

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

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

**REPLY TO OPPOSITION OF
USTELECOM – THE BROADBAND ASSOCIATION**

By this filing, USTelecom-The Broadband Association (USTelecom)¹ replies to the opposition and comments filed in response to the Petition for Reconsideration filed by USTelecom (USTelecom Petition) in the above referenced proceeding.² USTelecom supports the requirement in the 2nd RCC Order that each covered provider (“Covered Provider”)³ monitor the performance of the intermediate providers (“Intermediate Providers”)⁴ with which it contracts and take steps to correct performance failures, and shares the Commission’s goal of resolving call completion problems to rural areas. However, the industry and consumers would be better served by reconsideration of the uncodified rules governing the monitoring obligations of non-safe-harbor providers.⁵

Concurrent with the filing of the USTelecom Petition, USTelecom also filed a Petition for Stay in this proceeding (“USTelecom Stay Petition”).⁶ In that filing, USTelecom noted that

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecom industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications service to both urban and rural markets.

² Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rural Call Completion*, FCC 18-45 (April 17, 2018) (2nd RCC Order).

³ *See, Id.*, ¶ 6.

⁴ *Id.*, ¶ 3.

⁵ *Id.*, Appendix B, § 64.211; *id.* ¶¶ 34 – 35.

⁶ *See*, Petition for Stay, USTelecom – the Broadband Association, WC Docket No. 13-39 (filed June 11, 2018) (*USTelecom Stay Petition*).

the Commission's monitoring rule will go into effect on October 17, 2018,⁷ regardless of whether the Commission has adopted obligations for Intermediate Providers. USTelecom and several commenters have demonstrated that it would be unrealistic and counterproductive for the Commission to mandate monitoring requirements for non-safe harbor providers by an arbitrary date before it has established the registration, self-monitoring and service quality standards for Intermediate Providers.⁸

Comments supporting the USTelecom Petition and USTelecom Stay Petition were filed by both NCTA – The Internet & Television Association (NCTA), and ITTA – The Voice of America's Broadband Providers (ITTA). NTCA–The Rural Broadband Association (NTCA), was the only party filing in opposition to the USTelecom Petition and the USTelecom Stay Petition. For the reasons set forth herein, the USTelecom Petition and the USTelecom Stay Petition should be granted.

I. The Commission Should Grant the USTelecom Petition.

Both NCTA and ITTA agree with USTelecom that the Commission should reconsider its requirement that Covered Providers either directly monitor Intermediate Providers, or renegotiate contracts with them to include provisions governing the performance of downstream providers. In particular, commenters raised a host of issues that underscore the significant technical and practical problems associated with the approach adopted by the Commission in the 2nd RCC Order.

⁷ See, 2nd RCC Order, ¶ 50 (the Commission's monitoring rule went into effect six months from the date that its order was released by the Commission, or 30 days after publication of a summary of the order in the Federal Register, whichever is later).

⁸ See e.g., Comments of USTelecom – the Broadband Association, WC Docket No. 13-39, pp. 7 – 10 (submitted June 4, 2018) (*USTelecom Comments*).

For example, NCTA and ITTA agreed with USTelecom that the Commission’s requirement raised serious pragmatic and technical issues. NCTA noted that “covered providers only had the ability to directly monitor intermediate providers they directly contracted with and that covered providers should not be subjected to liability for actions within the control of any downstream providers selected by an intermediate provider.”⁹ ITTA similarly stated that once the Covered Provider has handed the call to the first Intermediate Provider in the call path, it has no technical capability to see how the call has been handled, and further noted that “nothing in the [2nd RCC Order] contradicts this assertion.”¹⁰ Indeed, ITTA points out that in its 2nd RCC Order the Commission “concede[d] that requiring direct covered provider monitoring of the entire call chain would be ‘unnecessarily burdensome.’”¹¹

In its opposition, NTCA glosses over the valid concerns raised by USTelecom, NCTA and ITTA, and mischaracterizes key aspects of the 2nd RCC Order. For example, NTCA claims that nothing in the 2nd RCC Order “compels” any Covered Provider to monitor directly any and all downstream Intermediate Providers.¹² It asserts that because Covered Providers have a choice in how to satisfy the monitoring obligation, no such burden exists. NTCA, however, ignores the fact that Covered Providers’ choices consist of either a technical impossibility (*i.e.*, direct monitoring), or an impractical – and potentially unnecessary¹³ – contractual exercise. While this may indeed

⁹ Comments of NCTA – the Internet & Television Association, WC Docket No. 13-39, pp. 2 – 3 (filed August 2, 2018) (*NCTA Comments*).

