

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rural Call Completion)	WC Docket No. 13-39
)	
Connect America Fund)	WC Docket No. 10-90
)	
Petition of AT&T Services, Inc. for)	WC Docket No. 16-363
Forbearance under 47 U.S.C. § 160(c) from)	
Enforcement of Certain Rules for Switched)	
Access Services and Toll Free Database Dip)	
Charges)	

COMMENTS OF AT&T

AT&T Services, Inc., on behalf of its affiliates, respectfully submits these comments in response to the Second Further Notice of Proposed Rulemaking, seeking comment on proposed rules to address concerns about completion of long-distance calls to rural customers.¹ As the Commission is aware, AT&T has a long history of strongly supporting the Commission's efforts to ensure the reliable and efficient operation of the nation's telephone network. AT&T continues to believe that a reliable network benefits both customers and providers, and is critical to fuel economic development and enable social connections in our communities, including rural areas of the nation.² All customers, whether they live in rural areas or not, should expect their calls to go through. AT&T supports the Commission's proposals to adopt a more effective regulatory approach to rural call completion by eliminating ineffective data recording, retention and

¹ *Rural Call Completion*, WC Docket No. 13-39, Second Further Notice of Proposed Rulemaking, FCC 17-92 (rel. July 14, 2017) (*Second Further Notice*).

² *See, e.g.*, AT&T Comments, WC Docket No. 13-39, at 1 (filed May 13, 2013).

reporting rules, and instead ensuring that providers are accountable for high-quality call completion to the nation's rural consumers.

The Existing Reporting Regime. To the extent that the Commission identifies regulatory requirements that are no longer effective—by definition, the costs outweigh the nonexistent benefits—the Commission is obligated to repeal those rules. That is the case here. In its recent *Report*, the Wireline Competition Bureau (Bureau) reached some important conclusions about rural call completion.³ The *Report* concluded, among other things, that:

- “[T]here was wide variation in performance among covered providers ... which suggests that rural call completion may be more a function of individual provider performance than a systemic problem”;
- “[Another] finding suggests that the requirement to report data, in and of itself, has not caused providers in the aggregate to improve their performance in rural areas during the reporting period”; and
- “[D]ata quality issues impact the reliability of the data collection and preclude us from drawing firm conclusions from the data. These issues include not only variations in how covered providers report their data (e.g., how they categorize their call attempts) but also variations in the type of data they report (e.g., most covered providers do not segregate autodialer traffic in their reporting and some covered providers include intermediate provider and/or wholesale traffic in their reports).”⁴

Based on these conclusions, the Bureau recommended that the Commission consider eliminating the recording, retention, and reporting rules.⁵ AT&T agrees.

At the time the data collection rules were adopted, the Commission was taking important steps to address a serious consumer and industry concern.⁶ The Commission's efforts at collecting data about this issue helped spotlight rural call completion problems, which led to

³ See *Rural Call Completion*, WC Docket No. 13-39, Report, 32 FCC Rcd 4980 (WCB 2017) (*Report*).

⁴ *Id.* at para. 2.

⁵ See *id.* at para. 38.

⁶ See *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, paras. 13-15 (2013) (*Rural Call Completion Order*).

changes in the industry. However, in practice, AT&T's experience with the data recording and retention has been that the data anomalies in the Commission's methodology have made it impossible for AT&T to use the data as a tool to identify or rectify any rural call completion problems. For the reasons laid out in the *Report*, the reporting regime served an important initial purpose but has now outlived its utility. It is time to eliminate these unnecessary and unjustifiable burdens on providers. The Commission should now focus instead on more effective approaches for addressing any residual rural call completion concerns.

Accordingly, the Commission should reject calls to implement new reporting requirements.⁷ Providers, including AT&T, expended significant resources to design systems to implement the existing reporting regime. Changing the data recording, retention and reporting requirements now would require new systems work, adding to the already substantial costs incurred by providers to comply with these rules. At the same time, claims that the policy benefits would outweigh these substantial costs are dubious at best.⁸ Even if a new reporting regime could yield information useful in addressing rural call completion issues, it is unclear how to design something better. The record of this proceeding includes no credible and comprehensive proposals for how to revamp data collection to achieve the stated policy purpose. The Bureau identified critical shortfalls in the existing data collection that would not be readily or easily remedied in a new set of rules. Rather, any new reporting regime is likely to perpetuate many of the same flaws identified in the Bureau's *Report*, imposing high burdens on providers without more effective results.

⁷ See NTCA Comments, WC Docket No. 13-39, at 9-10 (Aug. 3, 2017).

⁸ See *id.* at 10.

