Before the
Federal Communications Commission
Washington, D.C. 20554

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

OPPOSITION OF
NTCA–THE RURAL BROADBAND ASSOCIATION
TO PETITION FOR STAY OF USTELECOM

By this filing, NTCA–The Rural Broadband Association ("NTCA")[1] opposes the Petition for Stay submitted by USTelecom-The Broadband Association ("USTelecom") in the above-captioned proceeding.[2] In the Petition, USTelecom requests that the Federal Communications Commission (the "Commission") stay all "Covered Provider" monitoring requirements adopted in the recent *Rural Call Completion Order* pending consideration of rules governing performance by "Intermediate Providers" through the rulemaking that accompanied that order.[3] For the reasons set forth herein, the stay request should be denied.

USTelecom acknowledges that requests for stay of Commission orders are typically reviewed pursuant to a four-factor test also applied by courts. That test requires: (1) the petitioner to make a strong showing that it is likely to prevail on the merits; (2) the petitioner to show irreparable injury in the absence of a stay; (3) the agency to determine that the issuance of stay

[1] NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA's service provider members are full service rural local exchange carriers and broadband providers.

[2] Petition for Stay of USTelecom, WC Docket No. 13-39 (posted June 12, 2018) ("Petition").

[3] *See Rural Call Completion*, Second Report and Order and Third Notice of Proposed Rulemaking, WC Docket No. 13-39 (rel. April 17, 2018) ("*Rural Call Completion Order*").

would substantially harm other interested parties; and (4) the agency to determine whether the public interest is served by issuance or denial of the requested relief. [4] USTelecom's request fails to satisfy any of the four factors, and to the contrary, would harm both other interested parties – most notably rural consumers – and thereby unequivocally undermine the public interest that has driven this proceeding since its inception.

In the first instance, USTelecom fails to address altogether the need for a "strong showing that it is likely to prevail on the merits" after highlighting that as the initial prong of the test. Thus, USTelecom has failed to make a *prima facie* case for a stay; even if a strong showing were not required, no showing at all certainly must fall short of satisfying the test.

As for the second factor, USTelecom cannot not make a credible case for "irreparable injury" if the monitoring rules for Covered Providers take effect in October 2018. USTelecom asserts it is "unrealistic and counterproductive" to have such monitoring rules take effect in advance of further action on the Intermediate Provider standards.[5] Even if true, however – which they are not – such claims hardly rise to the level of "irreparable injury" considered necessary for equitable relief. USTelecom attempts to leverage the Commission's already-gracious six-month transition period for Covered Providers to implement monitoring procedures to argue that no effective implementation can be done at all if standards for Intermediate Providers are not adopted by the time the monitoring requirements take effect post-transition.

But, as a matter of fact, Covered Providers can take many reasonable steps to implement their monitoring procedures during this six-month window even as the standards for Intermediate

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[4] Petition at 2 (*citing In re AT&T Corp. v. Ameritech Corp.*, 13 FCC Rcd 14508, 14515-16 (1998)).

[5] Petition at 3.

Providers are finalized. In addition to emphasizing *repeatedly* in the *Rural Call Completion Order* the substantial "flexibility" that Covered Providers have in living up to their new monitoring duties,[6] it is beyond belief that Covered Providers "have no idea" how to implement the duties because they do not yet know who might be a registered Intermediate Provider. To the contrary, putting aside *registration* duties, it is quite simple to determine who qualifies as an Intermediate Provider given the current definition in the law, and the flexibility afforded by the Commission for implementation makes it all the more simple still – if Covered Providers hand calls off to someone to complete for them, the Covered Providers can and should monitor the party to whom that call is handed off in a way "that it is appropriate for their respective networks and mixes of traffic."[7] This process could not be any more open-ended and straightforward in light of the substantial "flexibility" granted by the Commission. Indeed, as described in NTCA's Reply Comments also being filed today, a careful reading of the *Rural Call Completion Order* makes clear that the Intermediate Provider standards operate independently from Covered Provider monitoring requirements.[8]

Moreover, as a matter of law, the entirely speculative potential incurrence of an unquantified amount of costs to renegotiate contracts to reflect Intermediate Provider standards

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6 *Rural Call Completion Order*, at ¶¶ 18, 20-21, 28, 34-35, 41-42, 46, and 48-49. Indeed, in just the 56 paragraphs that compose the order portion of the Commission's release alone, some variation of "flexible" is used 18 times to describe the ability of Covered Providers to manage and monitor Intermediate Providers.