¹⁰ Comments, Opposition, and Reply of ITTA – the Voice of America’s Broadband Providers, WC Docket No. 13-39, p. 4 (filed August 2, 2018) (*ITTA Comments*).

¹¹ *Id.*, pp. 4 – 5 (citing 2nd RCC Order, ¶ 34).

¹² Opposition of NTCA – the Rural Broadband Association to Petition for Reconsideration of USTelecom, WC Docket No. 13-39, p. 3 (filed July 17, 2018) (*NTCA Opposition*).

¹³ As noted by USTelecom and others, by adopting the same set of monitoring obligations for both Covered Providers and Intermediate Providers, and aligning the deadlines for each, the Commission would establish a more administratively efficient framework that could be transitioned to in a less disruptive manner. See *e.g.*, *USTelecom Comments*, pp. 5 – 10;

constitute a choice, ITTA is correct in stating that it is a “Hobson’s choice,” which, as the effective date draws closer, “becomes increasingly pronounced.”¹⁴

In addition to these pragmatic and technical concerns, ITTA also demonstrates that the monitoring obligations established in the 2nd RCC Order are unsupported by the record,¹⁵ are “rife with potential confusion,”¹⁶ and contravene the RCC Act.¹⁷ For example, regarding the latter point, ITTA points out that the primary thrust of proposing monitoring requirements for Covered Providers prior to enactment of the RCC Act, was ““particularly maintaining the accountability of their intermediate providers in the event of poor performance.””¹⁸

ITTA then notes that the RCC Act “properly placed the focus of rural call completion troubles on heretofore unidentified intermediate providers,” and that had Congress indeed viewed Covered Providers as the source of rural call completion problems, “it would have addressed them in the RCC Act.”¹⁹ Moreover, the only “substantive requirement” applicable to Covered Providers in the RCC Act is that if they use an Intermediate Provider to transmit covered voice

Comments of the Alliance for Telecommunications Industry Solutions, WC Docket No. 13 – 39, p. 4 (submitted June 4, 2018) (stating that ““the need to avoid the imposition of inconsistent regulatory obligations indicates that covered providers and intermediate providers should be subject to the same service quality standards.””); Comments of ITTA, WC Docket No. 13-39, p. 6 (submitted June 4, 2018) (stating that “intermediate providers be accorded the same treatment as covered providers were accorded in the Second RCC Order.”); Comments of Verizon, WC Docket No. 13-39, pp. 2 – 3 (submitted June 4, 2018) (stating that “the Commission should model the self-monitoring requirement for intermediate providers after the monitoring requirement for covered providers.”).

¹⁴ *ITTA Comments*, p. 14.

¹⁵ *Id.*, pp. 6 – 7.

¹⁶ *Id.*, pp. 7 – 10.

¹⁷ *Id.*, pp. 10 – 12.

¹⁸ *Id.*, p. 10 (quoting 2nd RCC Order, ¶ 8).

¹⁹ *ITTA Comments*, p. 10.

communications “it must be an intermediate provider that has registered with the Commission.”²⁰

ITTA then concludes that because the RCC Act also requires the Commission to implement service quality standards for Intermediate Providers, “the covered provider monitoring requirements are duplicative and overkill, and threaten to overrun Congress’ expressed intent on how to allocate responsibility over the call path.”²¹

NCTA and ITTA provide compelling reasons supporting grant of the USTelecom Petition. In contrast, nothing in the comments submitted by NTCA rebuts any of the issues raised in the USTelecom Petition. The Commission should therefore expeditiously grant the USTelecom Petition.

II. The Commission Should Grant the USTelecom Stay Petition.

As noted by USTelecom, the Commission has “substantial discretion” in granting a stay and may stay an order where doing so is “equitable and will serve the public interest.”²²

Moreover, since “no single factor is necessarily dispositive,”²³ the Commission may grant a stay where a petitioner makes a strong showing as to at least one of the factors, even if there is no showing on another.²⁴ There is strong support in the record for the Commission to grant a stay,

²⁰ *ITTA Comments*, p. 10.

