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

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

On April 10, 2018, Steve Morris and Jennifer McKee of NCTA – The Internet & Television Association (NCTA) met with Nese Guendelsberger, Wireline Legal Advisor to Commissioner Clyburn, Jamie Susskind, Chief of Staff to Commissioner Carr, and Travis Litman, Chief of Staff and Senior Legal Advisor to Commissioner Rosenworcel, to discuss the draft Second Report and Order and Third Further Notice of Proposed Rulemaking under consideration in the above-referenced proceeding.¹ The attached document was distributed at the meeting.

During the meeting, we expressed our appreciation and support for the Commission's continuing interest in resolving rural call completion problems without imposing undue burdens on providers. We expressed support for the proposed decision to eliminate reporting obligations of covered providers in connection with rural call completion, as well as the proposed decision not to impose specific call completion metrics on covered providers. In addition, we discussed the following issues:

No Strict Liability. We expressed concern that portions of the Draft Order suggest that originating providers are solely responsible any time a call fails to complete. We encouraged the Commission to revise a number of paragraphs in the Draft Order, as well as Section 64.2111 of the rules proposed in the Draft Order, to clarify that the rules and any potential liability are limited to persistent problems with rural call completion by originating or intermediate providers, and not isolated call failures, which have always been inherent in the exchange of voice traffic and can be the result of issues anywhere in the call path, including the terminating end of the call.

Monitoring. We encouraged the Commission to provide clearer guidance on how covered providers can comply with the monitoring obligation. We explained that all

¹ *Rural Call Completion*, WC Docket No. 13-39, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC-CIRC1804-04 (rel. Mar. 27, 2018) (Draft Order).

monitoring of intermediate providers necessarily occurs through the contract with an intermediate provider and that “direct monitoring” is only feasible with the first intermediate provider in the call path and not with subsequent intermediate providers. We expressed support for the notion that temporary routing changes may be insufficient to address persistent performance problems, but we explained that the marketplace changes too quickly to require “permanent” solutions. We also encouraged the Commission to explicitly state that an originating provider that engages in reasonable monitoring efforts will not be held responsible under the proposed rules for conduct of intermediate providers that is not identified, or could not be identified, through such monitoring efforts.

Contact Person. In many cases, terminating carriers choose not to inform the originating provider of a call completion problem before raising the situation with Commission staff. If the Commission adopts the proposal to require all covered providers to publicly identify a contact person for rural call completion issues, we suggested that it should explicitly encourage terminating providers to reach out to that contact person *before* bringing the issue to the attention of the Commission staff. Doing so would enable any problems to be resolved as quickly as possible.

Transition Period. We explained that compliance with the proposed rules will require every originating provider to review all of its contracts with intermediate providers and to renegotiate many of those agreements. Given the complex and time-consuming nature of this task, we encouraged the Commission to provide a 12-month transition period before any new rules take effect.

Respectfully submitted,

/s/ **Steven F. Morris**

Steven F. Morris

cc: N. Guendelsberger
J. Susskind
T. Litman

Proposed edits to Rural Call Completion draft order – WC Docket No. 13-39

Revise paragraph 12:

12. . . . The monitoring rule encourages covered providers to ensure that calls are completed, assigns clear responsibility for call completion issues, and enhances our ability to take enforcement action where needed to address persistent problems. . . .

Revise paragraph 24:

24. . . . When this evidence of persistent poor performance exists with respect to a rural area, the provider should know that there may be a problem with calls being completed to that area and it has a duty to investigate.⁸⁶ We further clarify that a covered provider or carrier may only deem the duty set forth in the 2012 Declaratory Ruling satisfied if it: (a) promptly resolves any recurring anomalies or problems and takes action to ensure they do not recur . . .

Revise paragraph 26:

26. Where a covered provider detects a persistent problem based on retrospective monitoring, we require the covered provider to select a solution that is reasonably calculated to be effective ~~and in solving the problem~~permanent. A temporary and quickly abandoned solution is not acceptable.⁸⁸ Covered providers that do not ~~permanently-effectively~~ correct problems with call completion to specific areas have “allow[ed] the conditions to persist” and are subject to enforcement action for violation of the monitoring rule as well as the Act and our call blocking prohibition thereunder. ⁸⁹

Revise paragraph 27:

Although we give covered providers flexibility in the remedial steps they choose so long as they pursue a solution that is reasonably calculated to be effective ~~and permanent~~, we specifically require removing intermediate providers from routes where warranted. . . . Sustained inadequate performance is manifest when, even if a provider alters routing to a rural area, call completion problems with that provider persist or recur within days or weeks, ~~or months~~ after the routing change.

