



April 10, 2018

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 Monday, April 9, the undersigned and Michael Romano, Senior Vice President of Industry Affairs and Business Development from NTCA – The Rural Broadband Association (“NTCA”) met with Daniel Kahn, Alex Espinoza, Zach Ross, Matt Collins, Melissa Kirlkel and D’Wana Terry from the Wireline Competition Bureau. On April 10, we met with Jamie Susskind from Commissioner Carr’s office. The purpose of the meetings was to discuss the Commission’s Draft Order and Notice of Proposed Rulemaking on rural call completion.¹

NTCA is generally supportive of the Commission’s goal to streamline unnecessary or burdensome regulations, but we expressed concern that certain portions of the Draft Order, if adopted without modification, would have a negative impact on the continuing problem of calls failing to complete to rural businesses and consumers. Given the potentially devastating consequences of call failure, NTCA urged the Commission to consider targeted modifications to its Draft Order.

As an initial matter, the record-keeping and reporting requirements have served as an effective incentive for rural call completion, with “sunshine serving as the best disinfectant” when covered providers must recognize that their performance (or lack thereof) will be visible to the Commission. NTCA’s members are concerned that removal of such “sunshine” now – through elimination of the reports without any meaningful replacement – could very well lead to backsliding in call completion. Unfortunately, the Draft Order does little more than memorialize in rules what was already law,² as clarified by a Declaratory Ruling in 2012.³ While the law and accompanying declaratory ruling

¹ Rural Call Completion, WC Docket No. 13-39, FCC- CIRC1804-04, Second Report and Order and Third Further Notice of Proposed Rulemaking (circulated for tentative consideration) “Draft Order” or “Draft NPRM.”

² 47 U.S.C. §§ 201, 202 and 217.

³ *Developing a Unified Inter-carrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers*, CC Docket No. 01-92, WC Docket No. 017-135, Declaratory Ruling, 27 FCC Rcd 1351.

provided necessary foundations for further action, the record is clear that by themselves they did very little to prompt originating providers to modify ineffective, but highly profitable, routing practices. There is no reason to believe that the flexibility offered in the draft rules will establish the incentives necessary to ensure that originating providers properly complete calls to rural consumers.

In the Draft Order, the Commission rejects mandating the standards and best practices contained in the ATIS Rural Call Completion Handbook as a replacement for the current reporting requirements.⁴ The Commission expresses concern that such a mandate could “have a chilling effecting on future industry cooperation,” and instead states that it will look at best practices as “persuasive guidance.”⁵ As the Commission recognizes in the Draft Order, however, there is ample evidence in the record that the ATIS best practices effectively mitigate rural call completion problems.⁶ Indeed, even as it affirmatively declines to mandate best practices by the originating carriers that developed them, the Commission proposes to impose some of the same best practices on intermediate providers in the Draft Order’s accompanying proposed rulemaking. As a meaningful alternative to the current reporting requirements, the Commission should “go with what has actually worked,” and require covered providers to abide by certain best practices, including limiting the number of intermediate providers in the call chain. This would represent good governance by adopting the most proven measure thus far to accomplish the goal of minimizing, if not eliminating, rural call completion problems, while minimizing burdens and offering the industry greater certainty in compliance.

In lieu of such a proven alternative and in place of the existing reporting requirements, the Draft Order instead proposes to return in effect to the *status quo ex ante* of the 2012 Declaratory Ruling by requiring covered providers to “monitor” prospectively their intermediate providers to prevent reasonably foreseeable problems, to investigate any problems that arise, and to hold intermediate providers accountable for substandard performance. The Commission states each provider’s monitoring must involve comparing rural and non-rural areas, based on any measure reasonably calculated to evaluate performance. NTCA is concerned, however, that the lack of better guidance from the Commission will lead to confusion as covered providers seek to comply with the requirement, as rural carriers experience call failure, and as the Commission tries to determine whether proper monitoring procedures were followed. The Commission should provide further information about procedures that will meet the standard established in the Draft Order.