²¹ *Id.*, p. 11.

²² *Tennis Channel, Inc. v. Comcast Cable Commcn 's, LLC*, 27 FCC Red 5613, 5616 ii 5 (2012); see also 5 U.S.C. § 705 (providing that an agency may grant a stay pending judicial review when it “finds that justice so requires.”).

²³ *In re AT&T Corp. v. Ameritech Corp.*, 13 FCC Red 14508, 14515-16 (1998); see also *In re Comcast Cable Commcn 's, LLC*, 20 FCC Red 8217, 8217-18 2 (MB 2005) (explaining that the degree to which any one factor must favor a stay “will vary according to the Commission's assessment of the other factors.”).

²⁴ “The four factors have typically been evaluated on a ‘sliding scale.’ If the movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor.” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291-92 (D.C. Cir. 2009) (quoting *Davenport v. Int’l Bhd. a/ Teamsters*, 166 F.3d 356, 361, 334 U.S. App. D.C. 228 (D.C. Cir. 1999)). See also *Washington Metro Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) (*Washington Metro*); *Iowa Utils. Bd. v.*

and the single opposing view submitted by NTCA fails to rebut the merits of the USTelecom Stay Petition.

Given the impending deadline and the significant burdens associated with the current monitoring framework, ITTA states that the Commission should grant the USTelecom Stay Petition and that the “need to do so immediately is urgent.”²⁵ USTelecom agrees with ITTA that the rapidly approaching monitoring deadline warrants an expeditious grant of the USTelecom Stay Petition.

Noting that the monitoring requirements are due to go into effect on October 17, 2018, ITTA points out that, absent a stay, covered providers will unnecessarily be forced to incur the costs of renegotiating their vendor contracts multiple times, or be placed in a position where they risk Commission action for noncompliance with the covered provider monitoring requirements while they wait for the Commission to act on the Third FNPRM.²⁶ Based on this decision, USTelecom agrees with ITTA that as the October, 2018, date draws closer, “the Hobson’s choice faced by covered providers becomes increasingly pronounced.”²⁷

Contrary to the assertions by NTCA, the 2nd RCC Order’s current six month transition period does not provide “ample time” within which to negotiate a multitude of contracts, and it is far from “generous.”²⁸ Rather, NCTA correctly notes that “compliance with the monitoring rule would be a time-consuming process,” and therefore encouraged the Commission to “provide a 12-month transition period after receiving approval for the new rules from the Office of

FCC, 109 F.3d 418, 423 (8th Cir. 1996).

²⁵ *ITTA Comments*, p. 13.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *NTCA Opposition*, pp. 3, 4.

Management and Budget pursuant to the Paperwork Reduction Act.”²⁹

The need for additional time is warranted given the complexity of the existing negotiation framework faced by Covered Providers. NTCA oversimplifies this complexity when it asserts that such discussions are “over just a single contract clause.”³⁰ Statements such as these gloss over the complex contractual and negotiation landscape faced by Covered Providers, and should be rejected by the Commission.

Moreover, NTCA is incorrect when it asserts that USTelecom did not satisfy the Commission’s criteria for grant of a stay.³¹ For example, NTCA asserts that USTelecom did not satisfy the criteria for demonstrating irreparable injury,³² and asserts that it would be “quite simple” for Covered Providers to determine who qualifies as an Intermediate Provider.³³ NTCA simply states that Covered Providers should essentially negotiate with all providers to whom they connect.³⁴ This ignores the fact that depending on how narrowly or broadly the Commission defines Intermediate Providers, the number of contracts that will need to be renegotiated will vary. NTCA simply dismisses the valid concerns raised by USTelecom and others that under the current framework, it would be highly disruptive and burdensome for non-safe harbor providers to renegotiate contracts for terms they do not yet know, with parties who the Commission has not

²⁹ *NCTA Comments*, pp. 3.

³⁰ *NTCA Opposition*, p. 4.

