

In the Matter of)
)
Rural Call Completion) WC Docket No. 13-39

NCTA – The Internet & Television Association (NCTA) submits these comments to address the Commission’s proposed implementation of the Rural Call Quality and Reliability Act of 2017 (RCC Act) in the above-referenced proceeding.¹ The RCC Act provides the Commission with additional express authority to directly regulate intermediate providers involved in handling long-distance calls to rural areas. Consequently, the Commission can and should reduce its regulation of “covered providers” with respect to rural call completion problems.

NCTA supports the Commission’s efforts to improve rural call completion performance and we strongly agree with the Commission’s conclusion that the RCC Act “provides an important additional tool” to help the Commission deal with these issues.² As described in the *Notice*, the RCC Act gives the Commission “clear authority to shine a light on intermediate providers and hold them accountable for their performance.”³ In particular, the RCC Act directs

³ *Id.*

the Commission to establish a national registry of intermediate providers and quality standards to govern the performance of those carriers.⁴

In conjunction with the monitoring rules for covered providers that were recently adopted by the Commission, new rules implementing the requirements of the RCC Act will enable the Commission to take enforcement action directly against the parties that are responsible for poor rural call performance anywhere in the call path. As explained in these comments, the Commission should exercise its authority under the RCC Act to create a regulatory regime that allocates responsibility for improving rural call completion rates equitably among covered providers and intermediate providers, without placing unnecessary or unwarranted burdens on providers.

I. THE COMMISSION SHOULD REQUIRE ACCOUNTABILITY FROM INTERMEDIATE PROVIDERS

The Commission solicits comment on how to interpret and implement the statutory prohibition on covered providers' use of unregistered intermediate providers.⁵ As the Commission made clear in the context of the monitoring rule, the objective of any new rules should be to combat persistent performance problems with respect to rural call completion, not isolated call failures.⁶ To achieve that objective in its implementation of the RCC Act, the Commission should reject its proposal to interpret the term "use" in a manner that would hold covered providers liable if an intermediate provider used any unregistered provider anywhere along the call path used to deliver the covered provider's toll call. Instead, the Commission

⁴ RCC Act, § 262(c).

⁵ *Notice*, ¶ 79.

⁶ *Id.* at ¶ 26 n.89.

should adopt its alternative proposal “that the covered provider must ensure only that the *first* intermediate provider in the call path is registered.”⁷

By following this approach in its rules implementing the RCC Act, the Commission would be creating a regime in which responsibility for poor rural call performance will be placed directly on those who are responsible for such performance. Specifically, the Commission should place responsibility for the use of unregistered providers directly on the party that contracts with the unregistered provider. Thus, covered providers should be required to ensure that the intermediate providers with which they directly contract are registered. A similar obligation should be imposed on each downstream intermediate provider as a component of the quality standards the Commission is required to adopt by the RCC Act. The approach NCTA advocates here is consistent with the Commission’s decision in the monitoring context not to subject covered providers to strict liability for decisions they do not control and may not even know about.⁸

For similar reasons, the Commission should not adopt proposals that would hold covered providers “responsible for knowing the identity of all intermediate providers in a call path”⁹ and require them to “maintain, and furnish upon request to the Commission or state authorities as appropriate, the identities of any and all intermediate providers in the respective call paths.”¹⁰ As a threshold matter, covered providers already are subject to the recently adopted monitoring rule, which requires that a covered provider monitor call completion performance and take steps to

⁷ *Id.* (emphasis in original).

⁸ *Id.*, ¶ 34 (“Conversely, covered providers that engage in reasonable monitoring efforts will not be held responsible for intermediate provider conduct that is not, or could not be, identified through reasonable monitoring efforts.”).

⁹ *Id.*, ¶ 81.

¹⁰ *Id.*, ¶ 82.

address persistent performance problems. The *Notice* provides no justification for imposing any additional requirements, nor is there any discussion of whether the benefits of the proposed new requirements outweigh the burdens. That said, if the Commission adopts new requirements of this nature, a covered provider only should be held responsible for providing to the Commission, upon request, the identity of those intermediate providers with which it directly contracts, and intermediate providers should have the same responsibility with respect to any downstream providers they contract with.

Finally, there is no basis in the RCC Act for establishing a federal requirement that state authorities be given access to data collected by the Commission in connection with implementing the new statute. The RCC Act explicitly states that it shall not be “construed to preempt or expand the authority of a State public utility commission or other relevant State agency.”¹¹ Accordingly, there is no statutory basis on which the Commission could impose new federal reporting obligations for the benefit of state authorities.¹²

II. THE COMMISSION SHOULD EASE THE BURDENS ON COVERED PROVIDERS

In the *Notice*, the Commission appropriately asks whether it should revisit the requirements placed on covered providers in light of the new registry and service quality requirements to be adopted pursuant to the RCC Act.¹³ For the reasons suggested above, it is imperative for the Commission to reassess those obligations and allocate responsibility for addressing rural call completion problems equitably and effectively among covered and

¹¹ RCC Act, § 262(e).