Revise paragraph 30:

30. . . . We will hold covered providers accountable for exercising oversight regarding the performance of all intermediate providers in the path of calls for which the covered provider makes the initial-long distance call path choice. To the extent these monitoring efforts identify recurring call completion problems, w~~We~~ expect covered providers to take remedial measures where necessary to address such problems and covered providers who fail to remediate such problems ~~are may be~~ subject to enforcement action. As explained below, covered providers may fulfill their monitoring obligation through ~~direct monitoring or a combination of~~ direct monitoring and contractual restrictions. Covered providers that undertake reasonable monitoring efforts and employ and enforce reasonable contractual restrictions will not be held responsible for performance problems that result from failure by intermediate providers to adhere to those contractual restrictions.

⁸⁶ Add the following language in the footnote: “The Commission recognizes that isolated instances of call failure are inherent in the exchange of voice traffic for a number of reasons, and these monitoring rules do not require covered providers to take remedial action to address such instances.”

Revise paragraph 33:

33. . . . We require covered providers to directly monitor¹⁰⁹ the performance of intermediate providers with which they have a contractual relationship. We recognize, however, that direct monitoring of any additional downstream providers is not possible because there is no contractual relationship between the covered provider and those downstream providers, and we decline to impose an unnecessarily burdensome mandate requiring direct covered provider monitoring of the entire call chain. Rather, a covered provider may manage the call path through ~~(i) direct monitoring of all intermediate providers or (ii) a combination of~~ direct monitoring of contracted intermediate providers and contractual restrictions on directly monitored intermediate providers that are reasonably calculated to ensure rural call completion through the responsible use of any further intermediate providers.¹¹⁰ Contractual measures that meet this standard include limiting the use of further intermediate providers¹¹¹ and provisions that ensure quality call completion.¹¹² ~~Insofar as a covered provider relies on contractual restrictions rather than direct monitoring for downstream intermediate providers, t~~The covered provider must ensure these restrictions flow down the entire intermediate provider call path.¹¹³ Thus, a covered provider generally may not avoid liability for poor performance by asserting that a rural call went awry at an unknown point down a lengthy chain of intermediate providers or by claiming solely that its contracts with initial downstream vendors prohibited unlawful conduct. At the same time, we recognize that there are limits to the oversight and monitoring that a covered provider can exercise, and we will not hold a covered provider responsible when there is no reasonable basis on which it could have become aware of a problem (e.g., where an intermediate provider breaches an agreement by reporting false or incomplete information about the existence or performance of downstream providers).

Revise paragraph 36:

36. . . . Covered providers must ensure that any staff reachable through this contact information has the technical capability to promptly respond to and address call completion concerns.¹²⁶ These staff members should serve as the first points of contact when a rural provider identifies a call completion problem and we expect that exchanges between technical professionals likely will lead to the expeditious resolution of specific call completion problems without the need for the Commission to become involved. We further expect that covered providers will ensure that there is a means by which persons with disabilities can contact them and that the contact information is available on a covered provider's website in a manner accessible by persons with disabilities.

Add new paragraph 48:

48. *Transition period.* We recognize that the obligations we impose pursuant to these new rules may require covered providers to review all of their contracts with intermediate providers and that many contracts may need to be renegotiated to facilitate compliance with these rules. Given the potential volume and complexity of changes and the need for testing of any new processes or reporting mechanisms, we believe a transition period is warranted. Accordingly, the obligations imposed under section 64.2111 will not take effect until one year after the date of Federal Register publication of notice that the rules have been approved by the Office of Management and Budget. Covered providers continue to be responsible for compliance with our prior orders on this subject, including the 2012 Declaratory Ruling.

Revise new rule 64.2111:

§ 64.2111 Covered Provider Rural Call Completion Practices.

For each intermediate provider with which it contracts, a covered provider shall . . .

(b) based on the results of such monitoring, take steps that are reasonably calculated to resolve any identified performance problems with ~~hold~~ the intermediate provider ~~accountable for such performance~~, including ~~by~~ removing the intermediate provider from a particular route after sustained inadequate performance.