³¹ The Commission’s test for considering the grant of a stay consists of the following: 1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? 2) Has the petitioner shown that without such relief, it will be irreparably injured? 3) Would the issuance of a stay substantially harm other parties interested in the proceedings? 4) Where lies the public interest?

³² *Opposition of NTCA – the Rural Broadband Association to Petition for Stay of USTelecom*, WC Docket No. 13-39, pp. 2 – 4 (filed June 19, 2018) (*NTCA Stay Opposition*).

³³ *Id.*, p. 3.

³⁴ *Id.*

yet identified.

Moreover, NTCA's proposed solution to the contractual challenges faced by Covered Providers (*i.e.*, the use of "change of law" provisions within existing contracts)³⁵ could arguably undermine rural call completion efforts. Specifically, such an ambiguous and open-ended approach to contract renegotiations could leave Intermediate Providers with ample leeway to avoid their obligations under the Commission's yet-to-be established service quality standards for Intermediate Providers. As noted in the USTelecom Stay Petition, Covered Providers need to know whether to amend "their contracts to account for specific service quality standards . . . or whether the delineation of more general practices may suffice."³⁶ By ignoring the importance of such contractual specificity in favor of change of law provisions, NTCA would undermine rural call completion goals.

Contrary to NTCA's assertions, the USTelecom Stay Petition also demonstrated that grant of the stay would not harm any party in this proceeding, and would instead benefit the broader calling ecosystem.³⁷ NTCA fails to even address the merits raised in the USTelecom Stay Petition of subjecting Intermediate Providers to the same set of monitoring standards that Covered Providers are under the 2nd RCC Order.³⁸ Aligning provider obligations in such a manner will not only benefit both categories of providers, but would make the Commission's

³⁵ *NTCA Stay Opposition*, p. 4 (*see also*, *NTCA Opposition*, p. 4, n. 14 (stating that "in some cases, a "change-of-law" clause often found in many telecom contracts may even compel the Intermediate Provider to accept such provisions.")).

³⁶ *USTelecom Stay Petition*, p. 4.

³⁷ *Id.*, pp. 5 – 6.

³⁸ *Id.*, p. 5 (noting that "aligning provider obligations in such a manner will not only benefit both categories of providers, but it is also logical from an administrative efficiency perspective." Also pointing out that by subjecting Intermediate Providers to the same set of monitoring standards that Covered Providers are under in the 2nd RCC Order, a "Covered Provider's obligation to modify vendor contracts will be *de minimis*, at best.").

rural call completion efforts more administratively and operationally efficient, and therefore more beneficial to rural consumers.

Finally, contrary to the arguments of NTCA,³⁹ grant of the USTelecom Stay Petition is in the public interest. NTCA incorrectly narrows the full scope that grant of the USTelecom Stay Petition would have. NTCA claims that the “only tether to the ‘public’ interest is a baseless claim that implementation will somehow generate costs that result in increased rates for consumers.” This is not the case, and ignores the far broader public benefits discussed in the USTelecom Stay Petition.

Specifically, USTelecom noted that grant of the stay would “provide greater certainty and integrity to *overall* rural call completion efforts.”⁴⁰ In other words, in addition to avoiding increased costs, grant of the USTelecom Stay Petition would benefit rural consumers through the increased integrity of rural call completion efforts. NTCA also ignores the Commission’s own findings that complaints about rural call completion filed by rural carriers with the Enforcement Bureau decreased by about 15 percent from 2016 to 2017, following a decrease of 45 percent from 2015 to 2016.⁴¹ Thus, as noted in the USTelecom Stay Petition, staying for a short time § 64.2111 of the Commission’s rules would risk no third-party harm and would instead promote the public interest in stability and predictability for all relevant stakeholders.

³⁹ *NTCA Stay Opposition*, pp. 5 – 6.

⁴⁰ *USTelecom Stay Petition*, p. 6 (emphasis added).

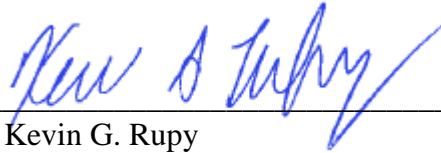
⁴¹ *2nd RCC Order*, ¶ 9.

III. Conclusion.

For the foregoing reasons, the Commission should grant both the USTelecom Petition and the USTelecom Stay Petition.

Respectfully submitted,

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