

**Before the  
Office of Management and Budget  
Washington, D.C.**

In the Matter of )  
 )  
Wireline Competition Bureau Seeks Comment ) WC Docket No. 13-39  
On Petition for Waiver filed in the Rural Call )  
Completion Proceeding )

**COMMENTS  
Of  
NTCA – THE RURAL BROADBAND ASSOCIATION**

NTCA – The Rural Broadband Association hereby responds to the Wireline Competition Bureau’s (the “Bureau’s”) request for comment on a request for waiver by Comcast Cable Communications, LLC (“Comcast”) of the recordkeeping, retention and reporting requirements (“Waiver Request”)<sup>1</sup> adopted in the Rural Call Completion Order.<sup>2</sup> Because Comcast has not demonstrated that good cause exists to grant the Waiver Request, it should be denied.

In general, the Federal Communications Commission’s (the “Commission’s”) rules may only be waived for good cause shown.<sup>3</sup> As the D.C. Circuit has held, the Commission’s exercise of its discretion to waive a rule is warranted where the “particular facts would make strict compliance

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<sup>1</sup> Petition for Limited Waiver of Comcast Cable Communications, LLC, WC Docket No. 13-39 (filed Sept. 9, 2016) (Comcast Petition), <https://ecfsapi.fcc.gov/file/10909481310618/Rural%20Call%20Completion%20Waiver%20Petition%20-%20Redacted%20Version%20-%20090916.pdf>.

<sup>2</sup> See generally *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154 (2013) (“*Rural Call Completion Order*”); see also 47 CFR §§ 64.2103-64.2105.

<sup>3</sup> 47 C.F.R. § 1.3.

inconsistent with the public interest.”<sup>4</sup> To determine if a waiver of a rule is consistent with the public interest, the Commission must determine that requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.<sup>5</sup> Comcast’s Waiver Request fails to meet this standard.

For more than five years, some voice calls to consumers and businesses located in rural areas of the United States have been dropped or blocked before reaching the networks of rural rate-of-return regulated local exchange carriers (“RLECs”) or the consumers they serve. “[The Federal Communications Commission has] heard about calls from doctors to nursing homes not going through, that calls to businesses aren’t getting completed, and that rural consumers are frustrated when their friends and family are not able to reach them. Even more critically, calls to public safety authorities that are not completed can literally mean the difference between life and death.”<sup>6</sup> Schools have been unable to reach parents with critical alerts, including school closings due to extreme weather. 911 call centers have been unable to complete emergency callbacks, and those who safeguard the public have been unable to communicate with public safety officials.

This issue affects not only rural consumers and businesses, but also harms users across the nation when their ability to reach family members, friends and rural businesses is compromised.

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<sup>4</sup> See *AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”).

<sup>5</sup> See generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972); see also *Northeast Cellular* (D.C. Cir. 1990).

<sup>6</sup> *Rural Call Completion*, WC Docket No. 13-39, *Report and Order and Further Notice of Proposed Rulemaking*, 28 FCC Rcd. 16154 (2013) (*Order*), Statement of Commissioner Clyburn.

Even for those who never call a rural area, the value of the voice network to them is diminished as the reliability of the nationwide network is degraded.<sup>7</sup> There are severe adverse impacts to regional economies and the national economy if consumers and businesses in certain areas cannot reliably be reached. The United States once had a telecommunications network that was the envy of the world because of its reach and reliability. The *Rural Call Completion Order* is an important and necessary step in restoring that reality.

To this end, the order adopted, among other things, recordkeeping, retention, and reporting rules to improve the Commission's ability to monitor the delivery of long-distance calls to rural areas, and to aid enforcement action in connection with providers' call completion practices as necessary.<sup>8</sup> As the Commission noted, these rules are a critical step toward creating proper incentives for call routing and eliminating significant concerns regarding completion of long-distance calls to rural areas.<sup>9</sup>

Comcast makes no assertion that there are special circumstances that warrant grant of the requested waiver or that it was unable to collect the required Call Detail Record information. In fact, Comcast was apparently able to correct the problem "immediately upon discovering the errors."<sup>10</sup>

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<sup>7</sup> It is well established that the value of a network increases as it grows. *See, e.g.*, Bob Briscoe et al, *Metcalf's Law Is Wrong*, IEEE Spectrum, (Jul. 1, 2006 6:15 PM), <http://spectrum.ieee.org/computing/networks/metcalfes-law-is-wrong> (Metcalf was correct that the value of a network grows faster than its size in linear terms).

