Covered Provider rule. Such a requirement would stipulate that Intermediate Providers “document their processes for prospective monitoring and identify staff responsible for such monitoring functions in the written documentation, and we expect [intermediate] providers to comply with that written documentation in conducting the required prospective monitoring.”⁹

Moreover, it does not make sense to keep the recording and retention requirements “until such time as there is an affirmative determination that the [monitoring] rules are effective and records are no longer necessary.”¹⁰ This request is based again on NTCA’s unsupported contention that there is a correlation between retaining data and improved call performance.¹¹ The Commission has repeatedly acknowledged that simply recording unhelpful

⁵ *Draft Order*, ¶ 43 (stating that “it is unnecessary for us to require covered providers to produce data unused in meeting these purposes.”).

⁶ *Rural Call Completion*, Order, WC Docket No. 13-39, 33 FCC Rcd 3887, DA 18-411 (Apr. 24, 2018) (noting that the Commission determined that “the reporting rules are burdensome on covered providers; and the resulting reports are of limited utility to the Commission in discovery the source of rural call completion issues.”)

⁷ *Draft Order*, ¶ 43.

⁸ *NTCA Ex Parte*, p. 3.

⁹ *See, Rural Call Completion*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 18-45, 33 FCC Rcd 4199, ¶ 17 (2018) (2nd R&O).

¹⁰ *NTCA Ex Parte*, p. 3.

¹¹ *Id.*

data does not improve call completion. Whether the new monitoring rules will be effective is entirely independent of the recordkeeping requirement. There is no need to adopt a “wait and see” approach here when the Commission has already determined that the data mandate is not useful or needed.

The Commission also made clear that it will impose penalties for both single infractions and patterns of non-compliance or misconduct in connection with call completion failures. The Draft Order clearly states that the Commission “may impose penalties for both single infractions and patterns of non-compliance or misconduct” for failure to comply with the service quality standards.¹² Adding a separate standard, and violation, for undefined “call completion failures” seems duplicative of the requirement to comply with the service quality standards.

I also noted NTCA’s speculative assertions that covered providers availing themselves of the safe harbor would “opt instead merely to ‘monitor’ the performance of downstream operators.”¹³ But the monitoring requirement is not a toothless rule without stiff penalties as NTCA suggests. Rather, the Commission has adopted a robust monitoring framework that require both covered and intermediate providers to ensure rural call completion and take swift action in the event of poor performance. As noted in the draft order, NTCA provides no evidence suggesting that covered providers “with a good track record of completing calls would suddenly assume bad call completion practices, and risk violating the Commission’s call completion rules, as a result of the removal of the recording and retention requirements.”¹⁴ I emphasized that USTelecom’s members include large and small carriers, all of whom are committed to completing calls to rural areas and have a genuine stake in maintaining high call completion.

Finally, I addressed the March 5, 2019 ex parte from attorney Robert Koppel of the law firm Lukas, LaFuria, Gutierrez & Sachs seeking clarification of whether the Rural Call Completion Act and the Commission’s rural call completion rules apply to calls destined for termination outside of the United States.¹⁵ It is clear from the record in this proceeding that the Commission’s rules and the RCC Act do not apply to calls terminating outside the United States. The Commission has stated time and again that its goal is “to ensure that calls are indeed completed to all Americans, including those in rural America,” and that its rules are designed “to ensure the integrity of our nation’s telephone network and prevent ‘unjust or unreasonable discrimination among areas of the United States’ in the delivery of telephone service.”¹⁶

¹² *Draft Order*, ¶ 37.

¹³ *NTCA Ex parte*, p. 2.

¹⁴ *Draft Order*, ¶ 45.

¹⁵ Letter of Robert Koppel (Lukas LaFuria Gutierrez & Sachs), to Marlene Dortch (FCC), filed March 5, 2019. Mr. Koppel also filed a further ex parte letter on March 7.

¹⁶ *2nd R&O*, ¶ 2; *see also e.g., Rural Call Completion*, Second Further Notice of Proposed Rulemaking, ¶ 1, WC Docket No. 13-39 (July 14, 2017); Notice of Proposed Rulemaking ¶ 13, WC Docket No. 13-39 (Feb. 7, 2013).

The RCC Act echoes this purpose and requires the Commission to “ensure the integrity of the transmission of covered voice communications to all customers in the United States,” and prevent discrimination “among areas of the United States.”¹⁷ To the extent clarification is necessary, the Commission may reiterate its prior statements in the final order. There is no need to adopt any additional rules.

Pursuant to Commission rules, please include this ex parte letter in the above identified proceeding.

Sincerely,



Kevin G. Rupy
Vice President, Law & Policy

cc: Randy Clarke

¹⁷ 42 U.S.C. § 262(c)(2).