If, however, the Commission decides to maintain the existing regime or to adopt new data collection requirements, the Commission must maintain the Managing Intermediate Provider Safe Harbor (Safe Harbor) exemption from routine reporting.⁹ As the Commission is aware, AT&T has consistently qualified for the Safe Harbor since it was adopted as part of the rural call completion rules.¹⁰ AT&T holds its vendors and itself to high standards for handling all traffic, as evidenced by its strict adherence to the ATIS Best Practices, the Safe Harbor, and additional commitments as part of the *AT&T Waiver*.¹¹ At the time of adoption, the Commission recognized providers' legitimate concerns about new regulatory burdens. To balance those concerns and create positive incentives, the Commission created the Safe Harbor to avoid punishing providers, like AT&T, that had already taken actions to ensure high-quality call completion and to create incentives for others to adopt responsible policies, including the ATIS Best Practices.¹² If the Commission continues the existing reporting or adopts new mandates, the Safe Harbor would continue to provide critical incentives for responsible conduct within the industry.

A New Approach. For the reasons discussed above, the Commission should abandon ineffective rural call completion data recording, retention and reporting. Rather, the Commission

⁹ See 47 C.F.R. § 64.2107.

¹⁰ See Letter to Marlene H. Dortch, Secretary, FCC, from Brian J. Benison, AT&T, WC Docket No. 13-39 (filed July 31, 2015) (filing AT&T's 2015 annual Safe Harbor certification); Letter to Marlene H. Dortch, Secretary, FCC, from Matthew Nodine, AT&T, WC Docket No. 13-39 (filed July 29, 2016) (filing AT&T's 2016 annual Safe Harbor certification); Letter to Marlene H. Dortch, Secretary, FCC, from Matthew Nodine, AT&T, WC Docket No. 13-39 (filed July 24, 2017) (filing AT&T's 2017 annual Safe Harbor certification).

¹¹ See "Alliance for Telecommunications Industry Solutions, ATIS Standard on Intercarrier Call Completion/Call Termination Handbook," ATIS-0300106, available at <https://www.atis.org/docstore/product.aspx?id=26780> (rel. Mar. 2013) (last visited Aug. 23, 2017) (ATIS Best Practices); 47 C.F.R. § 64.2107; *Rural Call Completion*, WC Docket No. 13-39, Order, 30 FCC Rcd 996 (WCB 2015) (*AT&T Waiver*). If the Commission eliminates the reporting requirements, the *AT&T Waiver* would no longer be relevant and the Commission should expressly set aside its terms.

¹² See *Report* at para. 36.

should focus on (1) enforcement of existing obligations, (2) new rules to address incentives that result in call completion problems, and (3) accountability for intermediate providers through industry Best Practices.

First, targeted and vigorous enforcement of existing legal duties has proven to be a more effective means of addressing rural call completion than generally applicable rules. The Enforcement Bureau has developed an effective, collaborative process to elevate informal rural call completion complaints for immediate attention from the company. The focus is on resolution for consumers rather than penalties. AT&T has worked cooperatively with the Enforcement Bureau to investigate and resolve any rural call completion complaints that AT&T receives. Through this process, AT&T has demonstrated that it takes all complaints about rural call completion seriously and actively investigates each one—regardless of whether the complaint comes from an AT&T customer, a rural LEC, or a rural end user with no relationship with AT&T. Indeed, AT&T’s internal tracking of call completion complaints and voluntary testing in cooperation with rural LECs shows that many rural call completion troubles reported to AT&T were not problems related to AT&T service at all. In the uncommon instances when that was not the case, AT&T has been able to quickly troubleshoot the problem and resolve any technical issues. And, if the Commission discovers a systemic rural call completion problem with a provider, the Commission has demonstrated that it has ample formal enforcement tools¹³ to ensure that carriers comply with their legal obligations to provide just, reasonable, and

¹³ See generally *Verizon*, Adopting Order and Consent Decree, 30 FCC Rcd 245 (EB 2015); *Matrix Telecom, Inc.*, Order and Consent Decree, 29 FCC Rcd 5709 (EB 2014); *Windstream Corp.*, Order and Consent Decree, 29 FCC Rcd 1646 (EB 2014); *Level 3 Commc’ns, LLC*, Order and Consent Decree, 28 FCC Rcd 2274 (EB 2013); *inContact, Inc.*, Order and Consent Decree, 31 FCC Rcd 4329 (EB 2016).

nondiscriminatory service without “blocking, choking, reducing, or restricting traffic in anyway.”¹⁴

Second, AT&T has long believed that rural call completion issues are merely a symptom of the real problem: incomplete reform of the intercarrier compensation system.¹⁵ The Commission should expeditiously move forward with new rules to eliminate inefficiencies and arbitrage that create incentives to game the system at the expense of call quality. There is good reason to believe that the reduced complaints noted by the Bureau—consumer complaints down by 57% from 2015 to 2016¹⁶—are attributable, at least in part, to intercarrier compensation reform currently in progress. The most significant development in the years since the *Rural Call Completion Order* is that the transition to bill-and-keep for end office rates is well underway for rural ILECs (and is already complete for many CLECs in rural areas).¹⁷ This is likely no coincidence.