¹² If the Commission were to consider adopting this proposal notwithstanding the lack of statutory authority, it also would need to take steps to ensure that such requirements were not unduly burdensome for covered providers and that state authorities were obligated to protect the confidentiality of any data submitted.

¹³ *Notice*, ¶ 111.

intermediate providers. The monitoring rules are premised on the notion that covered providers can exercise control over the entire call path to the terminating rural carrier, but as NCTA has explained previously, there are limits to a covered provider's ability to control the performance of parties with which there is no direct contractual relationship.¹⁴ The better approach, as noted above, is to hold both covered and intermediate providers responsible for conduct directly within their control.

NCTA also supports the proposal to eliminate recordkeeping and retention requirements.¹⁵ The Commission already has found that the data generated through these requirements is not particularly useful in identifying or resolving rural call completion problems.¹⁶ With the adoption of new registry and service quality rules applicable to intermediate providers and targeted monitoring rules for covered providers, the Commission should be in a position to make progress on any rural call completion issues without the need for burdensome recordkeeping and retention rules that have not yielded useful information.

III. ENFORCEMENT OF ANY NEW RULES SHOULD FOCUS ON INTERMEDIATE PROVIDERS

The Commission solicits comment on a variety of questions related to its statutory obligation to enforce the prohibition against the use of unregistered intermediate providers.¹⁷ Consistent with the discussion above, the Commission's enforcement efforts generally should focus on holding parties accountable for conduct within their direct control rather than holding covered providers responsible for decisions made by other parties. The Commission also should

¹⁴ Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Federal Communications Commission, WC Docket No. 13-39, at 1-2 (Apr. 10, 2018).

¹⁵ Notice, ¶ 109.

¹⁶ See *Rural Call Completion Report*, 32 FCC Rcd 4980, 4995-96, ¶¶ 38-39 (WCB 2017).

¹⁷ Notice, ¶¶ 83-84.

provide meaningful guidance regarding the time frames and mechanisms that covered and intermediate providers can use in taking steps to ensure compliance with any new rules.

For example, the Commission asks “[w]hat should the consequences be” if a covered provider uses an unregistered intermediate provider.¹⁸ Once the rules take effect, a covered provider that enters into an agreement with an intermediate provider that is not registered would seem to be in violation of the statutory prohibition in Section 262(b). But for the reasons explained above, a covered provider only should be responsible for ensuring that the intermediate providers with which it directly contracts are registered and it should not be found in violation of Section 262(b) for contracting with a registered provider which in turn used an unregistered provider to handle its traffic.

The situation is more complex when an intermediate provider “loses its registration” during the term of an agreement.¹⁹ In that scenario, the Commission’s rules should ensure that the covered provider (or an upstream intermediate provider) is given reasonable notice and an opportunity to fix the noncompliant arrangement. For example, the Commission could impose an obligation on intermediate providers to notify all affected covered and intermediate providers that the intermediate provider is no longer registered and then afford those providers six months to transition to alternative providers.

On a related note, the Commission also asks whether intermediate providers should be prohibited from registering if they have been “red-lighted” by the Commission for unpaid debts or other reasons.²⁰ NCTA does not support this proposal. The purpose of the RCC Act is to ensure that intermediate providers are meeting the quality of service standards established by the

¹⁸ *Id.*, ¶ 83.

¹⁹ *Id.*

²⁰ *Id.*, ¶ 100.

Commission. The fact that an intermediate provider has failed to timely pay a fee has no bearing on the rural call performance that provider is delivering and should not be used to disqualify that provider, particularly in light of the substantial cost and inconvenience such an approach could impose on covered providers.

CONCLUSION

For all the reasons explained in these comments, the Commission should implement the provisions of the RCC Act through rules that hold intermediate providers responsible for actions within their control and by reducing the requirements applicable to covered providers. In particular, the Commission should eliminate the existing reporting and recordkeeping requirements and it should make clear that covered providers will not be held responsible for actions of downstream providers hired by an intermediate provider.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris
Jennifer K. McKee
NCTA – The Internet & Television
Association
25 Massachusetts Avenue, N.W. – Suite 100
Washington, D.C. 20001-1431
(202) 222-2445

June 4, 2018