7 *Rural Call Completion Order*, at ¶ 18.

8 Reply Comments of NTCA, WC Docket No. 13-39 (filed June 19, 2018), at 8-9 (*citing Rural Call Completion Order*, at n. 15 (providing suggested contractual provisions for implementation of monitoring procedures, none of which tie directly to the Intermediate Provider standards being considered in the notice of proposed rulemaking)).

hardly rises to the level of "irreparable injury."[9] Indeed, as a helpful suggestion to mitigate, if not eliminate, any such easily avoidable or reparable costs, in addition to the contract language suggestions already incorporated within the *Rural Call Completion Order*, NTCA recommends that a Covered Provider simply require any party to which it hands calls for termination to adhere to reasonable call completion standards, and pair that with an express "change of law" provision to import whatever standards may thereafter be adopted by the Commission for Intermediate Providers. In NTCA's experience, such "change of law" provisions in telecommunications contracts are relatively standard fare, and should eliminate the risk of any potential "injury" arising out of potential renegotiation.

With respect to the third factor of the test for a stay, USTelecom breezes past the "substantial harm" to other interested parties. The Commission has led a charge for years to address the cries of rural consumers and businesses that they are not receiving long distance calls. Every commissioner has expressed his or her own concern that this problem must be solved to protect consumers.[10] Congress felt enough concern about this problem to pass a law. Yet, if a

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9 *See Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005) ("[P]roving irreparable injury is a considerable burden, requiring proof that the movant's injury is *certain, great and actual*—not theoretical—and *imminent*, creating a clear and present need for extraordinary equitable relief to prevent harm. . . . And economic loss, in and of itself, generally does not constitute irreparable harm. Rather, only economic loss that threatens the survival of a movant's business amounts to irreparable harm." (internal quotation marks and further citations omitted) (emphasis in original)).

10 *Rural Call Completion Order*, at Statement of Chairman Ajit Pai ("All Americans should have confidence that when a telephone call is made to them, their phone will ring. But that's not always the case in rural or remote parts of the United States."); Statement of Commissioner Michael O'Rielly ("Although prior decisions and enforcement actions have targeted problematic practices leading to a significant decline in carrier complaints, this issue has remained a concern for some small rural providers and their customers."); Statement of Commissioner Brendan Carr ("[Congress passed legislation] based on its determination that consumers continue to experience persistent problems with the completion of long-distance calls in rural areas."); Statement of

stay request were granted, rural consumers would face an indefinite period of time where Covered Providers would be subject to nothing more than the same broad "thou shalt complete calls" admonitions of a 2012 Declaratory Ruling that proved highly ineffective in stemming the tide of rural call failures. The Commission struck a careful balance – once that NTCA was already concerned about – in leaving a six-month period open between elimination of the reporting requirements and implementation of the monitoring requirements. Delaying implementation even further until the completion of the rulemaking with respect to Intermediate Providers creates a greater vacuum of accountability and only portends greater risk for rural consumers, presenting substantial harm of the kind that the commissioners and Congress alike felt warranted action.

Finally, USTelecom incorrectly asserts that a stay is in the public interest in connection with the fourth factor of the stay test.[11] While a stay is clearly in the interest of originating carriers, the only tether to the "public" interest is a baseless claim that implementation will somehow generate costs that result in increased rates for consumers. But other than the potential costs of renegotiation of contracts with Intermediate Providers (which should be non-existent if the contracts are negotiated reasonably, responsibly, and properly upfront), there are no costs identified as needing to be passed along to consumers. By contrast, the *public*'s interest is clear – rural call completion has been a problem for years, the Commission has implemented a new regime that it believes will help to address the problem in place of a prior regime, and if a stay were granted, there would be no regime in place at all. Indeed, if the Commission were to stay the monitoring requirements, the public interest would likely dictate reinstatement of the reporting

Jessica Rosenworcel ("This is about trust. When you pick up a phone to place a call, you should have every confidence that your call will go through.")

[11] Petition at 6.

regime until such time as the stay of the monitoring requirements could be lifted. Otherwise, consumers would be left only with the same ineffective protections they "enjoyed" prior to the creation of the reporting requirements in the first instance.

For the foregoing reasons, the Petition for Stay filed by USTelecom should be denied.

Respectfully submitted,

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