The 2011 *USF/ICC Transformation Order* was an enormous step in the right direction but there is more to be done.¹⁸ Arbitrage and gaming persist—and new schemes are still emerging to fill the void of end-office revenues. Perhaps the single most effective step the Commission could take to solve rural call completion challenges would be to complete its long-

¹⁴ See *Report* at para. 3 (citing *Developing a Unified Intercarrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers*, CC Docket No. 01-92, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd 1351, para. 1 (WCB 2012); *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629 (WCB 2007)). We note that none of the consent decrees to date have been with carriers that comply with the Safe Harbor, further demonstrating the effectiveness of the Safe Harbor protections and the ATIS Best Practices.

¹⁵ See, e.g., AT&T Comments, WC Docket No. 13-39, at 1-2 (filed May 13, 2013); AT&T Services, Inc. Petition for Limited Waiver, WC Docket No. 13-39, at 6 n.26 (filed Apr.10, 2014) (AT&T Waiver Petition).

¹⁶ See *Report* at para. 19 (“Notably, rural call completion complaints to the Commission decreased from 2015 to 2016 (by 57 percent for complaints filed by consumers and by 45 percent for complaints filed by rural carriers).”).

¹⁷ Certain CLECs operating in rural areas benchmark to price cap LECs.

¹⁸ See generally *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*).

standing rulemaking to finish intercarrier compensation reform and detariff switched access rates (starting with granting AT&T's pending forbearance petition).¹⁹

Third, AT&T's experience demonstrates that the ATIS Best Practices work. AT&T has been a leader in developing Best Practices in ATIS and has fully integrated the ATIS Best Practices into the conduct of its business.²⁰ By actively managing intermediate carrier relationships through contract and oversight to ensure quality call completion, AT&T minimizes rural call completion problems and can focus resolution efforts on the small number of inevitable technical issues that crop up.²¹ The result is a very low number of rural call completion complaints (counted in the dozens annually) relative to the billions of calls carried on the AT&T network every year.²² For this reason, AT&T is supportive of efforts of covered providers to monitor the rural call completion performance of their intermediate providers and to hold them accountable for such performance. The Commission should strongly encourage providers to adopt good business practices but the ATIS Best Practices were developed as voluntary industry guidelines, cooperatively with input from across the industry. Providers need flexibility to adopt some or all of the ATIS Best Practices as appropriate for their businesses and individual network functions, and future technological changes; any other approach could have a chilling effect on future industry cooperation to develop solutions to industry problems. The Commission should

¹⁹ *AT&T Services, Inc., Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c)*, WC Docket No. 16-363 (filed Sept. 30, 2016).

²⁰ Indeed, managing intermediate providers by contract in this way was AT&T's practice well before it was adopted as part of the Safe Harbor. See AT&T Waiver Petition at 5 n.21.

²¹ Many of the symptoms of call completion problems—such as excessive call set up time and inaccurate ring tones or intercept messages—can be resolved by limiting the number of intermediate providers in the call path. And if there is an issue, a limited number of intermediate providers allows carriers to isolate the problem and determine its cause more effectively.

²² We note that a *de minimis* number of call completion failures is unavoidable and should not be considered a violation. Even in urban areas, a certain number of calls fail to complete in the normal operation of the network and do not result from network arrangements that cause systemic call completion problems.

not micromanage business practices but as noted above, the Commission has authority to act if a carrier's practices result in actual performance that does not satisfy the carrier's regulatory obligations.

To the extent the Commission moves forward with adopting rules, it is critical that any rules are as narrowly tailored and minimally burdensome as possible to achieve the Commission's objectives. As the Commission notes, flexibility in implementation is imperative.²³ The Commission must avoid prescriptive mandates to providers' businesses that could interfere with contractual relationships and create incentives for inefficient operation of networks or other unintended consequences. At most, new rules should be consistent with ATIS Best Practices and no broader in scope. Any additional regulatory obligations would likely impose substantial cost on providers, potentially distorting normal functioning of the industry, without any track record of benefit that could outweigh those costs.

If the Commission adopts such rules, consistent with ATIS Best Practices, the new regulatory requirements must create a presumption of good faith for covered providers. As AT&T has made clear, it strongly believes that the ATIS Best Practices are effective in combatting abuses that result in systemic rural call completion failures. The ATIS Best Practices ensure that covered providers, within the limits of contract law, take responsibility for ensuring that each call gets to its destination. The Commission could make clear that it will consider compliance with the ATIS Best Practices (or lack thereof) in any enforcement proceedings against a provider. But there must also be a presumption that covered providers, like AT&T, that implement the ATIS Best Practices are acting in good faith. They cannot be held to account for the performance of other providers that may be beyond their control and could be in breach of

²³ See *Second Further Notice* at para. 16.

the contractual safeguards. For this reason, the Commission must clarify that it would not impose liability on covered providers that make good faith efforts to comply with any new monitoring requirements and that hold intermediate providers accountable for problems identified through such monitoring.²⁴

Conclusion. For the foregoing reasons, the Commission should eliminate the existing reporting regime and ensure that any new rules adopted in this proceeding are narrowly tailored and minimally burdensome, particularly for carriers that take responsible steps to ensure reliable service to all called parties.

Respectfully submitted,

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²⁴ See *id.* at para. 15.