In its Draft Order, the Commission states that it “expects” covered providers to document their processes for prospective monitoring and identify staff responsible for such monitoring functions in the written documentation. If the Commission will not entertain NTCA’s suggestion to mandate adherence to the best practices as an alternative to the current reporting requirements, NTCA requests at the very least then that the Commission require covered providers to file with the Commission their documented monitoring procedures along with contact information for call completion problems. The filing of procedures that are already “expected” to be in written form imposes no meaningful burden on covered providers, while offering transparency and greater certainty. The Commission and carriers alike will know what individual carriers’ procedures are and have benchmarks against which subsequent performance can be measured. Covered providers will also have greater incentives to

⁴ Draft Order, ¶ 19.

⁵ Id.

⁶ Id., ¶ 20.

comply with procedures on file with the Commission, and they should further be required annually to certify compliance with such procedures as well to ensure that such incentives are sustained.

Furthermore, the Commission should use the contact information provided in such filings to create a rural call completion contact list for to carriers to resolve problems. Although the Draft Order requires each carrier to post a point of contact on its website for rural call completion complaints, this would put rural providers in the position of having to hunt down the information on every covered provider's website.⁷ It is far simpler and far more efficient to maintain a central repository for rural call completion contact information and publication of the list.⁸

On the matter of rural call completion complaints, the Draft Order states that covered providers must reply "promptly."⁹ The Draft Order fails to define "promptly," however, saying only that a response should come within hours or a few days. Given the serious consequences of call failure, the lack of clearer guidelines for a response is unacceptable and inexplicable. Except in the rarest of circumstances (*i.e.*, a natural disaster), there is no plausible excuse for a covered provider to take more than a single business day at most (or a few hours under normal circumstances) to acknowledge a complaint and begin working on resolution. The Commission should mandate that a covered provider must respond to a rural call completion complaint as soon as reasonably practicable, and within no more than a single business day in any event.

Finally, with respect to the Draft Order, NTCA suggests that the rules adopted in this order sunset after three years and revert to the rules currently in effect, absent a finding based on evidence and analysis that the new framework as adopted addresses rural call completion problems. It took years for rules to be adopted and implemented to mitigate rural call completion, leading to years of frustration, lost business and safety concerns for rural consumers. As discussed with the Bureau, the Commission has previously adopted rules that sunset after a specified time period or date certain. A sunset in this instance would, if there is a finding that the rules adopted in the subject order fail to achieve their objective, provide a transitional mechanism to protect consumers while possible other solutions are considered. Alternatively, to the extent that rules adopted here prove effective after all, it would be relatively simple for the Commission to override the sunset and sustain the rules in place.

Turning to the Draft Notice of Proposed Rulemaking, the Commission would propose to eliminate the recordkeeping and retention rules as a follow-on to elimination of the reporting rules.¹⁰ NTCA urges the Commission to delete this proposal altogether. There is no basis in the record to permit carriers to eliminate evidence of the success or failure of their intermediate provider monitoring efforts. To the contrary, NTCA submits that such records are more important than ever to the extent that the Commission intends to eliminate reporting and instead expect mere "monitoring" by covered

⁷ Covered providers may have incentives to ensure that the contact information is not easy to find on a website since prominent display of such complaint contact information would likely lead to consumer use, rather than being reserved for its intended inter-operator purpose.

⁸ The Commission could make this list available online to carriers in a password-protected format, or pass the information to ATIS for publication as part of its carrier contact list. Providers should be under an affirmative duty as well to keep the list up to date.

⁹ Draft Order, ¶ 37.

¹⁰ Draft NPRM, ¶ 59.

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providers. Without records, there is no way for the Commission to verify whether an individual covered carrier's "documented monitoring procedures" are effective in addressing rural call completion problems and thus eliminate any potential basis for enforcement action against failing providers. The Commission should therefore instead provide an opportunity for any changes to take effect prior to even considering any further tear-down of existing record-keeping requirements.

Finally, as a matter of rather straightforward clarification, the Draft Notice of Proposed Rulemaking states "covered providers who qualify for the safe harbor provisions of section 64.2107(a) will . . . be exempt from the quality of service and registration of the RCC Act."¹¹ This is incorrect. Section 262(h) of the Act exempts qualified covered providers only from the quality of service requirements, and does not exempt any provider from the registration requirements. The draft should therefore be amended accordingly.

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

V.P. Legal & Industry

Assistant General Counsel

cc: Jamie Susskind
Daniel Kahn
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¹¹ Draft NPRM, ¶ 61.