



August 10, 2018

Ex Parte

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

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

Dear Ms. Dortch:

On Wednesday, August 8, 2018, Curtis Groves and Michele Cober (both of Verizon), AJ Burton (Frontier), Nick Alexander and John E. Benedict (both of CenturyLink), Steve Long (Windstream), and the undersigned met with Daniel Kahn, Zachary Ross, Alex Espinoza and Melissa Kinkel (who participated by phone) of the Wireline Competition Bureau (Bureau) of the Federal Communications Commission (Commission). The purpose of the meeting was to discuss the August 2018, implementation deadline to establish the registry for intermediate providers under the Improving Rural Call Quality and Reliability Act of 2017 (“RCC Act”).¹

During our meeting, we discussed various issues consistent with USTelecom’s filings in this proceeding.² In particular, we said the Commission should broadly define the category of intermediate providers subject to the registration requirements imposed under the RCC Act. We explained that the RCC Act imposes registration and service quality requirements on any intermediate provider “that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission.”³

¹ Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129 (2018) (the “RCC Act”).

² See, Comments of USTelecom – the Broadband Association, WC Docket No. 13-39, pp. 2 – 5 (submitted June 4, 2018) (*USTelecom Comments*); Reply Comments of USTelecom – the Broadband Association, WC Docket No. 13-39 (submitted June 19, 2018) (*USTelecom Reply Comments*); Petition for Reconsideration, USTelecom – the Broadband Association, WC Docket No. 13-39 (filed June 11, 2018) (*Petition for Reconsideration*); Petition for Stay, USTelecom – the Broadband Association, WC Docket No. 13-39 (filed June 11, 2018) (*Petition for Stay*).

³ RCC Act, § 262(a).

We noted that the RCC Act's definition provides the Commission with broad latitude to define an intermediate provider, since it covers any voice provider that merely "offers" such service and charges "any" rate to "any other entity."⁴ We pointed out that the statutory definition of intermediate provider should include both common carriers and non-common carriers. We also noted that under the RCC Act's definition of intermediate provider, the same entity must merely offer basic "capability" of provisioning such service.

We also noted that language in the Senate Report accompanying the RCC Act acknowledged only a single, narrowly defined limitation on how Congress defined intermediate provider.⁵ Specifically, the Senate Report states that it was Congress' intent not to define intermediate provider so broadly as to cover entities that only "incidentally transmit voice traffic," such as internet service providers who may carry such traffic "without a specific business arrangement to carry, route, or transmit that voice traffic."⁶ We encouraged the Commission to adopt the definition of intermediate provider contained in the RCC Act for its accompanying registration rules. We also said the Commission should provide additional clarification that it intends to broadly define the scope of which intermediate providers much register with the Commission.

As explained in USTelecom's filings in this proceeding, we also said any obligations under the RCC Act implemented by the Commission should only apply to rural areas, and not apply on nationwide basis.⁷ We explained that the text of the RCC Act, both in the preamble and section 262(c)(2)(B), states that the purpose of the Act is to prevent "unjust and unreasonable discrimination among areas of the United States." We urged to Commission to interpret this language consistently with its prior interpretation of sections 201 and 202. The Commission previously relied on section 201 and 202's prohibition on unjust and unreasonable practices or discrimination as the basis for implementing rules to address rural call completion issues.⁸ Commission clarification limiting the scope of the RCC Act would promote administrative efficiency, is supported by Congressional intent, and would ultimately achieve

⁴ RCC Act, § 262(a).

⁵ Report of the Committee on Commerce, Science, and Transportation On S. 96, Improving Rural Call Quality and Reliability Act of 2017, Report 115-6, March 21, 2017 (available at: <https://www.congress.gov/115/crpt/srpt6/CRPT-115srpt6.pdf>) (visited August 10, 2018) (*Senate Report*).

⁶ *Senate Report*, p. 6.

⁷ *See, USTelecom Comments*, pp. 10 – 15.

⁸ *See, In the Matter of Rural Call Completion, Second Report and Order and Third Further Notice of Proposed Rulemaking*, WC Docket 13-39, FCC 18-45, ¶ 24 (Apr. 17, 2018) (quoting *In the Matter of Developing an Unified Inter-carrier Compensation Regime*, Declaratory Ruling, DA 12-154 (Feb. 6, 2012) ("2012 Declaratory Ruling").

Congress', the Commission's, and industry's shared goal of ensuring that calls to rural Americans are completed can be best achieved.⁹

We explained that defining the scope of the Commission's rules implemented under the RCC Act are important to the implementation of its registration process. As noted in USTelecom's comments, we said that absent such clarification, the Commission should forbear from applying the rules outside of rural areas.¹⁰ We explained how forbearance by the Commission in this matter would satisfy all three prongs of the forbearance standard under the Communications Act of 1934.¹¹

Finally, we also urged the Commission to act on the USTelecom Petition for Reconsideration¹² and Petition for Stay¹³ filed in this docket with respect to the 2nd RCC Order.¹⁴ We noted that the October 17, 2018 deadline for covered providers to begin monitoring intermediate providers is fast approaching, yet many substantive issues relating to implementation of the RCC Act remain unresolved. With respect to USTelecom's Petition for Reconsideration, we explained that industry and consumers would be better served by reconsideration of the uncodified rules governing the monitoring obligations of non-safe-harbor providers.¹⁵

We noted that direct monitoring of all intermediate providers is not technically feasible in a non-safe harbor environment,¹⁶ and that the 2nd RCC Order's requirement for contractual restrictions to flow down the entire call path is problematic.¹⁷ With respect to USTelecom's Petition for Stay, we explained why industry and consumers would be better served by a stay of

⁹ *USTelecom Comments*, pp. 10 – 13.

¹⁰ *Id.*, pp. 13 – 15.

¹¹ The Communications Act compels forbearance where: 1) a regulatory requirement is no longer necessary to ensure that the charges, practices, classifications, or regulations by, for or in connection with telecommunications services are just and reasonable and are not unjustly or unreasonably discriminatory; 2) enforcement of the requirement is not necessary for the protection of consumers; and 3) forbearance is consistent with the public interest.

¹² *See generally, Petition for Reconsideration.*

¹³ *See generally, Petition for Stay.*

¹⁴ Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rural Call Completion*, FCC 18-45 (April 17, 2018).

¹⁵ *Id.*, Appendix B, § 64.211; *id.* paras. 34 – 35.

¹⁶ *Petition for Reconsideration*, pp. 3 – 5.

¹⁷ *Id.*, pp. 5 – 7.

the 2nd RCC Order's covered provider monitoring requirements during the pendency of this proceeding.¹⁸

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin G. Rupy", with a stylized flourish at the end.

Kevin G. Rupy
Vice President, Law & Policy

cc: Daniel Kahn
Zachary Ross
Alex Espinoza
Melissa Kinkel

¹⁸ *Petition for Stay*, pp. 3 – 6.