<sup>8</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16164-91, paras. 19-84, 16211-214, Appx. A; 47 C.F.R. §§ 64.2103-64.2105.

<sup>9</sup> *See id.* at 16160-64, paras. 13-18.

<sup>10</sup> *Id.*, p. 3.

Comcast explains its failure to comply with regulation by pointing out that the attention of the personnel responsible for reviewing the Call Detail Record (“CDR”) was focused elsewhere.<sup>11</sup> Neglect of company personnel and management to a federal law hardly constitutes “good cause.” Rural consumers and businesses have suffered through failed calls for years precisely because originating providers have had little incentive to investigate and address problems when they arise. There is no reason to give any firm a “free pass” with respect to regulations that it knew applied, that it had personnel available to address, and that it apparently could comply with quite readily once it “paid enough attention” – especially when the rules at issue are intended to assure service reliability and protect the livelihood and safety of consumers.

The Commission has “allowed providers that have practices consistent with the Commission’s call completion objectives to qualify for reduced reporting and retention requirements.”<sup>12</sup> In considering a request for waiver of its reporting rules, the Commission will take into account whether a provider has: (1) “processes in place to ensure that calls to rural incumbent LECs successfully reach their destinations, such as by adopting industry best practices”; (2) “capabilities and processes to monitor its own performances by the OCN of the called party’s LEC”; and (3) “demonstrated that it qualifies for the safe harbor.”<sup>13</sup> Comcast asserts that it has a “rigorous system of best practices to ensure high levels of call completion to rural and non-rural areas”<sup>14</sup> and that the Commission has “ample data” regarding Comcast’s rural

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<sup>11</sup> Comcast Petition, p. 2.

<sup>12</sup> *Rural Call Completion; Petition for Limited Waiver of AT&T Services, Inc.,; Petition for Waiver of CenturyLink*, Order, 30 FCC Rcd 9965, ¶ 5(205).

<sup>13</sup> *Rural Call Completion Order*, ¶¶33, 96

<sup>14</sup> Comcast Petition, pp. 5-6.

call completion performance.<sup>15</sup> NTCA cannot opine about Comcast’s practices or the data submitted to the Commission, but Comcast acknowledges that it does not qualify for the safe harbor.

Comcast argues that all but one of its agreements with the intermediate carriers satisfy the requirements adopted for a voice provider to be eligible for safe harbor treatment.<sup>16</sup> Yet, for its own business reasons, Comcast continues to use an intermediate carrier who will not agree to route rural call attempts using no more than one downstream provider. The fact that other carriers have so agreed is meaningless for safe harbor purposes since the vast majority of Comcast’s traffic destined for rural areas could be “hopping” to the non-compliant intermediate provider. Any protections the safe harbor may offer to rural consumers are at risk if the originating provider doesn’t ensure that *all* of the intermediate carriers it uses are compliant.

Qualification for “most of” a safe harbor is not the same thing as qualifying for a safe harbor, and a temporary “lack of attention” to a rule is not “good cause” for waiver of that rule. For these reason, the Comcast waiver request must be denied.

## **CONCLUSION**

Consumers living and working in rural communities must be able to rely on the nation’s telecommunications system. Rural communities’ financial welfare and public safety are compromised when calls fail to be complete. It is a serious issue that demands serious attention – the Commission has attempted to give this issue the attention it deserves, but so too must providers subject to the Commission’s rules. Comcast’s failure to recognize that it was not capturing all of the required data is not a “special circumstance” that should be waived. The

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<sup>15</sup> *Id.*, p. 9.

<sup>16</sup> *Id.* p. 6.

Commission examined a lengthy and complete record on the issue and determined that its targeted data collection will provide decision makers with the best chance of finding a permanent solution to this troubling issue. Granting Comcast's request would undermine an essential public policy objective and is not in the public interest. Accordingly, Comcast's Petition for limited waiver of the Commission's call completion rules should be denied.

Respectfully submitted,



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